



TASMANIA

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**WORKERS COMPENSATION AMENDMENT ACT 1993**

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**No. 43 of 1993**

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**WORKERS COMPENSATION AMENDMENT ACT 1993**

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**No. 43 of 1993**

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**AN ACT to amend the *Workers Compensation Act 1988*****[Royal Assent 10 September 1993]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**Short title**

**1**—This Act may be cited as the *Workers Compensation Amendment Act 1993*.

**Commencement**

**2**—This Act commences on a day to be proclaimed.

**Principal Act**

3—In this Act, the *Workers Compensation Act 1988\** is referred to as the Principal Act.

**Section 3 amended (Interpretation)**

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

- (a) by omitting the definitions of “Medical Board” and “Medical Panel”;
- (b) by omitting the definition of “weekly payment” and substituting the following definition:—

“**weekly payment**” means a weekly rate payment determined in accordance with section 69;

**Section 22 amended (Record of division)**

5—Section 22 of the Principal Act is amended by omitting from subsection (1) (c) “Medical Board” and substituting “medical panel”.

**Division 3 of Part II repealed**

6—Division 3 of Part II of the Principal Act is repealed.

**Section 49 amended (Procedure of Commissioner)**

7—Section 49 of the Principal Act is amended as follows:—

- (a) by omitting subsection (3) and substituting the following subsections:—

(3) Where a medical question arises in any proceedings before the Commissioner, the Commissioner may—

- (a) determine the medical question on any medical evidence presented to the Commissioner; or

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\* No. 4 of 1988. Amended by No. 39 of 1988, No. 13 of 1989, No. 5 of 1990, Nos. 26 and 46 of 1991, No. 50 of 1992 and No. 27 of 1993.

- (b) refer the medical question to a medical panel comprising 3 medical practitioners nominated by the Commissioner who are, in the Commissioner's opinion, appropriately qualified and who are acceptable to the parties to the proceeding for the purpose of obtaining medical advice or a medical opinion in relation to the medical question; or
- (c) refer the medical question to a medical practitioner who is, in the Commissioner's opinion, appropriately qualified and who is acceptable to the parties to the proceeding for the purpose of obtaining medical advice or a medical opinion in relation to the medical question.

(3A) If the parties to the proceeding cannot agree on the medical practitioners nominated by the Commissioner to comprise a medical panel, the Commissioner must nominate 3 other medical practitioners to comprise the panel who the Commissioner considers are appropriately qualified to provide the medical advice or opinion.

(3B) If the parties to the proceeding cannot agree on the medical practitioner nominated by the Commissioner, the Commissioner must choose another medical practitioner who the Commissioner considers is appropriately qualified to provide the medical advice or opinion.

- (b) by omitting from subsection (4) "Medical Board" and substituting "medical panel".

## **Section 50 substituted**

**8**—Section 50 of the Principal Act is repealed and the following section is substituted:—

### **Medical panels and medical practitioners**

50—(1) The Commissioner must appoint one of the medical practitioners nominated to comprise a medical panel under section 49 to be chairperson of the panel.

(2) The Commissioner must not nominate a medical practitioner to be a member of a medical panel for the purpose of obtaining medical advice or a medical opinion in relation to a medical question in respect of a worker if the medical practitioner—

- (a) has, in any capacity other than as a member of a medical panel, been involved in the examination or treatment of, or has provided medical services to, the worker in relation to the injury in respect of which the medical advice or opinion is sought by the Commissioner; or
- (b) informs the Commissioner that, for any reason, the medical practitioner's appointment to the medical panel could give rise to a conflict of interests.

(3) The Commissioner must not refer any medical question relating to a worker to a medical practitioner for the purpose of obtaining medical advice or a medical opinion in relation to that medical question if the medical practitioner—

- (a) has, in any capacity other than as a member of a medical panel, been involved in the examination or treatment of, or has provided medical services to, the worker in relation to the injury in respect of which the medical advice or opinion is sought by the Commissioner; or
- (b) informs the Commissioner that, for any reason, the referral of the medical question to the medical practitioner would give rise to a conflict of interests.

**Section 51 amended (Worker not entitled to be represented before medical panel, &c., except in certain cases)**

9—Section 51 of the Principal Act is amended by omitting “Medical Board” (wherever occurring) and substituting “medical panel”.

**Section 52 amended (Power of medical panel, &c., to examine worker)**

10—Section 52 of the Principal Act is amended by omitting “Medical Board” (wherever occurring) and substituting “medical panel”.

**Section 53 amended (Failure to attend before a medical panel, &c.)**

11—Section 53 of the Principal Act is amended by omitting “Medical Board” (wherever occurring) and substituting “medical panel”.

**Section 54 amended (Commissioner to be informed of findings in relation to medical question)**

12—Section 54 of the Principal Act is amended by omitting “Medical Board” and substituting “medical panel”.

**Section 55 amended (Liability of members of medical panel, &c.)**

13—Section 55 of the Principal Act is amended by omitting “Medical Board” (wherever occurring) and substituting “medical panel”.

**Section 56 amended (Provisions relating to evidence and production of documents)**

14—Section 56 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

(2) The Commissioner must cause a tape recording of a proceeding before the Commissioner to be made.

(3) On the completion of a proceeding before the Commissioner, the Commissioner must cause the tape recording of the proceeding and any notes of the proceeding made by the Commissioner to be filed in the office of the Registrar in Hobart.

(4) Any tape recording and notes of a proceeding filed in accordance with subsection (3) are to be kept for a period of 6 years from the date on which the tape recording and notes were filed.

**Section 61A inserted**

**15**—After section 61 of the Principal Act, the following section is inserted:—

**Power of Commissioner to publish and distribute copies of determinations**

61A—Where the Commissioner makes a determination in respect of a claim for compensation, the Commissioner may publish copies of the determination in such form as the Commissioner thinks fit with the name of the worker who is a party to the determination omitted and may distribute the copies to any person.

**Section 64 amended (Regulations for purposes of Part V)**

**16**—Section 64 of the Principal Act is amended as follows:—

(a) by omitting paragraph (b) of subsection (2) and substituting the following paragraph:—

(b) the powers that may be exercised, and the functions that are required to be performed, by Registrars under this Part, including the power of Registrars to hold conferences with persons referred to in section 42 (5) in relation to claims for compensation referred to the Commissioner.

(b) by inserting after subsection (2) the following subsection:—

(2A) Without limiting the generality of subsection (2) (b), the regulations may—

(a) prescribe the purposes for which a conference referred to in that subsection is to be held; and

(b) authorize a Registrar to delegate to an authorized officer the performance and exercise of the Registrar's functions and powers in relation to the holding of such a conference; and

(c) provide for or with respect to the representation of the parties to such a conference and the persons who are not entitled to be present at such a conference; and



- (d) provide for or with respect to the adjournment of such a conference; and
- (e) provide for or with respect to the bringing about of an agreement between the parties to a claim for compensation as a result of such a conference.

**Section 69 amended (Amount of compensation in case of incapacity)**

**17**—Section 69 of the Principal Act is amended as follows:—

- (a) by omitting “weekly payments” (wherever occurring) and substituting “weekly rate payments”;
- (b) by omitting from subsection (4) (a) “weekly payment” and substituting “weekly rate payment”;
- (c) by omitting from subsection (8) “weekly payment” and substituting “weekly rate payment”.

**Section 74 amended (Interpretation of Division 2 of Part VI)**

**18**—Section 74 of the Principal Act is amended by omitting “or podiatrist” from paragraph (a) of the definition of “medical services” and substituting “podiatrist or psychologist”.

**Section 75 amended (Additional compensation for medical and other services)**

**19**—Section 75 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (2) “or carried out on” after “provided to”;
- (b) by inserting in subsection (2) after “provided” (second and third occurring) “or carried out”;
- (c) by inserting in subsection (9) (b) “or carried out on” after “provided to”;
- (d) by inserting after subsection (9) the following subsection:—

(10) In this section, “medical treatment”, in relation to a worker, includes any attendance, examination, treatment, test or analysis provided to or carried out on the worker.

**Section 82 amended (Certain arrangements to be made with Motor Accidents Insurance Board in respect of weekly payments)**

**20**—Section 82 of the Principal Act is amended by omitting “under section 69”.

**Section 86 amended (Cases in which employer may terminate or reduce payments)**

**21**—Section 86 of the Principal Act is amended by inserting in subsection (3) “, for the reasons specified in subsection (1) (c), (d) or (e),” after “An employer who”.

**Section 127 amended (Order or judgment against Nominal Insurer)**

**22**—Section 127 of the Principal Act is amended by omitting from subsection (4) “he”.

**Section 127A inserted**

**23**—After section 127 of the Principal Act, the following section is inserted:—

**Nominal Insurer Fund**

127A—(1) There is established a fund to be known as the Nominal Insurer Fund.

(2) There is to be paid into the Nominal Insurer Fund—

(a) money received by the Nominal Insurer from licensed insurers and self-insurers under section 128; and

(b) any other money received by the Nominal Insurer.

- (3) There is to be paid from the Nominal Insurer Fund—
- (a) all amounts required to be paid by the Nominal Insurer under this Act in satisfaction of any claim or order made, or judgment obtained, against the Nominal Insurer pursuant to this Act or the amount of costs incurred by the Nominal Insurer in relation to any claim or order made, or the proceedings in which any judgment is obtained, against the Nominal Insurer pursuant to this Act; and
  - (b) all amounts required to meet the costs and expenses incurred by the Nominal Insurer in or in connection with the performance or exercise of the powers and functions imposed or conferred on the Nominal Insurer by or under this Act.

### **Section 128 amended (Payments to Nominal Insurer)**

**24**—Section 128 of the Principal Act is amended as follows:—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) all the words appearing before “determine” and substituting “In order to ensure that there is sufficient money in the Nominal Insurer Fund to enable payments to be made under section 127A (3) (a), licensed insurers and self-insurers must pay to the Nominal Insurer amounts of money in such proportion as the Nominal Insurer may from time to time”;
- (c) by omitting subsection (3) and substituting the following subsection:—

(3) Licensed insurers and self-insurers must pay to the Nominal Insurer, in such proportion as the Nominal Insurer determines under subsection (2), such additional amounts as the Nominal Insurer may require from time to time to enable the Nominal Insurer to meet any costs and expenses incurred by the Nominal Insurer in or in connection with the performance or exercise of the powers and functions imposed or conferred on the Nominal Insurer by or under this Act.
- (d) by omitting from subsection (5) “he” (twice occurring) and substituting “it”.

**Section 130 amended (Recovery by Nominal Insurer from employer, &c.)**

**25**—Section 130 of the Principal Act is amended as follows:—

- (a) by omitting “him” and substituting “the Nominal Insurer”;
- (b) by omitting from paragraph (b) “sustained.” and substituting “sustained; or”;
- (c) by inserting after paragraph (b) the following paragraph:—
  - (c) any person against whom that employer or licensed insurer has a right of indemnity or contribution, whether under this Act or any other Act or at common law.

**Section 158 amended (Maintenance of secrecy)**

**26**—Section 158 of the Principal Act is amended by omitting from subsection (1) “Except in the course of his functions under this Act,” and substituting “Except in the course of performing or exercising functions or powers under this Act,”.

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*[Second reading presentation speech made in:—  
House of Assembly on 18 May 1993  
Legislative Council on 18 August 1993]*