

**Authorised Version No. 232**  
**Accident Compensation Act 1985**  
**No. 10191 of 1985**

Authorised Version incorporating amendments as at  
1 July 2024

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**Authorised Version No. 232**  
**Accident Compensation Act 1985**  
**No. 10191 of 1985**

Authorised Version incorporating amendments as at  
1 July 2024

An Act to establish the Accident Compensation Commission, to constitute an Accident Compensation Tribunal, to establish the Victorian Accident Rehabilitation Council, to provide for the payment of compensation, to impose a levy in respect of accident compensation, to provide for the assessment and collection of the levy, to amend the **Workers Compensation Act 1958**, the **Pay-roll Tax Act 1971**, the **Motor Accidents Act 1973**, the **Motor Car Act 1958** and certain other Acts and for other purposes.

**BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):**

## **Part I—Preliminary**

### **Division 1—General**

Pt 1 Div. 1  
(Heading)  
inserted by  
No. 80/2010  
s. 15.

#### **1 Short title**

This Act may be cited as the **Accident Compensation Act 1985**.

#### **2 Commencement**

- (1) Subject to this section, this Act shall be deemed to have come into operation on the appointed day.

Accident Compensation Act 1985  
No. 10191 of 1985  
Part I—Preliminary

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- (2) Part VII shall come into operation on the day fixed by proclamation of the Governor in Council published in the Government Gazette.
- (3) Section 91 shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.
- (4) Section 264(4) shall be deemed to have come into operation on 30 June 1985.
- (5) Parts I, II and VI and sections 272 and 275 come into operation on the day on which this Act receives the Royal Assent.
- (6) The item in Schedule Two which amends section 95 of the **Stamps Act 1958** shall be deemed to have come into operation on 1 January 1985.
- (7) The item in Schedule Two which amends section 97 of the **Stamps Act 1958** shall be deemed to have come into operation on 1 August 1985.
- (8) The items in Schedule Two which amend sections 98 and 99 of the **Stamps Act 1958** shall be deemed to have come into operation on 30 June 1985.

S. 3  
amended by  
No. 83/1987  
s. 4,  
substituted by  
No. 67/1992  
s. 4.

S. 3(b)  
amended by  
No. 50/1994  
s. 4.

### 3 Objects of Act

The objects of this Act are—

- (a) to reduce the incidence of accidents and diseases in the workplace;
- (b) to make provision for the effective occupational rehabilitation of injured workers and their early return to work;

- (c) to increase the provision of suitable employment to workers who are injured to enable their early return to work;
- (d) to ensure appropriate compensation and provisional payments under this Act is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible;
- (e) to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses;
- (f) to establish incentives that are conducive to efficiency and discourage abuse;
- (g) to enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations;
- (h) to establish and maintain a fully-funded scheme;
- (i) in this context, to improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.

S. 3(d)  
substituted by  
No. 67/2013  
s. 624(1),  
amended by  
No. 5/2021  
s. 32.

### **3A Act binds the Crown**

- (1) This Act binds the Crown—
  - (a) in right of the State of Victoria; and
  - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

S. 3A  
inserted by  
No. 80/2010  
s. 16.

#### 4 Application of Act

S. 4  
amended by  
No. 48/1986  
s. 3,  
substituted by  
No. 83/1987  
s. 5.

(1) Despite anything to the contrary in this Act—

S. 4(1)(a)  
amended by  
Nos 13/1988  
s. 7(a),  
67/2013  
s. 624(2).

(a) this Act, other than Divisions 6A and 6B of Part IV, applies to and in relation to an injury to a worker on or after the appointed day but before 1 July 2014 arising out of or in the course of employment on or after the appointed day; and

S. 4(1)(b)  
amended by  
No. 13/1988  
s. 7(a).

(b) this Act, other than Divisions 6A and 6B of Part IV, does not apply to or in relation to an injury to a worker—

(i) before the appointed day arising out of or in the course of employment before the appointed day; or

(ii) after the appointed day arising out of or in the course of employment solely before the appointed day; and

S. 4(1)(c)  
amended by  
Nos 13/1988  
s. 7(a),  
18/1991  
s. 12(1)(a).

(c) Divisions 6A and 6B of Part IV apply in relation to an injury, disease or industrial deafness caused to or suffered by a worker before, on or after the appointed day which has arisen out of or in the course of any employment or is due to the nature of any employment in which the worker was employed at any time.

(2) Subsection (1) does not affect the application of Part I or III where it is necessary for those Parts to apply to or in respect of an injury to a worker before the appointed day arising out of or in the course of employment.



- |   |   |
|---|---|
| (3) Nothing in this Act entitles a worker to compensation in respect of a disease due to the nature of any employment in which the worker was employed unless the worker has been employed in employment of that nature on or after the appointed day but before 1 July 2014. | S. 4(3)<br>amended by<br>No. 67/2013<br>s. 624(2).  |
| (4) On and after 1 July 2014, a claim for compensation under this Act must be given, served or lodged in accordance with section 20 of the <b>Workplace Injury Rehabilitation and Compensation Act 2013</b> .   | S. 4(4)<br>inserted by<br>No. 67/2013<br>s. 624(3). |
| (5) This Act must be read and construed as one with the <b>Workplace Injury Rehabilitation and Compensation Act 2013</b> .  | S. 4(5)<br>inserted by<br>No. 67/2013<br>s. 624(3). |

#### 4A Interpretation

S. 4A  
inserted by  
No. 13/1988  
s. 4.

- |  |   |
|--|---|
| (1) If a worker commences or has commenced to receive compensation in the form of weekly payments, the entitlement of that worker to continue to receive weekly payments and the amount of those weekly payments depends upon the provisions of this Act as in force from time to time.  | S. 4A(1)<br>amended by<br>No. 64/1989<br>s. 4(1). |
| (2) Subsection (1) applies irrespective of the date (whether before or after the commencement of section 4 of the <b>Accident Compensation (Further Amendment) Act 1988</b> and whether before or after the commencement of any other Act amending this Act, whether enacted before or after the first-mentioned Act)—<br><br>(a) on which a worker commences or commenced to receive weekly payments; and<br><br>(b) of any claim, notice or application. | S. 4A(2)<br>amended by<br>No. 64/1989<br>s. 4(2). |

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S. 4A(3)  
repealed by  
No. 67/1992  
s. 5.

\* \* \* \* \*

- (4) Notwithstanding any provision of the **Accident Compensation (Amendment) Act 1987**, Part IV of this Act as in force prior to the commencement of the relevant provision of that Act applies to and only to the hearing and determination of any application lodged with the Tribunal—
- (a) before that commencement; or
  - (b) after that commencement, in respect of or in relation to a recommendation made before that commencement; or
  - (c) after that commencement, in relation to a recommendation made after that commencement in respect of an application made before that commencement.

S. 4AA  
inserted by  
No. 37/1992  
s. 4.

#### 4AA Compensation for death of worker

S. 4AA(1)  
amended by  
No. 67/2013  
s. 624(4) (as  
amended by  
No. 44/2014  
s. 21(1)).

- (1) Compensation for the death of a worker is not payable under this Act if compensation for the death of the worker has been paid under the **Workers Compensation Act 1958** or has been paid or is payable under the **Workplace Injury Rehabilitation and Compensation Act 2013**.

S. 4AA(2)  
amended by  
No. 67/2013  
s. 624(5) (as  
amended by  
No. 44/2014  
s. 21(2)).

- (2) If a claim for compensation in respect of the death of a worker is made under the **Workers Compensation Act 1958** or the **Workplace Injury Rehabilitation and Compensation Act 2013**, a claim must not be made under this Act by any dependant of the worker unless the claim made under the **Workers Compensation Act 1958** or the **Workplace Injury Rehabilitation**

**and Compensation Act 2013** is withdrawn or is rejected.

- (3) This section applies in relation to deaths occurring on or after the appointed day but nothing in this section affects any payment of compensation made before the day on which section 4 of the **Accident Compensation (Further Amendment) Act 1992** comes into operation.

## 5 Definitions

S. 5  
substituted by  
No. 67/2013  
s. 625<sup>1</sup>.

- (1) In this Act—

*appointed day* means four o'clock in the afternoon of the day before the proclaimed day;

*first entitlement period* has the meaning given by section 91E;

*personal and household service* means the provision of one or more of the following of a kind or type, and by a person, approved by the Authority—

- (a) attendant care;
- (b) counselling;
- (c) household help;
- (d) transportation costs;
- (e) at the request of a medical practitioner, an aid, assistance, appliance, apparatus or service, other than a medical service, hospital service or nursing service—

and includes a rehabilitation service provided under this Act as in force before the commencement of section 80 of the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 5(1) def. of  
*police officer*  
inserted by  
No. 37/2014  
s. 10(Sch  
item 2.1).

*police officer* has the same meaning as in the  
**Victoria Police Act 2013**;

*prescribed* means prescribed by regulations made  
under the **Workplace Injury Rehabilitation  
and Compensation Act 2013**;

*proclaimed day* means the day fixed under  
section 2(2);

*second entitlement period* has the meaning given  
by section 91E;

*weekly payment* means compensation in the form  
of a weekly payment under Division 2 of  
Part IV.

- (2) Unless inconsistent with the context or subject-matter—
- (a) words and expressions defined in section 3 of the **Workplace Injury Rehabilitation and Compensation Act 2013** have the same meaning in this Act as they have in that Act; and
  - (b) section 4(1) and (2) and Schedule 1 of the **Workplace Injury Rehabilitation and Compensation Act 2013** have effect as if enacted in this Act.

**Division 2—Pre-injury average weekly earnings  
and current weekly earnings**

Pt 1 Div. 2  
(Heading)  
inserted by  
No. 80/2010  
s. 21.

**5A Definition—pre-injury average weekly earnings**

S. 5A  
inserted by  
No. 64/1989  
s. 6,  
amended by  
Nos 50/1994  
s. 8, 7/1996  
s. 49(a),  
107/1997  
ss 8(3),  
30(2)–(4),  
26/2000  
s. 4(1)(2),  
95/2003 s. 5,  
102/2004  
s. 38(1)(a)(b),  
41/2006 s. 3,  
60/2007 s. 24,  
9/2010 ss 4–8,  
substituted by  
No. 80/2010  
s. 21.

- (1) In this Act, *pre-injury average weekly earnings*,  
in respect of a relevant period in relation to a  
worker, means, subject to this section, the sum  
of—

- (a) the average of the worker's ordinary earnings  
during the relevant period (excluding from  
that period any week during which the  
worker did not actually work and—

S. 5A(1)(a)  
substituted by  
No. 67/2013  
s. 626(2) (as  
amended by  
No. 44/2014  
s. 24(26)).

- (i) was not on paid leave; or

S. 5A(1)(a)(i)  
amended by  
No. 44/2014  
s. 26.

- (ii) was on paid leave at a rate less than the  
base rate of pay)—

expressed as a weekly sum; and

- (b) the worker's earnings enhancement (if any)  
in the relevant enhancement period.

- (2) If a worker has been continuously employed by the same employer for less than 4 weeks before the injury, *pre-injury average weekly earnings*, in relation to that worker, may be calculated having regard to—
- (a) the average of the worker's ordinary earnings that the worker could reasonably have been expected to have earned in that employment, but for the injury, during the period of 52 weeks after the injury expressed as a weekly sum; and
  - (b) the worker's earnings enhancement (if any) in the relevant enhancement period.
- (3) If a worker—
- (a) was not a full time worker immediately before the injury; and
  - (b) at the time of the injury was seeking full time employment; and
  - (c) had been predominantly a full time worker during the period of 78 weeks immediately before the injury—

*pre-injury average weekly earnings*, in relation to that worker, means the sum of—

- (d) the average of the worker's ordinary earnings while employed during the period of 78 weeks immediately before the injury (excluding from that period any week during which the worker did not actually work and—
  - (i) was on unpaid leave; or

S. 5A(3)(d)  
substituted by  
No. 67/2013  
s. 626(3) (as  
amended by  
No. 44/2014  
s. 24(26)).

- (ii) was on paid leave at a rate less than the base rate of pay)—  
whether or not the employer is the same employer as at the time of the injury, expressed as a weekly sum; and
  - (e) the worker's earnings enhancement (if any) in the relevant enhancement period.
- (4) If a worker is a person engaged by an employer to participate as a contestant in a sporting or athletic activity within the meaning of section 16(1) and the injury is not received while the person is—
  - (a) participating, or training for or preparing to participate, as a contestant in a sporting or athletic activity; or
  - (b) travelling between a place of residence and a place where the activity, training or preparation is held—  
any remuneration paid or payable in respect of such participation, training, preparation or travel is not to be taken into account in calculating the worker's pre-injury average weekly earnings.
- (5) In relation to a worker of a class referred to in column 2 of an item in Schedule 1A, ***pre-injury average weekly earnings*** means the amount determined in accordance with column 3 of that item, expressed as a weekly sum.
- (6) In relation to a worker to whom section 7 or 7A applies, the worker's pre-injury average weekly earnings must be calculated with reference to the amounts payable to the worker and deemed to be remuneration under that section, expressed as a weekly sum.

- (7) In relation to a worker to whom section 6 or 8 applies, the worker's pre-injury average weekly earnings must be calculated with reference to the amounts payable to the contractor and deemed to be remuneration under that section, expressed as a weekly sum.

S. 5AA  
inserted by  
No. 80/2010  
s. 21.

**5AA Definitions applying to pre-injury average weekly earnings—relevant period**

- (1) Subject to this section, a reference to the relevant period in relation to pre-injury average weekly earnings of a worker is a reference to—
- (a) in the case of a worker who has been continuously employed by the same employer for the period of 52 weeks immediately before the injury, that period of 52 weeks;
  - (b) in the case of a worker who has been continuously employed by the same employer for less than 52 weeks immediately before the injury, the period of continuous employment by that employer.
- (2) Subject to subsection (4), the relevant period, in relation to pre-injury average weekly earnings of a worker who, during the 52 weeks immediately before the injury, voluntarily (otherwise than by reason of an incapacity for work resulting from, or materially contributed to by, an injury which entitles the worker to compensation under this Act)—
- (a) alters the ordinary hours of work; or
  - (b) alters the nature of the work performed by the worker—

S. 5AA(2)  
amended by  
No. 35/2020  
s. 54(1).

and, as a result, the worker's ordinary earnings are reduced, does not include the period before the reduction takes effect.



- (3) If, during the period of 52 weeks immediately before the injury, a worker—
- (a) is promoted; or
  - (b) is appointed to a different position—
- (otherwise than on a temporary basis) and, as a result, the worker's ordinary earnings are increased, the relevant period in relation to the worker begins on the day on which the promotion or appointment takes effect.

- (4) If the relevant period, in relation to the pre-injury average weekly earnings of a worker during the 52 weeks immediately before the worker's injury would otherwise include a period of time during the prescribed period and the worker's earnings during the period occurring in the prescribed period are reduced for a COVID-19 reason, the relevant period in relation to the worker does not include the period occurring in the prescribed period.

S. 5AA(4)  
inserted by  
No. 35/2020  
s. 54(2).

- (5) In this section—

**COVID-19 reason** means, in relation to the reduction of earnings of a worker, that the reduction is a consequence of one or more of the following occurring during the prescribed period because of the COVID-19 pandemic—

S. 5AA(5)  
inserted by  
No. 35/2020  
s. 54(2).

- (a) the ordinary hours of work of the worker are reduced;
- (b) the nature of the work performed by the worker is altered;
- (c) the earnings of the worker are reduced;

**prescribed period** means the period starting on 1 March 2020 and ending on 31 December 2020.

S. 5AB  
inserted by  
No. 80/2010  
s. 21.

**5AB Definitions applying to pre-injury average weekly earnings—ordinary earnings**

(1) Subject to this section, in relation to pre-injury average weekly earnings, the *ordinary earnings* of a worker in relation to a week during the relevant period are—

(a) if the worker's base rate of pay is calculated on the basis of ordinary hours worked, the sum of—

S. 5AB(1)(a)(i)  
substituted by  
No. 67/2013  
s. 626(4) (as  
amended by  
No. 44/2014  
s. 24(26)).

(i) the worker's earnings calculated at that rate for ordinary hours in that week during which the worker worked or was on paid leave at the base rate of pay; and

(ii) if the worker receives a piece rate payment or a commission or both a piece rate payment and a commission, the amount of piece rate payments and commissions the worker receives in respect of that week; or

(b) if paragraph (a) does not apply, the actual earnings (other than an amount of a kind referred to in section 5AC(1)(a), (b), (c), (e) or (f)) paid or payable to the worker in respect of that week—

and include—

(c) any other amount (other than an amount of a kind referred to in section 5AC(1)(a), (b), (c), (e) or (f)) for the performance of work by the worker, that, under the worker's terms of employment, the employer is required to apply or deal with on behalf of the worker in accordance with the worker's instructions, in respect of that week; and

(d) the monetary value of—

- (i) residential accommodation; and
- (ii) use of a motor vehicle; and
- (iii) health insurance; and
- (iv) education fees—

provided in respect of that week to the worker by the employer for the performance of work by the worker (*non-pecuniary benefit*).

(2) For the purposes of subsection (1)(d), the monetary value of a non-pecuniary benefit is—

- (a) the value that would be the value as a fringe benefit for the purposes of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth, calculated in accordance with section 5C of this Act, divided by 52; or
- (b) in the case of residential accommodation that is not a fringe benefit or is otherwise not subject to fringe benefits tax, the amount that would reasonably be payable for that accommodation, or equivalent accommodation in the same area, in respect of that week if it were let on commercial terms.

(3) A reference to ordinary earnings does not include, and is deemed never to have included, a reference to any employer superannuation contribution.

**5AC Definition applying to pre-injury average weekly earnings and current weekly earnings—base rate of pay**

S. 5AC  
inserted by  
No. 80/2010  
s. 21.

(1) In relation to pre-injury average weekly earnings and current weekly earnings, a reference to a *base rate of pay* is a reference to the rate of pay

payable to a worker for his or her ordinary hours of work but does not include—

- (a) incentive based payments or bonuses;
  - (b) loadings;
  - (c) monetary allowances;
  - (d) piece rates or commissions;
  - (e) overtime or shift allowances;
  - (f) any separately identifiable amount not referred to in paragraphs (a) to (e).
- (2) In relation to pre-injury average weekly earnings and current weekly earnings, if, at the time of the injury—
- (a) a worker's base rate of pay is prescribed by an industrial award that applies to the worker; and
  - (b) the worker's actual rate of pay for ordinary hours is higher than that rate of pay—

the worker's actual rate of pay is to be taken to be the worker's base rate of pay.

S. 5AD  
inserted by  
No. 80/2010  
s. 21.

**5AD Definitions applying to pre-injury average weekly earnings—earnings enhancement and enhancement period**

In relation to pre-injury average weekly earnings—

*earnings enhancement*, in relation to a worker who—

- (a) during the relevant period, worked paid overtime or carried out work that attracted a shift allowance; and
- (b) but for the worker's injury or death, would have been likely, at any time during the enhancement period, to have

worked paid overtime or carried out  
work that attracted a shift allowance—

means the amount calculated in accordance  
with the formula—

$$\frac{A}{B}$$

where—

A is the total amount paid or payable to  
the worker for paid overtime and shift  
allowances in respect of the relevant  
period;

B is the number of weeks during the  
relevant period during which the  
worker worked or was on paid annual  
leave;

*enhancement period* means—

- (a) in relation to compensation in the form  
of weekly payments to the worker  
under section 93A or 93B—the first  
52 weeks in respect of which such  
compensation is paid or payable to the  
worker;
- (b) in relation to compensation in the form  
of weekly payments of pension under  
section 92B—the first 52 weeks after  
the death of the worker.

**5AE Definition applying to pre-injury average weekly  
earnings and current weekly earnings—ordinary  
hours of work**

**S. 5AE  
inserted by  
No. 80/2010  
s. 21.**

In relation to pre-injury average weekly earnings  
and current weekly earnings, the *ordinary hours  
of work*—

S. 5AE(a)(ii)  
substituted by  
No. 67/2013  
s. 626(5) (as  
amended by  
No. 44/2014  
s. 24(26)).

- (a) in the case of a worker to whom an industrial award applies are—
  - (i) if the ordinary hours of work in relation to a week are agreed or determined in accordance with an industrial award between the worker and the employer—those hours;
  - (ii) in any other case, the worker's average weekly hours during the relevant period (excluding from that period any week during which the worker did not actually work and was not on paid leave at the base rate of pay);

S. 5AE(b)(ii)  
substituted by  
No. 67/2013  
s. 626(6) (as  
amended by  
No. 44/2014  
s. 24(26)).

- (b) in the case of a worker to whom an industrial award does not apply—
  - (i) if the ordinary hours of work are agreed between the worker and the employer, those hours;
  - (ii) in any other case, the worker's average weekly hours during the relevant period (excluding from that period any week during which the worker did not actually work and was not on paid leave at the base rate of pay).

S. 5B  
inserted by  
No. 64/1989  
s. 6,  
amended by  
No. 67/1992  
s. 8,  
substituted by  
No. 80/2010  
s. 22.

## **5B Definition—current weekly earnings**

In this Act, *current weekly earnings* of a worker in relation to a week means—

- (a) if the worker's base rate of pay is calculated on the basis of ordinary hours worked, the sum of—
  - (i) the worker's earnings so calculated for the ordinary hours worked during that week; and

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- (ii) amounts paid or payable for overtime or shift allowances in respect of that week; and
- (iii) amounts paid or payable as piece rates or commissions in respect of that week; or
- (b) if paragraph (a) does not apply, the worker's actual earnings (other than an amount of a kind referred to in section 5AC(1)(a), (b), (c) or (f)) in respect of that week.

*	*	*	*	*	<b>S. 5C</b> inserted by No. 50/1994 s. 7, substituted by No. 9/2010 s. 95, repealed by No. 67/2013 s. 627(1).
*	*	*	*	*	<b>S. 5D</b> inserted by No. 107/1997 s. 5(4), amended by No. 81/1998 s. 19(2), repealed by No. 60/2007 s. 23, new s. 5D inserted by No. 9/2010 s. 95, repealed by No. 67/2013 s. 627(1).

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S. 5E  
inserted by  
No. 107/1997  
s. 5(4),  
amended by  
No. 81/1998  
s. 19(2),  
repealed by  
No. 60/2007  
s. 23, new  
s. 5E  
inserted by  
No. 9/2010  
s. 95,  
repealed by  
No. 67/2013  
s. 627(1).

\* \* \* \*

Pt 1 Div. 3  
(Heading and  
ss 5F–17)  
amended<sup>2</sup>,  
repealed by  
No. 67/2013  
s. 627(2).

\* \* \* \*



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*	*	*	*	*	<b>Pt 2 (Headings and ss 18–38) amended<sup>3</sup>, repealed by No. 67/2013 s. 627(3).</b>
*	*	*	*	*	<b>Pt 3 (Heading and ss 39–80) amended<sup>4</sup>, repealed by No. 67/2013 s. 627(3).</b>

## **Part IV—Payment of compensation**

### **Division 1—Application**

New s. 80  
inserted by  
No. 95/2003  
s. 15.

#### **80 Entitlement to compensation only if employment connected with Victoria**

- (1) There is no entitlement to compensation under this Act other than in respect of employment that is connected with this State.
- (2) The fact that a worker is outside this State when the injury happens does not prevent an entitlement to compensation arising under this Act in respect of employment that is connected with this State.
- (3) A worker's employment is connected with—
  - (a) the State in which the worker usually works in that employment; or
  - (b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or
  - (c) if no State or no one State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.
- (4) In the case of a worker working on a ship, if no State or no one State is identified by subsection (3), a worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.
- (5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if—

- (a) a worker is in this State when the injury happens; and
  - (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.
- (6) In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer over the preceding 12 months and the intentions of the worker and employer. However, regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.
- (7) Subject to subsection (6), in determining whether a worker usually works in a State or is usually based in a State for the purposes of employment, regard must be had to any period during which a worker works in a State or is in a State for the purposes of employment whether or not under the statutory workers compensation scheme of that State the person is regarded as a worker or as working or employed in that State.
- (8) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the Seafarers Rehabilitation and Compensation Act 1992 of the Commonwealth applies to the worker's employment.
- (9) In this section—
  - ship* means any kind of vessel used in navigation by water, however propelled or moved, and includes—
    - (a) a barge, lighter, or other floating vessel; and

(b) an air-cushion vehicle, or other similar craft—

used wholly or primarily in navigation by water;

S. 80(9) def. of *State* substituted by No. 80/2010 s. 46(1).

*State* includes—

- (a) Territory; and
- (b) the offshore area, within the meaning of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 of the Commonwealth, of the relevant State or Territory.

## 81 Application to sailors

(1) In this section—

*port* includes place or harbour;

S. 81(1) def. of *sailor* amended by No. 95/2003 s. 16(1)(a).

*sailor* means any person working in any capacity on board a ship;

S. 81(1) def. of *ship* substituted by No. 95/2003 s. 16(1)(b).

*ship* has the same meaning as in section 80.

S. 81(1) def. of *Victorian ship* repealed by No. 95/2003 s. 16(1)(c).

\* \* \* \* \*

S. 81(2) amended by Nos 83/1987 s. 35, 95/2003 s. 16(2).

(2) This Act applies with the following modifications in respect of an injury that happens on a ship to a sailor working on the ship where the sailor's employment is connected with Victoria—

- (a) except where the sailor is the master, the notice of injury and the claim for compensation may be served on the master of the ship as if the master were the employer;

- (b) if the injury happens and the incapacity commences on board the ship it shall not be necessary to give any notice of injury;
  - (c) a claim for compensation in respect of the death of a sailor shall be made within six months after notice of the death has been received by the claimant;
  - (d) if a ship is lost with all hands a claim for compensation in respect of the death of a sailor shall be made within 18 months after the date on which the ship is deemed under subsection (3) to have been lost with all hands;
  - (e) if a sailor dies without leaving any dependants compensation shall not be payable if the owner or charterer of the ship is liable to pay the expenses of burial or cremation under any Act in force in Victoria;
  - (f) weekly payments shall not be payable for any period during which the owner or charterer of the ship is liable to pay the expenses of maintenance of any injured sailor;
  - (g) notwithstanding any limitation of liability in any other law, compensation shall be paid in full.
- (3) Without prejudice to any other means of proof available—
- (a) a ship shall be deemed to have been lost with all hands on board if it is shown by an official return produced out of official custody or other evidence that the ship left a port of departure at least 12 months before the institution of proceedings under this Act and has not been heard of since that departure; and

- (b) a duplicate agreement or list of the crew of a ship lost with all hands made out and produced by the proper officer out of official custody shall in the absence of proof to the contrary be sufficient evidence that the sailors named were on board at the time the ship was lost.

## 82 Entitlement to compensation

S. 82(1)  
amended by  
Nos 67/1992  
s. 11(1),  
95/2003  
s. 3(3).

- (1) If there is caused to a worker an injury arising out of or in the course of any employment, the worker shall be entitled to compensation in accordance with this Act.

S. 82(2)  
amended by  
Nos 67/1992  
s. 11(1),  
107/1997  
s. 22, 95/2003  
s. 3(4)(a)(b).

- (2) If there is caused to a worker an injury arising out of or in the course of any employment which results in or materially contributes to the death of the worker, the worker's dependants shall be entitled, subject to this Act, to compensation in accordance with this Act.

Note to  
s. 82(2)  
inserted by  
No. 95/2003  
s. 3(4)(c).

### Note

Subsections (1) and (2), as amended by sections 3(3) and 3(4) of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**, only apply to injuries that occur on or after the date of commencement of section 3 of that Act—see section 262.

S. 82(2A)  
inserted by  
No. 67/1992  
s. 11(2),  
substituted by  
No. 9/2010  
s. 12.

- (2A) There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury caused wholly or predominantly by any one or more of the following—
  - (a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer; or
  - (b) a decision of the worker's employer, on reasonable grounds, to take, or not to take any management action; or

- (c) any expectation by the worker that any management action would, or would not, be taken or a decision made to take, or not to take, any management action; or
  - (d) an application under section 81B of the **Local Government Act 1989** (as in force before its repeal), or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of section 14AA. S. 82(2A)(d) amended by Nos 9/2020 s. 390(Sch. 1 item 2), 30/2022 s. 43.
- (2B) There is no entitlement to compensation in respect of a heart attack injury or stroke injury that arises in the course of, or that was caused by, a disease, unless the worker's employment was a significant contributing factor to the injury or to the disease. S. 82(2B) inserted by No. 95/2003 s. 3(5), amended by No. 9/2010 s. 13(1).
- (2C) There is no entitlement to compensation in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury— S. 82(2C) inserted by No. 95/2003 s. 3(5), amended by No. 9/2010 s. 13(1).
- (a) a heart attack injury or stroke injury to which subsection (2B) does not apply;
  - (b) a disease contracted by a worker in the course of the worker's employment (whether at, or away from, the place of employment);
  - (c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease.

**Note**

Sections 82(2B) and 82(2C) only apply to injuries that occur on or after the date of commencement of section 3 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 262.

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S. 82(3)  
substituted by  
No. 64/1989  
s. 9(1),  
amended by  
No. 9/2010  
s. 13(2).

(3) If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted, there is no entitlement to compensation in respect of that injury.

S. 82(4)  
amended by  
No. 64/1989  
s. 9(2),  
substituted by  
No. 9/2010  
s. 13(3),  
amended by  
No. 49/2014  
s. 49.

(4) Subject to sections 82A, 82B, 82BA and 82C, if it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including, but not limited to, being under the influence of intoxicating liquor or a drug or both), there is no entitlement to compensation in respect of that injury.

S. 82(4A)  
inserted by  
No. 83/1987  
s. 36,  
amended by  
Nos 64/1989  
s. 37(1)(b),  
94/2003 s. 40,  
93/2009  
s. 49(5),  
repealed by  
No. 9/2010  
s. 13(3).

\* \* \* \* \*

S. 82(5)  
amended by  
No. 9/2010  
s. 13(4).

(5) Subsection (4) shall not apply if the injury results in death or severe injury.

S. 82(6)  
amended by  
Nos 67/1992  
s. 11(3),  
95/2003  
s. 3(6)(a)(b).

(6) Subject to subsections (2B) and (2C), if a worker suffers an injury which occurs by way of a gradual process over time and which is due to the nature of employment in which the worker was employed at any time before notice of the injury was given, the worker or the worker's dependants shall be entitled to compensation under this Act as if the injury were an injury arising out of or in the course of employment.



- (7) If it is proved that before commencing employment with the employer—
- (a) a worker had a pre-existing injury or disease of which the worker was aware; and
  - (b) the employer in writing—
    - (i) advised the worker as to the nature of the proposed employment; and
    - (ii) requested the worker to disclose all pre-existing injuries and diseases suffered by the worker of which the worker was aware and could reasonably be expected to foresee could be affected by the nature of the proposed employment; and
    - (iii) advised the worker that subsection (8) will apply to a failure to make such a disclosure or the making of a false or misleading disclosure; and
    - (iv) advised the worker as to the effect of subsection (8) on the worker's entitlement to compensation; and
  - (c) the worker failed to make such a disclosure or made a false or misleading disclosure—
- subsection (8) applies.
- (8) If this subsection applies, any recurrence, aggravation, acceleration, exacerbation or deterioration of the pre-existing injury or disease arising out of or in the course of or due to the nature of employment with the employer does not entitle the worker to compensation under this Act.
- (9) If this section operates to prevent a worker or the worker's dependants recovering compensation in respect of an injury, the worker or the worker's dependants cannot rely on this section to claim to be entitled to take any other action or proceedings

**S. 82(7)**  
inserted by  
No. 107/1997  
s. 23.

**S. 82(8)**  
inserted by  
No. 107/1997  
s. 23.

**S. 82(9)**  
inserted by  
No. 107/1997  
s. 23.

in respect of the injury whether under this Act or otherwise.

S. 82(10)  
inserted by  
No. 9/2010  
s. 14.

(10) In this section—

***management action***, in relation to a worker, includes, but is not limited to, any one or more of the following—

- (a) appraisal of the worker's performance;
- (b) counselling of the worker;
- (c) suspension or stand-down of the worker's employment;
- (d) disciplinary action taken in respect of the worker's employment;
- (e) transfer of the worker's employment;
- (f) demotion, redeployment or retrenchment of the worker;
- (g) dismissal of the worker;
- (h) promotion of the worker;
- (i) reclassification of the worker's employment position;
- (j) provision of leave of absence to the worker;
- (k) provision to the worker of a benefit connected with the worker's employment;
- (l) training a worker in respect of the worker's employment;
- (m) investigation by the worker's employer of any alleged misconduct—
  - (i) of the worker; or

- (ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness;
- (n) communication in connection with an action mentioned in any of the above paragraphs;

***permanent blindness*** means—

- (a) a field of vision that is constricted to 10 degrees or less of arc from central fixation in the better eye, irrespective of corrected visual acuity; or
- (b) a corrected visual acuity of less than 6/60 on the Snellen Scale in both eyes; or
- (c) a combination of visual defects resulting in the same degree of visual loss as referred to in paragraph (a) or (b);

***severe injury*** means—

- (a) a significant acquired permanent brain injury;
- (b) permanent paraplegia;
- (c) permanent quadriplegia;
- (d) amputation of a limb, hand or foot;
- (e) full thickness burns that—
  - (i) cause permanent severe disfigurement to the head or neck or an arm or a lower leg; or
  - (ii) result in a significant permanent inability to undertake the necessary activities of daily living;

- (f) an injury that results in permanent blindness;
- (g) a brachial plexus injury that results in the permanent effective loss of the use of a limb;
- (h) a physical internal injury that results in a significant permanent inability to undertake the necessary activities of daily living.

S. 82A  
inserted by  
No. 9/2010  
s. 15.

**82A Circumstances in which weekly payments are reduced because of conviction for drink-driving offence**

- (1) This section applies if—
  - (a) a worker's incapacity for work results from, or is materially contributed to by, an injury that—
    - (i) entitles the worker to compensation in the form of weekly payments; and
    - (ii) was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and
  - (b) in respect of such driving, the worker is convicted or found guilty of an offence under section 49(1)(b), (f) or (g) of the **Road Safety Act 1986** or under a law that is declared to be a corresponding law under section 47A(2) of the **Road Safety Act 1986**.
- (2) In respect of a worker to whom section 52 of the **Road Safety Act 1986** applies, compensation in the form of weekly payments under this Part is reduced for a period of 130 weeks (whether or not consecutive) from the date on which notice of the

reduction is given to the worker in accordance with section 114(10)—

- (a) if the level of alcohol in the worker's blood was more than zero grams and less than 0·12 grams per 100 millilitres of blood or in the worker's breath was more than zero grams and less than 0·12 grams per 210 litres of exhaled air—by one third;
  - (b) if the level of alcohol in the worker's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the worker's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air—by two thirds.
- (3) In respect of a worker (other than a worker to whom section 52 of the **Road Safety Act 1986** applies), compensation in the form of weekly payments under this Part is reduced for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction is given to the worker in accordance with section 114(10)—
- (a) if the level of alcohol in the worker's blood was not less than 0·05 grams, and less than 0·12 grams per 100 millilitres of blood or in the worker's breath not less than 0·05 grams and less than 0·12 grams per 210 litres of exhaled air—by one third;
  - (b) if the level of alcohol in the worker's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the worker's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air—by two thirds.

- (4) This section does not apply if—
- (a) the injury results in death or is a severe injury within the meaning of section 82; or
  - (b) the worker satisfies the Authority or self-insurer that the concentration of, or presence of, alcohol in the blood or the breath of the worker did not contribute in any way to the injury.

S. 82B  
inserted by  
No. 9/2010  
s. 15.

**82B Circumstances in which weekly payments are reduced because of conviction for drug-driving offence**

- (1) This section applies if—
- (a) a worker's incapacity for work results from, or is materially contributed to by, an injury that—
    - (i) entitles the worker to compensation in the form of weekly payments; and
    - (ii) was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and
  - (b) in respect of such driving, the worker is convicted or found guilty of an offence under section 49(1)(bb), (h) or (i) of the **Road Safety Act 1986** or under a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of the **Road Safety Act 1986**.
- (2) Compensation in the form of weekly payments under this Part is reduced by one third for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction was given to the worker under section 114(10).

- (3) This section does not apply—
- (a) if the injury results in death or is a severe injury within the meaning of section 82; or
  - (b) the worker satisfies the Authority or self-insurer that the concentration of, or presence of, drugs in his or her blood or oral fluid did not contribute in any way to the injury.

**82BA Circumstances in which weekly payments are reduced because of combined drink and drug driving offence**

S. 82BA  
inserted by  
No. 49/2014  
s. 50.

- (1) This section applies if—
- (a) a worker's incapacity for work results from, or is materially contributed to by, an injury that—
    - (i) entitles the worker to compensation in the form of weekly payments; and
    - (ii) was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and
  - (b) in respect of such driving, the worker is convicted or found guilty of an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986** or under a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of the **Road Safety Act 1986**.
- (2) Compensation in the form of weekly payments under this Part is reduced for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction was given to the worker under section 114(10) by—
- (a) in any case, one third; and

- (b) if the level of alcohol in the worker's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the worker's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air—by an additional one third.
- (3) This section does not apply if—
  - (a) the injury results in death or is a severe injury within the meaning of section 82; or
  - (b) the worker satisfies the Authority or self-insurer that the following did not contribute in any way to the injury—
    - (i) the concentration, or presence, of alcohol in the blood or breath of the worker;
    - (ii) the concentration, or presence, of drugs in the blood or oral fluid of the worker;
    - (iii) the combination of matters referred to in subparagraphs (i) and (ii).

S. 82C  
inserted by  
No. 9/2010  
s. 15.

**82C No entitlement to compensation where conviction for certain serious road traffic offences**

- (1) A worker is not entitled to compensation under this Act in respect of an injury if—
  - (a) the injury was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and
  - (b) in respect of that driving, the worker is convicted or found guilty of an offence under—
    - (i) section 49(1)(b), (bc), (f), (g) or (j) of the **Road Safety Act 1986** and the level of alcohol in the worker's blood was 0·24 grams or more per 100 millilitres

S. 82C(1)(b)(i)  
amended by  
No. 49/2014  
s. 51(1).



of blood or in the worker's breath was  
0.24 grams or more per 210 litres of  
exhaled air; or

(ii) sections 49(1)(a), (ba), (c), (ca), (d), (e),  
(ea) or (eb), 56(2) or 56(7) of the **Road  
Safety Act 1986**; or

(iii) section 318 or 319 of the **Crimes  
Act 1958** or a corresponding law;

S. 82C(1)(b)(iii)  
amended by  
Nos 80/2010  
s. 47(1),  
73/2016  
s. 3(1).

(iv) a law of another State or of a Territory  
that is declared to be a corresponding  
law under section 47A(2) of the **Road  
Safety Act 1986**.

S. 82C(1)  
(b)(iv)  
inserted by  
No. 80/2010  
s. 47(2).

(1A) For the purposes of this section, the Minister  
may by Order published in the Government  
Gazette declare a law of another State or a  
Territory, including a law that has been repealed  
or has expired, to be a corresponding law for the  
purposes of this section.

S. 82C(1A)  
inserted by  
No. 73/2016  
s. 3(2).

(2) This section does not apply—

(a) if the injury results in death or is a severe  
injury within the meaning of section 82; or

(b) where the worker is convicted or  
found guilty of an offence specified in  
subsection (1)(b)(i) or (iii) (other than an  
offence under section 49(1)(bc) or (j) of  
the **Road Safety Act 1986**), the worker  
satisfies the Authority or self-insurer  
that the concentration of, or presence of,  
alcohol in his or her blood or breath, or the  
concentration of, or presence of, drugs in his  
or her blood or oral fluid, did not contribute  
in any way to the injury; or

S. 82C(2)(b)  
amended by  
No. 49/2014  
s. 51(2).

S. 82C(2)(c)  
inserted by  
No. 49/2014  
s. 51(3).

- (c) where the worker is convicted or found guilty of an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986**, the worker satisfies the Authority or self-insurer that the following did not contribute in any way to the injury—
  - (i) the concentration, or presence, of alcohol in the blood or breath of the worker;
  - (ii) the concentration, or presence, of drugs in the blood or oral fluid of the worker;
  - (iii) the combination of matters referred to in subparagraphs (i) and (ii).

S. 82D  
inserted by  
No. 9/2010  
s. 15.

#### **82D Where conviction or finding of guilt overturned**

If—

- (a) compensation in the form of weekly payments to a worker—
  - (i) has been reduced in accordance with section 82A, 82B or 82BA; or

S. 82D(a)(i)  
amended by  
No. 49/2014  
s. 52.

- (ii) in accordance with section 82C, is not payable—

after the worker has been convicted or found guilty of an offence; and

- (b) the conviction or finding is overturned on appeal—

the Authority or self-insurer must pay to the worker, subject to and in accordance with this Act—

S. 82D(c)  
amended by  
No. 80/2010  
s. 48(a).

- (c) the amount by which each weekly payment had been reduced, or the amount that had not been paid, together with interest at the prescribed rate on each such amount, in

respect of the period from the date on which the payment was due until the date on which the amount is paid; and

- (d) all amounts of compensation not paid in accordance with section 82C and to which, but for the conviction or finding of guilt, the worker would have been entitled.

S. 82D(d)  
inserted by  
No. 80/2010  
s. 48(b).

### **83 Out of or in the course of employment**

S. 83  
amended by  
Nos 48/1986  
s. 14, 64/1989  
s. 35(b)(i)(ii)(c),  
substituted by  
No. 67/1992  
s. 12.

- (1) An injury to a worker is deemed to arise out of or in the course of employment for the purposes of section 82(1) and 82(2) if the injury occurs—

S. 83(1)  
amended by  
No. 50/1994  
s. 33(1).

- (a) while the worker on any working day that the worker attended at the place of employment having been present at the place of employment is temporarily absent on that day during any authorised recess and does not during that absence voluntarily subject himself or herself to any abnormal risk of injury;
- (b) while the worker is, having regard to the nature of the worker's employment or any specific task which may require the worker to travel, travelling for the purposes of the worker's employment;
- (c) while the worker is in attendance at any school for the purposes of any trade, technical or other training which the worker is required to attend by the terms of his or her employment or as an apprentice or which the worker is expected to attend by the employer; and

S. 83(1)(c)  
amended by  
No. 50/1994  
s. 33(2).

S. 83(1)(d)  
amended by  
No. 50/1993  
s. 81(d).

- (d) while the worker is in attendance at any place for the purpose of obtaining a medical certificate, receiving medical, surgical or hospital advice, attention or treatment, receiving a personal and household service or an occupational rehabilitation service or receiving a payment of compensation in connection with any injury for which the worker is entitled to receive compensation or for the purpose of submitting to a medical examination required by or under this Act.

S. 83(2)  
amended by  
No. 50/1994  
s. 33(3).

- (2) For the purposes of this section—
  - (a) ***place of employment*** where there is no fixed place of employment includes the whole area, scope or ambit of employment;
  - (b) ***travelling for the purposes of a worker's employment*** does not include travelling to and from the worker's place of employment or the places referred to in subsections (1)(c) and (1)(d);
  - (c) an injury incurred while ***travelling for the purposes of a worker's employment*** is deemed not to have arisen out of or in the course of any employment if the injury occurred during or after any substantial interruption of or substantial deviation from the worker's journey made for a reason unconnected with his or her employment;
  - (d) an injury is deemed to arise out of or in the course of employment even though at the time that the injury happened the worker was—
    - (i) acting in contravention of any regulation (whether by or under an Act or otherwise) applicable to the work; or

(ii) acting without instructions from the employer—

if the act was done by the worker for the purposes of and in connection with the employer's trade or business.

#### **84 Compensation for workers injured outside Victoria**

(1) Where an employer who resides or has a place of business in Victoria engages a worker in Victoria and an injury is caused to or suffered by the worker outside Australia in circumstances which had the injury occurred in Victoria would have entitled the worker or the worker's dependants to compensation—

S. 84(1)  
amended by  
Nos 83/1987  
s. 37(1)(a),  
95/2003  
s. 17(1).

(a) the worker; or

(b) in the case of the death of the worker, the worker's dependants—

shall be entitled to compensation in accordance with this Act.

(2) If an injury is caused to or suffered by a worker outside Australia who is employed by the Crown, any administrative unit or any public statutory body constituted by or under the law of Victoria in circumstances which had the injury occurred in Victoria would have entitled the worker or the worker's dependants to compensation—

S. 84(2)  
amended by  
Nos 83/1987  
s. 37(1)(b),  
95/2003  
s. 17(1).

(a) the worker; or

(b) in the case of the death of the worker, the worker's dependants—

shall be entitled to compensation in accordance with this Act.

(3) For the purposes of this Act a worker who—

(a) is employed by the Crown, any administrative unit or any public statutory body constituted by or under the law of Victoria; and

S. 84(3)(b)  
amended by  
No. 95/2003  
s. 17(2).

(b) is directed by the Crown, administrative unit or public statutory body to work for or under the direction of any other person outside Victoria (whether within or outside Australia)—

shall be deemed to continue to be employed by the Crown, administrative unit or public statutory body.

S. 84(4)  
inserted by  
No. 83/1987  
s. 37(2),  
amended by  
No. 95/2003  
s. 17(1).

(4) This section does not apply in respect of an injury caused to or suffered by a worker outside Australia if the worker—

(a) has never resided in Australia; or

(b) had ceased to reside in Australia at the time the injury occurred.

S. 84B  
inserted by  
No. 95/2003  
s. 18.

#### **84B Person not to be compensated twice**

(1) Compensation under this Act is not payable in respect of an injury to the extent that compensation has been received in respect of the same injury under the laws of a place other than this State (whether within or outside Australia).

(2) If a person receives compensation under this Act in respect of an injury and, in respect of the same injury, subsequently receives compensation under the laws of a place other than this State (whether within or outside Australia), the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).

- (3) The amount that is recoverable under subsection (2) is—
- (a) the amount of compensation paid under this Act; or
  - (b) the amount of compensation received under the laws of the place other than this State—
- whichever is less.

## **85 Entitlement to damages outside Victoria**

S. 85  
(Heading)  
inserted by  
No. 95/2003  
s. 19(1).

- (1) This section shall apply where an injury is caused to or suffered by a worker which gives the worker a right of action under the law of any place outside Victoria (whether within or outside Australia) in circumstances which would otherwise have entitled the worker or the worker's dependants to compensation under this Act.

S. 85(1)  
amended by  
Nos 83/1987  
s. 37(3),  
95/2003  
s. 19(2)(a)(b).

- (2) Subject to subsection (3), if—

S. 85(2)  
amended by  
No. 95/2003  
s. 19(3)(c)(d).

- (a) damages has not been paid or recovered; and

S. 85(2)(a)  
amended by  
No. 95/2003  
s. 19(3)(a).

- (b) judgment for damages has not been given or entered—

S. 85(2)(b)  
amended by  
No. 95/2003  
s. 19(3)(b).

in respect of the injury under the law of any place outside Victoria (whether within or outside Australia), the worker or in the case of the death of the worker the worker's dependants shall be entitled to compensation under this Act as if there

were no right of action under the law of any place outside Victoria.

S. 85(3)  
amended by  
No. 95/2003  
s. 19(4)(a)(b).

- (3) A person who has a right of action in respect of an injury under the law of any place outside Victoria (whether within or outside Australia) shall not be entitled to claim compensation in respect of the injury under this Act if in respect of the injury under the law of any place outside Victoria—

S. 85(3)(a)  
amended by  
No. 95/2003  
s. 19(4)(c).

- (a) the person has been paid or recovered any amount of damages;

S. 85(3)(b)  
substituted by  
No. 95/2003  
s. 19(4)(d).

- (b) judgment for damages has been given or entered;

- (c) any payment into court has been accepted;

- (d) there has been a settlement or compromise of any claim; or

S. 85(3)(e)  
amended by  
No. 95/2003  
s. 19(4)(e).

- (e) any action for damages is pending.

S. 85(4)  
amended by  
No. 95/2003  
s. 19(5)(c).

- (4) If—

S. 85(4)(a)  
amended by  
No. 95/2003  
s. 19(5)(a).

- (a) damages has been paid or recovered; or



(b) judgment for damages has been given or entered—

S. 85(4)(b)  
amended by  
No. 95/2003  
s. 19(5)(b).

in respect of the injury under the law of any place outside Victoria (whether within or outside Australia) the worker or in the case of the death of the worker the worker's dependants shall not be entitled to compensation under this Act.

(5) The worker or in the case of the death of the worker the worker's dependants shall not be entitled to compensation under this Act if a payment into court has been accepted by the worker or the worker's dependants in proceedings or a settlement or compromise of a claim has been made in respect of the injury under the law of any place outside Victoria (whether within or outside Australia).

S. 85(5)  
amended by  
No. 95/2003  
s. 19(6).

(6) If a person—

(a) receives compensation under this Act in respect of any injury; and

S. 85(6)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 78(1)(h),  
81/1998  
s. 23(a),  
95/2003  
s. 19(7)(a).

(b) subsequently obtains damages or an award of damages, accepts a payment into court or settles or compromises a claim in respect of the injury under the law of any place outside Victoria (whether within or outside Australia)—

S. 85(6)(b)  
amended by  
No. 95/2003  
s. 19(7)(a)(b).

the Authority, employer or a self-insurer shall be entitled to recover from that person the amount of compensation paid under this Act or an amount equal to the damages or payment obtained or made, settled or compromised whichever is the lesser amount.

S. 85(7)  
amended by  
No. 50/1994  
s. 35(1).

- (7) Any dispute under subsection (6) shall be determined by a court of competent jurisdiction.

S. 85(8)  
amended by  
No. 95/2003  
s. 19(8)(a)(b).

- (8) Unless a worker produces satisfactory evidence to the contrary, any amount recovered or to be recovered by a worker under the law of any place outside Victoria (whether within or outside Australia) as damages in respect of an injury shall be presumed to be damages for the same injury in respect of which the worker claims compensation or a right of action under this Act.

S. 86  
amended by  
Nos 67/1992  
s. 13(1),  
95/2003  
s. 3(7)(a)–(c)  
(ILA s. 39B(1)).

## 86 Compensation for disease due to employment

S. 86(1)  
amended by  
No. 50/1994  
s. 35(2)  
substituted by  
No. 80/2010  
s. 49.

- (1) Subject to section 82(2B), if—
- (a) a worker suffers a disease that results in, or materially contributes to, the worker having either a current work capacity or no current work capacity; or
  - (b) the death of a worker is caused, or materially contributed to, by a disease—

and the disease is due to the nature of any employment in which the worker was employed at any time before notice of an injury relating to the disease is given under section 102, the worker or the worker's dependants are entitled to compensation under this Act as if the disease were an injury arising out of or in the course of employment.

### Note

*current work capacity* is defined (section 5(1)) as a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment.

- (1A) For the purposes of subsection (1), a disease suffered by a worker is to be regarded as due to the nature of employment if, and only if, the nature of the employment gave rise to a significantly greater risk of the worker contracting the disease than had the worker not been employed in employment of that nature.
- (2) Despite subsection (1), compensation is not payable in respect of a disease to the extent that the disease consists of, is caused by, results in or is associated with a heart attack injury or a stroke injury unless the worker's employment was a significant contributing factor to the disease or to the injury.

S. 86(1A)  
inserted by  
No. 80/2010  
s. 49.

S. 86(2)  
inserted by  
No. 95/2003  
s. 3(7)(c).

**Note**

This section in its current form only applies to injuries that occur on or after the date of commencement of section 3 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 263.

**87 Proclaimed diseases**

- (1) The Governor in Council, after consultation by the Minister with the Authority, may by proclamation published in the Government Gazette from time to time proclaim diseases in relation to places, processes or occupations for the purpose of this section.
- (2) Without derogating from section 86, if at the time a claim was made a proclamation under subsection (1) was in force and—
- (a) the worker has been employed at any place or in any process or occupation proclaimed under subsection (1); and

S. 87(1)  
amended by  
No. 67/1992  
s. 64(7)(a).

S. 87(2)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 78(1)(d),  
81/1998  
s. 23(b).

(b) has contracted a disease specified in relation to that place, process or occupation—

then the disease shall be deemed to be due to the nature of the employment at such place or in such process or occupation unless the employer or the Authority or a self-insurer, as the case may be, proves to the contrary.

S. 87(3)  
amended by  
Nos 64/1989  
s. 35(d),  
67/1992  
s. 13(2),  
50/1993  
s. 78(1)(f),  
81/1998  
s. 23(a).

- (3) A disease contracted by a worker shall be deemed to be a disease specified in a proclamation under subsection (1) in relation to a place, process or occupation if the Authority, self-insurer, a Conciliation Officer or the County Court (as the case requires) is satisfied that the disease contracted is substantially the same disease as the disease specified in the proclamation.

## **88 Compensation for industrial deafness**

- (1) Industrial deafness or a proportion of industrial deafness which has occurred in circumstances which do not create any liability to pay compensation under this Act shall be excluded from the assessment of deafness for the purposes of calculating compensation under this section.
- (2) Compensation for industrial deafness shall be in accordance with this section and section 89 and Divisions 2, 2A and 2B.

S. 88(2)  
amended by  
Nos 64/1989  
s. 35(e)(i),  
80/2010  
s. 86(1),  
67/2013  
s. 628(1).

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- (3) Unless the Authority, self-insurer, a Conciliation Officer, the Medical Panel or the County Court (as the case requires) determines otherwise industrial deafness shall be deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment.
- S. 88(3)  
amended by  
Nos 64/1989  
s. 35(e)(ii),  
67/1992  
s. 13(3),  
50/1993  
s. 78(1)(f),  
50/1994  
s. 35(3),  
81/1998  
s. 23(a),  
102/2004  
s. 17(2).
- (4) Notwithstanding subsection (3) and subject to subsection (5), if a worker sustains industrial deafness, the injury is deemed to have been sustained by the worker on the last day on which the worker was—
- S. 88(4)  
amended by  
No. 64/1989  
s. 9(3)  
substituted by  
No. 80/2010  
s. 86(2).
- (a) performing duties; or
- (b) exposed to conditions—
- by reason of which the injury was due to the nature of the worker's employment or arose out of or in the course of the worker's employment.
- (5) Notwithstanding subsection (3), if a worker sustains industrial deafness and on the day on which the worker gives, serves or lodges a claim for compensation in respect of the injury, the worker is still—
- S. 88(5)  
inserted by  
No. 80/2010  
s. 86(2).
- (a) performing duties; or
- (b) exposed to conditions—
- by reason of which the injury is due to the nature of the worker's employment or arises out of or in the course of employment, the injury is deemed to have been sustained on that day.

## 89 Further diminution of hearing

S. 89  
(Heading)  
inserted by  
No. 80/2010  
s. 87(1).

S. 89(1)  
amended by  
No. 102/2004  
s. 15(1).

- (1) In this section and sections 88, 91 and 98C—

S. 89(1) def. of  
*Compensation law*  
inserted by  
No. 102/2004  
s. 15(2).

*Compensation law* means this Act, the **Workers Compensation Act 1958** or any other workers compensation law of the Commonwealth or a State or Territory of the Commonwealth;

*further injury* means a further loss of hearing in respect of industrial deafness after a worker has on one or more occasions suffered a prior injury;

S. 89(1) def. of  
*prior hearing loss*  
inserted by  
No. 102/2004  
s. 15(2).

*prior hearing loss* means a loss of hearing for which a worker has received compensation under a Compensation law for loss of hearing;

*prior injury* means industrial deafness for which the worker has received or become entitled to receive compensation for loss of hearing.

S. 89(2)  
amended by  
No. 102/2004  
s. 15(3)(a)(b).

- (2) Subject to subsection (3A), a worker who suffers a further injury shall be entitled to receive in respect of the further injury, in addition to any other compensation payable under section 88, compensation in accordance with section 98C(3A), being compensation referable to a percentage calculated in accordance with subsection (3) of the amount that would have been payable for a total loss of hearing.

(3) The percentage shall be the difference between—

- (a) the total percentage of the diminution of hearing in respect of industrial deafness from which the worker was suffering immediately after the further injury in respect of which the claim is made; and

S. 89(3)(a)  
amended by  
Nos 102/2004  
s. 15(4)(a),  
80/2010  
s. 87(2)(a).

**Note**

The percentage NAL loss is to be determined in accordance with section 91(4). The percentage NAL loss is then converted in accordance with section 91(3).

Note to  
s. 89(3)(a)  
inserted by  
No. 28/2005  
s. 17(1).

- (b) the total percentage of the diminution of hearing in respect of industrial deafness immediately after the prior injury or prior hearing loss or in the case of more than one prior injury or prior hearing loss the latest of the prior injuries or prior hearing losses.

S. 89(3)(b)  
amended by  
Nos 102/2004  
s. 15(4)(b),  
80/2010  
s. 87(2)(a).

**Note**

The percentage NAL loss is to be determined in accordance with section 89(3C). The percentage NAL loss is then converted in accordance with section 91(3A).

Note to  
s. 89(3)(b)  
inserted by  
No. 28/2005  
s. 17(2).

- (3A) Despite anything to the contrary in this Act, a worker who suffers a further injury is not entitled to compensation under this section or section 98C unless the worker has a diminution of hearing assessed as a binaural loss of hearing of at least 10 percent NAL resulting from the further injury and any prior injury or prior hearing loss.

S. 89(3A)  
inserted by  
No. 102/2004  
s. 15(5),  
amended by  
No. 80/2010  
s. 87(2)(b).

- (3B) The total percentage referred to in subsection (3)(a) is to be determined in accordance with section 91(4).

S. 89(3B)  
inserted by  
No. 102/2004  
s. 15(5).

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S. 89(3C)  
inserted by  
No. 102/2004  
s. 15(5).

- (3C) The total percentage referred to in subsection (3)(b) is to be determined by reference to—
- (a) if a percentage has been determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory, that percentage; or
  - (b) in any other case, the percentage which having regard to the medical evidence available is determined to be the equivalent of the percentage that (as nearly as can be estimated) would have been determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

S. 89(3D)  
inserted by  
No. 102/2004  
s. 15(5).

- (3D) If a worker disputes the total percentage referred to in subsection (3)(b) as determined in accordance with subsection (3C), the Authority, self-insurer or a court must refer the question of what is the amount of the total percentage referred to in subsection (3)(b) as a medical question to a Medical Panel for an opinion.
- (4) For the purposes of this section the register kept under section 90 shall be taken into account.

S. 89(5)  
inserted by  
No. 107/1997  
s. 24,  
repealed by  
No. 102/2004  
s. 15(6).

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## **90 Effect of determination for industrial deafness**

- (1) A determination for the payment of compensation for industrial deafness which is not reviewed shall be a final determination in respect of the percentage of the diminution of the worker's hearing on the date of the assessment.
- (2) A determination for the payment of compensation shall state the percentage of diminution of the worker's hearing in respect of industrial deafness at the date of the determination in relation to which the amount of the compensation is assessed.
- (3) A determination for compensation for industrial deafness shall fully extinguish all rights of the worker to compensation for industrial deafness under section 98, 98C or 98E or under the **Workers Compensation Act 1958** up to the date of the determination but shall not prevent the worker from obtaining compensation under section 98, 98C or 98E for further industrial deafness suffered after that date.
- (4) The Authority shall be advised of any determination for the payment of compensation for industrial deafness.
- (5) The Authority shall keep a register of determinations for the payment of compensation for industrial deafness notified under subsection (4).

S. 90(3)  
amended by  
No. 107/1997  
s. 37(1)(a)(b).

S. 90(4)  
amended by  
Nos 67/1992  
s. 14(a),  
50/1994  
s. 35(4).

S. 90(5)  
amended by  
No. 67/1992  
s. 14(b)(i)(ii).

## **90A Assessment of lung injury**

Despite section 91(1A)(a), an assessment of the degree of impairment of the whole person resulting from either of the following may be made regardless of whether the degree of impairment has stabilised—

S. 90A  
inserted by  
No. 10/2022  
s. 3.

- (a) a serious lung injury;
- (b) an injury that has been treated with lung transplant surgery.

S. 90B  
inserted by  
No. 10/2022  
s. 3.

**90B Compensation for serious lung injury**

- (1) Despite section 104B(1A), the Authority or a self-insurer may receive a claim for compensation under section 98C or 98E for a serious lung injury at any time after the date of the injury.
- (2) For the purposes of subsection (1), the Authority or self-insurer, having regard to any relevant matter including medical evidence, must be satisfied that—
  - (a) the degree of impairment from the injury is unlikely to stabilise; and
  - (b) the injury requires treatment with lung transplant surgery.

S. 90C  
inserted by  
No. 10/2022  
s. 3.

**90C Compensation for injury treated with lung transplant surgery**

- (1) Despite section 104B(1A), the Authority or a self-insurer may receive a claim for compensation under section 98C or 98E for an injury that has been treated with lung transplant surgery at any time after the date of the injury.
- (2) For the purposes of a claim referred to in subsection (1), the degree of impairment of the worker is taken to be the greater of—
  - (a) the degree of impairment assessed in accordance with this Part; or
  - (b) 30 per cent.
- (3) For the purposes of subsections (1) and (2), the Authority or self-insurer, having regard to any relevant matter including medical evidence, must be satisfied that lung transplant surgery was required to treat the injury.

**90D Further impairment related to lung injury**

S. 90D  
inserted by  
No. 10/2022  
s. 3.

- (1) Despite section 104B(5AA), a worker who has received or become entitled to receive compensation under section 98C in respect of a serious lung injury may make a further claim for compensation under that section in respect of the injury after undergoing lung transplant surgery.
- (2) Compensation referred to in subsection (1) is to be determined in accordance with section 98C(3B), being compensation referable to a percentage which is the difference between—
  - (a) the degree of impairment suffered by the worker after undergoing lung transplant surgery; and
  - (b) the degree of impairment resulting from the worker's serious lung injury, as assessed for the purposes of the earlier claim.

**Note**

The deemed minimum level of impairment of a worker who has undergone lung transplant surgery is 30 per cent—see section 90C(2).

- (3) Compensation payable in accordance with section 98C(3B) is payable in addition to any other compensation payable in accordance with this Act.

**91 Assessment of impairment**

S. 91  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 78(1)(h),  
repealed by  
No. 50/1994  
s. 36,  
new s. 91  
inserted by  
No. 60/1996  
s. 9.

- (1) In this Part, a reference to the assessment of a degree of impairment in accordance with this section is a reference to an assessment—

S. 91(1)(a)(i)  
amended by  
No. 107/1997  
s. 25(1),  
substituted by  
No. 26/2000  
s. 13(1),  
amended by  
No. 60/2007  
s. 25(1).

(a) made in accordance with—

- (i) the A.M.A Guides as applicable subject to subsections (1A) and (1B); or

S. 91(1)(a)(ia)  
inserted by  
No. 41/2006  
s. 9(1),  
amended by  
No. 60/2007  
s. 25(2).

- (ia) the A.M.A Guides as applicable subject to subsections (1A) and (1B) and guidelines in accordance with subsection (6), (6A) or (6B); or

- (ii) methods prescribed for the purposes of this section—

and in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister;  
and

- (b) if the Minister has approved a training course in the application of those Guides or methods, made by a medical practitioner who has successfully completed such a training course.

S. 91(1A)  
inserted by  
No. 60/2007  
s. 25(3).

(1A) Despite anything to the contrary in the A.M.A Guides, an assessment under subsection (1) of the degree of impairment resulting from an injury must be made—

- (a) after the injury has stabilised; and
- (b) subject to subsection (7), based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical

or surgical treatment undergone by the worker in respect of the injury.

- (1B) The A.M.A Guides apply in respect of an assessment under section 3.3d of Chapter 3 of the A.M.A Guides as if the following were omitted—

S. 91(1B)  
inserted by  
No. 60/2007  
s. 25(3).

"with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment".

- (2) In assessing a degree of impairment under subsection (1), regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.

- (3) For the purposes of assessing the degree of impairment of the whole person resulting from diminution of hearing, the percentage of the diminution of hearing determined in accordance with subsection (4) is to be converted as follows—

S. 91(3)  
inserted by  
No. 107/1997  
s. 25(2),  
amended by  
No. 80/2010  
s. 88(1)(a).

- (a) if the diminution of hearing assessed as a binaural loss of hearing is less than 10 per cent NAL, the degree of impairment is zero;

S. 91(3)(a)  
amended by  
No. 80/2010  
s. 88(1)(b).

- (b) if the diminution of hearing assessed as a binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;

S. 91(3)(b)  
amended by  
No. 80/2010  
s. 88(1)(b).

- (c) if the diminution of hearing assessed as a binaural loss of hearing is more than 10 per cent NAL, the degree of impairment is the percentage equivalent of the number (rounded up to the next whole number) given by the formula—

S. 91(3)(c)  
amended by  
No. 80/2010  
s. 88(1)(b).

$10 + [0.278 (NAL - 10)]$ —

where NAL is the percentage of diminution of hearing determined in accordance with subsection (4).

S. 91(3AAA)  
inserted by  
No. 80/2010  
s. 88(2).

(3AAA) Impairment from industrial deafness or a proportion of such impairment that occurs in circumstances that do not create a liability to pay compensation under this Act must be excluded from the assessment of deafness for the purposes of assessing the degree of impairment under this section.

S. 91(3AAB)  
inserted by  
No. 80/2010  
s. 88(2).

(3AAB) Unless the Authority, self-insurer, Medical Panel or County Court (as the case requires) determines otherwise, impairment from industrial deafness is deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment.

S. 91(3AA)  
inserted by  
No. 28/2005  
s. 18,  
amended by  
No. 80/2010  
s. 88(3)(a).

(3AA) In the case of a further injury, for the purposes of assessing the degree of impairment of the whole person resulting from a diminution of hearing assessed as a binaural hearing impairment from which the worker was suffering immediately after the further injury in respect of which the claim is made, the percentage of the diminution of hearing is to be determined in accordance with subsection (4) and converted in accordance with subsection (3).

S. 91(3A)  
inserted by  
No. 102/2004  
s. 16(1),  
substituted by  
No. 28/2005  
s. 18,  
amended by  
No. 80/2010  
s. 88(3)(b)(i).

(3A) In the case of a further injury, for the purposes of assessing the degree of impairment of the whole person resulting from a diminution of hearing in respect of prior injury or prior hearing loss, the percentage of the diminution of hearing is to be determined in accordance with sections 89(3C) and 89(3D) and converted as follows—

- |  |   |
|--|---|
| (a) if the diminution of hearing assessed as a binaural loss of hearing is less than 10 per cent NAL, the degree of impairment is equal to that per cent (rounded up to the next whole number);  | S. 91(3A)(a)<br>amended by<br>No. 80/2010<br>s. 88(3)(b)(ii).                                   |
| (b) if the diminution of hearing assessed as a binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;   | S. 91(3A)(b)<br>amended by<br>No. 80/2010<br>s. 88(3)(b)(ii).                                   |
| (c) if the diminution of hearing assessed as a binaural loss of hearing is more than 10 per cent NAL, the degree of impairment is the percentage equivalent of the number (rounded up to the next whole number) given by the formula—<br><br>$10 + [0.278 (NAL - 10)]$ —<br><br>where NAL is the percentage of diminution of hearing determined in accordance with sections 89(3C) and 89(3D). | S. 91(3A)(c)<br>amended by<br>No. 80/2010<br>s. 88(3)(b)(ii).                                   |
| (4) For the purposes of this section and section 89(3)(a), the percentage of diminution of hearing—  | S. 91(4)<br>inserted by<br>No. 107/1997<br>s. 25(2),<br>amended by<br>No. 102/2004<br>s. 16(2). |
| (a) must be assessed as a binaural loss of hearing and determined—<br><br>(i) by a person or class of persons approved; and<br><br>(ii) in the manner approved—<br><br>by the Minister; and  | S. 91(4)(a)<br>amended by<br>No. 80/2010<br>s. 88(3)(c).  |
| (b) must be assessed as a binaural loss of hearing and determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or   | S. 91(4)(b)<br>amended by<br>No. 80/2010<br>s. 88(3)(c).  |

a later prescribed edition) published by the  
National Acoustic Laboratory.

S. 91(5)  
inserted by  
No. 107/1997  
s. 25(2),  
amended by  
No. 82/2001  
s. 14.

- (5) An approval by the Minister for the purposes of subsection (4)(a)(i) continues in force for the period not exceeding 3 years as is specified by the Minister in the approval unless revoked by the Minister.

S. 91(6)  
inserted by  
No. 107/1997  
s. 25(2),  
amended by  
No. 26/2000  
s. 13(2),  
substituted by  
No. 41/2006  
s. 9(2).

- (6) For the purposes of assessing the degree of psychiatric impairment the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".

S. 91(6A)  
inserted by  
No. 41/2006  
s. 9(2).

- (6A) For the purposes of assessing the degree of occupational asthma impairment—
- (a) the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 5, Tables 8 and 10, there were substituted the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma"; and
  - (b) occupational asthma has the meaning given by the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma".

S. 91(6B)  
inserted by  
No. 41/2006  
s. 9(2).

- (6B) For the purposes of assessing the degree of infectious occupational diseases impairment—
- (a) the A.M.A Guides apply, subject to any regulations made for the purposes of this section and subject to the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases"; and



- (b) infectious occupational disease has the meaning given by the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases".
- (6C) The guidelines referred to in subsections (6), (6A) and (6B)—
- (a) must be published by the Authority in the Government Gazette;
- (b) have effect on the day after the day on which the guidelines are published in the Government Gazette;
- (c) may be amended, varied or substituted by a subsequent edition of the guidelines published by the Authority in the Government Gazette.
- (7) For the purposes of section 98C—
- (a) impairments other than psychiatric impairments resulting from injuries which arose out of the same incident or occurred on the same date are to be assessed together using the combination tables in the A.M.A Guides;
- (b) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury;
- (c) impairments from unrelated injuries or causes are to be disregarded in making an assessment;
- (d) assessments are to specify the whole person values for each chapter of the A.M.A Guides used in the assessment.
- S. 91(6C) inserted by No. 41/2006 s. 9(2).
- S. 91(7) inserted by No. 107/1997 s. 25(2).
- S. 91(7)(c) amended by No. 95/2003 s. 8(3)(a).
- S. 91(7)(d) inserted by No. 95/2003 s. 8(3)(b), amended by No. 60/2007 s. 25(4).

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**Note**

Paragraph (d) only applies in respect of assessments for injuries that occur on or after the date of commencement of section 8 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 264(2).

S. 91(7AA)  
inserted by  
No. 9/2010  
s. 53.

- (7AA) For the purposes of section 98C(2A)(a)(ii) and (iii), assessments of spinal impairment are to specify the whole person values derived in accordance with section 3.3 of Chapter 3 of the A.M.A. Guides.

S. 91(7A)  
inserted by  
No. 26/2000  
s. 13(3),  
amended by  
No. 82/2001  
s. 5.

- (7A) For the purposes of Subdivision 1 of Division 3A and of section 134AB—
- (a) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury; and
  - (b) impairments from unrelated injuries or causes are to be disregarded in making an assessment.

S. 91(7B)  
inserted by  
No. 26/2000  
s. 13(4).

- (7B) Regulations made under this Act may modify the A.M.A. Guides.

S. 91(7C)  
inserted by  
No. 82/2001  
s. 15,  
amended by  
No. 60/2007  
s. 25(4).

- (7C) If a regulation is made under subsection (7B), the A.M.A. Guides as modified by the regulation only apply in respect of an injury occurring on or after the date the modification takes effect.

S. 91(8)  
inserted by  
No. 107/1997  
s. 25(2),  
amended by  
No. 26/2000  
s. 13(5),  
repealed by  
No. 80/2010  
s. 88(3)(d).

\* \* \* \* \*

- (9) Despite anything to the contrary in the A.M.A Guides, in determining a person's degree of impairment, no number determined under the A.M.A Guides is to be rounded up or down, regardless of whether the number represents an initial, an intermediate, a combined or a final value, unless the rounding is expressly required or permitted by this Act.

S. 91(9)  
inserted by  
No. 107/1997  
s. 25(2),  
substituted by  
No. 95/2003  
s. 7,  
amended by  
No. 60/2007  
s. 25(4).

- (10) A number determined under the A.M.A Guides must be rounded to the nearest whole percent.

**Example**

A final degree of impairment of 9.5% must be rounded to 10%. A final degree of impairment of 8.4% must be rounded to 8%.

**Note**

Section 264(1) sets out the transitional provisions that apply to subsections (9) and (10). Section 255 re-enacts former sections 91(9) and 91(10) (which were transitional provisions in relation to amendments made by the **Accident Compensation (Miscellaneous Amendment) Act 1997**).

S. 91(10)  
inserted by  
No. 107/1997  
s. 25(2),  
substituted by  
No. 95/2003  
s. 7,  
amended by  
No. 60/2007  
s. 25(4).

- (11) This subsection applies if—

- (a) an assessment is made for the purposes of section 98C of a worker's degree of impairment; and
- (b) the injury in respect of which the assessment is made occurred before the commencement of section 8 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**; and
- (c) the degree of impairment is determined to be 8% or 9%.

S. 91(11)  
inserted by  
No. 95/2003  
s. 7.

- (12) If subsection (11) applies, the degree of impairment may be rounded in accordance with the A.M.A Guides.

S. 91(12)  
inserted by  
No. 95/2003  
s. 7,  
amended by  
No. 60/2007  
s. 25(4).

## **Division 1A—Determination by courts and recognition of determinations**

Pt 4 Div. 1A  
(Heading and  
ss 91A–91D)  
inserted by  
No. 95/2003  
s. 20.

S. 91A  
inserted by  
No. 95/2003  
s. 20.

S. 91A(1)  
amended by  
No. 5/2021  
s. 33.

### **91A Determination of State with which worker's employment is connected in proceedings under this Act**

- (1) If the question of whether this State is connected with a worker's employment arises in proceedings in a court in relation to a claim for compensation under this Act or a request for provisional payments under Division 2BA, that court must—
  - (a) determine the State with which the worker's employment is connected in accordance with section 80; and
  - (b) cause that determination to be entered in the records of the court.
- (2) Subsection (1) does not apply if there is a determination that is to be recognised under section 91C.

S. 91B  
inserted by  
No. 95/2003  
s. 20.

### **91B Determination by County Court of State with which worker's employment is connected**

S. 91B(1)  
amended by  
No. 5/2021  
s. 34.

- (1) If a claim for compensation has been made under this Act or a request for provisional payments has been made under Division 2BA, a party to the claim or request may apply to the County Court for a determination of the question of which State is the State with which the worker's employment is connected.
- (2) The County Court must determine an application under subsection (1) in accordance with section 80 and cause that determination to be entered in the records of the court.

- (3) An application under subsection (1) is not to be made or heard if there is a determination that is to be recognised under section 91C.

**91C Recognition of previous determinations**

S. 91C  
inserted by  
No. 95/2003  
s. 20.

- (1) If a determination of the State with which a worker's employment is connected has been made—
- (a) by a court of this State under section 91A or 91B; or
  - (b) by a designated court under a provision of a law that corresponds with section 91A or 91B; or
  - (c) by a court of this State or another State in the course of proceedings on a claim for damages—

the State so determined is to be recognised for the purposes of this Act as the State with which the worker's employment is connected.

- (2) This section does not prevent any appeal relating to any such determination of a court. If the determination is altered on appeal, the altered determination is to be recognised under subsection (1).
- (3) In this section—

*corresponding law* means the provisions of the statutory workers compensation scheme of another State that corresponds with section 80;

*designated court* means—

- (a) the Supreme Court of a State in which a corresponding law is in force; or
- (b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is

S. 91C(3)  
def. of  
*designated court*  
amended by  
No. 41/2006  
s. 10.

declared by the Minister to be a designated court for the purposes of this section by a notice published in the Government Gazette;

*State* includes Territory.

S. 91D  
inserted by  
No. 95/2003  
s. 20.

#### **91D Determination may be made by consent**

In this Division a reference to a determination made by a court or a designated court in a proceeding includes a reference to a determination made by the court with the consent of the parties to the proceeding.

Pt 4 Div. 2  
(Heading and  
ss 92–100)  
amended by  
Nos 48/1986  
ss 5, 15, 16,  
48/1987 s. 5,  
83/1987  
ss 38–43,  
substituted as  
Pt 4 Div. 2  
(Heading and  
ss 92–100A)  
by No.  
64/1989 s. 10.

### **Division 2—Benefits**

S. 91E  
inserted by  
No. 9/2010  
s. 30 (as  
amended by  
No. 80/2010  
s. 159(c)).

#### **91E Definitions applicable to this Division**

In this Division—

S. 91E def. of  
*deductible  
amount*  
inserted by  
No. 80/2010  
s. 50(1),  
amended by  
No. 67/2013  
s. 628(2)(a).

*deductible amount* means the sum of the value, in respect of a week, of each non-pecuniary benefit referred to in section 5AB(1)(d) that is provided by the employer to a worker in respect of that week (whether or not received by the worker during the relevant period), being a non-pecuniary benefit that—

- (a) was provided by the employer to the worker for the performance of work by the worker before the worker sustained the relevant injury and continues after the injury to be provided by the employer for the benefit of the worker or a member of the family of the worker; or
- (b) was not provided by the employer before the worker sustained the relevant injury but is provided by the employer after the injury for the benefit of the worker or a member of the family of the worker;

***first entitlement period***, in relation to a claim for compensation in the form of weekly payments made by a worker—

- (a) if the claim is made by a pre-12 November 1997 claimant and relates to an injury arising before that date, means an aggregate period of incapacity for work not exceeding 26 weeks (whether or not consecutive) after the worker became entitled to compensation in the form of weekly payments in respect of the incapacity;
- (b) if the claim is made on or after 12 November 1997, means an aggregate period not exceeding 13 weeks (whether or not consecutive) in respect of which a weekly payment has been paid or is payable to the worker;

***pre-12 November 1997 claimant***, in relation to a claim for compensation in the form of weekly payments given, served or lodged before 12 November 1997 in respect of an

injury arising before that date, means a worker who—

- (a) as at that date, was entitled to compensation in the form of weekly payments in accordance with section 93A or 93B (as in force before the commencement of section 31 of the **Accident Compensation Amendment Act 2010**); or
- (b) on or after that date, was determined under this Act to have been so entitled as at 12 November 1997; or
- (c) but for the operation of section 96 (as in force before the commencement of section 31 of the **Accident Compensation Amendment Act 2010**) would have been so entitled as at 12 November 1997;

*second entitlement period*, in relation to a claim for compensation in the form of weekly payments made by a worker—

- (a) if the claim is made by a pre-12 November 1997 claimant and relates to an injury arising before that date, means an aggregate period of 78 weeks (whether or not consecutive) after the first entitlement period in respect of which a weekly payment has been paid or is payable to the worker;
- (b) if the claim is made on or after 12 November 1997 and received by the Authority or self-insurer before 1 January 2005, means an aggregate period of 91 weeks (whether or not consecutive) after the expiry of the first entitlement period in respect of which a



weekly payment has been paid or is payable to the worker;

- (c) if the claim is received by the Authority or self-insurer on or after 1 January 2005, means an aggregate period of 117 weeks (whether or not consecutive) after the expiry of the first entitlement period in respect of which a weekly payment has been paid or is payable to the worker;

***serious injury***, in relation to a claim for compensation in the form of weekly payments made before 12 November 1997, means an injury to a worker in respect of which the worker's degree of impairment, if assessed by the Authority or self-insurer in accordance with section 91, would be 30 per cent or more;

S. 91E def. of *serious injury* amended by No. 67/2013 s. 628(2)(b).

***week***, for the purposes of—

- (a) paragraph (b) of the definition of ***first entitlement period***;
- (b) the definition of ***second entitlement period***;
- (c) the definition of ***enhancement period***;
- (d) calculating a period of weeks referred to in section 93CE, 114 (other than subsection (5A)(b), (9A)(b)(ii) or (13)(c) or (e)), 116 or 117—

S. 91E def. of *week* inserted by No. 67/2013 s. 628(2)(c), amended by No. 21/2015 s. 3(Sch. 1 item 2.1).

means a week in respect of which any amount of compensation in the form of weekly payments or weekly payments of pension or superannuation contributions is paid or payable, whether for all or any part of that week.

S. 91EA  
inserted by  
No. 80/2010  
s. 51.

### **91EA Twice State average weekly earnings**

- (1) Where, under this Division—
  - (a) a person is entitled, in relation to a financial year, to an amount at the rate of the whole or a part of twice the State average weekly earnings; and
  - (b) continues to be so entitled; and
  - (c) the amount of State average weekly earnings is reduced in respect of a subsequent financial year—the person's entitlement, in respect of that subsequent financial year, is to be calculated as if the reduction had not taken effect, except for the purposes of this section.
- (2) If the amount of State average weekly earnings—
  - (a) is reduced in respect of a financial year; and
  - (b) is increased in respect of a subsequent financial year—that increase has effect in relation to a person to whom subsection (1) applies only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of the previous financial year, or that part of the reduction that has not been set off against a previous increase.
- (3) For the purposes of this Act, if twice the State average weekly earnings is an amount that includes a fraction of a dollar, a reference in this Act to twice the State average weekly earnings is a reference to that amount calculated—
  - (a) if that amount is less than \$1000, to the nearest whole dollar;
  - (b) if that amount is more than \$1000, to the nearest \$10.

(4) For the purposes of this section—

- (a) a person who becomes entitled, in relation to a financial year, to an amount at the rate of the whole or a part of twice the State average weekly earnings; and
- (b) in that financial year, the amount of State average weekly earnings is reduced in respect of the previous financial year—

the person's entitlement, in respect of that financial year, is to be calculated using the amount of State average weekly earnings in the last preceding financial year in which the State average weekly earnings was not reduced.

S. 91EA(4)  
inserted by  
No. 41/2016  
s. 4.

**92 Compensation for death of a worker**

S. 92  
substituted by  
No. 64/1989  
s. 10.

- (1A) This section does not apply in respect of a death occurring on or after 12 November 1997.

S. 92(1A)  
inserted by  
No. 107/1997  
s. 26.

- (1) If a worker's death results from or is materially contributed to by an injury which entitles the worker's dependants to compensation, the amount of the compensation must be determined—

S. 92(1)  
amended by  
Nos 67/1992  
s. 64(9)(a),  
50/1993  
s. 78(1)(c),  
50/1994  
s. 37(1),  
substituted by  
No. 9/2010  
s. 67(1).

- (a) if a dependant does not have legal representation, or is a minor or a person under a disability, by the court in accordance with this section; or
- (b) in all other cases, by the Authority or self insurer in accordance with this section.<sup>5</sup>

- (2) If the worker leaves any dependants wholly or mainly dependent on the worker's earnings the amount of compensation shall be—

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S. 92(2)(a)  
amended by  
No. 7/1996  
s. 49(b).

(a) the sum of \$128 420; and

S. 92(2)(b)  
amended by  
No. 7/1996  
s. 49(c).

(b) the appropriate additional sum specified in Column 2 of the Table to this subsection in the case of each child under the age and having the status specified in Column 1 of that Table who—

- (i) was wholly or mainly dependent on the earnings of the worker at the time of the death; or
- (ii) would, but for the incapacity of the worker prior to the worker's death, have been wholly or mainly dependent on the earnings of the worker at the time of death.

<i>Column 1</i>	<i>Column 2</i>
<i>Years of Age</i>	<i>Amounts of Compensation</i>
	\$
Under 1	24 470
Under 2	22 870
Under 3	21 310
Under 4	19 720
Under 5	18 140
Under 6	16 540
Under 7	14 970
Under 8	13 410
Under 9	11 840
Under 10	10 260
Under 11	8 690
Under 12	7 120
Not under 12 but under 16	5 530

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<i>Column 1</i>	<i>Column 2</i>
<i>Years of Age</i>	<i>Amounts of Compensation</i>
Not under 16 but under 21 (full-time student)	5 530
(3) If the worker does not leave any dependants wholly or mainly dependent on the worker's earnings but leaves any dependants partly dependent upon the worker's earnings, the amount of compensation shall be a sum not exceeding \$128 420 which the court, Authority or self-insurer <sup>6</sup> considers is reasonable and appropriate to the injury to those dependants.	S. 92(3) amended by Nos 67/1992 s. 64(9)(a), 50/1993 s. 78(1)(c), 50/1994 s. 37(1), 7/1996 s. 49(b), 9/2010 s. 67(2).
(4) If the worker being under the age of 21 years at the time of the injury leaves no dependants but immediately before the injury was contributing towards the maintenance of the home of the members of the worker's family, the members of the worker's family shall be deemed to be dependants of the worker partly dependent on the worker's earnings and the amount of compensation shall be a sum not exceeding \$128 420 which the court, the Authority or self-insurer <sup>7</sup> considers is reasonable and appropriate to the injury to those dependants.	S. 92(4) amended by Nos 67/1992 s. 64(9)(a), 50/1993 s. 78(1)(c), 50/1994 s. 37(1), 7/1996 s. 49(b), 9/2010 s. 67(3).
(5) In determining whether a spouse was wholly, mainly or in part dependent on the worker at the time of the death of the worker or other relevant time, no regard shall be had to any money which the spouse had earned or was earning by his or her own personal exertion or to any savings arising from any such earnings.	

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S. 92(6)  
amended by  
Nos 67/1992  
s. 64(9)(a),  
50/1993  
s. 78(1)(c),  
50/1994  
s. 37(1),  
9/2010  
s. 67(4).

- (6) If there are both total and partial dependants, the court, the Authority or self-insurer<sup>8</sup> shall determine the amount of compensation payable and shall allot the compensation to the total dependants and to the partial dependants in such proportions as it determines.

S. 92(7)  
substituted by  
No. 67/1992  
s. 64(9)(b),  
amended by  
Nos 50/1993  
s. 78(1)(c),  
50/1994  
s. 37(1),  
substituted by  
No. 9/2010  
s. 67(5).

- (7) A dependant is entitled to interest at the prescribed rate on an amount of compensation determined in accordance with this section—
- (a) in the case of a determination by the court—  
in respect of the period beginning on the date the claim for compensation was lodged in accordance with section 103 and ending on the date of the determination; or
- (b) in the case of a determination made by the Authority or self-insurer—in respect of the period beginning on the date the claim was lodged in accordance with section 103 and ending on the date the Authority or self-insurer makes the determination.<sup>9</sup>

S. 92A  
inserted by  
No. 107/1997  
s. 27(1).

## 92A Revised compensation for death of worker

- (1) In this section—

S. 92A(1)  
def. of  
*child*  
amended by  
No. 9/2010  
s. 68(1).

*child* means a person who—

- (a) is under the age of 16 years; or
- (b) is 16 years or more but under the age of 25 years and is a full-time student or full-time apprentice;

S. 92A(1)  
def. of  
*corresponding law*  
inserted by  
No. 9/2010  
s. 68(2)(a).

*corresponding law* means an Act of another State or Territory in relation to the status of a child who is born after the death of a person whether or not the birth of that child was a result of an assisted reproductive treatment

using the gametes, or an embryo formed  
from the gametes, of the deceased person;

***dependent child*** means a child who is a dependant  
of the worker and includes—

- (a) an orphan child;
- (b) a child born after the death of the  
worker where the deceased worker is  
that child's parent because of the **Status  
of Children Act 1974** or a  
corresponding law;

S. 92A(1)  
def. of  
*dependent  
child*  
substituted by  
No. 9/2010  
s. 68(2)(b).

***dependent partner*** means a partner who is, or  
would be but for the incapacity of the worker  
due to injury, wholly or mainly dependent on  
the worker's earnings;

S. 92A(1)  
def. of  
*dependent  
spouse*  
substituted as  
*dependent  
partner* by  
No. 27/2001  
s. 4(Sch. 2  
item 1.4(a)),  
substituted by  
No. 80/2010  
s. 52(1)(a).

***orphan child*** means a child—

- (a) who is a child of the worker and whose  
other parent—
  - (i) was dead before the death of the  
worker; or
  - (ii) was not, at the time of the death of  
the worker, a dependent partner of  
the worker and did not at that time  
wholly, mainly or in part provide  
economic support for the child; or
- (b) who is not a child of the worker and—
  - (i) whose parents were both dead  
before the worker died; or

S. 92A(1)  
def. of  
*orphan child*  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(b)),  
102/2004  
s. 14(1)(a).

- (ii) neither of whose parents, at the time of the death of the worker, wholly, mainly or in part provided economic support for the child and neither of whom was at that time a dependent partner of the worker;

S. 92A(1)  
def. of  
*partially  
dependent  
partner*  
inserted by  
No. 102/2004  
s. 14(1)(b),  
substituted by  
No. 80/2010  
s. 52(1)(b).

*partially dependent partner* means a partner who is, or would be but for the incapacity of the worker due to injury, to any extent dependent on the worker's earnings.

S. 92A(2)  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(c)),  
80/2010  
s. 52(2).

- (2) In determining, for the purposes of this section, whether a partner was a dependent partner at the time of the death of the worker or other relevant time, no regard shall be had to any money which the partner had earned or was earning by his or her own personal exertion or to any savings arising from any such earnings.

S. 92A(2A)  
inserted by  
No. 9/2010  
s. 68(3).

- (2A) For the purposes of this section and section 92B, a partner who resided with the worker at the time of the worker's death is deemed to have been dependent on the earnings of the worker at the time of the worker's death.

S. 92A(2B)  
inserted by  
No. 9/2010  
s. 68(3).

- (2B) Subsection (2A) applies to all claims first received on and from 10 December 2009—
- (a) by the Authority, whether forwarded by the employer or lodged by a partner to which that subsection applies; or
- (b) by a self-insurer, having been given or served on the self-insurer by a partner to which that subsection applies.



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| (3) If a worker's death results from or is materially contributed to by an injury which entitles the worker's dependants to compensation, the amount of compensation must be determined—<br><br>(a) if a dependant does not have legal representation, or is a minor or a person under a disability, by the court in accordance with this section; or<br><br>(b) in all other cases, by the Authority or self-insurer in accordance with this section. | S. 92A(3)<br>substituted by<br>No. 9/2010<br>s. 68(4).  |
| (4) If the worker leaves a dependent partner, or dependent partners, and no dependent child, the amount of compensation is \$555 350 payable to the dependent partner or, if there is more than one, in equal shares to the dependent partners.  | S. 92A(4)<br>amended by<br>Nos 27/2001<br>s. 4(Sch. 2<br>item 1.4(d)<br>(i)(ii)),<br>102/2004<br>s. 38(1)(c),<br>41/2006<br>s. 11(1),<br>9/2010<br>s. 68(5),<br>80/2010<br>s. 82(c),<br>67/2013<br>s. 632(c). |
| (5) If the worker leaves no dependent partner and no dependent children other than an orphan child or orphan children, the amount of compensation is \$555 350 payable to that orphan child or, if there are 2 or more, in equal shares for those children.  | S. 92A(5)<br>amended by<br>Nos 27/2001<br>s. 4(Sch. 2<br>item 1.4(e)),<br>102/2004<br>s. 38(1)(c),<br>41/2006<br>s. 11(1),<br>9/2010<br>s. 68(5),<br>80/2010<br>s. 82(c),<br>67/2013<br>s. 632(c).            |

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S. 92A(6)  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(f)  
(i)(ii)),  
102/2004  
s. 38(1)(d)(e),  
41/2006  
s. 11(2)(3),  
9/2010  
s. 68(6),  
80/2010  
s. 82(d)(e),  
67/2013  
s. 632(d)(e),  
substituted by  
No. 67/2013  
s. 628(3).

- (6) If the worker leaves a dependent partner, or dependent partners, and one, and only one, dependent child, the amount of compensation is \$555 350 of which—

S. 92A(6)(a)  
amended by  
No. 44/2014  
s. 27(1).

- (a) \$55 530 is payable to the dependent child;  
and

- (b) the balance—

- (i) is payable to the dependent partner; or  
(ii) if there is more than one dependent partner, is payable in equal shares to each of the dependent partners.

S. 92A(7)  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(f)  
(i)(ii)),  
102/2004  
s. 38(1)(c),  
41/2006  
s. 11(1),  
9/2010  
s. 68(7)(a) (as  
amended by  
No. 80/2010  
s. 159(l)(i)),  
80/2010  
s. 82(f),  
67/2013  
s. 632(f).

- (7) If the worker leaves a dependent partner, or dependent partners, and more than one and not more than 5 dependent children, the amount of compensation is \$555 350 payable in the following shares—

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| (a) \$27 770 to each dependent child; and   | S. 92A(7)(a)<br>amended by<br>Nos 102/2004<br>s. 38(1)(f),<br>41/2006<br>s. 11(4),<br>9/2010<br>s. 68(7)(b),<br>80/2010<br>s. 82(g),<br>67/2013<br>s. 632(g).  |
| (b) the balance to the dependent partner or, if<br>more than one, in equal shares to the<br>dependent partners.   | S. 92A(7)(b)<br>amended by<br>No. 27/2001<br>s. 4(Sch. 2<br>item 1.4(f)<br>(i)(ii)).   |
| (8) If a worker leaves a dependent partner, or<br>dependent partners, and more than 5 dependent<br>children, the amount of compensation is \$555 350<br>of which— | S. 92A(8)<br>amended by<br>Nos 27/2001<br>s. 4(Sch. 2<br>item 1.4(f)<br>(i)(ii)),<br>102/2004<br>s. 38(1)(c)(g)<br>(h), 41/2006<br>s. 11(1)(5)(6),<br>9/2010<br>s. 68(8)(a)-(c),<br>80/2010<br>s. 82(h)-(j),<br>67/2013<br>s. 632(h)-(j),<br>substituted by<br>No 44/2014<br>s. 27(2). |
| (a) \$416 520 is payable—   |  |
| (i) to the dependent partner; or  |  |
| (ii) if there is more than one dependent<br>partner, in equal shares to each of the<br>dependent partners; and  |  |
| (b) the balance is payable to each of the<br>dependent children in equal shares.  |  |

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S. 92A(8A)  
inserted by  
No. 26/2000  
s. 14,  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(g)),  
102/2004  
s. 38(1)(c),  
41/2006  
s. 11(1),  
9/2010  
s. 68(9) (as  
amended by  
No. 80/2010  
s. 159(1)(ii)),  
80/2010  
s. 82(k),  
67/2013  
s. 632(k).

(8A) If the worker does not leave a dependent partner but leaves a dependent child (not being an orphan child) or a dependent child (not being an orphan child) and any other dependent children (including any other orphan children), that dependent child is, or if more than one, each of those dependent children are, entitled to the amount of compensation being such share of a sum not exceeding \$555 350 which the court, the Authority or self-insurer considers is reasonable and appropriate to the injury to the dependent child or, if more than one dependent child, to those dependent children.

S. 92A(8B)  
inserted by  
No. 102/2004  
s. 14(2),  
amended by  
Nos 41/2006  
s. 11(1),  
9/2010  
s. 68(9) (as  
amended by  
No. 80/2010  
s. 159(1)(iii)),  
substituted by  
No. 80/2010  
s. 52(3),  
amended by  
No. 67/2013  
s. 632(k),  
substituted by  
No. 67/2013  
s. 628(4),  
amended by  
Nos 44/2014  
s. 27(3),  
21/2015  
s. 3(Sch. 1  
item 2.2).

(8B) In relation to a claim first received—

S. 92A(8B)(a)  
amended by  
No. 44/2014  
s. 27(3).

(a) on or after the day after the day on which the **Workplace Injury Rehabilitation and Compensation Act 2013** receives the Royal Assent; or

(b) before that day but not determined by the court, the Authority or self-insurer before that day—

if the worker leaves—

(c) one or more partially dependent partners or;

(d) one or more partially dependent partners and one or more dependants, whether dependent children or dependent partners—

each such dependent is entitled to the amount of compensation, being a share of a sum not exceeding \$555 350, which the court, the Authority or self-insurer considers is reasonable and appropriate to the injury to that dependant.

(9) If the worker does not leave any dependent partner, dependent child or partially dependent partner but leaves any other person who is to any extent dependent on the worker's earnings, the amount of compensation is a sum not exceeding \$555 350 which the court, Authority or self-insurer considers is reasonable and appropriate to the injury to that person or, if more than one, to those persons in such shares as the court, the Authority, or self-insurer determines.

S. 92A(9)  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(g)),  
102/2004  
ss 14(3),  
38(1)(c),  
41/2006  
s. 11(1),  
9/2010  
s. 69(10),  
80/2010  
s. 82(k),  
67/2013  
s. 632(k).

(10) If the worker, being under the age of 21 years at the time of the injury, leaves no dependent partner, dependent child or partially dependent partner but, immediately before the injury, was contributing to the maintenance of the home of the members of the worker's family, the members of the worker's family are deemed to be dependants of the worker partly dependent on the worker's earnings.

S. 92A(10)  
amended by  
Nos 27/2001  
s. 4(Sch. 2  
item 1.4(g)),  
102/2004  
s. 14(3),  
9/2010  
s. 68(11).

(11) If, under this section, compensation is payable to a minor or a person under a disability, the compensation must be paid to a trustee for the

S. 92A(11)  
amended by  
No. 9/2010  
s. 68(12).

minor or person under a disability appointed by the court to be invested, applied or otherwise dealt with for the benefit of the child as the trustee thinks fit.

S. 92A(12)  
substituted by  
No. 9/2010  
s. 68(13).

- (12) A claimant is entitled to interest at the prescribed rate on an amount of compensation determined in accordance with this section—
- (a) in the case of a determination by the court—  
in respect of the period beginning on the date the claim for compensation was lodged in accordance with section 103 and ending on the date of the determination; or
  - (b) in the case of a determination by the Authority or self-insurer—in respect of the period beginning on the date the claim was lodged in accordance with section 103 and ending on the date the Authority or self-insurer makes the determination.

S. 92AA  
inserted by  
No. 9/2010  
s. 69.

**92AA Reimbursement of expenses incurred by non-dependent family members of a deceased worker**

- (1) In this section—

*expenses* does not include—

S. 92AA(1)  
def. of  
*expenses*  
amended by  
No. 80/2010  
ss 53(1)(a),  
78(c).

- (a) the cost of any service or contribution that may be claimed under Division 2B of Part IV;
- (b) the legal or other costs of a member of the deceased worker's family incurred by that person as a result of a dispute arising from the deceased worker's will, or the distribution of the deceased worker's estate;
- (c) an expense incurred as a result of the loss of a service provided to a member of the deceased worker's family;

***maximum amount*** means an amount of \$33 120 in total for expenses incurred as a result of a worker's death, regardless of how many members of the deceased worker's family apply under this section.

S. 92AA(1)  
def. of  
*maximum  
amount*  
amended by  
Nos 80/2010  
s. 82(l),  
67/2013  
s. 632(l).

- (2) If a worker's death results from, or is materially contributed to by, an injury arising out of or in the course of employment and if—
- (a) had the worker had a dependant, or dependants at the time of his or her death, the injury would have entitled that dependant or dependants to compensation under this Act; and
  - (b) the worker did not have any dependants at the time of his or her death—

S. 92AA(2)(b)  
amended by  
No. 80/2010  
s. 53(1)(b).

a member of the worker's family may apply to the Magistrates' Court for an order that the Authority or a self-insurer (as appropriate) reimburse the applicant for expenses incurred as a result of the worker's death.

- (3) An application under this section must—
- (a) specify the expenses of the applicant incurred as a result of the death of the worker and how the incurring of those expenses caused financial hardship to the applicant;
  - (b) be made within 2 years after the date of the worker's death unless subsection (4) applies.
- (4) The Magistrates' Court may grant leave to an applicant to apply out of time, if the applicant has a special excuse for not making the application within time.

- (5) On application under this section, the Magistrates' Court may, in its discretion, order that the Authority or a self-insurer reimburse an applicant for expenses not exceeding the maximum amount if the Court is satisfied that—
- (a) the expenses incurred by the applicant were as a result of the death of the worker; and
  - (b) the expenses were reasonably incurred and are of a reasonable amount; and
  - (c) the incurring of the expenses caused financial hardship to the applicant.
- (6) In making an order under this section, the Magistrates' Court may order that more than one applicant in respect of a deceased worker be reimbursed by the Authority or self-insurer under this section however the total amount ordered to be reimbursed in respect of the deceased worker must not exceed the maximum amount regardless of how many applicants apply in respect of that deceased worker.
- (7) The Magistrates' Court must not award any interest if making an order for reimbursement of an applicant under this section.
- (8) A reimbursement of expenses under this section is not a payment of compensation under this Act except for the purposes of—
- (a) calculating employer premiums;
  - (b) contributions under Division 6A of Part IV;
  - (c) seeking indemnity from a third party under section 138 or any other indemnity under this Act;
  - (d) seeking a refund of payments under section 249A or any other amount relating to the recovery of payments under this Act.

S. 92AA(8)(c)  
amended by  
No. 80/2010  
s. 53(1)(c).

S. 92AA(8)(d)  
amended by  
No. 80/2010  
s. 53(1)(d).



**92B Weekly pensions for dependants of worker who dies**

S. 92B  
inserted by  
No. 107/1997  
s. 27(1).

(1) Subject to subsection (1A), words and expressions defined in section 92A have the same meaning in this section as in that section.

S. 92B(1)  
amended by  
No. 10/2022  
s. 4(1).

(1A) In this section, *child* includes a person who is 16 years or more but under the age of 25 years if the person has a disability within the meaning of section 3(1) of the **Disability Act 2006**;

S. 92B(1A)  
inserted by  
No. 10/2022  
s. 4(2).

(2) In addition to compensation under section 92A, compensation in the form of weekly payments of pension is payable subject to and in accordance with this section.

(3) If the worker leaves one, and only one, dependent partner, the partner is entitled to a weekly pension at the rate of—

S. 92B(3)  
amended by  
No. 27/2001  
s. 4(Sch. 2  
item 1.5(a)).

(a) during the first 13 weeks after death—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

S. 92B(3)(a)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

whichever is the lesser; and

(b) from the end of the first 13 weeks after the death until the end of 3 years after the death—

(i) unless subparagraph (ii) or (iii) applies, 50 per cent of the worker's pre-injury average weekly earnings or twice the State average weekly earnings, whichever is the lesser; or

S. 92B(3)(b)(i)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

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S. 92B(3)(b)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

- (ii) if the worker leaves not more than 5 dependent children who are entitled to a pension under this section and subsection (11) applies, an amount calculated in accordance with the formula—

$$\text{twice the State average weekly earnings} \times \frac{50}{50 + 5N}$$

where—

N is the number of dependent children so entitled; or

S. 92B(3)(b)(iii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(2).

- (iii) if the worker leaves more than 5 dependent children who are entitled to a pension under this section and subsection (11) applies, two thirds of twice the State average weekly earnings.

S. 92B(4)  
amended by  
No. 27/2001  
s. 4(Sch. 2  
item 1.5(b)).

- (4) If the worker leaves 2 or more dependent partners, each partner is entitled to a weekly pension at the rate of an equal share of—

(a) during the first 13 weeks after death—

- (i) 95 per cent of the worker's pre-injury average weekly earnings; or

- (ii) twice the State average weekly earnings—

S. 92B(4)(a)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

whichever is the lesser; and

- (b) from the end of the first 13 weeks after the death until the end of 3 years after the death—

(i) unless subparagraph (ii) or (iii) applies, 50 per cent of the worker's pre-injury average weekly earnings or twice the State average weekly earnings, whichever is the lesser; or

S. 92B(4)(b)(i)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

(ii) if the worker leaves not more than 5 dependent children who are entitled to a pension under this section and subsection (11) applies, an amount calculated in accordance with the formula—

S. 92B(4)(b)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

$$\text{twice the State average weekly earnings} \times \frac{50}{50 + 5N}$$

where—

N is the number of dependent children so entitled; or

(iii) if the worker leaves more than 5 dependent children who are entitled to a pension under this section and subsection (11) applies, two thirds of twice the State average weekly earnings.

S. 92B(4)(b)(iii)  
amended by  
Nos 102/2004  
s. 38(1)(j),  
9/2010  
s. 39(2).

(5) If the worker leaves no dependent child other than one, and only one, orphan child, the orphan child is entitled, subject to this section, to a weekly pension at the rate of—

(a) during the first 13 weeks after the death or until the orphan child ceases to be eligible, whichever first occurs—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

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S. 92B(5)(a)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

(ii) twice the State average weekly earnings—

whichever is the lesser; and

(b) if still eligible, from the end of the first 13 weeks after the death until the orphan child ceases to be eligible—

(i) 50 per cent of the worker's pre-injury average weekly earnings; or

S. 92B(5)(b)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

(ii) twice the State average weekly earnings—

whichever is the lesser.

(6) If the worker leaves no dependent children other than 2 or more orphan children, each such child is entitled, subject to this section, to a weekly pension at the rate of an equal share of—

(a) during the first 13 weeks after the death or until the orphan child ceases to be eligible, whichever first occurs—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

S. 92B(6)(a)(ii)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

(ii) twice the State average weekly earnings—

whichever is the lesser; and

(b) if still eligible, from the end of the first 13 weeks after the death until the orphan child ceases to be eligible—

- (i) 50 per cent of the worker's pre-injury average weekly earnings; or
- (ii) twice the State average weekly earnings—

S. 92B(6)(b)(ii)  
amended by  
No. 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

whichever is the lesser.

- (7) If the worker leaves not more than 5 dependent children, each such child is entitled, from the end of the first 13 weeks after the death until the child ceases to be eligible, to a weekly pension at the rate of—

- (a) unless subsection (11) applies, 5 per cent of the worker's pre-injury average weekly earnings; or
- (b) if subsection (11) applies, an amount calculated in accordance with the formula—

S. 92B(7)(b)  
amended by  
Nos 102/2004  
s. 38(1)(i),  
9/2010  
s. 39(1).

$$\text{twice the State average weekly earnings} \times \frac{5}{50 + 5N}$$

where—

N is the number of dependent children so entitled.

- (8) If a worker leaves more than 5 dependent children, each such child is entitled, from the end of the first 13 weeks after the death until the child ceases to be eligible, to a weekly pension at the rate of an equal share of—

- (a) unless subsection (11) applies, 25 per cent of the worker's pre-injury average weekly earnings; or

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S. 92B(8)(b)  
amended by  
Nos 102/2004  
s. 38(1)(k),  
9/2010  
s. 39(3).

(b) if subsection (11) applies, one third of twice the State average weekly earnings.

S. 92B(9)  
substituted by  
No. 9/2010  
s. 70(1).

(9) A child ceases to be eligible under this section—

S. 92B(9)(ab)  
inserted by  
No. 10/2022  
s. 4(3).

(a) on attaining the age of 16 years; or

(ab) if the child has a disability within the meaning of section 3(1) of the **Disability Act 2006**, on attaining the age of 25 years; or

(b) if the child is a full-time student or a full-time apprentice on attaining 16 years, whichever of the following occurs first—

(i) on ceasing to be a full-time student or full-time apprentice; or

(ii) the child attains the age of 25 years.

S. 92B(9A)  
inserted by  
No. 9/2010  
s. 70(1).

(9A) For the purposes of subsection (9)(b)—

(a) a child does not cease to be a full-time student or a full-time apprentice if that child ceases to be a student in order to become an apprentice;

(b) a child does not cease to be a full-time student or a full-time apprentice if that child ceases to be an apprentice in order to become a student;

(c) if a child attains the age of 25 years before ceasing to be a full-time student or full-time apprentice, the child remains eligible under this section until the end of the calendar year in which the child attains the age of 25.

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*	*	*	*	*	S. 92B(10) repealed by No. 9/2010 s. 70(2).
(11) The total amount of weekly pensions payable to the dependent partner, dependent partners and the dependent child or dependent children of a worker under—					S. 92B(11) amended by Nos 27/2001 s. 4(Sch. 2 item 1.5(c)), 102/2004 s. 38(1)(i), 9/2010 s. 39(1), substituted by No. 67/2013 s. 629(1).
(a) subsections (3)(b) and (7) or (8); or					
(b) subsections (4)(b) and (7) or (8)—					
must not exceed twice the State average weekly earnings.					
*	*	*	*	*	S. 92B(12) inserted by No. 80/2010 s. 53(2), repealed by No. 67/2013 s. 629(2).
<b>92C Payment of weekly pensions</b>					S. 92C inserted by No. 107/1997 s. 27(1).
(1) A weekly pension under section 92B must be paid by fortnightly, monthly, quarterly or annual instalments in accordance with this section, as the Authority, employer or self-insurer determines.					S. 92C(1) amended by No. 81/1998 s. 23(a).
(2) The first payment of amounts due as weekly pension must be made within 14 days after the amount is determined and subsequent amounts are payable—					
(a) on the 1st and 15th days of each month; or					
(b) on the 1st day of each month; or					
(c) on 1 January, 1 April, 1 July and 1 September in each year; or					

(d) on 1 July in each year—

as the case requires, and must be paid within  
7 days.

S. 92C(3)  
substituted by  
No. 27/2001  
s. 4(Sch. 2  
item 1.6).

- (3) A weekly pension to which a child under the age of 18 is entitled is payable to—
- (a) the parent of the child who has custody of the child; or
  - (b) if there is no such person, the child's guardian; or
  - (c) if there is no person referred to in paragraph (a) or (b), the person who has day to day care and control of the child and with whom the child is ordinarily resident.
- (4) A payment of a weekly pension may be made by post by properly addressing, prepaying and posting to the person entitled to the weekly pension a letter containing a cheque for the amount.
- (5) A payment of a weekly pension in accordance with subsection (4) is deemed to have been made when the letter was posted.
- (6) The liability to the person entitled to a weekly pension is not satisfied until the person receives the amount.
- (7) If the Authority, employer or self-insurer fails to make a payment before the end of the period within which it is required by this section to be paid, the Authority, employer or self-insurer must make the payment together with interest calculated at the prescribed rate in respect of the period beginning when the payment was first payable and ending on the day before the payment was made.

S. 92C(7)  
amended by  
No. 81/1998  
s. 23(a).



## **92D Provisional payment**

- (1) Subject to subsection (7), if it appears to the Authority or self-insurer that a person may be entitled to compensation in respect of the death of the worker, the Authority or self-insurer may make provisional payments to the person as follows—
- (a) weekly pension that may be payable under section 92B(3)(a) for a period of up to 12 weeks from the date of death of the worker;
  - (b) medical and other costs that may be payable under section 99(1)(a) up to a maximum of \$8270;
  - (c) family counselling services costs that may be payable under section 99(1)(b) up to the maximum prescribed in that section;
  - (d) the costs of the deceased worker's burial or cremation that may be payable under section 99(1)(c) up to the maximum amount determined as reasonable costs by the Authority under section 99AAA(2);
  - (e) reasonable travelling or accommodation expenses that may be payable under section 99(1)(d) up to the maximum prescribed in that section.
- (2) Except as provided by subsection (3), a provisional payment made under a paragraph in subsection (1) may be paid to more than one person however the total paid in respect of a deceased worker must not exceed the maximum set out in the relevant paragraph under that

S. 92D  
inserted by  
No. 9/2010  
s. 71.

S. 92D(1)(b)  
amended by  
Nos 80/2010  
s. 82(m),  
67/2013  
s. 632(m).

S. 92D(1)(c)  
amended by  
No. 80/2010  
s. 78(d).

S. 92D(1)(d)  
amended by  
Nos 80/2010  
s. 78(e),  
67/2013  
s. 630(1)(a),  
49/2018  
s. 39(1).

S. 92D(1)(e)  
inserted by  
No. 49/2018  
s. 39(2).

subsection regardless of how many persons receive provisional payments.

- (3) Only one partner of a deceased worker may receive provisional payments under subsection (1)(a).
- (4) A provisional payment made under this section is not a payment of compensation under this Act except for the purposes of—
  - (a) calculating employer premiums;
  - (b) contributions under Division 6A of Part IV;
  - (c) the reduction of common law damages under section 135C(7)(a);
  - (d) seeking indemnity from a third party under section 138 or any other indemnity under this Act;
  - (e) seeking a refund of payments under section 249A or any other amount relating to the recovery of payments under this Act.
- (5) A decision made by the Authority or self-insurer to make provisional payments under this section is not an admission of liability to pay compensation under this Act.
- (6) If liability to pay compensation in respect of the death of a worker is accepted, or determined by a court to be payable, after a provisional payment has been made to a person—
  - (a) under subsection (1)(a), any liability the Authority or self-insurer has to the person to whom the payment was made under section 92B(3)(a) or 92B(4)(a) is discharged to the extent of that payment;

S. 92D(4)(d)  
amended by  
No. 80/2010  
s. 54(a).

S. 92D(4)(e)  
amended by  
No. 80/2010  
s. 54(b).

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- (b) under subsection (1)(b), any liability the Authority or self-insurer has under section 99(1)(a) is discharged to the extent of that payment;
  - (c) under subsection (1)(c), any liability the Authority or self-insurer has under section 99(1)(b) is discharged to the extent of that payment; S. 92D(6)(c) amended by No. 80/2010 s. 78(d).
  - (d) under subsection (1)(d), any liability the Authority or self-insurer has under section 99(1)(c) is discharged to the extent of that payment. S. 92D(6)(d) amended by No. 80/2010 s. 78(e).
- (7) The Authority or self-insurer must not make provisional payments to a person under this section in respect of the death of the worker in the following circumstances—
- (a) if it appears to the Authority or self-insurer that the worker's death resulted from or was materially contributed to by a heart attack injury, disease or a stroke injury unless at the time of the worker's death—
    - (i) the Authority or the self-insurer had already accepted a claim for compensation made by the worker before his or her death in respect of that injury; and
    - (ii) the worker was receiving compensation payments in respect of that injury before the worker's death;
  - (b) the worker committed suicide. S. 92D(7)(b) amended by No. 10/2022 s. 5(1)(a).

\*                      \*                      \*                      \*

S. 92D(7)(c) repealed by No. 10/2022 s. 5(1)(b).

S. 92D(7A)  
inserted by  
No. 10/2022  
s. 5(2).

- (7A) If, under subsection (7), a provisional payment is payable to a minor or a person under a disability, the provisional payment must be paid to a trustee for the minor or person under a disability appointed by the court or VCAT to be invested, applied or otherwise dealt with for the benefit of the minor or person under a disability as the trustee thinks fit.
- (8) The Authority may issue guidelines for the purposes of this section relating to the process to be observed by the Authority or self-insurer when acting under this section.
- (9) Proceedings must not be brought in respect of any question or matter arising out of a decision of the Authority or self-insurer under this section.
- (10) In subsection (9), *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.

S. 93  
substituted by  
No. 64/1989  
s. 10.

### 93 Compensation in weekly payments

If a worker's incapacity for work results from, or is materially contributed to by, an injury which entitles the worker to compensation, the compensation shall be in the form of weekly payments subject to and in accordance with this Part.

**93A Weekly payments in first entitlement period**

- (1) In relation to a claim for compensation in the form of weekly payments made by a pre-12 November 1997 claimant, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the first entitlement period, to weekly payments—

S. 93A  
inserted by  
No. 64/1989  
s. 10,  
substituted by  
No. 67/1992  
s. 15,  
amended by  
Nos 50/1993  
ss 78(1)(d),  
91(a)(b),  
50/1994  
s. 38(1),  
7/1996  
s. 49(a),  
81/1998  
s. 23(b),  
102/2004  
s. 38(1)(l),  
substituted by  
No. 9/2010  
s. 31.

- (a) if the worker has no current work capacity and no current weekly earnings, at the rate of—

S. 93A(1)(a)  
amended by  
No. 67/2013  
s. 630(1)(b).

- (i) 95 per cent of the worker's pre-injury average weekly earnings; or

- (ii) \$1210—

S. 93A(1)(a)(ii)  
amended by  
Nos 80/2010  
s. 82(n),  
67/2013  
s. 632(n).

whichever is the lesser;

- (b) if the worker has a current work capacity or has no current work capacity but has current weekly earnings, at the rate of—

S. 93A(1)(b)  
amended by  
No. 67/2013  
s. 630(1)(c).

- (i) the difference between 95 per cent of the worker's pre-injury average weekly earnings and the worker's current weekly earnings; or

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S. 93A(1)(b)(ii)  
amended by  
Nos 80/2010  
s. 82(n),  
67/2013  
s. 632(n).

- (ii) the difference between \$1210 and the worker's current weekly earnings—

whichever is the lesser.

- (2) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 12 November 1997 and before 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the first entitlement period, to weekly payments—

S. 93A(2)(a)  
amended by  
No. 67/2013  
s. 630(1)(d).

- (a) if the worker has no current work capacity and no current weekly earnings, at the rate of—

- (i) 95 per cent of the worker's pre-injury average weekly earnings; or

S. 93A(2)(a)(ii)  
amended by  
Nos 80/2010  
s. 82(o),  
67/2013  
s. 632(o).

- (ii) \$1510—

whichever is the lesser;

S. 93A(2)(b)  
amended by  
No. 67/2013  
s. 630(1)(e).

- (b) if the worker has a current work capacity or has no current work capacity but has current weekly earnings, at the rate of—

- (i) the difference between 95 per cent of the worker's pre-injury average weekly earnings and the worker's current weekly earnings; or

- (ii) the difference between \$1510 and the worker's current weekly earnings—

S. 93A(2)(b)(ii)  
amended by  
Nos 80/2010  
s. 82(o),  
67/2013  
s. 632(o).

whichever is the lesser.

- (3) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the first entitlement period, to weekly payments—

- (a) if the worker has no current work capacity and no current weekly earnings, at the rate of—

S. 93A(3)(a)  
amended by  
No. 67/2013  
s. 630(1)(f).

- (i) 95 per cent of the worker's pre-injury average weekly earnings, less the deductible amount; or

S. 93A(3)(a)(i)  
amended by  
No. 80/2010  
s. 50(2)(a).

- (ii) twice the State average weekly earnings—

whichever is the lesser;

- (b) if the worker has a current work capacity or has no current work capacity but has current weekly earnings, at the rate of—

S. 93A(3)(b)  
amended by  
No. 67/2013  
s. 630(1)(g).

- (i) the difference between 95 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and the worker's current weekly earnings; or

S. 93A(3)(b)(i)  
amended by  
No. 80/2010  
s. 50(2)(b).

- (ii) the difference between twice the State average weekly earnings and the worker's current weekly earnings—

whichever is the lesser.

### **93B Weekly payments in second entitlement period**

S. 93B  
inserted by  
No. 64/1989  
s. 10,  
substituted by  
No. 67/1992  
s. 15,  
amended by  
Nos 50/1993  
ss 78(1)(c)(d),  
91(c)(d),  
50/1994  
s. 38(2)(3),  
7/1996  
ss 16(1),  
49(a)(d),  
60/1996 ss 10,  
11(1), 81/1998  
s. 23(a)(b),  
102/2004  
s. 38(1)(l)-(n),  
41/2006  
s. 13(1),  
substituted by  
No. 9/2010  
s. 31 (as  
amended by  
No. 80/2010  
s. 159(d)).<sup>10</sup>

S. 93B(1)(a)(ii)  
amended by  
Nos 80/2010  
s. 82(p),  
67/2013  
s. 632(p).

S. 93B(1)(b)  
amended by  
No. 67/2013  
s. 630(1)(h).

S. 93B(1)(b)(ii)  
amended by  
Nos 80/2010  
s. 82(p),  
67/2013  
s. 632(p).

- (1) In relation to a claim made by a pre-12 November 1997 claimant for compensation in the form of weekly payments, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the second entitlement period, to weekly payments—

- (a) if the worker has a serious injury, at the rate of—
- (i) the difference between 90 per cent of the worker's pre-injury average weekly earnings and 90 per cent of the worker's current weekly earnings; or

- (ii) the difference between \$1210 and 90 per cent of the worker's current weekly earnings—

whichever is the lesser;

- (b) if the worker does not have a serious injury but has no current work capacity and has no current weekly earnings, at the rate of—

- (i) 80 per cent of the worker's pre-injury average weekly earnings; or

- (ii) \$1210—

whichever is the lesser;



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- (c) if the worker does not have a serious injury but has a current work capacity or has no current work capacity but has current weekly earnings, at the rate of—
- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or
- (ii) the difference between \$1210 and 80 per cent of the worker's current weekly earnings—
- S. 93B(1)(c) amended by No. 67/2013 s. 630(1)(i).
- S. 93B(1)(c)(ii) amended by Nos 80/2010 s. 82(p), 67/2013 s. 632(p).

whichever is the lesser.

- (2) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 12 November 1997 and before 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the second entitlement period, to weekly payments—

- (a) if the worker has no current work capacity and no current weekly earnings, at the rate of—
- (i) 80 per cent of the worker's pre-injury average weekly earnings; or
- (ii) \$1510—
- S. 93B(2)(a) amended by No. 67/2013 s. 630(1)(j).
- S. 93B(2)(a)(ii) amended by Nos 80/2010 s. 82(q), 67/2013 s. 632(q).

whichever is the lesser;

- (b) if the worker has a current work capacity or has no current work capacity but has current weekly earnings, at the rate of—
- S. 93B(2)(b) amended by No. 67/2013 s. 630(1)(k).

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S. 93B(2)(b)(ii)  
amended by  
Nos 80/2010  
s. 82(q),  
67/2013  
s. 632(q).

- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or
- (ii) the difference between \$1510 and 80 per cent of the worker's current weekly earnings—

whichever is the lesser.

- (3) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the second entitlement period, to weekly payments—

S. 93B(3)(a)  
amended by  
No. 67/2013  
s. 630(1)(l).

- (a) if the worker has no current work capacity and no current weekly earnings, at the rate of—

S. 93B(3)(a)(i)  
amended by  
No. 80/2010  
s. 50(2)(c).

- (i) 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount; or
- (ii) twice the State average weekly earnings—

whichever is the lesser;

S. 93B(3)(b)  
amended by  
No. 67/2013  
s. 630(1)(m).

- (b) if the worker has a current work capacity or has no current work capacity but has current weekly earnings, at the rate of—

S. 93B(3)(b)(i)  
amended by  
No. 80/2010  
s. 50(2)(d).

- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and 80 per cent of the worker's current weekly earnings; or

- (ii) the difference between twice the State average weekly earnings and 80 per cent of the worker's current weekly earnings—

whichever is the lesser.

**93C Weekly payments after the second entitlement period**

S. 93C  
inserted by  
No. 64/1989  
s. 10,  
substituted by  
No. 67/1992  
s. 15,  
amended by  
Nos 50/1993  
s. 78(1)(c),  
7/1996  
s. 49(a)(d),  
substituted by  
No. 107/1997  
s. 28,  
amended by  
Nos 81/1998  
ss 23(a), 28,  
102/2004 s. 20,  
41/2006  
s. 5(3),  
substituted by  
No. 9/2010  
s. 31.

- (1) Subject to section 93CD, a worker's entitlement to compensation in the form of weekly payments under this Part ceases upon the expiry of the second entitlement period unless—

S. 93C(1)  
substituted by  
No. 8/2024  
s. 27(1).

- (a) subject to paragraph (c), the worker is assessed by the Authority or self-insurer as having no current work capacity and likely to continue indefinitely to have no current work capacity; or
- (b) the worker is a pre-12 November 1997 claimant who has a serious injury; or
- (c) in the case of a worker whose second entitlement period expires on or after 1 January 2024, the Authority or self-insurer determines in accordance with

Subdivision 1A of Division 2 of Part 5 of the  
**Workplace Injury Rehabilitation and  
Compensation Act 2013** that the worker—

- (i) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
- (ii) has a whole person impairment of more than 20 per cent.

S. 93C(2)  
amended by  
No. 8/2024  
s. 27(2).

(2) A worker to whom subsection (1)(a), (b) or (c) applies is entitled, subject to and in accordance with this Part and Part VIIB, to compensation in the form of weekly payments—

(a) if the worker is a pre-12 November 1997 claimant who has a serious injury, at the rate of—

(i) the difference between 90 per cent of the worker's pre-injury average weekly earnings and 90 per cent of the worker's current weekly earnings; or

S. 93C(2)(a)(ii)  
amended by  
Nos 80/2010  
s. 82(r),  
67/2013  
s. 632(r) (as  
amended by  
No. 44/2014  
s. 24(29)).

(ii) the difference between \$1210 and 90 per cent of the worker's current weekly earnings—

whichever is the lesser;

S. 93C(2)(b)  
amended by  
Nos 80/2010  
s. 82(r),  
67/2013  
s. 632(r),  
substituted by  
No. 67/2013  
s. 630(2).

(b) if the worker is a pre-12 November 1997 claimant who does not have a serious injury, at the rate of—

(i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and, if the worker has current weekly earnings, 80 per cent of those current weekly earnings; or

- (ii) the difference between \$1210 and, if the worker has current weekly earnings, 80 per cent of those current weekly earnings—

whichever is the lesser;

- (c) in the case of a claim for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 12 November 1997 and before 5 April 2010 at the rate of—

**S. 93C(2)(c)**  
amended by  
**Nos 80/2010**  
**s. 82(s),**  
**67/2013**  
**s. 632(s),**  
substituted by  
**No. 67/2013**  
**s. 630(2).**

- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and, if the worker has current weekly earnings, 80 per cent of those earnings; or

- (ii) the difference between \$1510 and, if the worker has current weekly earnings, 80 per cent of those current weekly earnings—

whichever is the lesser;

- (d) in the case of a claim for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 5 April 2010 at the rate of—

**S. 93C(2)(d)**  
amended by  
**No. 80/2010**  
**s. 50(2)(e),**  
substituted by  
**No. 67/2013**  
**s. 630(2).**

- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and, if the worker has current weekly earnings, 80 per cent of those earnings; or

- (ii) the difference between twice the State average weekly earnings and, if the worker has current weekly earnings, 80 per cent of those current weekly earnings—

whichever is the lesser.

- (3) A review of the assessment of a worker to whom subsection (1)(a) or (b) applies may be conducted by the Authority or self-insurer at any time and must be conducted as often as may reasonably be necessary and in any event at least once every 2 years.

S. 93C(4)  
inserted by  
No. 8/2024  
s. 27(3).

- (4) In the case of a worker referred to in subsection (1)(c) who is receiving compensation under subsection (2), the Authority or self-insurer—
- (a) may review the work capacity of the worker at any time; and
  - (b) must review the work capacity of the worker as often as reasonably necessary and not less than once every 2 years.

S. 93CA  
inserted by  
No. 107/1997  
s. 29,  
amended by  
Nos 81/1998  
s. 23(b),  
102/2004  
s. 38(1)(i),  
substituted by  
No. 9/2010  
s. 31.

**93CA Compensation for incapacity arising from surgery after second entitlement period**

- (1) Subject to subsection (2), this section applies to a worker who, on or after 5 April 2010—
- (a) suffers an injury arising out of or in the course of employment; and
  - (b) makes a claim for compensation in respect of that injury under section 103 and received weekly payments in respect of that injury; and
  - (c) has returned to work for a period of not less than 15 hours per week and is in receipt of current weekly earnings, or current weekly earnings together with a deductible amount, of at least \$177 per week; and

S. 93CA(1)(c)  
amended by  
Nos 80/2010  
ss 50(2)(f),  
82(t), 67/2013  
s. 632(t).

- (d) either, in respect of the injury—
    - (i) is not entitled to compensation in the form of weekly payments because of section 93C; or
    - (ii) is entitled under section 93CD to compensation in the form of weekly payments; and
  - (e) for at least 13 consecutive weeks immediately after the expiry of the second entitlement period, has not received compensation in the form of weekly payments other than weekly payments under section 93CD; and
  - (f) for that injury requires surgery (*the subsequent surgery*) for which the Authority or self-insurer has accepted liability under section 99(1); and
  - (g) suffers incapacity resulting from or materially contributed to by the subsequent surgery; and
  - (h) has not attained retirement age.
- (2) This section does not apply to a worker whose entitlement to compensation in the form of weekly payments has ceased (otherwise than under section 93C) or been terminated in accordance with this Act.
- (3) A worker to whom this section applies may apply, in a form approved by the Authority, to the Authority or self-insurer for compensation in the form of weekly payments in respect of an incapacity resulting from or materially contributed to by the subsequent surgery.

S. 93CA(2)  
amended by  
No. 80/2010  
s. 55.

- (4) Unless the worker to whom this section applies is receiving weekly payments under section 93CD—
  - (a) the worker is not entitled to compensation in the form of weekly payments under this section in respect of the first 13 consecutive weeks after the expiry of the second entitlement period; and
  - (b) an application under subsection (3) must not be made during the period of 13 consecutive weeks immediately after the expiry of the second entitlement period.
- (5) Compensation in the form of weekly payments under this section is payable at the rate that would have been applicable under section 93B if the second entitlement period had not expired—
  - (a) in respect of the period of incapacity resulting from or materially contributed to by the subsequent surgery; or
  - (b) if the worker has an incapacity resulting from, or materially contributed to, by the subsequent surgery for the period of 13 consecutive weeks commencing on the day on which the subsequent surgery is performed—whichever is the shorter.
- (6) Within 14 days after receiving an application in accordance with this section, the Authority or self-insurer must—
  - (a) approve or reject the application; and
  - (b) give the worker written notice of its decision including, in the case of rejection, a statement of the reasons for the decision.



**93CAB Review of impairment arising from surgery after second entitlement period**

S. 93CAB  
inserted by  
No. 8/2024  
s. 28.

- (1) A worker may apply, in a form approved by the Authority, to the Authority or self-insurer for compensation in the form of weekly payments in respect of incapacity and whole person impairment if the worker—
- (a) has an injury arising on or after 5 April 2010 in respect of which—
    - (i) liability has been accepted or established; and
    - (ii) the worker is, or has been, entitled under this Act to compensation in the form of weekly payments during the second entitlement period; and
  - (b) either, in respect of the injury—
    - (i) is not entitled to compensation in the form of weekly payments because of section 93C; or
    - (ii) is entitled under section 93CD to compensation in the form of weekly payments; and
  - (c) for at least 13 consecutive weeks immediately after the expiry of the second entitlement period, has not received compensation in the form of weekly payments other than weekly payments under section 93CD; and
  - (d) requires surgery for that injury (*the subsequent surgery*) for which the Authority or self-insurer has accepted liability under section 99; and

- (e) suffers incapacity and whole person impairment resulting from or materially contributed to by the subsequent surgery; and
  - (f) has not attained retirement age.
- (2) A worker who applies under this section is entitled to compensation in the form of weekly payments under section 93C(2)(d) if the Authority or self-insurer determines in accordance with Subdivision 1A of Division 2 of Part 5 of the **Workplace Injury Rehabilitation and Compensation Act 2013** that the worker, as a result of the subsequent surgery—
  - (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
  - (b) has a whole person impairment of more than 20 per cent.
- (3) Compensation payable under this section is payable from—
  - (a) if the worker receives compensation under section 93CA as a result of the subsequent surgery, the date that is 13 consecutive weeks after the day on which the subsequent surgery was performed; or
  - (b) in any other case, the date that it is determined that the worker is entitled to compensation.

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S. 93CB  
inserted by  
No. 107/1997  
s. 29,  
amended by  
Nos 81/1998  
s. 23(b),  
102/2004  
ss 21,  
38(1)(i)(o),  
41/2006  
ss 5(4), 13(2),  
repealed by  
No. 9/2010  
s. 31.

\* \* \* \* \*

S. 93CC  
inserted by  
No. 107/1997  
s. 29,  
amended by  
Nos 81/1998  
s. 23(a)(b),  
102/2004  
s. 38(1)(i),  
repealed by  
No. 9/2010  
s. 31.

**93CD Continuation of weekly payments after second entitlement period**

- (1) A worker who has a current work capacity and is, or has been, entitled to compensation in the form of weekly payments under this Division, may make an application at any time, in accordance with this section, to the Authority or self-insurer, in a form approved by the Authority, for a determination that the worker's entitlement to weekly payments does not, or will not, cease by reason only of the expiry of the second entitlement period.
- (2) An application must be made—
- (a) if liability to pay the weekly payments lies with the employer (not being a self-insurer or a subsidiary of a self-insurer) or the Authority—to the Authority;

S. 93CD  
inserted by  
No. 107/1997  
s. 29,  
amended by  
Nos 81/1998  
s. 23(c),  
102/2004  
s. 38(1)(o)(p),  
41/2006  
s. 13(3),  
substituted by  
No. 9/2010  
s. 34.

- (b) if liability to pay the weekly payments lies with a self-insurer—to the self-insurer.
- (3) If the Authority or self-insurer receives an application under subsection (1), the Authority or self-insurer must, within 28 days after receiving the application—
  - (a) approve or reject the application; and
  - (b) advise the worker in writing of its determination; and
  - (c) if the Authority or self-insurer rejects the application, give the worker a statement of the reasons for its determination.
- (4) The Authority or self-insurer must not approve an application under subsection (1) unless it is satisfied that—
  - (a) the worker has returned to work (whether in self-employment or other employment) for a period of not less than 15 hours per week and is in receipt of current weekly earnings, or current weekly earnings together with non-pecuniary benefits within the meaning of section 5AB(1)(d), of at least \$177 per week; and
  - (b) because of the injury, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further additional employment or work which would increase the worker's current weekly earnings; and
  - (c) in the case of a worker whose second entitlement period expires on or after 1 January 2024, the worker has a whole person impairment of more than 20 per cent.
- (5) If the Authority or self-insurer approves an application made under subsection (1), the worker's entitlement to compensation in the

S. 93CD(4)(a)  
amended by  
Nos 80/2010  
ss 50(2)(g),  
82(u), 67/2013  
s. 632(u).

S. 93CD(4)(b)  
amended by  
No. 8/2024  
s. 29(a).

S. 93CD(4)(c)  
inserted by  
No. 8/2024  
s. 29(b).

form of weekly payments commences on the date the Authority or self-insurer received the application and, subject to and in accordance with this Part and Part VIIB, the worker is entitled to weekly payments at the rate of—

- (a) in the case of a pre-12 November 1997 claimant—
  - (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or
  - (ii) the difference between \$1210 and 80 per cent of the worker's current weekly earnings—

S. 93CD(5)  
(a)(ii)  
amended by  
Nos 80/2010  
s. 82(v),  
67/2013  
s. 632(v).

whichever is the lesser;

- (b) in the case of a worker whose claim was first given, served or lodged on or after 12 November 1997 and before 5 April 2010—
  - (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or
  - (ii) the difference between \$1510 and 80 per cent of the worker's current weekly earnings—

S. 93CD(5)  
(b)(ii)  
amended by  
Nos 80/2010  
s. 82(w),  
67/2013  
s. 632(w).

whichever is the lesser;

S. 93CD(5)  
(c)(i)  
amended by  
No. 80/2010  
s. 50(2)(h).

(c) in the case of a claim first given, served or lodged on or after 5 April 2010—

- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and 80 per cent of the worker's current weekly earnings; or
- (ii) the difference between twice the State average weekly earnings and 80 per cent of the worker's current weekly earnings—

whichever is the lesser.

(6) A worker continues to be entitled to compensation in the form of weekly payments under subsection (5) until—

- (a) subject to section 93CDA, the Authority or self-insurer ceases to be satisfied as to the matters referred to in subsection (4); or
- (b) the worker otherwise ceases to be entitled to compensation in the form of weekly payments.

S. 93CDA  
inserted by  
No. 9/2010  
s. 35.

**93CDA Entitlement under section 93CD not affected by certain circumstances**

(1) A worker who receives weekly payments under section 93CD does not cease to be entitled to weekly payments under that section by reason only that the worker occasionally, but not during more than 4 weeks in the first period of 12 consecutive weeks immediately after the worker first received weekly payments under that section, or in any subsequent consecutive period of 12 weeks—

- (a) has worked more hours during a week; or

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- (b) has worked fewer hours during a week  
(even if the number of hours worked is less  
than 15); or
- (c) has received higher current weekly earnings;  
or
- (d) has received lower current weekly earnings  
(even if the earnings are less than \$177 per  
week)—

**S. 93CDA  
(1)(d)  
amended by  
No. 67/2013  
s. 632(x).**

than the hours worked, or the current weekly  
earnings received, at the time of making the  
application for payments under section 93CD.

- (2) A reference in subsection (1) to hours of work  
does not include hours of leave approved by the  
employer.

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**S. 93D  
inserted by  
No. 64/1989  
s. 10,  
amended by  
No. 18/1991  
s. 12(1)(g),  
substituted by  
No. 67/1992  
s. 15,  
amended by  
Nos 50/1993  
s. 92, 50/1994  
s. 38(4),  
107/1997  
s. 30(6),  
repealed by  
No. 9/2010  
s. 128.**

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S. 93DA  
inserted by  
No. 50/1994  
s. 39,  
amended by  
Nos 7/1996  
s. 16(2),  
60/1996  
s. 12, 107/1997  
s. 30(6)(7),  
102/2004 s. 22,  
repealed by  
No. 9/2010  
s. 36.

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S. 93CE  
inserted by  
No. 9/2010  
s. 37.

**93CE Compensation in the form of superannuation contributions**

(1) If—

- (a) there is caused to a worker an injury arising out of, or in the course of employment; and
- (b) compensation in the form of weekly payments—
  - (i) has been paid or is payable to the worker in respect of that injury for an aggregate period of 52 weeks (whether or not consecutive); and
  - (ii) has not ceased to be paid or payable in respect of that injury; and
- (c) the worker has not attained retirement age—

S. 93CE(1)(c)  
amended by  
No. 73/2016  
s. 4.

the Authority or self-insurer must, subject to the worker nominating a complying fund to the Authority or self-insurer and providing details of his or her tax file number to the trustee of the nominated complying fund within 3 months of receipt of a notice under subsection (4), pay, in accordance with this section, for the benefit of the worker, compensation in the form of



superannuation contributions to the nominated complying fund.

- (2) Subsection (1) does not apply in respect of a worker in relation to any period in respect of which—
- (a) the worker's employer makes contributions for the benefit of the worker to any scheme or fund for the payment of superannuation, retirement benefits or death benefits (other than under a salary sacrifice agreement or arrangement); and
  - (b) those contributions—
    - (i) exceed the contributions (if any) necessary for the employer to avoid an individual superannuation guarantee shortfall under the Superannuation Act in respect of a worker; and
    - (ii) are made for the purpose of discharging an obligation of the employer to the worker that arises because of the worker's injury under any public sector superannuation scheme, agreement or arrangement or any law of the Commonwealth or a State or Territory relating to superannuation or an industrial award.
- (3) The amount that the Authority or self-insurer is liable to pay, subject to and in accordance with this section, as compensation in the form of superannuation contributions for the benefit of a worker is the amount equal to the charge percentage of the compensation in the form of weekly payments payable to the worker under this Part after the expiry of the period referred to in subsection (1)(b)(i) other than—

S. 93CE(4)  
amended by  
No. 80/2010  
s. 56(a).

- (a) compensation under section 93CA, unless the worker is receiving compensation under section 93CD; and
  - (b) compensation under section 93EA.
- (4) Subject to subsection (1), the Authority or self-insurer must, within 28 days after becoming aware that it is liable to pay to a worker compensation in the form of superannuation contributions subject to and in accordance with this section, notify the worker in writing—
- (a) that the Authority or self-insurer is so liable and of the date on which it became so liable; and
  - (b) of the amount of its liability, expressed as the charge percentage of the weekly amount that the worker receives as compensation in the form of weekly payments in respect of the injury; and
  - (c) that the Authority or self-insurer is required to pay the contributions to a complying fund nominated by the worker; and
  - (d) that the worker is required to nominate a complying fund to the Authority or self-insurer; and
  - (e) that contributions cannot be paid to the nominated complying fund unless the worker, or the worker's employer on behalf of the worker, has provided details of the worker's tax file number to the trustee of the nominated complying fund; and
  - (f) that the worker is entitled to nominate a different complying fund, but not more than once in any period of 12 months; and

- (g) that, if the worker does not nominate a complying fund, or does not provide sufficient details to enable contributions to be paid to a complying fund, within 3 months after the date on which the notice under this subsection is given to the worker, the Authority or self-insurer is not liable to pay compensation in the form of superannuation contributions in respect of any period before it receives those details.
- (5) Subject to subsection (1), payment under this section must be made to the worker's nominated complying fund—
- (a) in the case of the Authority, within—
- (i) 30 days after it is informed by the worker's employer that compensation in the form of weekly payments has been paid; or
  - (ii) 120 days after compensation in the form of weekly payments has been paid—
- whichever first occurs;
- (b) in the case of a self-insurer, at least quarterly.
- (6) Despite anything to the contrary in section 125A(2), the Authority is liable to pay compensation in the form of superannuation contributions in accordance with this section.
- (7) Where the liability of the Authority under this section is discharged, the discharge is to be treated as if a liability of the employer is discharged.

S. 93CE(5)  
amended by  
No. 80/2010  
s. 56(b).

(8) In this section—

***charge percentage*** means the percentage applicable for the time being under section 19(2) of the Superannuation Act;

***complying fund*** means a complying superannuation fund or scheme within the meaning of section 7 of the Superannuation Act but does not include—

- (a) a defined benefit superannuation scheme within the meaning of section 6A(1) of that Act; or
- (b) a scheme that is a defined benefit superannuation scheme because of section 6A(2) of that Act;

***Superannuation Act*** means the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.

S. 93E  
inserted by  
No. 64/1989  
s. 10,  
substituted by  
No. 67/1992  
s. 15,  
amended by  
Nos 107/1997  
s. 31, 102/2004  
s. 23, 41/2006  
s. 5(5).

## **93E Injury after retirement**

If a worker is injured within the period of 130 weeks before attaining retirement age or after attaining retirement age, the worker is entitled to weekly payments under this Part for not more than the first 130 weeks (whether consecutive or not) of incapacity for work.

S. 93EA  
inserted by  
No. 41/2006  
s. 14.

## **93EA Compensation for incapacity arising after retirement age**

(1) This section applies to a worker, not being a worker to whom section 93E applies, if the worker—

- (a) before retirement age—
  - (i) suffered an injury arising out of or in the course of employment; and

- (ii) made a claim for compensation in respect of that injury under section 103; and
  - (b) received a weekly payment of compensation in respect of that injury within the period of 10 years before the worker attained retirement age; and
  - (c) after retirement age, became incapacitated for work and the incapacity is a consequence of treatment received after retirement age as an inpatient at a hospital for that injury; and
  - (d) is not entitled to weekly payments only because section 93F applies.
- (2) If this section applies to a worker, the worker may apply in writing to the Authority or self-insurer for weekly payments in respect of the incapacity payable at the rate specified in section 93B(2)(a) or (b) or 93B(3)(a) or (b). **S. 93EA(2) amended by No. 9/2010 s. 32(b) (as amended by No. 80/2010 s. 159(e)).**
- (3) The maximum period of weekly payments payable under this section is 13 weeks.
- (4) A worker who makes an application in accordance with subsection (2) is entitled to receive weekly payments under this section if—
- (a) the worker was a worker at the time the incapacity arose; and
  - (b) the incapacity is in respect of the work that the worker was performing immediately before the incapacity arose; and
  - (c) the worker has not ceased to become entitled to weekly payments due to the application of this Part or Part VIIB or section 119J(1) or (3), 134AB(36) or 135A(18); and **S. 93EA(4)(c) substituted by No. 9/2010 s. 32(c) (as amended by No. 80/2010 s. 159(f)).**

- (d) the worker has not previously received payment of compensation in respect of the injury under this section.
- (5) An application under subsection (2) must—
  - (a) specify the reason for the application; and
  - (b) be provided with supporting evidence.
- (6) Within 28 days of receiving the application, the Authority or self-insurer must—
  - (a) approve or reject the application; and
  - (b) give the worker written notice of its decision, including in the case of rejection, a statement of the reasons for the decision.

S. 93F  
inserted by  
No. 64/1989  
s. 10,  
amended by  
No. 41/2006  
s. 15(2).

### **93F Compensation after retirement**

Subject to sections 93E and 93EA, a worker is not entitled to weekly payments under this Part after attaining retirement age.

Ss 94, 95  
substituted by  
No. 64/1989  
s. 10,  
repealed by  
No. 67/1992  
s. 16(1).

\* \* \* \* \*

S. 96  
(Heading)  
inserted by  
No. 9/2010  
s. 40(1).

### **96 Effect of disability or other pensions and lump sums on weekly payments**

S. 96  
substituted by  
Nos 64/1989  
s. 10, 67/1992  
s. 17(1).

S. 96(1)  
substituted by  
Nos 7/1996  
s. 17(1),  
60/1996  
s. 13(1).

- (1) The amount of any weekly payment payable to a worker under this Part must be reduced by the weekly amount of—

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- (a) any retirement or superannuation pension received by the worker; and

S. 96(1)(a)  
amended by  
No. 9/2010  
s. 40(2)(a).

\* \* \* \* \*

S. 96(1)(b)  
repealed by  
No. 9/2010  
s. 40(2)(b).

which relates to the worker's retirement from, or the cessation or termination of, the employment out of, or in the course of which, or due to the nature of which, the injury arose.

- (2) If a worker—

S. 96(2)  
substituted by  
No. 7/1996  
s. 18,  
amended by  
Nos 7/1996  
s. 19(1),  
60/1996  
s. 13(2),  
9/2010  
s. 40(2)(c),  
substituted by  
No. 80/2010  
s. 57.

- (a) receives a superannuation or retirement benefit lump sum that—

- (i) relates to the worker's retirement from, or cessation or termination of, the employment out of, or in the course of which, the injury arose; and

- (ii) has not been deposited with a complying superannuation fund or a complying approved deposit fund; or

- (b) withdraws or redeems any part of, or withdraws or redeems any interest, or part of any interest on, such a superannuation or retirement benefit lump sum that has been deposited with a complying superannuation fund or a complying approved deposit fund—

the worker is not entitled to weekly payments under this Part during the specified period after the date on which he or she received the lump sum or made the withdrawal or redemption, as the case requires, or became eligible to receive weekly payments, whichever is the later.

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S. 96(3)  
substituted by  
Nos 7/1996  
s. 18, 80/2010  
s. 57.

- (3) The specified period for the purposes of subsection (2) is the number of weeks determined by dividing the amount received, withdrawn or redeemed by the worker's pre-injury average weekly earnings as varied in accordance with Division 2D of Part IV.

S. 96(4)  
inserted by  
No. 7/1996  
s. 19(2).

- (4) If a worker withdraws or redeems any part of the amount deposited or used under subsection (2) which represents the worker's own contributions for the purpose of an approved capital expenditure within the meaning of subsection (5), subsection (2) does not apply in respect of that withdrawal or redemption.

S. 96(5)  
inserted by  
No. 7/1996  
s. 19(2),  
amended by  
No. 81/1998  
s. 23(d).

- (5) For the purposes of subsection (4) *approved capital expenditure* means capital expenditure approved by the Authority or by a self-insurer in accordance with guidelines issued by the Authority.

S. 96(6)  
inserted by  
No. 9/2010  
s. 40(3).

- (6) The amount of compensation in the form of weekly payments payable to a worker under this Part must be reduced by the amount (if any) by which the sum of—
- (a) the weekly payment that would be payable but for this subsection; and
  - (b) the weekly rate of any disability pension received by or for the benefit of the worker and which relates to an injury in respect of which compensation in the form of weekly payments is payable to the worker; and
  - (c) the worker's current weekly earnings—
- exceeds the supplemental pension limit.



(7) In this section—

***disability pension***, in relation to a worker, means an amount payable under an insurance policy or by a trustee acting in the capacity of a trustee that—

S. 96(7)  
inserted by  
No. 9/2010  
s. 40(3).

(a) relates to an injury in respect of which compensation in the form of weekly payments is payable under this Part; and

(b) is payable in the form of periodic payments to or for the benefit of the worker—

but does not include a retirement or superannuation pension;

***supplemental pension limit***, in relation to a worker, means the worker's pre-injury average weekly earnings as calculated under section 5A as indexed in accordance with section 100(1) and calculated as if the period of 52 weeks referred to in paragraph (a) of the definition of ***enhancement period*** in section 5AD had not expired.

S. 96(7) def. of  
***supplemental  
pension limit***  
substituted by  
No. 67/2013  
s. 630(3).

## **96A Notification of entitlement to certain payments**

S. 96A  
inserted by  
No. 64/1989  
s. 10,  
repealed by  
No. 67/1992  
s. 17(1),  
new s. 96A  
inserted by  
No. 7/1996  
s. 20.

(1) If a worker who is claiming weekly payments under this Part receives a pension specified in section 96(1) or a lump sum amount specified in section 96(2), the worker must within 14 days of first receiving the pension or lump sum amount give notice in writing to the person from whom

S. 96A(1)  
amended by  
No. 9/2010  
s. 41(a)(b).

weekly payments are being claimed of the nature, source and amount of the pension or lump sum amount.

S. 96A(2)  
amended by  
No. 9/2010  
s. 41(a)(b).

- (2) If a worker has received or is receiving a pension specified in section 96(1) or a lump sum amount specified in section 96(2) or has withdrawn or redeemed any part of the amount deposited or used under section 96(2) at the time that the worker makes a claim for the payment of weekly payments under this Part, the worker must give notice in writing of the nature, source and amount of the pension or lump sum amount or of the withdrawal or redemption at the same time that the claim is given, served or lodged.

S. 96A(3)  
amended by  
No. 9/2010  
s. 41(b).

- (3) A worker required to give notice in writing under subsection (1) or (2) must within 14 days give notice in writing to the person from whom weekly payments are being claimed if there is any change in the amount of the pension or lump sum amount or if he or she withdraws or redeems any part of the amount deposited or used under section 96(2).

S. 96A(4)  
amended by  
Nos 81/1998  
s. 23(e),  
9/2010  
s. 41(a).

- (4) If an employer (not being a self-insurer or a subsidiary of a self-insurer) against whom a worker is claiming weekly payments under this Part becomes aware that the worker is, or may be, entitled to a pension specified in section 96(1) or a lump sum amount specified in section 96(2), the employer must within 28 days of becoming so aware give notice in writing to the Authority, of the entitlement.

S. 96A(5)  
amended by  
Nos 81/1998  
s. 23(e),  
9/2010  
s. 41(a).

- (5) If an employer (not being a self-insurer or a subsidiary of a self-insurer) against whom a worker makes a claim for the payment of weekly payments under this Part is at the time that the worker makes the claim aware that the worker is, or may be, entitled to a pension specified in section 96(1) or a lump sum amount specified in

section 96(2), the employer must within 28 days of the making of the claim give notice in writing to the Authority, of the entitlement.

- (6) A reference in this section to claiming weekly payments includes making a claim, or claiming to be entitled to weekly payments, or receiving weekly payments.
- (7) A person who fails to comply with this section is guilty of an offence.
- Penalty: 40 penalty units.

S. 96A(7)  
amended by  
No. 9/2010  
s. 41(c).

**97 Provisions relating to the payment of compensation**

S. 97  
substituted by  
No. 64/1989  
s. 10,  
amended by  
No. 67/1992  
s. 17(2).

- (1) Except as provided in section 96, regard shall not be had, in respect of the entitlement to, or amount of, compensation under this Part, to any sum paid or payable—
- (a) under any contract of assurance or insurance (including a contract made with any friendly or other benefit society or association or any trade union); or
- (b) out of any relief or sustentation fund or other fund (whether statutory or otherwise) of the like nature; or
- (c) by way of accident make-up pay under any industrial award; or
- (d) in lieu of accrued annual leave or long service leave.

S. 97(1)(b)  
amended by  
No. 50/1994  
s. 40(1).

S. 97(1)(c)  
substituted by  
No. 9/2010  
s. 42 (as  
amended by  
No. 80/2010  
s. 159(g)).

S. 97(1)(d)  
inserted by  
No. 9/2010  
s. 42 (as  
amended by  
No. 80/2010  
s. 159(g)).

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S. 97(2)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 78(1)(c),  
substituted by  
No. 50/1994  
s. 40(2),  
amended by  
Nos 107/1997  
s. 30(8),  
81/1998  
s. 23(a),  
8/2024  
s. 30(1).

(2) If a worker who is receiving weekly payments ceases to reside in Australia, his or her entitlement to weekly payments ceases unless the worker has before leaving Australia satisfied the Authority or self-insurer that the worker—

S. 97(2)(a)  
inserted by  
No. 8/2024  
s. 30(1).

(a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

S. 97(2)(b)  
inserted by  
No. 8/2024  
s. 30(1).

(b) in the case of a worker whose second entitlement period expires on or after 1 January 2024 and who is receiving weekly payments after the second entitlement period, has a whole person impairment of more than 20 per cent, determined in accordance with Subdivision 1A of Division 2 of Part 5 of the **Workplace Injury Rehabilitation and Compensation Act 2013**.

S. 97(2AA)  
inserted by  
No. 7/1996  
s. 21(1),  
amended by  
Nos 107/1997  
s. 30(8),  
81/1998  
s. 23(a).

(2AA) If a worker ceases to reside in Australia and subsequently claims to be entitled to the payment of weekly payments, the worker must in addition to establishing his or her entitlement satisfy the Authority or self-insurer that the worker has no current work capacity and is likely to continue indefinitely to have no current work capacity.

S. 97(2AAB)  
inserted by  
No. 8/2024  
s. 30(2).

(2AAB) If a worker who ceases to reside in Australia is receiving weekly payments and the worker's second entitlement period expires on or after 1 January 2024, the worker's entitlement to weekly payments ceases upon the expiry of the

second entitlement period unless the Authority or self-insurer determines in accordance with Subdivision 1A of Division 2 of Part 5 of the **Workplace Injury Rehabilitation and Compensation Act 2013** that the worker—

- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
- (b) has a whole person impairment of more than 20 per cent.

(2A) If a worker who is receiving weekly payments is temporarily absent from Australia, his or her entitlement to weekly payments is limited to a maximum aggregate period of 28 days in respect of any certificate or certificates provided by a medical practitioner outside Australia unless the Authority or self-insurer is satisfied that there are special circumstances which justify the extension of that period for a further period as is specified in the certificate.

S. 97(2A)  
inserted by  
No. 50/1994  
s. 40(2),  
amended by  
No. 81/1998  
s. 23(a).

(3) If a worker who does not reside in Australia is receiving weekly payments because of subsection (1), (2) or (2AAB), the worker is entitled to receive the weekly payments if the worker proves in the prescribed manner and at the prescribed intervals to the satisfaction of the Authority or self-insurer—

S. 97(3)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 78(1)(c),  
50/1994  
s. 40(3),  
7/1996  
s. 21(2),  
107/1997  
s. 30(8),  
81/1998  
s. 23(a),  
10/2022 s. 11,  
substituted by  
No. 8/2024  
s. 30(3).

- (a) the worker's identity; and
- (b) that the worker continues to have no current work capacity.

(3A) If a worker who does not reside in Australia is receiving weekly payments after the second entitlement period, the Authority or self-insurer—

S. 97(3A)  
inserted by  
No. 8/2024  
s. 30(3).

- (a) may review the work capacity of the worker at any time; and
  - (b) must review the work capacity of the worker as often as reasonably necessary and not less than once every 2 years.
- (4) Compensation under this Act is absolutely inalienable whether by way or in consequence of any sale, assignment, charge, execution, bankruptcy, attachment, legal process or by operation of law or any other means and no claim may be set off against compensation under this Act.
- (4A) Despite subsection (4), the Authority or self-insurer is entitled to set off against any weekly payments to which a worker is entitled any amount of compensation in the form of weekly payments previously paid to the worker if the worker was not entitled to receive that amount of compensation by virtue of section 96(1) or 96(2) and the worker has failed to give any notice in writing required under section 96A.
- (4B) Despite subsection (4), the Authority or self-insurer is entitled to set off against any weekly payments to which a worker is entitled the amount awarded to the Authority or self-insurer by an order made by a court under this Act or section 86 of the **Sentencing Act 1991** after the worker is convicted, or found guilty, of an offence under this Act or of an offence under the **Crimes Act 1958** in connection with a claim for compensation under this Act.
- (5) A person is not entitled to receive compensation in the form of weekly payments in respect of the same injury under this Act and the **Workers Compensation Act 1958**.

S. 97(4A)  
inserted by  
No. 7/1996  
s. 21(3),  
amended by  
No. 81/1998  
s. 23(a).

S. 97(4B)  
inserted by  
No. 107/1997  
s. 32,  
amended by  
No. 81/1998  
s. 23(a).

- (6) If a worker is entitled to receive weekly payments under the **Workers Compensation Act 1958** and under this Act at the same time, the sum of the rate of the weekly payments received under the **Workers Compensation Act 1958** and the rate of the weekly payments under this Act must not exceed the maximum rate of weekly payments specified in this Part and the amount of weekly payments payable under this Act is reduced accordingly.

S. 97(6)  
substituted by  
No. 7/1996  
s. 22.

- (7) A person is not entitled to weekly payments under this Act in respect of any period during which the person serves a sentence of imprisonment (whether imposed under the law of this State or of any other place) in a prison within the meaning of the **Corrections Act 1986** or in a prison or similar institution outside Victoria.

S. 97(7)  
substituted by  
No. 18/1991  
s. 5.

## **Division 2A—Compensation for maims, pain and suffering and non-economic loss**

Pt 4 Div. 2A  
(Heading)  
inserted by  
No. 80/2010  
s. 58.

### **98 Compensation for maims**

S. 98  
substituted by  
No. 64/1989  
s. 10.

- (1) A worker who suffers an injury which entitled the worker to compensation is, in respect of an injury mentioned in the Table in Schedule 3A, entitled to compensation equal to—

S. 98(1)  
amended by  
Nos 67/1992  
s. 18(1)(2)(a)–  
(d), 50/1994  
s. 41(1)(a)–(e),  
80/2010  
s. 59(1)(a).

- (a) the percentage of \$100 300 set out opposite to that injury in the Table; or

S. 98(1)(a)  
amended by  
No. 7/1996  
s. 49(e).

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S. 98(1)(b)  
amended by  
No. 7/1996  
s. 49(e).

(b) the assessed percentage of \$100 300 within  
the range set out opposite that injury in the  
Table—

calculated, subject to subsection (2), as at the date  
of the injury.

S. 98(1) Table  
amended by  
No. 60/1996  
s. 11(2),  
repealed by  
No. 80/2010  
s. 59(1)(b).

\*                      \*                      \*                      \*                      \*

(2) If the compensation payable under this section is  
for industrial deafness, the amount of  
compensation shall be calculated—

S. 98(2)(a)  
amended by  
No. 80/2010  
s. 89(1)(a).

(a) if the date of injury is deemed under  
section 88(4) to be the last day of the  
worker's employment out of which or in the  
course of which the injury arose—as at that  
day; or

S. 98(2)(b)  
amended by  
No. 80/2010  
s. 89(1)(b).

(b) if the date of injury is deemed under  
section 88(5) to be the date of the claim—  
as at the day on which the compensation is  
determined.

S. 98(2AA)  
inserted by  
No. 50/1994  
s. 41(2),  
substituted by  
No. 50/1994  
s. 41(3).

(2AA) Compensation is not payable under this section  
for a loss of hearing unless the percentage of the  
diminution of hearing determined in accordance  
with subsection (2AB) is at least 7<sup>11, 12</sup>.

S. 98(2A)  
inserted by  
No. 67/1992  
s. 18(3),  
substituted by  
No. 50/1994  
s. 41(3).

(2A) If compensation is payable under this section for a  
loss of hearing, the percentage of the maximum  
amount payable for total loss is the percentage of  
the diminution of hearing determined in  
accordance with subsection (2AB)<sup>13, 14</sup>.



- (2AB) For the purposes of this section, the percentage of diminution of hearing<sup>15</sup>—
- S. 98(2AB)  
inserted by  
No. 50/1994  
s. 41(3).
- (a) must be assessed as a binaural loss of hearing and determined—
- (i) by a person or class of persons approved; and
- (ii) in the manner approved—
- by the Minister<sup>16</sup>; and
- (b) must be assessed as a binaural loss of hearing and determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.
- S. 98(2AB)(a)  
amended by  
Nos 7/1996  
s. 23(1),  
80/2010  
s. 89(2).
- S. 98(2AB)(b)  
amended by  
No. 80/2010  
s. 89(2).
- (2AC) An approval by the Minister for the purposes of subsection (2AB)(a)(i) continues in force for the period not exceeding 3 years as is specified by the Minister in the approval unless revoked by the Minister<sup>17</sup>.
- S. 98(2AC)  
inserted by  
No. 7/1996  
s. 23(2),  
amended by  
No. 82/2001  
s. 14.
- (2B) A determination in accordance with subsection (2A) is conclusive evidence of the loss of hearing<sup>18</sup>.
- S. 98(2B)  
inserted by  
No. 67/1992  
s. 18(3).
- (3) If a worker suffers on the same occasion more than one of the injuries mentioned in the Table in Schedule 3A the worker is not in any case entitled to receive as compensation under subsection (1) more than \$100 300.
- S. 98(3)  
amended by  
Nos 50/1993  
s. 94(2),  
7/1996  
s. 49(e),  
80/2010  
s. 59(1)(c).
- (4) If a worker suffers any injury—
- (a) which as to the major part consists of an injury for which compensation is payable under subsection (1); or
- S. 98(4)  
amended by  
No. 80/2010  
s. 59(1)(c).

- (b) which consists of a lesser but substantial degree of any injury for which compensation is payable under subsection (1)—

the injury shall be regarded as an injury for which compensation based on the Table in Schedule 3A shall be payable, and the worker may be awarded as compensation such amount as, having regard to subsection (1), appears to be just and proportionate to the degree of injury suffered.

S. 98(5)  
repealed by  
No. 67/1992  
s. 18(4),  
new s. 98(5)  
inserted by  
No. 50/1993  
s. 94(1).

- (5) Compensation under this section is not payable after the death of the worker concerned.

S. 98(6)  
inserted by  
No. 107/1997  
s. 33.

- (6) Compensation under this section is payable only in respect of an injury that arose before 12 November 1997.

S. 98A  
inserted by  
No. 67/1992  
s. 19.

## **98A Compensation for pain and suffering**

S. 98A(1)  
amended by  
Nos 50/1994  
s. 42(a)(i)–(iii),  
7/1996 s. 49(f),  
80/2010  
s. 59(2).

- (1) A worker who has suffered an injury mentioned in the Table in Schedule 3A (or 2 or more of any such injuries on the same occasion) is entitled to receive by way of compensation for pain and suffering resulting from the injury or all those injuries, in addition to any other compensation under this Act, an amount not exceeding \$53 880.

S. 98A(2)  
amended by  
Nos 50/1994  
s. 42(b),  
7/1996  
s. 49(g).

- (2) This section does not apply if the compensation paid or payable under section 98 for the injury or all those injuries is less than \$10 770.

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(3) The maximum amount of compensation under this section is payable only in a most extreme case and the amount payable in any other case shall be reasonably proportionate to that maximum amount having regard to the degree and duration of pain and suffering and the severity of the injury or injuries.

S. 98A(3)  
amended by  
No. 50/1994  
s. 42(c).

(4) Compensation under this section is not payable after the death of the worker concerned.

(5) In this section—

S. 98A(5)  
amended by  
No. 50/1994  
s. 42(d).

*pain and suffering* means—

(a) actual pain; or

(b) distress or anxiety—

suffered or likely to be suffered by the injured worker, whether resulting from the injury concerned or from any necessary treatment.

(6) Compensation under this section is payable only in respect of an injury that arose before 12 November 1997.

S. 98A(6)  
inserted by  
No. 107/1997  
s. 34.

\* \* \* \* \*

S. 98B  
inserted by  
No. 50/1994  
s. 43,  
repealed by  
No. 7/1996  
s. 24(3).

S. 98C  
inserted by  
No. 107/1997  
s. 36.

## 98C Compensation for non-economic loss

S. 98C(1A)  
inserted by  
No. 9/2010  
s. 54(1).

(1A) In this section—

S. 98C(1A)  
def. of  
*relevant date*  
inserted by  
No. 80/2010  
s. 90(1).

*relevant date*, in relation to the calculation of the amount of non-economic loss under subsection (2), (3) or (3A) means—

- (a) if the worker's impairment benefit rating is not more than 70%, the date of the relevant injury;
- (b) if the worker's impairment benefit rating is more than 70%, the date on which the calculation is made;

*spinal impairment* means a whole person impairment derived solely in accordance with section 3.3 of Chapter 3 of the A.M.A. Guides, without inclusion of any other impairment.

- (1) A worker who suffers an injury which entitled the worker to compensation is, in respect of an injury resulting in permanent impairment as assessed in accordance with section 91, entitled to compensation for non-economic loss calculated in accordance with this section.

(2) The amount of the non-economic loss in respect of permanent impairment (other than psychiatric impairment and industrial deafness in respect of a further injury) is to be calculated as at the relevant date as follows—

- (a) if the worker's impairment benefit rating is less than 10%—the amount of the non-economic loss is zero;
- (b) subject to section 265, if the worker's impairment benefit rating—

S. 98C(2)  
amended by  
No. 26/2000  
s. 15(1),  
substituted by  
No. 95/2003  
s. 8(1),  
amended by  
No. 102/2004  
ss 18(1),  
38(1)(q)–(y),  
substituted by  
No. 9/2010  
s. 54(2) (as  
amended by  
No. 80/2010  
s. 159(j)),  
amended by  
No. 80/2010  
s. 90(2)(a).

- (i) is a modified whole person impairment (within the meaning of subsection (2A)(a)(i)) and is not less than 10% and less than 11%—the amount of the non-economic loss is to be determined in accordance with the formula—

S. 98C(2)(b)(i)  
amended by  
Nos 80/2010  
s. 82(x),  
67/2013  
s. 632(y).

$\$11\,670 + [(D - 10) \times \$9940];$

- (ii) is a modified spinal impairment (within the meaning of subsection (2A)(a)(ii)) and is not less than 10% and less than 11%—the amount of the non-economic loss is to be determined in accordance with the formula—

S. 98C(2)(b)(ii)  
amended by  
Nos 80/2010  
s. 82(x),  
67/2013  
s. 632(y).

$\{ \$11\,670 + [(D - 10) \times \$9940] \} \times 1.1;$

- (c) if the worker's impairment benefit rating—

- (i) is not less than 10% and not more than 30% and paragraph (b) does not apply to the worker—the amount of the non-economic loss is to be determined in accordance with the formula—

S. 98C(2)(c)(i)  
amended by  
Nos 80/2010  
s. 82(y),  
67/2013  
s. 632(z).

$\$18\,810 + [(D - 10) \times \$2830]$ ;

- (ii) is a spinal impairment (within the meaning of subsection (2A)(a)(ii) or (iii)) and is not less than 10% and less than 30% and paragraph (b) does not apply to the worker—the amount of the non-economic loss is—

S. 98C(2)  
(c)(ii)(A)  
amended by  
Nos 80/2010  
s. 82(z),  
67/2013  
s. 632(za).

- (A) the amount determined in accordance with the formula—

$\{\$18\,810 + [(D - 10) \times \$2830]\} \times 1.1$ ; or

S. 98C(2)  
(c)(ii)(B)  
amended by  
Nos 80/2010  
s. 60(1),  
67/2013  
s. 632(za).

- (B) the amount determined in accordance with the formula  
 $\$18\,810 + [20 \times \$2830]$ —

whichever is the lesser;

S. 98C(2)(d)  
amended by  
Nos 80/2010  
s. 82(za),  
67/2013  
s. 632(zb).

- (d) if the worker's impairment benefit rating is more than 30% and not more than 70%—the amount of the non-economic loss is to be determined in accordance with the formula—

$\$75\,260 + [(D - 30) \times \$4700]$ ;

- (e) if the worker's impairment benefit rating is more than 70% and not more than 80%—the amount of the non-economic loss is—

S. 98C(2)(e)(i)  
amended by  
Nos 80/2010  
s. 82(zb),  
67/2013  
s. 632(zc).

- (i) the amount determined in accordance with the formula—

$\$262\,070 + [(D - 70) \times \$29\,330]$ ; or

(ii) \$555 350—

S. 98C(2)(e)(ii)  
amended by  
Nos 80/2010  
s. 82(zc),  
67/2013  
s. 632(zd).

whichever is the lesser;

(f) if the worker's impairment benefit rating  
is more than 80%—the amount of the  
non-economic loss is \$555 350—

S. 98C(2)(f)  
amended by  
Nos 80/2010  
s. 82(zc),  
67/2013  
s. 632(zd).

where D is the worker's impairment benefit rating  
expressed as a number.

(2A) For the purposes of this section, a *worker's  
impairment benefit rating* is—

S. 98C(2A)  
inserted by  
No. 95/2003  
s. 8(1),  
substituted by  
No. 9/2010  
s. 54(2),  
amended by  
No. 80/2010  
s. 90(2)(b).

(a) if the worker's degree of impairment consists  
of, or includes, a whole person impairment  
assessed in accordance with Chapter 3 of  
the A.M.A. Guides and that whole person  
impairment is not less than 5% and not more  
than 29%—

- (i) subject to section 265, the modified  
whole person impairment set out in  
column 2 of Schedule 2 opposite the  
relevant whole person impairment as  
assessed in accordance with Chapter 3;
- (ii) subject to section 265, the modified  
whole person impairment set out in  
column 2 of Schedule 2 opposite the  
relevant whole person impairment as  
assessed in accordance with Chapter 3  
for a spinal impairment;
- (iii) if subparagraph (ii) does not apply,  
the worker's degree of impairment as  
assessed in accordance with Chapter 3  
for a spinal impairment;

(iv) the worker's degree of impairment—  
whichever provides the worker with the  
higher amount for non-economic loss under  
subsection (2);

(b) in any other case, the worker's degree of  
impairment.

**Note**

Subsections (2)(b) and (2A)(a)(i) and (ii) do not apply  
with respect to injuries that occurred before the date of  
commencement of the **Accident Compensation and  
Transport Accident Acts (Amendment) Act 2003**—  
see section 265.

S. 98C(3)  
amended by  
No. 26/2000  
s. 15(2),  
substituted by  
No. 95/2003  
s. 8(1),  
amended by  
No. 80/2010  
s. 90(2)(c).

- (3) The amount of the non-economic loss in respect  
of permanent psychiatric impairment is to be  
calculated as at the relevant date as follows—
- (a) if the worker's degree of impairment is less  
than 30%—the amount of the non-economic  
loss is zero;

S. 98C(3)(b)  
amended by  
No. 102/2004  
s. 38(2)(a)(b),  
substituted by  
No. 9/2010  
s. 54(3),  
amended by  
Nos 80/2010  
s. 82(zd),  
67/2013  
s. 632(ze).

- (b) if the worker's degree of impairment is  
30%—the amount of the non-economic loss  
is to be determined, subject to subsection  
(3AA), in accordance with the formula—  
$$\$18\,810 + [(D - 10) \times \$2830];$$

S. 98C(3)(c)  
amended by  
No. 102/2004  
s. 38(2)(c)(d),  
substituted by  
No. 9/2010  
s. 54(3),  
amended by  
Nos 80/2010  
s. 82(ze),  
67/2013  
s. 632(zf).

- (c) if the worker's degree of impairment is more  
than 30% and not more than 70%—the  
amount of non-economic loss is the amount  
determined, subject to subsection (3AA), in  
accordance with the formula—  
$$\$75\,260 + [(D - 30) \times \$4700];$$



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- (d) if the worker's degree of impairment is more than 70% and not more than 80%—the amount of the non-economic loss is—
- S. 98C(3)(d) amended by No. 102/2004 s. 38(2)(e)(f), substituted by No. 9/2010 s. 54(3).
- (i) the amount determined in accordance with the formula—
- $\$262\,070 + [(D - 70) \times \$29\,330]$ ; or
- S. 98C(3)(d)(i) amended by Nos 80/2010 s. 82(zf), 67/2013 s. 632(zg).
- (ii) \$555 350—
- S. 98C(3)(d)(ii) amended by Nos 80/2010 s. 82(zg), 67/2013 s. 632(zh).
- whichever is the lesser;
- (e) if the worker's degree of impairment is more than 80%—the amount of the non-economic loss is \$555 350—
- S. 98C(3)(e) amended by Nos 102/2004 s. 38(2)(g), 9/2010 s. 54(4), 80/2010 s. 82(zg), 67/2013 s. 632(zh).

where D is the worker's degree of impairment expressed as a number.

- (3AA) In relation to a relevant injury sustained before 3 December 2003, a reference to an amount of dollars—
- S. 98C(3AA) inserted by No. 9/2010 s. 54(5), substituted by No. 80/2010 s. 90(3).
- (a) in subsection (2)(c) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(b) as then in force;
- (b) in subsection (2)(d) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(c) as then in force;

- (c) in subsection (3)(b) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(b) as then in force in respect of permanent impairment;
- (d) in subsection (3)(c) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(c) as then in force in respect of permanent impairment.

S. 98C(3AB)  
inserted by  
No. 9/2010  
s. 54(5),  
substituted by  
No. 80/2010  
s. 90(3).

(3AB) In relation to a relevant injury sustained on or after 3 December 2003 and before 1 July 2010, a reference to an amount of dollars—

- (a) in subsection (2)(b) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(b) as then in force;
- (b) in subsection (2)(c) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(c) as then in force;
- (c) in subsection (3)(b) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(c) as then in force in respect of permanent impairment;
- (d) in subsection (3)(c) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(d) as then in force in respect of permanent impairment.

S. 98C  
(3AC)(3AD)  
inserted by  
No. 9/2010  
s. 54(5),  
repealed by  
No. 80/2010  
s. 90(3).

\* \* \* \* \*

- (3A) Despite subsection (1), the amount of non-economic loss in respect of industrial deafness in respect of a further injury is to be calculated as at the relevant date as follows—
- S. 98C(3A) inserted by No. 102/2004 s. 18(2), substituted by No. 28/2005 s. 19, amended by No. 80/2010 s. 90(2)(d).
- (a) if **T** is not less than 10% and not more than 30% and **P** is less than 10%—the amount of the non-economic loss is to be determined in accordance with the formula—
- S. 98C(3A)(a) amended by Nos 80/2010 s. 82(zh), 67/2013 s. 632(zi).
- $[(\mathbf{T} - 10) \times \$2830] + [(10 - \mathbf{P}) \times \$1860];$
- (b) if **T** is not less than 10% and not more than 30% and **P** is not less than 10%—the amount of the non-economic loss is to be determined in accordance with the formula—
- S. 98C(3A)(b) amended by Nos 80/2010 s. 82(zi), 67/2013 s. 632(zj).
- $[(\mathbf{T} - \mathbf{P}) \times \$2830];$
- (c) if **T** is more than 30% and **P** is less than 10%—the amount of the non-economic loss is to be determined in accordance with the formula—
- S. 98C(3A)(c) amended by Nos 80/2010 s. 82(zj), 67/2013 s. 632(zk).
- $[(\mathbf{T} - 30) \times \$4700] + [(30 - 10) \times \$2830] + [(10 - \mathbf{P}) \times \$1860];$
- (d) if **T** is more than 30% and **P** is not less than 10% and is less than 30%—the amount of the non-economic loss is to be determined in accordance with the formula—
- S. 98C(3A)(d) amended by Nos 80/2010 s. 82(zk), 67/2013 s. 632(zi).
- $[(\mathbf{T} - 30) \times \$4700] + [(30 - \mathbf{P}) \times \$2830];$
- (e) if **T** is more than 30% and **P** is not less than 30%—the amount of the non-economic loss is to be determined in accordance with the formula—
- S. 98C(3A)(e) amended by Nos 80/2010 s. 82(zi), 67/2013 s. 632(zm).

$[(T - P) \times \$4700]$ —

where—

"**T**" is the percentage referred to in section 89(3)(a) rounded up to the next whole number, after that percentage has been converted in accordance with section 91(3);

"**P**" is the total percentage referred to in section 89(3)(b) rounded up to the next whole number, after that percentage has been converted in accordance with section 91(3A).

S. 98C(3B)  
inserted by  
No. 10/2022  
s. 6.

- (3B) Despite subsection (1), the amount of non-economic loss in respect of impairment resulting from an injury referred to in section 90D is to be calculated as at the relevant date in accordance with the formula—

$[(T - P) \times \$4700]$

where—

"**T**" is the percentage referred to in section 90D(2)(a);

"**P**" is the percentage referred to in section 90D(2)(b).

S. 98C(4)  
amended by  
Nos 26/2000  
s. 15(3),  
95/2003  
s. 8(2)(a),  
102/2004  
s. 38(2)(h),  
80/2010  
s. 82(zm),  
67/2013  
s. 632(zn).

- (4) The amount of the non-economic loss in respect of an injury resulting in the loss of a foetus or of the loss of more than one foetus is \$67 660.

- (5) For the purposes of subsection (4), *foetus* means the conceptus beyond the sixteenth week of development.

- (6) If the compensation payable under this section is for industrial deafness, the amount of compensation is to be calculated—
- (a) if the date of injury is deemed under section 88 to be the last day of the worker's employment out of which or in the course of which the injury arose—as at that day; or
  - (b) if the date of injury is deemed under section 88 to be the date of the claim—as at the day on which the compensation is determined.

- (6A) Subject to subsections (6B) and (6C), if a worker sustains an injury, other than industrial deafness, that occurs by way of gradual process over time, the injury is deemed to have been sustained on the last day on which the worker was—

S. 98C(6A)  
inserted by  
No. 9/2010  
s. 54(6).

- (a) performing duties; or
- (b) exposed to conditions—

by reason of which the injury was due to the nature of the worker's employment or arose out of or in the course of the worker's employment.

- (6B) Subject to subsection (6C), if a worker sustains an injury, other than industrial deafness, that occurs by way of gradual process over time and on the day on which the worker gives, serves or lodges a claim for compensation in respect of the injury, the worker is still—

S. 98C(6B)  
inserted by  
No. 9/2010  
s. 54(6),  
amended by  
No. 80/2010  
s. 60(2).

- (a) performing duties; or
- (b) exposed to conditions—

by reason of which the injury is due to the nature of the worker's employment or arises out of or in the course of employment, the injury is deemed to have been sustained on that day.

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S. 98C(6C)  
inserted by  
No. 9/2010  
s. 54(6).

(6C) For the purposes of subsections (6A) and (6B), the Minister may make guidelines specifying considerations and circumstances to be considered in determining whether subsection (6A) or (6B) applies in respect of an injury that occurs by way of gradual process over time.

S. 98C(6D)  
inserted by  
No. 9/2010  
s. 54(6).

(6D) Guidelines made under subsection (6C) must be published—

- (a) in the Government Gazette; and
- (b) on a Government Internet website.

S. 98C(7)  
amended by  
Nos 26/2000  
s. 15(4),  
95/2003  
s. 8(2)(b),  
102/2004  
s. 38(2)(g),  
9/2010  
s. 54(7),  
80/2010  
s. 82(zn),  
67/2013  
s. 632(zc).

(7) If a worker suffers on the same occasion more than one injury which entitles the worker to compensation under subsection (1), the worker is not entitled to receive as compensation for non-economic loss more than \$555 350.

S. 98C(8)  
amended by  
Nos 26/2000  
s. 15(4),  
95/2003  
s. 8(2)(b),  
102/2004  
s. 38(2)(g),  
9/2010  
s. 54(7),  
80/2010  
s. 82(zn),  
67/2013  
s. 632(zc),  
substituted by  
No. 67/2013  
s. 630(4).

(8) If a worker suffers an injury which entitles the worker to compensation for non-economic loss of more than one kind as specified in subsection (2), (3) or (4), the worker is not entitled to receive as compensation for non-economic loss under this section more than \$555 350.

(9) Where compensation has been paid under this section for an impairment resulting from an injury or under section 98 or 98A in respect of an injury, that compensation must be deducted from any compensation payable under this section in

respect of any impairment resulting from an injury consisting of any recurrence, aggravation, acceleration, exacerbation or deterioration of the injury in respect of which compensation has previously been paid under this section or section 98 or 98A.

- (9A) If compensation has been paid for non-economic loss in respect of a prior injury or prior hearing loss, that prior injury or prior hearing loss must be taken into account in accordance with sections 88, 89, 91 and this section in determining the amount of compensation payable under this section. **S. 98C(9A) inserted by No. 102/2004 s. 18(3).**
- (10) Except as provided in subsection (10A), compensation under this section is not payable after the death of the worker concerned. **S. 98C(10) amended by No. 49/2018 s. 40(1).**
- (10A) If— **S. 98C(10A) inserted by No. 49/2018 s. 40(2).**
- (a) a worker suffers an injury which entitled the worker to compensation under this Division; and
  - (b) the worker has made a claim for compensation under this section; and
  - (c) the worker has received the decision of the Authority or self-insurer in relation to liability for the claim, or liability for the claim has been determined by a court; and
  - (d) the worker has received an assessment or assessments in accordance with section 91 as to the degree of impairment (if any) resulting from the injury; and
  - (e) the most recent assessment determines the worker has a degree of impairment that entitles the worker to compensation under this section or section 98E; and

(f) the worker dies before the compensation is fully paid—

any unpaid compensation is payable to the worker's estate.

S. 98C(11)  
inserted by  
No. 9/2010  
s. 54(8).

(11) Despite anything to the contrary in this section or section 98E, a worker is not entitled to an amount of compensation for non-economic loss under this section or section 98E or both that exceeds the maximum amount payable under this section as in force at the date of the relevant injury.

S. 98D  
inserted by  
No. 107/1997  
s. 36.

#### **98D Payment of Compensation**

Compensation for non-economic loss calculated under section 98C or 98E is to be paid as a lump sum.

S. 98DA  
inserted by  
No. 80/2010  
s. 91,  
amended by  
No. 67/2013  
s. 630(5).

#### **98DA Effect of payment of compensation under section 98C or 98E**

If compensation for non-economic loss, calculated in accordance with section 98C, is paid to a worker in respect of an impairment, loss of bodily function, disfigurement, brain damage or total loss resulting from an injury (other than industrial deafness) that occurred—

- (a) by gradual process over time due to the nature of the employment in which the worker was employed; or
- (b) by gradual process over time and arose out of, or in the course of, employment in which the worker was employed—

the worker ceases to be entitled to compensation under section 98, 98C or 98E of this Act or under section 11 of the **Worker's Compensation Act 1958** or under Division 5 of Part 5 of the **Workplace Injury Rehabilitation and Compensation Act 2013** in respect of any injury—



- (c) suffered by the worker before the compensation was paid; and
- (d) that materially contributed to the impairment, loss of body function, disfigurement, brain damage or total loss in respect of which the compensation was paid.

**98E No Disadvantage—Compensation Table**

S. 98E  
inserted by  
No. 107/1997  
s. 36.

- (1) If a worker suffers an injury which entitled the worker to compensation and the injury is a total loss mentioned in the Table in Schedule 3B and the amount of compensation calculated under section 98C is less than the amount payable for total loss specified in the Table in respect of that injury, the worker is entitled to compensation equal to the amount specified in the Table instead of compensation calculated under section 98C.

S. 98E(1)  
amended by  
No. 80/2010  
s. 61(1)(a).

\* \* \* \* \*

S. 98E(1)  
Table  
substituted by  
No. 102/2004  
s. 39,  
repealed by  
No. 80/2010  
s. 61(1)(b).

\* \* \* \* \*

S. 98E(2)  
repealed by  
No. 80/2010  
s. 61(1)(c).

- (3) For the purposes of this section, total loss of hearing—
  - (a) shall be determined—
    - (i) by a person or class of persons approved; and

(ii) in the manner approved—  
by the Minister; and

(b) shall be determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

S. 98E(4)  
amended by  
No. 82/2001  
s. 14.

(4) An approval by the Minister for the purposes of subsection (3)(a)(i) continues in force for the period not exceeding 3 years as is specified by the Minister in the approval unless revoked by the Minister.

S. 98E(5)  
amended by  
Nos 102/2004  
s. 40(a),  
80/2010  
s. 61(1)(d).

(5) If a worker suffers on the same occasion more than one of the injuries mentioned in the Table in Schedule 3B the worker is not in any case entitled to receive as compensation under subsection (1) more than \$252 250.

(6) Compensation under this section is not payable after the death of the worker concerned.

S. 98E(7)  
inserted by  
No. 80/2010  
s. 61(2).

(7) The amount of compensation for an injury that is a total loss mentioned in the Table in Schedule 3B is to be calculated as at the date of the relevant injury.

Pt 4 Div. 2B  
(Heading)  
inserted by  
No. 80/2010  
s. 77.

## **Division 2B—Compensation for medical and like services**

New s. 99AAA  
inserted by  
No. 80/2010  
s. 77.

### **99AAA Definitions**

(1) In this Division—

S. 99AAA(1)  
def. of *family  
member*  
amended by  
No. 49/2018  
s. 41.

*family member* means a partner, parent,  
grandparent, 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;

*supported accommodation* means—

- (a) a residential facility in which residential care is provided under the Aged Care Act 1997 of the Commonwealth;
- (b) a supported residential service within the meaning of section 214 of the **Social Services Regulation Act 2021**;
- (c) an SDA dwelling within the meaning of the **Residential Tenancies Act 1997**;
- (d) a group home or other residential facility approved by the Authority for the purposes of this section.

S. 99AAA(1)  
def. of  
*supported  
accom-  
modation*  
amended by  
Nos 22/2012  
s. 84, 67/2013  
s. 630(6),  
37/2021 s. 388,  
9/2023 s. 253.

- (2) In this Division, ***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.
- (3) Guidelines issued by the Authority for the purposes of subsection (2)(c)(iii) 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.

## **99 Liability of Authority and self-insurer**

- (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) is liable, unless a determination or order referred to in section 249AA or a determination under section 249AB, 249B or 249BA applies, 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

S. 99 amended by No. 50/1989 s. 52(2) (as amended by No. 91/1989 s. 7(h)), substituted by No. 64/1989 s. 10, amended by Nos 67/1992 ss 20, 64(7)(a)(8)(b), 50/1993 ss 78(1)(c)(d) (f)(2)(b), 81(e), 95, 50/1994 s. 44, 7/1996 ss 25, 26(1)(2), 49(h), 60/1996 ss 15(1), 16, 107/1997 s. 39, 81/1998 s. 23(a)(b), 27/2001 s. 4(Sch. 2 item 1.7), 95/2003 s. 4(2), 94/2004 s. 38, 102/2004 ss 24(1), 40(b)(c), 41/2006 ss 16, 17, 60/2007 s. 26, 68/2007 s. 22, 9/2010 ss 32(d), 48–50, 52, 144(1)–(3), substituted by No. 80/2010 s. 77.

- (ab) if the worker dies, the reasonable costs of household help received by a family member of the worker for a period of 6 months commencing from the date on which the

S. 99(1)(ab) inserted by No. 10/2022 s. 7(1).

Authority is notified of the death, in circumstances where—

- (i) it appears to the Authority that the worker's death results from the injury for which compensation is payable; and
  - (ii) at the time of the death of the worker, the worker was receiving compensation for household help within the meaning of paragraph (c) of the definition of ***personal and household service***; and
  - (iii) the family member resides at the worker's home; and
  - (iv) the Authority is notified of the death of the worker within 3 months from the date of the death; and
- (b) 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 \$5410 in respect of that severe injury or death; and
- (c) the reasonable costs of burial or cremation where death results from the injury; and

S. 99(1)(c)  
amended by  
No. 48/2017  
s. 3(1).

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(d) reasonable travelling or accommodation expenses not exceeding \$5000 incurred by family members of the worker in circumstances where—

S. 99(1)(d)  
inserted by  
No. 48/2017  
s. 3(2).

(i) death results from the injury; and

(ii) a burial service or cremation service is held in respect of the worker; and

(iii) the service is held at least 100 kilometres from the normal residence of the worker's family members—

S. 99(1)(d)(iii)  
amended by  
No. 10/2022  
s. 7(2)(a).

\* \* \* \* \*

S. 99(1)(d)(iv)  
repealed by  
No. 10/2022  
s. 7(2)(b).

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

- (2) The Authority may issue guidelines identifying services, or services of a class of services, referred to in subsection (1)(a) or (b) for which approval should be sought from the Authority or self-insurer before the services are provided.
- (3) A worker is 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.
- (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 is to the extent of the value of the services 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 \$592 the employer may claim the amount by which the value of the services exceeds \$592 from the Authority.
- (6) A payment of compensation under this Division must be made to the person lawfully entitled to payment.
- (7) If the liability to the person lawfully entitled to payment of the costs specified in this Division 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 must 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 this Division 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 must 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 must 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 this Division wholly and finally discharges the worker or the worker's dependants and any other person from all liability whatsoever in respect of those costs.

S. 99(6)  
amended by  
No. 67/2013  
s. 630(7)(a).



- (10) An 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 Division or to which a notice, determination or order referred to in section 249AA, 249AB, 249B or 249BA applies must not be entertained by any court.
- (11) Subsection (10) does not apply in relation to a worker or a worker's legal personal representative or a dependant in respect of the payment or recovery of costs of professional services provided by a person after the worker, representative or dependant has been informed in writing by the Authority or self-insurer that a determination or order against that person has been made under section 249AA, 249AB, 249B or 249BA.
- (12) 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 section 99AC(5));
  - (b) food or household or personal items;

**S. 99(10)  
amended by  
No. 67/2013  
s. 630(7)(b).**

- (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.
- (13) Subsection (12) does not apply in the case of a person—
- (a) who is under 18 years of age and who, as a result of his or her injury, is unable to reside at the place at which he or she resided before the injury; or
  - (b) who is receiving respite care as a result of his or her injury; or
  - (c) who receives a hospital service as a result of his or her injury and, after being discharged from hospital for the first time after suffering the injury, resides in supported accommodation but only while so residing during the first 18 months after being so discharged.
- (14) If, during the period of 18 months referred to in subsection (13), the person receives a hospital service or hospital services, a reference in that subsection to 18 months has effect, in relation to that person, as a reference to that period as extended by the period, or periods, during which the person receives the hospital service or hospital services.
- (15) The contribution to be made by a worker towards the cost of supported accommodation referred to in paragraph (b) or (d) of the definition of ***supported accommodation*** must not exceed \$32.50 per day.

S. 99(15)  
substituted by  
No. 67/2013  
s. 630(8).

- (16) The Governor in Council may, on the recommendation of the Authority, by Order published in the Government Gazette, declare that section 100C does not apply to an amount referred to in subsection (15) of this section in respect of a specified financial year.

S. 99(16)  
substituted by  
No. 67/2013  
s. 630(8).

\* \* \* \* \*

S. 99AAA  
inserted by  
No. 60/1996  
s. 17,  
amended by  
No. 81/1998  
ss 23(a)(c), 29,  
repealed by  
No. 9/2010  
s. 51(1).

#### **99AA Medical and like services outside Australia**

S. 99AA  
inserted by  
No. 67/1992  
s. 21,  
amended by  
Nos 50/1993  
s. 78(1)(h),  
50/1994  
s. 45(1)(2),  
7/1996  
s. 9(1)(2),  
60/1996  
s. 18(c),  
repealed by  
No. 107/1997  
s. 11(4), new  
s. 99AA  
inserted by  
No. 80/2010  
s. 77.

- (1) Notwithstanding anything to the contrary in this Division, unless subsection (3) or (4) applies, the Authority, employer or self-insurer is not liable to pay as compensation the costs of any service specified in section 99(1)(a), (ab) or (b) 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 was provided or carried out.

S. 99AA(1)  
amended by  
No. 10/2022  
s. 8(1).

S. 99AA(2)  
amended by  
No. 10/2022  
s. 8(2).

- (2) In determining whether to approve the provision or carrying out of a service specified in section 99(1)(a), (ab) or (b) for the purposes of subsection (1), the Authority, employer or self-insurer must have regard to the matters specified in the definition of *reasonable costs* in section 99AAA(2)(c) and to section 99AD(2), (4) and (5).
- (3) Subsection (1) does not apply if the worker or claimant satisfies the Authority, employer or self-insurer that because of an emergency situation—

S. 99AA(3)(a)  
amended by  
No. 10/2022  
s. 8(2).

- (a) it was necessary to immediately provide or carry out a service specified in section 99(1)(a), (ab) or (b); and
- (b) it was not reasonably practicable to first obtain approval.

S. 99AA(4)  
amended by  
No. 10/2022  
s. 8(3).

- (4) In the case of a worker who resides outside Australia, the Authority, employer or self-insurer may for the purposes of subsection (1) give a general approval specifying a class or classes of services.
- (5) The requirement imposed by subsection (1) is in addition to any other relevant requirements under this Division.

S. 99AB  
inserted by  
No. 67/1992  
s. 21,  
amended by  
No. 50/1993  
s. 78(1)(c),  
repealed by  
No. 107/1997  
s. 11(4), new  
s. 99AB  
inserted by  
No. 80/2010  
s. 77.

#### **99AB Occupational rehabilitation services**

- (1) A worker is entitled to receive occupational rehabilitation services referred to in this Division 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 (2); 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.
- (2) A list of providers of occupational rehabilitation services referred to in section 99(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.
- (3) If 3 approved providers of particular occupational rehabilitation services are not available, it is sufficient compliance with subsection (2) if the list consists of the names of the available approved provider or providers of those occupational rehabilitation services.
- (4) If—
  - (a) the Authority, employer or self-insurer offers occupational rehabilitation services from an approved provider of occupational rehabilitation services to be chosen by the worker from a list of providers of those services nominated by the Authority, employer or self-insurer in accordance with subsection (2) or (3); 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 (2).

S. 99AC  
inserted by  
No. 67/1992  
s. 21,  
substituted by  
No. 50/1994  
s. 46,  
repealed by  
No. 107/1997  
s. 11(4), new  
s. 99AC  
inserted by  
No. 80/2010  
s. 77.

### **99AC Modification of cars and homes**

- (1) Unless the Authority or self-insurer otherwise determines, the Authority or a self-insurer is not liable to pay the reasonable costs, or contribute a reasonable amount, referred to in subsection (2), (3) or (5) unless the Authority or self-insurer approved the worker's requirement, and its costs, before the costs were incurred.
- (2) 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 or self-insurer 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 or self-insurer.
- (3) 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 or self-insurer is liable to contribute a reasonable amount to the purchase cost of a suitable car selected by the Authority or self-insurer.
- (4) Without limiting the factors the Authority or self-insurer may consider in determining what is a reasonable amount for the purposes of

subsections (2)(b) and (3), the Authority or self-insurer 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.
- (5) 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 or self-insurer 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.
- (6) Without limiting the factors the Authority or self-insurer may consider in determining the reasonable costs or amount for the purposes of subsection (5), the Authority or self-insurer 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.
- (7) If a worker moves from a home that has modifications to which the Authority or self-insurer made a contribution, in assessing whether to make a payment in respect of modifications to the worker's new home, the Authority or self-insurer 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.
- (8) The Authority or self-insurer must not make a payment or contribution under subsection (2), (3) or (5) which exceeds \$10 000 or a greater amount as may be prescribed, unless the worker enters into an agreement with the Authority or self-insurer in relation to the ownership of, and



maintenance of modifications to, the car, home or semi-detachable portable unit.

- (9) Without limiting what may be included in an agreement under subsection (8), the agreement must include provisions in respect of—
- (a) subsequent modifications;
  - (b) changes of ownership;
  - (c) the frequency of modifications and changes of ownership.

**99AD Duration of compensation under this Division**

- (1) Subject to subsection (4), if weekly payments are payable, compensation under this Division ceases after 52 weeks after the entitlement to weekly payments ceases, unless subsection (5) applies.
- (2) Subject to subsection (4), if compensation is payable only under this Division, compensation under this Division ceases after 52 weeks after the entitlement arises, unless subsection (5) applies.
- (3) Before compensation under subsection (1) or (2) ceases, the Authority or self-insurer—
  - (a) must give at least 28 days written notice to the worker; and
  - (b) must state in the notice—
    - (i) the reasons for giving the notice; and
    - (ii) the date when the entitlement will cease.
- (4) 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,

S. 99AD  
inserted by  
No. 67/1992  
s. 21,  
amended by  
Nos 50/1993  
s. 78(1)(c),  
50/1994  
s. 47,  
repealed by  
No. 107/1997  
s. 11(4), new  
s. 99AD  
inserted by  
No. 80/2010  
s. 77.

S. 99AD(4)  
amended by  
No. 67/2013  
s. 630(9)(a).

to continue to receive compensation under this Division.

(5) Compensation under this Division does not cease if—

(a) the worker has returned to work but—

(i) could not remain at work if a service under section 99(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 91E; or

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

(c) the service provided under section 99(1) is essential to ensuring that the worker's health or ability to undertake the necessary activities of daily living does not significantly deteriorate.

S. 99AD  
(5)(a)(i)  
amended by  
No. 67/2013  
s. 630(9)(b) (as  
amended by  
No. 44/2014  
s. 24(27)).

S. 99AE  
inserted by  
No. 80/2010  
s. 77.

**99AE Termination of payment for professional services obtained fraudulently**

- (1) If the Authority or a self-insurer determines that payment for professional services was obtained by the worker fraudulently, the Authority or self-insurer may terminate payment of those professional services by giving to the worker, within 7 days after the determination is made, written notice stating the date on which, and the grounds on which, the determination was made.
- (2) The termination of payment of professional services under subsection (1) takes effect from the date of the determination.

**Division 2BA—Provisional payments for mental injuries**

Div. 2BA  
(Heading and  
ss 99AF–  
99AS)  
inserted by  
No. 5/2021  
s. 35.

**99AF Definition**

In this Division—

*reasonable costs* has the same meaning as in  
section 99AAA(2).

S. 99AF  
inserted by  
No. 5/2021  
s. 35.

**99AG Entitlement to provisional payments for mental injuries**

S. 99AG  
inserted by  
No. 5/2021  
s. 35.

- (1) If a worker makes a claim for compensation under this Act in respect of a mental injury, the Authority or a self-insurer must pay the reasonable costs of a service specified in section 99(1)(a) received because of the claimed mental injury as provisional payments in accordance with this Division.
- (2) Subsection (1) does not apply—
  - (a) if the claim for compensation was made before the commencement of this Division;  
or
  - (b) subject to section 99AN(1)(b), if the Authority or a self-insurer has previously determined a claim for compensation relating to the same mental injury and circumstances.
- (3) Guidelines made under section 99(2) apply for the purposes of this Division.
- (4) A worker is 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.

S. 99AH  
inserted by  
No. 5/2021  
s. 35.

**99AH To whom provisional payments under this Division are to be paid**

- (1) Provisional payments under this Division must be made to a person lawfully entitled to the payment.
- (2) If the liability to the person lawfully entitled to payment of the costs specified in section 99AG(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 must be paid to the worker or other person who made the payment.
- (3) If a worker is entitled to any of the services specified in section 99AG(1) free of charge or at a reduced rate or charge because the worker—
  - (a) entered into any prior contract, agreement or arrangement; or
  - (b) was a contributor or subscriber to any institution, fund or scheme—the payment in respect of those services must 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 must be paid to the worker.
- (4) The payment of the whole of the reasonable costs of any service specified in section 99AG(1) wholly and finally discharges the worker and any other person from all liability whatsoever in respect of those costs.

**99AI Certain actions etc. not permitted**

For the purposes of this Division, section 99(10) and (11) apply as if in subsection (10) of that section, for "this Division" there were substituted "Division 2BA".

S. 99AI  
inserted by  
No. 5/2021  
s. 35.

**99AJ Medical and like services outside Australia**

For the purposes of this Division, section 99AA applies as if—

S. 99AJ  
inserted by  
No. 5/2021  
s. 35.

- (a) in subsection (1) of that section—
  - (i) for "compensation" there were substituted "provisional payments"; and
  - (ii) for "or of burial or cremation" were omitted; and
- (b) in subsections (1) and (2) of that section "or burial or cremation" were omitted; and
- (c) in subsection (2) of that section, for "section 99AD(2), (4) and (5)" there were substituted "section 99AN"; and
- (d) in subsection (3) of that section "or burial or cremation" were omitted; and
- (e) in subsection (4) of that section ", burials or cremations" were omitted.

**99AK Provisional payments not payable for certain accommodation etc.**

For the purposes of this Division, section 99(12) to (16) apply as if in subsection (12) of that section—

S. 99AK  
inserted by  
No. 5/2021  
s. 35.

- (a) for "compensation" there were substituted "provisional payments"; and
- (b) for "injury" there were substituted "mental injury".

S. 99AL  
inserted by  
No. 5/2021  
s. 35.

### **99AL Occupational rehabilitation services**

For the purposes of this Division, section 99AB applies as if—

- (a) in subsection (1) of that section, for "this Division" there were substituted "section 99(1)(a)"; and
- (b) in subsection (2)(a) of that section, for "type of injury" there were substituted "nature of the mental injury".

S. 99AM  
inserted by  
No. 5/2021  
s. 35.

### **99AM Modification of cars and homes**

For the purposes of this Division, section 99AC applies as if—

- (a) in subsections (2), (3), (4)(a), (b) and (c) and (5) of that section, for "injury" there were substituted "mental injury"; and
- (b) in subsection (6)(b) and (c) of that section, for "injuries" there were substituted "mental injuries".

S. 99AN  
inserted by  
No. 5/2021  
s. 35.

### **99AN Duration of provisional payments under this Division**

- (1) Provisional payments are payable under this Division on and from the day the worker is determined under section 75A of the **Workplace Injury Rehabilitation and Compensation Act 2013** to be entitled to provisional payments until—

- (a) if the worker's claim for compensation in respect of the mental injury is accepted by the Authority or a self-insurer, the day the claim is accepted; or

- (b) in any other case, 13 weeks after the day the worker is determined under section 75A of the **Workplace Injury Rehabilitation and Compensation Act 2013** to be entitled to provisional payments.
- (2) To avoid doubt, a worker whose claim for compensation in respect of a mental injury is rejected by the Authority or a self-insurer or terminated under section 114 is entitled to provisional payments under this Division for that claimed injury until the day referred to in subsection (1)(b).

**99AO Provisional payments are not compensation**

S. 99AO  
inserted by  
No. 5/2021  
s. 35.

- (1) Provisional payments made under this Division are not a payment of compensation under this Act except for the purposes of—
  - (a) seeking a refund of payments under section 599 of the **Workplace Injury Rehabilitation and Compensation Act 2013** or any other amount relating to the recovery of payments under this Act; and
  - (b) calculating employer premiums.
- (2) A decision made by the Authority or self-insurer to make provisional payments under this Division is not an admission of liability to pay compensation under this Act.
- (3) Except as provided in subsection (4), nothing in this Division limits or otherwise affects a worker's entitlement to compensation or damages arising from the worker's mental injury.
- (4) If the reasonable costs of a service are paid as provisional payments under this Division, the liability of the Authority or a self-insurer to pay compensation under Division 2B in respect of that service is discharged.

S. 99AP  
inserted by  
No. 5/2021  
s. 35.

**99AP Termination of provisional payments for services obtained fraudulently**

For the purposes of this Division, section 99AE applies as if—

- (a) in subsection (1) of that section—
  - (i) for "payment for professional services" there were substituted "provisional payments made under Division 2BA"; and
  - (ii) for "payment of those professional services" there were substituted "those provisional payments"; and
- (b) in subsection (2) of that section, for "payment of professional services" there were substituted "those provisional payments".

S. 99AQ  
inserted by  
No. 5/2021  
s. 35.

**99AQ Guidelines for the purposes of this Division**

- (1) The Authority may make guidelines for the purposes of this Division relating to the process to be observed by the Authority or self-insurer when acting under this Division.
- (2) The Authority must ensure that guidelines made under subsection (1) are published and are generally available.

S. 99AR  
inserted by  
No. 5/2021  
s. 35.

**99AR Disputes about provisional payments**

For the purposes of this Division, section 6(6)(b) of the **Workplace Injury Rehabilitation and Compensation Act 2013** applies as if in that subsection, for "on or after 1 July 2014 in relation to a claim for compensation under the **Accident Compensation Act 1985**, whether made before, on or after 1 July 2014" there were substituted "under the **Accident Compensation Act 1985** in relation to a request for provisional payments under Division 2BA of Part IV of that Act".



**99AS Requests for information about provisional payments**

S. 99AS  
inserted by  
No. 5/2021  
s. 35.

For the purposes of this Division, section 9 of the **Workplace Injury Rehabilitation and Compensation Act 2013** applies as if—

- (a) in subsection (1) of that section—
  - (i) for "made a claim for compensation" there were substituted "requested provisional payments under Division 2BA of Part IV of the **Accident Compensation Act 1985**"; and
  - (ii) for "the claim for compensation" there were substituted "the request for provisional payments"; and
- (b) in subsection (2) of that section—
  - (i) for "made a claim for compensation" there were substituted "requested provisional payments under Division 2BA of Part IV of the **Accident Compensation Act 1985**"; and
  - (ii) for "the claim" there were substituted "the request for provisional payments".

Pt 4 Div. 2C  
(Heading)  
inserted by  
No. 80/2010  
s. 79(1).

## **Division 2C—Rehabilitation services prior to acceptance of claim**

S. 99A  
(Heading)  
inserted by  
No. 80/2010  
s. 79(2).

### **99A Authority or self-insurer may pay for rehabilitation service**

S. 99A  
inserted by  
No. 64/1989  
s. 10.

S. 99A(1)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 81(f),  
50/1994 s. 48,  
81/1998  
s. 23(a).

- (1) The Authority, employer or a self-insurer may pay the reasonable costs of an occupational rehabilitation service provided to a worker whether or not the entitlement of the worker to compensation under this Act has been established.

S. 99A(2)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1993  
s. 81(f),  
50/1994 s. 48,  
81/1998  
s. 23(a).

- (2) Where the Authority, employer or a self-insurer agrees to pay amounts under this section it must give the worker reasonable notice before discontinuing payments in respect of the occupational rehabilitation service.

S. 99B  
inserted by  
No. 67/1992  
s. 22,  
amended by  
Nos 50/1993  
s. 78(1)(d),  
50/1994 s. 49,  
repealed by  
No. 7/1996  
s. 26(3).<sup>19</sup>

\* \* \* \* \*

## Division 2D—Indexation<sup>20</sup>

Pt 4 Div. 2D  
(Heading)  
inserted by  
No. 80/2010  
s. 80.

### 100 Indexation—weekly payments

S. 100  
substituted by  
No. 64/1989  
s. 10,  
amended by  
Nos 18/1991  
s. 10(1),  
67/1992  
s. 46(4),  
50/1993 s. 93,  
107/1997  
ss 40, 41,  
74/2000  
s. 3(Sch. 1  
item 1.2),  
41/2006 s. 12,  
60/2007 s. 27,  
68/2007 s. 23,  
9/2010 ss 56,  
72, 152,  
substituted by  
Nos 80/2010  
s. 80, 67/2013  
s. 631.

- (1) Subject to this section, the amount of a weekly payment to a worker in respect of an injury under this Part must be varied, in respect of each year beginning on the anniversary of the day on which the worker became entitled to weekly payments in respect of that injury, by varying the amount of the worker's pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly payment in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

- A** is the amount of the worker's pre-injury average weekly earnings within the meaning of Division 2 of Part I or, if that amount has been varied in accordance with this section as in force for the time being, that amount as last so varied;
- B** is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period published by the Australian Bureau of Statistics as at the 15th day of the month preceding the month in which the date on which the variation is made falls;
- C** is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period one year earlier than the reference period referred to

in B published by the Australian Bureau of Statistics as at the 15th day of the same month referred to in B.

- (2) A variation of an amount of a worker's pre-injury average weekly earnings under this section does not take effect to the extent (if any) to which it increases that amount to more than 100 per cent of the worker's ordinary earnings (calculated in accordance with Division 2 of Part I) expressed as a weekly sum to which the worker would be entitled if he or she were employed in the same position or positions (if it or they can be identified) as he or she was employed in immediately before the injury, being the position or positions on the basis of which the calculation of the worker's pre-injury average weekly earnings was made.
- (3) In the case of a worker who became entitled to weekly payments before the commencement of section 10 of the **Accident Compensation (General Amendment) Act 1989**, the anniversary of the day on which the worker became so entitled is deemed, for the purposes of this section, to be 1 July.

S. 100A  
inserted by  
No. 64/1989  
s. 10,  
repealed by  
No. 67/1992  
s. 23, new  
s. 100A  
inserted by  
No. 80/2010  
s. 80,  
substituted by  
No. 67/2013  
s. 631.

#### **100A Indexation of weekly pensions for dependants of a worker who dies**

- (1) Subject to subsection (2), the amount of any compensation in the form of weekly payments of pension payable under section 92B to a deceased worker's dependants must be varied—
  - (a) on 1 July 2014 in respect of the financial year commencing on that date; and

(b) on 1 July in each subsequent year in respect of the financial year commencing on that date—

by varying the amount of the worker's pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly pension in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

**A** is the amount of the worker's pre-injury average weekly earnings within the meaning of Division 2 of Part I or, if that amount has been varied in accordance with this section as in force for the time being, that amount as last so varied;

**B** is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding calendar year published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;

**C** is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

- (2) If a worker's death resulted from or was materially contributed to by an injury arising out of or in the course of employment and the deceased worker died more than one year after the date of the injury, the amount of any compensation in the form of weekly payments of pension payable to the dependants of the deceased worker under section 92B must be varied on the anniversary date of the injury in respect of the year beginning on that date by varying the amount of the deceased worker's pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly pension in accordance with the formula—

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

where—

**D** is the amount of the worker's pre-injury average weekly earnings within the meaning of Division 2 of Part I or, if that amount has been varied in accordance with this section, that amount as last so varied;

**E** is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period published by the Australian Bureau of Statistics as at the 15th day of the month preceding the month in which the date on which the variation is made falls;

**F** is the average weekly total earnings of all employees for Victoria in original terms for the corresponding reference period one year earlier than the reference period referred to in E published by the Australian Bureau of Statistics as at the 15th day of the same month referred to in E.

**100B Indexation of certain amounts—according to average weekly earnings**

An amount specified in column 2 of the Table to this section must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

- A** is the amount specified in column 2 of that item or, if that amount has been varied in accordance with this section as in force for the time being, that amount as last so varied;
- B** is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding calendar year published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;
- C** is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

S. 100B  
inserted by  
No. 80/2010  
s. 80,  
amended by  
Nos 29/2011  
s. 3(Sch. 1  
item 2.2),  
67/2013  
s. 630(10),  
substituted by  
No. 67/2013  
s. 631 (as  
amended by  
No. 44/2014  
s. 24(28)).

Accident Compensation Act 1985  
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**TABLE**

<i>Column 1</i>	<i>Column 2</i>
<i>Item</i>	<i>Amount</i>
1	Section 93A(1)(a)(ii)—\$1210
2	Section 93A(1)(b)(ii)—\$1210
3	Section 93A(2)(a)(ii)—\$1510
4	Section 93A(2)(b)(ii)—\$1510
5	Section 93B(1)(a)(ii)—\$1210
6	Section 93B(1)(b)(ii)—\$1210
7	Section 93B(1)(c)(ii)—\$1210
8	Section 93B(2)(a)(ii)—\$1510
9	Section 93B(2)(b)(ii)—\$1510
10	Section 93C(2)(a)(ii)—\$1210
11	Section 93C(2)(b)(ii)—\$1210
12	Section 93C(2)(c)(ii)—\$1510
13	Section 93CA(1)(c)—\$177
14	Section 93CD(4)(a)—\$177
15	Section 93CD(5)(a)(ii)—\$1210
16	Section 93CD(5)(b)(ii)—\$1510
17	Section 93CDA(1)(d)—\$177
18	Section 129B(7)—\$14 990
19	Section 135A(7)(a)(i)—\$59 670
20	Section 135A(7)(a)(ii)—\$1 343 540
21	Section 135C(2)—\$886 330
22	Schedule 1A, item 11—\$1210



**100C Indexation of certain amounts—consumer price index**

Subject to section 99(16), an amount in dollars specified in column 2 of an item in the Table to this section must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

- A** is the amount specified in column 2 of that item or, if that amount has been varied in accordance with this section, that amount as last so varied;
- B** is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year most recently published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;
- C** is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

S. 100C  
inserted by  
No. 80/2010  
s. 80,  
amended by  
Nos 29/2011  
s. 3(Sch. 1  
item 2.3),  
67/2013  
s. 630(11),  
substituted by  
No. 67/2013  
s. 631,  
amended by  
No. 44/2014  
s. 33(Sch.  
item 1).

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**S. 100C**  
**(Table)**  
**amended by**  
**Nos 44/2014**  
**s. 29, 48/2017**  
**s. 4.**

**TABLE**

<i>Column 1</i>	<i>Column 2</i>
<i>Item</i>	<i>Amount</i>
*	* * *
*	* * *
3	Section 92A(4)—\$555 350
4	Section 92A(5)—\$555 350
5	Section 92A(6)—\$555 350
6	Section 92A(6)(a)—\$55 530
7	Section 92A(7)—\$555 350
8	Section 92A(7)(a)—\$27 770
9	Section 92A(8)—\$555 350
10	Section 92A(8)(a)—\$416 520
*	* * *
12	Section 92A(8A)—\$555 350
13	Section 92A(8B)—\$555 350
14	Section 92A(9)—\$555 350
15	Section 92AA—\$33 120
16	Section 92D(1)(b)—\$8270
*	* * *
*	* * *
*	* * *
*	* * *
*	* * *
*	* * *
23	Section 98C(2)(e)(i)—\$262 070 and \$29 330
24	Section 98C(2)(e)(ii)—\$555 350
25	Section 98C(2)(f)—\$555 350

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<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Amount</i>		
*	*	*	*
*	*	*	*
28	Section 98C(3)(d)(i)—\$262 070 and \$29 330		
29	Section 98C(3)(d)(ii)—\$555 350		
30	Section 98C(3)(e)—\$555 350		
*	*	*	*
*	*	*	*
*	*	*	*
*	*	*	*
*	*	*	*
*	*	*	*
37	Section 98C(7)—\$555 350		
38	Section 98C(8)—\$555 350		
*	*	*	*
40	Section 99(1)(b)—\$5870		
40A	Section 99(1)(c)—\$5000		
40B	Section 99(1)(d)—\$5000		
41	Section 99(5)—\$642		
42	Section 99(15)—\$32.50		
43	Section 125(1)(a)(iii)—\$642		
44	Section 125A(3)(c)—\$642		
45	Section 134AB(22)(a)(i)—\$56 650		
46	Section 134AB(22)(a)(ii)—\$1 275 570		
47	Section 134AB(22)(b)(i)—\$54 730		
48	Section 134AB(22)(b)(ii)—\$555 350		
49	Section 135A(7)(b)(i)—\$50 680		
50	Section 135A(7)(b)(ii)—\$514 360		

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<i>Column 1</i>	<i>Column 2</i>
<i>Item</i>	<i>Amount</i>
*	* * *

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S. 100D  
inserted by  
No. 80/2010  
s. 80.

#### **100D Indexation—no reduction**

If the variation of an amount specified in section 100, 100A, 100B or 100C or in a Table to section 100B or 100C by operation of that section has the effect of reducing the amount—

- (a) the variation is deemed not to have taken effect, except for the purposes of the application of this section; and
- (b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year, that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.

S. 100E  
inserted by  
No. 80/2010  
s. 80.

#### **100E Indexation—rounding**

Where it is necessary for the purposes of this Division to calculate an amount that consists of or includes a fraction of a whole number, the amount is deemed to have been calculated in accordance with this section if the calculation is made—

- (a) if the amount is less than \$1000, to the nearest whole \$1; or
- (b) if the amount is \$1000 or more, to the nearest whole \$10.

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## Division 3—Claims management and procedures

Pt 4 Div. 3  
(Heading and  
ss 101–123)  
amended by  
Nos 48/1986  
ss 12(f)(g),  
17(1), 18, 19,  
111/1986  
s. 180(3)(Sch.  
2 item 3(a)),  
83/1987  
ss 44–66,  
substituted as  
Pt 4 Div. 3  
(Heading and  
ss 101–117)  
by No.  
64/1989 s. 10,  
amended by  
Nos 18/1991  
s. 6, 67/1992  
ss 24–34,  
64(7)(a),  
50/1993  
ss 78(1)(a)(c)  
(d)(g), 96–100,  
110(1)(d),  
substituted as  
Pt 4 Div. 3  
(Heading and  
ss 101–114F)  
by No.  
50/1994 s. 50.

\* \* \* \*

S. 101  
substituted by  
No. 50/1994  
s. 50,  
amended by  
Nos 81/1998  
s. 23(f), 9/2010  
s. 158,  
repealed by  
No. 67/2013  
s. 634(1).

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S. 102  
substituted by  
Nos 50/1994  
s. 50, 107/1997  
s. 42,  
amended by  
Nos 81/1998  
s. 23(a),  
102/2004 s. 25,  
repealed by  
No. 67/2013  
s. 634(1).

\* \* \* \*

S. 103  
substituted by  
No. 50/1994  
s. 50.

### 103 Claim for compensation

New  
s. 103(1A)  
inserted by  
No. 67/2013  
s. 634(2).

(1A) This section applies to a claim for compensation under section 98 or 98A in respect of an injury that arose before 12 November 1997.

S. 103(1)  
amended by  
Nos 107/1997  
ss 27(2)(a),  
43(1), 81/1998  
s. 23(a),  
substituted by  
No. 9/2010  
s. 19(1).

(1) A claim for compensation must be in a form approved by the Authority in respect of that type or class of claim.

S. 103(1A)  
inserted by  
No. 102/2004  
s. 26(1),  
repealed by  
No. 9/2010  
s. 19(1).

\* \* \* \*

S. 103(1B)  
inserted by  
No. 102/2004  
s. 26(1),  
repealed by  
No. 9/2010  
s. 19(1).

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	*	*	*	*	*	S. 103(2) substituted by No. 9/2010 s. 19(1), repealed by No. 67/2013 s. 634(3).
(3)	A claim for compensation (other than a claim arising from the death of a worker) must include an authority, signed by the worker, authorising a provider of a medical service or hospital service to the worker in connection with the injury to which the claim relates to give to the Authority, self-insurer or employer information regarding the service relevant to the claim.					S. 103(3) substituted by No. 9/2010 s. 19(1).
	*	*	*	*	*	S. 103(4) substituted by No. 9/2010 s. 19(1), repealed by No. 67/2013 s. 634(3).
(4A)	A claim for compensation—					S. 103(4A) inserted by No. 9/2010 s. 19(1).
	(a) must be given to or served on the employer or self-insurer; or					
	(b) if section 106 of this Act or Part 5 of the <b>Accident Compensation (WorkCover Insurance) Act 1993</b> applies, must be lodged with the Authority.					
	*	*	*	*	*	S. 103(4B) inserted by No. 9/2010 s. 19(1), repealed by No. 67/2013 s. 634(3).

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S. 103(4C)  
inserted by  
No. 9/2010  
s. 19(1),  
substituted by  
No. 80/2010  
s. 63,  
repealed by  
No. 67/2013  
s. 634(3).

\* \* \* \*

S. 103  
(4D)–(4H)  
inserted by  
No. 9/2010  
s. 19(1),  
repealed by  
No. 67/2013  
s. 634(3).

\* \* \* \*

S. 103(5)  
amended by  
No. 81/1998  
s. 23(a).

(5) If—

- (a) a claim for compensation is made in respect of an injury to a worker arising out of or in the course of, or due to the nature of, employment with a particular employer; and
- (b) the claim is made after the worker ceases to be employed by that employer—

the claim is deemed not to have been made unless the claimant satisfies the Authority or self-insurer that he or she could not reasonably have made the claim while employed by that employer.

S. 103(6)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 2.3).

- (6) If a claim for compensation relates to an injury resulting from an accident involving a motor vehicle within the meaning of the **Road Safety Act 1986** the claim is deemed not to have been made unless a report of the accident has been made to a police officer, whether under section 61 of the **Road Safety Act 1986** or otherwise.



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|--|--|
| (7) Subject to subsection (8), a claim for compensation under section 98A must be given, served or lodged under this section or section 106 at the same time as the claim for compensation under section 98 in respect of the same injury is given, served or lodged.                                      | S. 103(7)<br>amended by<br>Nos 107/1997<br>s. 27(2)(b),<br>9/2010<br>s. 19(2)(a),<br>80/2010<br>s. 78(f),<br>substituted by<br>No. 67/2013<br>s. 634(4). |
| (8) If the Authority or self-insurer is satisfied that a person making a claim for compensation had a special excuse for not making the claim within the relevant applicable time limit, the Authority or self-insurer may waive or extend the time limit to enable the claim for compensation to be made. | S. 103(8)<br>amended by<br>No. 81/1998<br>s. 23(a).  |
| (9) A claim for compensation by a worker under section 98 or 98A must seek compensation for all injuries of the worker that are within the categories of injury listed in the Table in Schedule 3A that are compensable under that section and that are manifest and that have stabilised.                 | S. 103(9)<br>inserted by<br>No. 82/2001<br>s. 16,<br>amended by<br>No. 80/2010<br>s. 59(3).  |
| (10) Subsection (9) only applies in respect of claims for compensation that are given, served or lodged after the commencement of section 16 of the <b>Accident Compensation (Amendment) Act 2001</b> .  | S. 103(10)<br>inserted by<br>No. 82/2001<br>s. 16.   |
| (11) Subsection (9) only applies in respect of injuries of the worker arising out of, or in the course of, or due to the nature of, the worker's employment with—  | S. 103(11)<br>inserted by<br>No. 82/2001<br>s. 16.   |
| (a) the employer to, or on, whom the claim for compensation was given or served under section 103(4A); or  | S. 103(11)(a)<br>amended by<br>No. 9/2010<br>s. 19(2)(b).  |
| (b) the employer referred to in section 106 if the claim for compensation was lodged with the Authority; or  | S. 103(11)(b)<br>amended by<br>No. 9/2010<br>s. 19(2)(c).  |

S. 103(11)(c)  
amended by  
No. 9/2010  
s. 19(2)(d).

(c) the employer referred to in Part 5 of the  
**Accident Compensation (WorkCover  
Insurance) Act 1993** if the claim for  
compensation was lodged with the  
Authority.

S. 103(12)  
inserted by  
No. 82/2001  
s. 16.

(12) Subsection (9) does not apply to a worker who, at  
the time the claim for compensation was given,  
served or lodged—

- (a) was under 18 years of age; or
- (b) was not capable of managing his or her  
affairs in relation to the claim by reason of  
injury, disease, illness, dementia, intellectual  
impairment, physical disability or mental  
disorder.

S. 103A  
inserted by  
No. 82/2001  
s. 17.

#### **103A Restriction on certain claims for compensation under sections 98 and 98A**

(1) If a worker makes a second or subsequent claim  
for compensation under section 98 or 98A, the  
worker is not entitled to compensation under  
that section in respect of an injury that would  
otherwise entitle the worker to compensation  
under this Act—

- (a) unless the injury was not manifest at the time  
the most recent previous claim was made; or
- (b) unless—
  - (i) the injury had not stabilised at the time  
that the most recent previous claim was  
made; and
  - (ii) that previous claim was accompanied  
by—
    - (A) a written statement that  
identified the injury and that  
stated that the worker intended to  
claim compensation for the injury

under section 98 or 98A after it had stabilised; and

- (B) a written medical report, dated not more than 3 months before the date that previous claim was given, served or lodged, that supported the existence of the injury and stated that the injury had not stabilised at the date of the report.

- (2) This section only applies in respect of second or subsequent claims for compensation that are made after the commencement of section 17 of the **Accident Compensation (Amendment) Act 2001**.

- (3) This section does not apply to a worker who, at the time the claim for compensation was given, served or lodged—

- (a) was under 18 years of age; or  
(b) was not capable of managing his or her affairs in relation to the claim by reason of injury, disease, illness, dementia, intellectual impairment, physical disability or mental disorder.

#### **104 Claims for compensation under sections 98 and 98A**

**S. 104  
substituted by  
Nos 50/1994  
s. 50, 7/1996  
s. 24(1).**

- (1) In addition to the requirements under section 103, a claim for compensation under section 98 or 98A must be given, served or lodged with a copy of all the medical reports—
- (a) which the claimant intends to tender in any proceedings relating to the claim; or  
(b) the substance of which the claimant intends to adduce in evidence in support of the entitlement of the claimant to compensation or as evidence of the extent of any relevant

loss, impairment, disfigurement or pain and suffering in any proceedings relating to the claim.

S. 104(2)  
amended by  
Nos 107/1997  
s. 35(1),  
81/1998  
s. 23(a).

(2) The Authority or self-insurer must within 90 days of receiving the claim—

- (a) accept or reject the claim; and
- (b) advise the claimant of the decision; and
- (c) if the decision is to accept the claim, advise the claimant of its offer based on its determination of the worker's entitlement to compensation; and
- (d) give the claimant a copy of all the medical reports—

S. 104(2)(d)(i)  
amended by  
No. 81/1998  
s. 23(a).

(i) which the Authority or self-insurer intends to tender in any proceedings relating to the claim; or

S. 104(2)(d)(ii)  
amended by  
No. 81/1998  
s. 23(a).

(ii) the substance of which the Authority or self-insurer intends to adduce in evidence in any proceedings relating to the claim.

(3) If the claimant disputes the decision in respect of the claim, the claimant must not commence proceedings unless the claimant first refers the dispute for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and the Conciliation Officer has issued a certificate under subsection (8).

(4) If the Conciliation Officer considers that it is necessary for the purpose of settling the dispute, the Conciliation Officer may—

- (a) obtain a medical report in relation to the worker from a medical practitioner appointed under section 63(2);

- (b) request the worker to submit to a medical examination conducted by that medical practitioner.
- (5) The costs of any medical report and medical examination under subsection (4) are to be paid by the Authority or self-insurer. **S. 104(5) amended by No. 81/1998 s. 23(a).**
- (6) The Conciliation Officer must serve a copy of a medical report obtained under subsection (4) with the certificate under subsection (8).
- (7) If the Conciliation Officer is satisfied that all reasonable steps have been taken by the claimant to settle the dispute, the Conciliation Officer must issue a certificate under subsection (8).
- (8) The certificate must—
  - (a) certify that all reasonable steps have been taken by the claimant to settle the dispute; and
  - (b) identify all copies of medical reports provided in accordance with subsections (1) and (2) and any medical report obtained under subsection (4); and
  - (c) if any medical question has been referred by the Conciliation Officer under section 56(6) for an opinion by a Medical Panel, specify that opinion; and
  - (d) be served by post on all the parties to the dispute.
- (9) The Authority or self-insurer must within 14 days after the certificate has been served on the Authority or self-insurer make a statutory offer in writing in settlement or compromise of the claim. **S. 104(9) amended by Nos 107/1997 s. 35(2), 81/1998 s. 23(a).**

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S. 104(10)  
amended by  
No. 107/1997  
s. 35(2).

(10) If any medical question has been referred by the Conciliation Officer under section 56(6) for an opinion by a Medical Panel, the statutory offer must be consistent with that opinion.

S. 104(11)  
amended by  
Nos 107/1997  
s. 35(2),  
81/1998  
s. 23(a).

(11) If the Authority or self-insurer fails to comply with subsection (9), the Authority or self-insurer is deemed to have made a statutory offer of nothing.

S. 104(11A)  
inserted by  
No. 107/1997  
s. 35(3),  
amended by  
No. 81/1998  
s. 23(a).

(11A) The claimant must within 21 days after the making by the Authority or self-insurer of a statutory offer—

- (a) accept the statutory offer in writing; or
- (b) make a counter statutory offer in writing which is to remain open for 21 days.

S. 104(11B)  
inserted by  
No. 107/1997  
s. 35(3).

(11B) If at the expiry of the first period specified in subsection (11A), the claimant—

- (a) has not accepted the statutory offer; and
- (b) has not made a counter statutory offer—

the claimant is deemed to have made a counter statutory offer of an amount equal to the total of the maximum amounts that can be claimed for the relevant injury or injuries under section 98 and, where applicable, under section 98A.

(12) A party to any proceedings relating to a claim for compensation under section 98 or 98A cannot in evidence submit any medical evidence or tender a medical report or adduce evidence dependent on a medical report unless that evidence is disclosed by a medical report a copy of which has been provided to the other party in accordance with subsection (1) or (2) or a copy of which has been provided in accordance with subsection (8).

(13) Subsection (12) does not affect the admissibility of the opinion of the Medical Panel.

(14) For the purposes of this section if a medical report was oral, a copy of the medical report is to be taken to have been provided to the other party in accordance with subsection (1) or (2) if notice in writing of the substance of the medical report is provided to the other party in accordance with subsection (1) or (2).

(15) In this section—

*medical report*—

- (a) means a statement on medical matters concerning the worker whether in writing or oral made by a medical practitioner; and
- (b) includes any document which the medical practitioner intends should be read with a statement whether the document was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently.

**104AA Withdrawal of claims for compensation under sections 98 and 98A**

S. 104AA  
inserted by  
No. 82/2001  
s. 18.

- (1) A worker may withdraw a claim for compensation under section 98 or 98A at any time before the certificate described in section 104(8) is issued in respect of the claim.
- (2) To withdraw a claim, the worker must give the Authority or self-insurer a notice of withdrawal that is in a form approved by the Authority.
- (3) On the Authority or self-insurer receiving a notice of withdrawal of a claim under this section, the claim is deemed, for the purposes of taking further action under this Act, not to have been made.

- (4) Despite subsection (3), if the worker withdraws a claim under this section after—
- (a) a Conciliation Officer has referred a medical question in relation to the claim to a Medical Panel under section 56(6); and
  - (b) the Medical Panel has given its opinion on the question—
- that opinion has effect for the purposes of any subsequent claim for compensation under section 98 or 98A made by the worker in respect of which the opinion is relevant as if the opinion had been obtained for the purposes of that subsequent claim.
- (5) This section applies to a claim regardless of whether or not it was given, served or lodged before, on or after the date of commencement of section 18 of the **Accident Compensation (Amendment) Act 2001**.

S. 104A  
inserted by  
No. 7/1996  
s. 24(1).

**104A Directions relating to claim for compensation under sections 98 and 98A**

S. 104A(1)  
amended by  
No. 60/1996  
s. 20.

- (1) For the purposes of section 104, the Minister may issue directions for or with respect to procedures for the determination of claims for compensation under sections 98 and 98A.

S. 104A(1A)  
inserted by  
No. 82/2001  
s. 19(1).

- (1A) For the purposes of section 104AA, the Minister may issue directions for or with respect to procedures for the withdrawal of claims of compensation under sections 98 and 98A.

S. 104A(2)  
amended by  
No. 82/2001  
s. 19(2),  
repealed by  
No. 80/2010  
s. 122(2).

\* \* \* \* \*



(3) The directions apply to claims for compensation under sections 98 and 98A given, served or lodged after the publication of the directions.

(4) The parties to a claim and their legal practitioners and agents must comply with the directions. **S. 104A(4) amended by No. 107/1997 s. 35(4).**

(5) Directions made under subsection (1) may specify that the failure to comply with a particular provision of the directions has the effect of suspending the claim or any proceeding relating to the claim until the provision is complied with. **S. 104A(5) amended by No. 82/2001 s. 19(3).**

(6) Directions made under subsection (1)—  
(a) may require that each of the parties to a claim or their legal representatives provide information by affidavit to the other parties or their legal representatives and, if applicable, to a Conciliation Officer; and  
(b) may require that the parties to a claim and their legal representatives must attend at a conference or conferences in respect of the claim. **S. 104A(6) inserted by No. 107/1997 s. 35(5), amended by No. 82/2001 s. 19(3).**

#### **104B Claims for compensation under section 98C**

**S. 104B inserted by No. 107/1997 s. 43(2).**

(1) In addition to the requirements under section 103, this section, and section 6(1) and Divisions 1 and 2 of Part 2 of the **Workplace Injury Rehabilitation and Compensation Act 2013** apply to a claim for compensation under section 98C. **S. 104B(1) amended by No. 67/2013 s. 635(1) (as amended by No. 44/2014 s. 24(30)).**

(1A) Subject to subsection (1B), a claim for compensation under section 98C or 98E, not being a claim for compensation for industrial deafness, **S. 104B(1A) inserted by No. 26/2000 s. 16(1).**

can not be made before the expiry of the period of 12 months after the date of the relevant injury.

**S. 104B(1B)**  
inserted by  
No. 26/2000  
s. 16(1).

- (1B) Despite subsection (1A), the Authority or a self-insurer may receive a claim for compensation under section 98C or 98E before the expiry of the period of 12 months after the date of the relevant injury if the relevant injury has stabilised.

**S. 104B(1BA)**  
inserted by  
No. 102/2004  
s. 4.

- (1BA) If a worker has commenced an application under section 134AB(4)(b), the worker can not make a claim for compensation under section 98C until the proceedings under section 134AB in respect of that application have been finally determined.

**S. 104B(1C)**  
inserted by  
No. 26/2000  
s. 16(1),  
amended by  
No. 41/2006  
s. 19(1).

- (1C) If liability has been accepted or determined in respect of a prior claim for compensation for an injury, the Authority or a self-insurer may after the expiry of the period of 18 months after the date of the relevant injury and without a claim having been made under section 98C or 98E, request the worker to attend an independent examination under subsection (4).

**S. 104B(1CA)**  
inserted by  
No. 41/2006  
s. 19(2).

- (1CA) For the purposes of this section, a request under subsection (1C) has the effect of initiating a claim for compensation under section 98C or 98E in respect of the worker by the Authority or self-insurer.

**S. 104B(1D)**  
inserted by  
No. 102/2004  
s. 5(1),  
amended by  
No. 41/2006  
s. 19(3)(a)(b).

- (1D) The Authority or self-insurer may within 90 days of receiving a claim made by the worker by notice in writing to the worker suspend the claim made by the worker if—
- (a) the Authority or self-insurer has insufficient medical information to determine the matters specified in subsection (2); or
  - (b) the Authority or self-insurer can not make a determination under subsection (2) because the condition of the injury of the worker is not stable.

- (1E) The Authority or self-insurer must within 14 days—
- (a) if subsection (1D)(a) applies, of having sufficient medical information to determine the matters specified in subsection (2); or
- (b) if subsection (1D)(b) applies, of being able to make a determination under subsection (2) because the condition of the injury of the worker has stabilised—
- by notice in writing to the worker remove the suspension under subsection (1D).
- (2) The Authority or self-insurer must within 120 days of receiving a claim made by the worker or in the case of a claim initiated by the Authority or self-insurer, within 120 days of the relevant date—
- (a) if the claim is a claim made by the worker, accept or reject liability for each injury included in the claim;
- (b) obtain an assessment or assessments in accordance with section 91 as to the degree of permanent impairment (if any) of the worker resulting from the injury or injuries in respect of which liability is accepted;
- (c) after taking into account the assessment or assessments obtained under paragraph (b), determine the degree of permanent impairment (if any) of the worker for each of the purposes of—
- (i) section 98C;
- (ii) section 134AB;
- (iii) Subdivision 1 of Division 3A;

S. 104B(1E)  
inserted by  
No. 102/2004  
s. 5(1).

S. 104B(2)  
amended by  
No. 81/1998  
s. 23(a),  
substituted by  
No. 102/2004  
s. 5(2),  
amended by  
No. 41/2006  
s. 19(4)(a).

S. 104B(2)(a)  
amended by  
No. 41/2006  
s. 19(4)(b).

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S. 104B(2)(d)  
amended by  
No. 80/2010  
s. 62(b).

(d) determine whether the worker has an injury which is a total loss mentioned in the Table in Schedule 3B;

(e) calculate any entitlement to compensation under section 98C or 98E;

(f) advise the worker as to—

S. 104B(2)(f)(i)  
amended by  
No. 41/2006  
s. 19(4)(c).

(i) if the claim is a claim made by the worker, the decision to accept or reject liability for each injury included in the claim;

S. 104B(2)(f)(ii)  
amended by  
No. 80/2010  
s. 62(b).

(ii) each of the determinations as to the degree of permanent impairment (if any) of the worker and whether the worker has an injury which is a total loss mentioned in the Table in Schedule 3B resulting from the injury or injuries in respect of which liability is accepted;

(iii) the calculation of any entitlement to compensation under section 98C or 98E;

S. 104B  
(2)(f)(iv)  
repealed by  
No. 41/2006  
s. 18(1).

\* \* \* \* \*

(g) provide to the worker a copy of—

(i) any medical reports, correspondence and other documents provided to; and

(ii) any medical reports, correspondence and other documents obtained from—

any medical practitioner referred to in section 91(1)(b) conducting an independent examination.

(2AA) For the purposes of this section—

***claim made by the worker*** means—

S. 104B(2AA)  
inserted by  
No. 41/2006  
s. 19(5).

- (a) a claim by a worker for compensation under section 98C or 98E; or
- (b) a claim by a worker for compensation under section 98C or 98E in accordance with subsection (5D)(a);

***relevant date*** means—

- (a) if the worker makes a claim for compensation under section 98C or 98E in accordance with subsection (5D)(a), the day on which the claim is received by the Authority or self-insurer; or
- (b) if the worker advises the Authority or self-insurer that he or she disputes the written statement under subsection (5C), the day on which the dispute is resolved; or
- (c) if the worker does not make a claim or dispute the statement within the period specified under subsection (5D), the day on which that period expires; or
- (d) if the worker accepts the written statement of the injury or injuries under subsection (5C), the day on which the Authority or self-insurer receives the advice of the worker that he or she accepts the written statement of the injury or injuries.

(2A) The Authority or self-insurer is not bound by the assessment or assessments obtained under subsection (2)(b) in determining the degree of permanent impairment (if any) under subsection (2)(c).

S. 104B(2A)  
inserted by  
No. 102/2004  
s. 5(2).

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S. 104B(3)  
amended by  
Nos 81/1998  
s. 23(a),  
102/2004  
s. 5(3),  
41/2006  
s. 19(6).

(3) If the Authority or self-insurer rejects liability in relation to the injuries included in the claim made by the worker and the worker disputes the decision as to liability, the worker must not commence proceedings in relation to the claim made by the worker unless the worker first refers the dispute for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and until the Conciliation Officer has issued a certificate under section 49.

S. 104B(4)  
amended by  
Nos 107/1997  
s. 25(3),  
81/1998  
s. 23(a),  
substituted by  
No. 102/2004  
s. 5(4).

(4) The worker must at the request of the Authority or self-insurer attend an independent examination to be conducted by a medical practitioner referred to in section 91(1)(b) for the purposes this section.

S. 104B(5)  
amended by  
Nos 26/2000  
s. 16(2),  
82/2001  
s. 6(a),  
substituted by  
No. 102/2004  
s. 5(5).

(5) The Authority or self-insurer must obtain assessments in accordance with section 91 as to the degree of permanent impairment resulting from any injury for which liability is accepted or established for the purposes of—

- (a) determining any entitlement of the worker to compensation under section 98C;
- (b) determining the whole person impairment under sections 134AB(3) and 134AB(15);
- (c) Subdivision 1 of Division 3A.

S. 104B(5A)  
inserted by  
No. 26/2000  
s. 16(3),  
substituted by  
No. 102/2004  
s. 5(6).

(5A) A worker must include all injuries arising out of the same event or circumstance in a claim for compensation under section 98C.

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| (5AA) A worker can only make one claim for compensation under section 98C in respect of injuries arising out of the same event or circumstance.   | S. 104B(5AA) inserted by No. 102/2004 s. 5(6).                                     |
| (5AB) Subject to subsection (5D)(a), if a claim for compensation under section 98C or 98E has been initiated in respect of a worker by the Authority or self-insurer, the worker cannot make a claim for compensation under section 98C or 98E in respect of injuries arising out of the same event or circumstance.                                | S. 104B(5AB) inserted by No. 41/2006 s. 19(7).                                     |
| (5B) A determination of the degree of impairment must take into account all impairments resulting from the injuries entitling the worker to compensation included in the claim for compensation under section 98C.  | S. 104B(5B) inserted by No. 26/2000 s. 16(3), substituted by No. 102/2004 s. 5(6). |
| (5C) If the independent examination has been requested by the Authority or a self-insurer under subsection (1C), the Authority or self-insurer must give the worker a written statement of the injury or injuries to be included in the assessments and a statement of rights in a form approved by the Authority for the purposes of this section. | S. 104B(5C) inserted by No. 26/2000 s. 16(3), amended by No. 41/2006 s. 19(8).     |
| (5D) A worker must within 60 days of receiving a written statement under subsection (5C)—   | S. 104B(5D) inserted by No. 26/2000 s. 16(3), amended by No. 41/2006 s. 19(9)(a).  |
| (a) make a claim for compensation under section 98C or 98E in respect of any additional injuries that the worker believes have arisen out of the same event or circumstance; or   |  |
| (b) advise the Authority or self-insurer that he or she disputes the statement; or  | S. 104B(5D)(b) amended by No. 41/2006 s. 19(9)(b).                                 |
| (c) advise the Authority or self-insurer that he or she accepts the written statement of the injury or injuries.  | S. 104B(5D)(c) inserted by No. 41/2006 s. 19(9)(c).                                |

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S. 104B(5DA)  
inserted by  
No. 41/2006  
s. 19(10).

(5DA) If after receiving a written statement under subsection (5C) the worker makes a claim for compensation under section 98C or 98E in respect of any additional injuries that the worker believes have arisen out of the same event or circumstance—

(a) the claim by the worker and the claim initiated by the Authority or self-insurer are to be considered as one consolidated claim; and

(b) the consolidated claim is to be dealt with in accordance with subsection (2).

S. 104B(5DB)  
inserted by  
No. 41/2006  
s. 19(10).

(5DB) If the worker advises the Authority or self-insurer that he or she disputes the written statement under subsection (5C), the worker must not commence proceedings in relation to the claim unless the worker first refers the dispute for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and until the Conciliation Officer has issued a certificate under section 49.

S. 104B(5E)  
inserted by  
No. 26/2000  
s. 16(3),  
amended by  
Nos 102/2004  
s. 5(7)(a),  
41/2006  
s. 19(11).

(5E) If the worker does not make a claim or dispute the statement within the period specified under subsection (5D), the injury or injuries specified in the written statement are deemed to be the only injury or injuries arising from the same event or circumstance which are to be included in the determination of impairment to be dealt with in accordance with subsection (2).

S. 104B(5F)  
inserted by  
No. 26/2000  
s. 16(3),  
amended by  
No. 102/2004  
s. 5(7)(b)(i)(ii).

(5F) If the worker was not 18 years of age at the time of the event or circumstance, the determination of impairment resulting from the injury can not be made until the worker attains the age of 18 years.



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| <p>(6) The worker must within 60 days of being advised under subsection (2) in respect of a claim made by the worker advise the Authority or self-insurer in writing whether the worker accepts or disputes the decision as to liability in respect of each of the injuries claimed.</p>  | <p>S. 104B(6) amended by Nos 81/1998 s. 23(a), 26/2000 ss 16(4)(a), s. 17(1), 82/2001 s. 20(1), substituted by No. 102/2004 s. 5(8), amended by No. 41/2006 s. 19(12).</p> |
| <p>(6A) If under subsection (6) a worker disputes any part of the decision as to liability, the worker does not have to respond to any other part of the advice under subsection (2).</p>   | <p>S. 104B(6A) inserted by No. 102/2004 s. 5(8).</p>   |
| <p>(6B) Subject to subsection (6), the worker must within 60 days of being advised under subsection (2) advise the Authority or self-insurer in writing—</p> <p style="margin-left: 40px;">(a) whether the worker accepts or disputes the determinations of impairment and total loss;</p> <p style="margin-left: 40px;">(b) if the worker accepts the determinations of impairment and total loss, whether the worker accepts or disputes the entitlement to compensation, if any.</p> | <p>S. 104B(6B) inserted by No. 102/2004 s. 5(8), amended by No. 41/2006 s. 19(13).</p> <p>S. 104B(6B)(b) amended by No. 41/2006 s. 18(2)(a).</p>                           |
| <p style="text-align: center;">*                    *                    *                    *</p>   | <p>S. 104B(6B)(c) repealed by No. 41/2006 s. 18(2)(b).</p>   |
| <p>(7) If the decision made under subsection (2)(a) to reject liability for an injury is varied as the result of a decision of a court or an agreement between the worker and the Authority or self-insurer, the Authority or self-insurer must within 90 days of the variation—</p>  | <p>S. 104B(7) amended by Nos 81/1998 s. 23(a), 26/2000 ss 16(4)(b), s. 17(2), 82/2001 s. 20(1), substituted by No. 102/2004 s. 5(8).</p>                                   |

S. 104B(7)(c)  
amended by  
No. 80/2010  
s. 62(b).

- (a) obtain an assessment or assessments in accordance with section 91 as to the degree of permanent impairment (if any) of the worker resulting from the injury or injuries in respect of which liability is accepted or determined;
- (b) after taking into account the assessment or assessments obtained under paragraph (a), determine the degree of permanent impairment (if any) of the worker for each of the purposes of—
  - (i) section 98C;
  - (ii) section 134AB;
  - (iii) Subdivision 1 of Division 3A;
- (c) determine whether the worker has an injury which is a total loss mentioned in the Table in Schedule 3B;
- (d) calculate any entitlement to compensation under section 98C or 98E;
- (e) advise the worker as to—
  - (i) the decision or determination of liability for each injury included in the claim;
  - (ii) each of the determinations as to the degree of permanent impairment (if any) of the worker and whether the worker has an injury which is a total loss mentioned in the Table in Schedule 3B resulting from the injury or injuries in respect of which liability is accepted;
  - (iii) the calculation of any entitlement to compensation under section 98C or 98E;

S. 104B(7)  
(e)(ii)  
amended by  
No. 80/2010  
s. 62(b).

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*	*	*	*	*	<b>S. 104B (7)(e)(iv) repealed by No. 41/2006 s. 18(1).</b>
<p>(f) provide to the worker a copy of—</p> <p>(i) any medical reports, correspondence and other documents provided to; and</p> <p>(ii) any medical reports, correspondence and other documents obtained from—</p> <p>any medical practitioner referred to in section 91(1)(b) conducting an independent examination.</p>					
<p>(7A) The Authority or self-insurer is not bound by the assessment or assessments obtained under subsection (7)(a) in determining the degree of permanent impairment (if any) under subsection (7)(b).</p>					<b>S. 104B(7A) inserted by No. 102/2004 s. 5(8).</b>
<p>(7B) The worker must within 60 days of being advised under subsection (7) advise the Authority or self-insurer in writing—</p> <p>(a) whether the worker accepts or disputes the determinations of impairment and total loss;</p> <p>(b) if the worker accepts the determinations of impairment and total loss, whether the worker accepts or disputes the entitlement to compensation, if any.</p>					<b>S. 104B(7B) inserted by No. 102/2004 s. 5(8).</b>
					<b>S. 104B(7B)(b) amended by No. 41/2006 s. 18(3)(a).</b>
*	*	*	*	*	<b>S. 104B(7B)(c) repealed by No. 41/2006 s. 18(3)(b).</b>

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S. 104B(8)  
amended by  
Nos 81/1998  
s. 23(a),  
26/2000  
s. 16(4)(c),  
substituted by  
No. 26/2000  
s. 17(3),  
amended by  
No. 102/2004  
s. 5(9)(a)(b),  
substituted by  
No. 41/2006  
s. 18(4).

- (8) Subject to section 134AB(36), the Authority or self-insurer must, within 14 days of being advised by the worker either under subsection (6B) or (7B) or at a later date that the worker accepts the determinations of impairment and total loss and the entitlement to compensation—
- (a) if the entitlement is under section 98C, make payments in accordance with section 98D; or
  - (b) if the entitlement is under section 98E, pay the amount specified for the total loss under section 98E.

S. 104B(9)  
amended by  
Nos 81/1998  
s. 23(a),  
26/2000  
s. 16(4)(d)(i)(ii),  
82/2001  
s. 6(b),  
substituted by  
No. 102/2004  
s. 5(10).

- (9) The Authority or self-insurer must, within 14 days of being advised by the worker that the worker disputes the determinations of impairment or total loss in respect of the injury or injuries claimed, refer the medical questions as to—

- (a) the degree of impairment assessed in accordance with section 91 resulting from the injury or injuries claimed for which liability is accepted or established; and
- (b) whether the worker has an injury or injuries claimed for which liability is accepted or established which is a total loss mentioned in the Table in Schedule 3B—

to a Medical Panel for its opinion under section 67.

S. 104B(9)(b)  
amended by  
No. 80/2010  
s. 62(b).

S. 104B(9A)  
inserted by  
No. 102/2004  
s. 5(10).

- (9A) For the purposes of subsection (9), if a worker has suffered an injury arising out of the same event or circumstance resulting in both psychiatric impairment and impairment other than psychiatric impairment—

- (a) the worker may—
- (i) accept or dispute the determinations of impairment of both psychiatric impairment and impairment other than psychiatric impairment; or
  - (ii) accept or dispute either the determination of psychiatric impairment or the determination of impairment other than psychiatric impairment but can not accept only part of the determination of impairment other than psychiatric impairment; and
- (b) the Authority or self-insurer must refer under that subsection the medical questions relating to the determination or determinations disputed in accordance with subsection (9).
- (10) The Authority or self-insurer must, within 60 days of obtaining the opinion of the Medical Panel under section 67, advise the worker of the opinion and the entitlement, if any, under section 98C or 98E.
- (10A) The worker must, within 60 days of being advised by the Authority or self-insurer of the entitlement of the worker to compensation in accordance with subsection (10), advise the Authority or self-insurer whether the worker accepts or disputes the entitlement to compensation.
- (10B) Subject to section 134AB(36), the Authority or self-insurer must, within 14 days of being advised by the worker either under subsection (10A) or at a later date that the worker accepts the entitlement to compensation—
- S. 104B(10)**  
amended by  
No. 81/1998  
s. 23(a),  
substituted by  
No. 26/2000  
s. 17(4),  
amended by  
No. 82/2001  
s. 20(1),  
substituted by  
No. 41/2006  
s. 18(5).
- S. 104B(10A)**  
inserted by  
No. 26/2000  
s. 17(4),  
substituted by  
No. 41/2006  
s. 18(5).
- S. 104B(10B)**  
inserted by  
No. 26/2000  
s. 17(4),  
substituted by  
No. 41/2006  
s. 18(5).

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- (a) if the entitlement is under section 98C, make payments in accordance with section 98D; or
- (b) if the entitlement is under section 98E, pay the amount specified for the total loss under section 98E.
- S. 104B(11) amended by No. 80/2010 s. 62(b).
- (11) For the purposes of this section, liability in relation to a claim does not include a question as to the degree of permanent impairment of a worker or whether a worker has an injury which is a total loss mentioned in the Table in Schedule 3B.
- S. 104B(11A) inserted by No. 26/2000 s. 17(5), repealed by No. 41/2006 s. 18(6).
- \* \* \* \* \*
- S. 104B(12) amended by No. 102/2004 s. 5(11).
- (12) No appeal lies to any court or Tribunal from a determination or opinion—
- (a) as to the degree of permanent impairment of a worker resulting from an injury; or
- S. 104B(12)(b) amended by No. 80/2010 s. 62(b).
- (b) as to whether a worker has an injury which is a total loss mentioned in the Table in Schedule 3B.
- S. 104B(13) amended by No. 80/2010 s. 122(3).
- (13) For the purposes of this section, the Minister may issue directions for or with respect to procedures for the determination of claims for compensation under section 98C, including directions requiring that information in classes of claims specified in the directions must be provided by affidavit.
- S. 104B(14) inserted by No. 26/2000 s. 16(5).
- (14) This section as amended by section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** applies in respect of—
- (a) all claims for compensation under section 98C given, served or lodged on or after the commencement of section 16 of the

**Accident Compensation (Common Law and Benefits) Act 2000;**

- (b) an assessment for the purposes of sections 134AB(3) and 134AB(15) in respect of an injury to a worker on or after 20 October 1999 whose claim for compensation under section 98C was given, served or lodged before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000**;
  - (c) a claim specified in subsection (15).
- (15) If a worker has given, served or lodged a claim for compensation under section 98C before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** and on or after that commencement claims compensation under section 98C for any other injury which arose from the same event or circumstance in respect of which the injury the subject of the previous claim arose, this section as amended by section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** applies in respect of the subsequent claim.
- (16) Subject to subsection (14), this section as in force before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** continues to apply in respect of all claims for compensation under section 98C given, served or lodged before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000**.
- (17) This section as amended by section 17 of the **Accident Compensation (Common Law and Benefits) Act 2000** applies in respect of—
- S. 104B(15) inserted by No. 26/2000 s. 16(5).
- S. 104B(16) inserted by No. 26/2000 s. 16(5).
- S. 104B(17) inserted by No. 26/2000 s. 17(6).

- (a) all claims for compensation under section 98C given, served or lodged on or after the commencement of section 17 of the **Accident Compensation (Common Law and Benefits) Act 2000**;
- (b) a request made under subsection (1C) on or after that commencement;
- (c) an assessment on or after that commencement for the purposes of sections 134AB(3) and 134AB(15) in respect of an injury to a worker on or after 20 October 1999.

S. 104B(18)  
inserted by  
No. 82/2001  
s. 20(2).

- (18) This section as amended by section 20 of the **Accident Compensation (Amendment) Act 2001** only applies—
- (a) in the case of subsection (6), to any case in which the Authority or self-insurer obtained the assessments and determination on or after the date of commencement of section 20 of that Act;
  - (b) in the case of subsection (7), to any case in which the worker was advised under subsection (6) on or after the date of commencement of section 20 of that Act;
  - (c) in the case of subsection (10), to any case in which the Authority or self-insurer obtained the opinion of the Medical Panel under section 67 on or after the date of commencement of section 20 of that Act.

S. 104B(19)  
inserted by  
No. 102/2004  
s. 5(12).

- (19) If as at the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004** a worker has attended at least 1 impairment examination, the assessment of impairment and the final determination of the claim of the worker must be completed in



accordance with this section as in force before that commencement.

- (20) If as at the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004** a worker has lodged an impairment claim but has not attended any impairment examinations, the worker may before attending an impairment examination elect by notice in writing to the Authority or self-insurer—

S. 104B(20)  
inserted by  
No. 102/2004  
s. 5(12).

- (a) to continue to have the claim determined in accordance with this section as in force before that commencement; or  
(b) to withdraw the claim.

- (21) If a worker withdraws a claim under subsection (20)(b), the worker may submit a new claim as if it were the first claim of that type that the worker was submitting in respect of that injury.

S. 104B(21)  
inserted by  
No. 102/2004  
s. 5(12).

- (22) This section as in force before the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004** applies to a worker to whom subsection (19) or (20)(a) applies with the following modifications—

S. 104B(22)  
inserted by  
No. 41/2006  
s. 18(7).

- (a) as if in subsection (6) as then in force "and of the consequences as specified in subsection (11A) of confirming in writing that he or she wishes to receive any compensation to which he or she is entitled" were omitted;  
(b) as if in subsection (7) as then in force "and if the worker accepts the entitlement to compensation, whether or not he or she wishes to receive the compensation to which he or she is entitled" were omitted;

- (c) as if in subsection (8) as then in force, for "wishes to receive the compensation to which he or she is entitled" there were substituted "accepts the entitlement";
- (d) as if in subsection (10) as then in force "and of the consequences as specified in subsection (11A) of confirming in writing that he or she wishes to receive any compensation to which he or she is entitled" were omitted;
- (e) as if in subsection (10A) as then in force, for "wishes to receive the compensation to which he or she is entitled" there were substituted "accepts or disputes the entitlement to compensation";
- (f) as if in subsection (10B) as then in force, for "wishes to receive the compensation to which he or she is entitled" there were substituted "accepts the entitlement to compensation";
- (g) as if subsection (11A) as then in force were repealed.

S. 104B(23)  
inserted by  
No. 41/2006  
s. 18(7).

- (23) Subject to subsection (22), this section as amended by section 18 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies to an impairment claim whether lodged before, on or after 18 November 2004 unless the worker has before 1 June 2006—
- (a) made an application under section 134AB(4); or
  - (b) advised the Authority or self-insurer under subsection (7B) or (10A) that he or she wishes to receive the compensation to which he or she is entitled.

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	*	*	*	*	*	S. 105 substituted by No. 50/1994 s. 50, amended by Nos 107/1997 s. 30(9), 81/1998 s. 23(a), 9/2010 s. 20, repealed by No. 67/2013 s. 635(2).
<b>106 Lodging of claims with Authority in certain circumstances</b>						S. 106 substituted by No. 50/1994 s. 50.
(1) If a person making a claim for compensation becomes aware that the employer—						S. 106(1) amended by No. 81/1998 s. 23(g).
(a) cannot be identified; or						
(b) cannot be found; or						
(c) is dead; or						
(d) is a corporation that has been wound up; or						
(e) has not complied or is not likely to comply with section 108; or						
(f) is refusing to receive the claim—						
that person must lodge the claim with the Authority.						
(2) Subsection (1) does not apply to a claim in respect of an injury arising wholly out of or in the course of or due to the nature of employment on or after 4 p.m. on 30 June 1993.						
	*	*	*	*	*	S. 106(3) amended by No. 81/1998 s. 23(h), repealed by No. 67/2013 s. 635(2).

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S. 106(4)(5) inserted by No. 102/2004 s. 26(2), repealed by No. 67/2013 s. 635(2).	*	*	*	*	*
S. 107 substituted by No. 50/1994 s. 50, amended by Nos 81/1998 s. 23(c), 102/2004 s. 27, repealed by No. 80/2010 s. 65.	*	*	*	*	*
S. 107A inserted by No. 102/2004 s. 28, amended by Nos 80/2010 s. 66, 43/2012 s. 3(Sch. item 1.3), repealed by No. 67/2013 s. 635(2).	*	*	*	*	*
S. 108 substituted by No. 50/1994 s. 50, amended by Nos 47/1996 s. 16, 107/1997 ss 27(2)(c), 43(3), 81/1998 s. 23(i)–(l), 24/2000 s. 3(1)(2), 102/2004 s. 26(3)(4), 9/2010 ss 20(3)–(5), 159, 80/2010 s. 78(g), repealed by No. 67/2013 s. 635(2).	*	*	*	*	*

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*	*	*	*	*	<b>S. 109</b> substituted by No. 50/1994 s. 50, amended by Nos 81/1998 s. 23(m)(n), 102/2004 s. 26(5)(6), substituted by No. 9/2010 s. 21, amended by No. 80/2010 s. 78(h), repealed by No. 67/2013 s. 635(2).
*	*	*	*	*	<b>S. 109AA</b> inserted by No. 9/2010 s. 43, repealed by No. 67/2013 s. 635(2).
<b>110 Application by worker to alter amount of weekly payments</b>					
(1) A worker who is receiving weekly payments may apply in writing to the Authority or self-insurer for an increase or reduction in the amount of the payments and must specify in the application the reasons for so applying and provide with the application any supporting evidence.					<b>S. 110(1)</b> amended by No. 81/1998 s. 23(o).
(2) Within 28 days after receiving an application, the Authority or self-insurer must—					<b>S. 110(2)</b> amended by No. 81/1998 s. 23(o).
(a) approve or reject the application; and					
(b) give the worker and the employer written notice of its decision, including, in the case of rejection, a statement of the reasons for the decision.					

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S. 111 substituted by No. 50/1994 s. 50, amended by Nos 63/1996 s. 98(Sch. item 1.2), 107/1997 s. 30(10), 81/1998 s. 23(o), 28/2005 s. 22, repealed by No. 67/2013 s. 635(2).	*	*	*	*	*
S. 112 substituted by No. 50/1994 s. 50, amended by Nos 7/1996 s. 27, 107/1997 s. 11(7)(b), 81/1998 s. 23(o), 74/2000 s. 3(Sch. 1 item 1.3), 102/2004 s. 30, repealed by No. 67/2013 s. 635(2).	*	*	*	*	*
S. 113 substituted by No. 50/1994 s. 50, amended by Nos 63/1996 s. 98(Sch. item 1.2), 81/1998 s. 23(o), repealed by No. 9/2010 s. 130(2).	*	*	*	*	*

## **114 Termination or alteration of weekly payments**

**S. 114  
substituted by  
No. 50/1994  
s. 50.**

(1) The Authority or self-insurer may in accordance with this Act terminate a worker's entitlement to weekly payments or alter the basis on which the amount of the weekly payment is to be calculated whether or not the worker is currently receiving weekly payments.

**S. 114(1)  
amended by  
No. 81/1998  
s. 23(o).**

(1A) Subsections (2) to (13) only apply if the worker is currently receiving weekly payments as at the date of the change in the entitlement of the worker to weekly payments.

**S. 114(1A)  
inserted by  
No. 28/2005  
s. 23(1).**

(2) In addition to other grounds under this Act for termination or alteration of weekly payments, the Authority or a self-insurer—

**S. 114(2)  
amended by  
No. 81/1998  
s. 23(o).**

(a) may increase or reduce weekly payments on the ground that there is not, or is no longer, an entitlement to weekly payments of the existing amount; and

(b) may terminate weekly payments on the ground that—

(i) the worker is not entitled to compensation under Division 1 or 2; or

(ii) the worker is not, or is no longer entitled to weekly payments; or

(c) may terminate or alter weekly payments on the ground that—

(i) the worker has returned to any work whether as a self employed person or in employment; or

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S. 114(2)(c)(ii)  
amended by  
No. 26/2000  
s. 4(3),  
substituted by  
No. 9/2010  
s. 45(1).

- (ii) in the case of a worker who has current weekly earnings, the amount of the worker's current weekly earnings alters; or

S. 114(2)(c)(iii)  
inserted by  
No. 26/2000  
s. 4(3),  
amended by  
No. 67/2013  
s. 635(3).

- (iii) payments for regular overtime or shift allowances are no longer included in the worker's pre-injury average weekly earnings; or

S. 114(2)(c)(iv)  
inserted by  
No. 67/2013  
s. 635(4).

- (iv) an amount referred to in section 155(1)(c) of the **Workplace Injury Rehabilitation and Compensation Act 2013** is varied or no longer paid; or

S. 114(2)(c)(v)  
inserted by  
No. 67/2013  
s. 635(4).

- (v) a non-pecuniary benefit within the meaning of section 155(1)(d) of the **Workplace Injury Rehabilitation and Compensation Act 2013** is varied or no longer paid.

S. 114(2A)  
inserted by  
No. 9/2010  
s. 45(2).

(2A) If the current weekly earnings of a worker who—

- (a) has an incapacity for work resulting from, or materially contributed to by, an injury; and
- (b) is receiving, or but for the worker's current weekly earnings, would have been entitled to receive, compensation in the form of weekly payments—

are reduced because—

- (c) the worker no longer resides in Victoria; or
- (d) the worker's employment was terminated because of the worker's misconduct; or
- (e) the worker—
  - (i) has resigned; or



(ii) reduced the hours worked otherwise than in the circumstances referred in section 93CDA—

for reasons unrelated to the worker's incapacity—

the Authority or a self-insurer may determine—

(f) not to alter the amount of compensation in the form of weekly payments paid to the worker; or

(g) not to pay compensation in the form of weekly payments.

(2B) If the Authority or a self-insurer makes a determination under subsection (2A)—

S. 114(2B)  
inserted by  
No. 9/2010  
s. 45(2).

(a) the Authority or self-insurer must give written notice to the worker of the determination and the reasons for it; and

(b) the worker's entitlement to compensation in the form of weekly payments is adjusted in accordance with the determination.

(2C) A determination under subsection (2A) takes effect from the day on which the current weekly earnings were reduced or, if the Authority or self-insurer specifies a later date in the determination, on that later date.

S. 114(2C)  
inserted by  
No. 9/2010  
s. 45(2).

(2D) If the current weekly earnings of a worker are reduced because the worker is on paid annual leave or long service leave, the Authority or self-insurer must not, by reason only of that reduction, alter the amount of compensation in the form of weekly payments.

S. 114(2D)  
inserted by  
No. 9/2010  
s. 45(3).

(3) The Authority or a self-insurer may terminate weekly payments if it considers that payments were obtained fraudulently.

S. 114(3)  
amended by  
No. 81/1998  
s. 23(o).

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S. 114(5)  
amended by  
No. 80/2010  
s. 67.

(4) A termination or alteration of weekly payments on the grounds specified in subsection (2)(a) or (2)(b) has effect—

(a) only if written notice in accordance with subsection (10) is given; and

(b) after the expiry of the required notice period.

(5) A termination or alteration of weekly payments on the grounds specified in subsection (2)(c) or section 93E, 93F, 96, 97(2), 97(7), 134AB(36) or 135A(18) has effect—

(a) without the giving of notice; and

(b) as from the day on which the circumstances establishing the relevant ground first arise.

S. 114(5A)  
inserted by  
No. 41/2006  
s. 15(3).

(5A) A termination of weekly payments under section 93EA has effect—

(a) without the giving of notice; and

(b) as from the expiry of the period not exceeding 13 weeks for which the payment is granted under that section.

(6) A termination of weekly payments on the ground specified in subsection (3) has effect—

(a) if written notice in accordance with subsection (10) is given; and

(b) as from the day (whether before, on or after the giving of the notice) on which the Authority or self-insurer makes the decision.

S. 114(6)(b)  
amended by  
No. 81/1998  
s. 23(a).

S. 114(7)  
amended by  
No. 107/1997  
s. 30(11)(a),  
repealed by  
No. 9/2010  
s. 130(3)(b).

\* \* \* \* \*

- (8) A reduction of weekly payments solely on the ground of the expiry of the first entitlement period has effect—
- (a) if written notice in accordance with subsection (10) is given; and
  - (b) if section 114A has been complied with.
- (9) A termination of weekly payments solely on the ground of the expiry of the second entitlement period<sup>21</sup> has effect—
- (a) if written notice in accordance with subsection (10) is given; and
  - (b) if section 114B has been complied with.
- (9A) A termination of weekly payments under section 93CA has effect—
- (a) without the giving of notice; and
  - (b) as from—
    - (i) the day on which the worker ceases to suffer incapacity resulting from, or materially contributed to by, the subsequent surgery, or a recurrence of that incapacity, whichever is the later; or
    - (ii) the expiry of the period of 13 weeks commencing on the day on which the relevant surgery is performed—
- whichever first occurs.
- (10) A notice must—
- (a) be given to the worker; and
  - (b) state the reasons for giving the notice; and
  - (c) state—
    - (i) in the case of termination, when weekly payments will be stopped; and

S. 114(8)  
amended by  
Nos 107/1997  
s. 30(11)(b),  
9/2010  
s. 33(1)(a).

S. 114(9)  
amended by  
Nos 7/1996  
s. 16(3),  
107/1997  
s. 30(11)(c),  
9/2010  
s. 33(1)(b).

S. 114(9A)  
inserted by  
No. 9/2010  
s. 45(4).

- (ii) in the case of alteration, the new level of weekly payments and when payments at the new level will commence.

**S. 114(11)  
amended by  
No. 81/1998  
s. 23(o).**

(11) If a worker—

- (a) has received weekly payments of compensation for a continuous period of at least 12 weeks; and
- (b) has provided the worker's employer, or where applicable, the Authority or self-insurer with a certificate of capacity in accordance with section 111—

the Authority or self-insurer must not terminate or reduce weekly payments during the period of incapacity so specified without giving the worker the required period of notice of intention to do so.

**S. 114(12)  
amended by  
No. 81/1998  
s. 23(o).**

(12) If weekly payments are terminated or reduced in contravention of subsection (11), the worker may recover from the Authority or self-insurer an amount of compensation that—

- (a) if no period of notice has been given—is equal to the amount of compensation or additional compensation, that would have been payable during the required period of notice if weekly payments had not been terminated or reduced; or
- (b) if less than the required period of notice has been given—is equal to the amount of compensation that would have been payable during the balance of the required period of notice if weekly payments had not been terminated or reduced.

- (13) The required period of notice, unless expressly otherwise provided in this Act is—
- (a) if the worker has been receiving weekly payments of compensation for a continuous period of at least 12 weeks but less than 1 year—14 days; or
- (b) if the worker has been receiving weekly payments of compensation for a continuous period of 1 year or more—28 days; or
- (c) if the termination of weekly payments is solely on the ground of the expiry of the second entitlement period—13 weeks; or
- (d) if the worker has been receiving compensation in the form of weekly payments under section 93CD and ceases to be entitled to receive such compensation—28 days; or
- (e) if the worker has been receiving compensation in the form of weekly payments under section 93CD and the termination is because the employer has withdrawn the employment—13 weeks commencing on the day on which the employer informs the worker of the withdrawal of employment.
- 114AA Termination of compensation in the form of superannuation contributions**
- (1) Subject to this section, the Authority or a self-insurer may terminate the payment of compensation in the form of superannuation contributions in respect of a worker on the ground that the worker—
- S. 114(13) amended by No. 9/2010 s. 130(3)(a).
- S. 114(13)(b) amended by No. 41/2006 s. 20(a).
- S. 114(13)(c) inserted by No. 41/2006 s. 20(b), amended by No. 9/2010 ss 33(1)(b), 45(5)(a).
- S. 114(13)(d) inserted by No. 9/2010 s. 45(5)(b).
- S. 114(13)(e) inserted by No. 9/2010 s. 45(5)(b).
- S. 114AA inserted by No. 9/2010 s. 46 (as amended by No. 80/2010 s. 159(i)).

- (a) is not, or has ceased to be, entitled to such compensation; or
  - (b) is not, or has ceased to be, entitled to compensation in the form of weekly payments.
- (2) The Authority or self-insurer must not terminate payments in the form of superannuation contributions (otherwise than because the worker is not, or has ceased to be, entitled to compensation in the form of weekly payments) unless the Authority or self-insurer gives a notice in writing in accordance with subsection (3) to the worker—
  - (a) stating the reasons for the termination; and
  - (b) stating when the payments will cease.
- (3) A notice in writing under subsection (2) must be given—
  - (a) if compensation in the form of superannuation contributions has been paid in respect of a worker for a continuous period of at least 12 weeks and not more than 1 year—at least 14 days before the termination;
  - (b) if compensation in the form of superannuation contributions has been paid in respect of the worker for a continuous period of 1 year or more—at least 28 days before the termination.

**114A Reduction of weekly payments after the first entitlement period**

(1) Weekly payments must not be reduced under section 114(8)—

S. 114A  
(Heading)  
inserted by  
No. 9/2010  
s. 33(2).  
S. 114A  
inserted by  
No. 50/1994  
s. 50.

(a) unless the Authority or self-insurer has made a determination of the worker's entitlement under section 93B; and

S. 114A(1)(a)  
amended by  
Nos 107/1997  
s. 30(11)(e),  
81/1998  
s. 23(o),  
9/2010  
s. 33(3)(a)(i).

(b) until the Authority or self-insurer has given at least 14 days notice under section 114 of the decision following that determination.

S. 114A(1)(b)  
amended by  
No. 81/1998  
s. 23(o).

(2) The notice is not invalid only because the date specified in the notice as the date on which the reduction is to take effect is not a date immediately after the expiry of the first entitlement period but has effect on the date immediately after the completion of the first entitlement period or, if the date specified in the notice is a later date, the later date.

S. 114A(2)  
amended by  
Nos 107/1997  
s. 30(11)(d),  
9/2010  
s. 33(3)(a)(ii).

(3) Despite anything to the contrary in section 93B, until notice is given to a worker and the date specified in the notice has expired, the worker is deemed to be entitled to weekly payments in respect of any period after the expiry of the first entitlement period under section 93B(2)(a) or (3)(a) provided that the worker is but for the expiry of 13 weeks otherwise entitled to weekly payments.

S. 114A(3)  
amended by  
Nos 107/1997  
s. 30(11)(d)(f)–  
(h), 82/2001  
s. 21, 9/2010  
s. 33(3)(a)(ii)–  
(iv).

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S. 114A(4)  
amended by  
No. 107/1997  
s. 30(11)(d),  
repealed by  
No. 107/1997  
s. 30(11)(i).

\* \* \* \*

S. 114A(5)  
amended by  
No. 107/1997  
s. 30(11)(j).

(5) Subsections (1)(b), (2) and (3) do not apply if—

S. 114A(5)(a)  
amended by  
No. 107/1997  
s. 30(11)(d),  
repealed by  
No. 107/1997  
s. 30(11)(k).

\* \* \* \*

S. 114A(5)(b)  
amended by  
Nos 107/1997  
s. 30(11)(d),  
9/2010  
s. 33(3)(a)(ii).

(b) the claim for weekly payments is made  
within the period of 42 days before the  
expiry of the first entitlement period.

S. 114A(6)  
amended by  
Nos 107/1997  
s. 30(11)  
(d)(f)(i), 9/2010  
s. 33(3)(a)(iii)(v).

(6) If subsection (5)(b) applies and weekly payments  
are commenced, the entitlement to weekly  
payments in respect of any period after the expiry  
of the first entitlement period must be determined  
in accordance with section 93B.



**114B Termination of weekly payments after expiry of entitlement period**

S. 114B  
inserted by  
No. 50/1994  
s. 50.

(1) Weekly payments must not be terminated under section 114(9)—

S. 114B(1)  
amended by  
Nos 7/1996  
s. 16(4),  
107/1997  
s. 30(11)(m),  
81/1998  
s. 23(o),  
substituted by  
No. 41/2006  
s. 21(1).

(a) unless the Authority or self-insurer has made a determination of the worker's entitlement to weekly payments after the expiry of the second entitlement period; and

S. 114B(1)(a)  
amended by  
No. 9/2010  
s. 33(3)(b)(i).

(b) until the Authority or self-insurer has given at least 13 weeks notice under section 114 of the determination following the making of the determination.

(1A) A determination under subsection (1) may be made before or after the expiry of the second entitlement period so as to terminate payments at or after the expiry of that entitlement period.

S. 114B(1A)  
inserted by  
No. 41/2006  
s. 21(1),  
amended by  
No. 9/2010  
s. 33(3)(b)(i).

(2) The notice is not invalid only because the date specified in the notice as the date on which the termination is to take effect is not a date immediately after the expiry of the second entitlement period<sup>22</sup> but has effect on the date immediately after the completion of the second entitlement period or, if the date specified in the notice is a later date, the later date.

S. 114B(2)  
amended by  
Nos 7/1996  
s. 16(5),  
107/1997  
s. 30(11)(m),  
9/2010  
s. 33(3)(b)(i).

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S. 114B(3)  
substituted by  
No. 7/1996  
s. 16(6),  
amended by  
Nos 107/1997  
s. 30(11)  
(m)–(o),  
28/2005  
s. 23(2)(a)(b),  
9/2010  
s. 33(3)(b)  
(ii)–(iv).

(3) If subsection (1) applies and notwithstanding anything to the contrary in section 93C(1), until notice is given to a worker and the date specified in the notice has expired, the worker is deemed to be entitled to weekly payments under section 93B in respect of any period after the expiry of the second entitlement period provided that the worker is but for the expiry of the entitlement period otherwise entitled to weekly payments<sup>23</sup>.

S. 114B(4)  
substituted by  
No. 7/1996  
s. 16(7),  
amended by  
Nos 107/1997  
s. 30(11)(m),  
41/2006  
s. 21(2),  
9/2010  
s. 33(3)(b)(iv).

(4) Subsections (1)(b), (2) and (3) do not apply if the claim for weekly payments is made within the period of 119 days before the expiry of the second entitlement period<sup>24</sup>.

S. 114B(5)  
substituted by  
No. 7/1996  
s. 16(7),  
amended by  
Nos 107/1997  
s. 30(11)  
(m)(p), 9/2010  
s. 33(3)(b)  
(iv)(v).

(5) If subsection (4) applies and weekly payments are commenced, the entitlement to weekly payments in respect of any period after the expiry of the second entitlement period must be determined in accordance with section 93C(1)<sup>25</sup>.

S. 114BA  
inserted by  
No. 9/2010  
s. 16.

#### **114BA Notice of reduction of weekly payments**

- (1) On becoming aware that section 82A, 82B or 82C applies to a worker who is receiving, or is entitled to receive, compensation in the form of weekly payments under this Part—
- (a) the Authority or self-insurer must give written notice to the worker in accordance with section 114(10) of the reduction in the amount of the worker's weekly payments; and

- (b) weekly payments must not be reduced before the notice has been given.
- (2) Section 114(13) does not apply to a notice given under subsection (1) of this section.

**114C Time for payment**

S. 114C  
inserted by  
No. 50/1994  
s. 50.

- (1) If a Conciliation Officer directs, or the Magistrates' Court or the County Court determines, that weekly payments are payable by the Authority or a self-insurer, the Authority or self-insurer must commence payment, including amounts payable under section 114E, no later than 7 days after the direction or determination.
- (2) On the commencement of payment under subsection (1), the Authority or self-insurer must pay an amount equal to any outstanding weekly payments to the worker.
- (3) If the Authority, a self-insurer or an employer accepts a claim for weekly payments, payments including amounts payable under section 114E must commence to be paid within 7 days after the claim is accepted.
- (4) If a Conciliation Officer directs or the Magistrates' Court or the County Court determines, that weekly payments be made, section 114E applies and the entitlement of the worker to weekly payments commences on the date specified by the Conciliation Officer or by the Magistrates' Court or the County Court.

S. 114C(1)  
amended by  
No. 81/1998  
s. 23(o),  
substituted by  
No. 80/2010  
s. 68.

S. 114C(2)  
amended by  
No. 81/1998  
s. 23(o).

S. 114C(3)  
amended by  
No. 81/1998  
s. 23(o).

## 114D Payment of weekly payments

S. 114D  
inserted by  
No. 50/1994  
s. 50.

S. 114D(1)  
amended by  
Nos 47/1996  
s. 17(a),  
81/1998  
s. 23(p).

S. 114D(2)  
amended by  
Nos 47/1996  
s. 17(b),  
81/1998  
s. 23(q),  
9/2010 s. 160,  
substituted by  
No. 67/2013  
s. 635(5).

(1) If a worker is entitled to weekly payments, the Authority unless the Authority determines otherwise, must make the payments to the worker's employer.

(2) If—

- (a) an employer is notified by the Authority that a worker is entitled to weekly payments; or
- (b) a self-insurer determines that a worker is entitled to weekly payments—

the employer or the self-insurer, as the case may be, must make weekly payments to the worker in accordance with subsection (1).

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

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

S. 114D(2A)  
inserted by  
No. 67/2013  
s. 635(5).

(2A) A self-insurer—

- (a) to which a direction or determination under section 114C(1) to pay weekly payments applies, must commence payment within 7 days after the direction or determination is made; or
- (b) which accepts a claim under section 114C(3) to make weekly payments to a worker and there are any outstanding payments of weekly payments, must pay those outstanding weekly payments to the worker within 7 days after accepting the claim.

Penalty: 300 penalty units.

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|--|---|
| <p>(3) If an employer is required to make a payment of weekly payments before the employer receives the payment from the Authority, the employer must be reimbursed by the Authority.</p>  | <p><b>S. 114D(3)</b><br/>amended by<br/>Nos 47/1996<br/>s. 17(b),<br/>81/1998<br/>s. 23(q).</p> |
| <p>(4) If an employer to whom subsection (3) applies does not apply within 3 months after making the payment of weekly payments to a worker for reimbursement by the Authority, the Authority is not required to reimburse the employer but may do so if satisfied that the employer's delay in making the application was reasonable.</p>                                     | <p><b>S. 114D(4)</b><br/>amended by<br/>Nos 7/1996<br/>s. 28, 81/1998<br/>s. 23(q).</p>         |
| <p>(5) If the Authority does not reimburse the employer in respect of a payment referred to in subsection (3) within the prescribed period, the Authority is liable to pay the employer interest at the prescribed rate on the amount of the payment until the Authority reimburses the employer in respect of the payment.</p>  | <p><b>S. 114D(5)</b><br/>amended by<br/>No. 81/1998<br/>s. 23(q).</p>                           |
| <p>(6) A weekly payment must be made to a worker—</p> <p style="margin-left: 40px;">(a) before the expiry of 7 days after the end of the week in respect of which it is payable; or</p> <p style="margin-left: 40px;">(b) if the worker would be paid less frequently if the worker were at work, at such time or at such intervals as he or she would be paid if at work.</p> |   |
| <p style="text-align: center;">*                    *                    *                    *</p>  | <p><b>S. 114D(7)(8)</b><br/>repealed by<br/>No. 67/2013<br/>s. 635(6).</p>                      |
| <p>(9) The liability to a worker is not satisfied until the worker receives the weekly payment.</p>  |   |

S. 114D(10)  
amended by  
Nos 47/1996  
s. 17(c)(i)(ii),  
81/1998  
s. 23(q).

- (10) In subsections (1) to (5) *employer* means a person who is or has been an employer of the worker and whom the Authority determines to be the employer for the purposes of this section but does not include a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 114E  
inserted by  
No. 50/1994  
s. 50.

#### **114E Outstanding weekly payments**

S. 114E(1)  
amended by  
No. 41/2006  
s. 22(1).

- (1) The amount of outstanding weekly payments and interest at the prescribed rate on each outstanding weekly payment are payable to the worker in the following circumstances and in respect of the periods specified in relation thereto—

- (a) if a Conciliation Officer directs that weekly payments be commenced or continued to be paid at the current rate or increased, from the day—

- (i) on which incapacity commenced; or  
(ii) on which weekly payments were terminated or altered; or

- (iii) on which the worker's application to increase the amount of weekly payments was received by the Authority or self-insurer—

until the day on which the direction is revoked or payments are commenced, continued or increased, whichever is the earlier;

S. 114E(1)  
(a)(iii)  
amended by  
No. 81/1998  
s. 23(o).

S. 114E(1)(b)  
amended by  
No. 41/2006  
s. 22(2).

- (b) subject to subsection (1A), if a decision to reject a claim for weekly payments is set aside by the Magistrates' Court or the County Court, from the day on which the incapacity

commenced until the day on which the decision is set aside;

- (c) subject to subsection (1A), if a decision to terminate or reduce weekly payments is set aside by the Magistrates' Court or the County Court, from the day on which the decision took effect until the day on which the decision is set aside;

S. 114E(1)(c)  
amended by  
No. 41/2006  
s. 22(2).

- (d) subject to subsection (1A), if a decision to reject an application by a worker to increase the amount of weekly payments is set aside by the Magistrates' Court or the County Court, from a day determined by the Magistrates' Court or the County Court until the day on which the decision is set aside;

S. 114E(1)(d)  
amended by  
No. 41/2006  
s. 22(2).

- (e) if an employer, the Authority or a self-insurer fails to make any weekly payment as and when required by the Act to be made to a worker, from the day after the payment was required to be made until the day before the payment is made.

S. 114E(1)(e)  
amended by  
No. 81/1998  
s. 23(m).

- (1A) If a worker has not made an application to the Magistrates' Court or the County Court within one year of being notified by a Conciliation Officer under section 59(4) that the Conciliation Officer is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments and that an application may be made to the Magistrates' Court or the County Court to determine the matter, interest is not payable under subsection (1) in respect of the period beginning after the expiry of one year after that date and ending on the day on which the application is made.

S. 114E(1A)  
inserted by  
No. 41/2006  
s. 22(3).

S. 114E(2)  
amended by  
Nos 47/1996  
s. 18(1),  
81/1998  
s. 23(r).

- (2) If an employer is responsible for making weekly payments to a worker, the Authority, must pay the employer the amount of any outstanding weekly payments payable under subsection (1).

S. 114E(3)  
inserted by  
No. 47/1996  
s. 18(2).

- (3) Subsection (2) does not apply to a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 114EA  
inserted by  
No. 9/2010  
s. 47.

#### **114EA Outstanding superannuation contributions**

- (1) Subject to subsection (2), outstanding payments of compensation in the form of superannuation contributions under section 93CE, and interest at the prescribed rate on each outstanding payment from the last date on which such a payment should have been paid until the date on which the payment is paid, are payable to the superannuation fund nominated by the worker under section 93CE for the benefit of the worker if a decision to terminate superannuation contributions under section 114AA is set aside by the court.
- (2) If a worker has not made an application to the court within one year after being notified by a Conciliation Officer that the Conciliation Officer is satisfied that there is a dispute with respect to liability to make or continue to make payments of compensation in the form of superannuation contributions under section 93CE and that an application may be made to the court to determine the matter, interest is not payable under subsection (1) in respect of the period beginning after the expiry of one year after that date and ending on the day on which the application is made.



- (3) If, under section 114E, outstanding payments of compensation in the form of weekly payments are payable in the circumstances referred to in section 114E(1)(b), (c) or (d), then, subject to section 93CE, compensation in the form of superannuation contributions under that section in respect of those outstanding payments and interest at the prescribed rate on each such payment are also payable.

**114EB Alteration or termination of superannuation contributions**

S. 114EB  
inserted by  
No. 9/2010  
s. 47.

The Authority or a self-insurer is not required to give written notice to the worker of—

- (a) an alteration of compensation in the form of superannuation contributions where the alteration is because of an alteration in the compensation in the form of weekly payments paid or payable to the worker; or
- (b) the termination of compensation in the form of superannuation contributions where the termination is because the worker is not, or has ceased to be, entitled to compensation in the form of weekly payments.

**114F Recovery of payments**

S. 114F  
inserted by  
No. 50/1994  
s. 50.

- (1) The Authority or a self-insurer may recover from a worker, an employer or any other person any payment of compensation or other amount to which the worker, employer or other person is not entitled.

S. 114F(1)  
amended by  
No. 81/1998  
s. 23(m).

- (1AA) Subsection (1) does not apply in respect of provisional payments made under Division 2BA, except in the case of a payment obtained fraudulently.

S. 114F(1AA)  
inserted by  
No. 5/2021  
s. 36.

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

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S. 114F(1A)  
inserted by  
No. 80/2010  
s. 69(1).

(1A) If the Authority recovers from a worker any amount paid as compensation to the worker by the worker's employer to which the worker is not entitled, the Authority may reimburse that amount to the employer.

S. 114F(2)  
amended by  
No. 81/1998  
s. 23(k)(s).

(2) The Authority may recover from an employer the amount of any penalty or cost incurred by the Authority as a result of the employer failing to pay compensation as required by the Act.

S. 114F(3)  
inserted by  
No. 80/2010  
s. 69(2).

(3) If—  
  
    (a) an amount of compensation under this Act has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this Act; or  
  
    (b) a person is liable to pay an amount to the Authority or a self-insurer under this Act—  
  
the amount concerned is recoverable by the Authority or a self-insurer from a person in a court of competent jurisdiction as a debt due to the Authority or self-insurer.

S. 114F(4)  
inserted by  
No. 80/2010  
s. 69(2).

(4) Where an amount is recoverable from a person under subsection (3) and an amount is payable under this Act to or for the benefit of that person, the recoverable amount may be deducted from the amount so payable, despite anything to the contrary in section 97(4).

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

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**Division 3AA—Employer objections**

Pt 4 Div. 3AA  
(Heading and  
ss 114H–  
114R)  
inserted by  
No. 9/2010  
s. 91.

\* \* \* \*

Ss 114H–  
114M  
inserted by  
No. 9/2010  
s. 91,  
repealed by  
No. 67/2013  
s. 635(7).

\* \* \* \*

S. 114N  
inserted by  
No. 9/2010  
s. 91,  
amended by  
No. 80/2010  
s. 70,  
repealed by  
No. 67/2013  
s. 635(7).

\* \* \* \*

Ss 114O–  
114R  
inserted by  
No. 9/2010  
s. 91,  
repealed by  
No. 67/2013  
s. 635(7).

\* \* \* \*

S. 114S  
inserted by  
No. 80/2010  
s. 71,  
repealed by  
No. 67/2013  
s. 635(7).

New Pt 4  
Div. 3A  
(Heading)  
inserted by  
No. 50/1994  
s. 50,  
substituted by  
No. 82/2001  
s. 3.

## **Division 3A—Voluntary settlements**

Pt 4 Div. 3A  
Subdiv. 1  
(Heading)  
inserted by  
No. 82/2001  
s. 3.

### **Subdivision 1—Settlements for certain serious injuries suffered on or after 12 November 1997 and before 20 October 1999**

S. 115  
substituted by  
Nos 64/1989  
s. 10, 67/1992  
s. 31,  
amended by  
Nos 50/1993  
ss 78(1)(c),  
100, 50/1994  
s. 52, 7/1996  
s. 29(1)-(4),  
107/1997  
ss 30(11)(q),  
44(1)(2),  
81/1998  
ss 24(1)(a)(b),  
30,  
substituted by  
No. 82/2001  
s. 3.

#### **115 Who this Subdivision applies to**

This Subdivision applies to a worker—

- (a) who suffered an injury arising out of, or in the course of, or due to the nature of, employment on or after 12 November 1997 and before 20 October 1999; and
- (b) who is receiving weekly payments of compensation in respect of the injury, or who would be entitled to receive such payments but for the operation of section 96(2); and
- (c) who has been assessed in respect of the injury as having no current work capacity and as likely to continue indefinitely to have no current work capacity; and
- (d) who has received weekly payments in respect of the injury for at least 104 weeks; and
- (e) who has been assessed, in accordance with sections 91 and 115C, as having a 30% or more degree of impairment in respect of the injury.

## **115A Right to apply for settlement**

New s. 115A  
inserted by  
No. 82/2001  
s. 3.

- (1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than Division 2B of Part IV) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

S. 115A(1)  
amended by  
No. 80/2010  
s. 78(i).

### **Note**

Although this Subdivision is intended to come into operation on the day after the **Accident Compensation (Amendment) Act 2001** receives the Royal Assent, section 119(3) will have the effect of delaying the application process under this Subdivision. The process can be delayed from starting until a date that can be no later than 1 July 2002.

## **115B Calculation of settlement amount**

S. 115B  
inserted by  
No. 82/2001  
s. 3.

- (1) The amount of the settlement is the amount resulting from applying the following formula—

$$A \times B$$

where—

A is—

- (a) if a declaration under subsection (2) is not in effect, the amount of the weekly payment to which the worker is, or, but for the operation of section 96(2), would be, entitled as at the notification date less the amount that must be withheld from that payment for the purposes of the Pay as you go system under Schedule 1 to the Taxation Administration Act 1953 of the Commonwealth; or

- (b) if a declaration under subsection (2) is in effect, the amount of the weekly payment to which the worker is, or, but for the operation of section 96(2), would be, entitled as at the notification date.
- B is the number in Column 2 of Schedule 1 opposite the number in Column 1 of that Schedule corresponding to the worker's age in years on his or her birthday next following—
- (a) if the worker is not receiving payments as a result of the operation of section 96(2), the day after the specified period defined in section 96(3) expires; or
  - (b) in any other case, the notification date.
- (2) The Minister may, by Order published in the Government Gazette, declare that the meaning of "A" in the formula set out in subsection (1) is the meaning set out in paragraph (b) of the definition of A.
- Note**
- The purpose of this provision is to enable the Minister to respond to possible policy changes in relation to the taxation of settlement payments by the Commonwealth Government.
- (3) A declaration takes effect on the day after the Order is published, or on any later day specified in the Order.
- (4) In this section ***notification date*** means the day on which the Authority or self-insurer receives an expression of interest from the worker under section 119.

**115C Procedure for assessment of impairment**

**S. 115C  
inserted by  
No. 82/2001  
s. 3.**

For the purposes of section 115(e)—

- (a) the worker must—
  - (i) have made a claim for compensation under section 98C; and
  - (ii) have had the degree of his or her impairment assessed under section 104B; and
- (b) either—
  - (i) the worker must have advised the Authority or self-insurer under section 104B(7) that he or she accepts the assessments; or
  - (ii) the assessments must have been referred to a Medical Panel under section 104B(9) and the Medical Panel must have given its opinion in relation to the assessments.

**115D Notice to worker**

**S. 115D  
inserted by  
No. 82/2001  
s. 3.**

- (1) This section applies if the Authority or self-insurer is of the opinion that a worker satisfies the requirements set out in paragraphs (a), (c), (d) and (e) of section 115.
- (2) The Authority or self-insurer may give the worker a written notice advising him or her—
  - (a) that it is of that opinion, as at the date of the notice; and
  - (b) that he or she may be eligible to apply for a settlement under this Subdivision.
- (3) The Authority or self-insurer may only give a notice under this section on or after the relevant date (as defined in section 115E(1)).

S. 115E  
inserted by  
No. 82/2001  
s. 3.

### **115E Existing assessments to be used**

- (1) In this section *relevant date* means the earliest date an expression of interest in applying for a settlement under this Subdivision may be lodged under section 119(3).
- (2) This section applies if, before the relevant date—
  - (a) a worker had the degree of his or her impairment assessed under section 104B; and
  - (b) either—
    - (i) the worker has advised the Authority or self-insurer under section 104B(7) that he or she accepts the assessments; or
    - (ii) the assessments have been referred to a Medical Panel under section 104B(9) and the Medical Panel has given its opinion in relation to the assessments.
- (3) Subject to sections 115F and 115G, the assessments are deemed to be assessments for the purposes of this Subdivision.

S. 115F  
inserted by  
No. 82/2001  
s. 3.

### **115F Transitional provision for workers who have had psychiatric impairment assessed**

- (1) This section applies if—
  - (a) section 115E applies; and
  - (b) the worker has had the degree of his or her impairment assessed under section 104B and the assessment process included an assessment of psychiatric impairment in accordance with section 91; and
  - (c) either—
    - (i) the worker has advised the Authority or self-insurer under section 104B(7) that he or she accepts the assessments; or



- (ii) the assessments have been referred to a Medical Panel under section 104B(9) and the Medical Panel has given its opinion in relation to the assessments.
- (2) The Authority or self-insurer must combine the assessment for psychiatric impairment with the assessments for any other impairments that were assessed, using the combination tables in the A.M.A. Guides.
- (3) The result obtained by combining the assessments is the assessment for the purposes of this Subdivision.
- (4) In this section *A.M.A. Guides* has the same meaning as it has in section 91(8).

**115G Transitional provisions for workers who have not had psychiatric impairment assessed**

**S. 115G  
inserted by  
No. 82/2001  
s. 3.**

- (1) This section applies if section 115E applies, but no assessment was made of any psychiatric impairment of the worker.
- (2) The worker may apply to the Authority or self-insurer in writing for an assessment under section 104B of his or her degree of permanent psychiatric impairment for the purposes of this Subdivision.
- (3) An application under subsection (2) must be made in a form approved by the Authority.
- (4) For the purposes of this section, sections 104B(2), 104B(3), 104B(4) and 104B(11) apply as if a reference in those sections to a claim was a reference to the application.
- (5) The purpose of a further assessment under this section is—
  - (a) to assess the degree of the worker's permanent psychiatric impairment in accordance with section 91; and

- (b) if such an impairment exists, to combine the assessment for the psychiatric impairment with the assessments for any other impairments that were assessed in the initial assessments, using the combination tables in the A.M.A. Guides to obtain a result for the purposes of this Subdivision.
- (6) The result of a further assessment under this section is the assessment for the purposes of this Subdivision.
- (7) During a further assessment, any result of the initial assessment—
  - (a) must not be re-assessed; and
  - (b) must be adopted for the purposes of subsection (5)(b).
- (8) For the purposes of subsection (5), the only medical question that may be referred to a Medical Panel under section 104B(9) is a question as to the worker's degree of permanent psychiatric impairment in accordance with section 91 resulting from the injury.
- (9) The results of any further assessments made under this section can only be used for the purposes of this section.
- (10) In this section *A.M.A. Guides* has the same meaning as it has in section 91(8).

S. 115H  
inserted by  
No. 82/2001  
s. 3.

**115H Certain workers may re-start section 98C claim**

- (1) In this section *relevant date* has the same meaning as it has in section 115E(1).
- (2) This section applies if a worker submitted a claim for compensation under section 98C before the relevant date, but had not, before that date, either—

- (a) advised the Authority or self-insurer under section 104B(7) that he or she accepts assessments under section 104B of the degree of his or her impairment; or
  - (b) had such assessments referred to the Medical Panel under section 104B(9) and had the Medical Panel give its opinion in relation to the assessments.
- (3) The worker may, by notice in writing given to the Authority or self-insurer, withdraw his or her claim.
  - (4) If a worker withdraws a claim under this section, he or she may submit a new claim under section 98C as if it was the first claim he or she was submitting in respect of the injury under that section.

**115I Continuation of existing claims**

S. 115I  
inserted by  
No. 82/2001  
s. 3.

- (1) In this section *relevant date* has the same meaning as it has in section 115E(1).
- (2) This section applies if section 115H applies to a worker, but the worker does not withdraw his or her claim in accordance with that section.
- (3) Sections 115E(3), 115F and 115G apply in respect of any assessments of the degree of the worker's impairment made for the purposes of section 104B before the relevant date.
- (4) Any assessments that are still to be made are to be made under section 104B as amended by section 6 of the **Accident Compensation (Amendment) Act 2001**.

Pt 4 Div. 3A  
Subdiv. 2  
(Heading and  
ss 116–116C)  
inserted by  
No. 82/2001  
s. 3.

## **Subdivision 2—Settlements for certain injuries suffered on or after 4.00 p.m. on 31 August 1985 and before 1 December 1992**

New s. 116  
inserted by  
No. 82/2001  
s. 3.

### **116 Who this Subdivision applies to**

(1) This Subdivision applies to a worker—

(a) who suffered an injury arising out of, or in the course of, or due to the nature of, employment on or after 4.00 p.m. on 31 August 1985 and before 1 December 1992; and

(b) who was—

(i) on 3 September 2001; and

(ii) on the notification date—

receiving weekly payments of compensation in respect of the injury, or who would have been entitled to receive such payments on both of those dates but for the operation of section 96(2); and

(c) who has been assessed in respect of the injury as having either—

(i) no current work capacity and as likely to continue indefinitely to have no current work capacity; or

(ii) a serious injury within the meaning of section 91E; and

(d) who had, as at 3 September 2001, received weekly payments in respect of the injury for at least 104 weeks.

S. 116(1)(c)(ii)  
amended by  
No. 9/2010  
s. 33(3)(c).

- (2) In this section *notification date* means the date on which the Authority or self-insurer receives an expression of interest from the worker under section 119.

#### **116A Right to apply for settlement**

New s. 116A  
inserted by  
No. 82/2001  
s. 3.

- (1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than Division 2B of Part IV) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

S. 116A(1)  
amended by  
No. 80/2010  
s. 78(j).

##### **Note**

Although this Subdivision is intended to come into operation on the day after the **Accident Compensation (Amendment) Act 2001** receives the Royal Assent, section 119(4) will have the effect of delaying the application process under this Subdivision. The process can be delayed from starting until a date that can be no later than 1 July 2002.

#### **116B Calculation of settlement amount**

S. 116B  
inserted by  
No. 82/2001  
s. 3.

The amount of the settlement is to be calculated in accordance with the relevant method set out in an Order in Council made under section 116C.

#### **116C Order in Council concerning settlements**

S. 116C  
inserted by  
No. 82/2001  
s. 3.

- (1) The Governor in Council, may by Order made on the recommendation of the Minister, specify how settlement amounts are to be determined for the purposes of this Subdivision.
- (2) The Minister must not recommend the making of an Order unless the Minister certifies in writing that, in his or her opinion, the making of the Order—

- (a) is consistent with ensuring that the accident compensation scheme is managed as effectively, efficiently and economically as is possible; and
  - (b) is not likely to adversely affect the competitiveness of the scheme; and
  - (c) is not likely to interfere with the scheme being fully-funded.
- (3) An Order, and the certificate of the Minister, must be published in the Government Gazette.
  - (4) An Order takes effect on the day after it is published in the Government Gazette, or on any later day specified in the Order.
  - (5) On taking effect, an Order has the like force and effect as if it were expressly enacted in this Act.

Pt 4 Div. 3A  
Subdiv. 3  
(Heading and  
ss 117–117G)  
inserted by  
No. 82/2001  
s. 3.

### **Subdivision 3—Other settlements in specific circumstances**

New s. 117  
inserted by  
No. 82/2001  
s. 3,  
amended by  
No. 80/2010  
s. 78(k).

#### **117 Who this Subdivision applies to**

This Subdivision applies to a worker who is receiving, or who is entitled to receive, compensation under this Act (other than Division 2B of Part IV) if—

S. 117(a)  
amended by  
No. 41/2006  
s. 5(6).

- (a) the claim for the payment of weekly payments was received by the Authority or a self-insurer before 1 January 2005 and the worker—
  - (i) is over the age of 55 years; and
  - (ii) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

- (iii) has been receiving weekly payments for at least 104 weeks; or
- (aa) the claim for the payment of weekly payments was received by the Authority or self-insurer on or after 1 January 2005 and the worker—
  - (i) is over the age of 55 years; and
  - (ii) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
  - (iii) has been receiving weekly payments for at least 130 weeks; or
- (b) the worker—
  - (i) has a serious injury within the meaning of section 91E; and
  - (ii) has been receiving weekly payments for at least 104 weeks.

S. 117(aa)  
inserted by  
No. 41/2006  
s. 5(7).

S. 117(b)(i)  
amended by  
No. 9/2010  
s. 33(3)(d).

#### **117A Right to apply for settlement**

S. 117A  
inserted by  
No. 82/2001  
s. 3.

- (1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than Division 2B of Part IV) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

S. 117A(1)  
amended by  
No. 80/2010  
s. 78(l).

S. 117B  
inserted by  
No. 82/2001  
s. 3.

### **117B Amount of settlement**

- (1) The amount of the settlement is the amount resulting from applying the following formula—

$$A \times C$$

where—

A is—

- (a) if a declaration under subsection (2) is not in effect, the amount of the weekly payment to which the worker is, or, but for the operation of section 96(2), would be, entitled as at the notification date less the amount that must be withheld from that payment for the purposes of the Pay as you go system under Schedule 1 to the Taxation Administration Act 1953 of the Commonwealth; or
- (b) if a declaration under subsection (2) is in effect, the amount of the weekly payment to which the worker is, or, but for the operation of section 96(2), would be, entitled as at the notification date.

C is the number in Column 3 of Schedule 1 opposite the number in Column 1 of that Schedule corresponding to the worker's age in years on his or her birthday next following—

- (a) if the worker is not receiving payments as a result of the operation of section 96(2), the day after the specified period defined in section 96(3) expires; or
- (b) in any other case, the notification date.



- (2) The Minister may, by Order published in the Government Gazette, declare that the meaning of "A" in the formula set out in subsection (1) is the meaning set out in paragraph (b) of the definition of A.

**Note**

The purpose of this provision is to enable the Minister to respond to possible policy changes in relation to the taxation of settlement payments by the Commonwealth Government.

- (3) A declaration takes effect on the day after the Order is published, or on any later day specified in the Order.
- (4) In this section *notification date* means the day on which the Authority or self-insurer receives an expression of interest from the worker under section 119.

\* \* \* \* \*

Ss 117C–117G inserted by No. 82/2001 s. 3, repealed by No. 80/2010 s. 73.

## Subdivision 4—Other settlements

Pt 4 Div. 3A Subdiv. 4 (Heading and ss 118–118C) inserted by No. 82/2001 s. 3.

### 118 Application of this Subdivision

New s. 118 inserted by No. 80/2001 s. 3.

This Subdivision applies if—

- (a) a worker is receiving, or is entitled to receive, compensation under this Act (other than Division 2B of Part IV) with respect to an injury; and

S. 118(a) amended by No. 80/2010 s. 78(m).

S. 118(b)  
amended by  
No. 67/2013  
s. 635(8).

- (b) the regulations state that the worker may apply for the settlement of his or her entitlement under the Act (other than Division 2B of Part IV) in any particular circumstances specified by the regulations.

New s. 118A  
inserted by  
No. 82/2001  
s. 3.

#### **118A Right to apply for settlement**

S. 118A(1)  
amended by  
No. 80/2010  
s. 78(n).

- (1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than Division 2B of Part IV) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

New s. 118B  
inserted by  
No. 82/2001  
s. 3.

#### **118B Amount of settlement**

The amount of the settlement is to be calculated in accordance with the relevant method set out in an Order in Council made under section 118C.

S. 118C  
inserted by  
No. 82/2001  
s. 3.

#### **118C Order in Council concerning settlements**

- (1) The Governor in Council, may by Order, specify how settlement amounts are to be determined for the purposes of this Subdivision.
- (2) The Minister must not recommend the making of an Order unless the Minister certifies in writing that, in his or her opinion, the making of the Order—
- (a) is consistent with ensuring that the accident compensation scheme is managed as effectively, efficiently and economically as is possible; and
- (b) is not likely to adversely affect the competitiveness of the scheme; and

- (c) is not likely to interfere with the scheme being fully-funded.
- (3) An Order, and the certificate of the Minister, must be published in the Government Gazette.
- (4) An Order takes effect on the day after it is published in the Government Gazette, or on any later day specified in the Order.
- (5) On taking effect, an Order has the like force and effect as if it were expressly enacted in this Act.

### **Subdivision 5—Application procedure**

Pt 4 Div. 3A  
Subdiv. 5  
(Heading and  
ss 119–119L)  
inserted by  
No. 82/2001  
s. 3.

#### **119 Expression of interest must first be given**

New s. 119  
inserted by  
No. 82/2001  
s. 3.

- (1) Before applying for a settlement under this Division, a worker must give a written expression of interest in applying for the settlement—
  - (a) if the liability to pay compensation lies with a self-insurer, to the self-insurer; or
  - (b) in any other case, to the Authority.
- (2) An expression of interest is only valid if—
  - (a) on the date it is given, the worker is eligible to apply for the settlement; and
  - (b) it is accompanied by any documents in relation to the identity and date of birth of the worker that are required by a direction of the Minister under section 119L.
- (3) An expression of interest in applying for a settlement under Subdivision 1 is only valid if it is given on or after whichever of these dates occurs first—

- (a) the date specified for the purposes of this subsection by the Minister in a notice published in the Government Gazette; or
  - (b) 1 July 2002.
- (4) An expression of interest in applying for a settlement under Subdivision 2 is only valid if it is given on or after whichever of these dates occurs first—
- (a) the date specified for the purposes of this subsection by the Minister in a notice published in the Government Gazette; or
  - (b) 1 July 2002.

S. 119A  
inserted by  
No. 82/2001  
s. 3.

**119A Time limits apply to some expressions of interest**

- (1) A worker who is entitled to apply for a settlement under Subdivision 1 and who is given a notice under section 115D must give the Authority or self-insurer an expression of interest before the expiry of 12 months from the date the notice was given to the worker.
- (2) A worker who is entitled to apply for a settlement under Subdivision 2 must give the Authority or self-insurer an expression of interest before the expiry of 3 months from the earliest date a valid expression of interest in applying for a settlement under that Subdivision may be lodged under section 119(4).
- (3) If a worker fails to comply with subsection (1), the worker ceases to be entitled to apply for a settlement under Subdivision 1.
- (4) If a worker fails to comply with subsection (2), the worker ceases to be entitled to apply for a settlement under Subdivision 2.

**119B Authority or self-insurer must respond to expression of interest**

**S. 119B  
inserted by  
No. 82/2001  
s. 3.**

- (1) On receiving an expression of interest in applying for a settlement from a worker, the Authority or self-insurer must give the worker a written response to the expression of interest.
- (2) If the Authority or self-insurer is of the opinion that the worker is eligible to apply for the settlement, the response must include—
  - (a) a statement of that opinion; and
  - (b) a statement of the amount that the worker is eligible to receive under this Division if he or she applies for the settlement and an offer of settlement is made; and
  - (c) a statement that the Authority or self-insurer will not grant an application unless the worker obtains legal and financial advice as specified in any relevant direction of the Minister under section 119L, and a copy of any such direction; and
  - (d) a statement—
    - (i) that the Authority or self-insurer will pay the reasonable costs of the worker in obtaining the legal and financial advice; and
    - (ii) of the maximum amount that will be paid with respect to the advice; and
    - (iii) of when and how the costs of the advice will be paid; and
  - (e) a statement that sets out the period within which the application must be made and that states the consequences if an application is not made within that time.

- (3) If the Authority or self-insurer is of the opinion that the worker is not eligible to apply for the settlement, the response must include—
  - (a) a statement of that opinion; and
  - (b) a statement of the reasons why the Authority or self-insurer is of that opinion.

S. 119C  
inserted by  
No. 82/2001  
s. 3.

#### **119C Application for settlement**

- (1) This section applies if a worker is given a response from the Authority or a self-insurer under section 119B(2).
- (2) The worker may apply to the Authority or self-insurer for the settlement.
- (3) The application must—
  - (a) be made in writing; and
  - (b) be accompanied by any certificate required by any direction of the Minister under section 119L.

S. 119D  
inserted by  
No. 82/2001  
s. 3.

#### **119D Time limit for making applications**

- (1) A worker wishing to apply for a settlement must do so before the expiry of 6 months from the date the Authority or self-insurer gives him or her a response under section 119B(2).
- (2) If a worker who is entitled to apply for a settlement under Subdivision 1 or 2 fails to comply with subsection (1), the worker ceases to be entitled to apply for a settlement under that Subdivision.
- (3) If a worker who is entitled to apply for a settlement under Subdivision 3 or 4 fails to comply with subsection (1), the worker is not entitled to apply for a settlement under that Subdivision until he or she gives the Authority or self-insurer another expression of interest in

applying for a settlement and is given another response under section 119B(2).

**119E Authority or self-insurer must respond to application**

S. 119E  
inserted by  
No. 82/2001  
s. 3.

- (1) On receiving an application for settlement from a worker that complies with this Division, the Authority or self-insurer must decide whether it will offer a settlement to the worker.
- (2) On making the decision, the Authority or self-insurer must give the worker written notice of the decision.
- (3) If the Authority or self-insurer decides to offer a settlement to the worker, the notice must include an offer to settle for the amount advised under section 119B(2)(b).
- (4) If the Authority or self-insurer decides not to offer a settlement to the worker, the notice must include a statement of the reasons why a settlement will not be offered to the worker.
- (5) A worker—
  - (a) who applied for a settlement under Subdivision 1 or 2; and
  - (b) who is given a notice under subsection (4)—ceases to be entitled to apply for a settlement under that Subdivision in respect of the injury.

**119F Time limit on response to offer**

S. 119F  
inserted by  
No. 82/2001  
s. 3.

- (1) If a worker wishes to accept an offer of settlement made by the Authority or a self-insurer, he or she must give the Authority or self-insurer a written notice accepting the offer before the expiry of 28 days from the date the offer was given to him or her.

- (2) If a worker rejects the offer, or fails to accept the offer within that 28 day period, the application lapses and the worker ceases to be entitled to apply for a settlement under this Division in respect of the injury.

S. 119G  
inserted by  
No. 82/2001  
s. 3.

#### **119G Payment and nature of settlement amounts**

- (1) If a worker accepts an offer of settlement, the Authority or self-insurer must make the settlement payment within the time (if any) required by any direction of the Minister under section 119L.
- (2) A settlement payment under this Division is a capital sum for loss of earning capacity.

S. 119H  
inserted by  
No. 82/2001  
s. 3.

#### **119H Adjustment of settlement amount offers**

- (1) This section applies if the Authority or a self-insurer becomes aware at any time after providing the response required by section 119B, and before paying the worker a settlement amount, that the amount specified as the settlement amount in the response does not comply with this Division.
- (2) The Authority or self-insurer must, as soon as is practicable after becoming aware that the proposed settlement amount does not comply with this Division, give the worker—
- (a) a notice advising the worker that the proposed amount does not comply with this Division and explaining the effect of this section; and
  - (b) an amended written response complying with section 119B.
- (3) For the purposes of section 119D(1), the relevant date is the date the worker was given the last amended response.



(4) If—

- (a) the reason why a proposed settlement amount no longer complies with this Division is the coming into effect of a declaration made under section 115B(2) or 117B(2); and
- (b) the worker has obtained legal or financial advice in respect of a response from the Authority or self-insurer that has been amended under this section; and
- (c) the settlement amount specified in the amended response is more than—
  - (i) 5% greater than the last settlement amount previously advised; and
  - (ii) \$5 000 greater than that last amount—

the worker is entitled to obtain further legal or financial advice at the expense of the Authority or self-insurer.

(5) In any other case, if—

- (a) a worker has obtained financial advice in respect of a response from the Authority or self-insurer that has been amended under this section; and
- (b) the settlement amount specified in the amended response is more than—
  - (i) 5% greater or less than the last settlement amount previously advised; and
  - (ii) \$5 000 greater or less than that last amount—

the worker is entitled to obtain further financial advice at the expense of the Authority or self-insurer.

- (6) If the worker is given an amended response after—
- (a) the worker has applied for a settlement; or
  - (b) the worker has been offered a settlement; or
  - (c) the worker has accepted an offer of settlement—
- the application, offer or acceptance is to be treated as if it was for a settlement for the amount set out in the amended response, unless the worker gives the Authority or self-insurer a written notice, before the expiry of 42 days from the date the worker is given the amended response, stating that he or she withdraws the application or acceptance or rejects the offer (as the case may be).
- (7) A worker to whom subsection (6) applies may give the Authority or self-insurer a written notice before the expiry of 42 days from the date the worker is given the amended response accepting an amended offer, or stating that he or she wishes the application or acceptance to proceed (as the case may be) on the basis of the amended amount.
- (8) The Authority or self-insurer must give effect to a notice given to it under subsection (7).
- (9) The rights conferred on a worker by subsection (6) are in addition to any rights conferred on the worker by section 119I(1).

S. 119I  
inserted by  
No. 82/2001  
s. 3.

**119I Worker may withdraw application at any time**

- (1) A worker who has applied for a settlement under this Division may withdraw the application at any time before an offer is made by giving the Authority or self-insurer written notice of the withdrawal.

- (2) If a worker who is entitled to apply for a settlement under Subdivision 1 or 2 withdraws an application, the worker ceases to be entitled to apply for a settlement under that Subdivision.

**119IA Circumstances in which offer may be withdrawn or settlement avoided**

S. 119IA  
inserted by  
No. 102/2004  
s. 19.

- (1) If this section applies, the Authority or a self-insurer may—
- (a) withdraw an offer of settlement made to the worker under this Division before the worker has accepted the offer of settlement;
  - (b) if the worker has accepted the offer of settlement made to the worker under this Division and the settlement payment has not been made, avoid the settlement.
- (2) This section applies if a worker applying for a settlement under this Division has made a fraudulent or reckless misrepresentation relating to his or her circumstances or any change in his or her circumstances which would have been material to the decision of the Authority or self-insurer under section 119E whether or not to offer a settlement to the worker.
- (3) Without limiting the generality of subsection (2), the circumstances include—
- (a) the worker ceases to satisfy any of the eligibility criteria specified in section 115, 116, 117 or 118;
  - (b) the worker is serving a sentence of imprisonment which would disentitle the worker to weekly payments in accordance with section 97(7);

- (c) the worker becomes aware that any other ground for the termination of weekly payments in accordance with section 114 applies but weekly payments have not been terminated.

S. 119J  
inserted by  
No. 82/2001  
s. 3.

### **119J Preclusion of further claims**

- (1) A person who accepts a settlement under Subdivision 1 or 2 is not entitled, after accepting the settlement—

S. 119J(1)(a)  
amended by  
No. 80/2010  
s. 78(o).

- (a) to any further compensation or other payment under this Act (other than Division 2B of Part IV); or
- (b) to recover damages in any proceedings against—
- (i) a person whom the Authority is liable to indemnify under section 134; or
  - (ii) the Authority under section 134(8); or
  - (iii) an employer who is a self-insurer or a subsidiary of a self-insurer; or
  - (iv) an employer or the Authority; or
  - (v) a person whom the Authority is liable to indemnify under the **Accident Compensation (WorkCover Insurance) Act 1993**; or
  - (vi) the Authority under the **Accident Compensation (WorkCover Insurance) Act 1993**—

in respect of the injury, any recurrence of the injury (other than a recurrence resulting from, or that is materially contributed to by, any employment engaged in after the date of the settlement) or any other injury arising out of, or in the course of, or due to the nature of, or

contributed to by, any employment in which the person engaged before the date of the settlement.

(2) Despite subsection (1), the person remains entitled—

- (a) to compensation for medical and the like services under Division 2B of Part IV in respect of the injury; and
- (b) to compensation and damages in respect of any injury that was caused to the worker before the date of the settlement if that injury was not manifest on or before the date of the settlement; and
- (c) to compensation under section 98, 98A, 98C or 98E in respect of—
  - (i) an injury other than the injury to which the settlement relates; or
  - (ii) a recurrence of the injury to which the settlement relates (being an injury arising out of, or in the course of, or due to the nature of, or contributed to by, employment in which the person engaged before the date of the settlement)—

S. 119J(2)(a)  
amended by  
No. 80/2010  
s. 78(o).

S. 119J(2)(c)  
amended by  
No. 21/2015  
s. 3(Sch. 1  
item 2.3).

if the claim for that compensation had been given, served or lodged before the date on which the person's application for the settlement was given to the Authority or self-insurer.

(3) A person who accepts a settlement under Subdivision 3 or 4 is not entitled, after accepting the settlement—

- (a) to any further compensation or other payment under this Act (other than Division 2B of Part IV); or

S. 119J(3)(a)  
amended by  
No. 80/2010  
s. 78(o).

- (b) to recover damages in any proceedings against—
- (i) a person whom the Authority is liable to indemnify under section 134; or
  - (ii) the Authority under section 134(8); or
  - (iii) an employer who is a self-insurer or a subsidiary of a self-insurer; or
  - (iv) an employer or the Authority; or
  - (v) a person whom the Authority is liable to indemnify under the **Accident Compensation (WorkCover Insurance) Act 1993**; or
  - (vi) the Authority under the **Accident Compensation (WorkCover Insurance) Act 1993**—

in respect of the injury, or in respect of any recurrence of the injury, other than a recurrence resulting from, or materially contributed to by, employment engaged in after the date of the settlement.

- (4) Nothing in this section is intended to preclude or interfere with any right a person may have to recover compensation under the **Sentencing Act 1991**.
- (5) In this section, *recurrence* includes aggravation, acceleration, exacerbation, or deterioration.

S. 119K  
inserted by  
No. 82/2001  
s. 3.

**119K Authority or self-insurer may extend or waive time limits**

- (1) The Authority or a self-insurer may extend or waive any time limit specified in this Division (including a time limit imposed under subsection (4)) as it applies to a worker, on the written application of the worker.

- (2) The Authority or self-insurer may only extend or waive such a time limit if it is satisfied that the worker's failure to meet the time limit was due to special circumstances.
- (3) An application for the waiver of a time limit may be made at any time, either before or after the limit has expired.
- (4) In extending or waiving a time limit, the Authority or self-insurer must specify in writing a new time limit within which the relevant act must be done.
- (5) If the Authority or self-insurer extends or waives a time limit—
  - (a) in the case of an extension, or a waiver that is granted before the time limit expires, the worker's entitlement to apply for a settlement on the expiration of that time limit does not cease on the expiration of that time limit; and
  - (b) in the case of a waiver, any entitlement to apply for a settlement that ceased on the expiry of the time limit is revived; and
  - (c) in the case of a worker seeking a settlement under Subdivision 1 or 2, the entitlement to apply for the settlement is to cease if the worker does not do the relevant act before the expiry of the time limit specified under subsection (4).

**119L Minister may issue directions**

- (1) The Minister may issue written directions that—
  - (a) require an expression of interest under section 119 to be accompanied by proof of the identity and date of birth of the worker giving the expression of interest;

S. 119L  
inserted by  
No. 82/2001  
s. 3.

- (b) specify what documents may be used to satisfy such a requirement;
- (c) specify the legal and financial issues in relation to a proposed settlement on which a worker must receive advice before being eligible to apply for the settlement;
- (d) specify the categories of people from whom the advice may be received, or specify that the advice must be obtained from a person holding a specified minimum qualification;
- (e) specify the form of certificates to be completed by legal and financial advisors to provide evidence that any advice required by a direction made under this section has been given;
- (f) specify when and how the Authority or a self-insurer is to pay or reimburse a worker in relation to the worker obtaining legal and financial advice in relation to a proposed settlement;
- (g) specify the maximum amounts that the Authority or a self-insurer is liable to pay a worker in respect of such advice;
- (h) require a worker to provide a copy to the Authority or self-insurer of any advice obtained for the purposes of this Division, but only for the purpose of enabling a determination of the reasonable cost of the advice to be made;
- (i) specify the form in which an application for settlement is to be made;

S. 119L(1)(i)  
amended by  
No. 11/2002  
s. 3(Sch. 1  
item 4).



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- (j) require the Authority or a self-insurer to pay the settlement amount to a worker within a specified period after the worker accepts the settlement offer;
- (k) specify that the Authority, self-insurer or a worker do anything else that is necessary or expedient to enable settlements under this Division to be dealt with fairly and efficiently.

*	*	*	*	*	S. 119L(2)–(5) repealed by No. 80/2010 s. 122(4).
*	*	*	*	*	S. 115A inserted by No. 67/1992 s. 31, amended by Nos 50/1993 ss 78(1)(c), 100, 35/1996 s. 453(Sch. 1 item 1.3), repealed by No. 81/1998 s. 24(2).
*	*	*	*	*	Pt 4 Div. 3A (Heading) inserted by No. 64/1989 s. 10, repealed by No. 50/1994 s. 51(a).
*	*	*	*	*	Ss 118, 119 substituted by No. 64/1989 s. 10, repealed by No. 67/1992 s. 35.

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S. 120 substituted by No. 64/1989 s. 10, amended by No. 67/1992 ss 36(2), 64(7)(a), repealed by No. 50/1993 s. 101(1).	*	*	*	*	*
Pt 4 Div. 3B (Heading and ss 121–121E) inserted by No. 64/1989 s. 10, amended by Nos 18/1991 ss 7, 12(2), 67/1992 ss 16(2) (as amended by No. 50/1993 s. 111(2)(a)), 29(2), 37(a)(b) (ii) (as amended by No. 50/1993 s. 111(2)(b)), 64(7)(a), repealed by No. 50/1994 s. 51(b).	*	*	*	*	*

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**Division 3C—General**

Pt 4 Div. 3C  
(Heading)  
inserted by  
No. 64/1989  
s. 10.

\* \* \* \* \*

S. 122  
substituted by  
No. 64/1989  
s. 10,  
amended by  
Nos 67/1992  
s. 38, 50/1994  
ss 53, 92(3)(a),  
7/1996 ss 30,  
31, 47/1996  
s. 19, 107/1997  
s. 30(11)(r),  
repealed by  
No. 95/2003  
s. 11(a).

\* \* \* \* \*

S. 123  
substituted by  
No. 64/1989  
s. 10,  
amended by  
Nos 67/1992  
ss 39, 64(7)(a),  
50/1994 s. 54,  
47/1996 s. 20,  
107/1997  
s. 30(11)(s)–  
(u), 81/1998  
s. 25(1)(2),  
9/2010  
ss 130(4), 161,  
repealed by  
No. 80/2010  
s. 92.

**123A Notice to include statement of right of review**

Where the Authority or a self-insurer gives a notice under this Part or Part VIIB (except under section 208) to a worker or claimant, the notice must include a statement of any right of the worker or claimant to apply for conciliation or review of any decision to which the notice relates.

S. 123A  
inserted by  
No. 64/1989  
s. 10,  
amended by  
Nos 67/1992  
ss 40, 64(7)(a),  
50/1994 s. 55,  
81/1998  
s. 23(a),  
9/2010  
s. 130(5),  
80/2010  
s. 109(4).

S. 123B  
inserted by  
No. 67/1992  
s. 41,  
substituted by  
No. 67/2013  
s. 636.

### **123B Prohibition on recovery of certain costs**

A person must not recover any costs in respect of assisting a person to make, lodge or forward any application or claim for compensation under this Act.

## **Division 4—Liability for payment of compensation**

S. 124  
substituted by  
No. 47/1996  
s. 21,  
amended by  
No. 67/2013  
s. 637(1) (ILA  
s. 39B(1)).

### **124 Application of Division**

(1) This Division does not apply to an employer who is a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 124(2)  
inserted by  
No. 67/2013  
s. 637(1).

(2) This Division does not apply to the liability to pay compensation in respect of an injury arising out of or in the course of any employment on or after 1 July 2014.

### **125 Liability to pay compensation**

S. 125(1AAA)  
inserted by  
No. 50/1993  
s. 75(1).

(1AAA) This section does not apply to the liability to pay compensation in respect of an injury arising out of or in the course of any employment on or after 4 p.m. on 30 June 1993.

(1) Where a worker or a worker's dependants are entitled to compensation, the liability to pay compensation shall be assumed—

S. 125(1)(a)  
amended by  
Nos 83/1987  
s. 67(a),  
67/2013  
s. 637(2).

(a) if the total amount of leviable remuneration paid or payable by an employer during a financial year exceeds the exemption limit within the meaning of section 3 of the **Workplace Injury Rehabilitation and Compensation Act 2013**—by the worker's employer in the case of—

- |  |  |  |
|--|--|--|
| (i) weekly payments in respect of a worker who has no current work capacity or has a current work capacity, being a full-time worker for the first five days of the period of incapacity resulting from the relevant injury; and   | S. 125(1)(a)(i) substituted by No. 83/1987 s. 67(b), amended by No. 107/1997 s. 30(11)(v).                                   |  |
| (ii) a proportion of the weekly payments in respect of a worker who has no current work capacity or has a current work capacity who is not a full-time worker with that employer for the first five days of the period of incapacity resulting from the relevant injury; and | S. 125(1)(a)(ii) amended by No. 48/1986 s. 20(a), substituted by No. 83/1987 s. 67(b), amended by No. 107/1997 s. 30(11)(v). |  |
| (iii) payment of the first \$642 of the reasonable costs referred to in section 99(1)(a) in relation to the relevant injury; and   | S. 125(1)(a)(iii) amended by Nos 7/1996 s. 49(i), 102/2004 s. 40(c), 80/2010 s. 83(a), 67/2013 s. 633(a).                    |  |
| (b) in all other cases—by the Authority.   | S. 125(1)(b) amended by No. 67/1992 s. 64(7)(a).   |  |
| <br>(1A) If a worker is employed by more than one employer at the time of the injury and is injured while travelling between one place of employment and another the liability to pay compensation under subsection (1)(a) is to be assumed as follows:                      |  | S. 125(1A) inserted by No. 48/1986 s. 20(b). |
| (a) Each employer providing those places of employment shares the liability in the same proportion as the number of hours per week worked by the worker for that employer bears to the total number of hours per week worked by the worker for all of his or her employers;  |  |  |

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S. 125(1A)(b)  
amended by  
No. 67/1992  
s. 64(7)(a).

(b) The Authority is to meet any liability remaining after the two employers have shared the liability in accordance with paragraph (a).

S. 125(1AA)  
inserted by  
No. 83/1987  
s. 67(c),  
amended by  
No. 64/1989  
s. 20(1).

(1AA) If a worker who has been receiving weekly payments returns to work, an employer of the worker is not liable to make payments under subsection (1)(a) in respect of any injury to the worker occurring within the first twelve months after the worker returns to work.

S. 125(2)  
amended by  
No. 67/1992  
s. 64(7)(a).

(2) A payment or payments made by an employer to a worker to discharge the employer's liability under subsection (1)(a) shall not prejudice the determination of the liability of the Authority under subsection (1)(b).

(3) The proportion for the purposes of subsection (1)(a)(ii) is the number of hours per week which the worker works for the employer as a proportion of the total number of hours per week which the worker works for all employers.

S. 125(4)  
amended by  
No. 83/1987  
s. 67(d).

(4) In subsection (1)(a), a reference to a relevant injury in relation to a worker does not include a reference to a recurrence of any pre-existing injury or disease in respect of which the worker is entitled to compensation under this Act where the worker's employment was a contributing factor to that recurrence.

S. 125(5)  
substituted by  
No. 48/1986  
s. 20(c),  
amended by  
No. 67/1992  
s. 64(7)(a),  
repealed by  
No. 102/2004  
s. 35(3).

\* \* \* \* \*

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

*	*	*	*	*	S. 125(5A) inserted by No. 48/1986 s. 20(c), repealed by No. 102/2004 s. 35(3).
*	*	*	*	*	S. 125(5B) inserted by No. 48/1986 s. 20(c), amended by No. 67/1992 s. 64(7)(a), repealed by No. 102/2004 s. 35(3).
*	*	*	*	*	S. 125(5C) inserted by No. 48/1986 s. 20(c), repealed by No. 102/2004 s. 35(3).
(6) Subsection (1)(a) does not apply to the liability to pay compensation in respect of an injury to a worker receiving remuneration of a kind referred to in paragraph (h) or (i) of the definition of <i>remuneration</i> in section 5.					S. 125(6) inserted by No. 10255 s. 8(2)(b), amended by No. 10255 s. 8(4).
(7) Subsection (1)(a) does not apply to the liability to pay compensation in respect of an injury—					S. 125(7) inserted by No. 83/1987 s. 67(e).
(a) resulting from a transport accident within the meaning of the <b>Transport Accident Act 1986</b> ; and					
(b) deemed to have arisen out of or in the course of any employment by reason of section 83(2) (except section 83(2)(a)(i)) of this Act.					

S. 125(8)  
inserted by  
No. 83/1987  
s. 67(e).

(8) For the purposes of subsection (1), in calculating the first five days of the period of incapacity resulting from the relevant injury—

(a) the day on which the incapacity commenced shall be included; and

(b) any day on which the worker would not have worked if he or she had not suffered the injury shall be excluded.

S. 125A  
inserted by  
No. 50/1993  
s. 75(2).

**125A Liability to pay compensation—on or after 4 p.m. on 30 June 1993**

(1) This section applies to the liability to pay compensation in respect of an injury arising out of or in the course of any employment on or after 4 p.m. on 30 June 1993.

(2) Where a worker or a worker's dependants are entitled to compensation in respect of an injury arising out of or in the course of any employment on or after 4 p.m. on 30 June 1993, the liability to pay compensation is to be assumed in all cases by the worker's employer.

(3) A WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of an employer's liability under subsection (2) is subject to an employer's excess in respect of each claim equal to—

S. 125A(3)(a)  
amended by  
No. 107/1997  
s. 30(11)(v).

(a) in the case of weekly payments in respect of a worker who has no current work capacity or has a current work capacity, being a full-time worker, the first 10 days of the period of incapacity resulting from the relevant injury; and

S. 125A(3)(b)  
amended by  
No. 107/1997  
s. 30(11)(v).

(b) a proportion of the weekly payments in respect of a worker who has no current work capacity or has a current work capacity who is not a full-time worker with that employer



for the first 10 days of the period of incapacity resulting from the relevant injury; and

- |  |   |
|--|---|
| (c) payment of the first \$642 of the reasonable costs referred to in section 99(1)(a) in relation to the relevant injury.   | S. 125A(3)(c) amended by Nos 7/1996 s. 49(j), 102/2004 s. 40(c), 80/2010 s. 83(b), 67/2013 s. 633(b). |
| (3A) A payment or payments made by an employer to a worker to discharge the employer's liability under the employer's excess does not prejudice the determination of the liability of the employer above the employer's excess.  | S. 125A(3A) inserted by No. 50/1994 s. 56, amended by No. 74/2000 s. 3(Sch. 1 item 1.4).              |
| (3B) If the Authority has set aside its decision to accept a claim for compensation against a claimed employer under section 84(1)(b) of the <b>Workplace Injury Rehabilitation and Compensation Act 2013</b> , the claimed employer—<br><br>(a) is not liable for any excess under subsection (3); and<br><br>(b) may request a reimbursement of the excess from the Authority. | S. 125A(3B) inserted by No. 80/2010 s. 72, amended by No. 67/2013 s. 637(3).                          |
| (4) The proportion for the purposes of subsection (3)(b) is the number of hours per week which the worker works for the employer as a proportion of the total number of hours per week which the worker works for all employers.   |   |
| (5) In subsection (3), a reference to a relevant injury in relation to a worker does not include a reference to a recurrence of any pre-existing injury or disease in respect of which the worker is   |   |

entitled to compensation under this Act where the worker's employment was a significant contributing factor to that recurrence.

- (6) Subject to guidelines issued by the Authority and in accordance with the premiums order, an employer may elect to increase, reduce or eliminate the excess under subsection (3) by paying an adjusted premium under the employer's WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993**.
- (7) The premiums order made under section 15 of the **Accident Compensation (WorkCover Insurance) Act 1993** may specify different rates or levels of premium for the purposes of this section.
- (8) Subsection (3) does not apply to the liability to pay compensation in respect of an injury to a student worker.
- (9) Subsection (3) does not apply to the liability to pay compensation in respect of an injury—
  - (a) resulting from a transport accident within the meaning of the **Transport Accident Act 1986**; and
  - (b) deemed to have arisen out of or in the course of any employment by reason of section 83(1)(a) or 83(1)(c).
- (9A) Subsection (3)(c) does not apply in the case of a claim in respect of a mental injury that entitles the worker to provisional payments under Division 2BA in relation to that mental injury.

S. 125A(8)  
amended by  
Nos 85/1995  
s. 9(b),  
67/2013  
s. 637(4) (as  
amended by  
No. 44/2014  
s. 24(31)).

S. 125A(9A)  
inserted by  
No. 5/2021  
s. 37.

- (10) For the purposes of subsection (3), in calculating the first 10 days of the period of incapacity resulting from the relevant injury—
- (a) the day on which the incapacity commenced must be included; and
  - (b) any day on which the worker would not have worked if he or she had not suffered the injury must be excluded.

**125B Liability to pay compensation—recovery**

- (1) Section 125A applies to the liability to pay compensation in respect of an injury arising out of or in the course of any employment partly before 4 p.m. on 30 June 1993 and partly on or after 4 p.m. on 30 June 1993.
- (2) There is no right to contribution as between the Authority, employers, self-insurers or authorised insurers in respect of liability to which section 125A applies irrespective of whether the liability arises wholly or partly before or after 4 p.m. on 30 June 1993.
- (3) This section does not affect any rights conferred under Division 6A of this Part.

S. 125B  
inserted by  
No. 50/1993  
s. 75(2).

S. 125B(2)  
amended by  
Nos 50/1994  
s. 57, 9/2010  
s. 153(1).

S. 125B(3)  
amended by  
No. 9/2010  
s. 153(2).

**126 Provisions to apply where there is no employer**

- (1) If the employer of the worker—
  - (a) cannot be identified;
  - (b) cannot be found;
  - (c) is dead; or
  - (d) is a corporation which has been wound up—the Authority shall assume that employer's liability under section 125(1)(a).

S. 126(1)  
amended by  
No. 67/1992  
s. 64(7)(a).

- (2) Without derogating from the generality of subsection (1), an employer shall be deemed to be unable to be found if the employer cannot be found at—
  - (a) the last known place of residence of the employer; and
  - (b) the last place of business at which the worker was employed by the employer.
- (3) Where the Authority has assumed an employer's liability under subsection (1), the Authority shall be entitled to recover the amount of any compensation paid in discharge of the employer's liability—
  - (a) from any insurer with whom the employer held a policy indemnifying the employer in respect of that liability; or
  - (b) if the employer is subsequently identified or found, from that employer.

S. 126(3)  
amended by  
Nos 64/1989  
s. 20(2),  
67/1992  
s. 64(7)(a).

S. 126(3)(b)  
substituted by  
No. 83/1987  
s. 68.

S. 127  
amended by  
Nos 64/1989  
s. 20(2),  
50/1993  
s. 110(2)(a)(b),  
substituted by  
No. 50/1994  
s. 58.

S. 127(1)  
amended by  
Nos 81/1998  
s. 25(3),  
80/2010  
s. 74(a).

## **127 Provisions to apply where employer does not meet liabilities**

- (1) If the employer of the worker neglects, refuses or is unable to pay compensation in discharge of the employer's liability under section 125(1)(a) or 125A(3) within 21 days of receiving the claim for payment of compensation, the liability becomes a liability of the Authority.

- |   |  |
|---|--|
| (2) If the liability has become a liability of the Authority under subsection (1), the Authority may impose on the employer a penalty calculated in accordance with the method determined under subsection (3).                       | S. 127(2)<br>amended by<br>No. 81/1998<br>s. 25(3),<br>substituted by<br>No. 24/2000<br>s. 3(3),<br>amended by<br>No. 80/2010<br>s. 74(b). |
| (3) The Governor in Council, by Order published in the Government Gazette, may determine the method for calculating the penalty payable by an employer if the liability has become a liability of the Authority under subsection (1). | S. 127(3)<br>inserted by<br>No. 24/2000<br>s. 3(3),<br>amended by<br>No. 80/2010<br>s. 74(b).  |
| (4) The Authority may recover a penalty imposed under subsection (2) in a court of competent jurisdiction as a debt due to the Authority.   | S. 127(4)<br>inserted by<br>No. 24/2000<br>s. 3(3).  |

## **Division 5—Payment of compensation**

### **128 Provisions relating to payment of compensation**

- |  |  |
|--|--|
| (1) If in any proceedings under this Act for the payment of compensation under section 92, 92A, 92B, 98, 98A, 98C or 98E or weekly payments or compensation under Division 2B of Part IV, the Magistrates' Court or the County Court is of the opinion that the employer, the Authority or a self-insurer is responsible for any unreasonable delay— | S. 128(1)<br>substituted by<br>No. 83/1987<br>s. 69,<br>amended by<br>Nos 67/1992<br>ss 43(1)(a),<br>64(7)(a),<br>50/1994<br>s. 59(a),<br>107/1997<br>ss 18(3),<br>27(2)(d),<br>37(2)(a),<br>81/1998<br>s. 24(3)(a),<br>80/2010<br>s. 78(p). |
| (a) the Court may direct the amount of compensation determined and payable under this Act to be increased by an amount specified by the Court; and   | S. 128(1)(a)<br>amended by<br>No. 67/1992<br>s. 43(1)(b).  |

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S. 128(1)(b)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 59(a),  
81/1998  
s. 24(3)(a).

(b) the Authority or self-insurer must pay the person entitled to compensation the amount of the increase.

S. 128(2)  
amended by  
No. 48/1986  
s. 21,  
substituted by  
No. 83/1987  
s. 69,  
amended by  
Nos 67/1992  
ss 43(1)(c),  
64(7)(a),  
50/1994  
s. 59(b)(c),  
81/1998  
s. 24(3)(b)(c).

(2) If the Magistrates' Court or the County Court made a direction increasing the amount of compensation payable under subsection (1)(a) as a result of forming the opinion that the employer was responsible for any unreasonable delay, the Authority may require the employer to pay an amount equivalent to the increase paid by the Authority as if it were premium payable under the **Accident Compensation (WorkCover Insurance) Act 1993**.

(3) The amount of the increase shall not exceed—

S. 128(3)(a)  
amended by  
Nos 67/1992  
s. 43(1)(d),  
107/1997  
s. 27(2)(e).

(a) in the case of compensation under section 92, 92A, 98 or 98A—one-tenth of the total amount of the compensation;

(b) in the case of weekly payments—one-tenth of the total amount of the weekly payments accrued due at the date of the assessment of compensation.

S. 128(3)(c)  
inserted by  
No. 107/1997  
s. 27(2)(f).

(c) in the case of weekly pensions under section 92B—one-tenth of the total amount of the weekly pensions accrued due at the date of the assessment of compensation.

S. 128(3)(d)  
inserted by  
No. 107/1997  
s. 37(2)(b).

(d) in the case of compensation under section 98C or 98E—one-tenth of the lump sum calculated in accordance with section 98D.

## **128A Interim payments**

If in respect of any claim, the Magistrates' Court or County Court determines that compensation is or may be payable under this Act, but is unable presently to ascertain the total amount of the compensation, under section 92, 98 or 98A or the rate of weekly payments, the Court may make an interim award or recommendation for payment of the whole or any part of the compensation and the making of any such interim payments—

- (a) shall not preclude the Court from making in respect of the same claim a further interim recommendation or determination or a final recommendation or determination; and
- (b) shall not prejudice the rights of either of the parties in respect of any such further or final recommendation or determination.

\* \* \* \* \*

S. 128A  
inserted by  
No. 83/1987  
s. 70,  
amended by  
No. 67/1992  
s. 43(2)(a)–(c).

Pt 4 Div. 6  
(Heading and  
s. 129)  
amended by  
Nos 48/1986  
s. 22(a)-(h) (as  
amended by  
No. 64/1989  
s. 37(2)),  
83/1987 s. 71(a)  
(as amended  
by No. 64/1989  
s. 37(3)(b)) (b),  
13/1988 s. 5,  
67/1992  
s. 64(7)(a),  
50/1994  
ss 60(1), 61,  
52/1998  
s. 311(Sch. 1  
item 1.2),  
81/1998  
s. 25(4),  
repealed by  
No. 9/2010  
s. 154.

Pt 4 Div. 6A  
(Heading and  
ss 129A–  
129M)  
inserted by  
No. 13/1988  
s. 6.

## Division 6A—Contribution by contributors

S. 129A  
inserted by  
No. 13/1988  
s. 6.

### 129A Definitions

In this Division—

*contributing employer* means—

- (a) the employer of a worker at the time a contribution injury within the meaning of paragraph (a) of the definition of contribution injury was caused to the worker, being an employer who, at that time, did not have or hold accident insurance as defined by section 3(1) of the **Workers Compensation Act 1958** and was not a contributing self-insurer; or
- (b) the employer of a worker at any time during the period of employment due to which or out of or in the course of which a contribution injury within the meaning of paragraph (b) or (c) of the definition of contribution injury was suffered by, or caused to, the worker, being an employer who, during that period, did not have or hold accident insurance as defined by section 3(1) of the **Workers Compensation Act 1958** and was not a contributing self-insurer;



***contribution injury*** means any injury, disease or industrial deafness as each is defined in section 5(1)—

S. 129A def. of *contribution injury* amended by Nos 67/1992 s. 64(7)(a), 50/1994 s. 62(1), 81/1998 s. 25(4).

- (a) caused to a worker before the appointed day and which has arisen out of or in the course of any employment of the worker; or
- (b) suffered by a worker before the appointed day and which is due to the nature of any employment in which a worker was employed before the appointed day; or
- (c) which has been caused to or suffered by a worker after the appointed day and which, in whole or in part, has arisen out of or in the course of any employment of a worker or is due to the nature of any employment in which a worker was employed at any time before the appointed day—

and includes any injury within the meaning of the **Workers Compensation Act 1958**—

- (d) caused to a worker before the appointed day and which has arisen out of or in the course of any employment of the worker; or
- (e) suffered by a worker before the appointed day and which is due to the nature of any employment in which a worker was employed before the appointed day; or
- (f) which has been caused to or suffered by a worker after the appointed day and which, in whole or in part, has arisen out of or in the course of any employment of a worker or is due to

the nature of any employment in which  
a worker was employed at any time  
before the appointed day—

and which has directly or indirectly caused  
or contributed to any injury, disease or  
industrial deafness or any incapacity, death  
or physical or mental condition of the worker  
in respect of which or in relation to which  
the Authority or self-insurer has made or is  
liable to make payments under this Act or in  
respect of any period after 4 p.m. on 30 June  
1993, in respect of which or in relation to  
which the Authority has made or is liable to  
make payments under a re-insurance  
arrangement under section 34 of the  
**Accident Compensation (WorkCover  
Insurance) Act 1993** or under a WorkCover  
insurance policy under that Act or under  
Part 5 of that Act;

***contributing insurer*** means an insurer as defined  
in section 3(1) of the **Workers  
Compensation Act 1958** of the employer of  
a worker—

- (a) at the time a contribution injury within  
the meaning of paragraph (a) of the  
definition of ***contribution injury*** was  
caused to the worker; or
- (b) during the whole or any part of the  
period of employment due to which or  
out of or in the course of which a  
contribution injury within the meaning  
of paragraph (b) or (c) of the definition  
of ***contribution injury*** was suffered by,  
or caused to, the worker;

***contributing self-insurer*** means the Victorian Railways Board and any body or person which held a certificate under the **Workers Compensation Act 1928** and their respective successors and assigns which employed a worker—

- (a) at any time a contribution injury within the meaning of paragraph (a) of the definition of ***contribution injury*** was caused to the worker; or
- (b) during the whole or any part of the period of employment due to which or out of or in the course of which a contribution injury within the meaning of paragraph (b) or (c) of the definition of ***contribution injury*** was suffered by, or caused to, the worker;

***contributor*** means a person who is a contributing employer, contributing insurer or contributing self-insurer;

***employer*** means—

- (a) an employer as defined in section 5(1); and
- (b) an employer as defined in section 3(1) of the **Workers Compensation Act 1958**; and
- (c) any person deemed to be an employer under the **Workers Compensation Act 1958**;

\* \* \* \* \*

S. 129A def. of *Tribunal* inserted by No. 67/1992 s. 44, repealed by No. 52/1998 s. 311(Sch. 1 item 1.3).

*worker* means—

- (a) a worker as defined in section 5(1); and
- (b) a worker as defined in section 3(1) of the **Workers Compensation Act 1958**; and
- (c) any person deemed to be working under a contract of service or deemed to be a worker under the **Workers Compensation Act 1958**;

*Workers Compensation Act 1958* includes any corresponding previous enactment.

S. 129B  
inserted by  
No. 13/1988  
s. 6.

## **129B Application and object of Division**

- (1) This Division applies to and in relation to—

S. 129B(1)(a)  
amended by  
No. 67/1992  
s. 64(7)(a).

- (a) all payments under this Act made or to be made by the Authority or a self-insurer on and after the appointed day; and

S. 129B(1)(b)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(2).

- (b) all payments which the Authority or a self-insurer is or may become liable to make under this Act on and after the appointed day; and

S. 129B(1)(c)  
inserted by  
No. 50/1994  
s. 62(2),  
amended by  
No. 81/1998  
s. 25(4).

- (c) all payments which the Authority has made or is or may be liable to make under a re-insurance arrangement under section 34 of the **Accident Compensation (WorkCover Insurance) Act 1993** or under a WorkCover insurance policy under that Act or under Part 5 of that Act on and after 4 p.m. on 30 June 1993.

S. 129B(2)  
amended by  
No. 50/1994  
s. 62(3).

- (2) Nothing in this Division imposes any liability on a contributor in respect of payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** unless a claim for compensation to which those payments relate or

will relate has been made under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** and, if such a claim has been made, this Division applies whether the claim was made before or after the commencement of the **Accident Compensation (Further Amendment) Act 1988**.

- (3) If the Authority or a self-insurer receives a payment in relation to an injury which was the subject of a claim for compensation by a worker under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** from a person other than a contributor before or after the Authority or self-insurer has received contribution payments under an assessment made under this Division and that payment was not taken into account in making, amending or varying an assessment, the Authority or self-insurer must make a refund to each contributor of an amount calculated in accordance with the formula—

S. 129B(3)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(3).

$$\frac{E}{F} \times F$$

where—

C has the same value as "C" in paragraph (b) of section 129B(6);

E is the amount of the contributions paid by the contributor;

F is the payment received by the Authority or self-insurer from a person other than the contributor.

- (4) The object of this Division is to make provision for the Authority and self-insurers to obtain from contributors a just and equitable and timely contribution to payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** that the Authority or a

S. 129B(4)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(3).

self-insurer has made or may become liable to make to or in respect of a worker who has suffered a contribution injury.

S. 129B(5)  
amended by  
No. 67/1992  
s. 64(7)(a).

- (5) It is the intention of Parliament that the Authority and the Tribunal in giving effect to this Division regard as paramount the object of this Division.

S. 129B(6)  
amended by  
No. 67/1992  
s. 64(7)(a).

- (6) The Authority, in making or amending an assessment or in considering an objection under this Division and the Tribunal, in reviewing an assessment under this Division, must apply the following principles—

S. 129B(6)(a)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(3).

- (a) the liability of a contributor under an assessment must not exceed the amount determined by the Authority or Tribunal to be—
- (i) in respect of a contributor which is a contributing employer or a contributing self-insurer, the amount that the contributor would have been liable to pay as compensation whether by way of weekly payments, redemption, compromise or otherwise in accordance with the **Workers Compensation Act 1958**; or
- (ii) in respect of a contributor which is a contributing insurer, the amount that would have been payable by the contributor whether by way of weekly payments, redemption, compromise, settlement or otherwise under the policy of insurance or indemnity obtained under section 72 of the **Workers Compensation Act 1958**—

as if the contribution injury were the sole cause of the injury, disease or industrial deafness or the incapacity, death or physical or mental condition

of the worker in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**;

- (b) the liability of a contributor under an assessment shall be the amount determined by the Authority or the Tribunal in accordance with the formula—

$$\frac{A}{A + B} \times C - D$$

where—

A is the extent, expressed as a percentage, determined by the Authority or the Tribunal to be the extent to which the contribution injury directly or indirectly caused or contributed to the injury, disease or industrial deafness or the incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

B is the extent, expressed as a percentage, determined by the Authority or Tribunal to be the extent to which—

- (i) any other contribution injury; and
- (ii) any other injury after the appointed day for which compensation has been paid or is payable under this Act or the **Accident Compensation**

S. 129B(6)(b)  
amended by  
Nos 18/1991  
s. 12(1)(h),  
67/1992  
s. 64(7)(a),  
50/1994  
s. 62(3).

**(WorkCover Insurance)  
Act 1993—**

have directly or indirectly caused or contributed to the injury, disease or industrial deafness or the incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

C is the amount determined by the Authority or Tribunal to be the amount that the contributor would have been liable to pay in the circumstances described in paragraph (a) in accordance with the provisions of that paragraph.

D is the amount determined by the Authority or Tribunal as the amount the contributor would have been entitled to be recompensed from the Accident Compensation Fund by reason of the operation of section 2C(1), 2C(7), 2F(1) or 2G(3) of the **Workers Compensation Act 1958** if the contributor had paid, on the date of the making of the assessment, the amount to be calculated by the Authority in accordance with the formula—

$$\frac{A}{A + B} \times C$$

where A, B and C are to be determined in the manner set out above as compensation in circumstances which entitled the contributor to be



recompensed in accordance with  
section 2C(1), 2C(7), 2F(1) or 2G(3) of  
the **Workers Compensation Act 1958**.

- (7) The liability of a contributor to make payments under this Division in respect of a contribution injury shall not commence unless and until the Authority or the Tribunal has determined that payments made under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of the injury, disease or industrial deafness or any incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer has made payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**, directly or indirectly caused or contributed to by that contribution injury exceed in the aggregate \$14 990.
- (8) If a contribution injury is not a proclaimed medical condition that portion of the contribution injury which has occurred more than 10 years before the last date on which the injury, disease or industrial deafness or any incapacity, death or physical or mental condition was caused to or suffered by the worker prior to the claim of the worker in respect thereof under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** shall be wholly disregarded for the purposes of this Division.
- (9) The Governor in Council may from time to time by proclamation published in the Government Gazette proclaim a medical condition to be a proclaimed medical condition under this Division.

S. 129B(7)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(3),  
7/1996  
s. 49(k),  
102/2004  
s. 40(d),  
80/2010  
s. 83(c),  
67/2013  
s. 633(c).

S. 129B(8)  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(3).

S. 129C  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

## 129C Contribution in case of contribution injury

If—

S. 129C(a)  
amended by  
No. 50/1994  
s. 62(3).

- (a) the Authority or a self-insurer has made or is or may become liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** to or in respect of a worker; and
- (b) a contribution injury has been caused to or suffered by the worker—

each contributor shall pay to the Authority or a self-insurer (as the case may be) the amount or amounts determined to be payable in accordance with this Division.

S. 129D  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

## 129D Assessments

- (1) If the Authority—

S. 129D(1)(a)  
amended by  
No. 50/1994  
s. 62(3).

- (a) has made or is or may become liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** to or in respect of a worker; and
- (b) believes that the worker has suffered a contribution injury and that a contributor ought to pay such amount or amounts as is just and equitable as contribution—

the Authority may, by an assessment in writing, determine the amount or amounts payable as contribution to the Authority by each contributor.

- (2) If a self-insurer—
- (a) has made or is or may become liable to make payments under this Act to or in respect of a worker; and
  - (b) satisfies the Authority that the self-insurer has reason to believe and believes that the worker has suffered a contribution injury and that a contributor ought to pay such amount or amounts as is just and equitable as contribution—

the Authority shall, by an assessment in writing, determine the amount or amounts payable as contribution to the self-insurer by each contributor.

- (3) The Authority must not make an assessment under subsection (1) or (2) unless—
- (a) not less than 42 days before making the assessment, the Authority has given notice in writing to each person it believes is a contributor of the intention to make an assessment; and
  - (b) the Authority has made reasonable attempts to engage in consultations with each person it believes is a contributor in relation to its intention to make an assessment.

- (4) Within 28 days after the Authority gives a notice under subsection (3) to a contributor, in addition to any other requirement for the giving or exchange of documents—

- (a) the Authority must give to the contributor; and

- (b) the contributor must give to the Authority—

a copy of each document in its possession or under its control which may be relevant to determining the liability of a contributor under

S. 129D(4)  
amended by  
Nos 64/1989  
s. 35(f),  
50/1993  
s. 81(g),  
50/1994  
s. 62(4),  
81/1998  
s. 25(5).

this Part including any claim for compensation or any certificate or report by a provider of medical, hospital, nursing, personal and household or ambulance services or any assessor's report or any other document from the worker's employer relating to any injury to or incapacity of the worker or filed with a court or tribunal in relation to claims by the worker for compensation under this Act or the **Workers Compensation Act 1958** or damages provided always that the giving or exchange of documents under this section shall not extend to documents in relation to which any legal privilege attaches.

S. 129D(5)  
amended by  
No. 50/1994  
s. 62(3).

- (5) In determining the amount or amounts to be payable as contribution in an assessment, the Authority may determine and set out in the assessment the present and future liability of the contributor to pay amounts as contribution in respect of payments made or to be made under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** upon terms and conditions set out in the assessment that the Authority believes to be just and equitable.
- (6) The Authority may, at any time, amend an assessment made under this section by making such alterations, reductions or additions to it as the Authority deems appropriate, whether or not an amount has been paid under the assessment.
- (7) An amended assessment is an assessment for the purposes of this Division.
- (8) The Authority or a self-insurer, as the case requires, shall within a reasonable time after the making of an assessment—
  - (a) serve a copy of the assessment on each contributor; and

(b) serve on each contributor a notice stating the grounds on which the Authority believes that the contributor ought to pay such amount or amounts as is just and equitable as contribution.

- (9) The validity of an assessment and the liability of a contributor to pay any amount determined to be payable by an assessment is not affected by reason that any of the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** have not been complied with or a claim for compensation has not been determined but any failure to comply with the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or the fact that a claim has not been determined may be taken into account by the Tribunal in any review of the assessment.

S. 129D(9)  
amended by  
No. 50/1994  
s. 62(3).

- (10) Notwithstanding anything to the contrary in this Division a contributor is not required to make payments of a contribution which relates to any amount of compensation to be paid prior to that compensation being paid.

S. 129D(10)  
amended by  
No. 50/1994  
s. 62(5).

## **129E Evidence**

- (1) The production of an assessment, a copy of an assessment or of a copy of a document under the hand of the Chief Executive of the Authority purporting to be an assessment or a copy of an assessment is conclusive evidence of the due making of the assessment and (except in proceedings before the Tribunal under this Division for a review of the assessment) that the amount payable under and all the particulars of the assessment are correct.

S. 129E  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

- (2) The production of an assessment, or a copy of an assessment, under the hand of the Chief Executive of the Authority purporting to be an assessment or a copy of an assessment by the Authority shall be conclusive evidence that the assessment was by the Authority in accordance with this Division.

S. 129F  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

#### **129F Recovery of amounts assessed as payable**

- (1) An amount determined to be payable by an assessment by the Authority under section 129D is due and payable to the Authority or self-insurer, as the case requires, by each person liable to pay the amount in accordance with the terms and conditions as to payment set out in the assessment and if periodic payments are required to be paid then those payments shall be made at such intervals between payments as the Authority or the Tribunal determines to be reasonable.
- (2) A contributor is not required under this section to pay any amount payable by reason of an assessment within less than 28 days after service of a copy of the assessment on the contributor.
- (3) The Authority or a self-insurer, as the case requires, may, in writing, grant an extension of time for payment of any amount determined to be payable by an assessment (whether or not the time has expired) or permit payment of any such amount by such instalments and within such time as it considers the circumstances warrant and, in such a case, the amount is due and payable accordingly.
- (4) If an amount determined by an assessment to be payable as contribution remains unpaid after the time when it became due and payable in accordance with the provisions of this Division, the person liable to pay the amount shall pay interest at the prescribed rate on the amount

unpaid, computed from the date on which the amount was due and payable until payment.

- (5) If interest is due and payable by a person under this section and the Authority or a self-insurer, as the case requires, is satisfied that there are special circumstances by reason of which it would be just and equitable to remit the interest or part of the interest, the Authority or self-insurer may remit the interest or a part of the interest.
- (6) A contributor and the Authority or self-insurer may agree or the Tribunal may determine that the contributor pay a lump sum in full and final settlement of its liability to make payments under this Division, including future periodic payments, in accordance with the assessment.
- (7) An agreement or determination under subsection (6) is deemed to be an assessment for the purposes of this Division.
- (8) An amount determined to be payable by an assessment as contribution to the Authority, including interest payable (if any), when it becomes due and payable, is a debt due to His Majesty and payable to the Authority.
- (9) An amount determined to be payable by an assessment as contribution to a self-insurer, including interest payable (if any), when it becomes due and payable is a debt due and payable to the self-insurer.
- (10) Any amount due and payable under this Division may be sued for and recovered in any court of competent jurisdiction.

S. 129F(8)  
amended by  
No. 25/2023  
s. 7(Sch. 1  
item 1).

S. 129G  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

## **129G Review of assessment**

- (1) If a contributor is dissatisfied with any assessment under this Division, the contributor may, if the contributor has paid the amount determined to be payable by the assessment within 28 days after service of a copy of the assessment on the contributor, post to, or lodge with, the Authority an objection in writing against the assessment stating the amount (if any) the contributor contends should be payable as contribution and stating fully the grounds on which the contributor relies but, if the assessment is an amended assessment, and the objection is posted to or lodged with the Authority after the period of 28 days, after notice of the original assessment was served, the contributor may object only against the amendment.
- (2) The Authority, within 28 days after receiving the objection, shall consider the objection and either disallow it or allow it either wholly or in part by amending, or further amending, the assessment and shall serve on the contributor and, in the case of an assessment under section 129D(2), on the self-insurer, notice of its decision and any amendment.
- (3) If—
  - (a) a contributor is dissatisfied with the decision and any amendment made under subsection (2); or
  - (b) the Authority does not, within 28 days after receiving an objection from a contributor, comply with subsection (2)—

the contributor may, within 28 days after service of the notice of the decision on the contributor or, where paragraph (b) applies, after the Authority



receives the objection, apply to the Tribunal for review of the assessment or the amendment.

\* \* \* \* \*

**S. 129G(4)**  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 1.4).

- (5) If a self-insurer is dissatisfied with the decision and any amendment notice of which was required to be served on the self-insurer under section 129G(2), the self-insurer may, within 28 days after service of notice of the decision on the self-insurer apply to the Tribunal for a review of the amendment.

\* \* \* \* \*

**S. 129G(6)**  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 1.4).

- (7) Upon a review by the Tribunal under this Division—

\* \* \* \* \*

**S. 129G(7)(a)**  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 1.5).

- (b) if the application for the review was made by a self-insurer—
- (i) the burden of proving that an amendment of an assessment was in error lies on the self-insurer; and
  - (ii) the Authority shall not be a party to the review; and
- (c) the Tribunal shall not regard an assessment under this Division, a notice under section 129D(8) or an objection or contention under section 129G(1) as an admission.

- (8) The Tribunal when hearing an application shall determine which party shall bear the burden of satisfying the Tribunal that the assessment or the amended assessment should be confirmed, reduced, increased or varied (as the case requires) in accordance with what it considers is just and equitable in all the circumstances of the application.
- (9) When the Tribunal determines what is just and equitable under subsection (8) it will not be a relevant factor—
  - (a) that the contributor is applying for a review of the assessment or the amended assessment; and
  - (b) that the Authority made the assessment or the amended assessment.
- (10) If a contributor has applied to the Tribunal for a review of the assessment or the amended assessment, the contributor and the Authority must on the request of the other party—
  - (a) provide a copy of every certificate or report by a medical practitioner that may be relevant to determining the liability of the contributor; and
  - (b) permit any medical practitioner who has given a certificate or report that may be relevant to determining the liability of the contributor to give evidence in the proceedings before the Tribunal under this Division.
- (11) If the Tribunal increases an assessment, the Tribunal must determine that the contributor pay to the Authority or self-insurer interest at the prescribed rate upon the whole or part of the amount by which the amount of the increased assessment exceeds the amount of the assessment.

S. 129G(11)  
amended by  
No. 50/1994  
s. 62(10)(a).

- (12) If the Tribunal reduces the assessment, the Tribunal must determine that the Authority or self-insurer pay to the contributor interest at the prescribed rate upon the whole or part of the amount by which the amount of the assessment exceeds the amount of the reduced assessment. **S. 129G(12) amended by No. 50/1994 s. 62(10)(a).**
- (13) If the Authority or the Tribunal determines that a contributor is entitled to a refund, the Authority or self-insurer must make the refund within 28 days of the determination.
- (14) If the Authority or self-insurer fails to comply with subsection (13), it must pay interest at the prescribed rate for the period after the period specified in subsection (13) that the default continues. **S. 129G(14) amended by No. 50/1994 s. 62(10)(b).**
- (15) A court, other than the Tribunal exercising power under this Division, does not have jurisdiction to review an assessment made under this Division by way of—
- (a) the grant of an injunction; or
  - (b) the grant of a prerogative or statutory writ or the making of any order of the same nature or having the same effect as, or of a similar nature or having a similar effect to, any such writ; or
  - (c) the making of a declaratory order.

S. 129G(16)  
amended by  
Nos 64/1989  
s. 35(g)(i)(ii),  
50/1993  
s. 110(1)(e),  
50/1994  
s. 62(6) (as  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 2)),  
substituted by  
No. 52/1998  
s. 311(Sch. 1  
item 1.6).

- (16) Subsection (15) does not apply to or in relation to a referral of a question of law under section 96 of the **Victorian Civil and Administrative Tribunal Act 1998** or an appeal under section 148 of that Act.

S. 129G(17)  
inserted by  
No. 107/1997  
s. 11(5),  
substituted by  
No. 52/1998  
s. 311(Sch. 1  
item 1.6).

- (17) An application for leave to appeal under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** against an order of the Tribunal under this Division by a person other than the Authority or a self-insurer does not operate as a stay of the order or of the liability of a contributor to make such payment as is, or payments as are, determined to be payable.

S. 129H  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

## 129H Information

- (1) If a claim is made under this Act and the Authority or a self-insurer believes that there may have been a contribution injury, the Authority or self-insurer may require the worker or a dependant of the worker to give such information as he or she possesses as to the names and addresses of all contributors.
- (2) If the Authority or self-insurer has reason to believe that a person is a contributor in relation to a claim made under this Act the Authority or self-insurer shall give notice of the claim to that person.
- (3) A failure to give notice under subsection (2) does not affect the entitlement of the Authority or a self-insurer to contribution under this Division.

### **129I Recoveries Review Committee**

S. 129I  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

- (1) If the Authority or a self-insurer requires information about the medical treatment of a worker and the worker does not consent to a medical practitioner giving the information, the Authority or a self-insurer may apply to the Tribunal to have the matter referred to the Recoveries Review Committee.
- (2) The Recoveries Review Committee shall be required to present a report to the Tribunal within 21 days or such longer period as the Tribunal allows on such matters as the Tribunal directs, having regard to the reasons for the application by the Authority or self-insurer.
- (3) After the report is presented to the Tribunal, the Tribunal may require a member of the Recoveries Review Committee or the medical practitioner to appear before the Tribunal and, if required to appear, the member or practitioner shall answer questions on the report.
- (4) If the Recoveries Review Committee fails to provide a report as required by subsection (2) or the Committee reports that it has not had access to all relevant evidence to make a report, the Tribunal may determine that the medical practitioner is required to give evidence in accordance with subsection (5).
- (5) If subsection (4) applies, for the purposes of this Division and despite any provision of any Act or law to the contrary or any privilege of a worker, a medical practitioner or worker shall not refuse to divulge to the Tribunal, or refuse to give evidence before the Tribunal in respect of, information acquired or given in relation to the medical treatment of a worker, any injury to a worker arising out of or in the course of employment or any physical or mental condition of that worker

but any such evidence is not admissible in any other proceedings in any court or tribunal without the written consent of the worker.

- (6) The Recoveries Review Committee shall consist of such medical practitioners as are appointed from time to time by the Minister administering the **Health Act 1958** or by a person, or persons, authorized by that Minister in that behalf.

S. 129J  
inserted by  
No. 13/1988  
s. 6.

## 129J Refund of contributions

S. 129J(1)  
amended by  
Nos 18/1991  
s. 12(1)(i),  
67/1992  
s. 64(7)(a).

- (1) If a contributor has paid a contribution under this Division and the worker recovers from the contributor or the contributor subsequently pays compensation under the **Workers Compensation Act 1958** damages at common law for the contribution injury, the contributor may apply to the Authority or self-insurer for a refund of the contribution in total or in part.

S. 129J(2)  
amended by  
No. 67/1992  
s. 64(7)(a).

- (2) The Authority or self-insurer must determine the application within 28 days of receiving it and must make a refund to the extent that it considers just and equitable to do so.

S. 129J(3)  
amended by  
No. 67/1992  
s. 64(7)(b).

- (3) If a contributor is aggrieved about a determination made under subsection (2) it may within 28 days of the date of the determination apply to the Tribunal for a review of the Authority's determination.
- (4) On hearing a review the Tribunal may determine the amount of any refund that it considers is just and equitable.

**129K Time**

S. 128K  
inserted by  
No. 13/1988  
s. 6,  
re-numbered  
as s. 129K by  
No. 18/1991  
s. 12(1)(j),  
amended by  
No. 67/1992  
s. 64(7)(a).

\* \* \* \* \*

S. 129K(1)  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 1.7).

- (2) The Authority may at any time in writing enlarge the time for the doing of any act or the taking of any step by any person other than the Authority under this Division upon such terms as it deems appropriate and the time so enlarged shall be the time within which the act is required to be carried out or the step is required to be taken under this Division.

**129L Extension of policies**

S. 129L  
inserted by  
No. 13/1988  
s. 6.

- (1) When a contributing insurer has entered into a contract or arrangement for a policy of insurance or for re-insurance in respect of or in relation to its liability to indemnify an employer under the terms of a policy of insurance for compensation payable by the employer under the **Workers Compensation Act 1958** and the contributing insurer pays an amount by reason of an assessment made under this Division, the payment, for the purposes of the policy and the contract or arrangement for a policy of insurance or for re-insurance, shall be deemed—
- (a) to be a payment by the insurer in satisfaction of or by reason of its liability to indemnify the employer under the terms of the policy;  
and

- (b) to have been a payment in respect of compensation payable by the employer under the **Workers Compensation Act 1958** as if the contribution injury resulting in the assessment was an injury or disease for which compensation was payable and paid under that Act.
- (2) If a contributing insurer is not entitled to recover any sum under any contract or arrangement for a policy of insurance or for re-insurance in respect of a payment of an amount by reason of an assessment, that matter shall not be regarded as a relevant matter by the Tribunal upon a review under this Division.

S. 129M  
inserted by  
No. 13/1988  
s. 6.

## 129M Offences

S. 129M(1)  
amended by  
No. 67/1992  
s. 64(7)(a).

- (1) A person must not—
  - (a) obstruct or hinder the Authority or any other person acting in the administration of this Division; or
  - (b) prevent or defeat or attempt to prevent or defeat the operation or enforcement of this Division.

S. 129M(2)  
amended by  
No. 9/2010  
s. 162.

- (2) If, on or after 18 September 1987 and before the commencement of the **Accident Compensation (Further Amendment) Act 1988**, a person entered into, or after that commencement, a person enters into, an arrangement or transaction for the purpose, or for purposes which include the purpose, of securing, either generally or for a limited period, that a contributor (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the contributor, to pay the amount payable under an assessment under this



Division or to pay an amount which may become payable in the near future by reason of this Division, the person is guilty of an offence.

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

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

- (3) Proceedings for an offence under this section may be commenced within three years after the day on which the offence occurred.

### **Division 6AB—Choice of law**

Pt 4 Div. 6AB  
(Heading and  
ss 129MA–  
129MF)  
inserted by  
No. 95/2003  
s. 21.

#### **129MA The applicable substantive law for work injury claims**

S. 129MA  
inserted by  
No. 95/2003  
s. 21.

- (1) If there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid), the substantive law of that State is the substantive law that governs—
- (a) whether or not a claim for damages in respect of the injury can be made; and
- (b) if it can be made, the determination of the claim.
- (2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.

- (3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it—
- (a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or
  - (b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.
- (4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.
- (5) In this Division—

*State* includes Territory.

S. 129MB  
inserted by  
No. 95/2003  
s. 21.

#### **129MB Claims to which Division applies**

- (1) This Division applies only to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury that was caused by—
- (a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or
  - (b) a breach of contract by the worker's employer.
- (2) This Division also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if—

- (a) the worker's employment is connected with Victoria; and
  - (b) the negligence or other tort or the breach of contract on which the claim is founded occurred in Victoria.
- (3) Subsections (1)(a) and (2) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.
- (4) A reference in this Division to a worker's employer includes a reference to—
- (a) a person who is vicariously liable for the acts of the employer; and
  - (b) a person for whose acts the employer is vicariously liable.

**129MC What constitutes injury and employment and who is employer**

S. 129MC  
inserted by  
No. 95/2003  
s. 21.

For the purposes of this Division—

- (a) *injury* and *employer* include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State; and
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

**129MD Claim in respect of death included**

S. 129MD  
inserted by  
No. 95/2003  
s. 21.

For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

S. 129ME  
inserted by  
No. 95/2003  
s. 21.

## 129ME Meaning of *substantive law*

In this Division—

S. 129ME  
def. of  
*a State's  
legislation  
about  
damages for a  
work related  
injury*  
amended by  
No. 41/2006  
s. 23.

*a State's legislation about damages for a work related injury* means—

- (a) for this State—this Part and the **Accident Compensation (WorkCover Insurance) Act 1993** and any other provision of this Act providing for the interpretation of anything in this Part; and
- (b) for any other State—any provisions of a law of the State that is declared by the Minister to be the State's legislation about damages for a work related injury for the purposes of this section by a notice published in the Government Gazette;

*substantive law* includes—

- (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action; and
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and

- (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and
- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and
- (g) a provision of a State's legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature—

but does not include a law prescribing rules for choice of law.

**129MF Availability of action in another State not relevant**

**S. 129MF  
inserted by  
No. 95/2003  
s. 21.**

- (1) It makes no difference for the purposes of this Division that, under the substantive law of another State—
  - (a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or
  - (b) the circumstances on which the claim is based do not give rise to a cause of action.
- (2) In this section—

***another State*** means a State other than the State with which the worker's employment is connected.

Pt 4 Div. 6B  
(Heading and  
ss 129N–  
129S)  
inserted by  
No. 13/1988  
s. 6.

## Division 6B—Conduct of common law proceedings

S. 129N  
inserted by  
No. 13/1988  
s. 6.

### 129N Definitions

(1) In this Division—

S. 129N(1)  
def. of  
*common law*  
*insurer*  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(7),  
81/1998  
s. 25(6).

*common law insurer* means an insurer, other than the Authority, which is liable to indemnify a defendant in whole or in part in respect of or in relation to a common law proceeding;

*common law proceeding* means any suit or action by a worker to recover damages in respect of an injury, disease or death arising out of or in the course of employment or due to the nature of employment but does not include a claim, demand or application for compensation under this Act;

*defendant* means the employer against whom a common law proceeding has been brought or made (as the case may be) by a worker;

*worker* includes a dependant of a worker.

## 129O Application of Division

S. 129O  
inserted by  
No. 13/1988  
s. 6,  
amended by  
Nos 67/1992  
s. 64(7)(a),  
50/1994  
s. 62(8).

- (1) This Division applies to and in relation to all common law proceedings brought or made (as the case may be) after the appointed day in respect of which the Authority is liable to indemnify a defendant in whole or in part under section 134, or under the **Accident Compensation (WorkCover Insurance) Act 1993** or a policy under that Act, in relation to an injury, disease or death caused to or suffered by a worker.
- (2) A defendant or a common law insurer may enter into an agreement with the Authority that the provisions of this Division do not apply to a common law proceeding to which this Division applies and the provisions of this Division shall not thereafter apply to the extent that they are inconsistent with that agreement.

S. 129O(1)  
amended by  
No. 81/1998  
s. 25(7).

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S. 129O(3)  
inserted by  
No. 50/1994  
s. 62(9),  
repealed by  
No. 81/1998  
s. 25(8).

## 129P Apportionment of liability

Liability to pay damages and all costs recovered or recoverable by a worker in a common law proceeding shall be apportioned between the Authority and all other persons under any legal liability in respect of the injury the subject of the proceeding and any common law insurer who is liable to indemnify any such persons in respect of or in relation to the common law proceeding in

S. 129P  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

such manner as is, and upon such terms as are, agreed or, in default of agreement, as are determined in accordance with the provisions of this Division by a court to be just and equitable.

S. 129Q  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

#### **129Q Notice of proceedings**

- (1) The defendant in a common law proceeding made or brought (as the case may be) after the appointed day shall give to the Authority notice in writing of the proceeding within 14 days after the defendant receives notice of the proceeding or within 28 days after the commencement of the **Accident Compensation (Further Amendment) Act 1988**, whichever is the later.
- (2) The common law insurer in respect of the common law proceeding shall give to the Authority notice in writing of the proceeding within 14 days after the insurer receives notice of the proceeding or within 28 days after the commencement of the **Accident Compensation (Further Amendment) Act 1988**, whichever is the later.

S. 129R  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

#### **129R Conduct of defence**

- (1) The defendant or the common law insurer is not entitled to conduct the defence of the common law proceeding unless—
  - (a) the defendant or common law insurer, within 14 days after the last date for giving notice under section 129Q undertakes to the Authority in writing that the defendant or common law insurer, as the case requires, will conduct the defence of the common law proceeding; and



- (b) the Authority does not within 7 days after receiving the undertaking give notice in writing to the defendant or common law insurer objecting to the defendant or common law insurer conducting the defence; or
  - (c) the court in which the common law proceeding is brought at any time orders or directs that the defendant or common law insurer is entitled to conduct the defence of the common law proceeding under this section.
- (2) If the court considers that the interest of one of the Authority, defendant or common law insurer in conducting the defence in proceedings is substantially greater than the interest of the other of the Authority, defendant or common law insurer, any order or direction under subsection (1) must be in favour of the person with the greater interest, unless the court considers it just and equitable to provide otherwise.
- (3) Subsection (1) does not prevent the defendant or common law insurer conducting the defence of the common law proceeding in accordance with its legal entitlement to do so from the date the defendant or common law insurer received notice of the common law proceeding until the expiration of the period set out in subsection (1)(b) but in so conducting the defence, the defendant and common law insurer must not settle or compromise the common law proceeding without the consent of the Authority.
- (4) If a defendant or common law insurer is at any time not entitled to conduct the defence of a common law proceeding in accordance with this section, the Authority or self-insurer may conduct the defence.

- (5) Subject to subsection (3), any person entitled to conduct and which conducts the defence of a common law proceeding in accordance with this section—
- (a) is liable to make full payment of all costs and damages awarded or agreed to be paid to the worker or other person bringing or making (as the case may be) the common law proceeding; and
  - (b) is authorized by each person under any legal liability in respect of the injury the subject of the proceeding and each common law insurer which is liable to indemnify any such person in respect of or in relation to the proceeding to make admissions, including admissions of liability, and to agree to or compromise or settle the common law proceeding; and
  - (c) shall on behalf of the defendant adopt a defence which has the intention of minimizing the damages payable to the worker, regardless of whether this defence advantages or disadvantages the Authority, the defendant or the common law insurer.

S. 129S  
inserted by  
No. 13/1988  
s. 6,  
amended by  
No. 67/1992  
s. 64(7)(a).

### **129S Order for apportionment of liability**

- (1) In default of agreement under section 129P, the Authority, the defendant and any common law insurer may at any time before entry of judgment in a common law proceeding, apply to the court in which the common law proceeding is brought for orders apportioning liability in respect of all damages and costs recovered or recoverable in the common law proceeding in accordance with that section, including orders in respect of the payment of all amounts required to be paid as a consequence of any such apportionment.

- (2) The court to which application is made under subsection (1)—
  - (a) may give such directions in relation to interlocutory orders for discovery, inspection and better particulars and for the filing of pleadings as it deems appropriate; and
  - (b) shall hear and determine the application for apportionment in such manner and at such time as it deems appropriate.
- (3) If an application is not made under subsection (1), the Authority, the defendant and any common law insurer may apply to any court of competent jurisdiction for orders apportioning liability in respect of all damages and costs recovered or recoverable in a common law proceeding in accordance with section 129P, including orders in respect of the payment of all amounts required to be paid as a consequence of any such apportionment.
- (4) The court to which application is brought under subsection (3)—
  - (a) may give such directions in relation to interlocutory orders for discovery, inspection and better particulars and for the filing of pleadings as it deems appropriate; and
  - (b) shall hear and determine the claim for apportionment in such manner and at such time as it deems appropriate.
- (5) An application to a court under subsection (3) shall be made within 12 months after the commencement of the **Accident Compensation (Further Amendment) Act 1988** or within 12 months of the person making the application receiving notice of the entry of judgment, settlement or compromise of the common law proceeding, whichever is the later.

- (6) An apportionment in accordance with this Division is an apportionment in relation to the amount of damages and costs awarded or agreed to be paid in accordance with this Division and of the costs of the conduct of the defence of the common law proceedings.

Pt 4 Div. 7  
(Heading)  
amended by  
Nos 64/1989  
s. 37(1)(c),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(a),  
74/2000  
s. 3(Sch. 1  
item 1.5).

## **Division 7—Administration by a trustee company<sup>26</sup>**

### **130 Certain funds to be administered by trustee company<sup>27</sup>**

S. 130(1)  
amended by  
Nos 83/1987  
s. 72(1)(a),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(b),  
15/1998  
s. 4(1)(a)(b).

- (1) The following payments of compensation shall be paid to a trustee company determined by the Court or the Authority (as the case requires) to be administered by the trustee company in accordance with this Act—

S. 130(1)(a)  
amended by  
Nos 83/1987  
s. 72(1)(b),  
50/1993  
s. 110(1)(f).

- (a) any payment under section 92, 98 or 98A to a person under the age of 18 years;

S. 130(1)(b)  
amended by  
No. 67/1992  
s. 45(b).

- (b) unless the County Court otherwise determines, any payment under section 92 to a person of or over the age of 18 years; and

S. 130(1)(c)  
amended by  
No. 67/1992  
s. 45(b).

- (c) any other payment of compensation under this Act where on an application to the County Court the County Court considers it would be in the best interests of the worker.

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| (1A) If the Court or Authority determines under subsection (1) that State Trustees (within the meaning of the <b>State Trustees (State Owned Company) Act 1994</b> ) administer payments of compensation, State Trustees must accept a transfer of the amount of compensation to be administered and the acceptance of that amount is a sufficient discharge to the person transferring that amount. | S. 130(1A)<br>inserted by<br>No. 15/1998<br>s. 4(2).                           |
| (2) The County Court in making a determination on an application under subsection (1)(c) may impose any conditions, restrictions or limitations it considers appropriate on the duration and termination of the administration.  | S. 130(2)<br>amended by<br>Nos 83/1987<br>s. 72(1)(c),<br>67/1992<br>s. 45(b). |

### 131 Powers of trustee company in relation to administration

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|---|--|
| (1) Except as otherwise provided in section 130, any money administered by a trustee company determined under that section may be invested in any manner in which money may be invested under the <b>Trustee Act 1958</b> and may be applied in any manner that the trustee company considers appropriate for the benefit of the person entitled to that money. | S. 131(1)<br>amended by<br>Nos 83/1987<br>s. 72(2)(a),<br>67/1992<br>s. 45(a),<br>50/1994<br>s. 63(1)(b),<br>substituted by<br>No. 15/1998<br>s. 4(3). |
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*                      *                      *                      *	S. 131(2) amended by Nos 83/1987 s. 72(2)(a), 67/1992 s. 45(a), 50/1994 s. 63(1)(b), repealed by No. 15/1998 s. 4(4).
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Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

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S. 131(3)  
substituted by  
No. 83/1987  
s. 72(2)(b),  
amended by  
Nos 67/1992  
s. 45(b),  
50/1993  
s. 110(1)(g),  
repealed by  
No. 50/1994  
s. 63(1)(c).

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S. 131(4)  
amended by  
Nos 83/1987  
s. 72(2)(c)(i)(ii),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(b),  
substituted by  
No. 15/1998  
s. 4(5).

- (4) If the amount of money administered on behalf of any person by a trustee company determined under section 130 becomes less than an amount determined by the trustee company, the amount shall be paid out by the trustee company to that person.

S. 131(5)  
substituted by  
No. 83/1987  
s. 72(2)(d),  
amended by  
Nos 64/1989  
s. 35(h),  
67/1992  
s. 45(a)(c),  
50/1993  
s. 110(1)(h),  
repealed by  
No. 50/1994  
s. 63(1)(c),  
new s. 131(5)  
inserted by  
No. 15/1998  
s. 4(5).

- (5) A trustee company must, within a reasonable period of time before paying out an amount under subsection (4), give written notice to the person entitled to the money of its intention to pay out that amount.

S. 131(6)  
repealed by  
No. 83/1987  
s. 72(2)(e),  
new s. 131(6)  
inserted by  
No. 15/1998  
s. 4(5).

- (6) A person entitled to money under this section who objects to a determination of the trustee company made under subsection (4) may appeal to the County Court and the Court may make a new determination.

## 132 Powers of trustee company to make determinations

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S. 132(1)  
amended by  
Nos 83/1987  
s. 72(3)(a),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(b),  
repealed by  
No. 15/1998  
s. 4(6).

- (2) If a deceased worker leaves more than one dependant the trustee company determined under section 130 after having regard to the circumstances of the various dependants and any variations in the circumstances from time to time may determine to—

S. 132(2)  
amended by  
Nos 83/1987  
s. 72(3)(a),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(b),  
15/1998  
s. 4(7)(a).

- (a) apply or otherwise deal with any money administered by the trustee company in a manner which the trustee company considers will for the time being be most beneficial to the dependants;

S. 132(2)(a)  
amended by  
Nos 83/1987  
s. 72(3)(a),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(b),  
15/1998  
s. 4(7)(b).

- (b) make a payment to any dependant;  
(c) provide for any two or more dependants collectively; or  
(d) exclude any dependant from participating in any benefit.

Accident Compensation Act 1985  
No. 10191 of 1985  
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S. 132(3)  
amended by  
Nos 83/1987  
s. 72(3)(a),  
67/1992  
s. 45(a),  
50/1994  
s. 63(1)(b),  
substituted by  
No. 15/1998  
s. 4(8).

- (3) A dependant may apply to the trustee company to vary any determination made under subsection (2) if the dependant believes that the dependant is inadequately provided for or the circumstances of the dependant or other dependants have changed, and the trustee company may make any determination it considers appropriate for the variation of the earlier determination.

S. 132(4)  
repealed by  
No. 83/1987  
s. 72(3)(b).

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S. 132(5)  
amended by  
Nos 67/1992  
s. 45(a)(b),  
50/1994  
s. 63(1)(b),  
substituted by  
No. 15/1998  
s. 4(9).

- (5) A dependant who objects to any determination of the trustee company made under this section may appeal to the County Court and the Court may make a new determination.

S. 133  
repealed by  
No. 83/1987  
s. 72(4).

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## Division 8—Insurance of common law liabilities

S. 134  
amended by  
Nos 10255  
s. 8(2)(c),  
83/1987 s. 73,  
67/1992  
s. 64(7)(a),  
repealed by  
No. 102/2004  
s. 35(3).

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**Division 8A—Actions in respect of injuries arising  
on or after 20 October 1999 but before 1 July 2014**

Pt 4 Div. 8A  
(Heading)  
amended by  
No. 67/2013  
s. 638(1).  
Pt 4 Div. 8A  
(Heading and  
ss 134AA–  
134AF)  
inserted by  
No. 26/2000  
s. 18.

**134AA Actions for damages**

S. 134AA  
inserted by  
No. 26/2000  
s. 18,  
amended by  
No. 67/2013  
s. 638(2).

A worker who is or the dependants of a worker who are or may be entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment on or after 20 October 1999 but before 1 July 2014 shall not, in proceedings in respect of the injury, recover any damages in respect of pecuniary loss except—

- (a) in proceedings in respect of an injury or death arising out of a transport accident within the meaning of the **Transport Accident Act 1986** on or after 20 October 1999—
  - (i) otherwise than under Part III of the **Wrongs Act 1958**, against the employer or any other person, subject to and in accordance with the **Transport Accident Act 1986**; or
  - (ii) under Part III of the **Wrongs Act 1958** against the employer or the employer and any other person, subject to and in accordance with the **Transport Accident Act 1986**; or
  - (iii) under Part III of the **Wrongs Act 1958** against a person other than the employer, subject to and in accordance

with the **Transport Accident Act 1986**; or

- (b) in proceedings to which the employer is not a party where, by reason of section 83(1), the injury is deemed to have arisen out of or in the course of employment, if the worker's place of employment is a fixed place of employment and the injury did not occur while the worker was present at that fixed place of employment.

S. 134AB  
inserted by  
No. 26/2000  
s. 18.

#### **134AB Actions for damages**

S. 134AB(1)  
amended by  
No. 67/2013  
s. 638(3).

- (1) A worker who is, or the dependants of a worker who are or may be, entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment on or after 20 October 1999 but before 1 July 2014—
- (a) shall not, in proceedings in respect of the injury, recover any damages for non-pecuniary loss except—
- (i) in accordance with the **Transport Accident Act 1986** and subsections (25)(b), (26) and (36)(b) of this section; or
- (ii) in proceedings of a kind referred to in section 134AA(b) and in accordance with subsections (25)(b), (26) and (36)(b) of this section; or
- (iii) if subparagraphs (i) and (ii) do not apply, as permitted by and in accordance with this section; and
- (b) shall not, in proceedings in respect of the injury recover any damages for pecuniary loss except—

- (i) in proceedings of a kind referred to in a paragraph of section 134AA and in accordance with subsections (25)(a), (26) and (36)(a) of this section; or
  - (ii) if subparagraph (i) does not apply, as permitted by and in accordance with this section.
- (2) A worker may recover damages in respect of an injury arising out of, or in the course of, or due to the nature of, employment if the injury is a serious injury and arose on or after 20 October 1999 but before 1 July 2014. S. 134AB(2) amended by Nos 95/2003 s. 3(8), 67/2013 s. 638(3).
- (3) Subject to subsection (4A), a worker may not bring proceedings in accordance with this section unless— S. 134AB(3) substituted by No. 102/2004 s. 6(1), amended by No. 80/2010 s. 64(1)(a).
  - (a) determinations of the degree of impairment of the worker have been made under section 104B and the worker has made an application under subsection (4); or
  - (b) subject to any directions issued under section 134AF, the worker elects to make an application under subsection (4) on the ground that the worker has a serious injury within the meaning of this section.
- (4) Subject to subsection (4A), a worker may only make an application— S. 134AB(4) substituted by No. 102/2004 s. 6(1), amended by No. 80/2010 s. 64(1)(b).
  - (a) if subsection (3)(a) applies, after the worker—
    - (i) has advised the Authority or self-insurer under section 104B(6B) or 104B(7B) that he or she accepts the determinations of degree of impairment; or S. 134AB (4)(a)(i) amended by No. 41/2006 s. 24(a).

- (ii) has received the advice of the Authority or self-insurer under section 104B(10); or

(b) if subsection (3)(b) applies—

- (i) after a period of at least 18 months has elapsed since the event or circumstance giving rise to the injury occurred; or
- (ii) if an application had been made under section 104B as in force before the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004**, subject to sections 104B(21), 104B(22) and 104B(23).

S. 134AB  
(4)(b)(ii)  
amended by  
No. 41/2006  
s. 24(b).

(4A) If a worker has made a claim for compensation under section 98C in respect of an injury, the worker must not make an application under subsection (4) in respect of that injury unless—

- (a) the degree of impairment resulting from the injury has been determined in accordance with section 104B; and
- (b) the worker has accepted the determination of the degree of impairment; and
- (c) the worker has accepted the entitlement to compensation.

S. 134AB(5)  
substituted by  
No. 9/2010  
s. 57(1).

(5) An application under subsection (4) must—

- (a) be in a form approved by the Authority; and
- (b) be accompanied by an authority in a form approved by the Authority, signed by the worker, authorising the release of medical information to the Authority or a self-insurer relevant to the application; and

(c) be accompanied by—

- (i) a copy of all medical reports; and
- (ii) affidavits attesting to other material—

existing when the application is made and of which the worker or his or her legal representative is aware and on which the worker intends to rely, or the substance of which the worker intends to adduce in evidence, in proceedings in accordance with this section or in any related proceedings.

(5AA) An authority to release information referred to in subsection (5)(b) has effect and cannot be revoked by the worker—

S. 134AB(5AA)  
inserted by  
No. 9/2010  
s. 57(1).

- (a) until all proceedings brought in accordance with this section have been heard and determined or compromised; or

- (b) the worker withdraws his or her application.

(5A) A copy of any claim under section 104B referred to in subsection (3) and of an application under subsection (4) must be served on each person against whom the applicant claims to have a cause of action.

S. 134AB(5A)  
inserted by  
No. 102/2004  
s. 7.

(6) If the worker unreasonably refuses to comply with a request by the Authority or self-insurer that the worker submit to a medical examination, to be paid for by the Authority or self-insurer, or in any way hinders such an examination, the period between the date on which the worker so refused to comply, or hindered the examination, and the date of the examination must be disregarded in calculating the period referred to in subsection (7).

(6A) In calculating a period of time for the purpose of subsection (7), (10), (11), (12), (13), (14) or (16), the period from 24 December to 9 January next following must be disregarded.

S. 134AB(6A)  
inserted by  
No. 10/2022  
s. 12(1).

- (7) The Authority or self-insurer must, within 120 days (or such other period as may be specified in directions made under section 134AF) of receiving the application, advise the worker in writing—
  - (a) that the worker is deemed to have a serious injury; or
  - (b) if the worker is not deemed to have a serious injury, whether or not the Authority or self-insurer will issue a certificate under subsection (16)(a).
- (8) The advice referred to in subsection (7)(a) must be accompanied by—
  - (a) a copy of all medical reports; and
  - (b) affidavits attesting to such other material—existing when the advice is given and of which the employer, Authority or self-insurer or the legal representative of any of them is aware and on which they intend to rely or the substance of which they intend to adduce in evidence in proceedings brought by the worker in accordance with this section or in any related proceedings.
- (9) If the Authority or self-insurer fails to advise the worker in writing within the period referred to in subsection (7) as required by subsection (7), the worker is deemed to have suffered a serious injury.
- (10) The worker, within 28 days after receiving the advice referred to in subsections (7) and (8), may give to the Authority or self-insurer an affidavit attesting to such further material (whether or not existing before the worker made the application under subsection (4)) in rebuttal of the material (other than medical reports) attested to in affidavits accompanying the advice.

(11) In proceedings in accordance with this section, a medical report or other material is inadmissible in evidence—

(a) on behalf of the Authority or self-insurer if—

(i) it was in existence, and the employer, Authority or self-insurer, or the legal representative or any of them, was aware of it, before the date by which the advice of the Authority or self-insurer is required to be given under subsections (7) and (8); and

(ii) it had not been disclosed to the worker in accordance with subsections (7) and (8); or

(b) on behalf of the worker if—

(i) it was in existence, and the worker or the worker's legal representative was aware of it, before the expiration of 28 days after receiving the advice under subsections (7) and (8); and

(ii) it had not been disclosed to the other party in accordance with subsection (5) or (10).

(12) The worker must not commence proceedings in accordance with this section, other than an application under subsection (16)(b) or the commencement of proceedings with the consent of the Authority under subsection (20) or (20A), unless—

**S. 134AB(12)  
amended by  
No. 82/2001  
s. 22(1)(a).**

(a) the worker and the Authority or self-insurer hold, or begin, a conference within 21 days after the response date; and

(b) the Authority or self-insurer makes a statutory offer in writing in settlement or compromise of the claim at that conference,

- or after the conference begins but no later than 60 days after the response date; and
- (c) if the worker does not accept that statutory offer within 21 days after it is made, the worker, before the expiration of that period, makes a statutory counter offer in writing in settlement or compromise of the claim; and
  - (d) the Authority or self-insurer does not accept that counter offer within 21 days after it is made; and
  - (e) the proceedings are commenced not earlier than 21 days, and not more than 51 days, after the counter offer is made or, if a counter offer is deemed to have been made under subsection (14), not more than 30 days after the day on which the counter offer is deemed to have been made.
- (13) If the Authority or self-insurer does not make a statutory offer under subsection (12), the Authority or self-insurer is deemed, for the purposes of that subsection, to have made, on the 60th day after the response date, a statutory offer of nothing.
- (14) If the Authority or self-insurer makes a statutory offer under subsection (12) and the worker does not make a statutory counter offer under that subsection, the worker is deemed, for the purposes of that subsection, to have made, on the 21st day after the statutory offer was made, a statutory counter offer of the maximum amount that may be awarded as damages under subsection (22)(a) and (b).
- (15) If the assessment under section 104B made before an application under subsection (4) is made of the degree of impairment of the worker as a result of the injury is 30 per centum or more, the injury is

S. 134AB(15)  
amended by  
No. 102/2004  
s. 6(2).



deemed to be a serious injury within the meaning of this section.

- (16) If the assessment under section 104B of the degree of impairment of the worker as a result of the injury is less than 30 per centum, the person may not bring proceedings for the recovery of damages in respect of the injury unless—
- (a) the Authority or self-insurer—
    - (i) is satisfied that the injury is a serious injury; and
    - (ii) issues to the worker a certificate in writing consenting to the bringing of the proceedings; or
  - (b) a court, other than the Magistrates' Court, on the application of the worker made within 30 days after the worker received advice under subsection (7) or, with the consent of the Authority under subsection (20), after that period, gives leave to bring the proceedings.
- (17) For the purposes of paragraphs (a) and (b) of subsection (16), a worker who satisfies subparagraph (i) of subsection (38)(b) but not subparagraph (ii) of that subsection, is entitled to bring proceedings in accordance with subsection (16)(b) for the recovery of damages for pain and suffering only.
- (18) A copy of an application under subsection (16) must be served on the Authority or self-insurer and on each person against whom the applicant claims to have a cause of action.

(19) For the purposes of subsection (16)(b)—

- (a) a court, other than the Magistrates' Court, must not give leave unless it is satisfied on the balance of probabilities that the injury is a serious injury;
- (b) for the purposes of proving a loss of earning capacity in accordance with subsection (38), a worker bears the onus of proving any inability to be retrained or rehabilitated or to undertake suitable employment or any employment including alternative or further or additional employment and the extent of such inability;

S. 134AB(19)(c)  
repealed by  
No. 9/2010  
s. 57(2).

\* \* \* \* \*

S. 134AB(19A)  
inserted by  
No. 9/2010  
s. 57(3).

(19A) Any finding made on an application for leave to bring proceedings in respect of the injury does not give rise to an issue estoppel in any proceedings for the recovery of damages brought in accordance with this section which is heard and determined on and from the commencement of section 57(3) of the **Accident Compensation Amendment Act 2010**.

S. 134AB(20)  
amended by  
No. 82/2001  
s. 22(1)(b)(ii).

(20) If, on the application of a worker, the Authority is satisfied that—

S. 134AB  
(20)(a)  
amended by  
No. 82/2001  
s. 22(1)(b)(i).

- (a) the worker is unable to commence proceedings in accordance with this section because of the operation of subsection (16)(b); and

(b) the failure to comply with subsection (16)(b) was not due to any fault or omission of the worker or the worker's legal representative—

S. 134AB  
(20)(b)  
amended by  
No. 82/2001  
s. 22(1)(b)(i).

the Authority may consent to the bringing of an application under subsection (16)(b).

(20A) If the Authority is satisfied that a worker is unable to commence proceedings in accordance with this section because of the operation of subsection (12), on the application of the worker the Authority may consent to the commencement of proceedings—

S. 134AB(20A)  
inserted by  
No. 82/2001  
s. 22(2).

(a) either—

(i) earlier than 21 days after the date the counter offer is made; or

(ii) later than 51 days, but no later than 81 days, after that date—

if the Authority is satisfied that the defence of the proceedings will not be prejudiced; or

(b) later than 81 days after the date the counter offer is made if the Authority is satisfied that the failure to comply with subsection (12) was not due to any fault or omission of the worker or the worker's legal representative.

(20B) The Authority may consent to the commencement of proceedings under subsection (20A) even though the relevant time limit expired before the date of commencement of section 22 of the **Accident Compensation (Amendment) Act 2001**.

S. 134AB(20B)  
inserted by  
No. 82/2001  
s. 22(2).

(21) If a worker makes an application under subsection (4) in respect of an injury the worker must not make a further application under that subsection in respect of that injury.

S. 134AB(21)  
substituted by  
No. 9/2010  
s. 57(4).

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S. 134AB(21A)  
inserted by  
No. 102/2004  
s. 6(3).

(21A) If after a worker has failed to satisfy a court that the relevant injury is a serious injury on an application for leave to bring proceedings in accordance with subsection (16)(b), the worker obtains under section 104B determinations that the degree of impairment of the worker is 30 percentum or more, the worker is not entitled to recover damages for the same relevant injury.

(22) A court must not, in proceedings in accordance with this section, award to a worker in respect of an injury—

(a) pecuniary loss damages—

S. 134AB(22)  
(a)(i)  
amended by  
Nos 102/2004  
s. 40(e),  
80/2010  
ss 81(b), 83(d),  
67/2013  
s. 633(d).

(i) if the total pecuniary loss damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under subsection (25), is less than \$56 650 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or

S. 134AB(22)  
(a)(ii)  
amended by  
Nos 102/2004  
s. 40(f),  
80/2010  
ss 81(b), 83(e),  
67/2013  
s. 633(e).

(ii) in excess of \$1 275 570 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or

(b) pain and suffering damages—

S. 134AB(22)  
(b)(i)  
amended by  
Nos 102/2004  
s. 40(g),  
80/2010  
ss 81(c), 83(f),  
67/2013  
s. 633(f).

(i) if the total pain and suffering damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under subsection (25), is less than \$54 730 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or

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- (ii) in excess of \$555 350 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or
  - (c) damages of any other kind, other than damages in the nature of interest.
- (23) In the trial of a proceeding brought under this section, a jury must not be informed—
- (a) of the monetary thresholds and statutory maximums specified by or under subsection (22); or
  - (b) that any injury in respect of which the proceeding has been brought has been deemed, found, or required to be found, to be a serious injury; or
  - (c) that the Authority or self-insurer has been satisfied that the injury is a serious injury; or
  - (d) that the Authority or self-insurer has issued a certificate under subsection (16)(a).
- (24) Damages awarded under this section in respect of pecuniary loss shall not include damages in respect of—
- (a) any loss suffered or that may be suffered as a result of the incurring of costs or expenses of a kind referred to in Division 2B of Part IV; or
  - (b) the value of services of a domestic nature or services relating to nursing and attendance—
    - (i) which have been or are to be provided by another person to the person in whose favour the award is made; and

**S. 134AB(22)**  
**(b)(ii)**  
**amended by**  
**Nos 102/2004**  
**s. 40(h),**  
**9/2010 s. 55,**  
**80/2010**  
**s. 81(c), 83(g),**  
**67/2013**  
**s. 633(g).**

**S. 134AB**  
**(24)(a)**  
**amended by**  
**No. 80/2010**  
**s. 78(q).**

- (ii) for which the person in whose favour the award is made has not paid and is not and will not be liable to pay.

(25) If a judgment, order for damages, settlement or compromise is made or entered in favour of a worker or the dependants of a worker in respect of proceedings referred to in subsection (1), the amount of the judgment, order for damages, settlement or compromise must be reduced by—

- (a) to the extent that it is in respect of pecuniary loss, the amount of compensation (if any) paid otherwise than under section 98C, 98E and Division 2B of Part IV or to the extent that section 93(10)(a) of the **Transport Accident Act 1986** applies, except any such compensation paid in respect of the whole or any part of the period of 18 months after the relevant transport accident;
- (b) to the extent that it is in respect of non-pecuniary loss, the amount of compensation (if any) paid under section 98C and 98E.

(26) If the amount of a judgment is subject to a reduction under subsection (25), that reduction must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.

(27) Subject to the rules of the court—

- (a) in proceedings relating to an application for leave of the court under subsection (16), costs are to be awarded against a party against whom a decision is made; and
- (b) unless subsection (28) applies in proceedings for the recovery of damages in accordance with this section—

S.  
134AB(25)(a)  
amended by  
No. 48/2017  
s. 5.

- (i) if no liability to pay damages is established, costs are to be awarded against the claimant; and
  - (ii) if damages are assessed but cannot be awarded under this section, each party bears its own costs; and
  - (iii) if damages are awarded, costs are to be awarded against the Authority or self-insurer.
- (28) In proceedings for the recovery of damages commenced in accordance with this section after a statutory offer was made, or deemed to have been made, under subsection (12)—
- (a) if no liability to pay damages is established, the worker must pay the costs assessed on the standard basis of the employer, Authority or self-insurer and the worker's own costs;
  - (b) if judgment is obtained or a settlement or compromise is made in an amount not less than 90 per cent of the worker's statutory counter offer under subsection (12) and more than the statutory offer of the Authority or self-insurer, the Authority or self-insurer must pay the worker's costs assessed on the standard basis and its own costs;
  - (c) if judgment is obtained or a settlement or compromise is made in an amount not more than the statutory offer of the Authority or self-insurer under subsection (12), the worker must pay the costs assessed on the standard basis of the Authority or self-insurer and the worker's own costs;

**S. 134AB  
(28)(a)  
amended by  
No. 10/2022  
s. 12(2).**

**S. 134AB  
(28)(b)  
amended by  
No. 10/2022  
s. 12(2).**

**S. 134AB  
(28)(c)  
amended by  
No. 10/2022  
s. 12(2).**

(d) if judgment is obtained or a settlement or compromise is made in an amount that is more than the statutory offer of the Authority or self-insurer under subsection (12) but less than 90 per cent of the worker's statutory counter offer under that subsection, each party bears its own costs—

and the court must not otherwise make an order as to costs.

S. 134AB(28A)  
inserted by  
No. 9/2010  
s. 57(5).

(28A) For the purposes of determining a liability to pay costs, or an entitlement to be paid costs, under subsection (28)(b), (c) or (d), if the amount of a judgment, order for damages, settlement or compromise is required to be reduced under subsection (25), the amount of the reduction must be the amount of compensation paid—

(a) to the date of the statutory counter offer under subsection (12); or

(b) to the date of the deemed statutory counter offer under subsection (14).

S. 134AB(28B)  
inserted by  
No. 9/2010  
s. 57(5).

(28B) A reduction under subsection (28A) must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.

(29) For the purpose of the taxing of costs in proceedings to which this section applies, any applicable scale of costs has effect as if amounts in the scale were reduced by 20 per cent.

(30) A person who represents or acts on behalf of a worker is not entitled—

(a) to recover any costs from that worker in respect of any proceedings under this section; or

(b) to claim a lien in respect of those costs; or



(c) to deduct those costs from any sum awarded as damages—

unless an award of costs has been made by the court in respect of those costs or those costs are payable in accordance with this section by the worker.

(31) The court, on the application of—

(a) the worker; or

(b) the person representing or acting on behalf of the worker—

may determine the amount of costs to be awarded to the person representing or acting on behalf of the worker.

(32) Where an award of damages in accordance with this section is to include an amount, assessed as a lump sum, in respect of damages for future loss which is referable to—

(a) deprivation or impairment of earning capacity; or

(b) loss of the expectation of financial support; or

(c) a liability to incur expenditure in the future; or

(d) any loss suffered by a dependant—

the present value of the future loss must be qualified by adopting a discount rate of 6 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(33) Except as provided by subsection (32), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.

- (34) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest shall be payable, on any amount of damages, other than damages referable to loss actually suffered before the date of the award, in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to date of the award.
- (35) Except as provided by subsection (34), nothing in that subsection affects any other law relating to the payment of interest on any amount of damages, other than special damages.
- (36) If judgment is obtained, or a compromise or settlement made in respect of proceedings referred to in subsection (1) in respect of an injury, the Authority, the employer or self-insurer is not liable—

S. 134AB  
(36)(a)  
amended by  
Nos 41/2006  
s. 15(4),  
9/2010  
s. 57(6).

(a) where pecuniary loss damages are awarded, to pay weekly payments in respect of the injury; or

(b) where pain and suffering damages are awarded, to make payments under section 98C or 98E in respect of the injury.

S. 134AB(36A)  
inserted by  
No. 9/2010  
s. 57(7).

- (36A) If judgment is obtained, or a compromise or a settlement is made, in respect of proceedings referred to in subsection (1) and the worker was, at the date of the judgment, compromise or settlement, still in receipt of compensation in the form of weekly payments, where pecuniary loss damages are awarded against the Authority, employer or self-insurer, the Authority, employer or self-insurer must, until the date on which a cheque is drawn for the purpose of payment of the

judgment, compromise or settlement, pay to the worker a weekly amount equal to the net weekly amount that, but for subsection (36), would have been payable to the worker as compensation in the form of weekly payments in respect of the injury.

- (36B) Subsection (36A) applies only in respect of proceedings referred to in subsection (1) against a sole defendant where that sole defendant was the worker's employer at the date of the injury the subject of the proceedings.

S. 134AB(36B)  
inserted by  
No. 9/2010  
s. 57(7).

- (36C) An amount paid in accordance with subsection (36A) is, to the extent of the payment, part satisfaction of the liability in respect of the judgment, settlement or compromise.

S. 134AB(36C)  
inserted by  
No. 9/2010  
s. 57(7).

- (37) In this section—

***determination date***, in relation to an injury, means the date on which—

S. 134AB(37)  
def. of  
***determination date***  
amended by  
No. 102/2004  
s. 8(1)(2).

- (a) if the worker is assessed under section 104B to have a degree of impairment of 30 per centum or more, the date on which the worker receives advice under subsection (7); or
- (ab) if the Authority or self-insurer fails to advise the worker in writing as required by subsection (7) within the period referred to in subsection (7), the date on which under subsection (9) the injury is deemed to be a serious injury; or
- (b) if the worker is assessed under section 104B to have a degree of impairment of less than 30 per centum, the date—
  - (i) on which a certificate is issued under subsection (16)(a) in relation to the injury; or

- (ii) unless subparagraph (iii) applies,  
on which a court gives leave under  
subsection (16)(b); or
- (iii) on which any appeal by the  
Authority or a self-insurer against  
a decision of a court to give leave  
under subsection (16)(b) is  
determined—

whichever is applicable;

***medical report*** means—

- (a) a statement in writing on medical  
matters concerning the worker, made  
by a medical practitioner; and
- (b) includes any document which the  
medical practitioner intends should be  
read with the statement, whether the  
document was in existence at the time  
the statement was made or was a  
document which he or she obtained or  
caused to be brought into existence  
subsequently;

***pain and suffering damages*** means damages for  
pain and suffering, loss of amenities of life  
or loss of enjoyment of life;

***pecuniary loss damages*** means damages for loss  
of earnings, loss of earning capacity, loss of  
value of services or any other pecuniary loss  
or damage;

***response date*** means the date on which the period  
of 28 days after the determination date  
expires;

***serious injury*** means—

- (a) permanent serious impairment or loss  
of a body function; or

- (b) permanent serious disfigurement; or
  - (c) permanent severe mental or permanent severe behavioural disturbance or disorder; or
  - (d) loss of a foetus.
- (38) For the purposes of the assessment of *serious injury* in accordance with subsections (16) and (19)—
- (a) the following definitions apply—
    - foetus* has the same meaning as in section 98C(5);
    - income from personal exertion* has the same meaning as in section 6(2) of the **Transport Accident Act 1986**;
  - (b) the terms *serious* and *severe* are to be satisfied by reference to the consequences to the worker of any impairment or loss of a body function, disfigurement, or mental or behavioural disturbance or disorder, as the case may be, with respect to—
    - (i) pain and suffering; or
    - (ii) loss of earning capacity—when judged by comparison with other cases in the range of possible impairments or losses of a body function, disfigurements, or mental or behavioural disturbances or disorders, respectively;
  - (c) an impairment or loss of a body function or a disfigurement shall not be held to be serious for the purposes of subsection (16) unless the pain and suffering consequence or the loss of earning capacity consequence is, when judged by comparison with other cases in the range of possible impairments or losses of a

body function, or disfigurements, as the case may be, fairly described as being more than significant or marked, and as being at least very considerable;

- (d) a mental or behavioural disturbance or disorder shall not be held to be severe for the purposes of subsection (16) unless the pain and suffering consequence or the loss of earning capacity consequence is, when judged by comparison with other cases in the range of possible mental or behavioural disturbances or disorders, as the case may be, fairly described as being more than serious to the extent of being severe;
- (e) where a worker relies upon paragraph (a), (b) or (c) of the definition of serious injury in subsection (37), the Authority or self-insurer shall not grant a certificate under subsection (16)(a) and a court shall not grant leave under subsection (16)(b) on the basis that the worker has established the loss of earning capacity required by paragraph (b) unless the worker establishes in addition to the requirements of paragraph (c) or (d), as the case may be, that—
  - (i) at the date of a decision under subsection (16)(a) or at the date of the hearing of an application under subsection (16)(b), the worker has a loss of earning capacity of 40 per centum or more, measured (except in the case of a worker referred to in item 1 of Schedule 1A or a worker under the age of 26 years at the date of the injury) as set out in paragraph (f); and

S. 134AB  
(38)(e)(i)  
amended by  
No. 67/2013  
s. 638(4) (as  
amended by  
No. 44/2014  
s. 24(32)).

- (ii) the worker (including a worker referred to in item 1 of Schedule 1A or a worker under the age of 26 years at the date of the injury) will after the date of the decision or of the hearing continue permanently to have a loss of earning capacity which will be productive of financial loss of 40 per centum or more;
- (f) for the purposes of paragraph (e)(i), a worker's loss of earning capacity is to be measured by comparing—
- (i) the worker's gross income from personal exertion (expressed at an annual rate) which the worker is—
- (A) earning, whether in suitable employment or not; or
- (B) capable of earning in suitable employment—
- as at that date, whichever is the greater, and—
- (ii) the gross income (expressed at an annual rate) that the worker was earning or was capable of earning from personal exertion or would have earned or would have been capable of earning from personal exertion during that part of the period within 3 years before and 3 years after the injury as most fairly reflects the worker's earning capacity had the injury not occurred;
- (g) a worker does not establish the loss of earning capacity required by paragraph (b) where the worker has, or would have after rehabilitation or retraining, and taking into account the worker's capacity for suitable employment after the injury and, where

S. 134AB  
(38)(e)(ii)  
amended by  
No. 67/2013  
s. 638(4) (as  
amended by  
No. 44/2014  
s. 24(32)).

S. 134AB  
(38)(f)  
substituted by  
No. 9/2010  
s. 57(8)(a).

applicable, the reasonableness of the worker's attempts to participate in rehabilitation or retraining, a capacity for any employment including alternative employment or further or additional employment which, if exercised, would result in the worker earning more than 60 per centum of gross income from personal exertion as determined in accordance with paragraph (f) had the injury not occurred;

- (h) the psychological or psychiatric consequences of a physical injury are to be taken into account only for the purposes of paragraph (c) of the definition of *serious injury* and not otherwise;
- (i) the physical consequences of a mental or behavioural disturbance or disorder are to be taken into account only for the purposes of paragraph (c) of the definition of *serious injury* and not otherwise;
- (j) the assessment of *serious injury* shall be made at the time that the application is heard by the court, unless sections 134ABAA and 135BBA apply;
- (k) the monetary thresholds and statutory maximums specified by or under subsection (22) must be disregarded for the purposes of the assessment of *serious injury*.

S. 134AB  
(38)(j)  
amended by  
No. 9/2010  
s. 57(8)(b).

S. 134ABAA  
inserted by  
No. 9/2010  
s. 58.

#### **134ABAA Determination of serious injury application following death of worker**

- (1) This section applies if—
  - (a) a worker dies; and
  - (b) the worker made an application served under section 134AB(4) before his or her death; and



- (c) at the time of the worker's death—
    - (i) the application of the worker was pending; or
    - (ii) the worker had issued proceedings seeking the leave of the Court to commence proceedings following the rejection of the application of the worker by the Authority or a self-insurer; or
    - (iii) the period specified in section 134AB(16)(b) within which a worker is required to institute proceedings had not expired; and
  - (d) the worker's death was not caused or materially contributed to by the injury which is the subject of the application under section 134AB; and
  - (e) the worker left a dependant or dependants.
- (2) If this section applies—
- (a) the legal personal representative of the deceased worker may take the same action as could have been taken by the worker had the worker not died—
    - (i) in respect of an application made by the worker under section 134AB(4) before his or her death; or
    - (ii) in respect of an application referred to in section 134AB(16)(b)—within the unexpired period of time that would have been available to the deceased, or after that period with the consent of the Authority under section 134AB(20);

- (b) if an application under section 134AB(4) was pending at the time of the worker's death, the Authority or self-insurer, within the unexpired period of time in which it had to determine the application, must determine whether, as at the date the application was served, the worker had a serious injury assessed in accordance with this section;
  - (c) any right arising from a determination by a Court, the Authority or a self-insurer that a worker had a serious injury is deemed, for the purposes of section 29 of the **Administration and Probate Act 1958** to have vested in the worker before the worker's death and survives for the benefit of the deceased worker's estate.
- (3) For the purposes of the assessment of *serious injury* in respect of an application or proceedings commenced or continued under this section, the assessment must be made in accordance with section 134AB(38) except where this section otherwise provides.
- (4) For the purposes of the assessment of *serious injury* under this section, the assessment must be made as at the date the application was served by the worker before his or her death under section 134AB(4).
- (5) If it is determined that a worker referred to in subsection (1) had a serious injury as at the time he or she served the application under section 134AB(4), notwithstanding anything to the contrary in section 134AB, the legal personal representative of the deceased worker may bring proceedings for the recovery of—
- (a) pain and suffering damages in respect of the injury; and

- (b) if the deceased worker's application established the matters specified in section 134AB(38)(e), (f) and (g)—pecuniary loss damages in respect of the injury—

from the date the injury was sustained to the date of death of the worker.

- (6) For the purposes of subsection (5)(b)—
  - (a) section 134AB(38)(e) applies as if a reference to "the date of the hearing of an application" were a reference to the date on which the application under section 134AB(4) was served;
  - (b) section 134AB(38)(f) applies as if a reference to "that date" were a reference to the date on which the application under section 134AB(4) was served.
- (7) The death of a worker does not affect the admissibility of—
  - (a) evidence obtained before or after the worker served an application under section 134AB(4); and
  - (b) evidence that would have otherwise been admissible under section 134AB.
- (8) In this section—

***dependant*** means a person who at the time of the death of the worker referred to in subsection (1)—

- (a) was wholly, mainly or partly dependent on the earnings of the worker; or
- (b) would have been wholly, mainly or partly dependent on the earnings of the worker but for the incapacity of the worker resulting from, or materially

contributed to by, the serious injury the subject of the application, or any incapacity of the worker due to the injury or disease which caused or materially contributed to the worker's death.

- (9) A reference to service of an application under section 134AB(4) in this section means the service of an application in accordance with directions made by the Minister under section 134AF.

S. 134ABA  
inserted by  
No. 102/2004  
s. 9.

#### **134ABA Calculation of limitation of actions period**

For the purpose of calculating the period of time under the **Limitation of Actions Act 1958** within which proceedings permitted by, and in accordance with, section 134AB may be commenced on or after the commencement of section 9 of the **Accident Compensation Legislation (Amendment) Act 2004**, the following periods of time are to be disregarded—

S. 134ABA(a)  
amended by  
No. 80/2010  
s. 93.

- (a) if the degree of permanent impairment of the worker resulting from the injury is to be determined, the period of time commencing on the day a claim for compensation under section 98C or 98E is lodged and ending 30 days after—

S. 134ABA  
(a)(i)  
amended by  
No. 67/2013  
s. 638(5).

- (i) the Authority or self-insurer advises the worker of the determination under section 104B(2) or (7); or

- (ii) the Authority or self-insurer notifies the worker of the decision of the Medical Panel—

whichever is applicable;

- (b) if the worker elects to make an application under section 134AB(4), the period of time commencing on the day on which the application is made and ending on the day on which proceedings are commenced in accordance with section 134AB(12)(e).

**134ABB Calculation of limitation of actions period**

S. 134ABB  
inserted by  
No. 9/2010  
s. 59.

- (1) For the avoidance of doubt, it is declared that, section 134AB does not affect the date of accrual of a cause of action for the purposes of the **Limitation of Actions Act 1958**.
- (2) Subsection (1) is deemed to have commenced on 20 October 1999.

\* \* \* \*

S. 134AC  
inserted by  
No. 26/2000  
s. 18,  
repealed by  
No. 62/2014  
s. 9.

\* \* \* \*

S. 134AD  
inserted by  
No. 26/2000  
s. 18,  
repealed by  
No. 9/2010  
s. 60.

\* \* \* \*

S. 134AE  
inserted by  
No. 26/2000  
s. 18,  
repealed by  
No. 68/2012  
s. 3.

**134AF Directions**

S. 134AF  
inserted by  
No. 26/2000  
s. 18.

- (1) For the purposes of section 134AB, the Minister may issue directions for or with respect to procedures under that section.

Accident Compensation Act 1985  
No. 10191 of 1985  
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S. 134AF(1A)  
inserted by  
No. 102/2004  
s. 10.

- (1A) For the purposes of section 134AB(3)(b), the Minister may issue directions specifying or limiting the classes of cases or circumstances in which an election can be made under that section.

S. 134AF(2)  
repealed by  
No. 80/2010  
s. 122(5).

\* \* \* \* \*

- (3) The directions may include directions about the provision of information by affidavit and the attending of conferences.
- (4) A person to whom a direction under this section applies, and the legal representatives and agents of such a person, must comply with the direction.
- (5) The directions may specify that a failure to comply with a particular provision of the directions has the effect of altering a period applicable under that section.

S. 134AFA  
inserted by  
No. 80/2010  
s. 94.

**134AFA Legal practitioner may recover costs**

A legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under section 134AB, 135, 135A or 135B is entitled to be paid legal costs, of a kind specified in a legal costs order made under section 134AG or 134AGA from the Authority or self-insurer.

S. 134AG  
inserted by  
No. 26/2000  
s. 19 (as  
amended by  
No. 84/2000  
s. 39(3)(a)(b)).

**134AG Legal costs order**

- (1) The Governor in Council may by Order in Council make a legal costs order—

S. 134AG(1)(a)  
amended by  
No. 80/2010  
s. 95(1).

- (a) specifying the legal costs that may be paid by the Authority or self-insurer by a legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under section 134AB, 135, 135A or 135B; and

- (b) prescribing or specifying any matter or thing required to give effect to the legal costs order.
- (2) A legal costs 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 legal costs incurred on or after the date of commencement of the order.
- (3) A legal costs order may—
  - (a) apply generally or be limited in its application by reference to classes of proceedings, costs, circumstances or factors;
  - (b) apply differently according to different circumstances or 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.
- (4) Section 134AB(29), 135A(13B) or 135B(7) does not apply in proceedings to which a legal costs order applies.

S. 134AG(5)  
amended by  
Nos 18/2005  
s. 18(Sch. 1  
item 1.2),  
62/2012 s. 23,  
17/2014  
s. 160(Sch. 2  
item 1.2).

- (5) This section and any legal costs order made under this section has full force and effect notwithstanding anything to the contrary in the Legal Profession Uniform Law (Victoria), the **Legal Profession Uniform Law Application Act 2014**, the **Supreme Court Act 1986** or the **County Court Act 1958** or the **Civil Procedure Act 2010** or in any regulation, rules, order or other document made under any of those Acts.

S. 134AG(6)  
inserted by  
No. 80/2010  
s. 95(2).

- (6) Legal costs in respect of any claim, application or proceeding referred to in subsection (1)(a) cannot be recovered from the Authority or self-insurer except in accordance with an order under this section.

S. 134AGA  
inserted by  
No. 80/2010  
s. 96.

#### **134AGA Litigated claims legal costs order—workers**

- (1) Subject to subsection (2), the Governor in Council may by Order in Council make a litigated claims legal costs order—
- (a) specifying the legal costs that may be recovered from the Authority or self-insurer by a legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under or in accordance with section 134AB, 135, 135A or 135B; and
  - (b) prescribing or specifying any matter or thing required to give effect to the legal costs order including procedures for resolving any dispute that arises in relation to the costs payable under the order.
- (2) Before a litigated claims legal costs order is made under subsection (1), the Minister must consult with the Attorney-General and Treasurer.
- (3) A litigated claims legal costs 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 legal costs incurred on or after the date of commencement of the order;
- (d) in the case of—
  - (i) the first litigated legal costs order to be made under subsection (1) after the commencement of section 99 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010**, must be reviewed by the Minister within 2 years of the commencement of the litigated legal costs order;
  - (ii) each subsequent litigated legal costs order made under subsection (1) after the litigated legal costs order specified in subparagraph (i) is made, must be reviewed by the Minister 3 years after commencement of each subsequent litigated legal costs order.
- (4) Section 134AB(29), 135A(13B) or 135B(7) does not apply in proceedings to which a litigated claims legal costs order under subsection (1) applies.
- (5) A litigated legal costs order under subsection (1) may provide for the amounts of costs specified in the order to be indexed in accordance with the all groups consumer price index for Melbourne as published by the Australian statistician.

- (6) If a litigated claims legal costs order under subsection (1) is in force, legal costs in respect of any claim, application or proceeding referred to in subsection (1) to which the order applies cannot be recovered except in accordance with the order.

S. 134AGB  
inserted by  
No. 80/2010  
s. 96.

**134AGB Litigated claims legal costs order—Authority and self-insurers**

- (1) Subject to subsection (2), the Governor in Council may by Order in Council make a litigated claims legal costs order—
- (a) specifying the legal costs that may be recovered from a worker by a legal practitioner acting on behalf of the Authority or self-insurer in respect of any claim, application or proceedings under or in accordance with section 134AB, 135, 135A or 135B; and
  - (b) prescribing or specifying any matter or thing required to give effect to the legal costs order including procedures for resolving any dispute that arises in relation to the costs payable under the Order.
- (2) Before a litigated claims legal costs order is made under subsection (1), the Minister must consult with the Attorney-General and Treasurer.
- (3) A litigated claims legal costs 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 legal costs incurred on or after the date of commencement of the order;

- (d) in the case of—
- (i) the first litigated legal costs order to be made under subsection (1) after the commencement of section 99 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010**, must be reviewed by the Minister within 2 years of the commencement of the litigated legal costs order;
  - (ii) each subsequent litigated legal costs order made under subsection (1) after the litigated legal costs order specified in subparagraph (i) is made, must be reviewed by the Minister 3 years after commencement of each subsequent litigated legal costs order.
- (4) Section 134AB(29), 135A(13B) or 135B(7) does not apply in proceedings to which a litigated claims legal costs order under subsection (1)(a) applies.
- (5) If a litigated claims legal costs order under subsection (1)(a) is in force, legal costs in respect of any claim, application or proceeding referred to in subsection (1)(a) to which the order applies cannot be recovered except in accordance with the order.

Pt 4 Div. 9  
(Heading)  
substituted by  
No. 26/2000  
s. 20(2).

## **Division 9—Actions in respect of injuries to which Division 8A does not apply**

S. 134A  
inserted by  
No. 107/1997  
s. 45.

### **134A Actions for damages only in accordance with this Act**

S. 134A(1)  
amended by  
No. 26/2000  
s. 21.

- (1) A worker who is, or the dependants of a worker who are or may be, entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment on or after 12 November 1997 but before 20 October 1999 shall not, in proceedings commenced in respect of the injury or otherwise, recover any damages of any kind.
- (2) Subsection (1) does not prevent the recovery of damages in proceedings under Part III of the **Wrongs Act 1958**, subject to and in accordance with the **Transport Accident Act 1986**, in respect of the death of a worker—
  - (a) arising out of a transport accident within the meaning of the **Transport Accident Act 1986**; and
  - (b) arising out of, or in the course of, or due to the nature of, any employment that was a significant contributing factor resulting in or materially contributing to the death.

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**135 Actions for damages**<sup>28, 29</sup>

*	*	*	*	*	<p>S. 135(1) amended by Nos 111/1986 s. 180(3)(Sch. 2 item 3(b)(i)), 83/1987 s. 74(a), 67/1992 s. 46(1), 50/1994 s. 64(1)–(4), repealed by No. 107/1997 s. 46(1).</p>
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*	*	*	*	*	<p>S. 135(1A) inserted by No. 111/1986 s. 180(3) (Sch. 2 item 3(b)(ii)), amended by No. 83/1987 s. 74(a), repealed by No. 67/1992 s. 46(2).</p>
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- (2) For the purposes of proceedings to which subsection (1) (as in force at any time) or section 134A(2) applies, sections 135(1A) to (7) and 135A, and any other relevant provisions, of this Act as in force immediately before the commencement of section 46 of the **Accident Compensation (WorkCover) Act 1992** continue to apply as if they had not been repealed by that Act.

S. 135(2)  
amended by  
No. 83/1987  
s. 74(a),  
substituted by  
No. 67/1992  
s. 46(2),  
amended by  
No. 107/1997  
s. 46(2).

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S. 135(3)  
amended by  
Nos 48/1986  
s. 23, 111/1986  
s. 180(3)  
(Sch. 2  
item 3(b)(iii)),  
83/1987  
s. 74(b),  
repealed by  
No. 67/1992  
s. 46(2),  
new s. 135(3)  
inserted by  
No. 107/1997  
s. 46(3).

(3) Subsection (1), as in force immediately before 12 November 1997, continues to apply, subject to section 135AC, in respect of an injury arising out of, or in the course of, or due to the nature of, employment before that commencement.

S. 135(3A)  
inserted by  
No. 83/1987  
s. 74(c),  
amended by  
No. 18/1991  
s. 10(2),  
repealed by  
No. 67/1992  
s. 46(2).

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S. 135(3B)  
inserted by  
No. 83/1987  
s. 74(c),  
repealed by  
No. 67/1992  
s. 46(2).

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S. 135(4)  
amended by  
Nos 48/1986  
s. 23, 83/1987  
s. 74(d),  
64/1989  
s. 35(i),  
repealed by  
No. 67/1992  
s. 46(2).

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S. 135(4A)  
inserted by  
No. 83/1987  
s. 74(e),  
repealed by  
No. 67/1992  
s. 46(2).

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*	*	*	*	*	S. 135(4B) inserted by No. 83/1987 s. 74(e), repealed by No. 67/1992 s. 46(2).
*	*	*	*	*	S. 135(5) amended by No. 111/1986 s. 180(3)(Sch. 2 item 3(b)(iv) (v)), repealed by No. 67/1992 s. 46(2).
*	*	*	*	*	S. 135(6) substituted by No. 83/1987 s. 74(f), repealed by No. 67/1992 s. 46(2).
*	*	*	*	*	S. 135(7) inserted by No. 83/1987 s. 74(f), repealed by No. 67/1992 s. 46(2).
<b>135A Actions for damages<sup>30, 31</sup></b>					
					S. 135A inserted by No. 37/1992 s. 5, substituted by No. 67/1992 s. 46(3).
(1) A worker who is, or the dependants of a worker who are or may be, entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment before 12 November 1997—					S. 135A(1) amended by Nos 50/1994 s. 64(5), 107/1997 s. 47(1).
(a) shall not, in proceedings in respect of the injury, recover any damages for non-pecuniary loss except—					S. 135A(1)(a) inserted by No. 50/1994 s. 64(5).

S. 135A(1)(b)  
inserted by  
No. 50/1994  
s. 64(5).

- (i) in accordance with the **Transport Accident Act 1986** and subsections (11)(b), (12) and (18)(b) of this section; or
  - (ii) in proceedings of a kind referred to in section 135(1)(c) and in accordance with subsections (11)(b), (12) and (18)(b) of this section; or
  - (iii) if subparagraphs (i) and (ii) do not apply, as permitted by and in accordance with this section; and
- (b) shall not, in proceedings in respect of the injury recover any damages for pecuniary loss except—
- (i) in proceedings of a kind referred to in a paragraph of section 135(1) and in accordance with subsections (11)(a), (12) and (18)(a) of this section; or
  - (ii) if subparagraph (i) does not apply, as permitted by and in accordance with this section.

(2) A worker may recover damages in respect of an injury arising out of, or in the course of, or due to the nature of, employment—

- (a) if employment of that nature was a significant contributing factor, and the injury is a serious injury and arose on or after 1 December 1992; or
- (b) if the injury is a serious injury and arose before that date but the incapacity arising from the injury did not become known until that date or a later date.

S. 135A(2A)  
inserted by  
No. 7/1996  
s. 32(1).

(2A) Subject to subsection (2D), a worker may not bring proceedings in accordance with this section unless a determination of the degree of



impairment of the worker has been made under subsection (3)<sup>32</sup>.

(2AA) For the purposes of the procedures relating to an application for a determination from a worker made under subsection (2B) and received by the Authority or a self-insurer after 10 August 2000 but before 1 September 2000, subsections (2B), (2D) and (2DB) have effect as if the reference in each of those subsections to 120 days was a reference to 210 days.

S. 135A(2AA)  
inserted by  
No. 84/2000  
s. 37.

(2B) Subject to subsection (2C), the Authority or self-insurer must make a determination under subsection (3) within 120 days of receiving a written application for a determination from the worker<sup>33</sup>.

S. 135A(2B)  
inserted by  
No. 7/1996  
s. 32(1),  
amended by  
Nos 107/1997  
s. 47(2),  
81/1998  
s. 25(9).

(2BA) An application under subsection (2B)—

S. 135A(2BA)  
inserted by  
No. 107/1997  
s. 47(3).

(a) must be in a form approved by the Authority;  
and

(b) must be accompanied by—

(i) a copy of all medical reports; and

(ii) affidavits attesting to such other  
material—

existing when the application is made and  
of which the worker or his or her legal  
representative is aware and on which the  
worker intends to rely, or the substance  
of which the worker intends to adduce in  
evidence, in proceedings in accordance with  
this section or in any related proceedings.

(2BB) If the worker unreasonably refuses to comply with a request by the Authority or self-insurer that the worker submit to a medical examination, to be paid for by the Authority or self-insurer, or in any way hinders such an examination, the period

S. 135A(2BB)  
inserted by  
No. 107/1997  
s. 47(3),  
amended by  
No. 81/1998  
s. 25(9).

between the date on which the worker so refused to comply, or hindered the examination, and the date of the examination must be disregarded in calculating the period of 120 days referred to in subsections (2B) and (2D).

S. 135A(2C)  
inserted by  
No. 7/1996  
s. 32(1),  
amended by  
No. 81/1998  
s. 25(9).

- (2C) Despite subsection (2B), if the application is received during the first 104 weeks after the injury, the Authority or self-insurer may refuse to make a determination if the Authority or self-insurer is not satisfied that the worker's injury has stabilised<sup>34</sup>.

S. 135A(2D)  
inserted by  
No. 7/1996  
s. 32(1),  
substituted by  
No. 107/1997  
s. 47(4),  
amended by  
No. 81/1998  
s. 25(9).

- (2D) The Authority or self-insurer must, within 120 days of receiving the application, advise the worker in writing—
- (a) of the determination; or
  - (b) of the refusal to make a determination under subsection (2C).

S. 135A(2DA)  
inserted by  
No. 107/1997  
s. 47(5),  
amended by  
No. 81/1998  
s. 25(9).

- (2DA) The advice referred to in subsection (2D) must be accompanied by—

- (a) a copy of all medical reports; and
- (b) affidavits attesting to such other material—

existing when the advice is given and of which the employer, Authority or self-insurer or the legal representative of any of them is aware and on which they intend to rely or the substance of which they intend to adduce in evidence in proceedings brought by the worker in accordance with this section or in any related proceedings.

S. 135A(2DB)  
inserted by  
No. 107/1997  
s. 47(5),  
amended by  
No. 81/1998  
s. 25(9).

- (2DB) If the Authority or self-insurer fails to advise the worker in writing within 120 days of receiving the application—
- (a) of the determination; or

(b) of the refusal to make a determination under subsection (2C)—

the worker is deemed to have suffered a serious injury.

(2DC) The worker, within 28 days after receiving the advice referred to in subsections (2D) and (2DA), may give to the Authority or self-insurer an affidavit attesting to such further material (whether or not existing before the worker made the application under subsection (2B)) in rebuttal of the material (other than medical reports) attested to in affidavits accompanying the advice.

S. 135A(2DC)  
inserted by  
No. 107/1997  
s. 47(5),  
amended by  
No. 81/1998  
s. 25(9).

(2DD) In proceedings in accordance with this section, a medical report or other material is inadmissible in evidence—

S. 135A(2DD)  
inserted by  
No. 107/1997  
s. 47(5).

(a) on behalf of the Authority or self-insurer if—

S. 135A  
(2DD)(a)  
amended by  
No. 81/1998  
s. 25(9).

(i) it was in existence, and the employer, Authority or self-insurer, or the legal representative or any of them, was aware of it, before the date by which the advice of the Authority or self-insurer is required to be given under subsections (2D) and (2DA); and

S. 135A  
(2DD)(a)(i)  
amended by  
No. 81/1998  
s. 25(9).

(ii) it had not been disclosed to the worker in accordance with subsections (2D) and (2DA); or

(b) on behalf of the worker if—

(i) it was in existence, and the worker or the worker's legal representative was aware of it, before the expiration of 28 days after receiving the advice under subsections (2D) and (2DA); and

- (ii) it had not been disclosed to the other party in accordance with subsection (2BA) or (2DC).

S. 135A(2DE)  
inserted by  
No. 107/1997  
s. 47(5),  
amended by  
No. 82/2001  
s. 23(1)(a).

- (2DE) The worker must not commence proceedings in accordance with this section, other than an application under subsection (4)(b) or the commencement of proceedings with the consent of the Authority under subsection (6A) or (6B), unless—

S. 135A  
(2DE)(a)  
amended by  
No. 81/1998  
s. 25(9).

- (a) the worker and the Authority or self-insurer hold, or begin, a conference within 21 days after the response date; and

S. 135A  
(2DE)(b)  
amended by  
No. 81/1998  
s. 25(9).

- (b) the Authority or self-insurer makes a statutory offer in writing in settlement or compromise of the claim at that conference, or after the conference begins but no later than 60 days after the response date; and

- (c) if the worker does not accept that statutory offer within 21 days after it is made, the worker, before the expiration of that period, makes a statutory counter offer in writing in settlement or compromise of the claim; and

S. 135A  
(2DE)(d)  
amended by  
No. 81/1998  
s. 25(9).

- (d) the Authority or self-insurer does not accept that counter offer within 21 days after it is made; and

- (e) the proceedings are commenced not earlier than 21 days, and not more than 51 days, after the counter offer is made or, if a counter offer is deemed to have been made under subsection (2DG), not more than 30 days after the day on which the counter offer is deemed to have been made.

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|--|--|
| (2DF) If the Authority or self-insurer does not make a statutory offer under subsection (2DE), the Authority or self-insurer is deemed, for the purposes of that subsection, to have made, on the 60th day after the response date, a statutory offer of nothing.  | S. 135A(2DF)<br>inserted by<br>No. 107/1997<br>s. 47(5),<br>amended by<br>Nos 81/1998<br>s. 25(9),<br>74/2000<br>s. 3(Sch. 1<br>item 1.6). |
| (2DG) If the Authority or self-insurer makes a statutory offer under subsection (2DE) and the worker does not make a statutory counter offer under that subsection, the worker is deemed, for the purposes of that subsection, to have made, on the 21st day after the statutory offer was made, a statutory counter offer of the maximum amount that may be awarded as damages under subsection (7)(a) and (b). | S. 135A(2DG)<br>inserted by<br>No. 107/1997<br>s. 47(5),<br>amended by<br>No. 81/1998<br>s. 25(9).   |
| (3) If the Authority or self-insurer determines that the degree of impairment of the worker as a result of the injury would, if assessed in accordance with section 91 be 30 per centum or more, the injury is deemed to be a serious injury within the meaning of this section.   | S. 135A(3)<br>amended by<br>Nos 50/1994<br>s. 64(6)(a),<br>60/1996<br>s. 11(3),<br>81/1998<br>s. 25(9).                                    |
| (3A) A decision by the Authority or self-insurer that a worker has a serious injury for the purposes of section 93B is not to be taken to be a determination for the purposes of subsection (3) unless the decision specifically states that it is to be taken to be a determination for the purposes of subsection (3) <sup>35</sup> .  | S. 135A(3A)<br>inserted by<br>No. 7/1996<br>s. 33(1),<br>amended by<br>No. 81/1998<br>s. 25(9).  |
| (4) If the Authority or self-insurer has determined in accordance with subsection (3) that the degree of impairment of a worker is less than 30 per centum, the person may not bring proceedings for the recovery of damages in respect of the injury unless—  | S. 135A(4)<br>amended by<br>Nos 50/1994<br>s. 64(6)(a),<br>81/1998<br>s. 25(9).  |

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S. 135A(4)(a)  
amended by  
No. 81/1998  
s. 25(9).

- (a) the Authority or self-insurer—
  - (i) is satisfied that the injury is a serious injury; and
  - (ii) issues to the worker a certificate in writing consenting to the bringing of the proceedings; or

S. 135A(4)(b)  
amended by  
No. 107/1997  
s. 47(6).

- (b) a court, on the application of the worker made within 30 days after the determination was made or, with the consent of the Authority under subsection (6A), after that period, gives leave to bring the proceedings.

S. 135A(4A)  
inserted by  
No. 107/1997  
s. 47(7),  
amended by  
No. 81/1998  
s. 25(9).

- (4A) If a worker makes an application for a determination under subsection (3) of the degree of impairment of the worker, the worker must not make a further application for such a determination unless it is the first application made after the Authority or self-insurer has refused to make a determination in accordance with subsection (2C).

- (5) A copy of an application under subsection (4) must be served on the Authority or self-insurer and on each person against whom the applicant claims to have a cause of action.

S. 135A(6)  
amended by  
No. 50/1994  
s. 64(6)(b).

- (6) A court must not give leave under subsection (4)(b) unless it is satisfied that the injury is a serious injury.

S. 135A(6A)  
inserted by  
No. 107/1997  
s. 47(8),  
amended by  
No. 82/2001  
s. 23(1)(b)(ii).

- (6A) If, on the application of a worker, the Authority is satisfied that—

S. 135A(6A)(a)  
amended by  
No. 82/2001  
s. 23(1)(b)(i).

- (a) the worker is unable to commence proceedings in accordance with this section because of the operation of subsection (4)(b); and

- (b) the failure to comply with subsection (4)(b) was not due to any fault or omission of the worker or the worker's legal representative—  
the Authority may consent to the bringing of an application under subsection (4)(b). S. 135A(6A)(b)  
amended by  
No. 82/2001  
s. 23(1)(b)(i).
- (6B) If the Authority is satisfied that a worker is unable to commence proceedings in accordance with this section because of the operation of subsection (2DE), on the application of the worker the Authority may consent to the commencement of proceedings— S. 135A(6B)  
inserted by  
No. 82/2001  
s. 23(2).
- (a) either—
- (i) earlier than 21 days after the date the counter offer is made; or
- (ii) later than 51 days, but no later than 81 days, after that date—
- if the Authority is satisfied that the defence of the proceedings will not be prejudiced; or
- (b) later than 81 days after the date the counter offer is made if the Authority is satisfied that the failure to comply with subsection (2DE) was not due to any fault or omission of the worker or the worker's legal representative.
- (6C) The Authority may consent to the commencement of proceedings under subsection (6B) even though the relevant time limit expired before the date of commencement of section 23 of the **Accident Compensation (Amendment) Act 2001**. S. 135A(6C)  
inserted by  
No. 82/2001  
s. 23(2).
- (7) A court must not, in proceedings in accordance with this section, award to a worker in respect of an injury—

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(a) pecuniary loss damages—

S. 135A(7)(a)(i)  
amended by  
Nos 50/1994  
s. 64(6)(c)  
(d)(i), 7/1996  
s. 49(l),  
102/2004  
s. 40(i),  
80/2010  
ss 81(d), 83(h),  
67/2013  
s. 633(h).

S. 135A(7)  
(a)(ii)  
amended by  
Nos 50/1994  
s. 64(6)(d)(ii),  
7/1996  
s. 49(m),  
102/2004  
s. 40(k),  
80/2010  
ss 81(d), 83(i),  
67/2013  
s. 633(i).

- (i) if the total pecuniary loss damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under subsection (11), is less than \$59 670 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or
- (ii) in excess of \$1 343 540 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or

(b) pain and suffering damages—

S. 135A(7)  
(b)(i)  
amended by  
Nos 50/1994  
s. 64(6)(c)  
(d)(i), 7/1996  
s. 49(l),  
102/2004  
s. 40(j),  
80/2010  
ss 81(e), 83(j),  
67/2013  
s. 633(j).

- (i) if the total pain and suffering damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under subsection (11), is less than \$50 680 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or



- (ii) in excess of \$514 360 or that amount as varied in accordance with Division 2D of Part IV as at the date of the award; or
- (c) damages of any other kind, other than damages in the nature of interest.
- (8) A dependant of a worker may recover damages under Part III of the **Wrongs Act 1958** in respect of the death of a worker.
- (9) A court must not, in proceedings under Part III of the **Wrongs Act 1958** award damages in accordance with subsection (8) in respect of the death of a person in excess of \$500 000.
- (10) Damages awarded under this section in respect of pecuniary loss shall not include damages in respect of—
- (a) any loss suffered or that may be suffered as a result of the incurring of costs or expenses of a kind referred to in Division 2B of Part IV; or
- (b) the value of services of a domestic nature or services relating to nursing and attendance—
- (i) which have been or are to be provided by another person to the person in whose favour the award is made; and
- (ii) for which the person in whose favour the award is made has not paid and is not and will not be liable to pay.

S. 135A(7)  
(b)(ii)  
amended by  
Nos 50/1994  
s. 64(6)(d)(iii),  
7/1996  
s. 49(n),  
102/2004  
s. 40(l),  
80/2010  
ss 81(e), 83(k),  
67/2013  
s. 633(k).

S. 135A(10)(a)  
amended by  
No. 80/2010  
s. 78(r).

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S. 135A(11)  
amended by  
No. 50/1994  
s. 64(6)(e).

(11) If a judgment, order for damages, settlement or compromise is made or entered in favour of a worker or the dependants of a worker in respect of proceedings referred to in subsection (1), the amount of the judgment, order for damages, settlement or compromise must be reduced by—

S. 135A(11)(a)  
amended by  
Nos 84/1994  
s. 63, 74/2000  
s. 3(Sch. 1  
item 1.7),  
80/2010  
s. 78(s).

(a) to the extent that it is in respect of pecuniary loss, the amount of compensation (if any) paid otherwise than under sections 98 and 98A and Division 2B of Part IV or to the extent that section 93(10)(a) of the **Transport Accident Act 1986** applies, except any such compensation paid in respect of the whole or any part of the period of 18 months after the relevant transport accident;

S. 135A(11)(b)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 1.8).

(b) to the extent that it is in respect of non-pecuniary loss, the amount of compensation (if any) paid under sections 98 and 98A.

(12) If the amount of a judgment is subject to a reduction under subsection (11), that reduction must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.

(13) Subject to the rules of the court—

S. 135A(13)(b)  
amended by  
No. 107/1997  
s. 47(9)(a).

(a) in proceedings relating to an application for leave of the court under subsection (4)—  
costs are to be awarded against a party against whom a decision is made; and

(b) unless subsection (13A) applies in proceedings for the recovery of damages in accordance with this section—

(i) if no liability to pay damages is established, costs are to be awarded against the claimant; and

- |   |  |
|---|--|
| <p>(ii) if damages are assessed but cannot be awarded under this section, each party bears its own costs; and</p> <p>(iii) if damages are awarded, costs are to be awarded against the Authority or self-insurer.</p>   | <p>S. 135A(13)(b)(iii) amended by Nos 107/1997 s. 47(9)(b), 81/1998 s. 25(9).</p>  |
| <br>  |  |
| <p>(13A) In proceedings for the recovery of damages commenced in accordance with this section after a statutory offer was made, or deemed to have been made, under subsection (2DE)—</p> <p>(a) if no liability to pay damages is established, the worker must pay costs assessed on the standard basis of the employer, Authority or self-insurer and the worker's own costs;</p> <p>(b) if judgment is obtained or a settlement or compromise is made in an amount not less than 90 per cent of the worker's statutory counter offer under subsection (2DE) and more than the statutory offer of the Authority or self-insurer, the Authority or self-insurer must pay the worker's costs assessed on the standard basis and its own costs;</p> <p>(c) if judgment is obtained or a settlement or compromise is made in an amount not more than the statutory offer of the Authority or self-insurer under subsection (2DE), the worker must pay costs assessed on the standard basis of the Authority or self-insurer and the worker's own costs;</p> <p>(d) if judgment is obtained or a settlement or compromise is made in an amount that is more than the statutory offer of the Authority</p> | <p>S. 135A(13A) inserted by No. 107/1997 s. 47(10).</p><br><p>S. 135A (13A)(a) amended by Nos 81/1998 s. 25(9), 10/2022 s. 13(a).</p><br><p>S. 135A (13A)(b) amended by Nos 81/1998 s. 25(9), 10/2022 s. 13(b).</p><br><p>S. 135A (13A)(c) amended by Nos 81/1998 s. 25(9), 10/2022 s. 13(c).</p><br><p>S. 135A (13A)(d) amended by No. 81/1998 s. 25(9)</p> |

or self-insurer under subsection (2DE) but less than 90 per cent of the worker's statutory counter offer under that subsection, each party bears its own costs—

and the court must not otherwise make an order as to costs.

S. 135A(13B)  
inserted by  
No. 107/1997  
s. 47(10).

(13B) For the purpose of the taxing of costs in proceedings to which this section applies, that are commenced on or after 12 November 1997 any applicable scale of costs has effect as if amounts in the scale were reduced by 10 per cent.

S. 135A(13C)  
inserted by  
No. 107/1997  
s. 47(10).

(13C) A person who represents or acts on behalf of a worker is not entitled—

- (a) to recover any costs from that worker in respect of any proceedings under this section commenced on or after 12 November 1997; or
- (b) to claim a lien in respect of those costs; or
- (c) to deduct those costs from any sum awarded as damages—

unless an award of costs has been made by the court in respect of those costs or those costs are payable in accordance with this section by the worker.

S. 135A(13D)  
inserted by  
No. 107/1997  
s. 47(10).

(13D) The court, on the application of—

- (a) the worker; or
- (b) the person representing or acting on behalf of the worker—

may determine the amount of costs to be awarded to the person representing or acting on behalf of the worker.

- (14) Where an award of damages in accordance with this section is to include an amount, assessed as a lump sum, in respect of damages for future loss which is referable to—

**S. 135A(14)**  
**amended by**  
**No. 50/1994**  
**s. 64(6)(f).**

- (a) deprivation or impairment of earning capacity; or
- (b) loss of the expectation of financial support; or
- (c) a liability to incur expenditure in the future; or
- (d) any loss suffered by a dependant—

the present value of the future loss must be qualified by adopting a discount rate of 3 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

- (15) Except as provided by subsection (14), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.
- (16) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest shall be payable, on any amount of damages, other than damages referable to loss actually suffered before the date of the award, in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to date of the award.
- (17) Except as provided by subsection (16), nothing in that subsection affects any other law relating to the payment of interest on any amount of damages, other than special damages.

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

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S. 135A(18)  
amended by  
Nos 50/1994  
s. 64(6)(g)(h),  
81/1998  
s. 25(10).

(18) If judgment is obtained, or a compromise or settlement made in proceedings referred to in subsection (1) in respect of an injury, the Authority, the employer or self-insurer is not liable—

S. 135A(18)(a)  
amended by  
Nos 102/2004  
s. 11(1),  
41/2006  
s. 15(4),  
9/2010  
s. 61(1).

(a) where pecuniary loss damages are awarded, to pay weekly payments in respect of the injury; or

(b) where pain and suffering damages are awarded, to make payments under section 98 or 98A in respect of the injury.

S. 135A(18AA)  
inserted by  
No. 9/2010  
s. 61(2).

(18AA) If judgment is obtained, or a compromise or a settlement is made, in respect of proceedings referred to in subsection (1) and the worker was, at the date of the judgment, compromise or settlement, still in receipt of compensation in the form of weekly payments, where pecuniary loss damages are awarded against the Authority, employer or self-insurer, the Authority, employer or self-insurer must, until the date on which a cheque is drawn for the purpose of payment of the judgment, compromise or settlement, pay to the worker a weekly amount equal to the net weekly amount that, but for subsection (18), would have been payable to the worker as compensation in the form of weekly payments in respect of the injury.

S. 135A(18AB)  
inserted by  
No. 9/2010  
s. 61(2).

(18AB) Subsection (18AA) applies only in respect of proceedings referred to in subsection (1) against a sole defendant where that sole defendant was the worker's employer at the date of the injury the subject of the proceedings.

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

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(18AC) An amount paid in accordance with subsection (18AA) is, to the extent of the payment, part satisfaction of the liability in respect of the judgment, settlement or compromise.

S. 135A(18AC)  
inserted by  
No. 9/2010  
s. 61(2).

(18A) If—

S. 135A(18A)  
inserted by  
No. 107/1997  
s. 47(11),  
amended by  
No. 81/1998  
s. 25(9).

(a) a written application for a determination under subsection (3) was made before 12 November 1997 by a worker to the Authority or self-insurer; and

S. 135A  
(18A)(a)  
amended by  
No. 81/1998  
s. 25(10).

(b) the advice of the Authority or self-insurer was not given before that date; and

S. 135A  
(18A)(b)  
amended by  
No. 81/1998  
s. 25(9).

(c) the period of 60 days after the application was received by the Authority or self-insurer expires on or after that date—

S. 135A  
(18A)(c)  
amended by  
No. 81/1998  
s. 25(9).

the Authority or self-insurer must advise the worker in accordance with subsections (2D) and (2DA) within 120 days after receiving from the worker—

(d) a copy of all medical reports; and

(e) affidavits attesting to such other material—

existing when the worker gives copies of any such reports and affidavits to the Authority and of which the worker or his or her legal representative is aware and on which the worker intends to rely, or the substance of which the worker intends to adduce in evidence, in proceedings in accordance with this section or in any related proceedings.

S. 135A(18B)  
inserted by  
No. 107/1997  
s. 47(11).

(18B) If subsection (18A) applies to an application, this section, as amended by section 47 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**, applies, subject to subsection (18A), as if the application had been made under this section as so amended.

S. 135A(19)  
def. of  
*determination date*  
inserted by  
No. 107/1997  
s. 47(12),  
amended by  
No. 102/2004  
s. 11(2).

(19) In this section—

*determination date*, in relation to an injury, means the date on which—

- (a) the injury is determined, or deemed, in accordance with this section, or declared by a court, to be a serious injury; or
- (b) a certificate is issued under subsection (4)(a) in relation to the injury; or
- (c) any appeal by the Authority or a self-insurer against a decision of a court to give leave under subsection (4)(b) is determined—

whichever is applicable;

S. 135A(19)  
def. of  
*medical report*  
inserted by  
No. 107/1997  
s. 47(11).

*medical report* means—

- (a) a statement in writing on medical matters concerning the worker, made by a medical practitioner; and
- (b) includes any document which the medical practitioner intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently;



***pain and suffering damages*** means damages for pain and suffering, loss of amenities of life or loss of enjoyment of life;

***pecuniary loss damages*** means damages for loss of earnings, loss of earning capacity, loss of value of services or any other pecuniary loss or damage;

***response date*** means the date on which the period of 28 days after the determination date expires;

S. 135A(19)  
def. of  
*response date*  
inserted by  
No. 107/1997  
s. 47(11).

***serious injury*** means—

- (a) serious long-term impairment or loss of a body function; or
- (b) permanent serious disfigurement; or
- (c) severe long-term mental or severe long-term behavioural disturbance or disorder; or
- (d) loss of a foetus.

#### **135AB Directions**

- (1) For the purposes of section 135A, the Minister may issue directions for or with respect to procedures under that section.

S. 135AB  
inserted by  
No. 107/1997  
s. 48.

\* \* \* \* \*

S. 135AB(2)  
repealed by  
No. 80/2010  
s. 122(6).

- (3) The directions may include directions about the provision of information by affidavit and the attending of conferences.
- (4) A person to whom a direction under this section applies, and the legal representatives and agents of such a person, must comply with the direction.

- (5) The directions may specify that a failure to comply with a particular provision of the directions has the effect of altering a period applicable under that section.

S. 135AC  
inserted by  
No. 107/1997  
s. 48,  
substituted by  
No. 26/2000  
s. 22.

#### **135AC Limitation of Actions Act 1958**

Despite anything to the contrary in the **Limitation of Actions Act 1958**, proceedings in accordance with section 135 or 135A must not be commenced—

- (a) subject to the **Limitation of Actions Act 1958**, unless paragraph (b) applies, unless an application for a determination from the worker under section 135A(2B) has been made to the Authority or a self-insurer before 1 September 2000; or
- (b) if the cause of action arose before 12 November 1997 and the incapacity arising from the injury was not known until after 12 November 1997, unless an application for a determination from the worker under section 135A(2B) has been made to the Authority or a self-insurer before the expiration of 3 years after the date the incapacity became known.

S. 135AC(b)  
substituted by  
No. 82/2001  
s. 24.

S. 135AD  
inserted by  
No. 9/2010  
s. 63.

#### **135AD Limitation of Actions Act 1958**

- (1) For the avoidance of doubt, it is declared that, sections 135A and 135AC do not affect the date of accrual of a cause of action for the purposes of the **Limitation of Actions Act 1958**.
- (2) Subsection (1) is deemed to have commenced on the appointed day.

\* \* \* \* \*

S. 135B  
inserted by  
No. 67/1992  
s. 46(3),  
amended by  
Nos 50/1994  
s. 64(7)–(10),  
81/1998  
s. 25(9),  
26/2000 s. 23,  
repealed by  
No. 67/2013  
s. 638(6).

## **Division 9A—Actions by terminally ill workers**

Pt 4 Div. 9A  
(Heading and  
s. 135BA)  
inserted by  
No. 102/2004  
s. 12.

### **135BA Actions by terminally ill workers**

S. 135BA  
inserted by  
No. 102/2004  
s. 12.

- (1) This section applies if a worker who may have an entitlement to recover damages in accordance with section 134AB or 135A in respect of an injury arising out of or in the course of, or due to the nature of, employment believes that that injury or an unrelated medical condition or injury gives rise to an imminent risk of death.
- (2) If this section applies, the worker may subject to compliance with the requirements of this section bring proceedings in accordance with—
  - (a) section 134AB without complying with the requirements of subsections (1) to (21) and subsections (27), (28) and (38) of that section; or
  - (b) section 135A without complying with subsections (1) to (6) and subsections (13), (13A), (18A) and (18B) of that section.
- (3) If a worker commences proceedings under section 134AB or 135A on the basis that this section applies, the worker must within 30 days of

S. 135BA(3)  
amended by  
No. 24/2008  
s. 74(a).

the commencement of the proceedings apply to an Associate Judge of the Supreme Court—

- (a) for an order allowing leave for the worker to proceed nunc pro tunc; and
- (b) for an order allowing an expedited hearing of the proceedings.

S. 135BA(4)  
amended by  
No. 24/2008  
s. 74(b).

- (4) The Associate Judge of the Supreme Court must not grant the orders referred to in subsection (3) unless the Associate Judge of the Supreme Court is satisfied on the balance of probabilities that the injury arising out of or in the course of, or due to the nature of, employment or an unrelated medical condition or injury gives rise to an imminent risk of death of the worker.

S. 135BA(5)  
amended by  
No. 24/2008  
s. 74(b).

- (5) If the Associate Judge of the Supreme Court does not grant the orders referred to in subsection (3), the Associate Judge of the Supreme Court must make an order that the proceedings be struck out on the grounds that this section does not apply and that the proceedings have not been brought in accordance with section 134AB or 135A.

S. 135BA(6)  
amended by  
No. 24/2008  
s. 74(b).

- (6) If the Associate Judge of the Supreme Court does grant the orders referred to in subsection (3), the worker can only recover damages in accordance with section 134AB, 135A or 135AC if the worker establishes that the worker has a serious injury within the meaning of section 134AB(38) or 135A(19).

S. 135BBA  
inserted by  
No. 9/2010  
s. 62.

**135BBA Actions by terminally ill workers continued after death of worker**

- (1) This section applies if—
  - (a) a worker dies after serving proceedings issued in reliance on section 135BA to commence proceedings, in accordance with section 134AB; and

- (b) the worker's death was not caused or materially contributed to by the injury to which the proceedings relate; and
  - (c) at the time of the worker's death, the worker had a dependant or dependants within the meaning of section 134ABAA(8).
- (2) If this section applies—
- (a) the legal personal representative of the deceased worker may continue the proceedings referred to in subsection (1)(a); and
  - (b) proceedings referred to in subsection (1)(a) are taken to be, and are limited to, an application served under section 134AB(16) by the worker before the worker's death; and
  - (c) subject to paragraph (d), section 134ABAA applies to the proceedings referred to in subsection (1)(a); and
  - (d) despite section 134ABAA(3), (4) and (5), for the purposes of the assessment of serious injury, the assessment must be made as at the date the proceedings referred to in subsection (1)(a) were served.

S. 135BBA  
(2)(b)  
amended by  
Nos 80/2010  
s. 97, 43/2012  
s. 3(Sch.  
item 1.4).

## **Division 9B—Actions by workers with asbestos-related conditions**

Pt 4 Div. 9B  
(Heading and  
s. 135BB)  
inserted by  
No. 69/2008  
s. 9.

### **135BB Actions by workers with asbestos-related conditions**

S. 135BB  
inserted by  
No. 69/2008  
s. 9.

- (1) This section applies to a worker who may have an entitlement to recover damages in accordance with section 134AB or 135A in respect of an injury that is an asbestos-related condition arising

out of, or in the course of, or due to the nature of, employment.

- (2) If this section applies, the worker may, subject to compliance with the requirements of this section, bring proceedings in accordance with—
  - (a) section 134AB without complying with the requirements of subsections (1) to (21) and subsections (27), (28) and (38) of that section; or
  - (b) section 135A without complying with subsections (1) to (6) and subsections (13), (13A), (18A) and (18B) of that section.
- (3) If a worker commences proceedings under section 134AB or 135A on the basis that this section applies, the worker must within 30 days of the commencement of the proceedings apply to an Associate Judge of the Supreme Court—
  - (a) for an order allowing leave for the worker to proceed *nunc pro tunc*; and
  - (b) for an order allowing an expedited hearing of the proceedings if the asbestos-related condition gives rise to an imminent risk of death.
- (4) The Associate Judge of the Supreme Court must not grant the orders referred to in subsection (3) unless the Associate Judge of the Supreme Court is satisfied on the balance of probabilities that the injury arising out of, or in the course of, or due to the nature of, employment is an asbestos-related condition.
- (5) If the Associate Judge of the Supreme Court does not grant the orders referred to in subsection (3), the Associate Judge of the Supreme Court must make an order that the proceedings be struck out on the grounds that this section does not apply and

that the proceedings have not been brought in accordance with section 134AB or 135A.

- (6) If the Associate Judge of the Supreme Court does grant the orders referred to in subsection (3), the worker can only recover damages in accordance with section 134AB, 135A or 135AC if the worker establishes that the worker has a serious injury within the meaning of section 134AB(38) or 135A(19).
- (7) If the worker dies from the asbestos-related condition before the hearing of the proceeding, it is established for the purposes of subsection (6) that the worker had a serious injury within the meaning of section 134AB(38) or 135A(19).
- (8) In this section, asbestos-related condition has the same meaning as it has in the **Asbestos Diseases Compensation Act 2008**.

## **Division 9C—Subsequent actions by workers with silica-related conditions**

Pt 4 Div. 9C  
(Heading and  
ss 135BC–  
135BH)  
inserted by  
No. 10/2022  
s. 9.

### **135BC Definitions**

S. 135BC  
inserted by  
No. 10/2022  
s. 9.

In this Division—

*initial award* has the meaning set out in section 135BD(a);

*serious silica-related condition* means a condition that is—

- (a) specified in an Order made under section 51A of the **Workplace Injury Rehabilitation and Compensation Act 2013** as being an eligible progressive disease that is attributable to exposure to silica dust; and

(b) a serious injury within the meaning of section 134AB(37);

*subsequent action* means an action for a subsequent award of damages for a serious silica-related condition;

*subsequent award* has the meaning set out in section 135BD(b).

S. 135BD  
inserted by  
No. 10/2022  
s. 9.

**135BD Initial and subsequent award of damages for serious silica-related conditions**

If it is proved or admitted in an action for damages in respect of a serious silica-related condition that the worker may at some time in the future develop another serious silica-related condition wholly or partly as a result of the act or omission giving rise to the cause of action, the court may—

- (a) award, in the first instance, damages for the serious silica-related condition assessed on the assumption that the worker will not develop another serious silica-related condition (the *initial award*); and
- (b) award damages at a future date if the worker does develop another serious silica-related condition (the *subsequent award*).

S. 135BE  
inserted by  
No. 10/2022  
s. 9.

**135BE Only one subsequent award of damages permitted**

If an initial award of damages has been made to a worker in respect of a serious silica-related condition only one subsequent award of damages for another serious silica-related condition can be made to that worker.

S. 135BF  
inserted by  
No. 10/2022  
s. 9.

**135BF Regard must be had to initial award of damages**

If an initial award of damages has been made to a worker for a serious silica-related condition, a court must have regard to those damages when assessing damages to be awarded in a subsequent



action for damages for another serious silica-related condition suffered by that worker.

**135BG Regard must be had to legal costs incurred in initial action**

S. 135BG  
inserted by  
No. 10/2022  
s. 9.

- (1) If an initial award of damages has been made to a worker for a serious silica-related condition, a court must have regard to the legal costs incurred in respect of the action for those damages (the *initial action*) when assessing the amount to be awarded as legal costs in a subsequent action for damages by that worker for another serious silica-related condition.
- (2) The purpose of subsection (1) is to ensure that legal costs awarded in a subsequent action are not in respect of work undertaken for the purposes of the initial action.
- (3) In considering any possible duplication of legal costs, the court must have regard to the following factors—
  - (a) any work undertaken in the initial action—
    - (i) to identify the party or parties to be named as defendants; and
    - (ii) to identify the circumstances of the worker's exposure to silica; and
    - (iii) in relation to the negligence or breach of duty of the party or parties to be named as defendants; and
    - (iv) as to the relationship and causal nexus between the worker's condition and the exposure to silica;
  - (b) any other factors that the court considers appropriate.

S. 135BH  
inserted by  
No. 10/2022  
s. 9.

### **135BH Total award of damages not to exceed relevant statutory maximum**

Despite anything to the contrary in this Part, a worker is not entitled to an amount of damages under this Division to the extent that the total amount of damages from the initial award of damages and the subsequent award of damages exceeds any maximum amount payable under section 134AB(22), as in force at the time the subsequent award of damages is made.

Pt 4 Div. 10  
(Heading)  
inserted by  
No. 26/2000  
s. 20(3).

## **Division 10—Other actions and rights**

S. 135C  
inserted by  
No. 107/1997  
s. 49.

### **135C Damages under Part III of Wrongs Act 1958**

- (1) A dependant of a worker may recover damages under Part III of the **Wrongs Act 1958** in respect of the death of a worker arising otherwise than out of a transport accident within the meaning of the **Transport Accident Act 1986**.
- (2) A court must not, in proceedings under Part III of the **Wrongs Act 1958**, award damages in accordance with subsection (1) in respect of the death of a person in excess of \$886 330.
- (3) If an award of damages in accordance with subsection (1) is to include an amount, assessed as a lump sum, in respect of damages for future loss which is referable to—
  - (a) deprivation or impairment of earning capacity; or
  - (b) loss of the expectation of financial support; or

S. 135C(2)  
amended by  
Nos 102/2004  
s. 40(m),  
80/2010  
s. 83(l),  
67/2013  
s. 633(l).

- (c) a liability to incur expenditure in the future;  
or
- (d) any loss suffered by a dependant—  
the present value of the future loss must be  
qualified by adopting a discount rate of 3 per cent  
in order to make appropriate allowance for  
inflation, the income from investment of the sum  
awarded and the effect of taxation on that income.
- (4) Except as provided in subsection (3), nothing in  
that subsection affects any other law relating to  
the discounting of sums awarded as damages.
- (5) A court must not, in relation to an award of  
damages in accordance with this section, order the  
payment of interest, and no interest is payable, on  
any amount of damages, other than damages  
referable to loss actually suffered before the date  
of the award, in respect of the period from the date  
of the death of the person in respect of whom the  
award is made, to the date of the award.
- (6) Except as provided in subsection (5), nothing in  
that subsection affects any other law relating to  
the payment of interest on any amount of  
damages, other than special damages.
- (7) If a judgment, order for damages, settlement or  
compromise is made or entered in favour of a  
dependant of a worker in respect of proceedings in  
respect of the death of the worker—
  - (a) the amount of the judgment, order for  
damages, settlement or compromise must be  
reduced by the sum of the compensation  
(if any) paid under section 92, 92A, 92B  
or 92D in respect of the death; and
  - (b) the Authority, the employer or self-insurer is  
not liable to pay compensation, or further  
compensation, in respect of the death.

S. 135C(7)(a)  
amended by  
No. 9/2010  
s. 66(2).

S. 135C(7)(b)  
amended by  
No. 81/1998  
s. 25(10).

S. 135D  
inserted by  
No. 26/2000  
s. 24,  
repealed by  
No. 67/2013  
s. 638(6).

\* \* \* \*

S. 136  
amended by  
Nos 111/1986  
s. 180(3)  
(Sch. 2  
item 3(c)),  
67/1992  
s. 64(7)(a).

### **136 Authority or employer not liable for certain costs and expenses**

Where a worker is or appears to be entitled to costs and expenses in respect of an injury under this Act, and that injury has arisen out of the use of a motor car before the commencement of section 34 of the **Transport Accident Act 1986**, the Authority, a self-insurer or an employer is not liable for any costs or expenses in respect of which the Transport Accident Commission may make payment under section 122 or 145 of the **Transport Accident Act 1986**.

### **137 Liability of the Transport Accident Commission**

S. 137(1)  
amended by  
Nos 111/1986  
s. 180(3)  
(Sch. 2  
item 3(d)(i)  
(ii)), 67/1992  
s. 64(7)(c).

(1) Where—

S. 137(1)(a)  
amended by  
Nos 83/1987  
s. 75, 67/1992  
s. 64(7)(c).

(a) the Authority, a self-insurer or an employer is required under this Act to pay an amount of compensation in respect of the death or injury of a worker (being death or injury that was caused by or arose out of the use of a motor car before the commencement of section 34 of the **Transport Accident Act 1986**); and

S. 137(1)(b)  
amended by  
No. 111/1986  
s. 180(3)  
(Sch. 2  
item 3(d)(i)(ii)).

(b) the Transport Accident Commission would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make payments in respect of

the death or injury under the **Transport Accident Act 1986**—

the Transport Accident Commission shall, notwithstanding anything to the contrary in the **Transport Accident Act 1986**, be liable to make payment to the Authority, self-insurer or employer in accordance with subsection (2).

- (2) The total amount of any payment to be made under subsection (1) by the Transport Accident Commission in respect of an injury or death shall be an amount equal to—
- (a) the amount of compensation payable under Division 2 (except sections 98 and 99) of Part IV less the amount of any payment in respect of that injury or death made under section 15A of the **Motor Accident Act 1973** or section 138 of the **Transport Accident Act 1986**;  
S. 137(2) amended by No. 111/1986 s. 180(3) (Sch. 2 item 3(d)(iii)).  
S. 137(2)(a) amended by Nos 111/1986 s. 180(3) (Sch. 2 item 3(d)(iv)), 64/1989 s. 35(j).
  - (b) the total amount of the payments which the Transport Accident Commission would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make under section 141, 142 or 143 of the **Transport Accident Act 1986** in respect of that death or injury; or  
S. 137(2)(b) amended by No. 111/1986 s. 180(3) (Sch. 2 item 3(d)(v)).
  - (c) \$20 800—
- whichever is the lesser.
- (3) The Transport Accident Commission is not liable to make a payment under subsection (1) to the Authority, a self-insurer or an employer in respect of an amount of compensation if the Authority, the self-insurer or the employer has not made a claim to the Transport Accident Commission within three months after the Authority, the self-insurer or the employer paid the amount of compensation.  
S. 137(3) amended by Nos 111/1986 s. 180(3) (Sch. 2 item 3(d)(vi)), 67/1992 s. 64(7)(c).

S. 137(4)  
amended by  
Nos 111/1986  
s. 180(3)  
(Sch. 2  
item 3(d)(vi)–  
(ix)), 67/1992  
s. 64(7)(c).

- (4) The provisions of the **Transport Accident Act 1986** relating to application for and determination of payments in respect of the death or injury of a person shall apply to payments which the Transport Accident Commission is liable to make under subsection (1) as if the Authority, the self-insurer or employer were the injured person or (in the case of the death of the injured person) a spouse or child of the deceased wholly, mainly or in part dependent upon the earnings of the deceased (as the case requires), and as if in section 69 of that Act the requirement that a claim to the Transport Accident Commission be made within six years after the date of the accident were disregarded.

S. 137(5)  
amended by  
Nos 111/1986  
s. 180(3)  
(Sch. 2  
item 3(d)(vi)),  
67/1992  
s. 64(7)(c).

- (5) If an employer has made a claim to the Transport Accident Commission within three months after paying an amount of compensation, the Transport Accident Commission shall not make a payment under this section to the Authority in respect of an amount of compensation paid in respect of an injury to a worker unless the Transport Accident Commission has made payment to the employer in respect of the claim.

S. 137(5A)  
inserted by  
No. 26/2000  
s. 25(1).

- (5A) If—
- (a) the Authority is required under this Act to pay an amount of compensation in respect of the death or injury of a worker arising out of a transport accident within the meaning of section 3 of the **Transport Accident Act 1986** on or after the commencement of section 25 of the **Accident Compensation (Common Law and Benefits) Act 2000**; and
  - (b) the Transport Accident Commission would, if no compensation were payable under this Act in respect of the death or injury, have

been liable to make payments in respect of that death or injury under the **Transport Accident Act 1986**—

the Transport Accident Commission shall, notwithstanding anything to the contrary in the **Transport Accident Act 1986**, be liable to make payment to the Authority of an amount equal to the total amount of compensation paid or payable under this Act and any amount paid or payable under an award of damages or in a settlement of a claim or action for damages in respect of that death or injury.

(5B) If—

S. 137(5B)  
inserted by  
No. 26/2000  
s. 25(1),  
amended by  
No. 84/2000  
s. 38.

- (a) a self-insurer has appointed the Transport Accident Commission to be its agent under section 147A; and
- (b) the self-insurer is required under this Act to pay an amount of compensation in respect of the death or injury of a worker arising out of a transport accident within the meaning of section 3 of the **Transport Accident Act 1986** on or after the commencement of section 25 of the **Accident Compensation (Common Law and Benefits) Act 2000** and arising during the course of the agency arrangement; and
- (c) the Transport Accident Commission would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make payments in respect of that death or injury under the **Transport Accident Act 1986**—

S. 137(5B)(a)  
amended by  
No. 67/2013  
s. 638(7).

the Transport Accident Commission shall, notwithstanding anything to the contrary in the **Transport Accident Act 1986**, be liable to make payment to the self-insurer of an amount equal to the total amount of compensation paid under this Act in respect of that death or injury less an amount equal to the employer's excess that would be applicable under section 125A if a WorkCover insurance policy was in force.

S. 137(6)  
substituted by  
No. 111/1986  
s. 180(3)  
(Sch. 2  
item 3(d)(x)).

- (6) Moneys in the Transport Accident Fund under the **Transport Accident Act 1986** may be applied for the purpose of making any payment which the Transport Accident Commission is liable to make under this section.

S. 137A  
inserted by  
No. 50/1994  
s. 66.

### **137A Settlement between Transport Accident Commission and the Authority**

S. 137A(1)  
amended by  
Nos 26/2000  
s. 25(2),  
80/2010 s. 75.

- (1) If—

S. 137A(1)(a)  
amended by  
Nos 26/2000  
s. 25(2),  
80/2010 s. 75.

- (a) the Transport Accident Commission is liable to make a payment to the Authority in accordance with section 137(1) or 137(5A);  
or

S. 137A(1)(b)  
amended by  
Nos 26/2000  
s. 25(2),  
80/2010 s. 75.

- (b) it appears to the Authority and the Transport Accident Commission that the Transport Accident Commission may become liable to make further payments to the Authority in accordance with section 137(1) or 137(5A)—

the Transport Accident Commission and the Authority may undertake a settlement of that liability or potential liability to make payments in accordance with section 137(1) or 137(5A).



- (2) For the purposes of a settlement under subsection (1) of a liability or potential liability, the Authority and the Transport Accident Commission may, despite section 137(2) or 137(5A), determine the value of that liability or potential liability in any manner they think fit.

S. 137A(2)  
amended by  
No. 26/2000  
s. 25(2).

### **138 Indemnity by third party**

S. 138  
amended by  
Nos 111/1986  
s. 180(3)  
(Sch. 2  
item 3(e)),  
67/1992  
ss 47, 64(7)(c),  
50/1993  
s. 102(1)  
(a)–(d),  
substituted by  
No. 50/1994  
s. 67.

- (1) Where an injury or a death for which compensation has been paid, or is or may be payable, by the Authority, a self-insurer or an employer was caused under circumstances creating a liability in a third party to pay damages or that would have created such a liability if the injury or death had been caused in Victoria or that would, but for section 134A, create such a liability in respect of the injury or death, the Authority, self-insurer or employer is entitled to be indemnified by the third party in accordance with this section.
- (2) In determining for the purposes of subsection (1) whether an injury or death was caused under circumstances creating a liability in a third party to pay damages or that would have created such a liability if the injury or death had been caused in Victoria in respect of the injury or death, Divisions 8A and 9 of Part IV must not be taken into account.

S. 138(1)  
amended by  
Nos 107/1997  
s. 50, 81/1998  
s. 25(9)(10),  
65/2008  
s. 8(1).

S. 138(2)  
amended by  
Nos 82/2001  
s. 25, 65/2008  
s. 8(1).

(3) The amount which a third party is required to pay as indemnity under subsection (1) is the lesser of—

- (a) the amount of compensation paid or payable under this Act in respect of the injury or death; and
- (b) the amount calculated, were it not for the provisions of this Act, the **Transport Accident Act 1986** and Parts VB, VBA and X of the **Wrongs Act 1958**, in accordance with the formula—

$$[A - (B + C)] \times \frac{X}{100}$$

where—

X is the extent, expressed as a percentage, whereby the third party's act, default or negligence caused or contributed to the injury or death;

A is the amount of damages (disregarding the extent, if any, whereby any other person's act, default or negligence caused or contributed to the injury or death) for pecuniary loss and non pecuniary loss which the third party is or would have been liable to pay in respect of the injury or death;

B is the amount recovered or recoverable by the Authority, the self-insurer or the employer under section 137 from the Transport Accident Commission (otherwise than under a settlement);

C is the amount paid by the third party in respect of the injury or death to the worker or the dependants of the worker under any settlement of, or judgment in,

S. 138(3)(b)  
amended by  
Nos 60/1996  
s. 22(a)(b),  
81/1998  
s. 25(11),  
65/2008  
s. 8(2).

an action by the worker or dependants  
of the worker against the third party.

- (4) Judgment against or settlement by a third party in an action by a worker, or dependants of a worker, in respect of an injury or death referred to in subsection (1) does not eliminate or diminish the right of indemnity given by this section, except to the extent provided in this section.
- (4A) A term of any contract that requires the employer or has the effect of requiring the employer to indemnify the third party in respect of any liability that the third party has or may have under this section is void. **S. 138(4A) inserted by No. 9/2010 s. 121.**
- (5) If the Transport Accident Commission is liable to make payment to the Authority under section 137(5A) or to a self-insurer under section 137(5B) in respect of a death or injury and the Authority or self-insurer is entitled under this section to be indemnified by a third party in respect of the liability, the entitlement of the Authority or self-insurer is subrogated to the Transport Accident Commission by virtue of this subsection. **S. 138(5) inserted by No. 26/2000 s. 25(3).**
- (6) The Authority may, in its discretion, seek to recover any indemnity that the employer is entitled to under this section, including an amount that represents the employer's liability to pay compensation under section 125(1)(a) or 125A(3), on the employer's behalf, if— **S. 138(6) inserted by No. 9/2010 s. 122.**
- (a) the Authority advises the employer of the Authority's intention to seek the indemnity for the employer; and
- (b) the employer gives the Authority the employer's written consent to seek the indemnity under this section on the employer's behalf.

S. 138(7)  
inserted by  
No. 9/2010  
s. 122.

- (7) If the Authority recovers an amount from a third party on behalf of the employer that includes an amount that represents the employer's liability to pay compensation under section 125(1)(a) or 125A(3), the Authority may, in its absolute discretion, decide how that amount is to be dispersed.

S. 138(8)  
inserted by  
No. 9/2010  
s. 122.

- (8) Any proceedings to seek review of a decision made by the Authority under subsections (6) or (7) in respect of recovery action taken on behalf of an employer (including a decision to not take recovery action on behalf of an employer) must not be brought, whether against the Authority or otherwise.

S. 138(9)  
inserted by  
No. 9/2010  
s. 122.

- (9) In subsection (8), *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.

S. 138A  
inserted by  
No. 107/1997  
s. 51,  
amended by  
No. 26/2000  
s. 20(4).

### 138A Substantive law

For the avoidance of doubt, it is hereby declared that all the provisions of Division 8A, Division 9 and this Division contain matters that are substantive law and are not procedural in nature.

**138B Compensation for pain and suffering**

New s. 138B  
inserted by  
No. 26/2000  
s. 26.

- (1) A court must not exercise the powers conferred by Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991** to make a compensation order within the meaning of that Subdivision if the compensation would be for a matter arising from discriminatory conduct that constitutes an offence against section 242AA or for a matter—
- (a) arising from an injury or death in respect of which it appears to the court that the person has an entitlement to any compensation under this Act; and
  - (b) arising from an event that constitutes an offence only against the **Dangerous Goods Act 1985**, the **Occupational Health and Safety Act 2004** or the **Equipment (Public Safety) Act 1994** or any regulations made under any of those Acts.
- (2) Notwithstanding anything to the contrary in Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**, this section applies to and in respect of any offence referred to in subsection (1) committed on or after the commencement of section 26 of the **Accident Compensation (Common Law and Benefits) Act 2000**.
- (3) For the purposes of subsection (1)(a), a person is not to be regarded as having an entitlement to any compensation under this Act if the entitlement would only arise under section 99(1)(b), 99(1)(c) or 92A (only by virtue of subsection (10)).

S. 138B(1)  
amended by  
Nos 54/2000  
s. 25(3)(a)(b),  
9/2010 s. 25.

S. 138B(1)(b)  
amended by  
No. 107/2004  
s. 177(6).

S. 138B(2)  
amended by  
No. 54/2000  
s. 25(4).

S. 138B(3)  
amended by  
No. 67/2013  
s. 638(8).

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IV—Payment of compensation

Pt 4 Div. 10  
(Heading and  
s. 138B)  
inserted by  
No. 60/1996  
s. 21 (as  
amended by  
No. 107/1997  
s. 77(a)(b)),  
repealed by  
No. 81/1998  
s. 25(12).

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Accident Compensation Act 1985  
No. 10191 of 1985

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*	*	*	*	*	<b>Pt 5 (Heading and ss 139–155) substituted by No. 9/2010 s. 126,<sup>36</sup> repealed by No. 67/2013 s. 639.</b>
*	*	*	*	*	<b>Pt 6 (Heading and ss 156–178), repealed by No. 9/2010 s. 131.<sup>37</sup></b>
*	*	*	*	*	<b>Pt 6A (Heading and ss 164–176) inserted by No. 28/2005 s. 6, amended by Nos 34/2007 s. 4, 9/2010 s. 163, 80/2010 s. 105, repealed by No. 67/2013 s. 639.</b>

Accident Compensation Act 1985  
No. 10191 of 1985

Pt 7  
(Heading and  
ss 179–236)  
amended by  
Nos 10255  
s. 8(1)(c)(d),  
48/1986 ss 27,  
29, 30(1)(2),  
83/1987  
ss 87–91,  
57/1989  
s. 3(Sch.  
items 3.3, 3.4),  
64/1989  
ss 23–25,  
35(n)(o),  
37(1)(e)(f),  
45/1990  
s. 109(e)(i)(ii),  
18/1991 ss 9,  
11, 12(1)(p),  
67/1992 ss 50,  
51(1)–(3),  
50/1993 ss 76,  
110(1)(i),  
repealed by  
No. 50/1994  
s. 78(1).

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Pt 7A  
(Heading and  
ss 179–188)  
inserted by  
No. 60/1996  
s. 26,  
amended by  
Nos 107/1997  
s. 53, 52/1998  
s. 311(Sch. 1  
items 1.9,  
1.10), 81/1998  
s. 26(1)–(4),  
9/2010 ss 155,  
164–167,  
80/2010  
ss 78(t), 89(3),  
repealed by  
No. 67/2013  
s. 639.

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Accident Compensation Act 1985  
No. 10191 of 1985

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**Pt 7B  
(Heading and  
ss 189–236B)  
inserted by  
No. 9/2010  
s. 129,  
amended by  
Nos 80/2010  
ss 78(u)–(w),  
107, 108,  
109(1)–(3),  
29/2011  
s. 3(Sch. 1  
item 2.4),  
repealed by  
No. 67/2013  
s. 639.**

Accident Compensation Act 1985  
No. 10191 of 1985  
Part VIII—General

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**Part VIII—General**

S. 237 repealed by No. 83/1987 s. 92.	*	*	*	*	*
Pt 8 Div. 1 (Heading and ss 236C– 236F) inserted by No. 82/2012 s. 171, amended by Nos 82/2012 s. 304(c), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
Pt 8 Div. 2 (Heading) inserted by No. 82/2012 s. 171, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 237A inserted by No. 83/1987 s. 93, amended by No. 67/1992 s. 64(7)(a), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*

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*	*	*	*	*	<p><b>S. 238</b> amended by Nos 64/1989 s. 35(p), 67/1992 s. 64(7)(a), 50/1993 s. 81(i), 50/1994 s. 79, 81/1998 s. 26(5), 80/2010 s. 78(x), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 238A</b> inserted by No. 95/2003 s. 13, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 239</b> amended by Nos 83/1987 s. 94, 67/1992 s. 64(7)(a), 50/1994 s. 80(1), 7/1996 s. 39, 107/1997 s. 55(3)(a), 102/2004 s. 32, 80/2010 s. 110, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

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S. 239AAA inserted by No. 9/2010 s. 17, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 239AAB inserted by No. 9/2010 s. 17, amended by No. 80/2010 s. 111, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 239AAC inserted by No. 9/2010 s. 17, amended by No. 55/2013 s. 11, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 239AAD inserted by No. 30/2013 s. 60(Sch. item 1), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*

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*	*	*	*	*	<p><b>S. 239A</b> inserted by No. 67/1992 s. 52, substituted by No. 7/1996 s. 40, amended by Nos 81/1998 s. 26(5), 102/2004 s. 33, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 239AA</b> inserted by No. 102/2004 s. 34, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 240</b> amended by Nos 67/1992 s. 64(7)(a), 50/1994 s. 80(2), 7/1996 s. 41, 107/1997 s. 55(3)(a), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

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S. 240A inserted by No. 7/1996 s. 42, amended by Nos 60/1996 s. 27, 107/1997 s. 54, 9/2010 s. 168, 80/2010 s. 112, 37/2014 s. 10(Sch. item 2.3), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 241 amended by No. 64/1989 s. 26, substituted by No. 9/2010 s. 169, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 242 amended by No. 67/1992 s. 55(1)(a)(b), substituted by No. 50/1994 s. 81, amended by Nos 7/1996 s. 43, 107/1997 s. 55(1)(3)(b), 81/1998 s. 26(1), 95/2003 s. 11(b), 34/2007 s. 5, 9/2010 ss 22, 130(3)(c), 170, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*

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*	*	*	*	*	S. 242AA inserted by No. 9/2010 s. 23, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 242AB inserted by No. 9/2010 s. 23, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 242AC inserted by No. 9/2010 s. 23 (as amended by No. 80/2010 s. 159(a)(i)), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 242AD inserted by No. 9/2010 s. 23, amended by No. 80/2010 s. 114, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).

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S. 242AE  
inserted by  
No. 9/2010  
s. 23,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 242AF  
inserted by  
No. 9/2010  
s. 23 (as  
amended by  
No. 80/2010  
s. 159(a)(ii)),  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 242A  
inserted by  
No. 50/1994  
s. 81,  
amended by  
No. 60/1996  
s. 25(b),  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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*	*	*	*	*	<p><b>S. 243</b> amended by Nos 83/1987 s. 95, 18/1988 s. 6(3)(4), 64/1989 s. 27, 67/1992 ss 53, 64(7)(a)(c), 50/1994 s. 82, 7/1996 s. 44(1), 60/1996 ss 25(c), 28, 46/1998 s. 7(Sch. 1), 52/1998 s. 311(Sch. 1 item 1.11), 74/2000 s. 3(Sch. 1 item 1.9), 107/2004 s. 177(7), 28/2005 s. 11, 77/2008 s. 129(Sch. 2 item 2), 9/2010 s. 51(2)(b), 80/2010 s. 113, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 244</b> amended by Nos 37/1987 s. 10(7), 83/1987 s. 96, 18/1988 s. 6(5)(6), 67/1992 ss 54, 64(7)(a)(c), 100/1995 s. 32(Sch. 2 item 1), 7/1996 s. 44(2), 60/1996 s. 25(d), 46/1998 s. 7(Sch. 1), 28/2005 s. 12, repealed by No. 83/2009 s. 39.</p>

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S. 244A inserted by No. 23/1986 s. 11, amended by No. 67/1992 s. 64(7)(a), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 245 amended by Nos 48/1986 s. 8(3), 67/1992 s. 64(7)(a), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 246 amended by Nos 83/1987 s. 97(1), 67/1992 s. 64(7)(a), 50/1994 s. 83(a)(b), 81/1998 s. 26(6), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*

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No. 10191 of 1985  
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*	*	*	*	*	<p><b>S. 247</b> amended by Nos 83/1987 s. 97(2), 67/1992 s. 64(7)(a), 50/1994 s. 83(c)–(e), 81/1998 s. 26(7)(a)(b), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 248</b> substituted by No. 83/1987 s. 98, amended by Nos 67/1992 s. 55(2), 50/1994 s. 83(f), 9/2010 s. 172, 80/2010 s. 106, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 248AA</b> inserted by No. 67/1992 s. 56, amended by Nos 50/1994 s. 83(g), 9/2010 s. 171, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

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Part VIII—General

S. 248A inserted by No. 64/1989 s. 28, amended by Nos 50/1993 s. 81(j), 18/2005 s. 18(Sch. 1 item 1.3), 9/2010 ss 142, 173, 80/2010 s. 18(a), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 248AB inserted by No. 9/2010 s. 97, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 248B inserted by No. 64/1989 s. 28, amended by Nos 67/1992 ss 57, 64(7)(a), 9/2010 s. 98, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 248BA inserted by No. 9/2010 s. 99, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*

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*	*	*	*	*	<p><b>S. 248C</b> inserted by No. 64/1989 s. 28, amended by Nos 67/1992 ss 57, 64(7)(a), 80/2010 s. 115, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 248D</b> inserted by No. 9/2010 s. 133, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 248E</b> inserted by No. 9/2010 s. 133, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 249</b> amended by Nos 83/1987 s. 99, 64/1989 s. 35(q), 67/1992 s. 58(1)(2), 50/1994 s. 83(h), 7/1996 s. 45, 107/1997 s. 56, 102/2004 s. 36, 9/2010 s. 174, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

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S. 249A  
inserted by  
No. 83/1987  
s. 100,  
amended by  
No. 64/1989  
s. 29(1),  
substituted by  
No. 67/1992  
s. 59,  
amended by  
Nos 50/1993  
s. 110(1)(j),  
50/1994  
s. 83(i),  
107/1997 s. 57,  
81/1998  
s. 26(8),  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 249AA  
inserted by  
No. 9/2010  
s. 143,  
amended by  
No. 80/2010  
s. 18(b),  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 249AB  
inserted by  
No. 9/2010  
s. 143,  
amended by  
No. 80/2010  
s. 18(c),  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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Accident Compensation Act 1985  
No. 10191 of 1985  
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**S. 249B**  
inserted by  
No. 67/1992  
s. 60,  
substituted by  
No. 50/1994  
s. 84,  
amended by  
Nos 7/1996  
s. 46, 107/1997  
s. 11(7)(c),  
81/1998  
s. 26(9),  
69/2009  
s. 54(Sch. Pt 2  
item 1),  
substituted by  
No. 9/2010  
s. 143 (as  
amended by  
No. 80/2010  
s. 159(p)),  
amended by  
No. 80/2010  
ss 18(d),  
117(1),  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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**S. 249BA**  
inserted by  
No. 9/2010  
s. 143,  
amended by  
Nos 80/2010  
ss 18(e), 116,  
117(2),  
27/2012 s. 7,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 249BB inserted by No. 9/2010 s. 143, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 249BC inserted by No. 9/2010 s. 143, amended by No. 80/2010 s. 18(f), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 249C inserted by No. 107/1997 s. 11(6), amended by Nos 52/1998 s. 311(Sch. 1 items 1.12 (as amended by No. 101/1998 s. 22(1)(a)), 1.13, 1.14), 9/2010 s. 144(4)(5), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*



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*	*	*	*	*	<p><b>S. 250</b> amended by Nos 50/1994 s. 85, 9/2010 s. 175, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 250A</b> inserted by No. 7/1996 s. 47, substituted by No. 80/2010 s. 118, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 250AA</b> inserted by No. 80/2010 s. 118, amended by No. 29/2011 s. 3(Sch. 1 item 2.5), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>Ss 250B, 250C</b> inserted by No. 28/2005 s. 8, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

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S. 251 substituted by No. 9/2010 s. 176, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 251A inserted by No. 9/2010 s. 177, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*
S. 252 amended by Nos 64/1989 ss 29(2), 35(r), 67/1992 ss 61(1) (a)(b)(d)(2)(3), 64(7)(a), 50/1994 s. 86, 7/1996 s. 48, 60/1996 s. 29, 107/1997 ss 58, 59, 34/2007 s. 6, 60/2007 s. 29(b), 68/2009 s. 97(Sch. item 3), 9/2010 ss 24, 130(3)(d)(e), 134, 80/2010 s. 119, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).	*	*	*	*	*

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*	*	*	*	*	S. 252AA inserted by No. 9/2010 s. 135, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 252A inserted by No. 67/1992 s. 62, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 252B inserted by No. 50/1994 s. 87, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 252C inserted by No. 107/1997 s. 60, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).
*	*	*	*	*	S. 252D inserted by No. 26/2000 s. 32, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).

Accident Compensation Act 1985  
No. 10191 of 1985  
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S. 252E  
inserted by  
No. 54/2000  
s. 26,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 252E  
inserted by  
No. 84/2000  
s. 40,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 252G  
inserted by  
No. 28/2005  
s. 25,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 252H  
inserted by  
No. 9/2010  
s. 73.

**252H Supreme Court—limitation of jurisdiction**

It is the intention of section 92D as inserted by section 71 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252I  
inserted by  
No. 9/2010  
s. 123.

**252I Supreme Court—limitation of jurisdiction**

It is the intention of section 138 as amended by section 122 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

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*	*	*	*	*	<p><b>S. 252J</b> inserted by No. 9/2010 s. 26 (as amended by No. 80/2010 s. 159(b)), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 252K</b> inserted by No. 9/2010 s. 27, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 252L</b> inserted by No. 9/2010 s. 44 (as amended by No. 80/2010 s. 159(h)), repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 252M</b> inserted by No. 9/2010 s. 92, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

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S. 252N  
inserted by  
No. 9/2010  
s. 136,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 252O  
inserted by  
No. 80/2010  
s. 120,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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S. 252P  
inserted by  
No. 80/2010  
s. 120,  
amended by  
No. 5/2021  
s. 38 (ILA  
s. 39B(1)).

**252P Supreme Court—limitation of jurisdiction**

(1) It is the intention of section 99(10) as inserted by section 77 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252P(2)  
inserted by  
No. 5/2021  
s. 38.

(2) It is the intention of section 99AI as inserted by section 35 of the **Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021** to alter or vary section 85 of the **Constitution Act 1975**.

Ss 252Q,  
252R  
inserted by  
No. 80/2010  
s. 120,  
repealed by  
No. 67/2013  
s. 640 (as  
amended by  
No. 44/2014  
s. 24(33)).

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*	*	*	*	*	<p><b>Ss 253AA, 253AB</b> inserted by No. 80/2010 s. 121, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>
*	*	*	*	*	<p><b>S. 253</b> amended by Nos 48/1986 s. 31, 83/1987 s. 101, 64/1989 ss 30, 35(s), 67/1992 s. 64(7)(a), substituted by No. 80/2010 s. 123<sup>38</sup>, repealed by No. 67/2013 s. 640 (as amended by No. 44/2014 s. 24(33)).</p>

Pt 9  
(Heading and  
ss 254–276)  
repealed by  
No. 48/1986  
s. 32,  
new Pt 9  
(Heading and  
ss 254–269)  
inserted by  
No. 95/2003  
s. 23.

## Part IX—Savings and transitional provisions—Amending Acts

### Division 1—Accident Compensation (Miscellaneous Amendment) Act 1997

New s. 254  
inserted by  
No. 95/2003  
s. 23.

#### 254 Definition of amending Act

In this Division *amending Act* means the **Accident Compensation (Miscellaneous Amendment) Act 1997**.

New s. 255  
inserted by  
No. 95/2003  
s. 23.

#### 255 Section 91 (Assessment of impairment)

- (1) Section 91, as amended by section 25 of the amending Act, applies to all claims for compensation under section 98C, irrespective of when the injury occurred or the claim is made.
- (2) Section 91, as in force immediately before 1 September 1998, continues to apply—
  - (a) to claims for compensation under section 98;
  - (b) to applications for determinations under section 135A(3);
  - (c) to all claims for weekly payments to which section 93C applies—

irrespective of when the injury occurred or the claim is made.

#### Note

1 September 1998 is the date of commencement of section 25 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**.



## **Division 2—Accident Compensation (Common Law and Benefits) Act 2000**

### **256 Definition of amending Act**

In this Division *amending Act* means the **Accident Compensation (Common Law and Benefits) Act 2000**.

New s. 256  
inserted by  
No. 95/2003  
s. 23.

### **257 Section 5A (Pre-injury average weekly earnings)**

- (1) Section 5A(1A), as amended by section 4 of the amending Act, applies in respect of a claim for weekly payments given, served or lodged—
  - (a) on or after 1 September 2000; but
  - (b) before the date of commencement of section 5 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**.
- (2) Section 5A as in force immediately before 1 September 2000 continues to apply in respect of a claim for weekly payments given, served or lodged before that date.
- (3) Section 5A(4), as amended by section 4 of the amending Act, applies in respect of a claim for weekly payments given, served or lodged on or after 1 September 2000.

New s. 257  
inserted by  
No. 95/2003  
s. 23.

#### **Note**

1 September 2000 is the date of commencement of section 4 of the **Accident Compensation (Common Law and Benefits) Act 2000**.

## **Division 3—Accident Compensation and Transport Accident Acts (Amendment) Act 2003**

New s. 258  
inserted by  
No. 95/2003  
s. 23.

### **258 Definitions**

In this Division—

*amending Act* means the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**;

*commencement date* means the day after the day on which the amending Act receives the Royal Assent.

New s. 259  
inserted by  
No. 95/2003  
s. 23.

### **259 Section 5(1) (Definition of *injury*)**

The definition of *injury* in section 5(1), as amended by section 3(1) of the amending Act, only applies to injuries that occur on or after the date of commencement of section 3.

New s. 260  
inserted by  
No. 95/2003  
s. 23.

### **260 Section 5(1) (Definition of *medical service*)**

The definition of *medical service* in section 5(1), as amended by section 4(1) of the amending Act, only applies to services provided on or after the date of commencement of section 4.

New s. 261  
inserted by  
No. 95/2003  
s. 23.

### **261 Section 5A (Pre-injury average weekly earnings)**

Section 5A, as amended by section 5 of the amending Act, applies in respect of a claim for weekly payments given, served or lodged on or after the date of commencement of section 5.

New s. 262  
inserted by  
No. 95/2003  
s. 23.

### **262 Section 82 (Entitlement to compensation)**

Section 82, as amended by section 3 of the amending Act, applies to all injuries that occur on or after the date of commencement of section 3.

**263 Section 86 (Compensation for disease due to employment)**

New s. 263  
inserted by  
No. 95/2003  
s. 23.

Section 86, as amended by section 3(7) of the amending Act, applies to all injuries that occur on or after the date of commencement of section 3.

**264 Section 91 (Assessment of impairment)**

New s. 264  
inserted by  
No. 95/2003  
s. 23.

- (1) Section 91, as amended by section 7 of the amending Act, applies to all assessments (including assessments made for the purposes of claims and applications referred to in section 255) made on or after the date of commencement of section 7.
- (2) For the purposes of assessments made for the purposes of claims and applications referred to in section 255(2), a reference in sections 91(9) and 91(10) to the A.M.A. Guides is to be read as a reference to the American Medical Association's Guides to the Evaluation of Permanent Impairment (Second Edition).
- (3) Section 91(7), as amended by section 8(3) of the amending Act, only applies in respect of assessments for injuries that are made on or after the date of commencement of section 8.
- (4) Despite the repeal of sections 91(11) and 91(12) by section 9(1) of the amending Act, those sections continue to apply according to their terms in respect of claims for compensation lodged before the date of commencement of section 9(1).

New s. 265  
inserted by  
No. 95/2003  
s. 23.

## **265 Section 98C (Compensation for non-economic loss)**

Section 98C, as amended by section 8 of the amending Act, only applies in respect of injuries that occur on or after the date of commencement of section 8.

### **Note**

The only effective changes made by section 8 are the inclusion of section 98C(2)(b), an increase to the formula amounts in section 98C(2)(c) and the inclusion of associated section 98C(2A). The other amendments made to amounts by section 8 were made for the purposes of consistency and merely reflect the amounts that applied under section 98C on the date of commencement of section 8 as a result of the indexation that occurred under section 100. Therefore nothing in section 265 affects those amounts.

New s. 266  
inserted by  
No. 95/2003  
s. 23.

## **266 Section 99 (Compensation for medical and like services)**

- (1) Section 99, as amended by section 4(2) of the amending Act, only applies to claims for compensation under section 99 made after the commencement date.
- (2) This Act continues to apply to a person who was injured before the commencement date for 18 months after the commencement date as if it had not been amended by section 4(2) of the amending Act.

New s. 267  
inserted by  
No. 95/2003  
s. 23.

## **267 Part IV (Payment of Compensation)**

- (1) The amendments made to Part IV by Part 3 of the amending Act do not apply in respect of an injury that occurred before the commencement of Part 3, and Part IV applies in respect of such an injury as if those amendments had not been made.
- (2) If the death of a worker results from both an injury that occurred before the date of commencement of Part 3 of the amending Act and an injury that occurred on or after that date, the worker is, for the purposes of the application of

the amendments made by Part 3 of that Act to and in respect of the death of the worker, to be treated as having died as a result of the injury that occurred on or after that date.

- (3) If a period of incapacity for work resulted both from an injury that occurred before the date of commencement of Part 3 of the amending Act and an injury that occurred on or after that date, the incapacity is, for the purposes of the application of the amendments made by Part 3 of that Act to and in respect of that incapacity for work, to be treated as having resulted from the injury that occurred on or after that date.
- (4) The amendments made by Part 3 of the amending Act and subsections (2) and (3) do not affect the apportionment of liability in a case where one or more of the injuries concerned occurred before, and one or more occurred on or after, the date of commencement of Part 3.

\* \* \* \* \*

New ss 268, 269 inserted by No. 95/2003 s. 23, repealed by No. 67/2013 s. 645.

## **Division 4—Accident Compensation Legislation (Amendment) Act 2004**

Pt 9 Div. 4 (Heading and ss 270–283) inserted by No. 102/2004 s. 41.

### **270 Sections 5(1), 88, 89, 91 and 98C—(claims for compensation for further loss of hearing)**

New s. 270 inserted by No. 102/2004 s. 41.

- (1) Subject to subsection (2), sections 5(1), 88, 89, 91 and 98C as amended by sections 15 to 18 of the **Accident Compensation Legislation (Amendment) Act 2004** apply in respect of a claim for compensation lodged under section 98C

on or after 18 November 2004 irrespective of whether the further injury, the prior injury or the prior hearing loss occurred before, on or after that date.

S. 270(2)  
amended by  
No. 28/2005  
s. 20(1).

- (2) Sections 5(1), 88, 89, 91 and 98C as in force before the commencement of sections 15 to 18 of the **Accident Compensation Legislation (Amendment) Act 2004** continue to apply in respect of a claim for compensation lodged under section 98C before 18 November 2004 in respect of a further injury which occurred after 12 November 1997.

S. 270(3)  
inserted by  
No. 28/2005  
s. 20(2).

- (3) Sections 89 and 91 as in force before the commencement of sections 15 and 16 of the **Accident Compensation Legislation (Amendment) Act 2004** continue to apply in respect of a claim for compensation in respect of a further injury which occurred before 12 November 1997 lodged under section 98 or 98A whether before, on or after that commencement.

New s. 271  
inserted by  
No. 102/2004  
s. 41,  
repealed by  
No. 67/2013  
s. 645.

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New s. 272  
inserted by  
No. 102/2004  
s. 41.

## **272 Section 92A (Revised compensation for death of worker)**

Section 92A as amended by section 14 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for compensation made on or after the commencement of section 14 of the **Accident Compensation Legislation (Amendment) Act 2004**.

**273 Section 93C (Grandfather provision)**

Section 93C as amended by section 20 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an application for a settlement made on or after the commencement of section 20 of the **Accident Compensation Legislation (Amendment) Act 2004**.

New s. 273  
inserted by  
No. 102/2004  
s. 41.

**274 Section 93CB (After the first entitlement period and until the expiry of the second entitlement period)**

Section 93CB as amended by section 21 of the **Accident Compensation Legislation (Amendment) Act 2004** applies to or in respect of a worker who lodges a claim for weekly payments on or after the commencement of section 21 of the **Accident Compensation Legislation (Amendment) Act 2004**.

New s. 274  
inserted by  
No. 102/2004  
s. 41.

**275 Section 93E (Injury after retirement)**

Section 93E as amended by section 23 of the **Accident Compensation Legislation (Amendment) Act 2004** applies to or in respect of—

- (a) a worker who as at 18 November 2004 has an entitlement under section 93E in respect of an injury which first arose when the worker had attained the age of 63 years; or
- (b) a worker who is injured on or after 18 November 2004 and has attained the age of 63 years as at the date of injury.

New s. 275  
inserted by  
No. 102/2004  
s. 41.

**276 Section 99—occupational rehabilitation services**

Section 99 as amended by section 24 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of the provision of occupational rehabilitation services on or after the commencement of section 24 of the

New s. 276  
inserted by  
No. 102/2004  
s. 41.

**Accident Compensation Legislation  
(Amendment) Act 2004.**

Ss 277, 278  
inserted by  
No. 102/2004  
s. 41,  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \*

S. 279  
inserted by  
No. 102/2004  
s. 41.

**279 Section 104B (Claims for compensation under section 98C)**

Section 104B as amended by section 4 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for compensation lodged under section 98C on or after the commencement of section 4 of the **Accident Compensation Legislation (Amendment) Act 2004** irrespective of whether the injury occurred before, on or after that date.

S. 280  
inserted by  
No. 102/2004  
s. 41.

**280 Section 119IA (Circumstances in which offer may be withdrawn or settlement avoided)**

Section 119IA as inserted by section 19 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an application for a settlement made on or after the commencement of section 19 of the **Accident Compensation Legislation (Amendment) Act 2004**.

S. 281  
inserted by  
No. 102/2004  
s. 41.

**281 Section 134AB (Actions for damages)**

- (1) Section 134AB as amended by sections 6 and 7 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an application made under section 134AB(4) on or after the commencement of sections 6 and 7 of the **Accident Compensation Legislation (Amendment) Act 2004**.



- (2) Section 134AB as amended by section 8(1) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages in respect of which a determination as to whether the injury is a serious injury has not been made or deemed to have been made before the commencement of section 8(1) of the **Accident Compensation Legislation (Amendment) Act 2004**.
- (3) Section 134AB as amended by section 8(2) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages made on or after the commencement of section 8(2) of the **Accident Compensation Legislation (Amendment) Act 2004** in respect of which a determination as to whether the injury is a serious injury has not been made or deemed to have been made before that commencement.

**282 Section 135A (Actions for damages)**

- (1) Section 135A as amended by section 11(1) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages made on or after the commencement of section 11(1) of the **Accident Compensation Legislation (Amendment) Act 2004** in respect of which a judgment has not been obtained or a compromise or settlement made before that commencement.
- (2) Section 135A as amended by section 11(2) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages made on or after the commencement of section 11(2) of the **Accident Compensation Legislation (Amendment) Act 2004** in respect of which an application for leave

S. 282  
inserted by  
No. 102/2004  
s. 41.

to bring proceedings for the recovery of damages  
has not been made before that commencement.

S. 283  
inserted by  
No. 102/2004  
s. 41.

**283 Section 135BA (Actions by terminally ill workers)**

Section 135BA as inserted by section 12 of the  
**Accident Compensation Legislation  
(Amendment) Act 2004** applies in respect of a  
claim for compensation made on or after the  
commencement of section 12 of the **Accident  
Compensation Legislation (Amendment) Act  
2004**.

Pt 9 Div. 5  
(Heading and  
ss 284, 285)  
inserted by  
No. 28/2005  
s. 24.

**Division 5—Accident Compensation (Amendment)  
Act 2005**

S. 284  
inserted by  
No. 28/2005  
s. 24.

**284 Sections 89, 91 and 98C—(claims for compensation  
for further loss of hearing)**

- (1) Subject to subsection (2), sections 89, 91 and 98C  
as amended by sections 17 to 19 of the **Accident  
Compensation (Amendment) Act 2005** apply in  
respect of a claim for compensation lodged under  
section 98C on or after 18 November 2004  
irrespective of whether the further injury, the prior  
injury or the prior hearing loss occurred before, on  
or after that date.
- (2) Despite the amendments made to sections 89, 91  
and 98C by sections 17 to 19 of the **Accident  
Compensation (Amendment) Act 2005**,  
sections 89, 91 and 98C as in force before the  
commencement of sections 15, 16 and 18 of the  
**Accident Compensation Legislation  
(Amendment) Act 2004** continue to apply in  
respect of a claim for compensation lodged under  
section 98C on or before 18 November 2004 in  
respect of a further injury which occurred on or  
after 12 November 1997.

**285 Sections 111, 114 and 114B**

Despite section 4A, sections 111, 114 and 114B as in force after the commencement of sections 22 and 23 of the **Accident Compensation (Amendment) Act 2005** apply in respect of the entitlement of a worker to weekly payments irrespective of when that entitlement arose.

S. 285  
inserted by  
No. 28/2005  
s. 24.

**Division 6—Treasury Legislation (Repeal) Act 2005**

Pt 9 Div. 6  
(Heading and  
s. 286)  
inserted by  
No. 73/2005  
s. 4(Sch. 2  
item 1).

**286 Saving of rights under Miners' Phthisis (Treasury Allowances) Act 1938**

Despite the repeal of the **Miners' Phthisis (Treasury Allowances) Act 1938** by the **Treasury Legislation (Repeal) Act 2005**, that 1938 Act continues to apply to any person who was in receipt of an allowance under that 1938 Act immediately before its repeal.

S. 286  
inserted by  
No. 73/2005  
s. 4(Sch. 2  
item 1).

**Division 7—Accident Compensation and Other Legislation (Amendment) Act 2006**

Pt 9 Div. 7  
(Heading and  
ss 287–295)  
inserted by  
No. 41/2006  
s. 26.

**287 Section 5A**

Section 5A as amended by section 3 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of the calculation of weekly payments of pension in respect of the death of a worker on or after 1 July 2006 resulting from, or materially contributed to, by the relevant injury irrespective of whether the relevant injury occurred before, on or after 1 July 2006.

S. 287  
inserted by  
No. 41/2006  
s. 26.

S. 288  
inserted by  
No. 41/2006  
s. 26.

## 288 Section 16

- (1) Subject to subsection (3), section 16 as amended by section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of any claim or proceedings made or lodged on or after 1 June 2006 irrespective of whether the injury occurred before, on or after 1 June 2006.
- (2) Subject to subsection (3), a worker who is or the dependants of a worker who are or may be entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment only because of the application of section 16 as in force before the commencement of section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** shall not, in proceedings in respect of the injury be entitled to compensation except in accordance with section 16 as amended by section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**.
- (3) The amendment of section 16 by section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** does not affect the rights of the parties in the proceedings known as *Adrian Whitehead v Carlton Football Club Limited & Ors* (No. 4905 of 2001) in the Supreme Court of Victoria (Court of Appeal).

S. 289  
inserted by  
No. 41/2006  
s. 26.

## 289 Sections 43, 50, 93C, 93CB and 93E

Despite section 4A, sections 43, 50, 93C, 93CB and 93E as amended by section 5 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** apply only in respect of any claim for weekly payments received by the Authority or a self-insurer on or after 1 January 2005, subject to the worker being otherwise entitled to receive weekly payments in accordance

with this Act or would be entitled but for the  
operation of section 96.

**290 Section 91**

**S. 290  
inserted by  
No. 41/2006  
s. 26.**

- (1) Subject to subsection (2)—
  - (a) section 91 as in force before the commencement of section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** continues to apply if before that commencement the worker has attended at least one impairment examination for the purposes of assessing the degree of psychiatric impairment, the degree of occupational asthma impairment or the degree of infectious occupational disease impairment;
  - (b) if paragraph (a) does not apply, section 91 as amended by section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies for the purposes of assessing the degree of psychiatric impairment, the degree of occupational asthma impairment or the degree of infectious occupational disease impairment in an impairment examination made on or after the commencement of section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**.
- (2) Despite subsection (1)(b), if the first guidelines under section 91 as amended by section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** are not in force on the commencement of section 9 of that Act, section 91 as in force before that commencement continues to apply for the purposes of assessing the degree of psychiatric impairment, the degree of occupational asthma impairment or the degree

of infectious occupational disease impairment in an impairment examination made on or after that commencement until the first guidelines are in force.

S. 291  
inserted by  
No. 41/2006  
s. 26.

#### 291 Section 92A

Section 92A as amended by section 11 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of compensation the entitlement to which arises as a result of the death of a worker on or after 1 July 2006.

S. 292  
inserted by  
No. 41/2006  
s. 26.

#### 292 Sections 93B, 93CB and 93CD

Despite section 4A, sections 93B, 93CB and 93CD as amended by section 13 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** apply in respect of entitlement periods on or after 1 July 2006.

S. 293  
inserted by  
No. 41/2006  
s. 26.

#### 293 Section 93EA

Section 93EA as inserted by section 14 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of an incapacity for work which arises on or after 1 July 2006.

S. 294  
inserted by  
No. 41/2006  
s. 26.

#### 294 Section 99

Section 99 as amended by section 16 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of a severe injury within the meaning of section 99(1A) which occurs on or after 1 July 2006.

S. 295  
inserted by  
No. 41/2006  
s. 26.

#### 295 Sections 114 and 114B

Sections 114 and 114B as amended by sections 20 and 21 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** apply in respect of any claim for weekly payments

received by the Authority or a self-insurer on or after 1 January 2005, subject to the worker being otherwise entitled to receive weekly payments in accordance with this Act.

## **Division 8—Transport Accident and Accident Compensation Acts Amendment Act 2007**

Pt 9 Div. 8  
(Heading and  
ss 296, 297)  
inserted by  
No. 60/2007  
s. 28.

### **296 Section 91**

S. 296  
inserted by  
No. 60/2007  
s. 28.

- (1) Subject to subsections (2) and (3), section 91, as amended by section 25 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, applies in respect of any assessment of the degree of impairment resulting from an injury, being an assessment that relates to any claim for compensation made under section 98C, irrespective of when the injury occurred or when the claim for compensation under section 98C was made.
- (2) Despite subsection (1), the amendment of section 91 by section 25 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** does not affect the rights of the parties in the proceedings known as *Mountain Pine Furniture Pty Ltd v Taylor* [2007] VSCA 146.
- (3) Despite subsection (1), section 91 as in force immediately before the commencement of section 25 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** continues to apply if before that commencement a worker has—
  - (a) made a claim for compensation under section 98C; and

(b) attended, after the injury has stabilised, at least one independent impairment examination under section 104B(4) for the purposes of assessing the degree of impairment under section 104B(5) conducted in accordance with the decision in the proceedings known as *Mountain Pine Furniture Pty Ltd v Taylor* [2007] VSCA 146.

S. 297  
inserted by  
No. 60/2007  
s. 28.

#### 297 Section 99(1)(aa)

Section 99(1)(aa), as amended by section 26 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, applies in respect of any claim for compensation made under that section after the commencement of section 26 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, irrespective of when the injury or death occurred.

Pt 9 Div. 9  
(Heading and  
s. 298)  
inserted by  
No. 68/2007  
s. 24.

### Division 9—State Taxation and Accident Compensation Acts Amendment Act 2007

S. 298  
inserted by  
No. 68/2007  
s. 24.

#### 298 Section 99

Section 99 as amended by section 22 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**, applies in respect of any claim for compensation made under that section, irrespective of when the injury occurred or when the claim was made.



**Division 10—Compensation and Superannuation  
Legislation Amendment Act 2008**

Pt 9 Div. 10  
(Heading and  
s. 299)  
inserted by  
No. 65/2008  
s. 9.

**299 Section 138 (Indemnity by third party)**

S. 299  
inserted by  
No. 65/2008  
s. 9.

Section 138, as amended by section 8 of the  
**Compensation and Superannuation Legislation  
Amendment Act 2008**, applies in respect of any  
right of indemnity, regardless of when that right  
came into existence, unless before the  
commencement of that section—

- (a) the amount of the indemnity has been  
determined; or
- (b) judgment for damages has been given or  
entered; or
- (c) there has been a settlement or compromise of  
the claim in respect of which the right of  
indemnity arose.

**Division 11—Asbestos Diseases Compensation  
Act 2008**

Pt 9 Div. 11  
(Heading and  
s. 300)  
inserted by  
No. 69/2008  
s. 10.

**300 Section 135BB**

S. 300  
inserted by  
No. 69/2008  
s. 10.

- (1) Section 135BB as inserted by section 9 of the  
**Asbestos Diseases Compensation Act 2008**  
applies in respect of an action for damages made  
before or after the commencement of that  
section 9.
- (2) However subsection (1) does not apply to an  
action commenced before the commencement of  
section 9 of the **Asbestos Diseases  
Compensation Act 2008** if—

- (a) the hearing of the action had commenced before that commencement; or
- (b) damages were awarded or a settlement was reached (other than for provisional damages) in that action before that commencement.

Pt 9 Div. 12  
(Heading and  
ss 301–364)  
inserted by  
No. 9/2010  
s. 191.

## Division 12—Accident Compensation Amendment Act 2010

S. 301  
inserted by  
No. 9/2010  
s. 191.

### 301 Definitions

- (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**.

S. 302  
inserted by  
No. 9/2010  
s. 191.

### 302 Section 5A

Section 5A, as amended by sections 4, 5, 6, 7 and 8 of the amending Act, applies in respect of a claim first received by the Authority or self-insurer on or after the commencement date.

S. 303  
inserted by  
No. 9/2010  
s. 191.

### 303 Section 14(3)

Sections 14(3), 14AA and 16A, as inserted by sections 9 and 10 of the amending Act, apply in relation to claim for compensation given, served or lodged on or after the commencement date and premiums under the **Accident Compensation**

**(WorkCover Insurance) Act 1993** payable on or after that date.

**304 Section 82**

Section 82, as amended by sections 12, 13 and 14 of the amending Act, applies in respect of a claim, first given, served or lodged on or after the commencement date.

S. 304  
inserted by  
No. 9/2010  
s. 191.

**305 Sections 82A-82D**

Sections 82A, 82B, 82C and 82D of the **Accident Compensation Act 1985**, as inserted by section 15 of the amending Act, apply in respect of a claim first given, served or lodged on or after the commencement date.

S. 305  
inserted by  
No. 9/2010  
s. 191.

\* \* \* \* \*

S. 306  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 151),  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \* \*

S. 307  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 152),  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \* \*

S. 308  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 159(q)(i)),  
repealed by  
No. 67/2013  
s. 645.

Accident Compensation Act 1985  
No. 10191 of 1985  
Part IX—Savings and transitional provisions—Amending Acts

Ss 309, 310  
inserted by  
No. 9/2010  
s. 191,  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \*

S. 311  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 153),  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \*

S. 312  
inserted by  
No. 9/2010  
s. 191.

### 312 Section 93CA

Section 93CA, as inserted by section 31 of the  
amending Act, applies in respect of an injury  
occurring on or after the commencement date.

S. 313  
inserted by  
No. 9/2010  
s. 191,  
amended by  
No. 80/2010  
s. 124,  
substituted by  
No. 67/2013  
s. 641.

### 313 Section 93CD

(1) Despite section 4A—

- (a) section 93CD, except subsection (5), as substituted by section 34 of the amending Act, applies in respect of an injury occurring on or after the commencement date;
- (b) section 93CD, except subsection (5), as in force immediately before the commencement of section 34 of the amending Act, applies in respect of an injury occurring before the commencement date and applies after the commencement date as if the current weekly earnings amount specified in subsection (3) as in force immediately before the commencement date were the current weekly earnings amount which applies from time to time under subsection (4) as in force after the commencement date.

(2) Section 93CD(5), as substituted by section 34 of the amending Act, applies in relation to an entitlement period beginning on or after 5 April 2010.

**314 Section 93CDA**

Section 93CDA, as inserted by section 35 of the amending Act, applies in respect of a claim relating to an injury occurring on or after the commencement date.

S. 314  
inserted by  
No. 9/2010  
s. 191.

**315 Section 93CE**

Section 93CE, as inserted by section 37 of the amending Act, applies in respect of injuries occurring on or after the commencement date.

S. 315  
inserted by  
No. 9/2010  
s. 191.

**316 Section 92B**

Section 92B, as inserted by section 39(2) of the amending Act, applies in respect of claims given, served or lodged on or after the commencement date.

S. 316  
inserted by  
No. 9/2010  
s. 191.

**317 Sections 96 and 96A**

Sections 96 and 96A, as amended by sections 40 and 41 of the amending Act, apply in relation to an injury occurring on or after the commencement date.

S. 317  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 159(q)(ii)).

\* \* \* \* \*

S. 318  
inserted by  
No. 9/2010  
s. 191,  
repealed by  
No. 67/2013  
s. 645.

**319 Section 114**

Section 114(2)(c)(ii), (2A), (2B) and (2C), as substituted or inserted by section 45 of the amending Act, applies to a claim whether made before, on or after the commencement date.

S. 319  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 159(q)(iii)).

S. 320  
inserted by  
No. 9/2010  
s. 191.

### 320 Section 91

Section 91, as amended by section 53 of the amending Act, applies in respect of a claim under section 98C or 98E whether made before, on or after the commencement date if the worker attends the first impairment assessment for the purposes of section 104B(2)(b) on or after the commencement date.

S. 321  
inserted by  
No. 9/2010  
s. 191.

### 321 Section 98C

Section 98C, as amended by section 54 of the amending Act, applies in respect of a claim under section 98C whether made before, on or after the commencement date if the worker attends the first impairment assessment for the purposes of section 104B(2)(b) on or after the commencement date.

S. 322  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 154),  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \*

S. 323  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 155),  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \*

S. 324  
inserted by  
No. 9/2010  
s. 191,  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \*

**325 Section 134AB (Actions for damages)**

- (1) Section 134AB, as amended by sections 57(4) and (5) of the amending Act, applies in respect of any proceedings to recover damages in accordance with section 134AB where the initiating serious injury application was served on or after the commencement date.

S. 325  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 156).

- (2) Section 134AB, as amended by section 57(7) of the amending Act, applies in respect of any judgment, settlement or compromise made on or after the commencement date in respect of proceedings to recover damages under section 134AB.

S. 325(2)  
substituted by  
No. 80/2010  
s. 125.

- (3) Section 134AB, as amended by section 57(8) of the amending Act, applies in respect of serious injury application which is to be determined or resolved on or after the commencement date.

**326 Section 134ABAA (Determination of serious injury application following death of worker)**

Section 134ABAA, as inserted by section 58 of the amending Act, applies in respect of a worker whose death occurs on or after the commencement date.

S. 326  
inserted by  
No. 9/2010  
s. 191,  
amended by  
No. 80/2010  
s. 126.

**327 Section 135A (Actions for damages)**

Section 135A, as amended by section 61(2) of the amending Act, applies in respect of any judgment, settlement or compromise made on or after the commencement date in respect of proceedings to recover damages under section 135A.

S. 327  
inserted by  
No. 9/2010  
s. 191,  
substituted by  
No. 80/2010  
s. 127.

**328 Section 135BBA (Actions by terminally ill workers continued after death of worker)**

Section 135BBA, as inserted by section 62 of the amending Act, applies in respect of a worker whose death occurs on or after the commencement date.

S. 328  
inserted by  
No. 9/2010  
s. 191,  
substituted by  
No. 80/2010  
s. 128.

S. 329  
inserted by  
No. 9/2010  
s. 191.

**329 Section 92 (Compensation for death of a worker)**

Section 92, as amended by section 67 of the amending Act, applies in respect of—

- (a) a claim for compensation made on or after the commencement date;
- (b) claims for compensation that have not been determined by a court immediately before the commencement date.

S. 330  
inserted by  
No. 9/2010  
s. 191.

**330 Section 92A (Revised compensation for death of worker)**

- (1) Section 92A as amended by section 68(1) of the amending Act applies in respect of—
  - (a) a claim for compensation made on or after the commencement date;
  - (b) a claim for compensation that has not been determined by a Court immediately before the commencement date.
- (2) The definition of *dependent child* in section 92A, as amended by section 68(2) of the amending Act, applies to claims for compensation to which sections 92A and 92B apply, made on or after the commencement date.
- (3) Section 92A, as amended by section 68(3) of the amending Act, applies in respect of claims for compensation to which section 92A applies that have not been determined by the Court immediately before the commencement date.
- (4) Section 92A, as amended by section 68(4) of the amending Act, applies in respect of a claim for compensation that has not been determined by a court immediately before the commencement date.



- (5) Section 92A, as amended by section 68(5), (6), (7), (8), (9) and (10) of the amending Act, applies in respect of a claim for compensation that has not been determined by a Court immediately before the commencement date.
- (6) If subsection (5) applies to a claim, the interest to which a claimant is entitled on the amount of compensation payable under that claim is to be determined as follows—
  - (a) interest at the prescribed rate on the relevant maximum sum set out in section 92A(4), (5), (6), (7), (8), (8A), (8B) or (9) immediately before the commencement date of section 68(5), (6), (7), (8), (9) and (10) of the amending Act, for the period beginning on the date the claim for compensation was made to immediately before the commencement date; and
  - (b) interest at the prescribed rate on the relevant maximum sum set out in section 92A as amended by section 68(5), (6), (7), (8), (9) and (10) of the amending Act, for the period beginning on the commencement date to the date the claim is determined by the court or the Authority or self-insurer (as appropriate).

**331 Section 92AA (Re-imbursement of expenses incurred by non-dependant family members of a deceased worker)**

**S. 331  
inserted by  
No. 9/2010  
s. 191.**

Section 92AA, as inserted by section 69 of the amending Act, applies in respect of deaths that occur on and from the commencement date.

S. 332  
inserted by  
No. 9/2010  
s. 191.

**332 Section 92B (Weekly pension for dependants of worker who dies)**

Section 92B, as amended by section 70 of the amending Act, applies in respect of—

- (a) a claim for compensation under section 92B made on or after the commencement date;
- (b) a claim for compensation under section 92B that exists immediately before the commencement date.

S. 333  
inserted by  
No. 9/2010  
s. 191.

**333 Section 92D (Provisional payment)**

Section 92D, as inserted by section 71 of the amending Act, applies in respect of deaths that occur on and from the commencement date.

Ss 334–346  
inserted by  
No. 9/2010  
s. 191,  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \* \*

S. 347  
inserted by  
No. 9/2010  
s. 191.

**347 Sections 5(9A) and (10) and 5C to 5E (Remuneration)**

Sections 5(9A), 5(10), 5C, 5D and 5E, as amended by sections 94 and 95 of the amending Act, apply in respect of the calculation of premium on or after the commencement date.

S. 348  
inserted by  
No. 9/2010  
s. 191.

**348 Section 138 (Indemnity by third party)**

Section 138(4A), as inserted by section 121 of the amending Act, applies only to contracts entered into on or after the commencement date.

S. 349  
inserted by  
No. 9/2010  
s. 191 (as  
amended by  
No. 80/2010  
s. 157).

**349 Section 138 (Indemnity by third party)**

Sections 138(6), 138(7), 138(8) and 138(9), as inserted by section 122 of the amending Act, apply in respect of any right of indemnity that the Authority, self-insurer or employer has, regardless

of when that right came into existence, unless before the commencement date—

- (a) judgment for indemnity under section 138 has been given or entered; or
- (b) there has been a settlement or compromise of the claim for indemnity.

*	*	*	*	*	<b>S. 350</b> inserted by No. 9/2010 s. 191 (as amended by No. 80/2010 ss 158, 159(q)(iv)), repealed by No. 67/2013 s. 645.
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*	*	*	*	*	<b>S. 351</b> inserted by No. 9/2010 s. 191, repealed by No. 67/2013 s. 645.
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### **352 Retrospective operation of certain instruments of delegation**

**S. 352**  
inserted by  
No. 9/2010  
s. 191.

- (1) This section applies to the following instruments—
  - (a) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Royal Automobile Club of Victoria (RACV) Limited (ACN 004 060 833) purporting to take effect from 4.00 p.m. on 16 December 1994;
  - (b) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Hanson Australia (Holdings) Proprietary Limited (ACN 090 994 657) purporting to take effect from midnight on 30 November 2000;

- (c) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Burns, Philp & Company Pty Limited (ACN 000 000 359) purporting to take effect from 4.00 p.m. on 9 July 2004;
  - (d) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Goodman Fielder Limited (ACN 116 399 430) purporting to take effect from 4.00 p.m. on 23 December 2005;
  - (e) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Transfield Services Limited (ACN 000 484 417) purporting to take effect from 4.00 p.m. on 1 March 2007;
  - (f) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Crown Limited (ACN 125 709 953) purporting to take effect from midnight on 9 December 2007.
- (2) Each instrument of delegation has effect from the purported date by virtue of this section.

S. 352A  
inserted by  
No. 67/2013  
s. 642 (as  
amended by  
No. 44/2014  
s. 24(34)).

**352A Retrospective operation of certain instruments of delegation**

- (1) The instrument of delegation executed by the Authority on 20 April 2011 in respect of Brickworks Limited (ACN 000 028 526), which became a self-insurer on 30 April 2004 and assumed liability for the claims of Bristle Limited is to be taken to have had effect from 4 p.m. on 11 May 2001.
- (2) The instrument of delegation executed by the Authority on 20 April 2011 in respect of Building Supplies Group Holdings Pty Limited (ACN 121 366 041), which became a self-insurer at 4 p.m. on 5 November 2010 and assumed

liability for the claims of Carter Holt Harvey Australia Pty Limited is to be taken to have had effect from 4 p.m. on 5 November 1999.

- (3) The instrument of delegation executed by the Authority on 20 April 2011 in respect of Brambles Limited (ACN 118 896 021), which became a self-insurer at 4 p.m. on 5 November 2010 and assumed liability for the claims of Brambles Industries Limited is to be taken to have had effect from 4 p.m. on 5 November 1999.
- (4) Each instrument of delegation has effect from the purported date by virtue of this section.

\* \* \* \* \*

Ss 353–364  
inserted by  
No. 9/2010  
s. 191,  
repealed by  
No. 67/2013  
s. 645.

## Division 13—Transport Accident and Accident Compensation Legislation Amendment Act 2010

Pt 9 Div. 13  
(Heading and  
ss 365–389)  
inserted by  
No. 80/2010  
s. 129.

### 365 Definitions

S. 365  
inserted by  
No. 80/2010  
s. 129.

- (1) In this Division—

*amending Act* means the **Transport Accident and Accident Compensation Legislation 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**.

S. 366  
inserted by  
No. 80/2010  
s. 129.

### **366 Sections 5A to 5AE, 5B and Schedule 1A**

- (1) Sections 5A, 5AA, 5AB, 5AC, 5AD and 5AE and Schedule 1A, as inserted by sections 21 and 23 of the amending Act, apply in relation to a claim first received by the Authority or self-insurer on or after the commencement date.
- (2) Section 5B, as inserted by section 22 of the amending Act, applies in relation to a claim for weekly payments, whether made before, on or after the commencement date, in respect of an injury whether sustained before, on or after the commencement date.

S. 367  
(Heading),  
amended by  
No. 29/2011  
s. 3(Sch. 1  
item 2.6(a)).  
S. 367  
inserted by  
No. 80/2010  
s. 129,  
amended by  
No. 29/2011  
s. 3(Sch. 1  
item 2.6(b)).

### **367 Part I, Division 3 and sections 6 to 12, 14 and 15**

Division 3 of Part I, as inserted by section 24 of the amending Act, sections 6, 7, 7A, 8, 9, 10, 11, 12, and 14(4) and (5) as substituted by sections 25, 26, 27, 28, 29 and 31 of the amending Act and section 15 as amended by section 33 of the amending Act, apply in relation to—

- (a) a claim first received by the Authority or self-insurer on or after the commencement date; and
- (b) premiums under the **Accident Compensation (WorkCover Insurance) Act 1994** payable on or after the commencement date.

S. 368  
inserted by  
No. 80/2010  
s. 129.

### **368 Section 82D (Road traffic offences)**

Section 82D, as amended by section 48 of the amending Act, applies in respect of a conviction or finding overturned on appeal on or after 5 April 2010.

**368A Section 91(3AAA)**

Section 91(3AAA), as inserted by section 88(2) of the amending Act, applies to assessments of deafness made on or after 20 October 2010 for the purposes of assessing the degree of impairment in relation to a claim made before, on or after that date.

S. 368A  
inserted by  
No. 67/2013  
s. 643 (as  
amended by  
No. 44/2014  
ss 23, 24(35)).

**369 Section 91E (Benefits—definitions)**

Section 91E, as amended by section 50 of the amending Act, applies in respect of a claim first received by the Authority or self-insurer on or after the commencement date.

S. 369  
inserted by  
No. 80/2010  
s. 129.

**370 Section 92A (Death of a worker)**

Section 92A, as amended by section 52 of the amending Act, applies in respect of—

- (a) a claim for compensation made on or after the commencement date;
- (b) a claim for compensation that, immediately before the commencement date, has not been determined by the Authority or a self-insurer or by a court.

S. 370  
inserted by  
No. 80/2010  
s. 129.

**371 Section 93CE (Superannuation contributions)**

Section 93CE, as amended by section 56 of the amending Act, applies in respect of superannuation contributions payable on or after the commencement date.

S. 371  
inserted by  
No. 80/2010  
s. 129.

**372 Section 98C (Non-economic loss)**

- (1) Section 98C, as amended by section 60(1) of the amending Act, applies in respect of a claim, whether made before, on or after the commencement date, if a determination has not been made under section 104B(2) before that date.

S. 372  
inserted by  
No. 80/2010  
s. 129.

- (2) Section 98C, as amended by section 90 of the amending Act, applies in respect of a claim whether made before, on or after the commencement date if the worker attends the first impairment assessment for the purposes of section 104B(2)(b) on or after that date.

S. 373  
inserted by  
No. 80/2010  
s. 129.

**373 Section 98E (Total loss)**

Section 98E, as amended by section 61 of the amending Act, applies in respect of a claim whether made before, on or after the commencement date if the worker attends the first impairment assessment for the purposes of section 104B(2)(b) on or after that date.

S. 374  
inserted by  
No. 80/2010  
s. 129.

**374 Part IV, Division 2B (Compensation for medical and like services)**

Division 2B of Part IV, as inserted by section 77 of the amending Act, applies in respect of a liability of the Authority or a self-insurer arising on or after the commencement date.

S. 375  
inserted by  
No. 80/2010  
s. 129.

**375 Sections 117C to 117G**

No act, matter or thing is affected only because of the repeal of sections 117C, 117D, 117E, 117F and 117G of this Act by section 73 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010.**

Ss 376, 377  
inserted by  
No. 80/2010  
s. 129,  
repealed by  
No. 67/2013  
s. 645.

\* \* \* \* \*



**378 Section 134AB (Actions for damages)**

Section 134AB, as amended by section 64 of the amending Act, applies to new serious injury applications made under section 134AB(4) on or after the commencement date.

S. 378  
inserted by  
No. 80/2010  
s. 129.

\* \* \* \* \*

Ss 379–381  
inserted by  
No. 80/2010  
s. 129,  
repealed by  
No. 67/2013  
s. 645.

**382 Section 125A(3)**

- (1) Section 125A(3), as amended by section 72 of the amending Act, applies to objections made by a claimed employer under section 114I on or after the commencement date in respect of which the Authority has not, before that date, made a decision under section 114N.
- (2) For the purposes of subsection (1), a decision includes a deemed decision under section 114N(3).

S. 382  
inserted by  
No. 80/2010  
s. 129.

\* \* \* \* \*

Ss 383–387  
inserted by  
No. 80/2010  
s. 129,  
repealed by  
No. 67/2013  
s. 645.

**388 Section 92B**

- (1) Section 92B as amended by section 53(2) of the amending Act applies to weekly payments of pension paid or payable on or after the commencement date.
- (2) Payments of weekly pensions under section 92B made on or after 5 April 2010 and before the commencement of section 129 of the amending Act in accordance with section 92B as amended

S. 388  
inserted by  
No. 80/2010  
s. 129.

by section 53(2) of the amending Act are deemed to have been validly made.

S. 389  
inserted by  
No. 80/2010  
s. 129.

### **389 Guidelines under section 14AA**

Guidelines made under section 14AA(4) on 21 June 2010 are deemed to have been made in accordance with section 14AA(4) as amended by section 32(2) of the amending Act.

Pt 9 Div. 14  
(Heading and  
s. 390)  
inserted by  
No. 68/2012  
s. 4.

## **Division 14—Justice Legislation Amendment (Miscellaneous) Act 2012**

S. 390  
inserted by  
No. 68/2012  
s. 4.

### **390 Effect of repeal of section 134AE**

- (1) If an application for leave to bring proceedings under section 134AB(16)(b) has been made and heard but a decision has not been made on that application before 1 January 2013, on and from 1 January 2013, the court, in deciding that application, must give reasons as if section 134AE had not been repealed.
- (2) Despite section 14(2) of the **Interpretation of Legislation Act 1984**, in relation to an application for leave to bring proceedings under section 134AB(16)(b) commenced before 1 January 2013, other than an application referred to in subsection (1), on and from 1 January 2013, the repeal of section 134AE takes effect for the purposes of deciding that application.

**Division 15—Workplace Injury Rehabilitation and Compensation Act 2013**

Pt 9 Div. 15  
(Heading and  
s. 391)  
inserted by  
No. 67/2013  
s. 644.

**391 Workplace Injury Rehabilitation and Compensation Act 2013**

S. 391  
inserted by  
No. 67/2013  
s. 644.

- (1) Except as in the **Workplace Injury Rehabilitation and Compensation Act 2013** or regulations made under section 621 of that Act expressly provided, all persons, things and circumstances appointed or created by or under this Act or existing or continuing under this Act immediately before 1 July 2014 continue under and subject to the **Workplace Injury Rehabilitation and Compensation Act 2013** to have the same status, operation and effect as they respectively would have had if that Act had not been enacted.
- (2) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

**Division 16—WorkSafe Legislation Amendment Act 2017**

Pt 9 Div. 16  
(Heading and  
ss 392, 393)  
inserted by  
No. 48/2017  
s. 6.

**392 Amendment of section 99 (Liability of Authority and self-insurer)**

S. 392  
inserted by  
No. 48/2017  
s. 6.

This Act, as amended by section 3 of the **WorkSafe Legislation Amendment Act 2017**, applies to all claims made on or after the date on which section 3 of the **WorkSafe Legislation Amendment Act 2017** comes into operation.

S. 393  
inserted by  
No. 48/2017  
s. 6.

### **393 Savings provision—seafarers' claims**

- (1) This section applies to a claim for compensation made, and a premium collected or recovered, under this Act that, but for *Samson Maritime Pty Ltd v Noel Aucote* [2014] FCAFC 182, would be a valid claim or validly collected or recovered premium in accordance with this Act.
- (2) If a claim has been accepted by the Authority, then it is taken to be a valid claim in accordance with this Act.
- (3) If a premium has been collected or recovered by the Authority, then it is taken to be validly collected or recovered.
- (4) Nothing in this section creates any new entitlement to compensation.

Pt 9 Div. 17  
(Heading and  
s. 394)  
inserted by  
No. 49/2018  
s. 42.

## **Division 17—Treasury and Finance Legislation Amendment Act 2018**

S. 394  
inserted by  
No. 49/2018  
s. 42.

### **394 Treasury and Finance Legislation Amendment Act 2018**

This Act, as amended by sections 40 and 41 of the **Treasury and Finance Legislation Amendment Act 2018**, applies to a claim made on or after the date on which that Act has come into operation, regardless of when the injury occurred.

**Division 18—Workplace Safety Legislation and  
Other Matters Amendment Act 2022**

Pt 9 Div. 18  
(Heading and  
s. 395)  
inserted by  
No. 10/2022  
s. 10.

**395 Section 92B**

S. 395  
inserted by  
No. 10/2022  
s. 10.

- (1) Section 92B, as in force on the commencement date, is taken to apply to a person for the purposes of a claim that relates to the death of a worker that occurred before the commencement date if the person is under 25 years of age on the commencement date.
- (2) In this section, *commencement date* means the date of commencement of Division 1 of Part 2 of the **Workplace Safety Legislation and Other Matters Amendment Act 2022**.

Accident Compensation Act 1985  
No. 10191 of 1985

Part 10  
(Heading and  
ss 395, 396)  
inserted by  
No. 11/2020  
s. 61,  
amended by  
No. 27/2020  
ss 17, 18,  
repealed by  
No.  
10191/1985  
s. 396 (as  
amended by  
No. 27/2020  
s.18).

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\* \* \* \*

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedules

## Schedules

### Schedule 1A—Pre-injury average weekly earnings

Sch. 1A  
inserted by  
No. 80/2010  
s. 23,  
amended by  
Nos 29/2011  
s. 3(Sch. 1  
item 2.7),  
67/2013  
s. 633(m).

Section 5A(5)

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Class of worker at time of injury</i>	<i>Calculation of pre-injury average weekly earnings</i>
1	<p>Worker who is—</p> <p>(a) under the age of 21 years; or</p> <p>(b) an apprentice; or</p> <p>(c) working under a contract of employment under which the worker is required to undergo training, instruction or examination in order to become qualified to carry on an occupation—</p> <p>and who, but for the injury, would have been entitled to increments in earnings at certain ages or stages during the course of employment to become qualified.</p>	<p>(a) Until the worker attains the age or stage or, but for the injury, would have attained the stage at which the highest rate is payable—the worker's pre-injury average weekly earnings are the earnings that the worker would have been entitled to receive in respect of a relevant week if the worker had not sustained the injury and had continued in the employment.</p> <p>(b) On and after the worker attains the age or stage or, but for the injury, would have attained the age or stage at which the highest rate is payable—the worker's pre-injury average weekly earnings are to be calculated as if, at the time of the injury,</p>

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 1A—Pre-injury average weekly earnings

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Class of worker at time of injury</i>	<i>Calculation of pre-injury average weekly earnings</i>
		<p>the worker were being paid at the highest rate applicable to that age or stage.</p> <p>(c) If (a) or (b) applies but there is no rate applicable to a worker who has attained the age of 21 years, the worker's pre-injury average weekly earnings are twice the State average weekly earnings.</p>
2	Worker employed by 2 or more employers and who works for one of those employers for at least the ordinary hours fixed in any applicable industrial award.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to the work for the employer for whom the worker works for at least the ordinary hours fixed in the industrial award.
3	Worker employed by 2 or more employers who works for one of those employers for at least the prescribed number of hours each week and to whom no industrial award is applicable.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to the work for the employer for whom the worker works for at least the prescribed number of hours.



Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 1A—Pre-injury average weekly earnings

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Class of worker at time of injury</i>	<i>Calculation of pre-injury average weekly earnings</i>
4	Worker employed by 2 or more employers for at least the ordinary hours fixed in any applicable industrial award.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to the work which yields the higher weekly ordinary earnings.
5	Worker employed by 2 or more employers who works for one of those employers for at least the ordinary hours fixed in an applicable industrial award and works for another of those employers for at least the prescribed number of hours each week.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to the work which yields the higher weekly ordinary earnings.
6	Worker employed by 2 or more employers for at least the prescribed number of hours each week and to whom no industrial award is applicable.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to the work which yields the higher weekly ordinary earnings.
7	Worker employed by 2 or more employers who sustains an injury that results in an incapacity to work for one or more of those employers but not for all those employers.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to earnings from work with all the employers.
8	Worker employed by 2 or more employers in circumstances other than those described in	The worker's pre-injury average weekly earnings are the worker's average ordinary earnings

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 1A—Pre-injury average weekly earnings

	the preceding provisions of this Schedule.	expressed as an amount per hour for all work carried out by the worker
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Class of worker at time of injury</i>	<i>Calculation of pre-injury average weekly earnings</i>
		for all employers multiplied by— (a) the prescribed number of hours per week; or (b) the total of the worker's ordinary hours per week— whichever is the lesser.
9	Worker who, during the period of 52 weeks immediately before the injury, receives advice in writing from the employer that the worker is to be promoted or otherwise appointed to a new position (otherwise than on a temporary basis) with the effect that the worker's ordinary earnings will be increased but has not been so promoted or appointed.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I with reference to the amount that is the average of the earnings expressed as a weekly sum that the worker could reasonably be expected to have earned after the promotion or appointment had taken effect as if the promotion or appointment had taken effect 52 weeks before the injury.
10	Full time student at a post-secondary education institution within the meaning of the <b>Education and Training Reform Act 2006</b> .	(a) Until the worker, but for the injury, would have completed the course as a full time student, pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I.

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 1A—Pre-injury average weekly earnings

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Class of worker at time of injury</i>	<i>Calculation of pre-injury average weekly earnings</i>
		(b) As from the time the worker, but for the injury, would have completed the course in which the worker was a full time student, pre-injury average weekly earnings are twice the State average weekly earnings.
11	Full time student at primary or secondary school.	<p>(a) Until the worker, but for the injury, would have completed secondary school, pre-injury average weekly earnings are to be calculated in accordance with Division 2 of Part I.</p> <p>(b) As from the time the worker, but for the injury, would have completed secondary school, pre-injury average weekly earnings are \$1210.</p>
12	Worker (not being a worker to whom another item of this Schedule applies) who is a student at a school within the meaning of Part 5.4 of the <b>Education and Training Reform Act 2006</b> and is employed under a work experience arrangement or a	The worker's pre-injury average weekly earnings is the amount deemed by operation of section 5.4.9(6) of the <b>Education and Training Reform Act 2006</b> .

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 1A—Pre-injury average weekly earnings

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structured workplace learning  
arrangement under that Part.

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Class of worker at time of injury</i>	<i>Calculation of pre-injury average weekly earnings</i>
13	Worker (not being a worker to whom another item of this Schedule applies) who is a post-secondary student within the meaning of Part 5.4 of the <b>Education and Training Reform Act 2006</b> and is employed under a practical placement agreement under that Part.	The worker's pre-injury average weekly earnings is the amount deemed by operation of section 5.4.16(5) of the <b>Education and Training Reform Act 2006</b> .

Accident Compensation Act 1985

No. 10191 of 1985

Schedule 1—Table to be used to determine settlement amounts under sections 115B and 117B

**Schedule 1—Table to be used to determine settlement amounts under sections 115B and 117B**

Sch. 1  
amended by  
Nos 57/1989  
s. 3(Sch. item  
3.5(a)–(c)),  
67/1992  
s. 64(7)(d)  
(i)(ii),  
repealed by  
No. 107/1997  
s. 61, new  
Sch. 1  
inserted by  
No. 82/2001  
s. 7.

Column 1	Column 2	Column 3	Column 1	Column 2	Column 3
18	427	75	42	267	74
19	422	75	43	258	74
20	416	75	44	249	74
21	411	75	45	240	73
22	406	75	46	231	73
23	400	75	47	222	72
24	394	75	48	212	72
25	388	75	49	202	71
26	383	75	50	192	70
27	376	75	51	182	70
28	370	75	52	172	69
29	364	75	53	161	68
30	357	75	54	150	68
31	351	75	55	139	68
32	344	75	56	128	67
33	337	75	57	117	65
34	330	75	58	105	61
35	322	75	59	93	56
36	315	75	60	81	50
37	307	75	61	68	43
38	299	75	62	55	35
39	292	74	63	42	27
40	283	74	64	29	19
41	275	74	65	0	0

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 2—Modification to degrees of  
impairment for the purposes of section 98C

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Sch. 2  
repealed by  
No. 48/1986  
s. 32,  
new Sch. 2  
inserted by  
No. 95/2003  
s. 14.

## Schedule 2—Modification to degrees of impairment for the purposes of section 98C

<i>Column 1</i>	<i>Column 2</i>
Whole person impairment as assessed in accordance with Chapter 3 of the A.M.A. Guides	Modified whole person impairment
5	10.00
6	10.20
7	10.40
8	10.60
9	10.80
10	11.00
11	11.95
12	12.90
13	13.85
14	14.80
15	15.75
16	16.70
17	17.65
18	18.60
19	19.55
20	20.50
21	21.45
22	22.40
23	23.35
24	24.30
25	25.25
26	26.20
27	27.15

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 2—Modification to degrees of  
impairment for the purposes of section 98C

<i>Column 1</i>	<i>Column 2</i>
Whole person impairment as assessed in accordance with Chapter 3 of the A.M.A. Guides	Modified whole person impairment
28	28.10
29	29.05

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**Sch. 3**  
inserted by  
No. 95/2003  
s. 22,  
repealed by  
No. 80/2010  
s. 46(2).

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 3A—Compensation for maims

Sch. 3A  
inserted by  
No. 80/2010  
s. 76,  
amended by  
No. 10/2022  
s. 14.

## Schedule 3A—Compensation for maims

Section 98

**THE TABLE**

<i>Injury</i>	<i>Percentage</i>
Total loss of the sight of both eyes	100
Total loss of the sight of an only eye	100
Loss of both hands	100
Loss of both feet	100
Loss of a hand and a foot	100
Permanent brain damage (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0–100
Total loss of the right arm or of the greater part of the right arm	80
Total loss of the left arm or of the greater part of the left arm	75
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	70
Total loss of the same for the left hand and arm	65
Total loss of a leg	75
Total loss of a foot	65
Total loss of the lower part of the leg	70
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	75
Total loss of hearing	65
Total loss of the sight of one eye	40
Loss of binocular vision	40
Loss of eyeball (in addition to compensation for loss of sight of an eye)	22
Total loss of power of speech	60
Total loss of sense of taste or smell	17



Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 3A—Compensation for maims

<i>Injury</i>	<i>Percentage</i>
Total loss of senses of both taste and smell	34
Total loss of sexual organs	47
Total loss of both breasts	47
Total loss of one breast	30
Total loss of the thumb of the right hand	30
Total loss of the thumb of the left hand	26
Total loss of the forefinger of the right hand	21
Total loss of the forefinger of the left hand	18
Total loss of two joints of the forefinger of the right hand	16
Total loss of two joints of the forefinger of the left hand	12
Total loss of a joint of the thumb	16
Total loss of the first joint of the forefinger of the right hand	10
Total loss of the first joint of the forefinger of the left hand	9
Total loss of the first joint of the middle or little or ring finger of either hand	6
Total loss of the middle finger of either hand	12
Total loss of the little or ring finger of either hand	11
Total loss of two joints of the middle finger of either hand	10
Total loss of two joints of the little or ring finger of either hand	9
Total loss of the great toe of either foot	22
Total loss of a joint of the great toe of either foot	10
Total loss of any other toe	6
Total loss of a joint of any other toe	2

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 3A—Compensation for maims

<i>Injury</i>	<i>Percentage</i>
Partial loss of the sight of both eyes or of an only eye	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of the sight of one eye	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of hearing	Such percentage of the maximum amount payable for total loss as is equal to the percentage (being not less than 7) of the diminution of hearing.
Quadriplegia, paraplegia or total impairment of the spine	100
Impairment of the back	0–60
Impairment of the neck	0–40
Impairment of the pelvis	0–15
Severe facial disfigurement (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0–26
Severe bodily disfigurement (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0–22

For the purposes of this Table—

- (a) the total loss of a limb, hand, foot, finger, thumb, toe or joint or any part thereof is deemed to include the permanent total loss of the use of such limb, hand, foot, finger, thumb, toe, joint or part;
- (b) where a worker habitually uses the left hand and arm to perform work usually performed by a worker with the right hand and arm the compensation payable for the loss of such left arm or the greater part of the arm or for the total loss of the left hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the left hand is such amount as would have been payable for a similar loss in respect of the right arm or the part or parts thereof, but in any such case the compensation for the loss of the right arm or the greater part of that arm or for the total loss of the right hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the right hand is such amount as would have been payable for a similar loss in respect of the left arm or the part or parts thereof if the worker did not habitually use the left hand and arm to perform work usually performed by a worker with the right hand and arm; and
- (c) where, under the heading "Percentage", a range is provided, the highest and lowest percentages are reserved for injuries resulting in maximum or minimal impairment;
- (d) in the case of loss of sexual organs (subject to the maximum percentage of 47 per cent and without limiting compensation for other losses of sexual organs)—
  - (i) the percentage payable for loss of the penis is 47 per cent;

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 3A—Compensation for maims

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- (ii) the percentage payable for loss of 1 testicle is 10 per cent; and
- (iii) the percentage payable for loss of 2 testicles or an only testicle is 47 per cent;
- (e) the degree of impairment in the case of injuries to the back, neck or pelvis is to be assessed in accordance with section 91.

Accident Compensation Act 1985  
No. 10191 of 1985  
Schedule 3B—No Disadvantage—Compensation Table

## Schedule 3B—No Disadvantage— Compensation Table

Sch. 3B  
inserted by  
No. 80/2010  
s. 76.

Section 98E

**TABLE**

<b>Injury</b>	<b>Total Losses— Minimum Compensation Payable for Total Loss \$</b>
Total loss of the sight of both eyes	252 250
Total loss of the sight of an only eye	252 250
Loss of both hands	252 250
Loss of both feet	252 250
Loss of a hand and a foot	252 250
Total loss of the right arm or of the greater part of the right arm	201 800
Total loss of the left arm or of the greater part of the left arm	189 180
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	176 550
Total loss of the left hand or of five fingers of the left hand, or of the lower part of the left arm	163 980
Total loss of a leg	189 180
Total loss of a foot	163 980
Total loss of the lower part of the leg	176 550
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	189 180
Total loss of hearing	163 980
Total loss of the sight of one eye	100 880
Loss of binocular vision	100 880
Loss of eyeball (in addition to compensation for loss of sight of an eye)	55 500

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<b>Injury</b>	<b>Total Losses— Minimum Compensation Payable for Total Loss \$</b>
Total loss of power of speech	151 350
Total loss of sense of taste or smell	42 890
Total loss of senses of both taste and smell	85 770
Total loss of male sexual organs	118 570
Total loss of penis	118 570
Total loss of one testicle	25 200
Total loss of two testicles or an only testicle	118 570
Total loss of female sexual organs	118 570
Total loss of both breasts	118 570
Total loss of one breast	75 660
Total loss of the thumb of the right hand	75 660
Total loss of the thumb of the left hand	65 590
Total loss of the forefinger of the right hand	53 000
Total loss of the forefinger of the left hand	45 390
Total loss of two joints of the forefinger of the right hand	40 350
Total loss of two joints of the forefinger of the left hand	30 260
Total loss of a joint of the thumb	40 350
Total loss of the first joint of the forefinger of the right hand	25 200
Total loss of the first joint of the forefinger of the left hand	22 710
Total loss of the first joint of the middle or little or ring finger of either hand	15 120
Total loss of the middle finger of either hand	30 260
Total loss of the little or ring finger of either hand	27 770

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<b>Injury</b>	<b>Total Losses— Minimum Compensation Payable for Total Loss \$</b>
Total loss of two joints of the middle finger of either hand	25 200
Total loss of two joints of the little or ring finger of either hand	22 710
Total loss of the great toe of either foot	55 500
Total loss of a joint of the great toe of either foot	25 200
Total loss of any other toe	15 120
Total loss of a joint of any other toe	5050
Quadriplegia	252 250
Paraplegia	252 250
Total impairment of the spine	252 250

For the purposes of this Table—

- (a) the total loss of a limb, hand, foot, finger, thumb, toe or joint or any part thereof is deemed to include the permanent total loss of the use of such limb, hand, foot, finger, thumb, toe, joint or part;
- (b) where a worker habitually uses the left hand and arm to perform work usually performed by a worker with the right hand and the arm, the compensation payable for the loss of such left arm or the greater part of the arm or for the total loss of the left hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the left hand is such amount as would have been payable for a similar loss in respect of the right arm or the part or parts thereof, but in any such case the compensation for the loss of the right arm or the greater part of that arm or for the total loss of the right hand or of five fingers thereof or of the lower part of that arm or of a

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finger or part of a finger of the right hand is such amount as would have been payable for a similar loss in respect of the left arm or the part or parts thereof if the worker did not habitually use the left hand and arm to perform work usually performed by a worker with the right hand and arm.

**Note**

Amounts are indexed to the year in which the injury occurred.



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*	*	*	*	*	Sch. 4 inserted by No. 9/2010 s. 127, repealed by No. 67/2013 s. 646.
*	*	*	*	*	Sch. 5 inserted by No. 9/2010 s. 127, amended by No. 80/2010 s. 84, repealed by No. 67/2013 s. 646.
*	*	*	*	*	Sch. 6 inserted by No. 80/2010 s. 130, amended by Nos 29/2011 s. 3(Sch. 1 item 2.8), 27/2012 s. 8, repealed by No. 67/2013 s. 646.

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Accident Compensation Act 1985** was assented to on 30 July 1985 and came into operation as follows:

Parts 1, 2, 6, sections 272, 275 on 30 July 1985: section 2(5); section 264(4) on 30 June 1985: section 2(4); item in Schedule 2 which amends section 95 of the **Stamps Act 1958** on 1 January 1985: section 2(6); item in Schedule 2 which amends section 97 of the **Stamps Act 1958** on 1 August 1985: section 2(7); items in Schedule 2 which amend sections 98, 99 of the **Stamps Act 1958** on 30 June 1985: section 2(8); Part 7 on 1 September 1985 at 4 p.m.: Government Gazette 30 August 1985 page 3401; rest of Act (*except* section 91) on 31 August 1985 at 4 p.m.: Government Gazette 30 August 1985 page 3401; section 91 repealed unproclaimed by No. 50/1994 section 36.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

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- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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## 2 Table of Amendments

This publication incorporates amendments made to the **Accident Compensation Act 1985** by Acts and subordinate instruments.

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### **Accident Compensation Act 1985, No. 10191/1985**

<i>Assent Date:</i>	30.7.85
<i>Commencement Date:</i>	S. 396 inserted on 25.4.20 by No. 11/2020 s. 61: s. 2 (as amended by No. 27/2020 s. 18)
<i>Note:</i>	S. 396 repealed Pt X (ss 395, 396) on 26.4.21
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Accident Compensation Act 1985</b>

### **Employment and Training (Rebates) Act 1985, No. 10255/1985**

<i>Assent Date:</i>	10.12.85
<i>Commencement Date:</i>	Ss 1, 2, 8(3) on 10.12.85: s. 2(4); s. 8(2) on 31.8.85: s. 2(3); s. 4(2) on 22.12.81: s. 2(2); rest of Act on 1.1.86: s. 2(1)
<i>Current State:</i>	All of Act in operation

### **Taxation Acts (Reciprocal Assistance) Act 1986, No. 23/1986**

<i>Assent Date:</i>	22.4.86
<i>Commencement Date:</i>	22.4.86
<i>Current State:</i>	All of Act in operation

### **Accident Compensation (Amendment) Act 1986, No. 48/1986** (as amended by No. 64/1989)

<i>Assent Date:</i>	27.5.86
<i>Commencement Date:</i>	Ss 3–6, 14, 16, 23, 35, 37, 38 on 31.8.85 (4 p.m.): s. 2(1); s. 27 on 1.7.86: s. 2(2); rest of Act on 27.5.86: s. 2(3)
<i>Current State:</i>	All of Act in operation

### **Transport Accident Act 1986, No. 111/1986**

<i>Assent Date:</i>	16.12.86
<i>Commencement Date:</i>	S. 180(3) (Sch. 2 item 3) on 1.1.87: Government Gazette 23.12.86 p. 4777
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Accident Compensation Act 1985</b>

### **Taxation (Reciprocal Powers) Act 1987, No. 37/1987**

<i>Assent Date:</i>	12.5.87
<i>Commencement Date:</i>	11.6.87: Special Gazette (No. 24) 11.6.87 p. 1
<i>Current State:</i>	All of Act in operation

### **State Concessions (Amendment) Act 1987, No. 48/1987**

<i>Assent Date:</i>	15.9.87
<i>Commencement Date:</i>	1.12.87: Government Gazette 18.11.87 p. 3072
<i>Current State:</i>	All of Act in operation

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**Accident Compensation (Amendment) Act 1987, No. 83/1987** (as amended by No. 64/1989)

*Assent Date:* 1.12.87  
*Commencement Date:* S. 6(2) on 30.7.85: s. 2(2); s. 45(1) on 1.1.88: s. 2(3);  
rest of Act on 1.12.87: s. 2(1)  
*Current State:* All of Act in operation

**Accident Compensation (Further Amendment) Act 1988, No. 13/1988**

*Assent Date:* 11.5.88  
*Commencement Date:* 11.5.88  
*Current State:* All of Act in operation

**Accident Compensation (Disclosure of Information) Act 1988, No. 18/1988**

*Assent Date:* 17.5.88  
*Commencement Date:* 1.12.87: s. 2  
*Current State:* All of Act in operation

**State Superannuation Act 1988, No. 50/1988**

*Assent Date:* 24.5.88  
*Commencement Date:* S. 93(3) on 1.7.87: s. 2(1); s. 93(4) on 27.11.87:  
s. 2(2); Pt 1, Div. 2 of Pt 6, s. 91 on 1.1.88: s. 2(3); rest  
of Act on 1.7.88: Government Gazette 1.6.88 p. 1487  
*Current State:* All of Act in operation

**County Court (Amendment) Act 1989, No. 19/1989**

*Assent Date:* 16.5.89  
*Commencement Date:* 1.8.89: Government Gazette 26.7.89 p. 1858  
*Current State:* All of Act in operation

**Fire Authorities Act 1989, No. 50/1989** (as amended by No. 91/1989)

*Assent Date:* 14.6.89  
*Commencement Date:* S. 52(2) on 31.7.90: Special Gazette (No. 38) 31.7.90  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989**

*Assent Date:* 14.6.89  
*Commencement Date:* S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette  
30.8.89 p. 2210; rest of Act on 1.9.90: Government  
Gazette 25.7.90 p. 2217  
*Current State:* All of Act in operation

**Accident Compensation (General Amendment) Act 1989, No. 64/1989**

(as amended by No. 18/1991)

*Assent Date:* 29.9.89  
*Commencement Date:* Ss 11, 16 on 1.1.90: s. 2(3); s. 37(2) on 27.5.86:  
s. 2(4); s. 37(3) on 1.12.87: s. 2(5); ss 1–4, 9, 12–15,  
17–19, 21–26, 27(b), 28, 29, 37(1), 38 on 1.10.89:  
Special Gazette (No. 55) 29.9.89 p. 1; ss 5–8, 10, 20,  
27(a), 30–35 on 5.3.90: Government Gazette 21.2.90  
p. 518; s. 36 on 1.7.90: Government Gazette 21.2.90  
p. 518  
*Current State:* All of Act in operation

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**Courts (Children's and Magistrates') Act 1990, No. 34/1990**

*Assent Date:* 13.6.90  
*Commencement Date:* Ss 3–6, 7(1) on 1.9.90: Government Gazette 25.7.90 p. 2216; s. 7(2) on 16.5.89: s. 2(b); s. 7(4)(5) on 6.6.89: s. 2(c); s. 7(6)(7) on 14.6.89: s. 2(d); rest of Act on 13.6.90: s. 2(e)  
*Current State:* All of Act in operation

**Vocational Education and Training Act 1990, No. 45/1990**

*Assent Date:* 19.6.90  
*Commencement Date:* S. 109 on 1.7.91: Government Gazette 19.12.90 p. 3745 and Special Gazette (No. 9) 31.1.91 p. 3  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation (Amendment) Act 1991, No. 18/1991**

*Assent Date:* 30.4.91  
*Commencement Date:* S. 4 on 30.6.89: s. 2(1); s. 12(3) on 29.9.89: s. 2(2); s. 12(2) on 5.3.90: s. 2(3); s. 10(1)(2) on 1.7.90: s. 2(4); Pt 1 (ss 1–3), ss 8, 10(3), 12(1) on 30.4.91: s. 2(5); rest of Act on 1.7.91: Government Gazette 26.6.91 p. 1659  
*Current State:* All of Act in operation

**Accident Compensation (Further Amendment) Act 1992, No. 37/1992**

*Assent Date:* 16.6.92  
*Commencement Date:* 16.6.92  
*Current State:* All of Act in operation

**Accident Compensation (WorkCover) Act 1992, No. 67/1992** (as amended by No. 50/1993)

*Assent Date:* 19.11.92  
*Commencement Date:* Ss 1–3 on 19.11.92: s. 2(2); ss 26, 49 on 1.7.93: s. 2(3); s. 63(2) on 29.10.92: s. 2(4); rest of Act (*except* s. 36(1)) on 1.12.92: s. 2(1); s. 36(1) repealed by No. 50/1993 s. 111(1)(a); s. 42 repealed by No. 50/1993 s. 111(1)(b)  
*Current State:* All of Act in operation

**Employee Relations Act 1992, No. 83/1992**

*Assent Date:* 24.11.92  
*Commencement Date:* S. 184(Sch. 6 item 1) on 1.3.93: Special Gazette (No. 63) 27.11.92 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Accident Compensation (WorkCover Insurance) Act 1993, No. 50/1993**

*Assent Date:* 1.6.93  
*Commencement Date:* Pt 1 (ss 1–6), ss 19, 94(1), 102, 110(1), 111(1) on 1.6.93: s. 2(1); ss 111(2), 112(1) on 19.11.92: s. 2(2)(a); ss 84(1), 92, 94(2), 95, 100, 110(2) on 1.12.92: s. 2(2)(b); s. 93 on 1.4.93: s. 2(2)(c); ss 87, 88 on 29.4.93: s. 2(2)(d); Pt 3 (ss 27–42), ss 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 16.6.93; ss 12–14, 18, 20–26, 55, 57–71, 73, 75, 78(1)(c)–(h) (2), 83, 101 on 30.6.93; Pt 4 (ss 43–54), ss 56, 74, 76, 78(1)(a), 80(1)(b)–(d)(2), 81, 84(2), 91, 99, 109(3) on 1.7.93; ss 96, 97 on 1.8.93: Special Gazette (No. 39) 16.6.93 p. 1; ss 77, 82 were never proclaimed, repealed by No. 50/1994 s. 104  
*Current State:* All of Act in operation

**Medical Practice Act 1994, No. 23/1994**

*Assent Date:* 17.5.94  
*Commencement Date:* S. 118(Sch. 1 item 1.1) on 1.7.94: Government Gazette 23.6.94 p. 1672  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Financial Management (Consequential Amendments) Act 1994, No. 31/1994**

*Assent Date:* 31.5.94  
*Commencement Date:* S. 4(Sch. 2 item 1) on 1.1.95: Government Gazette 28.7.94 p. 2055  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation (Amendment) Act 1994, No. 50/1994** (as amended by No. 74/2000)

*Assent Date:* 15.6.94  
*Commencement Date:* Ss 13, 15–19, 30, 35, 36, 48, 49, 64(2) (4)–(11) on 15.6.94: s. 2(1); s. 64 (1)(3) on 30.11.92: s. 2(2)(a); ss 5(10)(11), 32(1), 33(1), 42, 60, 67 on 1.12.92: s. 2(2)(b); ss 5(1)(7)(12), 9(a)(b), 52, 57, 61, 62(1)–(9), 92(3) on 30.6.93 at 4 p.m.: s. 2(2)(d); ss 41(1)(2) (4) on 1.4.94: s. 2(2)(e); ss 76, 77 on 1.7.94: s. 2(3); ss 3, 4, 5(3)(4)(6)(a), 10–12, 14, 21–25, 28, 31, 32(2), 33(2)(3), 38(1)(b)(d)(e)(3)(a)(d)(f), 44, 46, 47, 54(1)(2), 55, 56, 59, 66, 68–75, 79, 80, 83–87, 92(4)(5) on 24.6.94: Special Gazette (No. 37) 24.6.94 p. 2—see **Interpretation of Legislation Act 1984**; ss 5(2)(5)(6)(b)(8)(9), 6–8, 9(c)–(e), 20, 26, 27, 29, 37, 38(1) (a)(c)(2)(3)(b)(c)(e)(4), 39, 40, 41(3)(5), 43, 45, 50, 51, 53, 54(3), 58, 62(10), 63, 78, 81, 82 on 1.7.94: Special Gazette (No. 37) 24.6.94 p. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Vocational Education and Training (Amendment) Act 1994, No. 62/1994**

*Assent Date:* 15.6.94  
*Commencement Date:* S. 68 on 1.12.94: Government Gazette 23.6.94 p. 1671  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 29.11.94  
*Commencement Date:* S. 63 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 Act 1985**

**Constitution (Court of Appeal) Act 1994, No. 109/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* S. 34(1) on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Equal Opportunity Act 1995, No. 42/1995**

*Assent Date:* 14.6.95  
*Commencement Date:* S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 1 on 1.1.96: Government Gazette 21.12.95 p. 3571  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Vocational Education and Training (Amendment) Act 1995, No. 85/1995**

*Assent Date:* 28.11.95  
*Commencement Date:* 28.11.95  
*Current State:* All of Act in operation

**Mental Health (Amendment) Act 1995, No. 98/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* S. 65(Sch. 1 item 1) on 1.7.96: Government Gazette 27.6.96 p. 1593  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* S. 10(1)(Sch. 1 items 1.1, 1.2) on 30.4.96: Special Gazette (No. 45) 30.4.96 p. 1; s. 32(Sch. 2 item 1) on 5.12.95: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**



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

*Assent Date:* 25.6.96  
*Commencement Date:* S. 32 on 25.6.96: s. 2(1); s. 33 on 1.12.92: s. 2(2); s. 4 on 1.7.95: s. 2(3); ss 3(1)(4)(5), 5–18, 22, 25, 26, 28, 30, 34–37, 39, 41, 43–46, 48, 49 on 25.6.96; ss 20, 21, 24, 29, 31, 38, 47 on 1.7.96; s. 19 on 1.8.96: Special Gazette (No. 71) 25.6.96 p. 2; s. 40 on 19.12.96: Government Gazette 19.12.96 p. 3251; ss 3(2)(3), 23, 27, 42 on 25.12.96: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation (Occupational Health and Safety) Act 1996, No. 13/1996**  
(as amended by No. 60/1996)

*Assent Date:* 28.6.96  
*Commencement Date:* Ss 1, 2, 9 on 28.6.96: s. 2(1); rest of Act on 2.7.96: s. 2(4)  
*Current State:* All of Act in operation

**Legal Practice Act 1996, No. 35/1996**

*Assent Date:* 6.11.96  
*Commencement Date:* S. 453(Sch. 1 items 1.1–1.3) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 26.11.96  
*Commencement Date:* Pt 4 (ss 15–24) on 1.1.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation (Further Amendment) Act 1996, No. 60/1996**  
(as amended by Nos 45/1997, 107/1997, 81/1998)

*Assent Date:* 17.12.96  
*Commencement Date:* Ss 9, 11 on 14.11.96: s. 2(3); ss 3, 4(2), 5, 7, 8, 13, 16, 20, 22, 24 on 17.12.96: s. 2(1); s. 27 on 25.12.96: s. 2(3A); ss 10, 12, 15, 25, 26, 29 on 23.1.97: Government Gazette 23.1.97 p. 146, ss 4(1), 6, 17, 18, 28 on 1.7.97: s. 2(6); s. 21 on 1.7.98: Government Gazette 25.6.98 p. 1561; s. 23 on 13.7.98: Government Gazette 9.7.98 p. 1852  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Chiropractors Registration Act 1996, No. 63/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* S. 98(Sch. item 1) on 1.7.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Co-operatives Act 1996, No. 84/1996**

*Assent Date:* 23.12.96  
*Commencement Date:* S. 467(Sch. 6 item 1.1) on 1.10.97: Special Gazette (No. 122) 1.10.97 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Miscellaneous Acts (Omnibus No. 3) Act 1997, No. 45/1997**

*Assent Date:* 11.6.97  
*Commencement Date:* S. 3 on 11.6.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Podiatrists Registration Act 1997, No. 78/1997**

*Assent Date:* 25.11.97  
*Commencement Date:* S. 97(Sch. item 1) on 1.12.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 25.11.97  
*Commencement Date:* S. 50 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 Act 1985**

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

*Assent Date:* 23.12.97  
*Commencement Date:* Ss 3, 11(1), 15, 22, 24, 26–30, 33–37, 43, 45–51 on 12.11.97: s. 2(2); ss 4, 7–10, 12, 14, 16(2), 19–21, 31, 32, 39(2), 60, 61 on 23.12.97: s. 2(1); s. 5 on 1.1.98: s. 2(3), ss 13, 16(1)(3), 17, 18, 39(1), 40, 41, 44, 53–58 on 1.2.98: Government Gazette 22.1.98 p. 101; ss 23, 42 on 29.6.98: Government Gazette 22.1.98 p. 101; ss 11(2)–(7), 52, 59 on 1.7.98: s. 2(7); s. 25 on 1.9.98: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**State Trustees (Amendment) Act 1998, No. 15/1998**

*Assent Date:* 28.4.98  
*Commencement Date:* S. 4 on 1.8.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,  
No. 52/1998** (as amended by No. 101/1998)

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 1) on 1.7.98: Government Gazette  
18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

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

*Assent Date:* 17.11.98  
*Commencement Date:* Ss 20(5), 27–29(1), 30, 31 on 17.11.98: s. 2(1); ss 19,  
20(1)–(4), 21–26 at 4 p.m. on 30.6.99: s. 2(4); s. 29(2)  
on 30.12.00: Government Gazette 21.12.00 p. 2980  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**National Taxation Reform (Further Consequential Provisions) Act 2000,  
No. 24/2000**

*Assent Date:* 16.5.00  
*Commencement Date:* S. 3 on 1.7.00: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Accident Compensation (Common Law and Benefits) Act 2000, No. 26/2000**  
(as amended by No. 84/2000)

*Assent Date:* 30.5.00  
*Commencement Date:* S. 23(1) on 15.6.94: s. 2(2); s. 14 on 12.11.97: s. 2(4);  
ss 18, 20, 21 on 20.10.99: s. 2(5); s. 26 on 13.4.00:  
s. 2(6); ss 3, 5–13, 16, 22, 23(2), 32 on 31.5.00: s. 2(1);  
s. 15 on 1.7.00: s. 2(7); s. 25(1)–(4) on 1.7.00: Special  
Gazette (No. 92) 27.6.00 p. 1; s. 4 on 1.9.00:  
Government Gazette 31.8.00 p. 2214; s. 17 on  
20.10.00: Government Gazette 19.10.00 p. 2521; s. 19  
on 29.11.00: s. 2(7A); s. 24 on 1.1.01: s. 2(9)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Psychologists Registration Act 2000, No. 41/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* S. 102(Sch. item 1) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

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

*Assent Date:* 12.9.00  
*Commencement Date:* Ss 25(3)(4), 26 on 1.1.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

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**Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 1.3) on 1.7.97: s. 2(2)(a); s. 3(Sch. 1 items 1.1, 1.2, 1.4–1.9) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Transport Accident (Amendment) Act 2000, No. 84/2000**

*Assent Date:* 28.11.00  
*Commencement Date:* Ss 37, 40 on 29.11.00: s. 2(1); s. 38 on 1.1.01: Government Gazette 7.12.00 p. 2865  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Victorian Qualifications Authority Act 2000, No. 97/2000**

*Assent Date:* 5.12.00  
*Commencement Date:* S. 41(Sch. 2 item 1) on 1.3.01: Government Gazette 1.3.01 p. 304  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 2) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Statute Law Amendment (Relationships) Act 2001, No. 27/2001**

*Assent Date:* 12.6.01  
*Commencement Date:* S. 4(Sch. 2 item 1) on 23.8.01: Government Gazette 23.8.01 p. 1927  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Racing (Racing Victoria Ltd) Act 2001, No. 35/2001**

*Assent Date:* 19.6.01  
*Commencement Date:* S. 8 on 19.12.01: Special Gazette (No. 233) 19.12.01 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 11.12.01  
*Commencement Date:* S. 25 on 20.10.99: s. 2(4); s. 24 on 30.5.00: s. 2(3); Pt 2 (ss 3–7), ss 13–15, 20–23 on 12.12.01: s. 2(1); s. 12 on 1.7.02: s. 2(2); ss 8–11, 16–19 on 1.7.02: s. 2(6)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 4) on 24.4.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003, No. 60/2003**

*Assent Date:* 16.6.03  
*Commencement Date:* S. 19 on 21.5.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Road Safety (Amendment) Act 2003, No. 94/2003**

*Assent Date:* 25.11.03  
*Commencement Date:* S. 40 on 26.11.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 2.12.03  
*Commencement Date:* Ss 3, 4, 7, 8, 14, 23 on 3.12.03: s. 2(1); s. 5 on 1.2.04: Government Gazette 29.1.04 p. 179; ss 10–12 on 1.3.04: Government Gazette 26.2.04 p. 392; ss 6, 13, 15–22 on 1.9.04: Government Gazette 26.8.04 p. 2363; s. 9 was never proclaimed, repealed by No. 65/2008 s. 10 on 2.12.08  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 8.6.04  
*Commencement Date:* S. 3 on 9.6.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**State Taxation Acts (Amendment) Act 2004, No. 71/2004**

*Assent Date:* 19.10.04  
*Commencement Date:* S. 3 on 1.7.94: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Transport Accident (Amendment) Act 2004, No. 94/2004**

*Assent Date:* 7.12.04  
*Commencement Date:* S. 38 on 8.12.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 21.12.04  
*Commencement Date:* Ss 5, 15–18, 23 on 18.11.04: s. 2(2); ss 3, 4, 6–14, 19, 20, 22, 32–34, 35(1)–(3), 36, 38–41 on 21.12.04: s. 2(1); ss 21, 24–31 on 1.7.05: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Occupational Health and Safety Act 2004, No. 107/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 177 on 1.7.05: s. 3(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 1) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 1) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 21.6.05  
*Commencement Date:* Pt 2 Div. 5 (ss 17–20) on 18.11.04: s. 2(3); Pt 2 Div. 1 (ss 3–6) on 19.5.05: s. 2(4); Pt 2 Divs 2 (ss 7, 8), 4 (ss 13–16), 6 (ss 21–23), 7 (s. 24), 8 (s. 25) on 22.6.05: s. 2(1); Pt 2 Div. 3 (ss 9–12) on 1.7.05: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Dangerous Goods and Equipment (Public Safety) Acts (Amendment) Act 2005, No. 31/2005**

*Assent Date:* 21.6.05  
*Commencement Date:* S. 35 on 1.7.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation and Transport Accident Acts (Ombudsman) Act 2005, No. 46/2005**

*Assent Date:* 24.8.05  
*Commencement Date:* S. 5 on 25.8.05: s. 2(1); ss 3, 4, 6 on 1.10.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Treasury Legislation (Repeal) Act 2005, No. 73/2005**

*Assent Date:* 25.10.05  
*Commencement Date:* S. 4(Sch. 2 item 1) on 26.10.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 1) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Education and Training Reform Act 2006, No. 24/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* S. 6.1.2(Sch. 7 item 1) on 1.7.07: Government Gazette 28.6.07 p. 1304  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 25.7.06  
*Commencement Date:* S. 17(1) on 20.10.99: s. 2(2); ss 4, 18, 24 on 1.6.06: s. 2(3); ss 3, 5, 10–16, 17(2), 19–23 on 1.7.06: s. 2(4); ss 6–9, 26 on 26.7.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Owners Corporations Act 2006, No. 69/2006**

*Assent Date:* 19.9.06  
*Commencement Date:* S. 224(Sch. 3 item 1) on 31.12.07: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 1) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation Amendment Act 2007, No. 34/2007**

*Assent Date:* 14.8.07  
*Commencement Date:* Ss 3–6 on 15.8.07: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 27.11.07  
*Commencement Date:* Ss 22–25, 28 on 19.9.07: s. 2(4); ss 26, 27, 29 on 28.11.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**State Taxation and Accident Compensation Acts Amendment Act 2007,  
No. 68/2007**

*Assent Date:* 11.12.07  
*Commencement Date:* Ss 21–24 on 12.12.07: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Relationships Act 2008, No. 12/2008**

*Assent Date:* 15.4.08  
*Commencement Date:* S. 73(1)(Sch. 1 item 1) on 1.12.08: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008**

*Assent Date:* 3.6.08  
*Commencement Date:* S. 74 on 17.12.08: Special Gazette (No. 377) 16.12.08  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Compensation and Superannuation Legislation Amendment Act 2008,  
No. 65/2008**

*Assent Date:* 18.11.08  
*Commencement Date:* Ss 8, 9 on 19.11.08: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Dangerous Goods Amendment (Transport) Act 2008, No. 66/2008**

*Assent Date:* 18.11.08  
*Commencement Date:* S. 30 on 1.1.09: Government Gazette 18.12.08 p. 2998  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Asbestos Diseases Compensation Act 2008, No. 69/2008**

*Assent Date:* 25.11.08  
*Commencement Date:* Ss 9, 10 on 26.11.08: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Coroners Act 2008, No. 77/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 129(Sch. 2 item 2) on 1.11.09: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009**

*Assent Date:* 10.2.09  
*Commencement Date:* S. 37(Sch. 1 item 1) on 1.12.09: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**



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**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 3) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 1), (Sch. Pt 2 item 1) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**State Taxation Acts Further Amendment Act 2009, No. 83/2009**

*Assent Date:* 8.12.09  
*Commencement Date:* S. 39 on 1.3.10: Government Gazette 18.2.10 p. 288  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* S. 49(5) on 17.12.09: Government Gazette 17.12.09 p. 3339  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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

*Assent Date:* 23.3.10  
*Commencement Date:* S. 52 on 3.12.03: s. 2(2); s. 49(1) on 12.12.07: s. 2(3); s. 57(4)(5) on 17.6.09: s. 2(4); ss 53–54(5), 54(7)(8), 55, 57(2)(3), 60, 67, 68(1)(3)–(10)(13), 70(1) on 10.12.09: s. 2(5); ss 42, 45(3) on 1.1.10: s. 2(6); ss 59, 63, 191 on 24.3.10: s. 2(1); ss 3–8, 12–17, 19–21, 28–41, 43–45(2), 45(4)–48, 49(2)–51, 54(6), 56, 57(1), 57(6)–58, 61, 62, 64–66, 68(2)(11)(12), 69, 70(2)–74(2), 75–90, 121–123, 142–177 on 5.4.10: s. 2(7); ss 9–11, 22–27, 74(3)(4), 91, 92, 94–99, 124–136 on 1.7.10: s. 2(8)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 51(Sch. item 2) on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Subordinate Legislation Amendment Act 2010, No. 78/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 24(Sch. 1 item 1) on 1.1.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Transport Accident and Accident Compensation Legislation Amendment Act 2010, No. 80/2010** (as amended by No. 29/2011)

*Assent Date:* 19.10.10  
*Commencement Date:* S. 90 on 10.12.09: s. 2(2); ss 48, 53(2), 63, 124 on 5.4.10: s. 2(3); ss 107–109 on 1.7.10: s. 2(4); s. 64 on 29.7.10: s. 2(5); ss 15, 16, 17(1)–(3), 18, 19(1), 30(1), 32, 34–45, 47, 49, 52, 53(1), 54–60, 65–79, 85–89, 91–106, 110–123, 125–130 on 20.10.10: s. 2(1); ss 21–23, 50, 51, 80–84 on 1.11.10: Government Gazette 28.10.10 p. 2584; ss 17(4)–(8), 19(2), 20, 24–29, 30(2), 31, 33, 61, 62 on 1.7.11: s. 2(6); s. 46 on 1.1.12: s. 2(8)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Statute Law Revision Act 2011, No. 29/2011**

*Assent Date:* 21.6.11  
*Commencement Date:* S. 3(Sch. 1 item 2) on 22.6.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Education and Training Reform Amendment (Skills) Act 2011, No. 76/2011**

*Assent Date:* 13.12.11  
*Commencement Date:* S. 15 on 1.7.11: s. 2(4); s. 16 on 14.12.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Accident Compensation Amendment (Repayments and Dividends) Act 2012, No. 18/2012**

*Assent Date:* 24.4.12  
*Commencement Date:* 25.4.12: s. 2  
*Current State:* All of Act in operation

**Disability Amendment Act 2012, No. 22/2012**

*Assent Date:* 8.5.12  
*Commencement Date:* S. 84 on 1.7.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Health Professions Registration (Repeal) Act 2012, No. 27/2012**

*Assent Date:* 29.5.12  
*Commencement Date:* Ss 7, 8 on 1.7.12: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Statute Law Revision Act 2012, No. 43/2012**

*Assent Date:* 27.6.12  
*Commencement Date:* S. 3(Sch. item 1) on 28.6.12: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Civil Procedure Amendment Act 2012, No. 62/2012**

*Assent Date:* 30.10.12  
*Commencement Date:* S. 23 on 24.12.12: Special Gazette (No. 429) 11.12.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Justice Legislation Amendment (Miscellaneous) Act 2012, No. 68/2012**

*Assent Date:* 20.11.12  
*Commencement Date:* Ss 3, 4 on 1.1.13: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 170, 171, 283 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; s. 304 on 11.2.13: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Co-operatives National Law Application Act 2013, No. 9/2013**

*Assent Date:* 13.3.13  
*Commencement Date:* S. 42(Sch. 2 item 1) on 3.3.14: Special Gazette (No. 46) 18.2.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Heavy Vehicle National Law Application Act 2013, No. 30/2013**

*Assent Date:* 4.6.13  
*Commencement Date:* S. 60(Sch. item 1) on 10.2.14: Special Gazette (No. 28) 4.2.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013, No. 43/2013**

*Assent Date:* 28.6.13  
*Commencement Date:* S. 33 on 30.6.14: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013**

*Assent Date:* 24.9.13  
*Commencement Date:* S. 11 on 1.1.14: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013**  
(as amended by No. 44/2014)

*Assent Date:* 12.11.13  
*Commencement Date:* Ss 630(3), 641 on 5.4.10: s. 2(3); ss 628(1), 643 on 20.10.10: s. 2(5); s. 626(7) on 1.7.11: s. 2(5A); s. 630(6) on 1.7.12: s. 2(6); ss 626(1)–(6), 628(2)–(4), 629, 630(1)(2)(4)(5)(10)(11), 631–633, 637(4), 642 on 13.11.13: s. 2(2); ss 624, 625, 627, 630(7)–(9), 634–636, 637(1)–(3), 638–640, 644–646 on 1.7.14: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Education and Training Reform Amendment (Dual Sector Universities) Act 2013, No. 76/2013**

*Assent Date:* 17.12.13  
*Commencement Date:* S. 20 on 1.1.14: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Legal Profession Uniform Law Application Act 2014, No. 17/2014** (as amended by No. 8/2015)

*Assent Date:* 25.3.14  
*Commencement Date:* S. 160(Sch. 2 item 1) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Mental Health Act 2014, No. 26/2014**

*Assent Date:* 8.4.14  
*Commencement Date:* S. 455(Sch. item 1) on 1.7.14: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 2) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014**

*Assent Date:* 27.6.14  
*Commencement Date:* Ss 26–29 on 13.11.13: s. 2(3); s. 30 on 5.4.10: s. 2(4); s. 33(Sch. item 1) on 30.6.14: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Road Safety Amendment Act 2014, No. 49/2014<sup>39</sup>**

*Assent Date:* 1.7.14  
*Commencement Date:* Ss 49–53 on 1.8.15: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Privacy and Data Protection Act 2014, No. 60/2014<sup>40</sup>**

*Assent Date:* 2.9.14  
*Commencement Date:* S. 140(Sch. 3 item 2) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014**

*Assent Date:* 9.9.14  
*Commencement Date:* S. 9 on 10.11.14: Special Gazette (No. 364) 14.10.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Statute Law Revision Act 2015, No. 21/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* S. 3(Sch. 1 item 2) on 1.8.15: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Treasury and Finance Legislation Amendment Act 2016, No. 41/2016**

*Assent Date:* 28.6.16  
*Commencement Date:* S. 4 on 1.7.14: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Compensation Legislation Amendment Act 2016, No. 73/2016**

*Assent Date:* 13.12.16  
*Commencement Date:* S. 3 on 14.12.16: s. 2(1); s. 4 on 1.7.17: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**WorkSafe Legislation Amendment Act 2017, No. 48/2017**

*Assent Date:* 26.9.17  
*Commencement Date:* Ss 3–6 on 27.9.17: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Treasury and Finance Legislation Amendment Act 2018, No. 49/2018**

*Assent Date:* 25.9.18  
*Commencement Date:* Ss 39–42 on 26.9.18: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Local Government Act 2020, No. 9/2020**

*Assent Date:* 24.3.20  
*Commencement Date:* S. 390(Sch. 1 item 2) on 24.10.20: s. 2(3)(f)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020**

*Assent Date:* 24.4.20  
*Commencement Date:* S. 61 on 25.4.20: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020**

*Assent Date:* 20.10.20  
*Commencement Date:* Ss 17, 18 on 21.10.20: s. 2  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Justice Legislation Amendment (Supporting Victims and Other Matters) Act 2020, No. 35/2020**

*Assent Date:* 17.11.20  
*Commencement Date:* S. 54 on 18.11.20: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021, No. 5/2021**

*Assent Date:* 23.2.21  
*Commencement Date:* Ss 32–38 on 1.7.21: Special Gazette (No. 293) 16.6.21 p. 1  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Social Services Regulation Act 2021, No. 37/2021 (as amended by No. 40/2022)**

*Assent Date:* 21.9.21  
*Commencement Date:* S. 388 on 1.7.24: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Workplace Safety Legislation and Other Matters Amendment Act 2022, No. 10/2022**

*Assent Date:* 16.3.22  
*Commencement Date:* Ss 11–14 on 17.3.22: s. 2(2); ss 3–10 on 1.7.22: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**Local Government Legislation Amendment (Rating and Other Matters) Act 2022, No. 30/2022**

*Assent Date:* 9.8.22  
*Commencement Date:* S. 43 on 24.10.20: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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**Disability and Social Services Regulation Amendment Act 2023, No. 9/2023**

*Assent Date:* 23.5.23  
*Commencement Date:* S. 253 on 1.7.24: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Statute Law Amendment (References to the Sovereign) Act 2023, No. 25/2023**

*Assent Date:* 5.9.23  
*Commencement Date:* S. 7(Sch. 1 item 1) on 6.9.23: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

**Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024, No. 8/2024**

*Assent Date:* 13.3.24  
*Commencement Date:* Ss 27–30 on 31.3.24: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Accident Compensation Act 1985**

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### 3 Explanatory details

<sup>1</sup> S. 5:

S. 5 amended by Nos 10255 s. 8(1)(a)(b), 83/1987 s. 6, 64/1989 ss 5, 35(a), 45/1990 s. 109(a)–(c), 18/1991 s. 4, 67/1992 ss 6, 7, 64(7)(a)(8)(a), 50/1993 ss 78(1)(c), 80, 23/1994 s. 118(Sch. 1 item 1.1), 50/1994 ss 5, 6, 92(4), 62/1994 s. 68, 85/1995 s. 9(a), 98/1995 s. 65(Sch. 1 item 1), 7/1996 ss 3(1)(2)(4)(5), 4, 26(4), 47/1996 s. 15, 60/1996 s. 4(1)(2), 63/1996 s. 98(Sch. item 1.1), 78/1997 s. 97(Sch. item 1.1), 80/1997 s. 50, 107/1997 ss 3, 4, 5(1)–(3), 8(2), 30(1), 52/1998 s. 311(Sch. 1 item 1.1), 81/1998 s. 19(1), 26/2000 s. 3, 41/2000 s. 102(Sch. item 1), 97/2000 s. 41(Sch. 2 item 1), 11/2001 s. 3(Sch. item 2.1), 27/2001 s. 4(Sch. 2 items 1.1–1.3), 82/2001 s. 12(1)(a), 95/2003 ss 3(1)(2), 4(1), 71/2004 s. 3, 102/2004 ss 17(1), 31, 18/2005 s. 18(Sch. 1 item 1.1), 28/2005 s. 9, 97/2005 s. 182(Sch. 4 item 1), 24/2006 s. 6.1.2(Sch. 7 item 1.1), 41/2006 s. 15(1), 60/2007 ss 22, 23, 29(a), 68/2007 s. 21, 12/2008 s. 73(1)(Sch. 1 item 1), 66/2008 s. 30(1), 4/2009 s. 37(Sch. 1 item 1), 9/2010 ss 3, 28, 32(a), 51(2)(a), 64 (as amended by No. 80/2010 s. 159(k)), 74, 94, 124, 130(1), 145, 146, 13/2010 s. 51(Sch. item 2), 80/2010 ss 17, 19, 20, 62(a), 85, 29/2011 s. 3(Sch. 1 item 2.1), 82/2012 ss 170, 304(a)(b), 67/2013 s. 626(1) (as amended by No. 44/2014 s. 24(26)), 26/2014 s. 455(Sch. item 1), substituted by No. 67/2013 s. 625.

<sup>2</sup> Pt 1 Div. 3 (Heading and ss 5F–17):

Pt 1 Div. 3 (Heading and ss 5F–17) amended by Nos 10255 s. 8(2)(a), 48/1986 ss 4–7, 83/1987 s. 7, 64/1989 s. 37(1)(a)(i) (as amended by No. 18/1991 s. 12(3)) (ii), 34/1990 s. 7(1), 45/1990 s. 109(d), 67/1992 s. 64(7)(a), 50/1993 ss 78(1)(a)(d), 83, 50/1994 ss 9–12, 92(5), 84/1996 s. 467(Sch. 6 item 1.1), 107/1997 ss 5(5)–(7), 7, 8(1), 81/1998, s. 19(2)–(5), 74/2000 s. 3(Sch. 1 item 1.1), 35/2001 s. 8, 82/2001 s. 12(1)(b)(2), 40/2004 s. 3, 28/2005 s. 7, 41/2006 s. 4, 9/2010 ss 9–11, 80/2010 ss 24–26, 27 (as amended by No. 29/2011 s. 3(Sch. 1 item 97)), 28–35, 76/2011 ss 15, 16, 43/2012 s. 3(Sch. items 1.1, 1.2), 9/2013 s. 42(Sch. 2 item 1), 43/2013 s. 33, 67/2013 s. 626(7) (as amended by No. 44/2014 ss 22, 24(26)), 76/2013 s. 20, 37/2014 s. 10(Sch. item 2.2), repealed by No. 67/2013 s. 627(2).

<sup>3</sup> Pt 2 (Headings and ss 18–38):

Pt 2 (Headings and ss 18–38) amended by Nos 10255 s. 8(3), 48/1986 ss 8(1)(2), 9, 83/1987 ss 8–13, 13/1988 s. 7(b), 18/1988 s. 4, 50/1988 s. 93(2)(Sch. 2 Pt 2 item 1), 64/1989 ss 7, 11(1), 12–14, 18/1991 s. 12(1)(b)(c), substituted as Pt 2 (Headings and ss 18–38B) by No. 67/1992 s. 9, amended by Nos 50/1993 ss 73, 74, 78(1), 81(a), 84(1)(2), 85, 86, 110(1)(a), 31/1994 s. 4(Sch. 2 item 1), 50/1994 ss 13–22, 42/1995 s. 224(Sch. 2 item 1), 100/1995 s. 10(1)(Sch. 1 item 1), 7/1996 ss 5–7, 13/1996 ss 4–8, 60/1996 ss 5, 6, 45/1997 s. 3, 107/1997 ss 9, 10, 46/1998 s. 7(Sch. 1), 52/1998 s. 311(Sch. 1 item 1.2), 81/1998 ss 20, 21, 11/2001



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s. 3(Sch. item 2.2), 82/2001 s. 9(a), 95/2003 s. 6, 102/2004 s. 35(1)(2), 107/2004 s. 177, 108/2004 s. 117(1)(Sch. 3 items 1.1–1.3), 28/2005 ss 13, 14, 31/2005 s. 35, 46/2005 ss 3–5, 80/2006 s. 26(Sch. item 1.1), 66/2008 s. 30(2)–(5), 9/2010 ss 96, 125, 132, 147–150, 80/2010 ss 36–40, 122(1)(a)(b), 18/2012 ss 3, 4, 82/2012 s. 283, repealed by No. 67/2013 s. 627(3).

<sup>4</sup> Pt 3 (Headings and ss 39–80):

Pt 3 (Headings and ss 39–80) amended by Nos 48/1986 ss 10, 11, 12(a)–(e), 13, 17(2), 33(2), 83/1987 ss 14–17(1) (2)(a)–(c) (as amended by No. 64/1989 s. 57(3)(a)) (3), 18–28, 29(2), 30–34, 13/1988 s. 7(c)–(f), 50/1988 s. 93(2)(Sch. 2 Pt 2 item 1), 19/1989 s. 16(Sch. items 1.1, 1.2), 64/1989 s. 15(1)–(3), substituted as Pt 3 (Headings and ss 39–73D) by No. 64/1989 s. 8, amended by No. 18/1991 s. 12(1)(d)–(f), substituted as Pt 3 (Headings and ss 39–68) by No. 67/1992 s. 10, amended by Nos 50/1993 ss 78(1) (c)–(f)(h)(2)(a), 81(b)(c), 87(1), 88(1)(2), 89, 90, 110(1)(b)(c), 50/1994 ss 23–32, 60(2), 109/1994 s. 34(1), 7/1996 ss 8(1)(2), 9, 10(1), 11(1), 12–15, 24(2), 35/1996 s. 453(Sch. 1 items 1.1, 1.2), 60/1996 ss 7(1)–(3), 8, 18(a)(b), 107/1997 ss 11(1)–(3)(7)(a), 12–17, 18(1)(2), 19–21, 30(5), 35(6), 46/1998 s. 7(Sch. 1), 52/1998 s. 311(Sch. 1 item 1.2), 81/1998 ss 22, 27, 26/2000 ss 5–12, 20(1), 82/2001 ss 4, 8, 9(b), 10, 11, 13, 60/2003 s. 19, 102/2004 ss 3, 13, 29, 108/2004 s. 117(1)(Sch. 3 item 1.4), 28/2005 ss 15, 16, 21, 41/2006 ss 5(1)(2), 6–8, 80/2006 s. 26(Sch. item 1.2), 69/2009 s. 54(Sch. Pt. 1 item 1), 9/2010 ss 29, 38, 65, 66(1), 75–90, 151, 156, 157, 80/2010 ss 41–45, 78(a)(b), 82(a)(b), 67/2013 s. 632(a)(b), repealed by No. 67/2013 s. 627(3).

<sup>5</sup> S. 92(1): Section 37(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

**37 County Court to determine compensation for death**

(2) The Principal Act as amended by subsection (1) applies to determinations made after the commencement of this section.

<sup>6</sup> S. 92(3): See note 5.

<sup>7</sup> S. 92(4): See note 5.

<sup>8</sup> S. 92(6): See note 5.

<sup>9</sup> S. 92(7): See note 5.

<sup>10</sup> S. 93B: Section 16(8) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

**16 Weekly payments**

(8) Despite section 4A of the **Accident Compensation Act 1985**—

- (a) the **Accident Compensation Act 1985** as in force after the commencement of this section applies in respect of the entitlement of a worker to weekly payments unless paragraph (b) applies; and
- (b) the **Accident Compensation Act 1985** as in force before the commencement of this section continues to apply in respect of the entitlement of a worker to weekly payments where the period of 104 weeks of incapacity has expired before the commencement of this section.

<sup>11</sup> S. 98(2AA): Section 41(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

**41 Industrial deafness**

(2) After section 98(2) of the Principal Act **insert**—

"(2AA) Compensation is not payable under this section for a loss of hearing unless the percentage of the diminution of hearing is at least 7.".

Section 41(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

**41 Industrial deafness**

- (4) Section 98 of the Principal Act as amended by subsections (1) and (2) applies in respect of claims for compensation made on or after 1 April 1994.

Subsection (2AA) inserted by section 41(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 was in force from 1 April to 1 July 1994.

<sup>12</sup> S. 98(2AA): Section 41(5) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

#### **41 Industrial deafness**

- (5) Section 98 of the Principal Act as amended by subsection (3) applies in respect of claims for compensation made on or after commencement of this subsection.

Section 41(5) came into operation on 1 July 1994.

<sup>13</sup> S. 98(2A): Section 63(1) of the **Accident Compensation (WorkCover) Act 1992**, No. 67/1992 (as amended by section 65(1) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994, section 50(1) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996, section 30(1) of the **Accident Compensation (Further Amendment) Act 1996**, No. 60/1996 and section 62 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**, No. 107/1997) reads as follows:

#### **63 Supreme Court—limitation of jurisdiction**

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent—
- (a) the Supreme Court exercising jurisdiction conferred on, or excluded from the jurisdiction of, the County Court under section 39(1) or 40(1)(a) or (c) of the Principal Act as amended by this Act and as amended by section 11 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**;
  - (b) the Supreme Court exercising jurisdiction conferred on the Magistrates' Court under section 43(1) of the Principal Act as amended by this Act;

- (c) an appeal on the merits to the Supreme Court from an opinion of a Medical Panel under section 45(1)(c) or section 99AB(1)(c) or a determination under section 98(2B) by a person and in the manner approved by a Medical Panel under section 98(2A) of the Principal Act as amended by this Act or the Authority or a self-insurer under section 115 or 115A(8) of the Principal Act as so amended but not to alter or vary section 85 of the **Constitution Act 1975** so as to affect the jurisdiction of the Supreme Court to grant any other relief or remedy;
- (d) the Supreme Court making a judgment or order for damages or approving a settlement or compromise in an amount exceeding the limits or without the reductions referred to in section 135 of the Principal Act as inserted by section 46(1) of this Act and as amended by section 64 of the **Accident Compensation (Amendment) Act 1994** and as amended by section 46 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** or in section 135A of the Principal Act as inserted by section 46(3) of this Act and as amended by section 64 of the **Accident Compensation (Amendment) Act 1994** and as amended by sections 32 and 33 of the **Accident Compensation (Amendment) Act 1996** and as amended by section 11 of the **Accident Compensation (Further Amendment) Act 1996** and as amended by section 47 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**;

- (e) the Supreme Court making a judgment or Order for damages or approving a settlement or compromise in respect of an injury arising before 1 December 1992, except in the circumstances specified in section 135B of the Principal Act as inserted by section 46(3) of this Act and as amended by section 64 of the **Accident Compensation (Amendment) Act 1994**.

<sup>14</sup> S. 98(2A): See note 12.

<sup>15</sup> S. 98(2AB): See note 12.

<sup>16</sup> S. 98(2AB)(a): Section 23(3) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

**23 Amendment of section 98—loss of hearing**

- (3) Section 98 of the **Accident Compensation Act 1985** as amended by this section applies in respect of all determinations made on or after the commencement of this section.

<sup>17</sup> S. 98(2AC): See note 16.

<sup>18</sup> S. 98(2B): See note 13.

<sup>19</sup> S. 99B (*repealed*): Section 26(5) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

**26 Amendment of section 99—reasonable costs**

- (5) The **Accident Compensation Act 1985** as in force on the commencement of this section applies to services or provisions rendered on or after that commencement.

<sup>20</sup> Pt 4 Div. 2D: See Government Gazette of 20 June 2024 pages 1073–1080 for Notice of Indexed Benefit Levels and Other Amounts.

<sup>21</sup> S. 114(9): See note 10.

<sup>22</sup> S. 114B(2): See note 10.

<sup>23</sup> S. 114B(3): See note 10.

<sup>24</sup> S. 114B(4): See note 10.

<sup>25</sup> S. 114B(5): See note 10.

<sup>26</sup> Pt 4 Div. 7: Section 63(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

**63 Administration by State Trust Corporation of Victoria**

- (2) The Principal Act as amended by subsection (1) applies in respect of payments of compensation to which section 130 of the Principal Act applies which are paid after the commencement of subsection (1).

<sup>27</sup> S. 130: Section 63(3)(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 read as follows:

**63 Administration by State Trust Corporation of Victoria**

- (3) Subject to subsection (4), payments of compensation to which section 130 of the Principal Act applies which have been paid to the Authority in accordance with the Principal Act as in force before the commencement of subsection (1) are to continue to be administered by the Authority in accordance with the Principal Act as in force before that commencement.
- (4) On the appointed day—
  - (a) the administration of payments of compensation to which subsection (3) applies is transferred to the State Trust Corporation of Victoria; and
  - (b) the Authority must transfer to the State Trust Corporation of Victoria such assets (including any money) as the Authority determines to be equivalent in value to the value of payments of compensation administered by the Authority.

<sup>28</sup> S. 135: See note 13.

<sup>29</sup> S. 135: Section 64(11) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

**64 Amendment of sections 135, 135A and 135B**

(11) The amendments made to the Principal Act by this section—

- (a) do not affect the rights of the parties in the proceeding known as *Jim Isaac Robart v. Matchplan Pty. Ltd. (In Liquidation)* (No. 7267 of 1993) in the Supreme Court of Victoria; and
- (b) do not affect any order or liability to pay costs, or payment of costs, made before the date on which the **Accident Compensation (Amendment) Act 1994** receives the Royal Assent.

<sup>30</sup> S. 135A: See note 13.

<sup>31</sup> S. 135A: See note 29.

<sup>32</sup> S. 135A(2A): Section 32(2) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

**32 Amendment of section 135A**

- (2) Section 135A of the **Accident Compensation Act 1985** as amended by this section applies in respect of any proceedings brought on or after the commencement of this section.

<sup>33</sup> S. 135A(2B): See note 32.

<sup>34</sup> S. 135A(2C): See note 32.

<sup>35</sup> S. 135A(3A): Section 33(3) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

**33 Amendment of section 135A—"serious injury"**

- (3) This section does not affect the rights of the parties in any proceedings commenced and determined before 16 May 1996.

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<sup>36</sup> Pt 5 (Heading and ss 139–155):

Pt 5 (Heading and ss 139–155) amended by Nos 48/1986 ss 24, 25, 83/1987 s. 76, 64/1989 ss 21, 22, 37(1)(d), 18/1991 s. 12(1)(k)–(m), 67/1992 s. 64(7)(a)(8)(c)(10), 83/1992 s. 184(Sch. 6 item 1), 50/1993 ss 103–108, 109(1)(2), 50/1994 ss 68–70, 71(1)(2), 72–75, 7/1996 ss 34–38, 47/1996 s. 22, 60/1996 ss 23, 24(1), 25(a), 46/1998 s. 7(Sch. 1), 52/1998 s. 311(Sch. 1 item 1.8), 81/1998 s. 31, 26/2000 s. 25(4), 11/2001 s. 3(Sch. item 2.3), 28/2005 ss 3–5, 10, 46/2005 s. 6, 34/2007 s. 3, substituted by No. 9/2010 s. 126 (as amended by No. 80/2010 s. 159(m)), amended by Nos 80/2010 ss 98–103, 104(a)–(g), 43/2012 s. 3(Sch. item 1.5), 82/2012 s. 283, repealed by No. 67/2013 s. 639.

<sup>37</sup> Pt 6 (Heading and ss 156–178):

Pt 6 (Heading and ss 156–178) amended by Nos 48/1986 s. 26, 83/1987 ss 77–82(6) (as amended by No. 64/1989 s. 37(3)(c))(7), 83–86, 18/1988 ss 5, 6(1)(2), 64/1989 ss 16(1), 17–19, 35(k)–(m), 18/1991 ss 8(a)(b), 12(1)(n)(o), repealed by No. 67/1992 s. 48, new Pt 6 (Heading and s. 156) inserted by No. 67/1992 s. 49, amended by No. 50/1993 ss 81(h), 92(3)(b), 109(3), substituted as Pt 6 (Heading and ss 156–164) by No. 50/1994 s. 76, amended by Nos 47/1996 s. 23, 107/1997 ss 30(11)(w)(x), 52, 55(2), 81/1998 s. 26(1), 95/2003 ss 10, 11(b), 12, 102/2004 s. 24(2), 24/2006 s. 6.1.2(Sch. 7 item 1.2), 69/2006 s. 224(Sch. 3 item 1), repealed by No. 9/2010 s. 131.

<sup>38</sup>S. 253: The amendment proposed by section 24(Schedule 1 item 1) of the **Subordinate Legislation Amendment Act 2010**, No. 78/2010 is not included in this publication due to the earlier substitution of section 253 by section 123 of the **Transport Accident and Accident Compensation Legislation Amendment Act 2010**, No. 80/2010.

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**GROUND FOR TERMINATION OF WEEKLY AND MEDICAL  
AND LIKE BENEFITS (AS AN AID TO UNDERSTANDING)**

This table is intended for reference purposes only and, in accordance with section 36 of the **Interpretation of Legislation Act 1984**, does not form part of the **Accident Compensation Act 1985**. For more specific detail on the operation of the provisions referenced in the table, refer to relevant sections of the Act.

Grounds for Termination	AC Act section as at 1 July 2010
Worker is no longer entitled to weekly payments. This includes where worker is no longer incapacitated for pre-injury employment.	14(2)(b)
Worker obtained payments fraudulently.	114(3)



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<b>Grounds for Termination</b>	<b>AC Act section as at 1 July 2010</b>
Worker returns to work full time within first or second entitlement period.	114(2)(c)(i)
Worker leaves Victoria, has their employment terminated for misconduct, resigns or reduces the hours worked for reasons unrelated to their capacity and in circumstances that do not invoke the exception that operates in s.93CDA.	114(2A)
Weekly payments have been paid or are payable for a claimed injury for a total of { 104/130) weeks (whether consecutive or not) and the worker is assessed by the Authority or self-insurer as: <ul style="list-style-type: none"> <li>• having a current work capacity; or</li> <li>• having no current work capacity but this is not likely to continue indefinitely; or</li> <li>• where the worker is a pre-12 November 1997 claimant, not to have sustained a serious injury.</li> </ul>	93C(1)

<b>Grounds to Reduce, Suspend or Vary Entitlement</b>	<b>AC Act Section as at 1 July 2010</b>
Worker ceases to reside in Australia and cannot provide evidence that they have no work capacity and will continue to do so indefinitely	97(2)
Worker injured within 130 weeks of retirement age or after retirement age and has received payments for 130 weeks.	93E
Worker is beyond retirement age (and who doesn't have an entitlement under section 93E) and has received weekly payments for 13 weeks due to incapacity which resulted from in patient hospital treatment. <sup>1</sup>	93EA(1), 93EA(3)
Worker receiving weekly payments for an incapacity arising from surgery after the second entitlement period. <sup>2</sup>	93CA and 114(9A)
Worker reaches retirement age, unless the injury was sustained within 130 weeks of retirement age or after retirement age (s.93E).	93F

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<b>Grounds to Reduce, Suspend or Vary Entitlement</b>	<b>AC Act Section as at 1 July 2010</b>
Worker did not make reasonable efforts to actively participate and co-operate in planning for the worker's return to work in co-operation with the employer, Authority or self-insurer.	205* and 200
Worker did not use an occupational rehabilitation service provided in accordance with sections 99 and 99A (Division 2C) and co-operate with the provider of that service.	205* and 201
Worker did not, when requested to do so by the employer, Authority or self-insurer, actively participate and co-operate in any assessment of— (a) capacity for work, (b) rehabilitation progress, (c) future employment prospects.	205* and 202
Worker did not make reasonable efforts to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment, in co-operation with the employer, Authority or self-insurer.	205* and 203
Worker did not participate in an interview with the representative of the Authority or self-insurer for the purpose of enhancing the worker's opportunities to return to work, and actively participate and co-operate in the interview to comply with his or her obligations under Division 3 of Part VIIB, and as required by the Authority or self-insurer.	205* and 204
Judgment is obtained, or a compromise or settlement made in respect of common law proceedings and pecuniary loss damages are awarded. <sup>3</sup>	134AB(36)/135(18)
<b><i>Reduction of weekly payment amount</i></b>	
Worker returns to work full time within first or second entitlement period.	114(2)(c)(i)

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Worker who does not have capacity for pre injury employment but has returned to work in some capacity and changes their hours of work (subject to 114(2A)).	114(2)(c)(ii)
<b>Grounds to Reduce, Suspend or Vary Entitlement</b>	<b>AC Act Section as at 1 July 2010</b>
Payments for regular overtime or shift allowances are no longer included in PIAWE.	114(2)(c)(iii)
<i><b>Non-entitlement period</b></i>	
Worker temporarily absent from Australia for more than 28 days. <sup>4</sup>	97(2A)
Worker imprisoned.	97(7)
Worker is in receipt of any disability, retirement or superannuation pension or receives income from superannuation or retirement benefit lump sum amount that has not been deposited with a complying superannuation fund or a complying approved deposit fund. <sup>5</sup>	96
<i><b>Suspension of weekly payments</b></i>	
Worker unreasonably refuses to submit to or unreasonably obstructs a medical examination.	s 67(4) & 67(5), s 112(2) & (4)
Expenses claimed are not reasonable and/or necessary.	99(1), 99(2)

<b>Grounds to Terminate Entitlement to Medical and Like Expenses</b>	<b>AC Act Section as at 1 July 2010</b>
Services claimed are not for an injury which creates an entitlement to compensation under the Act.	99(1)
52 weeks after entitlement to weekly payments has ceased unless: <ul style="list-style-type: none"> <li>Worker has received a common law settlement or award of pecuniary loss damages under this act or section 93 of the Transport Accident Act 1986 or accepts a voluntary settlement of weekly payments;</li> </ul>	

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<ul style="list-style-type: none"> <li>The worker has returned to work and could not remain at work unless the medical and like service was provided, the worker requires surgery or the worker is assessed as having a serious injury under s.91E of the Act;</li> </ul>	99(11), 99(12), 99(13)
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Grounds to Terminate Entitlement to Medical and Like Expenses	AC Act Section as at 1 July 2010
<ul style="list-style-type: none"> <li>The worker requires modification of a prosthesis;</li> <li>The medical and like services is essential to ensuring the worker's health or ability to undertake necessary tasks of daily living does not significantly deteriorate.</li> </ul>	

<sup>1</sup> Not technically a ground for termination as section 93EA(3) makes it clear a worker is entitled to a limited period of payments only (13 weeks) if this section applies. No termination is required however a worker's entitlement ceases after the period specified.

<sup>2</sup> As above, not a ground for termination but this section limits the period of payments and a worker's entitlement ceases after the period specified.

\* Section 205 establishes a multi stage process where a worker does not comply with their return to work obligations imposed under sections 200, 201, 202, 203 and 204 (Division 3). The procedure is designed to encourage workers to return to work and section 205 provides the Authority or self insurer may either suspend or terminate weekly payments or cease and determine entitlement. See section 205 for details on the operation of this provision.

<sup>3</sup> Entitlement ceases but no notice of termination is required.

<sup>4</sup> Non entitlement period applies after 28 days.

<sup>5</sup> Section 96(2) relates to a lump sum and section 96(6) relates to a pension. These sections may also apply to reduce weekly payment amount.

<sup>39</sup> Table of Amendments: The amendment proposed by section 53 of the **Road Safety Amendment Act 2014**, No. 49/2014 is not included in this publication due to the earlier repeal of sections 239AAA, 239AAB and 239AAC by section 640 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, No. 67/2013.

Section 53 reads as follows:

**53 Access to information**

- (1) In sections 239AAA(1)(a) and 239AAB(1)(a)(ii) of the **Accident Compensation Act 1985**, after "82B" insert ", 82BA".
- (2) In paragraph (d) of the definition of *relevant information* in section 239AAC(2) of the **Accident Compensation Act 1985**, after "82B" insert ", 82BA".

<sup>40</sup> Table of Amendments: The amendment proposed by section 140 (Schedule 3 item 2) of the **Privacy and Data Protection Act 2014**, No. 60/2014 is not included in this publication due to the earlier repeal of section 239AAA by section 640 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, No. 67/2013.

Schedule 3 item 2 reads as follows:

**2 Accident Compensation Act 1985**

- 2.1 In section 239AAA(3), for the words and expressions commencing "any relevant standards" and ending at the end of the subsection substitute "any relevant law enforcement data security standards issued under the **Privacy and Data Protection Act 2014**".