

South Australia

## **Return to Work Regulations 2015**

under the *Return to Work Act 2014*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Return to Work Regulations 2015*.

### 2—Commencement

- (1) Subject to subregulation (2), these regulations will come into operation on 1 July 2015.
- (2) Regulations 48, 56 and 70 come into operation on the day on which they are made.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Return to Work Act 2014*;

*commercial motor vehicle* means a motor vehicle constructed or adapted solely or mainly for the carriage of goods or materials (including money) by road, including a prime mover, truck, panel van, utility and station wagon, but not including a motor cycle;

*GST* means the tax payable under the GST law;

*GST law* means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth; and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things;

*prime bank rate*, for a particular financial year, means a rate (expressed as an annual percentage to 2 decimal places) equal to the average of—

- (a) the 12 months fixed-rate personal home loan rate fixed by the National Australia Bank Limited (*NAB*) as at the commencement of the financial year (or, if there is more than 1 such rate, the average of all such rates); and
- (b) the fixed-rate unsecured personal loan rate fixed by NAB as at the commencement of the financial year (or, if there is more than 1 such rate, the average of all such rates).

#### 4—Indexation

If a monetary sum referred to in these regulations is followed by the words (*indexed*), the amount is to be adjusted on 1 January of each year, beginning on 1 January 2016, by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the September quarter of the immediately preceding year by the Consumer Price Index for the September quarter of 2014 (with the amount so adjusted being rounded up to the nearest dollar).

## Part 2—Key principles, concepts and requirements

### 5—Contract of service and other terms (section 4 of Act)

- (1) For the purposes of the definition of *contract of service* in section 4(1) of the Act (but subject to this regulation and regulation 6), the following classes of work under a contract, arrangement or understanding are prescribed classes of work:
  - (a) building work, other than wall or floor tiling, where—
    - (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the *employer*); and
    - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
    - (iii) the worker does not employ any other person to carry out any part of the work; and
    - (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed—
      - (A) 4% of the total amount payable, or reasonably expected to be payable, under or pursuant to the contract, arrangement or understanding; or
      - (B) \$120 (indexed),whichever is the greater; and
    - (v) the value of any 1 tool, or any single item of plant or equipment, owned or leased by the worker for work purposes (whether or not it is used in the performance of the particular work) does not exceed \$18 988 (indexed);
  - (b) cleaning work, where—

- (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the *employer*); and
  - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
  - (iii) the worker does not employ any other person to carry out any part of the work; and
  - (iv) —
    - (A) in the case of window cleaning work—the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed—
      - if the term of the contract, arrangement or understanding is not more than 1 month—\$60 (indexed);
      - if the term of the contract, arrangement or understanding is more than 1 month—an average of \$60 (indexed) per month;
    - (B) in any other case—the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed—
      - if the term of the contract, arrangement or understanding is not more than 1 month—\$120 (indexed);
      - if the term of the contract, arrangement or understanding is more than 1 month—an average of \$120 (indexed) per month;
- (c) driving a motor vehicle used for the purposes of transporting goods or materials (whether or not the vehicle is registered in the driver's name) where the driver is paid under the *Local Government Employees Award* or the *Adelaide City Corporation Award* and where—
- (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the *employer*); and
  - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
  - (iii) the worker does not employ any other person to carry out any part of the work; and
  - (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed \$120 (indexed);
- (d) driving a taxi-cab or similar motor vehicle used for the purpose of transporting members of the public where the driver does not hold or lease a licence issued in relation to the vehicle and where—

- (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the *employer*); and
  - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
  - (iii) the worker does not employ any other person to carry out any part of the work; and
  - (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed \$120 (indexed);
- (e) driving or riding for fee or reward a vehicle, other than a commercial motor vehicle, for the purpose of transporting by road goods or materials (including money) where the driver or rider does not simultaneously own or operate more than 1 vehicle for work purposes and where—
  - (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the *employer*); and
  - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
  - (iii) the worker does not employ any other person to carry out any part of the work; and
  - (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed \$120 (indexed); and
  - (v) the goods or materials being transported are not owned (and have not been previously owned) by the driver or rider (as the case may be), or by the employer;
- (f) performing as a singer, dancer, musician, comedian or other entertainer at a hotel, restaurant, club or other similar venue, but excluding work as an actor, model or mannequin, or as any other type of entertainer, in performing as part of a circus, concert recital, opera, operetta, mime, play or other similar performance, where—
  - (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the *employer*); and
  - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
  - (iii) the worker does not employ any other person to carry out any part of the work; and
  - (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed \$120 (indexed);
- (g) thoroughbred riding work where the work is performed by a licensed jockey.

- (2) For the purposes of subregulation (1)—
- (a) the value of any tool, plant or equipment owned or leased by a worker is the price that, at the time that the worker enters into the relevant contract, arrangement or understanding, the worker would reasonably be expected to pay if the worker were to purchase an equivalent, unused, tool or item of plant or equipment; and
  - (b) a vehicle will not be taken to be used for work purposes if its sole or principal use is to transport the worker, and any tools, plant or equipment, to any work site.
- (3) In relation to the work prescribed under paragraph (g) of subregulation (1), TRSA is designated as the presumptive employer of workers who are within the ambit of that paragraph.
- (4) If—
- (a) a person performs work as an outworker; and
  - (b) any aspect of that work is governed by an award or industrial agreement that is expressed to apply to outworkers (or a specified class or classes of outworkers),
- that work is prescribed work for the purposes of the definition of *contract of service* in section 4(1) of the Act.
- (5) Subject to regulation 6, the work of a minister, priest or other member of a religious order is a prescribed class of work for the purposes of the definition of *contract of service* in section 4(1) of the Act.
- (6) For the purposes of the definition of *local government corporation* in section 4(1) of the Act, the following bodies are prescribed as being within this definition:
- (a) committees of a council under the *Local Government Act 1999*;
  - (b) subsidiaries of a council (or councils) established under the *Local Government Act 1999*;
  - (c) the Local Government Finance Authority of South Australia established under the *Local Government Finance Authority Act 1983*;
  - (d) LGCS Pty. Ltd.;
  - (e) Local Government Managers Australia, South Australian Division Incorporated;
  - (f) LG System Incorporated;
  - (g) Upper Spencer Gulf Business Incubator Network Incorporated.
- (7) For the purposes of the definition of *prescribed allowance* in section 4(1) of the Act, an allowance or benefit prescribed for the purposes of this definition includes allowances paid occasionally or intermittently for accommodation or travel where—
- (a) the worker's accommodation or means of travel is not otherwise provided by the employer; or
  - (b) the cost of the worker's accommodation or travel is not otherwise reimbursed by the employer.

(8) For the purposes of section 4(4) of the Act, a prescribed circumstance is where a person (the principal) contracts with another person (the contractor) who is not registered as an employer under the Act.

(9) In this regulation—

**award** means—

- (a) an award under the *Fair Work Act 1994*; or
- (b) an award, determination or order of the Fair Work Commission under the *Fair Work Act 2009* of the Commonwealth; or
- (c) an award or determination given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth;

**building work** has the same meaning as in the *Building Work Contractors Act 1995*;

**cleaning work** means the work of cleaning any building or a part of a building (including the windows of a building or the surrounds of a building);

**industrial agreement** means—

- (a) an enterprise agreement within the meaning of the *Fair Work Act 1994*; or
- (b) an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth; or
- (c) an agreement given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth;

**licensed jockey** means a jockey, an interstate jockey, or an apprentice jockey, licensed by TRSA;

**licensed trainer** means a trainer licensed by TRSA;

**outworker** has the meaning given by the *Fair Work Act 1994*;

**thoroughbred riding work** means mounting, dismounting or riding a thoroughbred horse—

- (a) in the course of a race meeting conducted and controlled by TRSA; or
- (b) in the course of a barrier trial conducted and controlled by TRSA; or
- (c) in the course of a training session conducted and controlled by a licensed trainer;

**TRSA** means—

- (a) Thoroughbred Racing SA Ltd (ACN 094 475 939); or
- (b) if a body other than Thoroughbred Racing SA Ltd is designated under section 6 of the *Authorised Betting Operations Act 2000* as the racing controlling authority for horse racing—that body;

**wall or floor tiling** means any work performed within the wall and floor tiling trade (including any ancillary building work of a minor nature only);

**window cleaning work** means the work of cleaning any window of a building or a part of a building.



## 6—Exclusions (section 4 of Act)

- (1) For the purposes of section 4(5) of the Act, the following persons are excluded from the application of the Act:
  - (a) a minister ministering within The Anglican Church of Australia in South Australia;
  - (b) a priest or other member of a religious order ministering within the Catholic Church of South Australia;
  - (c) a pastor ministering within the Lutheran Church of Australia South Australia District Inc;
  - (d) an ordained minister, deaconess or lay pastor of The Uniting Church in Australia ministering in South Australia in an approved placement under the "Classification of Ministers" of that Church;
  - (e) an officer of The Salvation Army appointed in South Australia under the orders and regulations for officers of The Salvation Army.
- (2) For the purposes of section 4(5) of the Act, but subject to subregulation (3), a worker who is employed by an employer to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation, and other associated activities) is, in relation to that employment, excluded from the application of the Act.
- (3) Subregulation (2) does not apply to—
  - (a) a person authorised or permitted by a racing controlling authority within the meaning of the *Authorised Betting Operations Act 2000* to ride or drive in a race within the meaning of that Act; or
  - (b) a boxer or wrestler employed or engaged for a fee to take part in a boxing or wrestling match.
- (4) For the purposes of section 4(5) of the Act, a person (the **driver**) who is employed or engaged by another (the **principal**) to transport goods or materials (including money) by motor vehicle in the course of or for the purposes of a trade or business carried on by the principal is excluded from the application of the Act if—
  - (a) the motor vehicle is a commercial motor vehicle; and
  - (b) the motor vehicle is owned, leased or hired by the driver; and
  - (c) the motor vehicle is not owned by, leased from or hired out by, or otherwise supplied by (directly or indirectly)—
    - (i) the principal; or
    - (ii) a third person who is related to the principal; and
  - (d) the goods or materials are not owned (and have not been previously owned) by the driver or by the principal.
- (5) For the purposes of subregulation (4), a principal and another person will be taken to be related if—
  - (a) they are employer and employee; or

- (b) the other person is accustomed or under an obligation (whether formal or informal) to control the use of the relevant motor vehicle in accordance with the directions or determinations of the principal.
- (6) For the purposes of section 4(5) of the Act, a person to whom the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies is excluded from the application of the Act.

### **7—Federal minimum wage**

- (1) For the purposes of section 4(8) of the Act, the national minimum wage for the category of work that the worker performs is prescribed as the wage applying under a national minimum wage order under Part 2-6 of the *Fair Work Act 2009* of the Commonwealth.
- (2) For the purposes of section 5(15)(b) of the Act, in the case of a worker who was working at the relevant date on a part-time basis, the Federal minimum wage will be adjusted by—
  - (a) calculating the number of hours per week being worked by the worker as a percentage of the number of hours per week that constitute full-time employment under section 5(16)(b) of the Act in relation to the worker (calculated to 1 decimal point); and
  - (b) multiplying the Federal minimum wage by the percentage calculated under paragraph (a).

### **8—Indexation (section 4 of Act)**

An amount adjusted in accordance with section 4(17) of the Act is to be rounded up to the nearest dollar.

### **9—Average weekly earnings (section 5 of Act)**

For the purposes of section 5(13)(b) of the Act, each of the following is prescribed as a class of non-cash benefit:

- (a) access to a discounted rate of interest on a loan;
- (b) payment of school fees;
- (c) payment of health insurance premiums;
- (d) payment of medical benefits;
- (e) a computer for personal use;
- (f) access to the Internet;
- (g) accommodation;
- (h) payment of, or towards, housing costs;
- (i) a motor vehicle and payment of costs associated with running or maintaining the vehicle;
- (j) a telephone and payment of costs associated with using or maintaining the telephone;
- (k) a staff discount program;

- (l) a credit card.

#### **10—Designated courts (section 12 of Act)**

For the purposes of paragraph (b) of the definition of *designated court* in section 12(3) of the Act, the following are declared to be designated courts:

- (a) *Magistrates Court* of the Australian Capital Territory;
- (b) *Workers Compensation Commission of New South Wales*;
- (c) *Work Health Court* of the Northern Territory;
- (d) *Industrial Magistrates Court* of Queensland;
- (e) *Industrial Court of Queensland*;
- (f) *Queensland Industrial Relations Commission*;
- (g) *Workers Rehabilitation and Compensation Tribunal* of Tasmania;
- (h) *County Court* of Victoria;
- (i) *Magistrates' Court of Victoria*;
- (j) *District Court of Western Australia*.

#### **11—Notice of injury (section 16 of Act)**

For the purposes of section 16(4)(b) of the Act, notice of an injury will be taken to have been given to an employer if it is served—

- (a) by post on the employer; or
- (b) by email sent to an address used by the employer in the ordinary course of business.

#### **12—Employer's duty to provide work (section 18 of Act)**

- (1) For the purposes of section 18(6) of the Act, the following limits on costs awarded to a worker who is represented in proceedings are prescribed:
  - (a) for assistance in the preparation and lodgement of an application to the Tribunal under section 18(3) of the Act—\$402 (indexed);
  - (b) for participation in proceedings before the Tribunal in respect of an application under section 18(3) of the Act (including the preparation of any necessary documentation)—
    - (i) \$745 (indexed); or
    - (ii) if the Tribunal determines, on application by the worker, that the worker is entitled to an award of costs of an amount greater than \$745 (indexed)—\$2 464 (indexed);
  - (c) for proceedings before the Tribunal on account of a review or appeal under Part 5 Division 1 of the *South Australian Employment Tribunal Act 2014*—85% of the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

- (2) If a limit on costs prescribed by subsection (1) is varied or adjusted following the commencement of proceedings relating to an application under section 18(3) of the Act, the award of costs is subject to the limit that applied when the process was commenced.
- (3) For the purposes of section 18(8)(b) of the Act, costs may be awarded to reimburse disbursements incurred by a worker up to an amount reasonably incurred.
- (4) For the purposes of section 18(15) of the Act, the prescribed rate is the prime bank rate for the financial year in which the relevant weekly payment is made, compounded on a weekly basis for each complete week that the amount paid by the Corporation remains outstanding.

### **13—Interim decision (section 21 of Act)**

- (1) For the purposes of section 21(3) of the Act, an application must be made in writing to the Corporation.
- (2) For the purposes of section 21(4) of the Act, an interim decision must be—
  - (a) based on evidence from a medical practitioner; and
  - (b) made following consultation with the worker.
- (3) Subject to subregulation (4), for the purposes of section 21(7) of the Act, the amount in arrears will be increased by interest on the amount at the prime bank rate for the financial year in which the amount went into arrears, compounded on a weekly basis for each complete week that the amount is in arrears.
- (4) If the amount the worker is entitled to be paid relates to more than 1 financial year, those amounts will be increased by interest at the relevant prime bank rate for each financial year, compounded on a weekly basis.

## **Part 3—Recovery/return to work**

### **14—Interpretation**

In this Part, unless the contrary intention appears—

*different employer*, in relation to an injured worker, means an employer of the worker (whether identified or not) who is not the pre-injury employer;

*different employment*, in relation to an injured worker, means employment that is not pre-injury employment;

*injured worker* means a worker who has been incapacitated for work by an injury (whether or not it has been finally established that the worker's injury is a work injury under the Act);

*plan* means a recovery/return to work plan under Part 3 of the Act;

*pre-injury employer* means the person by whom an injured worker was employed immediately before the occurrence of an injury to which a plan relates;

*pre-injury employment* means the form of employment that an injured worker performed immediately before the occurrence of an injury to which a plan relates.

## 15—Standards and requirements—recovery/return to work plan (section 25 of Act)

For the purposes of section 25(6) of the Act, a recovery/return to work plan must comply with the following standards and requirements:

- (a) it must be in writing;
- (b) it must specify the following details:
  - (i) the worker's full name;
  - (ii) the worker's date of birth;
  - (iii) the claim number;
  - (iv) the employer's name;
  - (v) the nature of the injury;
  - (vi) the date that the injury was suffered;
- (c) it must be as simple and flexible as possible;
- (d) it must promote communication and co-operation between the parties;
- (e) it must be appropriate to the circumstances of the worker;
- (f) it must have specific objectives including at least 1 of the following:
  - (i) the worker's return to the pre-injury employment with the pre-injury employer;
  - (ii) the worker's return to different employment with the pre-injury employer;
  - (iii) the worker's return to the pre-injury employment but with a different employer;
  - (iv) the worker's return to different employment with a different employer;
  - (v) the worker's return to independence within the community;
- (g) it must contain other provisions consistent with the objects of the Act including provisions promoting—
  - (i) early intervention; and
  - (ii) recovery and return to work services; and
  - (iii) the provision of suitable employment for which the worker is fit;
- (h) it must contain the following statements:
  - (A) **Important Notice to Employers**
    - Failure to co-operate with the implementation of a recovery/return to work plan or to provide suitable employment for an injured worker may be considered as appropriate grounds to impose a supplementary payment (see section 147 of the *Return to Work Act 2014*);

- An application for a review of a provision of a recovery/return to work plan on the ground that the provision is unreasonable does not suspend obligations imposed by the recovery/return to work plan until a review authority makes a decision to modify the plan, if at all.

**(B) Important Notice to Injured Workers**

- A failure to comply with an obligation under a recovery/return to work plan may lead to the discontinuance of weekly payments (see section 48(3)(d)(ii) of the *Return to Work Act 2014*);
- An application for a review of a provision of a recovery/return to work plan may be made but it does not suspend obligations imposed by the plan pending a determination of the review;
- A refusal or failure to undertake work that has been offered and that the worker is capable of performing, or to take reasonable steps to find or obtain suitable employment, may lead to the discontinuance of payments (see section 48 of the *Return to Work Act 2014*). This may also occur if a worker obtains suitable employment and then unreasonably discontinues the employment.

## **16—Amendment to recovery/return to work plan**

A reference in this Part to a matter to be contained in a plan includes any amendments, alterations or modifications to the plan made by the Corporation in the course of a review of the plan, subject to the Corporation satisfying the requirements of the Act in respect of the implementation of an amendment, alteration or modification.

## **17—Review of recovery/return to work plan**

- (1) For the purposes of section 25(9)(a) of the Act, a recovery/return to work plan should be reviewed—
  - (a) if the objectives of the plan have been completed or satisfied; and
  - (b) as often as necessary to ensure that the plan continues to reflect—
    - (i) any significant changes in the nature of the worker's capacity for work; and
    - (ii) the issues that need to be addressed; and
    - (iii) a change in the return to work objective being sought (due to a change in the worker's capacity or for any other reason).
- (2) For the purposes of section 25(9)(b) of the Act, the review of a recovery/return to work plan should include a meeting with the worker to be conducted at the worker's place of employment (if reasonably practicable).

## 18—Return to work co-ordinators—exemptions from requirements (section 26 of Act)

- (1) Subject to subregulation (2), an employer is exempt from the requirement to appoint a co-ordinator under section 26 of the Act if—
  - (a) the employer maintains a remuneration level that has fallen below an amount that (according to the determination of the Corporation) represents a remuneration level consistent with the employment of fewer than 30 workers; or
  - (b) the employer holds an exemption from the Corporation under this paragraph granted on the ground that the Corporation is satisfied—
    - (i) that the employer reasonably expects not to employ 30 or more workers for any continuous period of 3 (or more) months; and
    - (ii) that in the particular circumstances it is appropriate to grant the exemption.
- (2) An exemption under subregulation (1) ceases to apply if at any time the employer employs 30 or more workers for a continuous period of 3 (or more) months.
- (3) If an exemption ceases to apply under subregulation (2), the employer must appoint a person to the office of co-ordinator within 3 months after the cessation of the exemption.

## Part 4—Financial benefits

### 19—Certification by designated person (section 30 of Act)

- (1) For the purposes of paragraph (b) of the definition of *designated person* in section 30(10) of the Act, a nurse practitioner—
  - (a) is a person of a prescribed class; and
  - (b) may, subject to subregulation (2), provide a certificate for the purposes of a claim if the nurse practitioner has examined the worker at—
    - (i) an incorporated hospital; or
    - (ii) a private hospital,within the meaning of the *Health Care Act 2008*.
- (2) A nurse practitioner's ability to act under section 30 of the Act is limited to certifying the worker's capacity for work over the ensuing 7 days.
- (3) In this regulation—

*nurse practitioner* means a nurse whose registration under the *Health Practitioner Regulation National Law* is endorsed as being qualified to practise as a nurse practitioner.

### 20—Notices

For the purposes of sections 31(8), 47(4), 48(5) and 60(7) of the Act, the following information must be included in a notice under any of those sections:

- (a) a statement of the decision that has been made;

- (b) a reference to the provision of the Act and, if relevant, the regulations made under the Act, on which the Corporation has relied in making the decision, and the text of that provision;
- (c) the reasons for the decision (including information about the evidence on which the decision is based).

### **21—Medical expenses—accommodation costs (section 33 of Act)**

- (1) For the purposes of section 33(2)(e) of the Act, the maximum amount of compensation payable for the cost of the accommodation (including meals) of a worker away from home for the purpose of receiving medical services or approved recovery/return to work services is \$215 per day (indexed).
- (2) If an amount under subregulation (1) relates to accommodation outside South Australia, the maximum amount is increased by an additional \$86 per day (indexed).

### **22—Medical expenses—application for approval (section 33 of Act)**

- (1) For the purposes of section 33(17) of the Act, all services, appliances, medicines and materials referred to in section 33(2) of the Act, other than services referred to in subsection (2)(c), are prescribed.
- (2) For the purposes of section 33(18) of the Act, an application must—
  - (a) be supported by medical evidence provided by a medical practitioner; and
  - (b) include the following information:
    - (i) the worker's full name, telephone number and address;
    - (ii) the worker's date of birth;
    - (iii) the claim number;
    - (iv) the employer's name;
    - (v) the nature of the injury;
    - (vi) the date that the injury was suffered;
    - (vii) details of the service, appliance, medicine or other materials forming the basis of the application;
    - (viii) details of the reason for making the application.
- (3) For the purposes of section 33(18) of the Act, the Corporation must make a decision within 1 month of the making of the application.

### **23—Medical expenses—period of entitlement (section 33(21) of Act)**

- (1) For the purposes of section 33(21)(b)(iii) of the Act, the following classes of injury are prescribed:
  - (a) multiple myeloma;
  - (b) primary leukaemia;
  - (c) primary non-hodgkin's lymphoma;
  - (d) primary site bladder cancer;
  - (e) primary site brain cancer;



- (f) primary site breast cancer;
  - (g) primary site colorectal cancer;
  - (h) primary site kidney cancer;
  - (i) primary site oesophageal cancer;
  - (j) primary site prostate cancer;
  - (k) primary site testicular cancer;
  - (l) primary site ureter cancer.
- (2) For the purposes of section 33(21)(b)(iv) of the Act, section 33(20) of the Act will not apply if—
- (a) the services relate to an injury that is subject to the application of the Act by virtue of clause 29(1)(a) of Schedule 9 of the Act (an *existing injury*); and
  - (b) the services—
    - (i) constitute surgery, or associated medical, nursing or medical rehabilitation services (including the cost of hospitalisation), associated with the provision, maintenance or replacement of a therapeutic appliance; and
    - (ii) have been approved by the Corporation.
- (2a) For the purposes of section 33(21)(b)(iv) of the Act, section 33(20) of the Act will not apply if—
- (a) the services relate to an injury that is subject to the application of the Act by virtue of clause 29(1)(a) of Schedule 9 of the Act (an *existing injury*); and
  - (b) the services constitute surgery, or associated medical, nursing or medical rehabilitation services (including the cost of hospitalisation), where the Corporation has determined or accepted, on application made before 1 July 2016, that it is reasonable and appropriate for such surgery to be undertaken at a later time due to the impact (or likely impact) of the existing injury on the worker's health and capacity (or future health and capacity).
- (3) For the purposes of section 97 of the Act—
- (a) a decision not to grant an approval under subregulation (2)(b); or
  - (b) a decision on an application under subregulation (2a)(b),
- is declared to be reviewable.

#### **24—Transportation for initial treatment (section 34 of Act)**

For the purposes of section 34(4) of the Act, the amount of \$277 (indexed) is prescribed.

#### **25—Compensation for property damage (section 35 of Act)**

For the purposes of section 35 of the Act, the following limits apply in relation to the compensation payable for damage to personal property:

- (a) for damage to therapeutic appliances and tools of trade—no limit;
- (b) for damage to clothes and personal effects—\$2 374 (indexed) in total.

## **26—Supplementary income support (section 40 of Act)**

For the purposes of section 40(3) of the Act, the rate of supplementary income support payments determined in accordance with section 39(1)(b) of the Act will be adjusted to take into account changes in the CPI between the quarter immediately preceding the quarter in which the second designated period came to an end and the quarter falling 2 quarters before the supplementary income support payments commence (with any amount so adjusted being rounded up to the nearest dollar).

## **27—Federal minimum wage adjustment scheme (section 42 of Act)**

For the purposes of section 42(3) of the Act, the adjustment to the Federal minimum wage will be made in each year—

- (a) if 1 July is a Sunday—on that day; or
- (b) on the first Sunday following 1 July.

## **28—Rate of interest payable on weekly payments in arrears (section 48 of Act)**

- (1) Subject to subregulation (2), for the purposes of section 48(12) of the Act, the amount in arrears will be increased by interest on the amount at the prime bank rate for the financial year in which the amount went into arrears, compounded on a weekly basis for each complete week that the amount is in arrears.
- (2) If the amount the worker is entitled to be paid relates to more than 1 financial year, those amounts will be increased by interest at the relevant prime bank rate for each financial year, compounded on a weekly basis.

## **29—Recovery of certain amounts paid to workers (section 48 of Act)**

- (1) This regulation applies in relation to the Corporation's ability to recover or set off an amount under section 48(13), (14) or (15) of the Act.
- (2) Subject to subregulation (3), the Corporation must—
  - (a) commence proceedings to recover an amount due to the Corporation as a debt; or
  - (b) exercise a right of set off under section 48(13)(b) of the Act,within 2 years after the date on which the Corporation becomes entitled to take action under the Act.
- (3) If the Corporation is satisfied on reasonable grounds that the worker provided false or misleading information to the Corporation, the Corporation may commence the proceedings or exercise the right of set off referred to in subregulation (2) at any time within 10 years after the date on which the Corporation becomes entitled to take action under the Act.
- (4) The Corporation may, according to what is reasonable in the circumstances of the particular case, recover an amount under section 48(13), (14) or (15) of the Act—
  - (a) as a single lump sum; or
  - (b) by periodic payments; or
  - (c) by a combination of a lump sum and periodic payments; or
  - (d) in some other manner agreed between the Corporation and the worker.

- (5) Subregulation (4) operates subject to the following qualifications:
- (a) the Corporation cannot require that a worker make periodic payments in excess of 10% of the worker's net income for the period over which those payments are to be made without the agreement of the worker;
  - (b) the Corporation may, in its absolute discretion, waive (absolutely or subject to such conditions as the Corporation thinks fit) the whole or any part of an amount that it is entitled to recover if—
    - (i) the Corporation is satisfied that the worker is experiencing severe financial hardship, or it appears appropriate to do so on account of any other special circumstances peculiar to the worker; or
    - (ii) the Corporation considers that it is appropriate to do so after the Corporation has balanced the likely costs that would be associated with recovering the amount against the amount itself;
  - (c) unless the Corporation is satisfied on reasonable grounds that the worker has provided false or misleading information to the Corporation, the Corporation must grant the following remissions if the total amount payable is repaid within the following periods:
    - (i) a 15% remission if the total amount is repaid within 1 month of the date on which the worker first receives a written notification of the amount that the worker is liable to pay;
    - (ii) a 10% remission if the total amount is repaid within 6 months of the date on which the worker first receives a written notification of the amount that the worker is liable to pay.
- (6) If a worker has made a periodic payment to the Corporation under subregulation (4), the Corporation must, within a reasonable time after the end of the financial year in which the payment is made, furnish the worker with a statement that sets out—
- (a) the total amount paid by the worker during that financial year; and
  - (b) the amount left to be paid (if any),
- and must furnish a final statement when the debt is extinguished.
- (7) In this regulation—
- net income* of a worker means income after an appropriate deduction is made for any income tax payable by the worker.

### 30—Absence from Australia (section 51 of Act)

- (1) For the purposes of section 51(1) of the Act, a worker intending to be absent from Australia must give the Corporation the following information:
- (a) the date on which the worker intends to leave Australia;
  - (b) the date on which the worker intends to return to Australia or, if there is no such date, an estimate of the duration of his or her absence from Australia;
  - (c) details of the places where the worker will be while absent from Australia;
  - (d) an address (which may be an email address), or a telephone number, at which contact may be made with the worker;

- (e) details of any treatment that the worker intends to receive, or details of any arrangements for treatment that the worker has made, while absent from Australia;
  - (f) details of any employment that the worker intends to undertake or seek while absent from Australia;
  - (g) details of any consultation in relation to the proposed absence that the worker has undertaken with any employer (including information as to the outcome of that consultation).
- (2) The information required under subregulation (1) must be supplied in a form determined by the Corporation.
- (3) The information required under subregulation (1) may be provided in electronic form according to a determination made by the Corporation and published in the Gazette.

### **31—Prescribed limits on costs—provision of professional advice (section 53 of Act)**

For the purposes of section 53(4) of the Act, the following limits are prescribed in relation to the indemnity provided by the Corporation for the costs of obtaining advice in the event of redemption negotiations:

<b>Item</b>	<b>Limit</b>
Obtaining professional advice about the consequences of redemption	\$900 (indexed)
Obtaining financial advice about the investment or use of money received on redemption	\$900 (indexed)

### **32—Prescribed limits on costs—provision of professional advice (section 54 of Act)**

For the purposes of section 54(6) of the Act, the following limits are prescribed in relation to the indemnity provided by the Corporation for the costs of obtaining advice in the event of redemption negotiations:

<b>Item</b>	<b>Limit</b>
Obtaining professional advice about the consequences of redemption	\$900 (indexed)
Obtaining advice from a recognised health practitioner about future medical services and other assistance likely to be required	\$900 (indexed)

### **33—Prescribed limits on costs—provision of professional advice (section 66 of Act)**

For the purposes of section 66(7)(j) of the Act, the following limits are prescribed in relation to the indemnity provided by the Corporation for the costs of obtaining advice about the consequences of entering into a deed of release:

<b>Item</b>	<b>Limit</b>
Obtaining professional advice about the consequences of entering into a deed of release	\$900 (indexed)
Obtaining financial advice about the consequences of entering into	\$900 (indexed)

<u>Item</u>	<u>Limit</u>
a deed of release	

### **34—Lump sum compensation (section 58 of Act)**

- (1) For the purposes of section 58(4) of the Act, the portion of the prescribed sum to which a worker is entitled will be calculated in accordance with the table set out in Schedule 1, based on the worker's degree of whole person impairment assessed under Part 2 Division 5 of the Act.
- (2) The lump sum amount that applies is the amount applying at the time of the occurrence of the injury.

### **35—Compensation payable on death (sections 59, 61 and 62 of Act)**

- (1) For the purposes of section 59(15) of the Act, the prescribed rate of discount that is to be applied to the capitalised value of weekly payments under section 59 is 3%.
- (2) For the purposes of section 61(11) of the Act, the prescribed rate of interest on an amount of compensation payable under that section will be the prime bank rate for the financial year in which the compensation is paid.
- (3) For the purposes of section 62(1) of the Act, the prescribed amount that may be payable in relation to a funeral benefit is \$10 172 (indexed).

### **36—Exemption from 2 weeks of payments (section 64 of Act)**

- (1) For the purposes of section 64(13) of the Act, employers who are participating in the RISE scheme are, subject to subregulation (2), a prescribed class of employers exempt from the operation of section 64(5) of the Act.
- (2) The exemption under subregulation (1) is limited to cases where—
  - (a) the injury is suffered by a worker who is employed by the employer under the RISE scheme; and
  - (b) the injury is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of the injury to which the worker's participation in the RISE scheme can be attributed.
- (3) In this regulation—

*RISE scheme* means the re-employment scheme called the Re-employment Incentive Scheme for Employers established by the Corporation for workers who have suffered work injuries.

### **37—Payments by Corporation on behalf of defaulting employers (section 64 of Act)**

For the purposes of section 64(20) of the Act, the administration fee payable to the Corporation when the Corporation makes a payment on behalf of an employer is \$120 (including GST).

### **38—Rate of interest payable on weekly payments in arrears (section 65 of Act)**

- (1) Subject to subregulation (2), for the purposes of section 65(1) of the Act, the amount in arrears will be increased by interest on the amount at the prime bank rate for the financial year in which the amount went into arrears, compounded on a weekly basis for each complete week that the amount is in arrears.
- (2) If the amount the worker is entitled to be paid relates to more than 1 financial year, those amounts will be increased by interest at the relevant prime bank rate for each financial year, compounded on a weekly basis.

## **Part 5—Common law**

### **39—Seriously injured worker—election to claim or enter into agreement (section 73 of Act)**

For the purposes of section 73(4) of the Act, a worker to whom that section applies must make an election in accordance with the following requirements:

- (a) the election must be in writing and furnished to the Corporation before the worker commences proceedings under Part 5 of the Act or enters into an agreement under Part 4 Division 5 of the Act;
- (b) the worker, in making the election, must confirm that he or she has received advice about the consequences of the election from a legal practitioner who holds a current practising certificate in compliance with the requirement under section 73(6) of the Act;
- (c) the election must be accompanied by any claim being made by the worker under section 73(7) of the Act (including information or evidence that supports the amount claimed by the worker).

### **40—Prescribed costs—obtaining advice (section 73)**

For the purposes of section 73(7) of the Act, an amount that does not exceed \$900 (indexed) is prescribed for the cost of obtaining advice.

### **41—Costs in relation to action for damages**

For the purposes of section 86(1) of the Act, in relation to the declaration of costs charged, or to be charged, to a party, a legal practitioner must declare the costs in writing and provide the declaration to all parties to the proceedings within 1 month of the end of proceedings.

### **42—Meaning of substantive law (section 91 of Act)**

For the purposes of paragraph (b) of the definition of *a State's legislation about damages for a work related injury* in section 91 of the Act—

- (a) the *Workers Compensation Act 1951* (ACT) is declared to be the legislation of the Australian Capital Territory about damages for a work related injury; and
- (b) the *Workers Compensation Act 1987* (NSW) and the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) are declared to be the legislation of New South Wales about damages for a work related injury; and

- (c) the *Workers Rehabilitation and Compensation Act* (NT) is declared to be the legislation of the Northern Territory about damages for a work related injury; and
- (d) the *Workers Compensation and Rehabilitation Act 2003* (Qld) is declared to be the legislation of Queensland about damages for a work related injury; and
- (e) the *Workers Rehabilitation and Compensation Act 1988* (Tas) is declared to be the legislation of Tasmania about damages for a work related injury; and
- (f) the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) is declared to be the legislation of Victoria about damages for a work related injury; and
- (g) the *Workers' Compensation and Injury Management Act 1981* (WA) is declared to be the legislation of Western Australia about damages for a work related injury.

## Part 6—Dispute resolution

### 43—Nomination of person to reconsider a disputed decision (section 102 of Act)

For the purposes of section 102(2)(b) of the Act, the nomination of a person to the Registrar is made by a relevant compensating authority providing, in writing, the following information about the person to the Registrar:

- (a) the person's full name;
- (b) the name of the person's employer (if the person is an employee), or a relevant business name;
- (c) the person's position in the organisation in which he or she works, or his or her occupation;
- (d) details of any relevant qualifications and experience;
- (e) an address for correspondence;
- (f) the person's business telephone number, email address and a fax number.

### 44—Costs (section 106(1) of Act)

- (1) For the purposes of section 106(1) of the Act, the costs awarded to a party who is represented in proceedings that take place under Part 6 of the Act cannot exceed—
  - (a) for assistance in the preparation and lodgement of an application to the Tribunal—\$402 (indexed); and
  - (b) for participation in proceedings before the Tribunal up to and including a compulsory conciliation conference under Division 5 of that Part (including the preparation of any necessary documentation)—
    - (i) \$745 (indexed); or
    - (ii) if the Tribunal determines, on application by the party, that the party is entitled to an award of costs of an amount greater than \$745 (indexed)—\$2 464 (indexed); and

- (c) for participation in proceedings before the Tribunal if they extend beyond a compulsory conciliation conference—the limit applying under section 106(6) of the Act.
- (2) Subregulation (1)(b) applies subject to the qualification that if the proceedings in respect of which a party is entitled to an award of costs involve more than 1 application, the party and the relevant compensating authority may agree, or the Tribunal may order, that the party is not to be awarded costs up to the relevant limit for participation in proceedings before the Tribunal in respect of each separate application.
- (3) The relevant compensating authority is entitled to appear and be heard on an application under subregulation (1)(b)(ii).
- (4) For the purposes of section 106(2)(b) of the Act, costs may be awarded to reimburse disbursements incurred by a party to proceedings before the Tribunal up to a reasonable amount reasonably incurred, subject to the qualification that costs for medical services reimbursed as disbursements in the proceedings are limited to the scales of charges that apply for the purposes of section 33 of the Act or, if a service is not covered by a scale of charges under that section, to an amount determined in accordance with the principles that apply under that section.
- (5) If a limit on costs prescribed by subregulation (1) is varied or adjusted following the commencement of a process in relation to which an award of costs may be made under section 106 of the Act, the award of costs is subject to the limit that applied when the process was commenced.

#### **45—Medical evidence**

- (1) For the purposes of section 111(1) of the Act, a party must, prior to the hearing of a matter before the Tribunal on a referral under section 44 of the *South Australian Employment Tribunal Act 2014*—
  - (a) obtain all medical reports that the party intends to obtain for the purposes of the proceedings; and
  - (b) serve on the other party to the proceedings a copy of each medical report in the party's possession relevant to the proceedings (whether the party intends to rely on the report or not).
- (2) In connection with the operation of subregulation (1), a party to the proceedings must comply with any rule of the Tribunal or direction of a member of the Tribunal as to the provision of a report.
- (3) A medical report should—
  - (a) set out the medical practitioner's qualifications to make the report; and
  - (b) set out the facts and factual assumptions on which the report is based; and
  - (c) identify any documentary or other materials on which the report is based; and
  - (d) distinguish between objectively verifiable facts and matters of opinion that cannot be (or have not been) objectively verified.
- (4) However, if a medical expert has provided a previous expert report to a party, a report complies with subregulation (3) if it refers to material contained in the previous report without repeating it.



- (5) A party who has disclosed a medical report, and proposes to rely on evidence from the medical practitioner in proceedings before the Tribunal, must, at the request of the other party, provide the party with—
- (a) a copy of documentary or other material on which a medical expert has relied for making a report; and
  - (b) details of any fee or benefit the medical expert has received, or is or will become entitled to receive, for preparation of the report or giving evidence on behalf of the party; and
  - (c) details of any communications relevant to the preparation of the report—
    - (i) between the party, or any representative of the party, and the medical expert; and
    - (ii) between the medical expert and another expert.
- (6) The Tribunal may, on application by a party, relieve the party from an obligation to disclose a medical expert report or information relating to it under this regulation.
- (7) An application under subregulation (6)—
- (a) must be made before or within 7 days after the time for disclosure of the medical expert report; and
  - (b) must be accompanied by a copy of the relevant report enclosed in a sealed envelope (which is only to be opened at the direction of the Tribunal); and
  - (c) may be made without notice to the other party to the action.

## Part 7—Special jurisdiction to expedite decisions

### 46—Special jurisdiction (section 113 of Act)

For the purposes of section 113 of the Act, the form set out in Schedule 2 is prescribed.

### 47—Costs (section 116 of Act)

- (1) For the purposes of section 116 of the Act, the following limits on costs are fixed in relation to proceedings that take place under Part 7 of the Act:

Item	Limit
Assistance in the preparation and lodgement of an application	\$138 (indexed)
Preparation of a case for hearing	\$265 (indexed)
Appearance before the Tribunal (to a maximum of \$528 (indexed))	
(a) First hour	\$173 (indexed)
(b) Second hour	\$104 (indexed)
(c) Third and subsequent hour	\$58 (indexed)

- (2) If a limit on costs prescribed by subregulation (1) is varied or adjusted following the commencement of a process in relation to which an award of costs may be made under section 116 of the Act, the award of costs is subject to the limit that applied when the process was commenced.

## Part 8—Independent medical advice

### 48—Appointment of independent medical advisers (section 118 of Act)

For the purposes of section 118(6) of the Act, the selection committee must, for the purpose of making recommendations under section 118(5) of the Act, by notice in publications considered by the committee to be suitable for the purpose, invite expressions of interest for appointment as an independent medical adviser under section 118 of the Act.

### 49—Referral by Tribunal or court (section 121 of Act)

For the purposes of section 121(2)(b) of the Act, the selection of an independent medical adviser—

- (a) must be made by the Tribunal or a court—
- (i) following consultation with the parties to proceedings; and
  - (ii) if agreement on the selection of the independent medical adviser cannot be reached within a period determined by the Tribunal or the court—on the recommendation of the members of the Minister's Advisory Committee who are medical practitioners; and
- (b) must be made following consideration—
- (i) of the nature and complexity of the injury; and
  - (ii) as to whether—
    - (A) a particular independent medical adviser may have a conflict of interest; and
    - (B) 1 or more independent medical advisers may be required; and
- (c) in the case of a medical question that relates to the assessment of whole person impairment—must be made on the basis that the independent medical adviser is a person who is accredited to conduct whole person impairment assessments under section 22 of the Act.

## Part 9—Registration and funding

### 50—Registration of employers (section 128 of Act)

- (1) If—
- (a) a person (the *employer*) employs 1 or more persons (the *workers*) under a contract of service or contracts of service; and
  - (b) the workers are not employed for the purposes of a trade or business carried on by the employer; and

- (c) the total remuneration payable by the employer to the workers in a particular financial year does not exceed \$12 286 (indexed),

the employer is not, in respect of those workers, required to be registered under section 128 of the Act (and the remuneration paid to those workers need not be included in any return or statement submitted or provided to the Corporation under Part 9 Division 7 of the Act).

- (2) The employers who are not required to be registered under section 128 of the Act by virtue of subregulation (1) are, in respect of the workers referred to in subregulation (1), a prescribed class of employers exempt from the operation of section 64(5) of the Act.
- (3) If the total remuneration payable in a particular financial year by an employer to workers employed by the employer (other than workers of a kind referred to in subregulation (1)) does not exceed \$12 286 (indexed), the employer is not required to be registered under section 128 of the Act.
- (4) However, if a worker employed by an employer who is, but for this subregulation, exempted from the obligation to be registered under section 128 of the Act by virtue of subregulation (3) suffers an injury arising from that employment that is determined under the Act to be a work injury, the exemption does not apply in relation to the employer from the day of the occurrence of the injury until the end of the financial year in which the injury occurred.

**Note—**

An employer required to be registered by the Corporation must apply for registration within 14 days after the obligation to be registered arises—see section 128(3) of the Act.

- (5) The employers referred to in subregulation (3)—
- (a) are not required to include the remuneration paid to their workers in any return or statement submitted or provided to the Corporation under Part 9 Division 7 of the Act; and
- (b) are a prescribed class of employers exempt from the operation of section 64(5) of the Act,
- (regardless of whether they are required under subregulation (4) to be registered under section 128 of the Act).
- (6) For the purposes of subregulations (1) and (3), the amount applying in relation to an employer at any time during a financial year will be the amount applying as at the beginning of that financial year.

**51—Prescribed terms and conditions—self-insured employers (section 129 of Act)**

For the purposes of section 129(5)(a)(iii) of the Act, the registration of an employer as a self-insured employer (or as 1 of a group of self-insured employers) is subject to the terms and conditions prescribed in Schedule 3.

**52—Agencies of the Crown (section 130 of Act)**

For the purposes of section 130(4) of the Act, the following bodies are prescribed for the purposes of the definition of *agency or instrumentality of the Crown*:

- (a) Minda Incorporated;

- (b) Royal Society for the Blind of South Australia Inc;
- (c) Royal District Nursing Service of SA Limited.

**53—Registration—self insured employers (section 131 of Act)**

- (1) For the purposes of section 131(1) of the Act, an application for registration as a self-insured employer or group of self-insured employers must contain, or be accompanied by, the following:
  - (a) a statement, prepared by an actuary, of the liabilities that an employer would be undertaking over the first 12 months if the applicant were registered as a self-insured employer;
  - (b) details of the financial guarantee or other security arrangements, and the contract of insurance, that the applicant would obtain for the purposes of Schedule 3 if the applicant were registered as a self-insured employer;
  - (c) a detailed plan of the arrangements that the applicant would implement to administer claims under the Act, which must—
    - (i) include details of—
      - (A) the job specifications of the officers who would be responsible for administering the claims; and
      - (B) the lines of accountability and control that would apply to those officers; and
      - (C) the policies that would be adopted for the return to work of injured workers; and
      - (D) the arrangements that would be implemented for the making of claims under the Act; and
    - (ii) be accompanied by a copy of any form that the applicant would require a claimant to complete;
  - (d) in respect of safety policies—
    - (i) a copy of any safety policy that has been adopted by the applicant; and
    - (ii) details of any programs that the applicant has implemented, or proposes to implement, to train workers in safe working procedures; and
    - (iii) details of the facilities and arrangements that the applicant has for providing first aid to workers; and
    - (iv) details of any safety committees that have been established by the applicant, and a copy of any minutes kept from meetings held by those committees over the period of 6 months immediately preceding the application;
  - (e) the name of any registered association of which any worker employed by the applicant is a member.

- (2) For the purposes of section 131(2) of the Act, a fee of \$10 000 (plus GST) in addition to \$15 (plus GST) for each worker employed by the employer, or group of employers, at the time of the application is fixed as the fee that must accompany an application for registration as a self-insured employer, or group of self-insured employers.
- (3) However—
  - (a) if the applicant is an employer who is taking over, or who has within the preceding period of 12 months before the date of application taken over, an activity undertaken by the Crown or an agency or instrumentality of the Crown and who, at the same time, is taking over, or has taken over, the employment of various workers engaged in that activity then—
    - (i) if that activity is the sole activity undertaken by the employer within the State—no fee is payable under subregulation (2); and
    - (ii) in any other case—there will be a proportionate reduction in the fee that is otherwise payable under subregulation (2) according to the proportion that the activity that is being taken over, or that has been taken over, bears to all activities undertaken by the employer within the State; and
  - (b) if the applicant is an employer who has, within the preceding period of 2 months before the date of application, ceased to be a self-insured employer by virtue of a proclamation under section 130(2) of the Act then no fee is payable under subregulation (2); and
  - (c) the maximum fee payable under subregulation (2) is \$40 000 (plus GST).

#### **54—Changes in details for registration (section 132 of Act)**

For the purposes of section 132 of the Act—

- (a) any material change in any details or information previously provided under section 131(1) of the Act will constitute prescribed circumstances; and
- (b) the period of 30 days from the occurrence of any such change is prescribed.

#### **55—Compensation Fund (section 135 of Act)**

- (1) For the purposes of section 135(2)(e) of the Act, the Compensation Fund will include any money received by the Corporation under the *Work Health and Safety Act 2012*.
- (2) For the purposes of section 135(3)(j) of the Act, the Compensation Fund may be applied towards the costs incurred by the Corporation in carrying out its functions under the—
  - (a) *Freedom of Information Act 1991*; and
  - (b) *South Australian Employment Tribunal Act 2014*; and
  - (c) *Work Health and Safety Act 2012*.

#### **56—Industry rates (section 142 of Act)**

For the purposes of section 142(3) of the Act, the following criteria are prescribed:

- (a) the extent to which work carried on in the particular class of industry is, in the opinion of the Corporation, likely to contribute to the cost of work injuries;

- (b) the need for the Corporation to establish and maintain sufficient funds—
  - (i) to satisfy the Corporation's current and future liabilities in respect of work injuries attributable to traumas occurring in a particular period from premiums raised in relation to that period; and
  - (ii) to make proper provision for administrative and other expenditure of the Corporation; and
  - (iii) to make up any insufficiency in the Compensation Fund resulting from previous liabilities or expenditures or from a reassessment of future liabilities.

### **57—Remission of premium (section 144 of Act)**

For the purposes of section 144(8) of the Act, the following are prescribed as circumstances where the Corporation may remit the premium payable by an employer under that section:

- (a) if the remuneration otherwise subject to the premium belongs to a category of remuneration determined by the Corporation for the purposes of this paragraph to be a category in relation to which the premium will be remitted (with the extent of the remission under this paragraph reflecting the extent to which remuneration falls into any such category);
- (b) if the Corporation considers that administrative savings are being made (or will be made) on account of the employer managing claims made by workers who suffer work injuries in the employment of the employer;
- (c) if, in the opinion of the Corporation, the amount standing to the credit of the Compensation Fund is sufficient to justify a remission of premium.

### **58—Limit on fine (section 145(6)(b) of Act)**

For the purposes of section 145(6)(b) of the Act, the amount of \$5 000 is prescribed.

### **59—Recovery on default (section 154 of Act)**

- (1) For the purposes of section 154(3)(b) of the Act, the rate of penalty interest on an amount in arrears is a simple interest rate equal to 5% of the amount in arrears (expressed as an annual rate and applied with respect to the relevant period) plus the TAA market rate for the financial year in which, under Part 9 of the Act, notice of an assessment is given, with the interest to be calculated at a daily rate over the relevant period.

- (2) In this regulation—

*relevant period* means the period during which the amount in arrears is unpaid;

*TAA market rate* means the market rate as defined in section 26 of the *Taxation Administration Act 1996*.

## **60—Penalty for late payment (section 155 of Act)**

- (1) For the purposes of section 155(1)(a) of the Act, the rate of penalty interest on an amount in arrears is a simple interest rate equal to 5% of the amount in arrears (expressed as an annual rate and applied with respect to the relevant period) plus the TAA market rate for the financial year in which, under Part 9 of the Act, notice of an assessment is given, with the interest to be calculated at a daily rate over the relevant period.
- (2) In this regulation—  
*relevant period* means the period during which the amount in arrears is unpaid;  
*TAA market rate* means the market rate as defined in section 26 of the *Taxation Administration Act 1996*.

## **61—Insurance of registered employers against other liabilities (section 166 of Act)**

For the purposes of section 166(1) of the Act, the terms and conditions to the insurance provided under that section to employers by the Corporation are set out in Schedule 4.

## **62—Insurer of last resort (section 167 of Act)**

For the purposes of section 167(4) of the Act—

- (a) the actuarial guidelines approved by the Corporation from time to time for the purposes of the calculation of financial guarantees under Schedule 3 clause 8; and
- (b) the principle that a scaling factor equal to the scaling factor that applies under Schedule 3 clause 8(2)(a) should be applied to any actuarial determination of the value of liabilities,

are prescribed for estimating and capitalising liabilities under that section.

## **Part 10—Miscellaneous**

### **63—Access to claim file (section 180 of Act)**

For the purposes of section 180(5)(a) of the Act, an application for review of a decision—

- (a) must be in writing; and
- (b) must be addressed to the Chief Executive Officer of the Corporation or the self-insured employer (as the case requires); and
- (c) must specify an address in Australia to which notice of the decision of the review should be sent.

### **64—Medical examination requested by employers (section 181 of Act)**

For the purposes of section 181(2) of the Act, a worker is not required to submit to examinations under section 181 more frequently than once in every 2 months.

## 65—Disclosure of information (section 185 of Act)

- (1) For the purposes of section 185(3)(k) of the Act, the following disclosures are authorised:
- (a) a disclosure made to Safe Work Australia or a Commonwealth workers compensation authority in accordance with an arrangement about sharing information obtained in the course of carrying out functions related to the administration, operation or enforcement of the Act;
  - (b) a disclosure made to the SafeWork SA Advisory Committee or the Department in accordance with an arrangement about sharing information obtained in the course of carrying out functions related to the administration, operation or enforcement of the Act;
  - (c) a disclosure made to a tax officer of any of the following in respect of an employer registered under the Act:
    - (i) the employer's name, trading name, RTWSA employer registration number, postal address or telephone number;
    - (ii) the location of the employer's head office or other workplaces;
    - (iii) the employer's ACN and ABN;
    - (iv) an estimate of the aggregate remuneration expected to be paid to the employer's workers during a financial year;
    - (v) the actual remuneration paid to the employer's workers during a financial year;
    - (vi) the relevant class or classes of industry (as determined by the Corporation) in which the employer employs workers;
    - (vii) the date of the employer's registration under the Act;
    - (viii) the date of cancellation of the employer's registration under the Act;
    - (ix) the status of the employer's registration under the Act.

- (2) In this regulation—

**Commonwealth workers compensation authority** means a person or authority of the Commonwealth with power to determine or manage claims for compensation for injuries arising from employment;

**Department** has the same meaning as in the *Work Health and Safety Act 2012*;

**tax officer** has the same meaning as in the *Taxation Administration Act 1996*.

## 66—Disclosure of information (section 186 of Act)

For the purposes of section 186(1)(i) of the Act, a disclosure of information is authorised if—

- (a) the information—
  - (i) constitutes, or is contained in, a claim summary report provided to the employer by or on behalf of the Corporation; or



- (ii) in the case of a self-insured employer—constitutes, or is contained in, a summary report prepared by the employer that provides information that is similar to the information contained in reports provided under subparagraph (i); and
- (b) the disclosure is reasonably required for, or in connection with, the possible or proposed transfer of the business of the employer.

### 67—Noise induced hearing loss (section 188 of Act)

- (1) For the purposes of section 188(4) and (5) of the Act, the following procedures apply for the purpose of establishing whether a worker is suffering from hearing loss that may be noise induced:
  - (a) the worker must first undergo an audiometric test of hearing conducted by—
    - (i) a medical practitioner; or
    - (ii) an audiologist; or
    - (iii) an audiometrist;
  - (b) in addition to an audiometric test, a legally qualified medical practitioner registered in the speciality of otorhinolaryngology, or approved by the Corporation, must carry out a physical examination of the worker (and any other appropriate investigation that the medical practitioner considers necessary) to determine whether the worker's hearing loss is noise induced or is due, or partly due, to ear disease or other causes of hearing loss and must, having regard to the results of the audiometric test of hearing, determine the noise induced hearing loss of the worker as a binaural noise induced hearing loss expressed as a percentage loss of hearing.
- (2) For the purposes of subregulation (1)(a)—
  - (a) an audiometric test must include air-conduction and bone-conduction pre-tone threshold measures with appropriate masking; and
  - (b) air-conduction testing must comply with the requirements of section 7—Audiometry and section 8—Audiometric test procedures of AS/NZS 1269.4:2005 *Occupational noise management—Part 4: Auditory assessment*; and
  - (c) bone-conduction testing must comply with the Audiological Society of Australia Professional Standards of Practice; and
  - (d) during an audiometric test, the hearing levels of the worker must be determined at audiometric test frequencies, 500, 1 000, 1 500, 2 000, 3 000 and 4 000Hz with an audiometer calibrated to the reference specified in AS IEC 60645—1:2002 *Electroacoustics—Audiological equipment, Part 1 Pure tone audiometers (IED 60645—1:2001, MOD)* and AS/NZS 1591.1:1995 *Part 1: Reference zero for the calibration of pure tone bone conduction audiometers*, and the instrumentation for bone conduction audiometry must also comply with AS/NZS 1591.4:1995 *Part 4: A mechanical coupler for calibration of bone vibrators*; and

- (e) if noise induced hearing loss is diagnosed, the hearing levels of the better and worse ear must be determined at each audiometric test frequency and, using the hearing levels obtained, a percentage loss of hearing must be read at each audiometric test frequency in accordance with the appropriate tables so as to obtain 6 values of percentage loss of hearing, and those 6 values of percentage loss of hearing are to be added together to obtain the binaural percentage loss of hearing; and
  - (f) if the worker is a man of or over the age of 56 years or a woman of or over the age of 69 years, the value in table P set out in Appendix 5 of NAL Report No 118 appropriate to the worker's age and sex must be subtracted from the binaural percentage of loss of hearing obtained in accordance with the procedure set out in paragraph (e).
- (3) For the purposes of section 188(4) and (5) of the Act, noise induced hearing loss is a prescribed injury.
- (4) In this regulation—

**appropriate tables** means tables RB-500 to RB-4000 (inclusive) set out in Appendix 3 of NAL Report No 118;

**audiologist** means a person who is either a full member, or eligible to be a full member, of the Audiological Society of Australia and who holds, or is eligible to hold, a Certificate of Competency of the Society;

**audiometrist** means a person who is either an ordinary member, or eligible to be an ordinary member, of the Australian College of Audiology;

**Hz** means Hertz where 1 Hertz equals 1 cycle per second;

**NAL Report No 118** means the report entitled *Improved Procedure for Determining Percentage Loss of Hearing published by the National Acoustic Laboratories in January 1988* (ISBN 0 644 06884 1).

## 68—Expiation of section 128 offences (section 199 of Act)

- (1) For the purposes of section 199 of the Act, the following is fixed as the expiation fee for an alleged offence against section 128 of the Act:
- (a) \$566 (indexed); or
  - (b) 5% of the aggregate remuneration paid to the employer's workers during the period for which the employer is in breach of the section,
- whichever is the greater.
- (2) In this regulation—

**remuneration** has the same meaning as under Part 9 Division 4 of the Act (but does not include remuneration paid to any worker in respect of whom an employer is not required to be registered under section 128 of the Act).

## 69—Volunteers (Schedule 1 of Act)

- (1) For the purposes of Schedule 1 clause 1(3) of the Act—
- (a) each of the following is prescribed as a class of persons:
    - (i) volunteer SASES members;

- (ii) volunteer marine rescue members; and
  - (b) the following activities are prescribed as a class of work in relation to volunteer SASES members:
    - (i) any activity directed towards dealing with an emergency that requires SASES to act to protect life, property or the environment;
    - (ii) attending in response to a call for assistance by SASES;
    - (iii) attending a SASES meeting, competition, training exercise or other organised activity;
    - (iv) any other activity carried out in relation to the functions of SASES under the *Fire and Emergency Services Act 2005*; and
  - (c) the following activities are prescribed as a class of work in relation to volunteer marine rescue members:
    - (i) any activity directed towards—
      - (A) dealing with an emergency that requires a marine rescue association to act to protect life, property or the environment; or
      - (B) provision of marine radio monitoring or the broadcast of safety messages;
    - (ii) attending in response to a call for assistance by a marine rescue association.
- (2) In this regulation—
- marine rescue association*** means—
- (a) The Australian Volunteer Coast Guard Association (SA Group) Incorporated; or
  - (b) Royal Volunteer Coastal Patrol (SA) Incorporated; or
  - (c) The South Australian Sea Rescue Squadron Incorporated; or
  - (d) Victor Harbor-Goolwa Sea Rescue Squadron Incorporated; or
  - (e) Whyalla Sea Rescue Squadron Incorporated; or
  - (f) Air Sea Rescue Squadron Cowell Incorporated;

***volunteer marine rescue member*** means a member of a marine rescue association who receives no remuneration in respect of his or her service in that capacity;

***volunteer SASES member*** means a member of SASES within the meaning of the *Fire and Emergency Services Act 2005* who receives no remuneration in respect of his or her service in that capacity.

## Part 11—Transitional provisions (Schedule 9 Part 9 of Act)

### 70—Prescribed clauses (clause 27)

For the purposes of clause 27(2) of Schedule 9 of the Act, the following clauses of Schedule 9 Part 9 are prescribed:

- (a) clause 33(1);
- (b) clause 34(2) and (3);
- (c) clause 39;
- (d) clause 41(1) and (3)(b)(ii);
- (e) clause 45;
- (f) clause 59(5) to (7) (inclusive) and (9) to (11) (inclusive).

### 71—Prescribed rate (clause 39)

- (1) Subject to subregulation (2), for the purposes of clause 39(2)(b) of Schedule 9 of the Act, each weekly back payment will be increased by interest at the prime bank rate for the financial year in which the designated day occurred, compounded on a weekly basis for each complete week that the payment is owed.
- (2) If the amount the worker is entitled to be paid relates to more than 1 financial year, those amounts will be increased by interest at the relevant prime bank rate for each financial year, compounded on a weekly basis.

### 72—Prescribed rate (clause 59)

- (1) For the purposes of Schedule 9 clause 59(4) of the Act, the amount recoverable from the employer will be increased by interest on the amount at the prime bank rate for the financial year in which the employer receives notification of a payment under that clause, compounded on a monthly basis for each complete month that has elapsed between the date of the notification and the date of payment.
- (2) For the purposes of Schedule 9 clause 59(11) of the Act, if a compensating authority has recovered an amount to which the compensating authority is not entitled, the amount to be repaid to the Corporation will be increased by interest on the amount at the prime bank rate for the financial year in which the amount in respect of which interest is payable is paid to the Corporation, compounded on a monthly basis for each complete month that has elapsed between the date of the determination of the Corporation and the date of payment.

## Schedule 1—Scale of entitlements—section 58(4) of Act

For the purposes of this scale, *WPI degree* is the worker's degree of whole person impairment assessed under Part 2 Division 5 of the Act.

<u>WPI degree</u>	<u>Compensation amount</u>
0	0
1	0
2	0

**1.7.2015 to 20.7.2016—Return to Work Regulations 2015**  
Scale of entitlements—section 58(4) of Act—Schedule 1

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<b>WPI degree</b>	<b>Compensation amount</b>
3	0
4	0
5	\$12 051 (indexed)
6	\$13 766 (indexed)
7	\$15 513 (indexed)
8	\$17 351 (indexed)
9	\$19 281 (indexed)
10	\$21 209 (indexed)
11	\$23 131 (indexed)
12	\$25 225 (indexed)
13	\$27 475 (indexed)
14	\$29 885 (indexed)
15	\$32 295 (indexed)
16	\$34 824 (indexed)
17	\$37 598 (indexed)
18	\$40 490 (indexed)
19	\$43 555 (indexed)
20	\$46 895 (indexed)
21	\$51 764 (indexed)
22	\$57 506 (indexed)
23	\$63 500 (indexed)
24	\$69 744 (indexed)
25	\$76 802 (indexed)
26	\$84 141 (indexed)
27	\$92 356 (indexed)
28	\$100 885 (indexed)
29	\$109 729 (indexed)
30	\$120 165 (indexed)
31	\$130 323 (indexed)
32	\$141 498 (indexed)
33	\$153 735 (indexed)
34	\$166 382 (indexed)
35	\$179 438 (indexed)
36	\$193 635 (indexed)
37	\$209 022 (indexed)
38	\$224 880 (indexed)
39	\$241 991 (indexed)

<b>WPI degree</b>	<b>Compensation amount</b>
40	\$259 604 (indexed)
41	\$277 720 (indexed)
42	\$297 166 (indexed)
43	\$317 991 (indexed)
44	\$339 381 (indexed)
45	\$362 212 (indexed)
46	\$385 640 (indexed)
47	\$409 665 (indexed)
48	\$435 210 (indexed)
49	\$462 321 (indexed)
50	\$482 014 (indexed)
51	\$482 014 (indexed)
52	\$482 014 (indexed)
53	\$482 014 (indexed)
54	\$482 014 (indexed)
55	\$482 014 (indexed)
56	\$482 014 (indexed)
57	\$482 014 (indexed)
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62	\$482 014 (indexed)
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67	\$482 014 (indexed)
68	\$482 014 (indexed)
69	\$482 014 (indexed)
70	\$482 014 (indexed)
71	\$482 014 (indexed)
72	\$482 014 (indexed)
73	\$482 014 (indexed)
74	\$482 014 (indexed)
75	\$482 014 (indexed)
76	\$482 014 (indexed)

<b>WPI degree</b>	<b>Compensation amount</b>
77	\$482 014 (indexed)
78	\$482 014 (indexed)
79	\$482 014 (indexed)
80	\$482 014 (indexed)
81	\$482 014 (indexed)
82	\$482 014 (indexed)
83	\$482 014 (indexed)
84	\$482 014 (indexed)
85	\$482 014 (indexed)
86	\$482 014 (indexed)
87	\$482 014 (indexed)
88	\$482 014 (indexed)
89	\$482 014 (indexed)
90	\$482 014 (indexed)
91	\$482 014 (indexed)
92	\$482 014 (indexed)
93	\$482 014 (indexed)
94	\$482 014 (indexed)
95	\$482 014 (indexed)
96	\$482 014 (indexed)
97	\$482 014 (indexed)
98	\$482 014 (indexed)
99	\$482 014 (indexed)
100	\$482 014 (indexed)

## **Schedule 2—Forms**

### **Form 2—Application for expedited decision**

#### **South Australian Employment Tribunal**

#### **Applicant**

*[Tick 1 box]*

- Worker  
 Employer

#### **Worker's details**

*Please complete all relevant parts of this section.*

Given name:

Family name:

Address:

Postcode:

Date of birth:

Occupation:

Phone:

Fax:

Email:

### **Employer's details**

*Please complete all relevant parts of this section.*

Business name:

Address:

Postcode:

Contact person:

Job title:

Phone:

Fax:

Email:

### **Case manager's details**

*If the employer is self-insured, leave this section blank.*

Business name:

Address:

Postcode:

Contact person:

Job title:

Phone:

Fax:

Email:

### **Representative's details**

*If you have representation (eg legal, union or employer association), please complete all relevant parts of this section.*

Business name:

Address:

Postcode:



Contact person:  
Job title:  
Internal reference:  
Phone:  
Fax:  
Email:

### **Claim details**

*Please complete all parts of this section.  
Describe the claim. If insufficient space, attach a separate page.  
Please attach any information (such as your claim form or medical reports) that may be relevant.  
Please provide a list of all attachments.*

Date of injury:  
Description of injury:  
Date of claim:  
Claim number (if known):  
What is the outcome you are looking for?  
Why do you think there has been an undue delay?  
*[explain the reasons]*

### **Interpreter**

*If you require an interpreter, please complete this section.*

Do you need an interpreter?

- Yes  
 No

If Yes, what language?

### **Signature**

Signature of applicant or representative:

Name:

Date:

## **Schedule 3—Self-insured employers terms and conditions of registration**

- 1 The employer must ensure that forms for making a claim under the Act, in a form approved by the Corporation, are reasonably available to the employer's workers.
- 2 The employer must ensure that all claims under the Act are promptly and efficiently investigated and determined.

- 3 The employer must ensure that any benefit to which a worker is entitled under the Act is—
- (a) provided promptly; and
  - (b) periodically reviewed in accordance with the Act.
- 4 The employer must ensure, so far as is reasonably practicable, that up to date programs that are designed to prevent or reduce the incidence of work injuries are established and maintained at places where the employer's workers work.
- 5 (1) The employer must, in respect of each reporting period, provide the following information to the Corporation:
- (a) Employer details:
    - (i) the Employer Registration Number;
    - (ii) the relevant Location Number;
    - (iii) the relevant Location Address;
  - (b) Particulars relating to each new claim received by the employer during the reporting period:
    - (i) the claim number assigned by the employer;
    - (ii) the full name of the worker;
    - (iii) the sex of the worker;
    - (iv) the date of birth of the worker;
    - (v) the language usually spoken at home by the worker;
    - (vi) the worker's country of birth;
    - (vii) the postcode of the worker's residence;
    - (viii) the worker's notional weekly earnings (if applicable);
    - (ix) the postcode of the location where the injury occurred;
    - (x) if the injury occurred at a particular workplace—the predominant class of industry at that workplace;
    - (xi) whether the worker is employed on a full time or part time basis by the employer;
    - (xii) whether the worker is employed on a permanent or casual basis by the employer;
    - (xiii) the occupation of the worker at the time of the injury (including, if the worker is an apprentice, making specific reference to that fact);
    - (xiv) the main tasks usually performed by the worker in the stated occupation;
    - (xv) the normal hours, and days per week, worked by the worker;
    - (xvi) the date on which the worker commenced employment with the employer;
    - (xvii) the activity being undertaken by the worker at the time of the occurrence of the injury;

- (xviii) the date of the occurrence of the injury;
  - (xix) the time of day at which the injury occurred (so far as is known to the employer);
  - (xx) the date on which the employer was first notified of the injury;
  - (xxi) the apparent cause of the injury;
  - (xxii) a description of the injury;
  - (xxiii) a statement as to the parts of the worker's body affected by the injury;
  - (xxiv) the date on which the worker ceased work (if incapacitated for work);
  - (xxv) if relevant, the date of death of the worker;
  - (xxvi) the date on which the occurrence of the injury, or the incident that caused the injury, was reported to the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Work Health and Safety Act 2012* (if applicable);
- (c) Particulars relating to each claim that is open during any part of the reporting period:
- (i) the RTWSA reference number;
  - (ii) sufficient details to allow the worker and the claim to be identified;
  - (iii) whether the claim has a serious injury classification;
  - (iv) whether the claim comes under the National Injury Insurance Scheme;
  - (v) the status of the claim (eg accepted, rejected, undetermined, finalised, reopened);
  - (vi) whether a common law action has commenced in relation to the claim;
  - (vii) the total time lost from work by the worker during the relevant period (if any);
  - (viii) the worker's last known work status;
  - (ix) the date on which the worker resumed work (if known);
  - (x) the date on which the claim was determined and the date and effect of any redetermination of the claim;
- (d) Particulars relating to each claim on which action has occurred during the period, including details of any changes and, if relevant, the latest totals of payments in the following categories:
- (i) income maintenance;
  - (ii) medical services (eg medical practitioner or dentist);
  - (iii) medical—allied health;

- (iv) medical—other goods and services;
  - (v) hospital outpatient;
  - (vi) hospital inpatient;
  - (vii) rehabilitation;
  - (viii) lump sum payments (section 56 of the Act);
  - (ix) lump sum payments (section 58 of the Act);
  - (x) redemption of income maintenance payments (section 53 of the Act);
  - (xi) redemption of medical expenses (section 54 of the Act);
  - (xii) common law;
  - (xiii) legal;
  - (xiv) investigation;
  - (xv) travel;
  - (xvi) other goods and services;
  - (xvii) other non-compensation;
  - (xviii) property damage;
  - (xix) third party recovery;
- (e) Other information reasonably required by the Corporation (including information required to meet national data collection requirements).
- (2) For the purposes of subclause (1)—
- (a) the information must be provided in a manner and form (including by electronic means), and at a time, determined by the Corporation; and
  - (b) the Corporation may, from time to time—
    - (i) by notice in writing, waive or postpone the obligation to comply with the requirements of that subclause, either for an individual self-insured employer or for self-insured employers of a specified class, subject to conditions (if any) determined by the Corporation; and
    - (ii) on giving reasonable notice (by further notice in writing), vary or revoke the operation of a notice under subparagraph (i), or vary, revoke or substitute a condition that applies under that subparagraph.
- (3) In this clause—
- reporting period** means a period of 14 days or such longer period approved by the Corporation with respect to the relevant employer from time to time.
- 6 (1) The employer must deliver to the Corporation—
- (a) an audited copy of the employer's financial statements in respect of each financial year of the employer within 5 months after the end of the financial year; and

- (b) an actuarial report on the outstanding liabilities of the employer under the Act, as at the end of each financial year of the employer within 3 months after the end of the financial year.
  - (2) For the purposes of this clause, the financial years of an employer are successive periods, not exceeding 12 months, determined by the employer to be the employer's financial years or, in the absence of such a determination, each period of 12 months ending on the 30th day of June.
  - (3) The Corporation may require an actuary that provides a report under subclause (1) to have experience as an actuary that is at least equal to a standard set by the Corporation for the purposes of this provision.
- 7 (1) The employer must at all reasonable times allow an authorised officer to examine—
- (a) the accounting and other records of the employer; and
  - (b) any system or facility used by the employer in connection with acting as a self-insured employer under the Act.
- (2) The employer must provide such assistance as may be reasonably required to facilitate an examination referred to in subclause (1).
  - (3) The employer must, at the request of a person carrying out an examination referred to in subclause (1), provide any explanations, information or assistance that the person may reasonably require for the purposes of the examination.
  - (4) The employer must comply with any written notice served on the employer by an authorised officer requiring the employer to exercise or perform a power or function of the employer under the Act in accordance with the Act.
- 8 (1) The employer must ensure that there is in force at all times a guarantee given by a financial institution to or in favour of the Corporation which—
- (a) guarantees the payment of an amount to the Corporation in the event that the employer becomes insolvent or ceases to be a self-insured employer; and
  - (b) complies with subclause (3).
- (2) The amount guaranteed by a guarantee entered into for the purposes of subclause (1)—
    - (a) must be an amount, at least equal to the prescribed sum, determined by the Corporation to be reasonable for the purposes of this provision after taking into account the principle that a scaling factor of 2 should be applied to—
      - (i) an actuarial estimate of the value of the current and contingent liabilities of the employer under the Act at the time of the determination (whether or not claims have been made with respect to those injuries); plus
      - (ii) an actuarial estimate of the value of the liabilities of the employer as a self-insured employer under the Act in respect of work injuries attributable to traumas expected to arise from employment by the employer over the ensuing period of 12 months; less
      - (iii) an actuarial estimate of the amounts expected to be paid out by the employer under the Act over the ensuing period of 12 months; and
    - (b) must be reviewed annually.

- (3) A guarantee complies with this subclause if—
- (a) the guarantee is given by a financial institution which has a credit rating at least equal to a standard set by the Corporation for the purposes of this provision and which is specifically approved by the Corporation as a financial institution which can give guarantees under this clause; and
  - (b) the guarantee is in a form, and for a term, approved by the Corporation.
- (4) A financial institution cannot give a guarantee under subclause (1) if the financial institution and the employer are related bodies corporate.
- (5) The Corporation and an employer may agree to enter into and maintain an arrangement that will apply in substitution for a guarantee under this clause if the Corporation is satisfied that the arrangement provides adequate and appropriate security to the Corporation in case the employer becomes insolvent or ceases to be a self-insured employer and, in the event of such an agreement, the employer is not (while the agreement remains in force) required to comply with a preceding subclause.

- (6) In this clause—

***financial institution*** means—

- (a) an ADI; or
- (b) a person whose sole or principal business is the provision of financial services;

***prescribed sum*** means—

- (a) in respect of an amount that is to apply to a period that corresponds to, or ends during, 2015—\$830 000;
- (b) in respect of an amount that is to apply to a period that corresponds to, or ends during, a subsequent year—a sum (calculated to the nearest multiple of \$10 000) that bears to \$830 000 the same proportion as the Consumer Price Index for the September quarter of the immediately preceding financial year bears to the Consumer Price Index for the September quarter, 2014;

***related bodies corporate*** has the same meaning as in section 129(15) of the Act.

- 9 The employer must ensure that there is in force at all times a contract of insurance, in a form approved by the Corporation, for an amount approved by the Corporation, in excess of an amount approved by the Corporation, against any liability of the employer that may arise under the Act as a result of the occurrence of 1 event or series of events during the period of the contract.
- 10 In relation to an employer that is a company incorporated, or taken to be incorporated, under the *Corporations Act 2001* of the Commonwealth—
- (a) the employer must immediately give the Corporation written notice of the commencement of any procedure to liquidate or wind up the employer; and
  - (b) the employer must, within 5 business days, give the Corporation written notice of—
    - (i) the commencement of steps to merge or take over the employer or the undertaking of the employer; or

- (ii) a change in the board of directors of the employer that substantially changes the management of the employer; or
  - (iii) a relocation of the undertaking of the employer; or
  - (iv) the purchase or sale of any asset that materially changes the financial position of the employer, the composition of its workforce or the nature of the work undertaken by its workers; or
  - (v) any other action that significantly affects the employer's ability to meet its liabilities under the Act.
- 11 The employer must ensure that—
- (a) all documentation that relates to a claim against the employer under the Act is retained for at least 20 years after the day on which the final payment is made in respect of the claim; and
  - (b) any documentation that relates to a claim against the employer under the Act in respect of an injury that occurred before the employer became a self-insured employer or 1 of a group of self-insured employers is provided to the Corporation after the material has been retained by the employer for 20 years as required by paragraph (a).
- 12(1) The employer must, in carrying out its functions under the Act, take into account the racial, ethnic and linguistic diversity of the employer's workforce, the interests of both sexes, and the interests of those who may be physically, mentally or intellectually impaired, and must ensure that those of the employer's workers who are entitled to benefits under the Act are not disadvantaged because of their origins or background, their sex, or some physical, mental or intellectual impairment.
- (2) The employer should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.
- 13 This Schedule applies to self-insured employers who are registered under section 129 of the Act.

## **Schedule 4—Terms and conditions for insurance of employers (section 166 of Act)**

- 1 In this Schedule—
- claim* means a claim against an employer in respect of which the employer is insured by virtue of section 166 of the Act.
- 2 If the employer becomes aware of the occurrence of a work injury that is likely to give rise to a claim against the employer, the employer must, within 5 business days, forward to the Corporation written notice of the injury.
- 3 If a claim is made against the employer, the employer must immediately forward the claim to the Corporation.
- 4 The employer must provide any assistance that the Corporation reasonably requires to assist the Corporation—
- (a) in investigating, determining, defending or settling a claim; and

- (b) in preparing, conducting, defending or settling any proceedings in respect of a claim.
- 5 The employer must sign any authority or other document required by the Corporation for the purpose of—
- (a) investigating, determining, defending or settling a claim; and
- (b) preparing, conducting, defending or settling any proceedings in respect of a claim, (and if the employer fails to sign the authority or other document, the Corporation may do so on the employer's behalf).
- 6 The employer must not incur any expense, enter into any litigation, make any settlement or admit any liability in respect of a claim without the written authority of the Corporation.
- 7 The Corporation may, for any purpose related to any liability or potential liability pursuant to section 166 of the Act—
- (a) take over and control any proceedings in respect of a claim on behalf of the employer; or
- (b) conduct and defend any proceedings, and, if appropriate, admit liability, in the name of, and on behalf of, the employer; or
- (c) settle any claim or proceedings against the employer; or
- (d) issue and conduct proceedings in the name of the employer against any other person who may also be liable in respect of the work injury.
- 8 To the extent that the Corporation acts on behalf of the employer in any proceedings, the employer is indemnified by the Corporation against all costs and expenses of or incidental to the proceedings.
- 9 If at the time of the occurrence of the work injury other insurance also covers the liability in respect of which the Corporation provides insurance pursuant to section 166 of the Act, the Corporation is only liable to pay a pro rata share of any amount recoverable from the employer in respect of the injury (and may, if it is appropriate, exercise a right of contribution against any other insurer).

## **Schedule 5—Revocation**

### **Part 1—Revocation**

#### **1—Revocation of *Workers Rehabilitation and Compensation Regulations 2010***

The *Workers Rehabilitation and Compensation Regulations 2010* are revoked.



## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2015	29	<i>Gazette 19.3.2015 p1197</i>	1.7.2015 except rr 48, 56 & 70—19.3.2015: r 2
<b>2015</b>	<b>179</b>	<b><i>Gazette 25.6.2015 p3102</i></b>	<b>1.7.2015: r 2</b>

### Provisions varied

New entries appear in bold.

Provision	How varied	Commencement
Pt 4		
r 23		
r 23(2a)	inserted by 179/2015 r 4(1)	1.7.2015
r 23(3)	substituted by 179/2015 r 4(2)	1.7.2015
r 48	varied by 179/2015 r 5	1.7.2015