Law Council
OF AUSTRALIA

Workers Compensation: Toward National Harmonisation

Position Paper developed by the Personal Injury and Compensation Committee of the Law Council of Australia

11 November 2009

GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au

Table of Contents

Preamble **4**
Background **5**
Guiding Principles **6**
(1) Harmonisation is better than Comcare 6
(2) Balancing Fairness and Sustainability 6
(3) Rewards for Safety 7
(4) Return to work 7
(5) Access to Legal Advice and Assistance. 7
(6) A Role for Private Insurers 7
(7) A Role for Employers as Self-Insurers 7
Phases of Harmonisation **7**
1. Standardisation of Definitions **8**
(a) Definition of Worker 8
(b) Nexus with Employment 8
(c) Wages/Remuneration 8
(d) Superannuation 9
(e) Older Workers 9
(f) Exclusionary Provisions of Injury 9
(g) Medical Expenses 9
(h) Attendant Care/Home Help 9
(i) Industrial Deafness 10
(j) Dispute Provisions 10
(k) Excess 10
(l) Forms 10
(m) Standardising Claims Processes 10
2. Standardisation of Entitlements **10**
(a) Journey / Recess Claims 10
(b) Incapacity Payments 11
(c) Commutation/Redemption 11
(d) Death Benefits 11
(e) Permanent Impairment 12
(f) Common Law Access 12
(g) Best Practice Return to Work 12
3. Standardisation of Structure **13**
(a) Common Benefits 13
(b) The Role of the WorkCover Authority 13
(c) Specialist Courts and Tribunals 13

A Broad Consultative Forum **14**
ANNEXURES **15**
A - *Accident Compensation Act 1985* (Vic) 15
Section 10: Persons deemed to be workers under relevant contracts 15
B – *Workers Compensation Act 1951 (ACT)* 18
C – Workers Compensation Act 1951 (ACT) 20
D – *Accident Compensation Act 1985* (Vic) 20
Section 99: Compensation for medical and like services 20
E - *Workers Compensation and Rehabilitation Act 2003* (Qld) 26

Preamble

This paper outlines a framework for harmonisation of workers compensation laws in Australia.

Following the harmonisation of occupational health and safety laws, in 2009/10, there is a strong possibility that harmonisation of workers compensation laws will become an issue during the next term of government. This makes it important for the Law Council, in concert with its constituent bodies and other strategic partners, to reach an agreed position on the most effective model for national harmonisation.

This paper identifies a set of guiding principles, suggests a staged approach to harmonisation and identifies a process to advance greater harmonisation of workers compensation laws.

The purpose of this paper is to generate discussion around the elements of such a scheme, particularly amongst stakeholders.

It is intended that the paper will develop as the Law Council gains input from stakeholders and ultimately position the Law Council and its strategic partners to promote the adoption of a fair, efficient and comprehensive national workers compensation framework.

Background

In Australia, Federal, State and Territory governments each have responsibility to provide for workers' compensation arrangements in their jurisdiction. These schemes have been developed and continue to operate in isolation from other schemes. This has resulted in significant differences across all jurisdictions in terms of common law access, benefit structures and the extent of public/private underwriting of workers compensation insurance.

In 2004, the Productivity Commission issued a report into *National Workers' Compensation and Occupational Health and Safety Frameworks*[1] (the PC report), recommending the creation of an alternative national workers' compensation scheme, which would operate in parallel to existing state and territory schemes.[2] The underlying thrust of the report was that nationally consistent workers' compensation arrangements would be desirable

The former Federal Government issued a response to the PC report on 24 June 2004 rejecting most of its proposals, including the proposal to establish a parallel national scheme, on the basis that the Commonwealth did not support developing a national template scheme for adoption and due to fears that the State/Territory schemes would become unviable if national employers opted out in favour of the Commonwealth model.[3]

However, the former Government subsequently established the Australian Safety and Compensation Council (ASCC)[4] to provide a national coordination and leadership role on workers' compensation and occupational health and safety (OHS).

In January 2006, Australian Government commissioned 'Regulation Taskforce' (driven by the Productivity Commission) released a report entitled "Rethinking Regulation: Reducing the Regulatory Burden on Business".[5] The report made 178 recommendations directed at removing or rationalising excess regulation. This included a recommendation that COAG request the ASCC to develop a model for achieving national consistency in workers' compensation arrangements.[6] The former Federal Government responded that it supported the recommendation, but that "a number of key objectives relating to the harmonisation of the respective workers' compensation jurisdictions had not been endorsed" by the Workplace Relations Ministers' Council.[7]

The Labor Party was elected on 24 November 2007 and it is clear from statements issued while in opposition that the new Labor Government will push for national harmonisation of OHS. In a speech launching the ALP's workplace safety policy on 24 October 2007,[8] the then ALP industrial relations spokesperson, Julia Gillard, announced that a Labor Government would work in partnership with

---

[1] Productivity Commission Report No.27, *National Workers' Compensation and Occupational Health and Safety Frameworks*, 2004, Commonwealth of Australia.

[2] Ibid, p.151-152.

[3] Press Release: Federal Treasurer, Peter Costello MP, *Response to Productivity Commission Report on Workers Compensation and Occupational Health and Safety,* 24 June 2004.

[4] http://www.ascc.gov.au/

[5] Regulation Taskforce, *Rethinking Regulation – Reducing the Regulatory Burden on Business*, January 2006, Productivity Commission, Commonwealth of Australia.

[6] Ibid, Recommendation 4.31.

[7] Australian Government Response to the *Report of the Taskforce into Reducing the Regulatory Burden on Business*, August 2006. Available at http://www.treasury.gov.au/contentitem.asp?ContentID=1141&NavID=

[8] Labor's Workplace Safety Launch, 24 October 2007, Safety Week Conference.

State and Territory governments to harmonise OHS regulations. This will inevitably lead to pressure to harmonise workers' compensation schemes across jurisdictions.

This differs from the approach of the previous Coalition Government, which proposed moving to national OHS uniformity by way of adoption by the states and territories of the *Safety, Rehabilitation and Compensation Act* 1988 (Cth) ("the SRC Act").

The ALP has indicated in its national policy platform that it has reservations about the SRC Act as a template for workers' compensation and favours an approach which seeks to achieve greater uniformity across schemes through harmonisation.[9]

On 1 July 2009, Safe Work Australia was established to subsume the responsibilities of the ASCC. Safework Australia's primary role is to drive the harmonisation process for OHS and workers compensation. A model national OHS law was released on 28 September 2009 and is expected to be ready for implementation by early 2010. Once a model OHS law is implemented nationally, it is expected that the Federal Government's focus will turn to harmonisation of workers compensation laws.

Guiding Principles

The Law Council proposes the following guiding principles to inform its approach to national harmonisation of workers compensation:

(1) Harmonisation is better than Comcare

It should be remembered that the vast majority of workers (71.5%) work for employers who are based in only one jurisdiction.[10] Whilst the number of firms based in more than one jurisdiction may be increasing, there is not yet a "crisis" that demands urgent change or resort to short-sighted 'solutions', such as extension of self-insurance under Comcare to multi-jurisdictional employers.

There also seems little value in reproducing a bureaucracy to administer a "national scheme", to replace the existing State/Territory schemes.

It is noted that there are significant doubts as to whether the SRC Act delivers a regime that is either more beneficial to injured employees or more cost efficient for employers. The Law Council notes, in particular, high administrative costs and dispute rates in the scheme. Further, extension of Comcare nationally, to compete with State/Territory schemes, as has been recently proposed,[11] will result in greater complexity and confusion, as companies and their employees could then be subject to differing entitlements and standards in the same jurisdiction, depending on whether they are insured under the Commonwealth or State/Territory scheme.

A better approach, therefore, would be to harmonise all schemes to ameliorate compliance and other costs for multi-jurisdictional employers.

(2) Balancing Fairness and Sustainability

Benefits should be accessible and provide a financial basis for injured workers to recover, particularly in the initial stages of injury.

---

[9] ALP Election Platform - Workplace Health and Safety 24 October 2007

[10] Productivity Commission report 27, Table 2.1, p.18.

[11] Steven Scott, "Push to overhaul workers comp", 30/4/08, *Australian Financial Review*

This must be balanced with the need to ensure schemes are financially viable and are not an unjustified impost on industry.

Such a balance should not be achieved by forcing injured workers to give away rights that are enjoyed by citizens in similar circumstances.

(3) Rewards for Safety

It is in everyone's interest that workplace injuries and deaths are reduced.

Schemes should reward improved safety performance. Conversely, disincentives and penalties should exist for ongoing disregard for safety.

(4) Return to work

All schemes should have mechanisms to ensure that, wherever possible, injured employees are assisted in returning to work, with another employer if necessary.

Obligations of employers, employees and insurers need to be "built in" to any scheme.

(5) Access to Legal Advice and Assistance.

Workers' compensation schemes are complex. Injured employees, employers and insurance companies need to have access to independent legal advice and assistance.

(6) A Role for Private Insurers

Most schemes now involve private insurers performing a role, from underwriting and premium setting to management of claims.

The Law Council believes there is a role for private insurers and it is appropriate to find the appropriate balance in each jurisdiction.

(7) A Role for Employers as Self-Insurers

There should be standard requirements for self-insurance in each jurisdiction and a system of mutual recognition.

Phases of Harmonisation

Despite numerous calls for greater harmonisation of workers compensation schemes over many years, little has been done to achieve uniformity. Harmonisation in this area requires significant cooperation between different levels of government, as well as general agreement by a number of different stakeholder groups. Historically, such cooperation and agreement has been difficult to achieve.

The Law Council considers that harmonisation must inevitably be achieved through a staged process, with mechanisms to involve stakeholders in the process.

It is regrettable that Safe Work Australia does not include representatives from the legal profession and the insurance industry, which the Law Council considers would help to facilitate this process.

The three phases can be characterised as:

(1) Standardisation of definitions;

(2) Standardisation of entitlements; and

(3) Standardisation of structure.

The stages also reflect the increased level of difficulty in choice and implementation.

At various points in this Paper, provisions under Federal, State or Territory legislation are held up as examples of potential model provisions. These are to be regarded as examples only and do not represent a concluded view about which provisions should be adopted in a nationally harmonised workers compensation framework.

1. Standardisation of Definitions

Given the disparate origins of the various workers' compensation schemes it is surprising that they are broadly similar in nature. Nevertheless there are differences that are unnecessary and could be standardised at little cost, bringing greater uniformity.

The following identifies areas in need of harmonisation and recommends an approach that could be easily adopted by all jurisdictions.

(a) Definition of Worker

The definition of "worker" and "deemed worker" provisions are broadly similar across jurisdictions, but not identical.[12]

Any definition should be comprehensive but clear.

On balance, the comprehensive definition set out in ss.5, 8, 9 and 10 of the *Accidents Compensation Act 1985* (Vic) is the most preferable. This is reproduced at Annexure "A".

(b) Nexus with Employment

All jurisdictions have the "arising out of or in the course of employment" test for work injuries.

There is variation in respect of diseases and an appropriate test (reflecting a mid-point between schemes) is whether the worker's employment is a "significant contributing factor" to the disease.

All jurisdictions accept that this includes aggravation or acceleration of an existing disease.

(c) Wages/Remuneration

Provisions in all jurisdictions are broadly similar for the calculation of wages/remuneration for compensation purposes.

However, a standard approach/formula would be appropriate, perhaps based on Part 4.1 of the *Workers Compensation Act 1951* (ACT), which is reproduced at Annexure "B".

It is noted that it may also be desirable to include a formula to calculate the value of additional allowances for compensation purposes. This could be done by way of a standard definition of 'earnings'.

[12] See Australian Safety and Compensation Council, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand*, October 2006, Commonwealth of Australia, pp30-35.

(d) Superannuation

Most schemes make no provision for loss of superannuation contributions. Employers are required to make contributions whilst the employee remains in employment but there is an issue as to what should occur if a worker continues to remain incapacitated for work.

The "Hanks Review" of the Victorian Act in 2008 recommended that superannuation entitlements be paid by the authority alongside weekly incapacity benefits at the mandatory contribution rate of 9%, directly to the injured worker's superannuation fund. This was considered to reflect community expectations and the overarching government policy of enforced retirement savings.

Alternatively, consideration should be given to requiring employers to continue to make superannuation contributions to incapacitated workers for the duration of their incapacity.

(e) Older Workers

All schemes now cut incapacity entitlements at age 65 or retirement.

Some schemes have made provision for workers aged 65 and over allowing up to 5 years compensation payments.

With the proposed increase in the retirement age to 67 all schemes should provide benefits up to that age. A mechanism should also be implemented to protect aged workers, who choose to work past age 67, for at least two years from injury.

(f) Exclusionary Provisions of Injury

All jurisdictions exclude wilful self-harm and injuries arising from misconduct.

All jurisdictions have some formulation in respect of psychiatric injuries excluding those arising from disciplinary proceedings or various other circumstances.

A common exclusion is in respect of conditions arising from reasonable disciplinary action or failure to obtain a promotion or transfer or benefit is appropriate.

This does however create a statutory fiction. It is not that someone is not injured in these circumstances. Rather it would be better to indicate that compensation was not payable for such injuries.

It is considered that the *Workers' Compensation Act 1951* (ACT) sets out a simple and straightforward approach, which is reproduced at Annexure "C".

(g) Medical Expenses

All schemes allow medical expenses but with different formulations.

A good example of a compensation definition can be found in section 99 of the *Accident Compensation Act 1985* (Vic), which is set out at Annexure "D".

(h) Attendant Care/Home Help

Most schemes have some provision but, again, these should be standard.

Annexure "F" sets ss.29 and 38 of the SRC Act, which the Law Council considers reflects a fair balance of entitlements. Note also ss.99(5A)-(5H) under the Victorian Act concerning entitlements in respect of car and home modifications, reproduced at Annexure "D".

(i) Industrial Deafness

Schemes have varying thresholds of acceptance (between 5-10% generally) and some schemes have last noisy employer provisions, which allows claims for industrial deafness to be made against the last 'noisy' workplace.

The latter is important in reducing disputation and complexity and should be universally adopted.

Similarly, most schemes adopt a 5% threshold, which is a reasonable approach.

(j) Dispute Provisions

There is enormous variation amongst jurisdictions as to how workers compensation claims are managed and disputes resolved.

Uniformity may not be easily achieved, however, as a minimum, all schemes should have timetables for dealing with claims, a compulsory conciliation process (with medical panels as an option) and an independent arbiter to resolve disputes by way of a hearing.

There should be consideration of a process for internal review before resorting to the expense of external review. Having had the benefit of a decision-makers thinking, a worker may be better placed to provide evidence which will alter the decision than at the outset of the claim. The opportunity to do this before engaging in litigation would be beneficial. However, any internal review process should not be mandatory, to avoid undue delay in the claims process.

(k) Excess

Some schemes provide for employer excess, however this is not consistent between schemes.

In general, excess provisions may discourage legitimate claims and should be viewed with caution.

This is a matter for consultation with employers but top-up insurance ought to be available for employers to be able to cover the entire claim, if excess becomes standard.

(l) Forms

A standard medical certificate and claim form should be designed for use in all jurisdictions.

(m) Standardising Claims Processes

A logical corollary of standardised forms is standardising claims processes and pre-court procedures across jurisdictions.

2. Standardisation of Entitlements

This phase involves some philosophical debate about what is appropriate, but also may require some actuarial modelling of options to ensure affordability.

Amongst the issues are:

(a) Journey / Recess Claims

Approximately half of all jurisdictions allow journey claims, while two of those that do not allow journey claims (Victoria and Tasmania) operate no-fault motor vehicle accident schemes for at least the first twelve months.

A standardised approach would involve, as a minimum:

(i) compensation for injuries incurred during journeys starting from the boundary of the home to the boundary of the workplace and vice-versa;

(ii) compensation for injuries incurred as a result of authorised travel, such as journeys during work to work sites, training or treatment, or upon errands connected with employment; and

(iii) compensation for injuries incurred during authorised or ordinary breaks and recesses.

The Law Council considers that journey claims are a reasonable aspect of any comprehensive workers compensation scheme.

(b) Incapacity Payments

Periods over which incapacity payments are made vary from scheme to scheme.

The Commonwealth (Comcare), New South Wales, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory pay 100% of weekly earnings to injured workers. As the vast majority of employees return to work within 26 weeks (nearly 90%) it seems reasonable that incapacity payments are made at 100% of pre-injury wages for the first 26 weeks. This also allows people requiring surgical intervention and/or rehabilitation reasonable time to recover and avoids complications which might occur as a result of premature return to work.

Thereafter incapacity payments should be made at 80% with ongoing payments for partial incapacity up to this figure. It should be an option for these to continue until retirement age. Loss of 20% of earnings is a more than sufficient incentive for injured workers to return to work as swiftly as possible. Any greater step down in entitlements places a substantial burden on medium to long-term incapacitated workers and may impede their recovery. A 20% reduction is also the approximate average step down across all jurisdictions (75% in Victorian, Queensland and NT; 80% in SA; 85% in WA and Tasmania; and 90% in NSW).

(c) Commutation/Redemption

It is appropriate that the option for a "clean break" be available to both insurers and employees at a certain point, by mutual agreement.

The Law Council supports a process no sooner than two years from injury on the basis that is agreed between insurer and employee after the latter receives appropriate legal advice. Neither side should be able to force the other to offer or accept a redemption of entitlements.

(d) Death Benefits

All jurisdictions provide for a lump sum payment to a worker's family on the death of a worker, plus funeral costs (most of which are capped).

There is variation as to whether periodic payments are made to dependent children, dependent spouses and dependent relatives, as well as whether some counselling is provided to family.

The provisions under the *Workers Compensation and Rehabilitation Act 2003 (Qld)* are comprehensive and provide relatively swift and fair compensation to bereaved dependants. These are reproduced at Annexure "E".

It should be noted, however, that the recent Victorian *Accident Compensation Act Review* (August 2008), conducted by Peter Hanks QC, recommended maximum death benefits be increased from $265,590 to $484,830 for wholly dependent spouse or children. There is a strong argument that this

recommendation be adopted under any model provision, along with recommendations by that review which limit the involvement of the court in straightforward cases and streamline the provision of immediate benefits.

(e) Permanent Impairment

Inevitably some form of guide to the assessment of the degree of permanent impairment is necessary.

Rather than use different or modified versions of the American Medical Association Guide, an Australian Guide should be developed for use by all jurisdictions.

An Australian Guide would better reflect Australian clinical practice, which differs in certain respects from clinical practice in the United States. It would also allow the Guide to develop having regard, not just to debate in American medical circles (as reflected in the changes to the American Guide in its various editions), but also debate in Australian medical circles and Australia's national specialist colleges.

The AMA Guide states explicitly that it should not be used for the purpose of compensation. Any Australian guide should be explicitly designed and used for this purpose. Such a guide would need to be the work of a body representing various views, such as Safe Work Australia.

Access to permanent impairment entitlements should be in addition to incapacity payments and other entitlements.

(f) Common Law Access

The law of negligence, usually referred to as the common law, is the fairest means of compensating injured persons in circumstances where they suffer personal injuries as a result of the fault of others. This is a civil law right enjoyed by most Australian citizens in such circumstances.

Although workers compensation provides an insurance safety net without recourse to fault, injured persons ought not to lose their rights to sue at common law simply because they are an employee. Any new national compensation scheme must, as a fundamental element, have provision for injured workers to recover at common law where they are injured as a result of the negligence of their employer, including access to all heads of damages.

Common law entitlements also provide an incentive for safety as negligent employers face increased premiums unless poor work practices are remedied.

The Law Council opposes thresholds of permanent impairment to determine whether a worker is entitled to access the common law, because they inevitably produce injustice in terms of the effect of the injury on different individuals; and provide a disincentive to recovery.

As well as being a matter of justice, the common law provides a mechanism for the resolution of many potential long-tail claims, which is important to ensure that the scheme remains financially viable.

(g) Best Practice Return to Work

There is now enough scheme expertise to identify the best practice return-to-work model.

Such a model would include the optimal time to commence intervention by rehabilitation and also the obligations on parties and options that work best.

There has been a growth of a "rehabilitation industry" over the last 10 years and the Law Council remains sceptical as to whether some interventions at an early stage are too costly and prove unhelpful.

The Law Council would be happy to liaise with rehabilitation providers and Heads of Schemes and Insurers to frame an appropriate model.

3. Standardisation of Structure

Given Australia's federal system, this phase is likely to be the most difficult to achieve. Nevertheless, it could be achieved in accordance with the following further steps to harmonisation.

(a) Common Benefits

There is a significant range in the level of lump sum pecuniary benefits and entitlements available, from death benefits to the amount payable for permanent impairment across jurisdictions.

As the various systems are harmonised, so should the level of benefits available for comparable injuries under corresponding schemes. The dependents of a deceased worker should receive the same, whether the death was in Brisbane, Wollongong or Launceston.

At the very least similar indices should be used to inform the lump sum entitlements – e.g. the average weekly earnings in each jurisdiction.

(b) The Role of the WorkCover Authority

The jurisdictions are largely divided between those administered by an overarching WorkCover Authority and schemes which are more market based, relying heavily on private insurers. The WorkCover model is generally described by the Australian Safety and Compensation Council as a "hybrid" model, while other schemes are "privately underwritten".

The "hybrid" model involves an active role of the Authority in underwriting, funds management and premium setting.

As the name suggests, "privately underwritten" involves a more free-market approach with the role of the Government Authority as general oversight and regulation.

There is no linear relationship between the model and scheme efficiency or sustainability. It is also clear that hybrid schemes are generally more closely involved with the political process.

The Law Council does not have a concluded view as to the appropriate balance between the prevalence of private insurers and the role of a public Authority in any given workers compensation scheme.

(c) Specialist Courts and Tribunals

There are a greater range of Courts and Tribunals that deal with workers' compensation and work related common law disputes.

A logical corollary of a harmonised system is consideration of a common court system, such as a national compensation court, dealing with both workers compensation disputes and personal injuries more generally.

Ultimately it is worth considering whether there is value in a National Compensation Court dealing with both workers' compensation disputes and personal injuries generally.

In addition, standardisation of dispute resolution across jurisdictions would also lead to an Australian (as opposed to State/Territory) jurisprudence in this area of the law.

It is accepted that constitutional and other barriers make this a long-term goal. Nevertheless there may be steps that could be taken now to ensure greater uniformity of practice and procedure between jurisdictions.

A Broad Consultative Forum

The process of moving toward nationally harmonised workers' compensation systems will require a federally appointed body to drive the necessary changes.

In the past, the Head of Workers Compensation Authorities (HOWCA) and the ASCC have made little progress in this area. The Federal Government has recently appointed Safe Work Australia to assume the responsibilities of the ASCC, with a mandate to drive the national harmonisation process in both OHS and workers compensation.

Unfortunately, the proposed Council of Safe Work Australia will be dominated by representatives from the State and Territory WorkCover Authorities, with just 2 representatives appointed by employers' representatives and 2 from workers representatives.

The legal profession, self-insurers and the insurance industry are major stakeholders in workers compensation and OHS systems and are able to provide valuable guidance on the workability and effectiveness of different systems in operation around Australia.

The Law Council considers that a broad consultative forum is the best means of achieving a uniform national approach. This would include representation from the legal profession and the insurance industry as well as from unions, employer groups and workers compensation authorities.

ANNEXURES

A - *Accident Compensation Act 1985* (Vic)

Section 5: Definitions

worker means—

(a) a person (including a domestic servant or an outworker) who has entered into or works under a contract of service or apprenticeship or otherwise with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is express or implied, is oral or is in writing;

(b) a person who under this Act is deemed to be working under a contract of service;

(c) a person who under this Act is deemed to be a worker;

(d) if a student at a school within the meaning of Part 5.4 of the **Education and Training Reform Act 2006** is employed under an arrangement under that Part— that student whilst so employed; or

(e) if a student of a TAFE provider is employed under a practical placement agreement under Part 5.4 of the **Education and Training Reform Act 2006**— that student whilst so employed**—**

Section 8: Contractors

(1) Notwithstanding anything in this Act or any other law, where any person (in this section referred to as ***the principal***) in the course of and for the purposes of a trade or business carried on by the person enters into a contract with any natural person or natural persons (in this section referred to as ***the contractor***)—

(a) under or by which the contractor agrees to perform any work not being work incidental to a trade or business regularly carried on by the contractor in the name of the contractor or under a firm or business name; and

(b) in the performance of which the contractor does not either sublet the contract or employ workers or although employing workers actually performs some part of the work personally—

then for the purposes of this Act the contractor shall be deemed to be working under a contract of service with an employer and the principal shall be deemed to be that employer and the amount payable by the principal to the contractor in respect of the performance of work under the first-mentioned contract shall be deemed to be remuneration and shall be deemed to include any payment that would be a superannuation benefit if made in relation to a person in the capacity of an employee.

(2) If an amount referred to in subsection (1) is included in a larger amount paid or payable by a principal under a contract referred to in subsection (1) that part of the larger amount which is not attributable to the performance of work relating to the contract by a contractor under the contract may be prescribed.

(3) If the contractor is a partnership, the contractor is deemed for the purposes of subsection (1)(b) to have performed a part of the work personally if one or more members of the partnership actually performs any part of the work personally.

(4) This section applies to contracts entered into whether before or after the appointed day.

Section 9: Independent contractors

(1) For the purposes of this section, a reference to a relevant contract in relation to a financial year is a reference to a contract under which a person during that financial year, in the course of a business carried on by that person—

(a) supplies to another person services for or in relation to the performance of work;

(b) has supplied to that person the services of persons for or in relation to the performance of work; or

(c) gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first-mentioned person or, where that person is a member of a group within the meaning of section 66 of the **Accident Compensation (WorkCover Insurance) Act 1993**, to another member of that group—

but does not include a reference to a contract of service or a contract under which a person during a financial year—

(d) has supplied to that person services for or in relation to the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property of that second-mentioned person;

(e) has supplied to that person services for or in relation to the performance of work where—

(i) those services are of a kind not ordinarily required by that person and are rendered by a person who ordinarily renders services of that kind to the public generally;

(ii) those services are of a kind ordinarily required by that person for less than 180 days in a financial year;

(iii) those services are provided for a period that does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in that financial year and are not services—

(A) provided by a person by whom similar services are provided to the first-mentioned person; or

(B) for or in relation to the performance of work where any of the persons who perform the work also perform similar work for the first-mentioned person—

for periods that, in the aggregate, exceed 90 days in that financial year;

(v) those services are supplied under a contract to which subparagraphs (i) to (iv) do not apply and the Authority is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally in that financial year; or

(f) has supplied to that person by a person (in this paragraph called ***the contractor***) services for or in relation to the performance of work under a contract to which paragraphs (d) and (e) do not apply where the work to which the services related is performed—

(i) by two or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor;

(ii) where the contractor is a partnership of two or more natural persons, by one or more of the members of the partnership and one or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or

(iii) where the contractor is a natural person, by the contractor and one or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor—

unless the Authority determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of a premium by any person; or

(g) has supplied to that person services for or in relation to the door to door sale of goods or of services ancillary to the sale of those goods on behalf of that person unless the Authority determines that the contract or arrangement under which the services are so supplied was entered into with an intention, either directly or indirectly, of avoiding or evading the payment of a premium by any person.

(2) For the purposes of this Act—

(a) a person—

(i) who during a financial year under a relevant contract supplies services to another person;

(ii) to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work; or

(iii) who, during a financial year, under a relevant contract, gives out goods to other persons—

shall be deemed to be an employer in respect of that financial year;

(b) a person who during a financial year—

(i) performs work for or in relation to which services are supplied to another person under a relevant contract; or

(ii) being a natural person, under a relevant contract, re-supplies goods to an employer—

shall be deemed to be a worker in respect of that financial year;

(c) amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract or the re-supply of goods by a worker under a relevant contract shall be deemed to be remuneration paid or payable during that financial year; and

(d) where an amount referred to in paragraph (c) is included in a larger amount paid or payable by an employer under a relevant contract during a financial year, that part of the larger amount which is not attributable to the performance of work relating to the relevant contract or the re-supply of goods by a worker under the relevant contract may be prescribed; and

(e) an amount paid or payable for or in relation to the performance of work under a relevant contract is deemed to include any payment made by a person who is deemed to be an employer under a relevant contract in relation to a person who is deemed to be a worker under the relevant contract that would be a superannuation benefit if made in relation to a person in the capacity of an employee.

(3) Where a contract is a relevant contract pursuant to both subsections (1)(a) and (1)(b)—

(a) the person to whom, under the contract, the services of persons are supplied for or in relation to the performance of work shall be deemed to be an employer; and

(b) notwithstanding subsection (2)(a)(i) the person who under the contract supplies the services shall not be deemed to be an employer.

(5) Where, in respect of a payment for or in relation to the performance of work that is deemed to be remuneration under this section, a premium is paid by a person deemed under this section to be an employer—

(a) no other person shall be liable to a premium in respect of that payment; and

(b) where another person is liable to make a payment for or in relation to that work, that person shall not be liable to a premium in respect of that payment unless it or the payment by the first-mentioned person is made with an intention either directly or indirectly of avoiding or evading the payment of premium whether by the first-mentioned person or another person.

(6) In this section—

(a) a reference to a contract includes a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;

(b) a reference to supply includes a reference to supply by way of sale, exchange, lease, hire or hire-purchase, and in relation to services includes a reference to the providing, granting or conferring of services;

(c) a reference to the re-supply of goods acquired from a person includes a reference to—

(i) a supply to the person of goods in an altered form or condition; and

(ii) a supply to the person of goods in which the first-mentioned goods have been incorporated;

(d) a reference to services includes a reference to results (whether goods or services) of work performed; and

(e) a reference to the door to door sale of goods or of services ancillary to the sale of those goods is a reference to the entering into of an agreement or the making of an offer for the sale of those goods or services to the end user, or the taking or soliciting of an order for the purchase of those goods or services by the end user at a place other than a place of business where goods or services of that kind are normally offered or displayed for retail sale.

Section 10: Persons deemed to be workers under relevant contracts

(1) This section applies to a person who would, but for section 9(1)(e)(iii), be a worker in relation to a relevant contract.

(2) If a person to whom this section applies is injured, the Authority may, if it is satisfied that the services provided by that person under a contract would have been likely to have been provided for 90 days or more in the financial year, determine that the person is, for the purposes of this Act, to be deemed to be a worker.

B – *Workers Compensation Act 1951 (ACT)*

Chapter 4: Entitlement to Compensation

Part 4.1 – Important concepts

21 Working out average pre-incapacity weekly earnings for non-contractor

(1) In working out average pre-incapacity weekly earnings for a worker who is not a contractor—

(a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's earnings from all employment must be taken into account; and

(b) the actual weekly earnings of the worker may be taken into account over—

(i) a period of 1 year before the injury; or

(ii) if the worker has not been employed for 1 year—the period of employment.

(2) However, if it is not possible to work out fair average pre-incapacity weekly earnings for the worker under subsection (1) because the worker has only been employed for a short time, because of the terms of the worker's employment or for some other reason, the worker's average pre-incapacity weekly earnings may be worked out by reference to the average weekly amount being earned by—

(a) others in the same employment who perform similar work at the same grade as the worker; or

(b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

22 Working out average pre-incapacity weekly earnings for contractor

In working out average pre-incapacity weekly earnings for a worker who is a contractor, the worker's average pre-incapacity weekly earnings are to be worked out—

(a) as if the worker were an employee; and

(b) if there is an award or industrial agreement applying to the class and grade of work in which the worker was engaged—by reference to the award or industrial agreement.

23 Working out average pre-incapacity weekly hours for non-contractor

(1) In working out average pre-incapacity weekly hours for a worker who is not a contractor—

(a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's work hours from all employment must be taken into account; and

(b) the actual weekly work hours of the worker over a period of up to 1 year before the injury may be taken into account.

(2) However, if it is not possible to work out fair average pre-incapacity weekly hours for the worker under subsection (1) because the worker has only been employed for a short time, because of the terms of the worker's employment or for some other reason, the worker's average pre-incapacity weekly hours may be worked out by reference to the average weekly hours being worked by—

(a) others in the same employment who perform similar work at the same grade as the worker; or

(b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

24 Working out average pre-incapacity weekly hours for contractor

In working out average pre-incapacity weekly hours for a worker who is a contractor, the worker's average pre-incapacity weekly hours are to be worked out as if the worker were an employee.

25 Overtime—hours and wages

(1) This section applies to a component of the worker's earnings or hours attributable to overtime.

(2) The overtime is to be taken into account in working out average pre-incapacity weekly earnings or average pre-incapacity weekly hours only if—

(a) the worker worked overtime in accordance with a regular and established pattern; and

(b) the pattern was substantially uniform as to the number of hours of overtime worked; and

(c) the worker would have continued to work overtime in accordance with the established pattern if the worker had not been injured.

26 Gradual onset of incapacity

(1) This section applies if, because of the gradual onset of a worker's injury, it appears that the level of the worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, have been affected.

(2) The worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, must be set at an amount that fairly represents the weekly amount that the worker would have been earning or working if the level had not been affected.

C – Workers Compensation Act 1951 (ACT)

4 Meaning of *injury*

(1) In this Act:

injury means a physical or mental injury (including stress), and includes aggravation, acceleration or recurrence of a pre-existing injury.

(2) In this section:

mental injury (including stress) does not include a mental injury (including stress) completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker.

D – *Accident Compensation Act 1985* (Vic)

Section 99: Compensation for medical and like services

(1) If there is caused to a worker an injury which entitles a worker to compensation, the Authority or a self-insurer and the employer in respect of the employer's liability under section 125(1)(a)(iii) or 125A(3)(c) shall be liable to pay as compensation—

(a) the reasonable costs of the road accident rescue services, medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services received because of the injury; and

(aa) if the injury is a severe injury for which immediate in-patient treatment in a hospital is received or where death results from the injury, the reasonable costs incurred in Australia of family counselling services provided to family members by—

(i) a medical practitioner; or

(ii) a registered psychologist; or

(iii) a social worker approved by the Authority to provide counselling services for the purposes of this section—

not exceeding $5000 in respect of that severe injury or death; and

(b) the reasonable costs of burial or cremation where death results from the injury—

which shall be in addition to any other compensation payable under this Act.

(1A) In subsection (1)(aa)—

family member means a partner, parent, sibling or child of the worker or of the worker's partner;

parent of a worker includes a person who has day to day care and control of the worker;

severe injury means—

(a) paraplegia;

(b) quadriplegia;

(c) amputation of a limb;

(d) amputation of a hand or foot;

(e) severe head injury;

(f) severe eye injury;

(g) separation of a worker's skin from an underlying tissue (such as de-gloving or scalping);

(h) severe burns;

(i) severe lacerations;

(j) severe injuries arising out of an electric shock;

(k) any other work related injury giving rise to an imminent risk of death.

(2) In subsections (1), (5A), (5D) and (5E), ***reasonable costs***, in relation to a service (including modification of a car or home), burial or cremation means an amount—

(a) that is determined by the Authority, employer or self-insurer as a reasonable amount in relation to that service, burial or cremation; and

(b) that does not exceed the amount (if any) specified in, or an amount determined in accordance with a method specified in, an Order of the Governor in Council made on the recommendation of the Authority and published in the Government Gazette, as the maximum amount of costs payable in respect of a service of that kind or a burial or cremation and which maximum amount in the case of a service must not be less than the amount of the fee specified in a Table within the meaning of the Health Insurance Act 1973 of the Commonwealth applicable in respect of a service of that kind provided in Victoria; and

(c) that is determined by the Authority, employer or self-insurer as a reasonable cost of the service, burial or cremation having regard to—

(i) the service or provision actually rendered; and

(ii) the necessity of the service or provision in the circumstances; and

(iii) any guidelines issued by the Authority in respect of services or provision of that kind.

(2A) Guidelines issued by the Authority for the purposes of subsection (2)(c) apply in relation to the cost of a service provided or a burial or cremation carried out after the issue of the Guidelines, irrespective of the date of the injury.

(2B) Notwithstanding anything to the contrary in this section, unless subsection (2D) or (2E) applies, the Authority, employer or self-insurer is not liable to pay as compensation the costs of any service or of burial or cremation specified in subsection (1) which is provided or carried out outside Australia, unless the worker or claimant obtained the approval of the Authority, employer or self-insurer before the service or burial or cremation specified in subsection (1) was provided or carried out.

(2C) In determining whether to approve the provision or carrying out of a service or burial or cremation specified in subsection (1) for the purposes of subsection (2B), the Authority, employer or self-insurer must have regard to the matters specified in subsection (2)(c) and to subsections (12), (13) and (14).

(2D) Subsection (2B) does not apply if the worker or claimant satisfies the Authority, employer or self-insurer that because of an emergency situation—

(a) it was necessary to immediately provide or carry out a service or burial or cremation specified in subsection (1); and

(b) it was not reasonably practicable to first obtain approval.

(2E) In the case of a worker who resides outside Australia, the Authority, employer or self-insurer may for the purposes of subsection (2B) give a general approval specifying a class or classes of services, burials or cremations.

(2F) The requirement imposed by subsection (2B) is in addition to any other relevant requirements under this section.

(3) A worker shall be entitled to receive a service referred to in subsection (1) (other than an occupational rehabilitation service) from the provider of the worker's choice notwithstanding that an employer or the Authority or a self-insurer as the case may be offers or provides a service to the worker for the worker's use.

(3A) A worker is entitled to receive occupational rehabilitation services referred to in subsection (1) from—

(a) a provider of occupational rehabilitation services chosen by the worker from a list of approved providers of those services nominated by the Authority, employer or self-insurer in accordance with subsection (3B); or

(b) if the Authority, employer or self-insurer does not nominate a list of approved providers of those services for the purposes of this subsection, from an approved provider of those services of the worker's choice.

(3B) A list of providers of occupational rehabilitation services referred to in subsection (1) must consist of the names of not less than 3 approved providers of those services nominated by the Authority, employer or self-insurer having regard as far as is possible to—

(a) the type of injury the worker has suffered;

(b) the type of occupational rehabilitation services required;

(c) where the worker resides;

(d) where the provider is requested by the Authority, self-insurer or employer to provide the services.

(3C) If 3 approved providers of particular occupational rehabilitation services are not available, it is sufficient compliance with subsection (3B) if the list consists of the names of the available approved provider or providers of those occupational rehabilitation services.

(3D) If—

(a) the Authority, employer or self-insurer offers occupational rehabilitation services from an approved provider of occupational rehabilitation services chosen by the worker from a list of providers of those services nominated by the Authority, employer or self-insurer in accordance with subsection (3B) or (3C); and

(b) the worker does not choose an approved provider of those occupational rehabilitation services within 14 days of the offer of occupational rehabilitation services—

the occupational rehabilitation services will be offered or provided to the worker by an approved provider of occupational rehabilitation services nominated by the Authority, employer or self-insurer in accordance with subsection (3B).

(4) If a worker receives services from an employer who has made adequate arrangements to provide workers in the employer's employment with gratuitous medical, hospital, nursing, ambulance or personal and household, occupational rehabilitation services, the employer shall to the extent of the value of the services be deemed to have discharged any liability of the employer under section 125(1)(a)(iii) or 125A(3)(c).

(5) If the employer is not a self-insurer and the value of the services provided under subsection (4) exceeds $506 the employer may claim the amount by which the value of the services exceeds $506 from the Authority.

(5A) If a worker, as a result of his or her injury, reasonably requires a car used by him or her in Australia to be modified, the Authority is liable—

(a) to pay the reasonable costs of modifying the car; or

(b) if the car is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified car selected by the Authority.

(5B) If a worker, as a result of his or her injury, reasonably requires access to a car, and he or she does not have access to a car, the Authority is liable to contribute a reasonable amount to the purchase cost of a suitable car selected by the Authority.

(5C) Without limiting the factors the Authority may consider in determining what is a reasonable amount for the purposes of subsections (5A)(b) and (5B), the Authority must have regard to any of the following factors that are applicable—

(a) the market value now of the car used by the worker at the time of the injury;

(b) if that car is no longer used by the worker, the market value of the car at the time of the injury;

(c) how often the worker was using a car at the time of the injury;

(d) how often the worker will, or is likely to, use a car in future;

(e) the market value of any other car that the worker uses.

(5D) If a worker, as a result of his or her injury, reasonably requires that a home in which he or she resides in Australia be modified, the Authority is liable—

(a) to pay the reasonable costs of modifying the home; or

(b) if for any reason the home cannot be reasonably modified, to contribute a reasonable amount—

(i) to the purchase costs of a semi-detachable portable unit; or

(ii) to the costs of relocating the worker to another home that is suitable for the worker or that is capable of being reasonably modified.

(5E) Without limiting the factors the Authority may consider in determining the reasonable costs or amount for the purposes of subsection (5D), the Authority must have regard to the following factors—

(a) whether the home in which the worker resides is structurally suitable for modification;

(b) the nature of the worker's injuries;

(c) how those injuries restrict, or are likely to restrict, the worker's ability—

(i) to enter and leave the home in which the worker resides; and

(ii) to move about the home for necessary purposes;

(d) the extent of the modifications that will be needed to address those restrictions or likely restrictions;

(e) any complex, unique or unusual circumstances associated with those modifications;

(f) whether the cost of those modifications is likely to exceed the value of the home in which the worker resides.

(5F) If a worker moves from a home that has modifications to which the Authority made a contribution, in assessing whether to make a payment in respect of modifications to the worker's new home, the Authority must have regard to the appropriateness of that home for modification, having regard to all relevant circumstances, with respect to the modifications that are needed.

(5G) The Authority must not make a payment or contribution under subsection (5A), (5B) or (5D) which exceeds $10 000 or a greater amount as may be prescribed, unless the worker enters into an agreement with the Authority in relation to the ownership of, and maintenance of modifications to, the car, home or semi-detachable portable unit.

(5H) Without limiting what may be included in an agreement under subsection (5G), the agreement must include provisions in respect of—

(a) subsequent modifications;

(b) changes of ownership;

(c) the frequency of modifications and changes of ownership.

(6) A payment of compensation under this section shall be made to the person lawfully entitled to payment of the costs specified in subsection (1).

(7) If the liability to the person lawfully entitled to payment of the costs specified in subsection (1) has already been discharged in whole or in part by a payment by the worker or any other person whether legally liable to make the payment or not, the amount by which the liability has been so discharged shall be paid to the worker or other person who made the payment.

(8) If a worker or a worker's dependants is or are entitled to any of the services (including burial or cremation) specified in subsection (1) free of charge or at a reduced rate or charge because the worker entered into any prior contract, agreement or arrangement or was a contributor or subscriber to any institution, fund or scheme, the payment in respect of those services shall not be reduced but after payment of the amount, if any, actually owing to the person lawfully entitled to payment the balance of the reasonable cost shall be paid to the worker or the worker's dependants.

(9) The payment of the whole of the reasonable costs of any service or of burial or cremation specified in subsection (1) shall wholly and finally discharge the worker or the worker's dependants and any other person from all liability whatsoever in respect of those costs.

(10) No action, suit or other proceeding against a worker or the legal personal representative of a worker or a dependant of a worker for the payment or recovery of any costs which the Authority, a self-insurer or an employer is liable to pay under this section shall be entertained by any court.

(11) Subject to subsection (13), if weekly payments are payable, compensation under this section ceases after 52 weeks after the entitlement to weekly payments ceases, unless subsection (14) applies.

(12) Subject to subsection (13), if compensation is payable only under this section, compensation under this section ceases after 52 weeks after the entitlement arises, unless subsection (14) applies.

(13) If a worker receives a settlement or award of pecuniary loss damages within the meaning of section 134AB or 135A of this Act or section 93 of the **Transport Accident Act 1986** or accepts a voluntary settlement of weekly payments under Division 3A of Part IV of this Act in respect of an injury, the worker is entitled, subject to this Act, to continue to receive compensation under this section.

(14) Compensation under this section does not cease if—

(a) the worker has returned to work but—

(i) could not remain at work if a service under subsection (1) was not provided; or

(ii) surgery is required for the worker; or

(iii) the worker has a serious injury within the meaning of section 93B(5); or

(b) the worker requires modification of a prosthesis; or

(c) the service provided under subsection (1) is essential to ensuring that the worker's health or ability to undertake the necessary activities of daily living does not significantly deteriorate.

(15) Nothing in this section renders the Authority, a self-insurer or the employer liable to pay as compensation the cost of the provision to, or for, a worker of any of the following things unless the provision of a particular thing to the worker is a medical service, or a hospital service, provided as a result of the injury—

(a) accommodation (including accommodation-related costs such as rent, bonds, rates, accommodation costs levied in accordance with Commonwealth legislation, capital contributions and costs associated with the buying or selling of property, but not including contributions or costs for which the Authority is liable under subsection (5D));

(b) food or household or personal items;

(c) power, water or any other service provided by a utility;

(d) room temperature controls;

(e) any other thing specified by the regulations for the purposes of this subsection.

(16) Subsection (15) does not apply in the case of a person who is under 18 years of age and who, as a result of his or her injury, is unable to reside at the place that he or she resided at before he or she was injured.

(16A) Subsection (15) also does not apply to a person while the person is receiving respite care as a result of the injury.

(17) Subsection (15) also does not apply to a person—

(a) who receives a hospital service as a result of an injury; and

(b) who is then discharged from hospital; and

(c) who then resides in a nursing home, aged person's hostel, group home or facility approved by the Authority, supported residential service, residential care service or state-funded residential care service—

during the first 18 months after the person is first discharged from hospital.

(18) For the purposes of subsection (17)—

(a) a person can only be "first" discharged once from hospital in relation to a particular injury; and

(b) it does not matter if, during the relevant period, the person changes accommodation, or does not live continuously in accommodation of the sort listed in subsection (17)(c) (although in this latter case subsection (17) only applies to the person while he or she is living in accommodation of that sort); and

(c) the 18 month period referred to in subsection (17) is to be extended by the addition of any period during which a person is in a hospital receiving a hospital service after he or she is first discharged from hospital.

Note

Subsections (15) to (18) only apply to claims for compensation under this section made after the date of commencement of section 4 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 266(1). Also, those subsections do not apply to workers who had been injured before that date until the expiry of 18 months after that date—see section 266(2).

E - *Workers Compensation and Rehabilitation Act 2003* (Qld)

Part 11 Compensation on worker's death

194 Application and object of pt 11

(1) This part applies if a worker dies because of an injury.

(2) However, this part does not apply if—

(a) a worker dies because of a latent onset injury that is a terminal condition; and

(b) the worker had received a payment of lump sum compensation for the latent onset injury.

(3) The object of this part is to provide for payment by an insurer of—

(a) particular expenses arising from the worker's injury and death; and

(b) compensation to persons having an entitlement to compensation under this part.

195 Definition for pt 11

In this part—

student means a person who is under 21 and receiving full time education at a school, college, university or similar institution.

196 To whom payments made for death of worker

(1) Compensation for the death of a worker is payable—

(a) to the worker's legal personal representative; or

(b) if there is no legal personal representative—

(i) so far as the payment is by way of expenses to which a person is entitled—to the person who has incurred the expenses; or

(ii) so far as the payment is by way of compensation to the worker's dependants—to the dependants entitled to compensation.

(2) The worker's legal personal representative must pay or apply

(3) the compensation to or for the benefit of the worker's dependants or other persons entitled to compensation.

197 Total and partial dependants

If compensation is payable for the death of a worker who is survived by persons totally dependent on the worker and persons partially dependent on the worker, the compensation may be apportioned between the total dependants and the partial dependants.

198 Dependant's compensation payable to public trustee

An insurer may pay an amount of compensation payable to the worker's dependant to the public trustee for the dependant's benefit.

199 Medical and funeral expenses must be paid by insurer

An insurer must pay the reasonable expenses—

(a) of the medical treatment of, or attendance on, the worker; and

(b) the worker's funeral.

200 Total dependency

(1) This section applies if at least 1 of the worker's dependants was, at the time of the worker's death, totally dependent on the worker's earnings.

(2) The amount of compensation payable for the worker's dependants is—

(a) if the worker has left dependent members of the worker's family, for the members—$374625; and

(aa) if the worker has left a totally dependent spouse, for the spouse—$10000; and

(ab) if the worker has left a totally dependent spouse and dependent members of the worker's family who are under 6, for the spouse—a weekly amount equal to 8% of QOTE while a dependent member is under 6; and

(b) if the worker has left a totally dependent spouse and dependent members of the worker's family who are under 16 or are students, for each member other than the spouse—$20000; and

(c) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was totally dependent on the worker's earnings and who are

under 16 or students, for each member or child—a weekly amount equal to 10% of QOTE while the member or child is under 16 or a student.

(3) However, the amount payable under subsection (2)(a) is subject to any reduction made under section 203.69

201 Partial dependency

(1) This section applies if all of the worker's dependants were, at the time of the worker's death, partially dependent on the worker's earnings.

(2) The amount of compensation payable for the worker's dependants is

(a) if the worker has left dependent members of the worker's family, for the members—an amount the insurer considers is reasonable and proportionate to the monetary value of the loss of dependence by the dependants; and

(b) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was partially dependent on the worker's earnings and who are under 16 or students, for each member or child—a weekly amount equal to 7% of QOTE while the member or child is under 16 or a student.

(3) However, the amount payable under subsection (2)(a)—

(a) is subject to any reduction made under section 203; but

(b) must not be less than 15% of the amount payable under section 200(2)(a); and

(c) must not be more than the amount payable under section 200(2)(a).

201A Worker with non-dependent spouse, issue or next of kin

(1) This section applies if a worker left no dependants but is survived by any of the following—

(a) a spouse;

(b) issue within the meaning of the *Succession Act 1981*;

(c) next of kin within the meaning of the *Succession Act 1981*.

(2) The amount of compensation payable to the worker's estate is 10% of the amount payable under section 200(2)(a).

202 Workers under 21

(1) This section applies if the worker—

(a) was under 21; and

(b) left a parent ordinarily resident in the State but no dependants.

(2) The amount of compensation payable to the parent is $22500.

(3) If more than 1 parent is entitled to compensation—

(a) the total amount of compensation payable to the parents is $22500; and

(b) the amount payable to each parent is to be decided by the insurer.

204 Reduced compensation if dependant dies before payment made

(1) This section applies if the worker is survived by a dependant who dies before payment of compensation is made for the dependant's benefit.

(2) For this section, the dependant is taken to have died before the worker.

(3) However, compensation for the period starting on the day of the worker's death and ending on the day of the dependant's death is payable to the dependant's legal personal representative for the benefit of the dependant's estate.

(4) The amount of the compensation is a weekly payment under this section.

(5) If the dependant was a spouse who was totally dependent on the worker's earnings, the payment is, for each week, 14% of QOTE.

(6) If the worker has left no surviving spouse and the dependant was a member of the worker's family who was totally dependent on the worker's earnings and was caring for—

a. another member of the worker's family who was totally dependent on the worker's earnings; or

b. the worker's child or stepchild who was under 16 or a student;

the payment is, for each week, 14% of QOTE.

(7) If the dependant was a member of the worker's family or a child of the worker's spouse who was under 16 or a student and was totally dependent on the worker's earnings, the payment is, for each week, 7% of QOTE.

(8)