

**Version No. 071**  
**Accident Compensation (WorkCover  
Insurance) Act 1993**

**No. 50 of 1993**

Version incorporating amendments as at  
12 November 2013

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**Version No. 071**  
**Accident Compensation (WorkCover  
Insurance) Act 1993**

**No. 50 of 1993**

Version incorporating amendments as at  
12 November 2013

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to provide for compulsory WorkCover insurance for employers under WorkCover insurance policies and the payment of premiums for WorkCover insurance policies.

S. 1  
amended by  
No. 50/1994  
s. 89(1)(2),  
substituted by  
No. 81/1998  
s. 3.

**2 Commencement**

- (1) Part 1 and sections 19, 94(1), 102, 110(1) and 111(1) come into operation on the day this Act receives the Royal Assent.
- (2) The following sections are deemed to have come into operation as follows—
  - (a) sections 111(2) and 112(1) on 19 November 1992;
  - (b) sections 84(1), 92, 94(2), 95, 100 and 110(2) on 1 December 1992;
  - (c) section 93 on 1 April 1993;
  - (d) sections 87 and 88 on 29 April 1993.
- (3) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

### 3 Definitions

(1) In this Act—

S. 3(1) def. of *applicable prescribed percentage* inserted by No. 80/2010 s. 132(1).

*applicable prescribed percentage* has the same meaning as in the section 5(1) of the **Accident Compensation Act 1985**;

S. 3(1) def. of *authorised insurer* substituted by No. 81/1998 s. 4(a).

*authorised insurer* means an insurer who was the holder of a licence under Part 3 as in force immediately before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998**;

S. 3(1) def. of *authorised agent* inserted by No. 81/1998 s. 4(a).

*authorised agent* has the same meaning as it has in section 5(1) of the **Accident Compensation Act 1985**;

S. 3(1) def. of *Authority* substituted by No. 80/2010 s. 132(2)(a).

*Authority* has the same meaning as in section 5(1) of the **Accident Compensation Act 1985**;

S. 3(1) def. of *employer* substituted by No. 80/2010 s. 132(2)(b).

*employer* has the same meaning as in the **Accident Compensation Act 1985**;

S. 3(1) def. of *estimated future claim cost* inserted by No. 9/2010 s. 100.

*estimated future claim cost* means an estimate of the future cost of a claim of an employer against whom one or more claims have been made within the relevant claims reporting period as determined by the Authority in accordance with the relevant premiums order;

*exemption limit* means—

- (a) in relation to the financial year ending 30 June 1994—\$7500; and
- (b) in relation to each subsequent financial year—the amount prescribed in the premiums order in respect of that financial year;

*former authorised insurer* means an authorised insurer whose licence has ceased to be in force whether by expiry, cancellation, suspension or operation of law;

S. 3(1) def. of *former authorised insurer* amended by No. 81/1998 s. 4(b).

*policy period* means the period of 12 months or such lesser period as may be fixed by the Authority ending at 4 p.m. on 30 June in any year;

S. 3(1) def. of *policy period* amended by No. 81/1998 s. 4(c).

*premiums order* means a premiums order made under section 15;

*rateable remuneration* means remuneration that is subject to a premium within the meaning of section 8;

*remuneration* means remuneration within the meaning of section 3AA;

S. 3(1) def. of *remuneration* substituted by Nos 60/2007 s. 30(1), 80/2010 s. 132(2)(c).

\* \* \* \* \*

S. 3(1) def. of *statutory fund* repealed by No. 81/1998 s. 4(d).

S. 3(1) def. of  
*super-  
annuation  
benefit*  
inserted by  
No. 60/2007  
s. 30(1).

*superannuation benefit* means money paid or payable by an employer in respect of a worker—

- (a) to or as a superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth; or
- (b) as a superannuation guarantee charge within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; or
- (c) to or as any other form of superannuation, provident or retirement fund or scheme including—
  - (i) a Superannuation Holding Accounts Reserve within the meaning of the Small Superannuation Accounts Act 1995 of the Commonwealth; and
  - (ii) a retirement savings account within the meaning of the Retirement Savings Accounts Act 1997 of the Commonwealth; and
  - (iii) a wholly or partly unfunded fund or scheme;

*WorkCover Authority Fund* means the Fund established under section 32 of the **Accident Compensation Act 1985**;



***WorkCover insurance policy*** means an insurance policy issued or deemed to be in force in accordance with this Act;

S. 3(1) def. of *WorkCover insurance policy* amended by Nos 81/1998 s. 4(e), 80/2010 s. 136, substituted by No. 80/2010 s. 131.

***worker*** has the same meaning as in the **Accident Compensation Act 1985**;

S. 3(1) def. of *worker* substituted by No. 80/2010 s. 132(2)(d).

- (2) Unless inconsistent with the context or subject-matter, words and expressions defined in the **Accident Compensation Act 1985** have the same meaning in this Act.
- (3) A reference in the definition of ***superannuation benefit*** to a worker includes a reference to any person to whom, by virtue of the definition of ***remuneration***, an amount paid or payable in the circumstances referred to in that definition constitutes remuneration.
- (4) For the purposes of paragraph (c) of the definition of ***superannuation benefit*** and section 3B(b), a superannuation, provident or retirement fund or scheme is unfunded to the extent that money paid or payable by an employer in respect of a worker covered by the fund or scheme is not paid or payable during the worker's period of employment with the employer.

S. 3(3) inserted by No. 60/2007 s. 30(2), substituted by No. 80/2010 s. 134.

S. 3(4) inserted by No. 60/2007 s. 30(2), repealed by No. 80/2010 s. 132(3), new s. 3(4) inserted by No. 80/2010 s. 134.

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S. 3(5) inserted by No. 60/2007 s. 30(2), repealed by No. 80/2010 s. 134.

S. 3AA  
inserted by  
No. 80/2010  
s. 133.

### 3AA Remuneration

- (1) Subject to this section, *remuneration* means any wages, remuneration, salary, commission, incentive-based payment, bonus, penalty rate, loading, overtime payment, monetary allowance or shift allowance (whether at piece work rates or otherwise and whether paid or payable in cash or kind) paid to or in relation to a worker and without limiting the generality of the foregoing includes but is not limited to—
- (a) wages, remuneration, salary, commission, an incentive based payment, bonus, penalty rate, loading, overtime rate, monetary allowance, piece rate, shift allowance (however described and whether paid or payable in cash or in kind) and whether paid by or on behalf of the employer or by a person working in concert with, or under an arrangement or understanding (whether formal or informal and whether expressed or implied) with the employer;
  - (b) an amount or payment that, under the **Accident Compensation Act 1985** or this Act, is deemed to be remuneration;
  - (c) a fringe benefit within the meaning of the **Accident Compensation Act 1985**;
  - (d) a superannuation benefit, other than a superannuation benefit paid or payable in respect of services performed or rendered by a worker before 1 January 1998;
  - (e) an amount paid or payable by a company to or in relation to a director or member of the governing body of that company for services rendered by that person to the company.

- 
- (2) In subsection (1), *remuneration* does not include—
- (a) an amount paid or payable to a person within the meaning of section 16 of the **Accident Compensation Act 1985** engaged by an employer to participate as a contestant in a sporting or athletic activity in respect of the services provided by the person while the person is—
    - (i) participating as a contestant in that sporting or athletic activity;
    - (ii) engaging in training or preparation with a view to so participating;
    - (iii) travelling between a place of residence and the place at which the person is so participating or so engaged;
  - (b) an amount paid or payable to an apprentice under a training contract made in accordance with a training scheme that is approved by the Victorian Skills Commission under Part 5.5 of the **Education and Training Reform Act 2006** if the apprentice or training scheme is, or is in a class of apprentices or training schemes declared by the Minister to be an apprentice or training scheme to which this paragraph applies;
  - (c) an allowance for travel or accommodation paid or payable at a rate in a particular class or class of cases that does not exceed the rate prescribed for that class or classes;
  - (d) an amount that does not exceed the exemption limit;
  - (e) any payment of compensation in respect of an injury under the **Accident Compensation Act 1985** or this Act;
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- (f) in relation to a worker of a class to which an applicable prescribed percentage applies, that applicable prescribed percentage.

S. 3A  
inserted by  
No. 60/2007  
s. 31.

**3A Superannuation benefits relating to services performed before 1 January 1998**

- (1) Money paid by an employer on or after 1 January 1998 as a superannuation benefit that is alleged by the employer to be paid in respect of services performed or rendered by a worker before that day, must be evidenced to the satisfaction of the Authority in the employer's records for the calculation of premiums under this Act.
- (2) In particular, the employer's records must show the manner of calculation of the benefit and any actuarial basis for it.
- (3) For the purposes of subsection (2) and of any calculation of premiums to which that subsection is relevant, the certificate of a fellow or accredited member of the Institute of Actuaries of Australia to the effect that the actuarial basis on which an amount is calculated is justified is evidence and, in the absence of evidence to the contrary, proof of that fact.
- (4) If records are not kept as required by this section, the Authority is entitled to assume for the purposes of the calculation of premiums, that a payment of money by an employer as a superannuation benefit on or after 1 January 1998 is an amount payable in respect of services performed or rendered by a worker on or after that day.

**3B Superannuation benefits not readily related to particular workers or their periods of service**

S. 3B  
inserted by  
No. 60/2007  
s. 31.

For the purposes of any calculation of premiums, the Authority may determine—

- (a) whether, and the extent to which, any money paid or payable by an employer to a superannuation, provident or retirement fund or scheme that is not identified by the employer as paid or payable in respect of a particular worker (and whether or not purporting to be so paid or payable on any actuarial basis) is to be regarded as a superannuation benefit paid or payable in respect of a particular worker; and
- (b) subject to section 3A, the portion of any money paid on or after 1 January 1998 by an employer as a superannuation benefit to a wholly or partly unfunded fund or scheme, being money paid in respect of a worker (or that is to be regarded under paragraph (a) to have been so paid) who performed or rendered services to the employer on or after, as well as before, 1 January 1998, that is to be regarded as having been paid in respect of services performed or rendered before that date.

**4 Act does not apply to certain self-insurers**

This Act does not apply to a self-insurer under Part V of the **Accident Compensation Act 1985**.

S. 4  
amended by  
Nos 47/1996  
s. 24, 80/1997  
s. 51,  
substituted by  
No. 80/2010  
s. 135.

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**5 Construction of Act**

This Act must be read and construed as one with the **Accident Compensation Act 1985**.

**6 Act to bind Crown**

This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

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**PART 2—WORKCOVER INSURANCE AND PREMIUMS**

**7 Compulsory WorkCover insurance**

(1) An employer who in any financial year employs a worker within the meaning of section 5(1) of the **Accident Compensation Act 1985**<sup>1</sup>—

S. 7(1)  
amended by  
Nos 7/1996  
s. 51(1),  
9/2010 s. 178.

(a) must obtain and keep in force a WorkCover insurance policy with the Authority indemnifying the employer against the employer's liability as an employer of the worker to pay—

S. 7(1)(a)  
amended by  
Nos 50/1994  
s. 90(1)(2),  
81/1998  
s. 5(1),  
substituted by  
No. 9/2010  
s. 101(1).

(i) any amount of compensation payable under the **Accident Compensation Act 1985**, other than an amount payable under section 125A(3) of that Act; and

(ii) damages to the worker or the dependants of the worker as permitted by and in accordance with section 134AB and section 135C of the **Accident Compensation Act 1985** and to pay contribution in respect of such damages under section 23B of the **Wrongs Act 1958**—

in respect of injuries arising out of or in the course of or due to the nature of employment with that employer on or after 4 p.m. on 30 June 1993<sup>2</sup>; and

(b) must not at any one time keep in force more than one such policy, unless permitted to do so by the Authority under subsection (1AAC).

S. 7(1)(b)  
amended by  
No. 9/2010  
s. 101(2).

Penalty: In the case of a natural person,  
240 penalty units;

In the case of a body corporate,  
1200 penalty units.

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993

Part 2—WorkCover Insurance and Premiums

s. 7

S. 7(1AAA)  
inserted by  
No. 9/2010  
s. 101(3),  
amended by  
No. 80/2010  
s. 140.

(1AAA) A policy of insurance obtained and kept in force by an employer under subsection (1)(a) does not indemnify an employer against any of the employer's liabilities arising out of or related to sections 242AB and 242AD of the **Accident Compensation Act 1985**.

S. 7(1AAB)  
inserted by  
No. 9/2010  
s. 101(3).

(1AAB) Subsection (1AAC) applies if the Authority is satisfied that—

- (a) an employer is a trustee of 2 or more trusts; and
- (b) 2 or more of the trusts for which the employer is trustee carry on separate businesses; and
- (c) the employer employs workers in relation to the businesses carried on by the trusts; and
- (d) at least one of the businesses (the *independent business*) is carried on independently of, and is not connected with, the carrying on of the other businesses.

S. 7(1AAC)  
inserted by  
No. 9/2010  
s. 101(3).

(1AAC) If this subsection applies, the Authority may permit the employer to keep—

- (a) one WorkCover insurance policy in respect of those businesses that are connected; and
- (b) an additional WorkCover insurance policy in respect of the independent business.

S. 7(1AA)  
inserted by  
No. 95/2003  
s. 24(1).

(1AA) It is a defence to a prosecution for an offence against subsection (1) concerning an employer's liability in respect of injuries to a worker if the court is satisfied that at the time of the alleged offence—

- (a) the employer believed on reasonable grounds that the employer could not be liable under the **Accident Compensation Act 1985** or at common law or otherwise in respect of injuries to the worker because under



section 80 of that Act the worker's employment was not connected with this State; and

- (b) the employer had workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the employer believed on reasonable grounds the worker's employment was connected under section 80 of that Act.

(1AB) In subsection (1AA), *workers compensation cover* means insurance or registration required under the law of a State or Territory in respect of liability for statutory workers compensation under that law.

S. 7(1AB)  
inserted by  
No. 95/2003  
s. 24(1).

(1A) Subject to subsection (1B), subsection (1) does not apply in respect of a financial year or part of a financial year during which the employer has reasonable grounds for believing that the total rateable remuneration that the employer is or will be liable to pay during that financial year does not exceed the exemption limit<sup>3</sup>.

S. 7(1A)  
inserted by  
No. 50/1994  
s. 91,  
substituted by  
No. 7/1996  
s. 51(2).

(1B) Subsection (1A) does not operate to exclude the application of subsection (1) to an employer who employs an apprentice within the meaning of section 5(1) of the **Accident Compensation Act 1985**<sup>4</sup>.

S. 7(1B)  
inserted by  
No. 7/1996  
s. 51(2).

(2) An employer is liable for an excess on each claim under a policy under subsection (1) as specified in section 125A(3) of the **Accident Compensation Act 1985**.

(3) The excess may be increased, reduced or eliminated in accordance with sections 125A(6) and 125A(7) of the **Accident Compensation Act 1985**.

Accident Compensation (WorkCover Insurance) Act 1993  
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Part 2—WorkCover Insurance and Premiums

s. 7

S. 7(3A)  
inserted by  
No. 9/2010  
s. 101(4).

(3A) An employer, other than an employer in respect of which subsection (1A) applies, who is required to, but fails to, comply with subsection (1)(a) for any policy period, or part of a policy period, is deemed to have in force a policy of insurance under subsection (1)(a) with the Authority for the purposes of this Act during the policy period or part of the policy period of non-compliance.

S. 7(3B)  
inserted by  
No. 9/2010  
s. 101(4),  
amended by  
No. 80/2010  
s. 137(1).

(3B) Subject to section 21A, an employer who is deemed to have a policy of insurance under subsection (3A), is liable to pay the premium for the policy period calculated in accordance with the premiums order for that period, or the premium calculated in accordance with subsection (3C) for part of the policy period, in respect of which the employer is deemed to have the policy of insurance and any penalty for non-compliance under subsection (6), specified in a written notice served by the Authority on the employer.

S. 7(3C)  
inserted by  
No. 9/2010  
s. 101(4),  
amended by  
No. 80/2010  
s. 137(2).

(3C) The premium payable under subsection (3B) in relation to part of a policy period for which an employer is deemed to have in force a policy of insurance is to be calculated in accordance with the formula—

$$P = D \times \frac{E}{F}$$

where—

P is the portion of premium payable for the deemed part of a policy period calculated in accordance with the premiums order for that period;

D is the amount of premium payable for the full policy period calculated in accordance with the premiums order for that period;

E is the number of days constituting the part of the policy period the employer is deemed to have held a policy;

F is the number of days in the policy period for which the employer is or was required to hold a policy under subsection (1)(a).

(3D) If an employer does not pay the premium and penalty under subsection (3B) in accordance with the written notice, the Authority may recover under section 61 any amount paid under a policy of insurance that an employer is deemed to have been issued under subsection (3A).

S. 7(3D)  
inserted by  
No. 9/2010  
s. 101(4).

(4) An employer in respect of which subsection (1A) applies is deemed to have in force a policy of insurance under subsection (1) with the Authority for the purposes of this Act during the period in respect of which subsection (1A) applies<sup>5</sup>.

S. 7(4)  
substituted by  
No. 7/1996  
s. 51(3).

\* \* \* \* \*

S. 7(4A)  
inserted by  
No. 50/1994  
s. 92(1),  
amended by  
Nos 80/1997  
s. 51, 107/1997  
s. 64(1),  
81/1998  
s. 5(2),  
repealed by  
No. 80/2010  
s. 138.

\* \* \* \* \*

S. 7(4B)  
inserted by  
No. 50/1994  
s. 92(1),  
amended by  
Nos 107/1997  
s. 64(1)(2),  
58/2007 s. 49,  
repealed by  
No. 80/2010  
s. 138.

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Part 2—WorkCover Insurance and Premiums

s. 7

S. 7(4C)  
inserted by  
No. 84/1994  
s. 64,  
amended by  
No. 81/1998  
s. 5(3).

(4C) The employer of a worker employed under a program designed under section 12(3) of the **Transport Accident Act 1986** is deemed to have a WorkCover insurance policy in respect of the worker only and subsection (1)(b) does not apply in respect of such policy.

S. 7(4D)  
inserted by  
No. 84/1994  
s. 64,  
amended by  
No. 107/1997  
s. 64(3).

(4D) Despite subsection (4C), the premium payable in respect of a deemed WorkCover insurance policy under subsection (4C) is to be calculated in accordance with the premiums order and is payable as part of the premium payable for the WorkCover insurance policy held by the Transport Accident Commission as if—

- (a) the worker was employed by the Transport Accident Commission; and
- (b) the remuneration paid to the worker had been paid by the Transport Accident Commission.

(5) If an employer registered under section 197 of the **Accident Compensation Act 1985** is required to obtain and keep in force a WorkCover insurance policy and has not on or before 4 June 1993 advised the Authority of the authorised insurer with which the employer is to obtain a WorkCover insurance policy, the employer is deemed for the first policy period after 4 p.m. on 30 June 1993 to have a WorkCover insurance policy with an authorised insurer specified by the Authority.

S. 7(6)  
amended by  
No. 82/2001  
s. 26(a),  
substituted by  
No. 9/2010  
s. 101(5).

(6) An employer who is deemed to have in force a policy of insurance under subsection (3A) is liable to pay a default penalty, as set out in a written notice of penalty served by the Authority on the employer, of an amount equal to the premium payable, as set out in the notice served by the Authority under section 21A, in respect of the period for which the employer is deemed to have had a policy of insurance.

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- (6A) A default penalty under subsection (6) is due and payable—
- (a) on a date specified by the Authority in the written notice of penalty; or
  - (b) if no date is specified in the written notice, within 28 days of the date of the notice of penalty.
- (6B) The Authority may remit the whole or any part of a default penalty imposed under subsection (6).
- (7) The Authority may recover a default penalty under subsection (6) from an employer whether or not the employer has been proceeded against or been convicted for an offence against subsection (1) in respect of the employer's failure to obtain or keep in force the policy of insurance.
- (7A) Despite any other provision of this section, if the Authority is satisfied that—
- (a) the reason for the employer not obtaining or keeping in force a policy of insurance as required in accordance with subsection (1) in respect of injuries to a worker in a period is that the employer believed on reasonable grounds that the employer could not be liable under the **Accident Compensation Act 1985** or at common law or otherwise in respect of injuries to the worker because under section 80 of that Act the worker's employment was not connected with this State; and
- S. 7(6A)**  
inserted by  
No. 9/2010  
s. 101(5).
- S. 7(6B)**  
inserted by  
No. 9/2010  
s. 101(5).
- S. 7(7)**  
amended by  
No. 9/2010  
s. 101(6).
- S. 7(7A)**  
inserted by  
No. 95/2003  
s. 24(2),  
amended by  
No. 9/2010  
s. 101(7).

(b) the employer had workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the employer believed on reasonable grounds the worker's employment was connected under section 80 of that Act—

the employer is not liable to pay a default penalty under subsection (6) in respect of that liability.

S. 7(7B)  
inserted by  
No. 95/2003  
s. 24(2).

(7B) In subsection (7A), *workers compensation cover* has the same meaning as in subsection (1AB).

S. 7(8)  
inserted by  
No. 81/1998  
s. 5(4).

(8) A WorkCover insurance policy issued or deemed to have been issued before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998** is deemed to have been issued under this Act as amended by Part 2 of the **Accident Compensation (Amendment) Act 1998**.

S. 7(9)  
inserted by  
No. 26/2000  
s. 27(1),  
amended by  
No. 54/2000  
s. 25(5).

(9) A WorkCover insurance policy issued or deemed to have been issued under this Act does not indemnify an employer in respect of any liability of the employer to pay compensation for a matter for which compensation is awarded under Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**.

## 8 Rateable remuneration

S. 8(1)  
substituted by  
No. 28/2005  
s. 26(1).

(1) The remuneration subject to a premium under this Act is remuneration that is paid or payable by an employer on or after 1 July 2005 in respect of services performed or rendered on or after 1 July 2005 by a worker whose employment is connected with the State of Victoria within the meaning of section 80 of the **Accident Compensation Act 1985**.

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- (2) Subsections (1) and (2) as in force before the commencement of section 26 of the **Accident Compensation (Amendment) Act 2005** continue to apply for the purposes of determining remuneration subject to a premium before 1 July 2005. **S. 8(2) substituted by No. 28/2005 s. 26(1).**
- (2A) For the purposes of this section, where remuneration includes a fringe benefit within the meaning of section 5(1) of the **Accident Compensation Act 1985**, that part of the fringe benefit which is to be included in rateable remuneration for a financial year is to be the fringe benefit calculated for the period 1 April to 31 March ending in that financial year. **S. 8(2A) inserted by No. 50/1994 s. 93.**
- (2B) Remuneration that is superannuation benefits that are not paid in respect of services performed or rendered by a worker in a particular month is rateable remuneration under this Act as if it were paid or payable in respect of services performed or rendered during the month in which it is paid or became payable. **S. 8(2B) inserted by No. 107/1997 s. 65.**
- (2C) Nothing in subsection (2B) applies to render remuneration that is superannuation benefits paid or payable in respect of services performed or rendered in respect of services performed or rendered by a worker before 1 January 1998 to be rateable remuneration. **S. 8(2C) inserted by No. 107/1997 s. 65.**
- \* \* \* \* \*
- S. 8(3) amended by No. 102/2004 s. 42(a)(b), repealed by No. 28/2005 s. 26(2).**

## 9 WorkCover insurance policy

(1) A WorkCover insurance policy must only contain such provisions as are prescribed by this Act and any other provisions that are approved by the Authority.

S. 9(2)  
amended by  
No. 81/1998  
s. 6(a).

(2) A WorkCover insurance policy must provide that—

S. 9(2)(a)  
amended by  
No. 81/1998  
s. 6(b),  
substituted by  
No. 9/2010  
s. 102(1).

(a) the Authority as well as the employer is directly liable to any worker and in the event of the worker's death, to the dependants of the worker to pay—

(i) any amount of compensation payable under the **Accident Compensation Act 1985** other than an amount under section 125A(3) of that Act; and

(ii) damages to the worker or the worker's dependants as permitted by and in accordance with section 134AB and section 135C of the **Accident Compensation Act 1985**—

for which the employer is liable as an employer of the worker to the worker or the worker's dependants in respect of injuries arising out of or in the course of or due to the nature of employment during the period of insurance and any renewal of the insurance; and

S. 9(2)(b)  
amended by  
No. 81/1998  
s. 6(b).

(b) the Authority is bound by and subject to any judgment, order, decision, award or determination given or made against the employer of any such worker in respect of the injury or death for which the compensation or amount is payable.



(2A) A WorkCover insurance policy does not indemnify an employer against any of the employer's liabilities arising out of or related to section 242AB or 242AD of the **Accident Compensation Act 1985**.

S. 9(2A) inserted by No. 9/2010 s. 102(2), amended by No. 80/2010 s. 141.

\* \* \* \* \*

S. 9(3) amended by No. 81/1998 s. 6(c), repealed by No. 9/2010 s. 102(3).

\* \* \* \* \*

S. 9(4)(5) repealed by No. 81/1998 s. 6(d).

**10 Issue and renewal of WorkCover insurance policies**

S. 10 amended by No. 50/1994 s. 94, substituted by No. 81/1998 s. 7.

(1) A person, other than the Authority, must not issue or renew a WorkCover insurance policy or a purported WorkCover insurance policy.

S. 10(1) amended by No. 9/2010 s. 179.

Penalty: In the case of a natural person,  
180 penalty units;  
In the case of a body corporate,  
900 penalty units.

(2) Subject to subsection (3), the Authority must not refuse to issue a WorkCover insurance policy to an employer or to renew a WorkCover insurance policy issued to an employer.

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- (3) Subsection (2) does not apply in any case where—
- (a) the employer has not complied with any conditions prescribed by this Act or the regulations in respect of the issue or renewal of a WorkCover insurance policy; or
  - (b) the employer has persistently failed to pay, or to pay when due and payable, premium or adjusted premium for a WorkCover insurance policy.

S. 11  
repealed by  
No. 81/1998  
s. 7.

\* \* \* \* \*

## 12 Inspection of policies

- (1) The Authority or a person authorised by the Authority may by notice in writing require an employer—
- (a) to produce for inspection the policy of insurance obtained by the employer and in force at such date or between such dates as the notice specifies; and
  - (b) to supply such particulars in relation to the policy as the Authority or person may deem necessary.
- (2) A worker or other person who has or may have a claim for compensation under the **Accident Compensation Act 1985** or at common law or otherwise for which the employer is or may be liable may by notice in writing require the employer to make available for inspection a policy of insurance in force in respect of the worker at the time the injury arose out of or in the course of employment.

S. 12(2)  
amended by  
No. 50/1994  
s. 95.

- (3) A person on whom a notice is served under subsection (1) or (2) must comply with the notice.

S. 12(3)  
amended by  
No. 9/2010  
s. 180(1).

Penalty: In the case of a natural person,  
40 penalty units;

In the case of a body corporate,  
200 penalty units.

- (4) An employer who obtains a policy of insurance must retain the policy in his or her possession in good order and condition until—

S. 12(4)  
amended by  
No. 9/2010  
s. 180(2).

(a) there are no longer any workers in respect of whom the policy is in force still employed by the employer; or

(b) the policy is at least 7 years old—

whichever occurs later.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

**13 Evidence that employer has WorkCover insurance policy**

S. 13  
amended by  
Nos 7/1996  
s. 52, 81/1998  
s. 8.

A certificate issued by the Authority or a person authorised by the Authority for the purposes of this section certifying that on any date or during any period specified in the certificate a specified employer had or did not have a WorkCover insurance policy with either a specified authorised insurer or the Authority is admissible in any proceedings and is evidence of the particulars certified in the certificate.

#### 14 Employer ceasing to exist

(1) A worker may make an application to the County Court for a declaration under this section.

(2) The County Court may make a declaration that—

(a) an employer has entered into a policy of insurance with an authorised insurer named in the declaration or with the Authority; and

(b) the employer—

(i) being a natural person, has died, or is permanently resident outside the Commonwealth of Australia and its Territories, or cannot after due inquiry and search be found;

(ii) being a corporation (other than a company which has commenced to be wound up) has ceased to exist;

(iii) being a company, corporation, society, association or other body (other than a company which has commenced to be wound up), was at the time when it commenced to employ the worker incorporated outside the Commonwealth of Australia and its Territories and registered as a foreign company under the laws of any State or Territory of the Commonwealth of Australia and is not at the time of the declaration so registered under any such law; or

(iv) being a company, has commenced to be wound up after entering into the policy of insurance with the authorised insurer.

S. 14(2)(a)  
amended by  
No. 81/1998  
s. 9(a).

- (3) If a declaration is in force under this section, there is deemed to be a policy of insurance between the authorised insurer referred to in the declaration and the employer of the worker or between the Authority and the employer of the worker in respect of the liability of the employer to the worker under the **Accident Compensation Act 1985** and at common law or otherwise.

S. 14(3)  
amended by  
No. 81/1998  
s. 9(b).

**15 Premiums order<sup>6</sup>**

- (1) The Governor in Council may on the recommendation of the Authority by Order in Council make a premiums order—
- (a) specifying the methods to be used in calculating premiums payable by an employer for a WorkCover insurance policy; and
- (b) prescribing or specifying any matter or thing required or permitted by this Act to be prescribed or specified by a premiums order.
- (2) The Governor in Council may on the recommendation of the Authority by Order in Council amend a premiums order which is in force under subsection (1) to insert provisions of a savings and transitional nature consequent on the enactment of the **Accident Compensation (Amendment) Act 1998**, including provisions providing for the construction of the premiums order.
- (3) An Order in Council made under subsection (2) has effect from the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998**.

S. 15  
amended by  
No. 81/1998  
s. 10(1) (ILA  
s. 39B(1)).

S. 15(2)  
inserted by  
No. 81/1998  
s. 10(1).

S. 15(3)  
inserted by  
No. 81/1998  
s. 10(1).

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## 16 Premiums order—general provisions

- (1) A premiums order—
- (a) must be published in the Government Gazette;
  - (b) takes effect on and from the date on which it is published or any later date of commencement as may be specified in the order;
  - (c) applies to a WorkCover insurance policy which is in force in respect of a policy period commencing on or after the date of commencement of the premiums order.
- (2) A premiums order may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
  - (b) apply differently according to different factors of a specified kind;
  - (c) specify different methods of calculation whether by reference to formulas, scales, tables or other means;
  - (d) apply, adopt or incorporate (with or without modification) the provisions of any document, code, standard, rule, specification or method whether as formulated, issued, prescribed or published at the time the order is made;
  - (e) authorise any specified person or body to determine or apply a specified matter or thing;

S. 16(1)(c)  
amended by  
No. 7/1996  
s. 53.

S. 16(2)(e)  
amended by  
No. 9/2010  
s. 103(a).

(f) include provisions relating to the avoidance of premium.

S. 16(2)(f) inserted by No. 9/2010 s. 103(b).

**17 Premiums to be calculated in accordance with premiums order**

S. 17 amended by Nos 82/2001 s. 27(a)(b), 80/2010 s. 139 (ILA s. 39B(1)).

- (1) The premium payable by an employer for a WorkCover insurance policy must be calculated in accordance with the relevant premiums order.
- (2) If an employer is deemed to have in force a policy of insurance under section 7(3A), the premium payable by the employer for that insurance policy must be calculated in accordance with the relevant premiums order for that period.

S. 17(2) repealed by No. 81/1998 s. 10(2), new s. 17(2) inserted by No. 80/2010 s. 139.

**17A Authority may serve notice of premium**

S. 17A inserted by No. 9/2010 s. 104.

- (1) The Authority may serve on an employer a notice of premium payable by an employer.
- (2) The Authority may include a notice of penalty in any notice of premium served on an employer under subsection (1).

**18 Estimate of rateable remuneration**

S. 18 substituted by No. 60/1996 s. 31.

- (1AA) The Authority may, for the purposes of this Act, estimate the rateable remuneration an employer is liable to pay to, or in respect of, workers.

S. 18(1AA) inserted by No. 80/2010 s. 142.

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**S. 18(1)**  
amended by  
No. 81/1998  
s. 11(1)(b).

(1) If—

**S. 18(1)(a)**  
substituted by  
No. 81/1998  
s. 11(1)(a).

- (a) an employer receives a notice from the Authority; and
- (b) the notice includes an estimate of rateable remuneration that the employer will be liable to pay to workers during the period not exceeding 12 months specified in the notice—

the estimate is deemed for the purposes of this Act to be the estimate provided by the employer unless the employer, within 28 days after receiving the notice, or such longer period as may be specified in the notice, provides to the Authority another estimate of rateable remuneration in a form approved by the Authority which the employer estimates that the employer will be liable to pay to workers during the period referred to in paragraph (b).

**S. 18(2)**  
amended by  
Nos 81/1998  
s. 11(1)(d),  
9/2010 s. 181.

(2) If—

**S. 18(2)(a)**  
substituted by  
No. 81/1998  
s. 11(1)(c).

- (a) an employer receives a notice from the Authority; and
- (b) the notice does not include an estimate of rateable remuneration referred to in subsection (1)(b)—

the employer must, within 28 days after receiving the notice, or such longer period as is specified in the notice, provide to the Authority an estimate of



rateable remuneration in a form approved by the Authority which the employer estimates that the employer will be liable to pay to workers during the period not exceeding 12 months specified in the notice.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
600 penalty units.

### 19 Rateable remuneration—transitional

- (1) The WorkCover Insurance Premiums Order 1997/98 is to be construed as if references to "remuneration", "assessable remuneration" and "rateable remuneration" in respect of remuneration paid or payable in respect of services performed or rendered on or after 1 January 1998 were references to "remuneration" within the meaning of the **Accident Compensation Act 1985** as amended by section 5 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**.
- (2) A revised estimate of rateable remuneration is not required under section 20 if the only reason that the actual rateable remuneration paid or payable exceeds the amounts referred to in that section is because of the amendment of the **Accident Compensation Act 1985** by section 5 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**.

S. 19  
substituted by  
No. 107/1997  
s. 66.

### 20 Revised estimates of rateable remuneration

- (1) If as a result of changed circumstances an employer becomes aware that the actual rateable remuneration paid or payable by the employer exceeds or is likely to exceed by more than 20 per cent or such other percentage as is prescribed the estimate of rateable remuneration previously

S. 20(1)  
amended by  
Nos 81/1998  
s. 11(2),  
9/2010  
s. 182(1).

**s. 21**

provided by the employer for the whole of the policy period or previously assessed under section 24, the employer must advise the Authority of the changed circumstances and submit a revised estimate of rateable remuneration in a form approved by the Authority within 28 days of becoming aware of the changed circumstances.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
600 penalty units.

S. 20(2)  
amended by  
Nos 81/1998  
s. 11(2),  
9/2010  
s. 182(2).

(2) If the actual rateable remuneration paid or payable by an employer as at any time before the last 2 months of a policy period exceeds the estimate of rateable remuneration previously provided by the employer for the whole of the policy period, the employer must advise the Authority and submit a revised estimate of rateable remuneration in a form approved by the Authority within 28 days of the actual rateable remuneration exceeding the estimate.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
600 penalty units.

S. 20(3)  
repealed by  
No. 9/2010  
s. 182(3).

\* \* \* \* \*

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**21 Adjustment of premium**

- (1) If the Authority considers that the premium payable by an employer should be adjusted because the circumstances specified in subsection (1) or (2) of section 20 apply, the Authority may serve a notice of adjusted premium on the employer.
- (2) The Authority may include a notice of penalty in any notice of adjusted premium served on an employer under subsection (1).

S. 21 amended by Nos 81/1998 s. 11(3), 9/2010 s. 105 (ILA s. 39B(1)).

S. 21(2) inserted by No. 9/2010 s. 105(2).

**21A Premium notices in respect of deemed policy periods**

- (1) Subject to subsection (2), the Authority may serve a notice of premium on an employer in respect of a policy period, or part of a policy period, for which the employer has been deemed to hold a policy of insurance for under section 7(3A).
- (2) A notice under this section may be in respect of the premium for one or more of the following policy periods or parts thereof—
  - (a) the latest policy period for which the employer is deemed to have been insured or a part of that policy period;
  - (b) up to 4 completed policy periods immediately preceding the latest deemed policy period;
  - (c) any completed policy period if there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf.
- (3) Despite subsection (2), the Authority may have regard to any matter that is relevant to the calculation of the premium under this Act and the relevant premiums order, including the claims history of an employer for any period.

S. 21A inserted by No. 9/2010 s. 106.

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s. 22A

S. 22  
amended by  
No. 81/1998  
s. 11(4),  
substituted by  
No. 82/2001  
s. 28,  
amended by  
No. 40/2004  
s. 4,  
repealed by  
No. 9/2010  
s. 107(1).

\* \* \* \* \*

S. 22A  
inserted by  
No. 60/1996  
s. 32,  
repealed by  
No. 81/1998  
s. 11(5), new  
s. 22A  
inserted by  
No. 40/2004  
s. 5.

**22A Application for refund of premium**

S. 22A(1)  
amended by  
No. 102/2004  
s. 43(1).

(1) Proceedings for the refund or recovery of premium, whether paid before or after 6 May 2004, must not be brought, whether against the Authority or otherwise, except as provided in this section and section 22B.

S. 22A(2)  
amended by  
No. 102/2004  
s. 43(2).

(2) If an employer claims to be entitled to receive a refund of or to recover premium, paid or purportedly paid, the employer must lodge with the Authority an application, in a form approved by the Authority, for the refund of the payment.

S. 22A(3)  
substituted by  
No. 102/2004  
s. 43(3).

(3) An application under subsection (2) must be lodged with the Authority within 5 years after the commencement of the policy period to which the payment of premium relates.

(4) This section does not apply to a written request for a refund of premium received by the Authority before 6 May 2004.

(5) For the purposes of subsection (4), a written request received by an authorised agent of the Authority is not to be taken to be received by the Authority unless the authorised agent has forwarded the request to the Authority, and the Authority has received that request, before 6 May 2004.

(6) In this section—

*premium* has the same meaning as in section 32;

S. 22A(6)  
def. of  
*premium*  
amended by  
No. 9/2010  
s. 107(2).

*proceedings* includes—

S. 22A(6)  
def. of  
*proceedings*  
amended by  
No. 102/2004  
s. 43(4).

(a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction;

(b) seeking any order under the **Administrative Law Act 1978**.

**22B What happens if Authority refuses or fails to determine an application for a refund or fails to make a refund?**

S. 22B  
inserted by  
No. 102/2004  
s. 44.

(1) This section applies if—

(a) an employer has lodged an application with the Authority in accordance with section 22A; and

(b) within the period of 4 months after the application was lodged, the Authority—

(i) by notice in writing to the employer refuses the application; or

(ii) fails to determine the application; or

(iii) determines that the employer is entitled to a refund but fails to make the refund.

(2) If this section applies, the employer may bring proceedings for the refund or recovery of the premium within the period of 4 months commencing after—

(a) the day on which the period specified in subsection (1)(b) ends; or

(b) the day which is the date of the notice of refusal—

whichever first occurs.

(3) In this section—

*premium* has the same meaning as in section 32;

S. 22B(3)  
def. of  
*premium*  
amended by  
No. 9/2010  
s. 107(2).

*proceedings* includes—

(a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction;

(b) seeking any order under the **Administrative Law Act 1978**.

## 23 Certificate of rateable remuneration

(1) The Authority may by notice in writing require an employer to provide a certified statement of rateable remuneration paid or payable by the employer in a form approved by the Authority during a specified policy period to workers employed by the employer to the Authority within 28 days of receiving the notice or such longer period as is specified in the notice.

S. 23(1)  
amended by  
No. 81/1998  
s. 11(6)(a)(b).

(2) The Authority may by notice in writing require an employer who does not hold, or has not held, a WorkCover insurance policy to provide a certified statement of rateable remuneration paid or payable by the employer in a form approved by the Authority during a period specified in the notice to the Authority within 28 days of receiving the notice or such longer period as is specified in the notice.

S. 23(2)  
amended by  
No. 107/1997  
s. 67.

(3) An employer must comply with a notice received under subsection (1) or (2).

S. 23(3)  
amended by  
No. 7/1996  
s. 54,  
substituted by  
No. 9/2010  
s. 183.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
600 penalty units.

(3A) For the purposes of subsection (3), an employer does not comply with a notice received under subsection (1) or (2) if the rateable remuneration specified in a certified statement provided by the employer is incorrect.

S. 23(3A)  
inserted by  
No. 9/2010  
s. 183.

(4) The Authority may assess the rateable remuneration paid or payable by an employer to which subsection (3) applies during the specified policy period and issue a notice of adjusted premium to the employer.

#### **24 Assessment by Authority**

If an employer fails to provide an estimate when required to do so under section 18, or the Authority considers that an estimate provided by the employer is incorrect, the Authority may—

- (a) assess the amount of rateable remuneration paid or payable by the employer; and
- (b) calculate the premium payable by the employer; and

- (c) serve a notice on the employer specifying the amount of premium payable.

## 25 Default penalty

S. 25(1)  
amended by  
Nos 7/1996  
s. 55(1)(c),  
81/1998  
s. 11(7).

- (1) If—

S. 25(1)(a)  
amended by  
Nos 7/1996  
s. 55(1)(a),  
82/2001  
s. 26(b).

- (a) an employer does not comply with section 18 or 20 or a notice received under section 23(1) or 23(2); or

- (b) an employer provides an incorrect statement under section 23; or

S. 25(1)(c)  
amended by  
No. 7/1996  
s. 55(1)(b).

- (c) the amount specified in a certified statement of rateable remuneration under section 23(1) or assessed under section 23(4) is more than 20 per cent or such other percentage as is prescribed higher than the previous estimate of rateable remuneration (if any) provided by the employer—

the employer is upon being served by the Authority with a notice under this section, liable to pay in addition to the difference between the premium that should have been payable by the employer and the premium calculated on the basis of the employer's rateable remuneration previously estimated, assessed or certified, as the case requires a default penalty of an amount equal to that difference.

- (2) A default penalty under subsection (1) is due and payable within 28 days of the date of the notice.



(3) The Authority may remit the whole or any part of any default penalty imposed under this section.

S. 25(3) substituted by No. 7/1996 s. 55(2).

\* \* \* \* \*

S. 25(4) inserted by No. 7/1996 s. 55(2), repealed by No. 81/1998 s. 11(8).

## 26 Payment of premiums

(1) The premium payable by an employer for a WorkCover insurance policy is payable in accordance with the relevant premiums order.

S. 26(1) substituted by No. 102/2004 s. 45(1).

\* \* \* \* \*

S. 26(2) repealed by No. 102/2004 s. 45(2).

\* \* \* \* \*

S. 26(3) substituted by No. 81/1998 s. 11(9), repealed by No. 102/2004 s. 45(2).

(4) The Authority may, by notice in writing to the employer, adjust the amount of the premium so that the amount is the amount calculated in accordance with the relevant premiums order.

S. 26(4) amended by No. 81/1998 s. 11(10), substituted by No. 82/2001 s. 29.

## 26A Premium avoidance schemes

(1) The Authority may determine that the premium payable by a relevant employer is the amount that would have been calculated or might reasonably be expected to have been calculated as the employer's premium if a premium avoidance scheme within the meaning of the relevant

S. 26A inserted by No. 9/2010 s. 108.

**s. 26A**

premiums order had not been entered into or carried out.

- (2) If the Authority makes a determination under subsection (1) it must, by notice in writing, advise the relevant employer of the determination and the default penalty payable under subsection (3).
- (3) If a relevant employer has obtained, or would but for subsection (1) obtain, a premium benefit in connection with a premium avoidance scheme within the meaning of the relevant premiums order, the employer is liable to pay a default penalty that is twice the difference between the premium determined under subsection (1) to be payable and the premium paid or payable by the employer but for that determination.
- (4) A default penalty under subsection (3) is due and payable within 28 days of the date of the notice.
- (5) The Authority may remit the whole or any part of a default penalty imposed under subsection (3).
- (6) If a determination is made by the Authority under subsection (1), the premium payable by a relevant employer is the amount specified in the determination.

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New s. 27  
inserted by  
No. 82/2001  
s. 30,  
amended by  
No. 40/2004  
s. 6,  
repealed by  
No. 9/2010  
s. 109.

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993  
Part 2—WorkCover Insurance and Premiums

s. 29

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New s. 28 inserted by No. 82/2001 s. 30, amended by No. 40/2004 s. 7, repealed by No. 9/2010 s. 109.

Ss 28A, 28B inserted by No. 40/2004 s. 8, repealed by No. 9/2010 s. 109.

## 29 Notice of adjustment

New s. 29 inserted by No. 82/2001 s. 30.

- (1) A notice to an employer under section 26(4) or 36M(2) must state the amount of premium that is payable, or that should have been paid, for the relevant period.
- (2) On the giving of the notice to the employer, the amount stated under subsection (1) becomes the premium payable by the employer.

S. 29(1) amended by Nos 40/2004 s. 9, 9/2010 s. 110(1).

## 30 Exercise of review and adjustment powers

The Authority may exercise its powers under sections 26, 33, 36L and 36M regardless of whether or not—

- (a) the premium has been fixed, demanded or paid; or
- (b) the period being reviewed, or in respect of which an adjustment applies, is no longer the current policy period; or

New s. 30 inserted by No. 82/2001 s. 30, amended by No. 9/2010 s. 110(2).

**s. 31**

- (c) the Authority has already reviewed the amount calculated as the premium for any policy period being reviewed, or has already adjusted the premium; or
- (d) any circumstances have arisen that would, but for this paragraph, estop the Authority from conducting a review of, or adjusting the amount of, the premium.

**31 Application of review and adjustment powers**

New s. 31  
inserted by  
No. 82/2001  
s. 30.

- (1) The Authority is only entitled to recover the amount of any increased premium resulting from an adjustment under section 36M if the premium relates to one or more of the following—

S. 31(1)  
amended by  
No. 9/2010  
s. 111(1).

S. 31(1)(a)  
amended by  
No. 9/2010  
s. 111(1).

- (a) the policy period current at the date on which the notice under section 36M in respect of the amount was given to the employer;
- (b) any of the 4 completed policy periods before that period;
- (c) any other completed policy period if there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf.

S. 31(1A)  
inserted by  
No. 9/2010  
s. 111(2).

- (1A) The Authority is entitled to recover the amount of any increased premium resulting from a determination made by the Authority under section 26A if the premium relates to the current policy period or any completed policy period before that period.

- (2) The Authority may exercise its powers under sections 26, 33, 36L and 36M in respect of an amount calculated as a premium that relates to a period that is before the date of commencement of section 30 of the **Accident Compensation (Amendment) Act 2001**.

S. 31(2)  
amended by  
No. 9/2010  
s. 111(3).

**31A Refund of premium may be offset**

If the Authority has been paid premium in excess of what is payable by an employer, the Authority may—

S. 31A  
inserted by  
No. 40/2004  
s. 10,  
substituted by  
No. 9/2010  
s. 112.

- (a) refund the excess (including any interest) to the employer; or
- (b) offset the excess (including any interest) against any amount of premium owed by the employer to the Authority for any policy period.

**31B Default penalty where failure to provide full and true disclosure**

S. 31B  
inserted by  
No. 41/2006  
s. 27.

- (1) If—
- (a) the Authority issues a notice of adjustment under section 26(4) or 36M(2); and
- (b) the notice of adjustment states an amount of premium that is different from any premium that was previously calculated for the employer for the policy period to which the notice of adjustment relates; and
- (c) the Authority is satisfied that the premium was miscalculated because the employer or a person acting on behalf of the employer failed to provide full and true disclosure to the Authority in respect of matters relevant to the calculation of the premium—

S. 31B(1)(a)  
amended by  
No. 9/2010  
s. 113(1).

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993  
Part 2—WorkCover Insurance and Premiums

**s. 31B**

the employer is upon being served with a notice of adjustment under this section, liable to pay a default penalty of an amount equal to the difference between the premium stated in the notice of adjustment and the premium that was previously calculated for the employer.

S. 31B(2)  
amended by  
No. 9/2010  
s. 113(2).

- (2) The amount of the default penalty imposed under subsection (1) is to be increased by 20% if, after the Authority commenced the review under section 33 or 36L, the employer or a person acting on behalf of the employer took steps to prevent or hinder the Authority from properly calculating the premium payable by the employer.
- (3) A default penalty under this section is due and payable within 28 days of the date of the notice.
- (4) The Authority may remit the whole or any part of a default penalty imposed under this section.
- (5) In this section, *premium* includes amounts—
  - (a) paid or payable as premium;
  - (b) purportedly paid or payable as premium.

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**PART 2A—PREMIUM REVIEW**

Pt 2A  
(Heading and  
ss 32–36M)  
inserted by  
No. 9/2010  
s. 114.

**32 Definition**

New s. 32  
inserted by  
No. 9/2010  
s. 114.

In this Part—

*premium* includes amounts—

- (a) paid or payable as premium;
- (b) purportedly paid or payable as premium;
- (c) paid or payable as a default penalty in respect of an amount paid or payable or purportedly paid or payable as premium;
- (d) purportedly paid or payable as a default penalty in respect of an amount paid or payable or purportedly paid or payable as premium;
- (e) paid or payable as a late payment penalty or interest in respect of an amount paid or payable or purportedly payable as premium, as specified in the notice in respect of the premium;
- (f) purportedly paid or payable as a late payment penalty or interest in respect of an amount paid or payable or purportedly payable as premium, as specified in the notice in respect of the premium;

*proceedings* includes—

- (a) the inquiry into, hearing and determination of any question or matter under this Act;

- (b) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction;
- (c) seeking any order under the **Administrative Law Act 1978**;
- (d) any other action or proceeding.

New s. 33  
inserted by  
No. 9/2010  
s. 114.

**33 Employer may apply for review of premium under this Part**

- (1) An employer may apply to the Authority for a review under this Part in respect of—
  - (a) premium as specified in a notice of premium served under section 17A, 21A or 24; or
  - (b) premium as specified in a notice of adjusted premium served under section 21, 23(4), 26(4) or 36M; or
  - (c) premium as specified in a notice of premium served under section 7(3B); or
  - (d) premium as specified in a notice served under section 26A(2); or
  - (e) a default penalty as specified in a notice of penalty served under—
    - (i) section 7(6) or 25(1); or
    - (ii) section 31B(1) insofar as it relates to a notice of adjustment issued under section 26(4) or 36M; or
  - (f) a default penalty as specified in a notice served under section 26A(2); or
  - (g) an estimated future claim cost only on the grounds that the estimate is erroneous because of a coding error or other data entry error in relation to that claim.



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- (2) On receiving an application in respect of a matter specified in subsection (1), the Authority must—
- (a) review the premium, default penalty or estimated future claim cost; or
  - (b) decide not to review the premium, default penalty or estimated future claim cost—
- in accordance with this Part.

### 34 Payment of premium pending review

New s. 34  
inserted by  
No. 9/2010  
s. 114.

- (1) An employer who—
- (a) receives a notice specified in section 33(1)(a), (b), (c), (d), (e) or (f) from the Authority specifying the employer's liability to pay premium or a default penalty; and
  - (b) applies for a review under this Part—
- is required to pay the premium or default penalty specified in the notice, together with any late payment penalty or interest in respect of the premium specified in the notice, by the due date specified in the notice, as if a review of the premium or default penalty were not pending.
- (2) If an employer fails to pay the premium specified in the notice by the due date specified in the notice, the employer will be liable to pay a late payment penalty under this section.
- (3) A late payment penalty is calculated on the unpaid amount of the premium from the due date—
- (a) at the interest rate specified in section 25 of the **Taxation Administration Act 1997**; and
  - (b) calculated monthly using compound interest.
- (4) The Authority may remit the whole or any part of a late payment penalty the employer is liable to pay under this section.

s. 35

New s. 35  
inserted by  
No. 9/2010  
s. 114.

### **35 Review only as permitted under this Act**

Proceedings in respect of any question concerning a notice of premium or purported premium or the amount of premium payable or purportedly payable by an employer must not be brought, whether against the Authority or otherwise except as provided in this Part.

New s. 36  
inserted by  
No. 9/2010  
s. 114.

### **36 Time for lodging, and form of, application for review**

- (1) An application for review made under section 33(1) must—
  - (a) be in writing in a form approved by the Authority; and
  - (b) state the grounds for review; and
  - (c) attach any document relevant for the purposes of the review; and
  - (d) unless section 36A applies, be lodged with the Authority within 60 days—
    - (i) after the date of service of the notice that is the subject of the application; or
    - (ii) in the case of an application in respect of an estimated future claim cost, after the Authority has notified the employer of an estimated future claim cost.
- (2) An application for review is taken to have been lodged with the Authority when it is received by the Authority.

S. 36A  
inserted by  
No. 9/2010  
s. 114.

### **36A Applications for review lodged out of time**

- (1) The Authority may permit an employer to lodge an application for review after the 60 day period.
- (2) The employer seeking to lodge an application for review out of time must state, in writing, the circumstances concerning, and the reasons for, the

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failure to lodge the application within the 60 day period.

- (3) The Authority may grant permission to lodge an application out of time unconditionally or subject to conditions.
- (4) Proceedings to seek review of a decision made by the Authority under this section to not grant permission to lodge an application out of time or to only grant permission to lodge out of time subject to conditions, must not be brought, whether against the Authority or otherwise.

**36B Authority may decline application for review**

S. 36B  
inserted by  
No. 9/2010  
s. 114.

- (1) The Authority may decline to conduct a review under this Part if—
  - (a) the application made under section 33 is in respect of matters that have been reviewed by the Authority on a prior occasion and the employer—
    - (i) has been provided with the Authority's written reasons for the decision following that review; and
    - (ii) has not provided the Authority with any new, relevant information in or with the application for review; or
  - (b) the Authority considers that the application made under section 33 is misconceived or lacking in substance.
- (2) If the Authority declines to conduct a review under subsection (1), the Authority must notify the employer of the Authority's decision, in writing, within 28 days of receiving the application under section 33.

s. 36C

S. 36C  
inserted by  
No. 9/2010  
s. 114.

**36C Withdrawal of application for review**

An employer may, in writing, withdraw an application for review made under this Part at any time before the Authority has made a determination under section 36F.

S. 36D  
inserted by  
No. 9/2010  
s. 114.

**36D Time period for review**

- (1) Subject to sections 36B and 36E, the Authority must conduct a review of an application made in accordance with section 36 within 90 days of receipt of the application.
- (2) The period specified in subsection (1) may be extended—
  - (a) by agreement between the Authority and the employer; or
  - (b) to allow the Authority to conduct an inspection.

S. 36E  
inserted by  
No. 9/2010  
s. 114.

**36E Request for information and suspension of review**

- (1) The Authority may, by written notice, request an employer to provide information relevant to the review to the Authority within the time specified in the notice.
- (2) The Authority may suspend a review if the employer fails to provide information relevant to the review that the Authority has requested in a notice under subsection (1) by the time specified in that notice.
- (3) If the Authority suspends a review under subsection (2), the Authority must give the employer written notice of the suspension (*suspension notice*) which states—
  - (a) that the suspension takes effect on service of the suspension notice; and

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- (b) the period of the suspension; and
  - (c) that the review has been suspended pending the provision of the information relevant to the review that the Authority has requested; and
  - (d) the details of the requested information; and
  - (e) that the review will remain suspended until the earlier of—
    - (i) the period for suspension specified in the suspension notice is complete; or
    - (ii) the employer provides the Authority with the requested information.
- (4) If an employer does not provide the Authority with information requested by the Authority by the completion of the stated period of suspension in the suspension notice, the employer is deemed to have withdrawn the application for review.
- (5) If an employer is deemed to have withdrawn an application for review under subsection (4), the employer may again apply for review of the same matter that was the subject of the deemed withdrawn application.
- (6) An application made under subsection (5) will not be accepted by the Authority unless the application—
- (a) is made within 60 days of the date the application was deemed to be withdrawn under subsection (4); and
  - (b) is accompanied by the information specified in the suspension notice.

**s. 36F**

**S. 36F**  
inserted by  
**No. 9/2010**  
s. 114.

**36F Determination of review**

- (1) The Authority must, after reviewing an application under section 33—
  - (a) confirm the premium, default penalty or estimated future claim cost; or
  - (b) adjust the premium, default penalty or estimated future claim cost.
- (2) Subject to subsection (3), the Authority is only entitled to recover the amount of any increased premium resulting from an adjustment under subsection (1) if the premium relates to one or more of the following—
  - (a) the policy period current at the date of the application for review under section 33;
  - (b) any of the 4 completed policy periods before that period;
  - (c) any other completed policy period if there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf.
- (3) In the case of a review of a notice of premium served under section 21A, the Authority is only entitled to recover the amount of any increased premium resulting from an adjustment under subsection (1) if the premium relates to one or more of the following—
  - (a) the most recent policy period for which the employer was deemed to hold a policy of insurance;
  - (b) any of the 4 completed policy periods before that period;

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- (c) any other completed policy period if there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf.
- (4) Subject to subsection (5), if the Authority makes an adjustment under subsection (1) that results in an employer recovering premium the recovery is limited to—
- (a) the policy period current at the date of the application for review under section 33;
  - (b) any of the 4 completed policy periods before that period.
- (5) If the Authority makes an adjustment under subsection (1) that results in an employer recovering premium in respect of a period for which the employer was deemed to have a policy of insurance, the recovery is limited to—
- (a) the most recent policy period for which the employer was deemed to hold a policy of insurance;
  - (b) any of the 4 completed policy periods before that period.
- (6) The Authority may, in making a determination under this section, consider any relevant information.
- (7) The Authority must give notice to the employer of the determination made under this section.
- (8) The Authority must, in the notice, give the employer reasons for the determination made under this section.

**s. 36G**

**s. 36G**  
inserted by  
No. 9/2010  
s. 114.

**36G Payments following review**

- (1) If the Authority confirms a premium under section 36F, the employer must pay any unpaid amount, including any late payment penalty, within 28 days after receiving notice of the determination under section 36F.
- (2) If the Authority adjusts a premium under section 36F, and the premium is higher than the premium previously paid by the employer, the employer is liable to pay the Authority the difference between the premium paid and the adjusted premium, within 28 days after receiving notice of the determination under section 36F.
- (3) Subject to subsection (4), if the Authority adjusts a premium under section 36F, and the adjusted premium is lower than the premium previously paid by the employer, the Authority is liable to pay the employer the difference between the premium paid and the adjusted premium, with interest pursuant to section 36H, within 28 days of the notice of determination being made under section 36F.
- (4) If an employer owes any premium to the Authority (other than the premium reviewed under section 36F), the Authority may offset some or all of the difference between the premium paid and the adjusted premium under subsection (3) against any outstanding premium owed by the employer.



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**36H Interest payable by the Authority**

S. 36H  
(Heading)  
amended by  
No. 80/2010  
s. 143(1).

S. 36H  
inserted by  
No. 9/2010  
s. 114.

S. 36H(1)  
amended by  
No. 80/2010  
s. 143(2).

- (1) Subject to subsection (2), if it is determined, following review under section 33 or on appeal made under section 36J, that the Authority is liable to pay the employer an amount, the Authority must pay the employer interest, at the prescribed rate, on that amount.
- (2) The Authority is not required to pay interest on an amount referred to in subsection (1) if that amount is only payable because the employer provided information to the Authority that—
  - (a) was inaccurate or incomplete;
  - (b) was revised by the employer after the Authority served the notice of premium.
- (3) The interest must be calculated—
  - (a) from the date on which the premium paid by the employer exceeded the lower amount of premium the Authority or court subsequently determined to be payable following review under section 33; and
  - (b) to the date of that determination by the Authority or court.
- (4) In this section—

S. 36H(3)(a)  
amended by  
No. 80/2010  
s. 143(3).

*prescribed rate* means the interest rate specified in section 7(2) of the **Taxation (Interest on Overpayments) Act 1986**.

s. 36I

S. 36I  
inserted by  
No. 9/2010  
s. 114.

**36I Deemed decisions of the Authority**

- (1) Subject to subsection (2), if the Authority does not issue, within 90 days of receiving an application by an employer under section 33—
  - (a) a determination made by the Authority under section 36F; or
  - (b) a notice under section 36B; or
  - (c) a notice of suspension under section 36E—the Authority is deemed to have made a determination under section 36F to confirm the premium, default penalty or estimated future claim cost.
- (2) If the period for review by the Authority has been extended under section 36D(2) and at the end of that extended period the Authority does not issue a determination or notice specified in subsection (1)(a), (b) or (c), the Authority is deemed to have made a determination under section 36F to confirm the premium, default penalty or estimated future claim cost.

S. 36J  
inserted by  
No. 9/2010  
s. 114.

**36J Appeals**

- (1) Despite anything to the contrary in section 39(1) of the **Accident Compensation Act 1985**, if an employer—
  - (a) is not satisfied with a determination made by the Authority under section 36F (including a deemed determination under section 36I); or
  - (b) has received notice that the Authority has decided not to conduct a review under section 36B—

the employer may appeal against that determination or decision to the Supreme Court.

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- (2) An appeal under subsection (1), other than an appeal made in respect of a deemed determination under section 36I, must be made within 60 days of the employer receiving notice of the Authority's determination or decision.
  - (3) An appeal made in respect of a deemed determination under section 36I must be made within 60 days of the determination being deemed to have been made.

**36K Hearing of appeal by Supreme Court**

S. 36K  
inserted by  
No. 9/2010  
s. 114.

- (1) On the hearing of an appeal by the Supreme Court, the Court may make any order it thinks fit and may by order confirm, reduce, increase or vary the premium.
- (2) The costs of an appeal are in the discretion of the Supreme Court.

**36L Premium review by Authority at its discretion**

S. 36L  
inserted by  
No. 9/2010  
s. 114.

- (1) The Authority may, in its absolute discretion, review the amount calculated as premium in respect of one or more policy periods.
- (2) In conducting the review, the Authority may have regard to any matter relevant to the determination or calculation of the premium.

**36M Adjustment of premium after review**

S. 36M  
inserted by  
No. 9/2010  
s. 114.

- (1) This section applies if, as the result of a review of a premium under section 36L, the Authority is of the opinion that the amount calculated as the premium was not, or is not, calculated in accordance with the relevant premiums order.
- (2) The Authority must, by notice in writing to the employer, adjust the amount of the premium so that the amount is the amount calculated in accordance with the relevant premiums order.

Accident Compensation (WorkCover Insurance) Act 1993  
 No. 50 of 1993  
 Part 3—Licensing of WorkCover Insurers

s. 27

**PART 3—LICENSING OF WORKCOVER INSURERS**

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| S. 27<br>repealed by<br>No. 81/1998<br>s. 12(1).  | * | * | * | * | * |
| S. 28<br>amended by<br>No. 50/1994<br>s. 96(1),<br>repealed by<br>No. 81/1998<br>s. 12(1).    | * | * | * | * | * |
| S. 29<br>repealed by<br>No. 81/1998<br>s. 12(1).  | * | * | * | * | * |
| S. 30<br>amended by<br>No. 50/1994<br>s. 96(1)(2),<br>repealed by<br>No. 81/1998<br>s. 12(1). | * | * | * | * | * |
| S. 31<br>repealed by<br>No. 81/1998<br>s. 12(1).  | * | * | * | * | * |
| S. 32<br>amended by<br>No. 50/1994<br>s. 96(3),<br>repealed by<br>No. 81/1998<br>s. 12(1).    | * | * | * | * | * |
| Ss 33, 34<br>repealed by<br>No. 81/1998<br>s. 12(1).  | * | * | * | * | * |
| S. 35<br>amended by<br>No. 50/1994<br>s. 96(1)(4),<br>repealed by<br>No. 81/1998<br>s. 12(1). | * | * | * | * | * |

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S. 36  
repealed by  
No. 81/1998  
s. 12(1).

### 37 Records and evidence relating to licences

- (1) The Authority must keep records in relation to all licences granted by the Authority, including particulars of—
  - (a) the granting, refusal, duration, conditions, cancellation and suspension of licences; and
  - (b) such other matters relating to licences as the Authority considers appropriate.
- (2) A certificate issued by the Authority certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records of the Authority is admissible in any proceedings and is evidence of the particulars certified in the certificate.

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S. 38  
repealed by  
No. 81/1998  
s. 12(1).

### 39 Information and records to be supplied by insurers

- (1) The Authority may require a former authorised insurer—
  - (a) to disclose to the Authority specified information relating to the business and financial position of the former authorised insurer or of any corporation which is a related corporation; or

S. 39(1)  
amended by  
No. 81/1998  
s. 12(2)(a).

S. 39(1)(a)  
amended by  
No. 81/1998  
s. 12(2)(b).

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993  
Part 3—Licensing of WorkCover Insurers

**s. 39**

**S. 39(1)(b)**  
amended by  
No. 81/1998  
s. 12(2)(b).

(b) to forward to the Authority, or make available for inspection, specified records, or copies or extracts from specified records, kept by the former authorised insurer or by any corporation which is a related corporation.

(2) A requirement under this section must—

**S. 39(2)(a)**  
amended by  
No. 81/1998  
s. 12(2)(b).

(a) be made in writing and served on the former authorised insurer; and

(b) specify the manner in which and the time within which the requirement is to be complied with.

(3) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by a registered tax agent, a registered company auditor or an actuary approved by the Authority as to the correctness of any specified information or specified records or copies of or extracts from specified records.

**S. 39(4)**  
amended by  
No. 81/1998  
s. 12(2)(b),  
substituted by  
No. 9/2010  
s. 184.

(4) An insurer must comply with a requirement under this section in the manner and within the time specified by the requirement.

Penalty: In the case of a natural person,  
100 penalty units;

In the case of a body corporate,  
500 penalty units.

**S. 39(4A)**  
inserted by  
No. 9/2010  
s. 184.

(4A) It is a defence to a charge of an offence against subsection (4) for the defendant to prove that it was not within the power of the defendant to comply with the requirement.

**Ss 40, 41**  
repealed by  
No. 81/1998  
s. 12(1).

\* \* \* \* \*

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**42 Payment of premiums**

S. 42 substituted by No. 81/1998 s. 13, amended by No. 82/2001 s. 31(1) (ILA s. 39B(1)).

- (1) An employer must pay any premium under a WorkCover insurance policy direct to the Authority or where appropriate to an authorised agent.

S. 42(1) amended by No. 9/2010 s. 185.

Penalty: In the case of a natural person,  
240 penalty units;

In the case of a body corporate,  
1200 penalty units.

- (2) A reference to a premium in this section includes a reference to a part of a premium.

S. 42(2) inserted by No. 82/2001 s. 31(1).

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\* \* \* \* \*

Pt 4 (Heading and ss 43–54) amended by Nos 50/1994 s. 97, 7/1996 ss 56, 58(a), repealed by No. 81/1998 s. 14(1).

s. 55

**PART 5—UNINSURED EMPLOYERS AND INDEMNITY  
SCHEME**

**55 Uninsured Employers and Indemnity Scheme**

- (1) There is established a scheme called the Uninsured Employers and Indemnity Scheme.
- (2) A claim may be made under the Scheme by any person who considers that he or she has a claim in respect of an injury to a worker against an employer—
  - (a) in respect of which section 7(1A) applies; or
  - (b) who cannot be identified; or
  - (c) who cannot be found, is dead or has been wound up and was not the holder of a WorkCover insurance policy at the time of the relevant injury; or
  - (d) who exists and can be found but who was not the holder of a WorkCover insurance policy at the time of the relevant injury.

S. 55(2)(a)  
substituted by  
No. 7/1996  
s. 51(5).

S. 56  
repealed by  
No. 81/1998  
s. 14(2).

\* \* \* \* \*

S. 57  
(Heading)  
inserted by  
No. 9/2010  
s. 120(1).

**57 Claims against section 55(2)(a) employers**

- (1) A claim for compensation against an employer in respect of which at the time of the relevant injury section 7(1A) applies must first be given to or served on the employer.

S. 57(1)  
amended by  
Nos 7/1996  
s. 51(6),  
9/2010  
s. 120(2).



- (2) The employer must forward the claim to the Authority within 5 days of receiving it.

S. 57(2)  
amended by  
No. 9/2010  
s. 186(1).

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

- (3) If a person making a claim for compensation becomes aware that the employer—

(a) has not complied or is not likely to comply with subsection (2); or

(b) is refusing to receive the claim—

that person may lodge the claim with the Authority.

- (4) Except as provided in this Part, Division 3 of Part IV of the **Accident Compensation Act 1985** applies in relation to the determination and management of the claim.

S. 57(4)  
substituted by  
No. 50/1994  
s. 98.

\* \* \* \* \*

S. 57(5)  
inserted by  
No. 7/1996  
s. 57,  
repealed by  
No. 9/2010  
s. 186(2).

## 58 Registration of section 55(2)(a) employer

- (1) An employer to whom section 55(2)(a) applies must apply to the Authority to be registered and must submit the registration fee fixed in the premiums order.

- (2) An employer who fails to comply with subsection (1) may be required to reimburse the Authority for any compensation paid in respect of an injured worker under the Uninsured Employers and Indemnity Scheme under section 61(1).

S. 58(2)  
amended by  
No. 9/2010  
s. 115.

**59 Claims against section 55(2)(b) or 55(2)(c) employers**

- (1) A claim for compensation against an employer who—
- (a) cannot be identified after the claimant has taken reasonable steps to identify the relevant employer; or
  - (b) cannot be found after the claimant has taken reasonable steps to find the employer or the employer is dead or has been wound up and who was not the holder of a WorkCover insurance policy at the time of the injury or death—

may be lodged with the Authority.

- (2) The Authority may require a person lodging a claim under subsection (1) to provide further information to the Authority.
- (3) Except as provided in this Part, Division 3 of Part IV of the **Accident Compensation Act 1985** applies in relation to the determination and management of the claim.
- (3A) Subject to subsection (4), section 109 of the **Accident Compensation Act 1985** applies in respect of a claim under this section as if the reference to 28 days were a reference to 35 days.
- (4) If the relevant employer is identified and was at the time of the injury the holder of a WorkCover insurance policy, section 109 of the **Accident Compensation Act 1985** applies as if the reference to 28 days of receiving the claim were a reference to 28 days from the time that the employer is identified.

S. 59(3)  
substituted by  
No. 50/1994  
s. 99.

S. 59(3A)  
inserted by  
No. 50/1994  
s. 99.

S. 59(4)  
substituted by  
No. 50/1994  
s. 99.

**59A Common law claim**

If—

- (a) a worker has suffered an injury in circumstances which entitle or would entitle the worker or the dependants of the worker to compensation under the **Accident Compensation Act 1985**; and
- (b) the injury arose out of or in the course of or due to the nature of employment with an employer to whom section 55(2)(b), 55(2)(c) or 55(2)(d) applies—

the worker or dependants may recover from the Authority a sum equivalent to the amount for which the worker or dependants could have obtained judgment at common law or otherwise against the employer subject to any limitation of liability in the deemed contract of insurance under section 59B on or after 4 p.m. on 30 June 1993.

**59B Deemed contract of insurance**

- (1) There is deemed to be a contract of insurance in the form approved by the Authority in respect of an employer's liability to which section 59A applies between the employer and the Authority.
- (1A) A deemed contract of insurance does not indemnify an employer in respect of any liability of the employer to pay compensation for a matter for which compensation is awarded under Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**.

S. 59A  
inserted by  
No. 50/1994  
s. 100,  
amended by  
No. 81/1998  
s. 14(3).

S. 59B  
inserted by  
No. 50/1994  
s. 100.

S. 59B(1A)  
inserted by  
No. 26/2000  
s. 27(2),  
amended by  
No. 54/2000  
s. 25(5).

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- (2) For the purposes of a deemed contract of insurance—
- (a) the Authority may undertake the settlement of any claim against the employer insured under the contract;
  - (b) the Authority may take over during such period as it thinks proper the conduct and control on behalf of the employer of any proceedings taken or had to enforce such claim or for the settlement of any question arising with reference thereto;
  - (c) the Authority may defend or conduct such proceedings in the name of the employer and on the employer's behalf.
- (3) The Authority may recover under section 61 any amount paid under a deemed contract of insurance.

**60 Authority may require employer to provide information**

- (1) The Authority may by notice in writing require an employer or a person whom the Authority suspects is an employer to provide to the Authority within the period specified in the notice any information specified in the notice which may be in the employer's or that person's possession and is required by the Authority in order to deal with a claim under this Part.
- (2) A person must comply with a notice under subsection (1).

Penalty: In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
300 penalty units.

S. 60(2)  
amended by  
No. 9/2010  
s. 187.

**61 Authority may recover amount in relation to claim**

- (1) The Authority may serve a notice in writing on a person who, in the opinion of the Authority, was—
- (a) in respect of an injured worker to or in respect of whom compensation has been paid or is payable under the Uninsured Employers and Indemnity Scheme, an employer at the relevant time;
- (b) in respect of an injured worker to or in respect of whom compensation has been paid or is payable under the Uninsured Employers and Indemnity Scheme, an employer at the relevant time and deemed to have in force a policy of insurance in accordance with section 7(3A)—
- requiring that person, within a period specified in the notice, to reimburse to the Authority an amount specified in the notice.
- (1A) Subsection (1) does not apply to an employer to whom section 55(2)(a) applies who is registered under section 58.
- (2) The Authority may, by instrument in writing, waive all or part of the liability of an employer under subsection (1) to reimburse the Authority an amount, if the Authority is satisfied that—
- (a) the amount is beyond the capacity of the employer to pay; or
- (b) the employer could not reasonably have been expected to regard himself or herself as an employer at the relevant time; or
- (c) the employer, not being a corporation, is bankrupt and the liability under this section is not provable in the bankruptcy; or

S. 61(1)  
amended by  
No. 50/1994  
s. 101(1).

S. 61(1)(a)  
amended by  
No. 81/1998  
s. 14(4)(a).

S. 61(1)(b)  
repealed by  
No. 81/1998  
s. 14(4)(b),  
new s. 61(1)(b)  
inserted by  
No. 80/2010  
s. 144.

S. 61(1A)  
inserted by  
No. 50/1994  
s. 101(2).

S. 61(2)  
amended by  
No. 40/2004  
s. 11.

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- (d) the employer, being a corporation, is being wound up and the liability under this section is not provable in the winding up; or
  - (e) the employer, being a corporation, has been dissolved; or
  - (f) it would not be commercially feasible for the Authority to attempt to recover the amount.
- (3) A person on whom a notice has been served under subsection (1) in respect of an injured worker may, within the period specified in the notice, apply to the appropriate court having jurisdiction in relation to the claim under the **Accident Compensation Act 1985** for a determination as to the person's liability under this Act.
- (4) The Authority may recover an amount specified in a notice served under subsection (1) if an application has not been made under subsection (3) from the person to whom the notice was given as a debt in a court of competent jurisdiction.

## **62 General power of Authority in relation to proceedings**

- (1) If—
- (a) a claim under the Uninsured Employers and Indemnity Scheme has been made and the employer does not appear and defend the application for an award of compensation; or
  - (b) an award of compensation has, prior to the making of the claim, been obtained in default of appearance by the employer, or by consent of the worker and the employer; or
  - (c) the Authority for any reason thinks fit—
- the Authority may cause to be made such inquiries as it thinks fit to determine the genuineness of the grounds on which the award is sought or was based.

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- (2) The court having jurisdiction in relation to the matter under the **Accident Compensation Act 1985** may adjourn an application referred to in subsection (1) or, if an award has been made, may reopen the proceedings and order some fit person to take and defend the proceedings in substitution for the employer, and for those purposes all the rights of the employer shall be subrogated to that person.

At any hearing of an application under this section, the Authority may appear before the court and exercise in respect of any matters and questions arising out of the application the same powers, rights and authorities as an employer may exercise in respect of a claim between a worker and an employer under this Act.

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**PART 6—GENERAL PROVISIONS**

**63 Transfer of Authority's liability<sup>7</sup>**

S. 63  
amended by  
Nos 50/1994  
s. 90(1),  
81/1998 s. 15  
(LA s. 39B(1)).

(1) The liability of the Authority in respect of injuries to a worker arising out of or in the course of or due to the nature of employment after 4 p.m. on 31 August 1985 but before 4 p.m. on 30 June 1993 under the **Accident Compensation Act 1985** to pay compensation or as an insurer under that Act is by virtue of this section transferred to authorised insurers on the following basis—

S. 63(1)(a)  
amended by  
No. 50/1994  
s. 90(1).

- (a) to the authorised insurer which has issued or renewed the current WorkCover insurance policy of an employer, if the injury to the worker arose out of or in the course of or due to the nature of employment with that employer after 4 p.m. on 31 August 1985 but before 4 p.m. on 30 June 1993;
- (b) if paragraph (a) does not apply, to an authorised insurer determined by the Authority.

S. 63(2)  
inserted by  
No. 81/1998  
s. 15.

(2) The liability transferred to authorised insurers under subsection (1) and held by authorised insurers immediately before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998** is by virtue of this section transferred to the Authority.

S. 64  
substituted by  
No. 81/1998  
s. 16.

**64 Transfer of rights, obligations and liabilities**

The liability of an authorised insurer to indemnify an employer under a WorkCover insurance policy and the rights, obligations and liabilities of the authorised insurer under the WorkCover insurance policy are by virtue of this section transferred to the Authority.



## 65 Reciprocal agreements

- (1) The Authority may enter into an agreement with a person or body constituted by or under the law of another State or Territory or of the Commonwealth relating to the payment of premium or other amounts in respect of remuneration paid or payable in respect of services performed or rendered partly in Victoria and partly in the corresponding state.
- (2) An agreement under subsection (1) may provide—
  - (a) that the provisions of this Act apply and the provisions of the law of the corresponding state do not apply in respect of remuneration paid or payable in respect of services performed or rendered partly in Victoria and partly in the corresponding state; or
  - (b) that the provisions of the law of the corresponding state apply and the provisions of this Act do not apply in respect of such remuneration.

S. 65(2)(a)  
amended by  
No. 7/1996  
s. 58(b).

## 66 Groups

- (1) For the purposes of this Act, if—
  - (a) an employer that is a body corporate and another body corporate (*related person*) are, by reason of section 50 of the Corporations Act related to each other; or
  - (b) one or more workers of an employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons (*associates*); or

S. 66  
amended by  
Nos 50/1994  
s. 102, 7/1996  
s. 58(c),  
44/2001  
s. 3(Sch.  
items 1.1, 1.2),  
substituted by  
No. 40/2004  
s. 12.

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- (c) one or more workers of an employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons (*associates*); or
- (d) one or more workers of an employer perform duties for or in connection with one or more businesses carried on by one or more other persons (*associates*), being duties performed in connection with, or in fulfilment of the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any one or more of the associates in connection with that business or those businesses—
- (i) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and
  - (ii) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the workers or specifies the duties to be performed by them—

the employer and all persons who are related persons or associates in relation to that employer together constitute a group and each is a member of that group.

**Note**

Subsection (8) allows the Authority to exclude members from a group constituted under this subsection in certain circumstances.

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- (2) If a person or set of persons has a controlling interest in each of 2 businesses under subsection (3), the persons who carry on those businesses constitute a group and each person is a member of the group.

S. 66(2)  
substituted by  
No. 9/2010  
s. 116(1).

**Note**

Subsection (8) allows the Authority to exclude members from a group constituted under this subsection in certain circumstances.

- (3) For the purposes of subsection (2), a person or set of persons, has a controlling interest in a business if—
- (a) in the case of a business carried on by a corporation—
    - (i) the person or each of the set of persons is a director of the corporation and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
    - (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person or set of persons; or
  - (b) in the case of a business carried on by a corporation that has a share capital—that person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or any class of voting shares, issued by the corporation; or

S. 66(3)  
substituted by  
No. 9/2010  
s. 116(1).

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- (c) in the case of a business carried on by a body corporate or unincorporate—that person or set of persons constitute more than 50% of the board of management (by whatever name called) of the body or control the composition of the board; or
  - (d) in the case of a business carried on by a partnership—that person or set of persons—
    - (i) own (whether beneficially or not) more than 50% of the capital of the partnership; or
    - (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership; or
  - (e) in the case of a business carried on under a trust—the person or set of persons (whether or not as a trustee of, or beneficiary under, another trust) is the beneficiary in respect of more than 50% of the value of the interests in the first-mentioned trust; or
  - (f) in the case of one person—the person is the sole owner (whether or not as trustee) of the business; or
  - (g) in the case of a set of persons—the persons are together as trustees the sole owners of the business.
- (4) A person who may benefit from a discretionary trust as a result of the trustee or another person, or the trustee and another person, exercising or failing to exercise a power or discretion, is taken, for the purposes of this Act, to be a beneficiary in respect of more than 50% of the value of the interests in the trust.

S. 66(4)  
substituted by  
No. 9/2010  
s. 116(1).

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**s. 66**

(5) If—

(a) 2 corporations are related bodies corporate within the meaning of the Corporations Act; and

(b) one of the corporations has a controlling interest in a business—

the other corporation has a controlling interest in the business.

**S. 66(5)  
substituted by  
No. 9/2010  
s. 116(1).**

(6) If—

(a) a person or set of persons has a controlling interest in a business; and

(b) a person or set of persons who carry on the business has a controlling interest in another business—

the person or set of persons referred to in paragraph (a) has a controlling interest in that other business.

**S. 66(6)  
substituted by  
No. 9/2010  
s. 116(1).**

(7) If—

(a) a person or set of persons is the beneficiary of a trust in respect of more than 50% of the value of the interests in the trust; and

(b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of another trust—

the person or set of persons has a controlling interest in the business.

**S. 66(7)  
substituted by  
No. 9/2010  
s. 116(1).**

(7A) If—

(a) a person or set of persons has a controlling interest in the business of a trust; and

**S. 66(7A)  
inserted by  
No. 9/2010  
s. 116(1).**

(b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a corporation—

the person or set of persons is deemed to have a controlling interest in the business of the corporation.

S. 66(7B)  
inserted by  
No. 9/2010  
s. 116(1).

(7B) If—

(a) a person or set of person has a controlling interest in the business of a trust; and

(b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a partnership—

the person or set of persons is deemed to have a controlling interest in the business of the partnership.

(8) If the Authority is satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the Authority considers relevant, that a business carried on by a member of a group, other than a group constituted by reason of subsection (10), is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of that group, the Authority may exclude the member from that group.

(9) The Authority must not, under subsection (8), exclude a person from a group if the person is a body corporate that, by reason of section 50 of the Corporations Act, is related to another body corporate that is a member of that group.

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(10) Subject to subsection (11), for the purposes of this section, if an employer is a member of a group and that person or another member of that group is a member of another group, a person who is a member of that other group is—

- (a) deemed to be a member of the first-mentioned group; and
- (b) called an *associate*.

(11) Subsection (10) does not apply if a person satisfies the Authority that—

- (a) the trade, business or profession carried on by that person is carried on independently of, and is not connected with the carrying on of a trade, business or profession carried on by a member of the first-mentioned group; and
- (b) that trade, business or profession is not carried on with an intention, either directly or indirectly, of reducing the amount of premium payable by that person or another member of the group.

(12) In this section—

*business* includes—

- (a) a profession or trade; and
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity of employing one or more persons who perform duties for or in connection with another business; and
- (d) the carrying on of a trust (including a dormant trust); and

S. 66(12)  
def. of  
*business*  
substituted by  
No. 80/2010  
s. 145.

s. 66A

(e) the activity of holding any money or property used for or in connection with another business—

whether carried on by 1 person or 2 or more persons together;

*person* includes a body or association (corporate or unincorporate) and a partnership.

(13) This section applies whether or not an employer became a member of the group before, on or after the commencement of section 12 of the **Treasury and Finance Legislation (Amendment) Act 2004**.

(14) This section does not affect the calculation of premium for any period before 1 July 2004.

S. 66A  
inserted by  
No. 40/2004  
s. 13.

#### **66A Joint and several liability of group members**

- (1) A person who, during a period, is or was a member of a group within the meaning of section 66 is jointly and severally liable with the other persons who are or were members of the group during that period to pay premium and penalties payable by members of that group in respect of that period.
- (2) For the avoidance of doubt, subsection (1) applies whether or not—
  - (a) the person was an employer during the relevant period;
  - (b) an employer became a member of the group before, on or after the commencement of section 13 of the **Treasury and Finance Legislation (Amendment) Act 2004**.
- (3) Subsection (1) does not apply to a premium or penalty payable by the group before the commencement of section 13 of the **Treasury and Finance Legislation (Amendment) Act 2004**.



- (3A) If the Authority has been paid premium in excess of what is payable by an employer who is a member of a group within the meaning of section 66, the Authority may offset some or all of that excess against any premium owed by another employer who is a member of that group.
- (4) In this section *person* includes a body or association (corporate or unincorporate) and a partnership.

S. 66A(3A) inserted by No. 9/2010 s. 117.

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S. 67 repealed by No. 40/2004 s. 14.

## 68 Recovery of premium or penalty

- (1) This section is in addition to and not in derogation from the rights of recovery by the Authority under a WorkCover insurance policy.
- (2) Any premium or penalty imposed by or under this Act and which is unpaid may be sued for and recovered—
- (a) irrespective of the amount of the premium or penalty, in the Magistrates' Court; or
- (b) in any other court of competent jurisdiction—

S. 68(1) amended by No. 81/1998 s. 17.

S. 68(2) amended by No. 80/2010 s. 146(1).

by the Authority suing in the name of the Authority or by a person employed in the administration of this Act and authorised to sue for and recover premium or penalty on behalf of the Authority suing in the name of the Authority.

- (2A) For the purposes of section 5 of the **Limitations of Actions Act 1958**, the date on which a cause of action accrues in respect of the recovery of a premium or penalty imposed under this Act is—

S. 68(2A) inserted by No. 9/2010 s. 188.

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993  
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s. 68

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- (a) if the Authority and employer have entered into a payment arrangement in respect of the premium or penalty, any day or date on which the premium or penalty is payable under that arrangement; or
- (b) otherwise, the date specified in a notice given by the Authority under Part 2 as the date on which the premium or penalty is payable.
- (3) Proceedings under this section brought in the name of the Authority are, in the absence of evidence to the contrary, deemed to have been brought by authority of the Authority.
- (4) The person referred to in subsection (2) may appear in proceedings brought under this section on behalf of the Authority.
- (5) Notwithstanding any Act or any rule of the court to the contrary, in any proceedings for the recovery of a premium or penalty against any person it is sufficient to disclose a cause of action in those proceedings if the statement of claim specifies, in respect of what remuneration the premium or penalty is payable—
- (a) the amount sought to be recovered; and
- (b) the date on which the amount was payable; and
- (c) any further or other particulars as the Authority thinks necessary to fully inform the defendant of the nature of the statement of claim.
- (6) A reference to a premium or penalty in this section includes a reference to a part of a premium or penalty.

S. 68(5)  
substituted by  
No. 80/2010  
s. 146(2).

S. 68(6)  
inserted by  
No. 82/2001  
s. 31(2).

## 69 Books and accounts to be preserved

- (1) A person who is or was an employer required to obtain and keep in force a WorkCover insurance policy under this Act must keep proper books and preserve those books for a period of not less than 5 years after the completion of the transactions to which they relate.

S. 69(1)  
amended by  
No. 9/2010  
s. 189.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

- (2) This section does not apply so as to require the preservation of any books—
- (a) in respect of which the Authority has notified the employer that preservation is not required; or
- (b) of a corporation which has gone into liquidation and which has been finally dissolved.

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S. 70  
amended by  
Nos 7/1996  
s. 58(d),  
107/1997 s. 68,  
9/2010 s. 190,  
repealed by  
No. 80/2010  
s. 147.

## 71 Evidence

- (1) For the purposes of any proceedings against a person for the recovery of a premium or penalty, a certificate purporting to be issued by the Authority or an authorised insurer certifying that—
- (a) the person named in the certificate was liable to the premium or penalty in respect of the period specified in the certificate; or

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S. 71(1)(d)  
amended by  
No. 9/2010  
s. 118(1).

- (b) an assessment of the premium or penalty was duly made against the person; or
- (c) the particulars of the assessment or penalty are as stated in the certificate; or
- (d) notice of premium or adjusted premium or penalty was duly served upon the person; or
- (e) the amount specified in the certificate was at the date of the certificate payable as the premium or penalty by the person named in the certificate—

is evidence of the matters so certified.

S. 71(2)  
amended by  
Nos 28/2005  
s. 27(1),  
9/2010  
s. 118(2).

- (2) The production of a notice of premium or adjusted premium, or a document purporting to be executed in accordance with section 18(3) of the **Accident Compensation Act 1985** or under the seal of an authorised insurer purporting to be a copy of a notice of premium or adjusted premium, is conclusive evidence of the due making of an assessment and that the amount and all particulars of the assessment are correct, except in review or appeal proceedings (in which it is proof in the absence of proof to the contrary).

S. 71(3)  
amended by  
No. 28/2005  
s. 27(2).

- (3) The production of any document purporting to be executed in accordance with section 18(3) of the **Accident Compensation Act 1985** or under the seal of an authorised insurer (that document purporting to be a copy of or extract from any document or return furnished to, or of any document issued by, the Authority or an authorised insurer) is for all purposes sufficient evidence of the matter therein set forth, without producing the original.

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## 72 Regulations

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act—
  - (a) may be of general or of specially limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may leave any matter or things to be from time to time determined, applied, dispensed with or regulated by a person or body specified in the regulation;
  - (d) may confer powers or impose duties in connection with the regulations on a person or body specified in the regulations;
  - (e) may apply, adopt or incorporate, with or without modification any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made;
  - (f) may make provision for or in relation to any matter by applying, adopting or incorporating, with or without modification, the provisions of any Act of the Commonwealth or of any statutory rule or other instrument made under an Act of the Commonwealth, as in force at a particular time or as in force from time to time;

S. 72(2)(c)  
amended by  
No. 7/1996  
s. 58(e).

S. 72(2)(d)  
amended by  
No. 7/1996  
s. 58(f).

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993  
Part 6—General Provisions

**s. 72**

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- (g) may impose a penalty not exceeding  
10 penalty units for any contravention of the  
regulations.
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**PART 7—SAVING AND TRANSITIONAL**

Pt 7  
(Heading and  
ss 73–78)  
repealed by  
No. 50/1994  
s. 104,  
new Pt 7  
(Heading and  
ss 73–77)  
inserted by  
No. 81/1998  
s. 18.

**Division 1—General**

Pt 7 Div. 1  
(Heading)  
inserted by  
No. 9/2010  
s. 192.

**73 Authority is successor in law**

New s. 73  
inserted by  
No. 81/1998  
s. 18.

For the purposes of this Act and the **Accident Compensation Act 1985**, the Authority is the successor in law of an authorised insurer.

**74 Transitional provisions**

New s. 74  
inserted by  
No. 81/1998  
s. 18,  
amended by  
No. 60/2007  
s. 32 (ILA  
s. 39B(1)).

- (1) Without limiting section 73, for the purposes of this Act and the **Accident Compensation Act 1985**—
- (a) anything of a continuing nature done, commenced or made by or in relation to an authorised insurer under this Act or the **Accident Compensation Act 1985** before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998** may be done, enforced or completed by or in relation to the Authority;
  - (b) anything of a continuing nature done, commenced or made by or in relation to a WorkCover insurance policy or a claim for compensation by an authorised insurer under this Act or the **Accident Compensation Act 1985** before the commencement of Part 2 of the **Accident Compensation (Amendment)**

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- Act 1998** may be done, enforced or completed by the Authority;
- (c) the Authority is substituted for an authorised insurer as a party in any proceedings or dispute to which the authorised insurer was a party under this Act or the **Accident Compensation Act 1985** pending or existing in any court, tribunal, conciliation or Medical Panel before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998** and the Authority has the same rights in the proceedings or dispute as the authorised insurer had;
- (d) on and after the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998**, any reference in any Act, regulation, contract, WorkCover insurance policy, application, notice, claim, statement, offer, referral, determination, decision order or other document to an authorised insurer, is to the extent that the reference relates to any act, matter or thing under this Act or the **Accident Compensation Act 1985**, to be construed as a reference to the Authority;
- (e) all WorkCover insurance policies are deemed to have been issued or renewed by the Authority and all acts or things done or omitted to be done by the Authority under a WorkCover insurance policy issued or renewed by an authorised insurer shall be as valid and effectual and have the same consequences as if those acts or things had been done or omitted to be done by the authorised insurer.



- (2) No act, matter or thing is affected only because of the repeal of the definitions of *superannuation benefit* and *remuneration* in the **Accident Compensation Act 1985**, and sections 5(15), 5(16), 5(17), 5D and 5E of that Act, by sections 22 and 23 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** and the re-enactment of those provisions in this Act by sections 30 and 31 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**.

S. 74(2)  
inserted by  
No. 60/2007  
s. 32.

#### 75 Cancellation of licences

- (1) Any licence in force under Part 3 immediately before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998** is by virtue of this section cancelled.
- (2) Any right or privilege acquired or accrued against the State of Victoria or the Authority in respect of a licence cancelled by this section is extinguished, despite anything to the contrary in section 14(2) of the **Interpretation of Legislation Act 1984**.
- (3) Despite any Act or law to the contrary, the State of Victoria and the Authority are not liable in any way for any loss, damage or injury whatsoever resulting from the cancellation of a licence under this section.
- (4) Except as otherwise provided in this section, the cancellation of a licence under this section does not affect any rights, obligations and liabilities accrued or incurred before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998**.

New s. 75  
inserted by  
No. 81/1998  
s. 18.

New s. 76  
inserted by  
No. 81/1998  
s. 18.

## 76 Re-insurance arrangements

- (1) Any re-insurance arrangement in force under section 34 immediately before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998** is by virtue of this section terminated.
- (2) Despite any Act or law to the contrary, the State of Victoria and the Authority are not liable in any way for any loss, damage or injury whatsoever resulting from the termination of a re-insurance arrangement under this section.
- (3) The termination of a re-insurance arrangement under this section does not affect any rights, obligations and liabilities accrued or incurred before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998**.

New s. 77  
inserted by  
No. 81/1998  
s. 18,  
amended by  
No. 40/2004  
s. 15 (ILA  
s. 39B(1)).

## 77 Supreme Court—limitation of jurisdiction

- (1) It is the intention of sections 75 and 76 to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 22A as inserted by section 5 of the **Treasury and Finance Legislation (Amendment) Act 2004** to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of sections 35 and 36A(4) as inserted by section 114 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 77(2)  
inserted by  
No. 40/2004  
s. 15.

S. 77(3)  
inserted by  
No. 9/2010  
s. 119.

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**Division 2—Accident Compensation Amendment Act 2010**

Pt 7 Div. 2  
(Heading and  
ss 78–91)  
inserted by  
No. 9/2010  
s. 193.

**78 Definitions**

New s. 78  
inserted by  
No. 9/2010  
s. 193.

- (1) In this Division—

*amending Act* means the **Accident Compensation Amendment Act 2010**;

*amending provision* means a provision of the amending Act specified in a section of this Division;

*commencement date* means the date on which the amending provision comes into operation.

- (2) Nothing in this Division limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

**79 Section 3(1) (Estimated future claim cost)**

New s. 79  
inserted by  
No. 9/2010  
s. 193.

The definition of *estimated future claim cost* in section 3(1), as amended by section 100 of the amending Act, applies only in respect of notices of premium served on or after the commencement date.

**80 Section 7 (Compulsory WorkCover Insurance)**

New s. 80  
inserted by  
No. 9/2010  
s. 193 (as  
amended by  
No. 80/2010  
s. 150).

- (1) Section 7, as amended by section 101(1) of the amending Act, applies in respect of injuries to which this Act applies on and after the commencement date.
- (2) Section 7, as amended by section 101(1) of the amending Act, applies in respect of premium calculated on and after the commencement date.

- (3) Section 7, as amended by section 101(3) of the amending Act, applies in respect of premium calculated on and after the commencement date.
- (4) Section 7, as amended by section 101(4) of the amending Act, applies to an employer who immediately before the commencement date—
  - (a) has not obtained or kept in force a policy of insurance as required by section 7(1) in respect of any of the 5 policy periods before the commencement date; and
  - (b) the Authority has not commenced proceedings against the employer under section 7(6), 61(3) or 61(4).

New s. 81  
inserted by  
No. 9/2010  
s. 193.

**81 Section 9 (WorkCover insurance policy)**

Section 9, as amended by section 102 of the amending Act, applies in respect of policies of insurance entered into on or after the commencement date.

New s. 82  
inserted by  
No. 9/2010  
s. 193,  
amended by  
No. 80/2010  
s. 148.

**82 Section 16 (Premiums order—general provisions)**

Section 16, as amended by section 103 of the amending Act, applies to the premiums order commencing on 1 July 2010 and to any other premium order made by the Governor in Council on or after the commencement date.

New s. 83  
inserted by  
No. 9/2010  
s. 193.

**83 Section 17A (Authority may serve notice of premium)**

Section 17A, as inserted by section 104 of the amending Act, applies to notices of premium served on or after the commencement date.

New s. 84  
inserted by  
No. 9/2010  
s. 193.

**84 Section 21 (Adjustment of premium)**

Section 21, as amended by section 105 of the amending Act, applies to notices of premium served on or after the commencement date.

**85 Section 21A (Premium notices in respect of deemed policy periods)**

New s. 85  
inserted by  
No. 9/2010  
s. 193.

Section 21A, as amended by section 106 of the amending Act, applies to an employer who immediately before the commencement date—

- (a) has not obtained or kept in force a policy of insurance as required by section 7(1); and
- (b) the Authority has not commenced proceedings against the employer under section 7(6), 61(3) or 61(4).

**86 Section 31A (Refund of premium may be offset)**

New s. 86  
inserted by  
No. 9/2010  
s. 193.

Section 31A, as substituted by section 112 of the amending Act, applies to excess premium paid to the Authority by an employer in respect of notices of premium served on the employer on or after the commencement date.

**87 Part 2A (Premium review)**

New s. 87  
inserted by  
No. 9/2010  
s. 193,  
amended by  
No. 80/2010  
s. 149,  
substituted by  
No. 67/2013  
s. 647.

Part 2A, as inserted by section 114 of the amending Act, applies to notices specified in section 33, whether issued before, on or after 1 July 2014, in respect of a policy period ending at 4 p.m. on 30 June in 2011, 2012, 2013 or 2014.

**88 Section 58 (Registration of section 55(2)(a) employer)**

New s. 88  
inserted by  
No. 9/2010  
s. 193.

Section 58, as amended by section 115 of the amending Act, applies to an employer who immediately before the commencement date—

- (a) has not obtained or kept in force a policy of insurance as required by section 7(1); and
- (b) the Authority has not commenced proceedings against the employer under section 7(6), 61(3) or 61(4).

s. 89

New s. 89  
inserted by  
No. 9/2010  
s. 193.

**89 Section 66A (Joint and several liability of group members)**

Section 66A, as amended by section 117 of the amending Act, applies on or after the commencement date, in respect of premium paid to the Authority that is in excess of what is payable by an employer.

New s. 90  
inserted by  
No. 9/2010  
s. 193.

**90 Section 71 (Evidence)**

Section 71, as amended by section 118 of the amending Act, applies in respect of proceedings to which section 71 applies—

- (a) that have not been determined or settled immediately before the commencement date;
- (b) that are commenced on or after the commencement date.

New s. 91  
inserted by  
No. 9/2010  
s. 193.

**91 Section 57 (Claims against 55(2)(a))**

Section 57, as amended by section 120 of the amending Act, applies in respect of claims for compensation given, served or lodged on and after the commencement date.

Pt 8  
(Heading and  
ss 79–110)  
repealed by  
No. 50/1994  
s. 104.

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Pt 9  
(Heading and  
ss 111–113)  
repealed by  
No. 50/1994  
s. 104.

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 29 April 1993*

*Legislative Council: 14 May 1993*

The long title for the Bill for this Act was "A Bill to require compulsory WorkCover insurance for employers and to establish a WorkCover insurance system, to generally amend the **Accident Compensation Act 1985** and the **Workers Compensation Act 1958** and to make minor amendments to the **Stamps Act 1958** and the **Accident Compensation (WorkCover) Act 1992** and for other purposes."

The **Accident Compensation (WorkCover Insurance) Act 1993** was assented to on 1 June 1993 and came into operation as follows:

Part 1 (sections 1–6), sections 19, 94(1), 102, 110(1), 111(1) on 1 June 1993: s. 2(1); sections 111(2), 112(1) on 19 November 1992: section 2(2)(a);

Sections 84(1), 92, 94(2), 95, 100, 110(2) on 1 December 1992: section 2(2)(b);

Section 93 on 1 April 1993: s. 2(2)(c);

Sections 87, 88 on 29 April 1993: s. 2(2)(d);

Part 3 (sections 27–42), sections 7–11, 15–17, 72, 78(1)(b), 79, 80(1)(a)(e), 85, 86, 89, 90, 98, 103–108, 109(1)(2), 112(2), 113 on 16 June 1993; sections 12–14, 18, 20–26, 55, 57–71, 73, 75, 78(1)(c)–(h)(2), 83, 101 on 30 June 1993; Part 4 (sections 43–54), sections 56, 74, 76, 78(1)(a), 80(1)(b)–(d)(2), 81, 84(2), 91, 99, 109(3) on 1 July 1993; sections 96, 97 on 1 August 1993: Special Gazette (No. 39) 16 June 1993 page 1;

Sections 77, 82 never proclaimed, repealed by No. 50/1994 section 104.

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993

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2. Table of Amendments

This Version incorporates amendments made to the **Accident Compensation (WorkCover Insurance) Act 1993** by Acts and subordinate instruments.

**Accident Compensation (Amendment) Act 1994, No. 50/1994**

*Assent Date:* 15.6.94  
*Commencement Date:* Ss 89, 90(1)(2) on 1.6.93: s. 2(2)(c); s. 92(2) at 4 p.m. on 30.6.93: s. 2(2)(d); ss 88, 90(3)(4), 92(1), 94–97, 100–104 on 24.6.94: Special Gazette (No. 37) 24.6.94 p. 2—see **Interpretation of Legislation Act 1984**; ss 91, 93, 98, 99 on 1.7.94: Special Gazette (No. 37) on 24.6.94 p. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Transport Accident (General Amendment) Act 1994, No. 84/1994**

*Assent Date:* 29.11.94  
*Commencement Date:* S. 64 on 1.1.95: Special Gazette (No. 96) 13.12.94 pp 1, 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Accident Compensation (Amendment) Act 1996, No. 7/1996**

*Assent Date:* 25.6.96  
*Commencement Date:* Ss 52–54, 55(1), 58 on 25.6.96; ss 51, 55(2), 56, 57 on 1.7.96: Special Gazette (No. 71) 25.6.96 p. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Education (Amendment) Act 1996, No. 47/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* S. 24 on 1.1.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Accident Compensation (Further Amendment) Act 1996, No. 60/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* S. 31 on 17.12.96: s. 2(1); s. 32 on 1.7.98  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**



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**Vocational Education and Training (Training Framework) Act 1997, No. 80/1997**

*Assent Date:* 25.11.97  
*Commencement Date:* S. 51 on 1.1.98: Government Gazette 18.12.97 p. 3614  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Accident Compensation (Miscellaneous Amendment) Act 1997, No. 107/1997**

*Assent Date:* 23.12.97  
*Commencement Date:* S. 67 on 23.12.97: s. 2(1); ss 65, 66 on 1.1.98: s. 2(3); ss 64, 68 on 1.2.98: Government Gazette 22.1.98 p. 101  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Accident Compensation (Amendment) Act 1998, No. 81/1998**

*Assent Date:* 17.11.98  
*Commencement Date:* Ss 3–18 at 4 p.m. on 30.6.99: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Accident Compensation (Common Law and Benefits) Act 2000, No. 26/2000**

*Assent Date:* 30.5.00  
*Commencement Date:* S. 27 on 1.7.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Victims of Crime Assistance (Amendment) Act 2000, No. 54/2000**

*Assent Date:* 12.9.00  
*Commencement Date:* S. 25(5) on 1.1.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 1) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

**Accident Compensation (Amendment) Act 2001, No. 82/2001**

*Assent Date:* 11.12.01  
*Commencement Date:* Pt 5 (ss 26–31) on 12.12.01: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation (WorkCover Insurance) Act 1993**

Accident Compensation (WorkCover Insurance) Act 1993  
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**Accident Compensation and Transport Accident Acts (Amendment) Act 2003,  
No. 95/2003**

*Assent Date:* 2.12.03  
*Commencement Date:* S. 24 on 1.9.04: Government Gazette 26.8.04 p. 2363  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Treasury and Finance Legislation (Amendment) Act 2004, No. 40/2004**

*Assent Date:* 8.6.04  
*Commencement Date:* Ss 4–10, 15 on 6.5.04: s. 2(2); ss 11–14 on 9.6.04:  
s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Accident Compensation Legislation (Amendment) Act 2004, No. 102/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* Ss 42–44 on 21.12.04: s. 2(1); s. 45 on 1.7.05: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Accident Compensation (Amendment) Act 2005, No. 28/2005**

*Assent Date:* 21.6.05  
*Commencement Date:* Pt 3 Div. 2 (s. 27) on 22.6.05: s. 2(1); s. 26 on 1.7.05:  
s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Accident Compensation and Other Legislation (Amendment) Act 2006,  
No. 41/2006**

*Assent Date:* 25.7.06  
*Commencement Date:* S. 27 on 1.7.06: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Education and Training Reform Miscellaneous Amendments Act 2007,  
No. 58/2007**

*Assent Date:* 27.11.07  
*Commencement Date:* S. 49 on 28.11.07: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

Accident Compensation (WorkCover Insurance) Act 1993  
No. 50 of 1993

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**Transport Accident and Accident Compensation Acts Amendment Act 2007,  
No. 60/2007**

*Assent Date:* 27.11.07  
*Commencement Date:* Ss 30–32 on 19.9.07: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Accident Compensation Amendment Act 2010, No. 9/2010** (as amended by  
No. 80/2010)

*Assent Date:* 23.3.10  
*Commencement Date:* Ss 192, 193 on 24.3.10: s. 2(1); ss 178–190 on 5.4.10:  
s. 2(7); ss 100–120 on 1.7.10: s. 2(8)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Transport Accident and Accident Compensation Legislation Amendment Act  
2010, No. 80/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* Ss 136, 137, 139–141, 143, 144, 148, 149 on 1.7.10:  
s. 2(4); ss 131, 135, 142, 145–147 on 20.10.10: s. 2(1);  
ss 132–134, 138 on 1.7.11: s. 2(6)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

**Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013**

*Assent Date:* 12.11.13  
*Commencement Date:* S. 647 on 1.7.10: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation (WorkCover  
Insurance) Act 1993**

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Endnotes

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### 3. Explanatory Details

<sup>1</sup> S. 7(1): Section 51(4) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

#### **51 Amendment of section 7**

- (4) Section 7 of the **Accident Compensation (WorkCover Insurance) Act 1993** as amended by this section applies to and in respect of the financial year commencing on 1 July 1996 and to each subsequent financial year.

<sup>2</sup> S. 7(1)(a): Section 90(3)(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

#### **90 References**

- (3) The Principal Act is deemed to have been enacted as amended by this section.
- (4) A WorkCover insurance policy issued before the enactment of this Act is deemed to have been issued under the Principal Act as amended by this section.

<sup>3</sup> S. 7(1A): See note 1.

<sup>4</sup> S. 7(1B): See note 1.

<sup>5</sup> S. 7(4): See note 1.

<sup>6</sup> S. 15: Section 103 of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

#### **103 WorkCover Insurance Premiums Order 1993/94**

- (1) This section applies for the purpose of calculating any adjusted premium payable—
- (a) after a WorkCover insurance policy has been cancelled before 4 p.m. on 30 June 1994 and the relevant employer ceases to be an employer; or
- (b) after a policy period has expired at 4.00 p.m. on 30 June 1994.

- (2) The WorkCover Insurance Premiums Order 1993/94 is to be construed as if it had been made with the following provisions included in the Order—
- (a) after item 3(1)(h) of Schedule 3—
- "(i) shall not include the cost of weekly payments of compensation or the cost of increased weekly payments of compensation made to a worker solely as the result of the invalidity of a notice issued under section 112 of the Act on and after 1 December 1992 by reason of the failure of the notice to comply with section 123A of the **Accident Compensation Act 1985**";
- (b) after item 4(c) of Schedule 3—
- "(d) claims for compensation under section 98 of the **Accident Compensation Act 1985** for loss of hearing which were given, served or lodged after 1 July 1991 if the total amount of compensation paid or payable in respect of such claims is for a binaural loss of hearing of less than 7 percent;"

<sup>7</sup> S. 63: See note 2.