

A Guide to Workers Compensation in Tasmania



DISCLAIMER

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Workers Rehabilitation and Compensation Act 1988*, the *Workers Rehabilitation and Compensation Regulations 2001* and any other relevant legislation. Copies of the legislation can be purchased from Print Applied Technology: call (03) 6233 3289 or freecall 1800 030 940. It is also available on the Internet at www.thelaw.tas.gov.au

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INTRODUCTION

This guide contains information of value to employers, workers and others with an interest in workers compensation and should be read in conjunction with the Tasmanian *Workers Rehabilitation and Compensation Act 1988*, amendments and regulations.

Throughout this guide are margin notes referring to the key sections and subsections of the *Workers Rehabilitation and Compensation Act 1988*, so you can readily locate and refer to this information in the legislation.

A definition of terms used in this guide can be found at the back.

CONTENTS

About Workers Compensation	2
What is workers compensation?	2
What is the Workers Rehabilitation and Compensation Act?	2
When does a worker become eligible to claim workers compensation?.....	4
What are the obligations and responsibilities of the worker?.....	5
What are the obligations and responsibilities of the employer?.....	6
Compensation	9
What benefits are provided under the Act?	9
How long can benefits continue?	12
Payments to dependants on the death of a worker	12
Settlement of a claim by agreement	13
Can common law damages be claimed?	14
Injury management, rehabilitation, return to work	15
The treating doctor and medical specialists.....	15
Injury management	15
Obligations relating to rehabilitation and return to work	16
Rehabilitation	16
The return-to-work plan.....	16
Criteria for rehabilitation policies	17

CONTENTS

Dispute resolution	18
How are disputes or questions relating to workers compensation claims resolved?	18
Workers Rehabilitation and Compensation Tribunal	18
Adjudication	20
Other Sections of the Act where disputes may arise.....	22
Definition of terms	23
Who's who	27
The WorkCover Tasmania Board	27
Nominal Insurer	28
Workplace Standards Tasmania	28
The Workers Rehabilitation and Compensation Tribunal	28
Licensed insurers	29
Self-insurers	29
Sample return-to-work plan	30
Licensed insurers	31
Workers Rehabilitation and Compensation Tribunal	31

ABOUT WORKERS COMPENSATION

Found in this Section
of the Act:

What is workers compensation?

Workers compensation is compensation payable under the *Workers Rehabilitation and Compensation Act 1988* (the Act) to a worker who suffers an injury or disease arising out of or in the course of the worker's employment (note that in relation to a disease, the worker's employment must have contributed to a substantial degree).

Under the Act, a worker may be entitled to compensation for:

- weekly payments while incapacitated for work
- medical expenses
- rehabilitation expenses
- permanent impairment.

In some circumstances, a worker may also be able to make a common law damages claim.

An employer must:

- take out a workers compensation insurance policy with a licensed insurer to cover it for workers compensation claims made by workers, or
- apply to the WorkCover Tasmania Board for a permit to self-insure (see page 29).

What is the Workers Rehabilitation and Compensation Act?

The *Workers Rehabilitation and Compensation Act 1988* (the Act) sets out the laws relating to workers compensation in Tasmania. It has two main purposes:

- to return an injured or sick worker to work as early and safely as possible
- to ensure that an injured or sick worker is compensated for lost wages, medical and other expenses while they are unable to work, and that the dependants of a deceased worker are compensated for the loss of the primary wage earner.

Who can claim workers compensation?

To claim workers compensation in Tasmania, a person must be a worker, or be deemed to be a worker by the Act.

Sections 4-7

The Act defines a worker as a person who has entered into, or works under, a contract of service or training agreement. The contract with the employer can take many forms and still be binding; for instance, it may be express or formal (in writing) or implied (oral).

For the purposes of the Act, the term 'worker' also includes the legal personal representatives or dependants of a deceased worker.

The definition includes a worker who has been loaned or hired by their employer to another employer. In such cases, responsibility under the Act stays with the original employer.

The definition includes working directors.

There are other categories of people deemed to be workers for the purposes of the Act:

- volunteer fire-fighters, police, ambulance workers and other prescribed volunteers while they are engaged in their volunteer duties

- taxi drivers and luxury hire car drivers while they are driving the vehicle or performing activities associated with operating the vehicle (such as loading, unloading or cleaning the vehicle). Note: Taxi drivers are not considered workers for the purposes of the Act if they are the responsible operator. Luxury hire car drivers are not considered workers for the purposes of the Act if they are also the licensee

Section 4 DA and DB

- jockeys and apprentices employed by the Tasmanian Thoroughbred Racing Council while:
 - engaged to ride a horse for fee or reward at a race meeting or official trial held in Tasmania under the Rules of Racing
 - engaged to ride a thoroughbred horse in a training session in Tasmania conducted by a licensed trainer or their delegate
- salespeople, canvassers and collectors paid by commission.

Section 4 DC

It is possible that other legislation may affect the definition of worker for the purposes of the Act.

There are several specific exclusions from the Act's coverage. These are:

Subsection 4(5)

- workers employed on a casual basis for a purpose other than the employer's trade or business
- outworkers
- workers employed as domestic servants with a private family who have not completed 48 hours employment with the employer at the time they suffer injury (those in domestic employment, for example a cleaner, would usually be covered by an extension of a household insurance policy [domestic workers compensation cover], unless the person engaged was employed by a business or carrying on a business)
- members of crews of fishing boats who are paid wholly or mainly on the basis of a share of profits or gross earnings of the boat
- people participating in approved programs of work for unemployment payment (work-for-the-dole schemes).

In most cases the Act does not apply to independent contractors engaged in a contract for services.

However, when a person enters into a contract with a contractor for work that is not related to a trade or business carried on by that contractor, that person is regarded as a worker employed by the contractor.

Section 4B

The Act does not apply to workers engaged in sporting activities who may receive some payment simply for playing, training or travelling with a sporting body. However, the Act does apply to workers genuinely engaged under contracts of service with sporting bodies: for example, paid coaches, umpires or referees, including sportspeople if their contract of service includes payment for performing tasks not related to competition.

Section 7

The Act does not apply to a worker employed on a ship where the *Commonwealth Seafarers Rehabilitation and Compensation Act 1992* applies.

Subsection 31A(7)

When does a worker become eligible to claim workers compensation?

A worker is entitled to claim compensation:

- if they suffer an injury which is not a disease, and which arises out of or in the course of their employment, or *Section 25(1)*
- if they suffer an injury which is a disease, arising out of or in the course of their employment, and to which that employment has contributed to a substantial degree (substantial degree means that their employment is the major or most significant factor). *Section 25(1)*

A claim can also be made if the worker:

- deviates from their normal route between home and work and suffers an injury, and it can be shown that the deviation was at the request or direction of their employer, or was work-related with the authority of the employer *Section 25(6)*
- suffers an injury while temporarily absent from the workplace at the request or the direction of the employer
- is engaged in a social or sporting activity away from their place of employment where it forms part of their employment, or is at the request or direction of the employer, or is work-related with the authority of the employer.
- suffers industrial deafness. *Section 72 A*

Workers compensation is not payable for:

- any injury which occurs while the worker is travelling between the worker's home and work unless, as stated above, the injury occurs during a deviation from the normal route made at the request or direction of the employer
- any absence from the workplace not at the direction or request of the employer
- any injury that is caused by a worker's serious or wilful misconduct (unless the injury results in the worker's death, or serious and permanent incapacity)
- diseased heart valve, coronary heart disease, aortic aneurism or cerebral aneurism or other prescribed condition unless employment was the major contributing factor. *Section 25 (2)*
- an intentional self-inflicted injury
- a disease which is an illness of the mind or a disorder of the mind that arises substantially from: *Section 25 (1A)*
 - reasonable action taken by an employer to transfer, demote, discipline or counsel a worker or to cease employing them
 - a decision of an employer, based on reasonable grounds, not to award promotion or benefit in connection with a worker's employment
 - reasonable action taken by an employer under this Act in a reasonable manner affecting a worker
- any disease which, at the time of starting their employment, the worker wilfully and falsely denied having previously suffered. *Section 25 (2)(c)*

What are the obligations and responsibilities of the worker?

Notice of injury

As soon as practicable after suffering an injury, the worker must notify their employer of the injury, either verbally or in writing. This notice must be given before the worker voluntarily leaves the employment in which the injury occurred.

Subsections 32(1) and
Section 33

In the case of industrial deafness, notice must be given within six months of leaving that employment.

The worker should always notify the employer of any injury, even if they do not expect to make a claim for compensation.

Claim for compensation

The worker's claim for compensation comprises:

Section 34

- a Workers' Claim for Compensation form, obtained from the employer, or in certain circumstances obtained from either the licensed insurer or Workplace Standards Tasmania *and*
- a Workers Compensation Medical Certificate, obtained from a medical practitioner (Note: The medical practitioner must be accredited by WorkCover Tasmania if within Tasmania) *or*
- in the case of a fatality, a Death Certificate.

Both documents must be lodged with the employer.

The worker must make a claim for compensation in the following time frames:

- within six months of the date of the injury *or*
- in the case of industrial deafness, while still in the employment in which the hearing loss occurred, or within six months of terminating that employment *or*
- in the case of a gradual onset disease, within six months of the day the worker first becomes incapacitated by the disease or the day a medical practitioner certifies that the worker was first incapacitated.

Subsections 32(1)

Subsection 32(2)

Sections 78 and
Subsections 3(5)

In the event of the death of a worker, the legal personal representative or dependants of the deceased worker must lodge the claim on the employer within six months of the date of death.

Subsections 32(1)

A notice or a claim may be served outside the time frame mentioned, if the failure to observe that time limit resulted from a mistake on the worker's part, the worker's absence from the State, or other reasonable cause.

The worker should keep a copy of all documents submitted to the employer for their own records.

Once a claim has been lodged, the employer must commence making weekly payments. The employer has 84 days to dispute liability for the claim, and liability to pay weekly payments and medical and other expenses. To do so, a formal notice must be served on the worker within the 84 day period. The notice must advise the worker of the reasons for the dispute, and refer the dispute to the Tribunal. For more information see *Disputes under section 81A of the Act* on page 20.

Section 81A

Maintaining a claim

The worker should submit requests for payment of medical and other expenses related to their claim to the employer as soon as is practicable and with relevant supporting documents (such as invoices, receipts and referrals).

Once a medical certificate runs out, the worker has 14 days to produce a new medical certificate showing the next period of incapacity for which benefits are payable.

Subsection 69(13)

A request for payment of a lump sum for permanent impairment must be accompanied by the assessment of whole person impairment by an accredited medical assessor.

Section 72

To keep receiving weekly payments, a worker is obliged to participate in a rehabilitation program and undertake suitable alternative duties proposed by the employer.

The worker must also make themselves available for a medical examination, of which they have reasonable notice, by a doctor provided and paid for by the employer, at any reasonable time and place. Failure or refusal to attend the examination, or refusal to undertake treatment recommended as a result of it, may result in the entitlement to weekly payments being suspended until the Tribunal has determined the matter.

Section 85

An exception to this rule is where the treatment recommended and refused is surgery. In such cases, payments of weekly payments will continue until the Tribunal determines the matter.

Subsection 85(6)

The worker has the right to select, or change, their own treating doctor and, in consultation with their employer and/or the insurer, the rehabilitation provider.

The worker has a right to be involved in the management of their injury. For example, they should be consulted about when and how they return to work and the duties they are to perform. The treating doctor, the employer's return to work co-ordinator and the vocational rehabilitation provider may also be involved.

The worker has access to the Tribunal for the early resolution of any dispute that may arise.

Subsection 77AA(5)

What are the obligations and responsibilities of the employer?

Obligation to insure

Under the Act it is compulsory for every employer to have a current workers compensation policy or to hold a permit to self-insure. An employer who does not have a current policy may be prosecuted, and if found guilty of the offence, be liable to be fined up to \$60,000 as well as an amount equal to the premium avoided (that is, the premium that the employer would have paid if insurance had been taken out).

Section 97

In addition, uninsured employers will be held responsible to pay the full cost of compensation, including any common law costs, if a worker is injured.

If there is a dispute between two or more employers as to liability but no dispute that a worker is entitled to compensation from some employer for an injury, the employer of the worker at the time of the latest injury is liable to pay compensation under this Act until the question of liability, or who is to pay the claim, is resolved.

Section 97B

If two or more employers disagree about which is to pay a claim, the employer at the time of the most recent injury has the initial responsibility. The Tribunal then determines which employer (employers) has ultimate responsibility.

Additionally, if two or more insurers disagree as to which of them is to indemnify the employer, the insurer at the time of the injury is initially responsible. The employer or one of the insurers may refer the matter to the Tribunal for resolution. The Tribunal will then determine which insurer has ultimate responsibility.

Section 97A Subsection

What if an employer employs a worker in more than one State or Territory?

All the States and Territories have now put in place legislation (called cross-border provisions) to cover situations where workers work temporarily in different states and territories. In the past, an interstate employer would have to take out workers compensation insurance in Tasmania if it had a worker working in the state for any period of time; even one day.

Under the cross-border provisions, an employer needs insurance under the Act only if Tasmania is the 'State of connection', irrespective of where the worker is when they are injured.

Section 31A

The 'State of connection' is the State where the worker usually works, taking into account:

- any period during which the worker was in the State for the purposes of the employment
- the intentions of the worker and the employer as to whether the arrangement is expected to continue beyond six months, or to be only temporary (if temporary, then the worker 'usually works' in a different State)
- the previous 12 months' work history in the employment (or six months, if the arrangement was originally intended to be temporary)
- whether or not the worker is covered under the workers compensation law of another State while in Tasmania (if not, then insurance should be obtained in Tasmania).

If the employer cannot identify a single Australian State where the worker usually works, then the State of connection is the State where the worker is usually based for the purposes of the employment.

If the employer cannot identify a single Australian State where the worker is usually based, then the State of connection is where the employer's principal place of business in Australia is located.

Special provisions apply to seafarers.

Sections 3, 4 and 31A

What happens to a worker's claim if the employer is uninsured?

The Nominal Insurer is a body established under the Act to ensure that injured workers are not disadvantaged in circumstances where:

Sections 121-131AA

- the employer does not hold a policy of workers compensation insurance or
- an employer cannot be located or
- the employer is bankrupt or
- the employer's insurer is insolvent or is unable to meet its liabilities under the policy.

The Nominal Insurer is administered by a committee comprising six members drawn from insurers, self-insurers and government. It is funded by contributions from licensed insurers and from employers who are self-insurers.

Where a claim is made but compensation cannot be obtained from the employer, the claim is paid by the Nominal Insurer. The Nominal Insurer will then attempt to recover the amount paid from the employers or insurers involved.

Even if the worker believes their employer may not hold a policy of workers compensation insurance, the worker must lodge a formal claim for compensation upon the employer (as described on page 5).

The worker is entitled to receive weekly benefits and all the other entitlements during any period of incapacity providing a claim has been lodged. Should an employer fail to meet these obligations the worker can refer the issue to the Tribunal under section 42 for an order requiring the employer to pay compensation. If the employer fails to comply with that order the Tribunal may be asked to make a further order requiring the Nominal Insurer to meet the employer's liability for the claim.

Employer excess

Employers are required to meet the costs of the first weekly payment for each injury suffered by the worker and the first \$200 of other benefits (for example, medical and rehabilitation expenses). This excess can be removed from the workers compensation insurance policy if an employer obtains a certificate from the WorkCover Tasmania Board, and pays any additional premium if required by the insurer. It is also possible for an employer to extend this period of insurance excess to 30 days.

Subsection 97(1A)

Handling claims

The Act requires that payment of compensation to the injured worker is to be made within set timeframes (for example, time frames for weekly payments are described on page 9).

Immediately upon receiving a claim for compensation from a worker, the employer must complete the employer's report section of the Worker's Claim for Compensation form and, together with the Workers Compensation Medical Certificate, send them to their insurer within five working days (unless it is a self-insurer in which case, a copy of the claim form is to be forwarded to the WorkCover Tasmania Board within five working days).

Subsection 36(1)

Other obligations

Other specific obligations imposed on employers include:

- providing, along with their application to insurers for the issue or renewal of a workers compensation insurance policy, full and correct statements of people employed and wages paid
- keeping a record of all injuries notified by their workers
- making and maintaining specified employment records for the purpose of workers compensation, and keeping those records for a period of 7 years

Section 97 and Regulation 23 of the Workers Rehabilitation and Compensation Regulations 2001

Section 153A

Information for workers

In addition, employers are required to display or have available for the information of workers:

- details of the name and address of the insurer with whom the employer holds a policy of insurance under the Act; or if the employer is a self-insurer, a statement to that effect
- a summary of the provisions of the Act displayed prominently in the workplace to ensure workers are aware of their rights and obligations under the Act
- a rehabilitation policy, prominently displayed in the workplace (where there are more than 20 workers)
- the person nominated as the rehabilitation co-ordinator (where there are more than 50 workers).

Section 152

Section 152

Section 143

Section 143A

COMPENSATION

Found in this Section of the Act:

What benefits are provided under the Act?

Weekly payments (income replacement payments)

A worker who is unable to work as a result of a work-related injury or disease is entitled — while incapacitated for work, and subject to producing medical evidence of incapacity — to weekly payments equal to whichever is the greater of:

Section 69

- the worker's ordinary time rate of pay for the employment in which the worker was engaged immediately before the incapacity commenced, or
- the normal weekly earnings of the worker averaged over the relevant period of employment:
 - if continuously employed by the same employer for 12 months or more, the 12 month period immediately preceding the commencement of the incapacity;
 - if continuously employed for less than 12 months, the period employed by the employer immediately before becoming incapacitated; or
 - if the period of employment is 14 days or less the worker's normal weekly earnings is taken to be the normal weekly earnings of another worker performing comparable work or if there is no other worker the worker's expected weekly salary excluding any overtime or other allowances.

Normal weekly earnings would include any regular allowances, but not travel or accommodation allowances. Overtime is excluded unless it is part of a regular pattern of employment.

Section 70

The Act also provides a formula for calculating the weekly payment where a worker has, prior to incapacity, been engaged in more than one job (for example, someone employed in several part-time positions). Under this formula the worker's normal weekly earnings from each part-time position are to be calculated as the sum of the average weekly earnings in each employment as if their earnings under both contracts were earnings in the employment of the employer for whom they were working at the commencement of the period of incapacity.

Subsection 70(2)(b)

When the employer receives a claim, they must start making payments as follows:

Section 81

- where the worker's first pay day is within 14 days after the employer received the claim, if it is reasonably practicable to do so, commence making weekly payments to the worker on the first pay day; or
- in any other case, commence making weekly payments to the worker not later than 14 days after receipt by the employer of the worker's claim for compensation.

Unless a worker and an employer agree otherwise in writing, workers entitled to weekly payments should be paid on the same day they would have received their pre-injury wages (however, a worker and employer may agree on a different method of payment to the way wages were paid prior to injury). You may need to check with your relevant award and/or industrial agreement.

An injured worker is not entitled to receive weekly payments going back to more than 14 days prior to the date the claim is lodged. Of course if the injury occurred less than 14 days before the claim is lodged, weekly payments only go back to the date of injury.

Section 81B

An employer must make weekly payments regardless of whether liability has been accepted. These payments are made on a 'without prejudice' basis. This means that should the claim be disputed, they are not to be considered as an admission of liability. If the Tribunal finds that there is a reasonably arguable case concerning liability, the payments will cease.

Section 81AA

The employer cannot recover 'without prejudice' weekly payments unless the Tribunal is satisfied:

- that the worker's claim was fraudulent, or
- that the worker obstructed or delayed the determination of the claim, and that liability to pay the claim has been determined not to exist, or
- that the injury is attributable to the serious and wilful misconduct of the worker (unless the injury results in the worker's death), or
- that it is an intentional self-inflicted injury.

Where the Tribunal has determined that there is no liability to pay weekly payments, the employer may deduct any period during which the worker was paid these benefits from the worker's current sick leave entitlement.

Subsection 81AA(3)

Weekly payments are made as follows:

Section 69B

- 100% of the weekly payment for the first 13 weeks of incapacity following the date of initial incapacity
- 85% of the weekly payment for the period of incapacity exceeding 13 weeks but not exceeding 78 weeks from the date of initial incapacity
- 80% of the weekly payment for the period of incapacity exceeding 78 weeks but not exceeding nine years from the date of initial incapacity.

These changes in payments are referred to as 'step downs'. For the purposes of the step downs in weekly payments:

- 'incapacity' means total or partial incapacity
- a period of incapacity does not necessarily have to be continuous calendar week period — it can include the aggregate or sum of intermittent periods of incapacity.

Entitlement to weekly payments ceases after nine calendar years from the date of the initial incapacity.

There is a 'safety net' provision in the legislation which ensures that, after the step downs have been applied, the injured worker cannot receive less than 70% of either the basic salary or the weekly rate of payments (whichever is the lesser amount).

Subsection 69B(3)

Where the worker recovers sufficiently to take part in some form of employment (whether on a part-time basis or on duties providing a lower level of remuneration than their usual pay), they may be entitled to weekly payments to make up the difference between the wages for the work they are doing and their pre-injury earnings.

Subsection 69 (2) (2A)

Lump sum payments for permanent injuries

In addition to any other compensation payable, a worker who suffers permanent impairment resulting from a work-related injury or disease for which a workers compensation claim has been lodged, may be entitled to receive a lump sum payment.

Whether a worker is entitled to lump sum permanent impairment compensation — and if so, the amount of that compensation — depends on the level of 'whole person impairment' suffered by the worker. To be entitled to lump sum permanent impairment compensation, the worker must meet the appropriate thresholds as follows:

- in the case of the loss of part, or all, of a finger or toe there is no threshold Subsection 71(1)(d)
- in the case of other permanent physical impairment, a 5% whole person impairment threshold applies Subsection 71(1)
- in the case of permanent psychological impairment, a 10% whole person impairment threshold (and some exclusions apply) Subsection 71(2)
- in the case of industrial deafness, a 5% binaural hearing loss (suffered since 16 August 1995). Section 73

In cases where the worker wishes to claim a lump sum for permanent impairment they must be assessed by a medical assessor (contact WorkCover for details of medical assessors) to determine the level of whole person impairment. Following that assessment and a determination of the level of permanent impairment, the amount of lump sum compensation will be determined by reference to the Act. Section 72A

A worker who suffers a permanent impairment of more than 70% is entitled to be paid the maximum amount which is a lump sum equal to 369 units. Section 71

A worker who suffers a permanent impairment of more than 30% may be able to undertake common law action (see page 14). Section 138AB

Medical, rehabilitation and other benefits

The Act provides that the employer is liable for the cost of all reasonable expenses necessarily incurred by a worker as a result of the injury for medical, hospital, nursing, constant attendance, rehabilitation and ambulance services. Section 75

These expenses can include costs associated with examination or treatment by medical practitioners, chiropractors, physiotherapists, dentists, optometrists, psychologists and so on. It should be noted that the term ‘chiropractors’ includes osteopaths registered under the *Chiropractors and Osteopaths Registration Act 1997*.

Similarly, the employer is liable to pay the reasonable expenses necessarily incurred by the worker for travelling and maintenance in connection with any medical, hospital or rehabilitation services, or to attend any medical examination organised by the employer. If a doctor certifies that the injured worker needs to be accompanied for any treatment or examination, the employer is liable for the reasonable expenses for the person accompanying the worker. Section 76

Reasonable travelling expenses for the use of a motor vehicle are paid by the employer at the rate set down in the General Conditions of Employment Award made by the Tasmanian Industrial Commission.

Within 28 days after receiving a claim for payment of a medical or other expense, the employer must pay the expense; or serve the worker with notice in writing disputing the claim (and notify the service provider that liability for the expense is disputed, and why). The worker can then refer the matter to the Tribunal within 60 days. Section 77AA

Any dispute about the reasonableness or necessity for any medical or rehabilitation service which is, or may become, the subject of a claim may be referred by the worker, the employer or the licensed insurer to the Tribunal for determination. The Tribunal can also determine the necessity for a medical or rehabilitation service before it is obtained and a cost incurred. Section 77AA

Anyone who provides a medical or rehabilitation service must not charge a fee that is more than they would normally charge (taking into account any discounts that would normally apply), if the service was not for a workers compensation matter. Subsection 75(2A)

How long can benefits continue?

Weekly payments

If the worker continues to produce a Workers Compensation Medical Certificate signed by an accredited medical practitioner (only medical practitioners residing in or providing a service in Tasmania must be accredited), confirming continued incapacity, weekly payments may continue until:

- nine years have passed from the date of initial incapacity, or
- the worker reaches 65 years of age.

Subsection 69B(2)

Section 87

Where an injury occurs after the worker turns 64, benefits can continue for 12 months from the date of injury. The Act also provides for compensation to continue where the worker would have continued to work beyond 65 years of age (subject to Tribunal approval).

A person serving a term of imprisonment is not entitled to weekly payments during that term of imprisonment.

Section 82

Lump sums for permanent impairment

The Act does not place a time limit on payments of compensation for permanent impairment under an existing claim.

Medical, rehabilitation and other benefits

If the worker continues to produce a Workers Compensation Medical Certificate signed by an accredited medical practitioner, the Act provides that the employer pay the cost of all reasonable medical and other expenses necessarily incurred by the worker in connection with the compensation claim, for a period up to 10 years from the date the claim was given to the employer.

Subsection 75(2)

Payments to dependants on the death of a worker

Where a worker dies as a result of a work-related injury or disease, the worker's dependents are entitled to compensation as follows.

Lump sums

A lump sum can be a maximum of 369 units. A unit is defined as the basic salary as declared annually by the Minister and published in the Tasmanian Government Gazette.

Section 67

Where the deceased worker leaves:

- a wholly dependent spouse or wholly dependant caring partner: the lump sum is to be paid to the spouse or partner
- a partially dependent spouse or partially dependant caring partner and no dependent children: the lump sum is to be an amount (no more than 369 units) that is reasonable and in proportion to the degree of dependency of the spouse or partner
- no dependent spouse or dependant caring partner and a wholly dependent child or children: the lump sum of 369 units is to be paid to the child or equally to the children
- no dependent spouse or dependant caring partner and a partially dependent child or children: the lump sum is to be an amount (no more than 369 units) that is reasonable and in proportion to the degree of dependency of the child or children.

If the deceased worker leaves no dependants but was (immediately before the date of injury) contributing towards the maintenance of the home of members of their family, those members are taken to be dependants of the worker, and are considered to be partially dependent for the purposes of determining the amount of a lump sum.

Any amount paid as weekly payments to the worker before their death is not to be taken into consideration when calculating the amount of a lump sum.

Weekly payments

Section 67A

Where agreement cannot be reached on who the dependents of the deceased worker are or what their level of dependency is, either of the parties may refer the matter to the Tribunal for determination. The Tribunal can also decide how the compensation is to be divided between the dependants.

The amount of weekly payments payable to the spouse or caring partner is:

- 100% of the weekly payment for the first 13 weeks following the date of death
- 85% of the weekly payment for the period over 13 weeks and up to 78 weeks from the date of death
- 80% of the weekly payment for the period over 78 weeks and up to two years from the date of death.

A dependent child is entitled to weekly payments of 10% of the basic salary applicable in the year of the worker's death.

These payments will start 13 weeks from the date of death and will continue until the child reaches the age of 16 years (or 21 years if a full-time student).

If the worker dies as a result of injuries for which they are receiving compensation, more than 78 weeks after receiving those injuries, their dependent spouse or dependant caring partner is entitled to weekly payments at the rate of 80% of the worker's weekly payment for a period up to two years from the date of death.

Medical, other services, burial or cremation expenses

Where the worker dies as a result of their injury, the following may be paid to the dependants, legal representative of the deceased, or the person who incurred those expenses:

Section 75

- the reasonable expenses necessarily incurred by the worker as a result of their injury for medical, hospital, nursing, constant attendance, rehabilitation or ambulance services
- the reasonable expenses of the worker's burial or cremation.

Settlement of a claim by agreement

In certain circumstances, claims may be settled by agreement between the parties. These circumstances arise where the injury which is the subject of the claim is stable and stationary, and where 12 months have elapsed since the claim was lodged.

Section 39

A settlement may include the redemption of the worker's entitlement to weekly payments, lump sum payments, medical and other expenses.

Either party to the agreement may refer it to the Tribunal for review within three months of the date the agreement was made. A Referral to the Tribunal form (available from the Tribunal) must be completed.

The Tribunal may set aside an agreement it deems to be inequitable, made under duress or made by a party lacking the legal capacity to make it, or for any other reason.

A worker is not entitled to common law damages in respect of an injury if the claim has been settled by agreement under section 39.

Can common law damages be claimed?

The workers compensation benefits payable under the Act (as outlined earlier in this guide) — weekly payments, medical and rehabilitation expenses, permanent impairment compensation, compensation to dependents of deceased workers — are statutory benefits. They are paid on a no-fault basis, which means that to be entitled to benefits under the Act, it is not necessary to prove that anyone was at fault for causing the injury or disease suffered by the worker. As long as the requirements of the Act are met, the worker is entitled to benefits under the Act.

There is another form of compensation available in some circumstances to workers who suffer injury arising out of or in the course of employment: common law damages.

Sections 132-138A1

Common law damages means lump sum compensation agreed between parties or awarded by the Court to compensate one party for loss or suffering caused by another party through negligence, breach of contract or breach of statutory duty.

Common law damages differ from statutory workers compensation benefits in that:

- they are fault-based; that is, the worker must be able to prove that the injury resulted from negligence, breach of contract or breach of statutory duty
- they can compensate for losses not covered by statutory benefits; for example, pain and suffering, loss of amenities, past and future loss of earning capacity.

Under the Act, the worker can only sue their employer for common law damages where the injury or disease suffered has resulted in a 30% or more whole person impairment (determined by reference to the American Medical Association *Guides to the Evaluation of Permanent Impairment*, Fourth Edition as modified by the Tasmanian Workers Compensation Guidelines for the Assessment of Permanent Impairment under the Act).

Disputes about whether an injury has resulted in a 30% or more whole person impairment can be referred to the Tribunal for determination.

Section 138AB

Where the worker has suffered an injury or disease resulting in a 30% or more whole person impairment — as agreed between the worker and the employer, or as determined by the Tribunal — a worker seeking common law damages from their employer must lodge an election to claim damages with the Tribunal.

An election to seek common law damages is to be made within two years of the date on which the workers claim for compensation was given to the employer. In some circumstances, the Tribunal may extend the period within which an election to claim damages can be made.

Section 138AB

Importantly, a claim for common law damages must also be lodged with the Supreme Court within the relevant time period specified in the *Limitation Act 1974*. Workers contemplating making a claim for common law damages are urged to seek prompt advice regarding the applicable limitation period for their claims. The Supreme Court can grant an extension of time in certain circumstances.

Failure by the worker to commence proceedings within the time period fixed or as extended by the Supreme Court will result in any right of action of the worker to claim common law damages being forever barred and extinguished. This does not affect the worker's right to compensation under the Act.

Where the worker makes a claim for common law damages, workers compensation weekly benefits payable under the Act will continue to be paid while the claim is being determined.

Section 137

If the worker is successful in the common law action, the amount of statutory compensation already paid is taken into account in the amount of damages awarded.

Section 133

INJURY MANAGEMENT, REHABILITATION, RETURN TO WORK

Found in this Section of the Act:

The treating doctor and medical specialists

Medical practitioners who are resident in Tasmania, or who provide a service in this State and who wish to issue medical certificates under the legislation, must be accredited by the WorkCover Tasmania Board. A list of accredited medical practitioners is available at www.workcover.tas.gov.au

Subsection 34(1)(b)

The treating doctor is obliged to respond to any request for information from an employer, an insurer or another health service provider concerning the injury.

A medical practitioner must not charge a fee that is more than they would normally charge (taking into account any discounts that would normally apply), if the service was not for a workers compensation matter.

Section 75 (2A)

There is a legislative requirement for the treating doctor to be provided with copies of any medical report relating to the worker's claim, irrespective of whether the report is relied upon in assessing liability and incapacity.

Section 85 (3AA)

Injury management

Under the provisions of the Act, injury management is defined as the management of an injured worker intended to provide the worker with a timely, safe and durable return to work following an injury.

Section 3

One of the functions of the WorkCover Tasmania Board is to promote and support the effective injury management of workers. The Board has done this by developing a framework for improving and streamlining the management of workplace injury. The WorkCover Return to Work and Injury Management Model is based on seven key principles:

- all parties, including the injured worker, should view recovery and return to work as the prime goals following a work related injury; have a shared commitment to these goals; and work together through cooperation, collaboration and consultation to achieve these goals
- early intervention is critical: injury management should commence as soon as possible following injury
- where possible, the injury management process will focus on maintaining the relationship between the employer and worker
- the injury management process should be transparent, cost efficient and effective
- all parties, particularly the injured worker, the employer and the medical practitioner, will have access to information and support in order to clearly understand their roles, rights and responsibilities
- injury management should be of a high standard to maintain the dignity and integrity of the injured worker; and ensure that the injured worker is an active participant
- effective injury management requires the timely, facilitated resolution of issues.

The WorkCover Return to Work Injury Management Model and related guidelines can be found on the WorkCover Tasmania website www.workcover.tas.gov.au

Obligations relating to rehabilitation and return to work

Under the Act, workplaces with 20 or more employees must have a rehabilitation policy that complies with criteria laid down by the WorkCover Tasmania Board (see page 17).

Section 143

Under the Act, an employer with more than 50 workers must nominate a person to be responsible for co-ordinating the timely and safe return to work of injured workers in accordance with the employer's rehabilitation policy. This person is usually called a rehabilitation co-ordinator.

Section 143A

The Act provides that the employer must keep the injured worker's pre-injury employment open for 12 months following the date of incapacity (unless it can be shown that the reason for the employment no longer exists, or that it would not be practicable to make such employment available), or find other suitable employment.

Section 138A

Terminating the worker's employment contract may not affect the worker's right to continue to receive compensation and rehabilitation under the Act, including suitable alternative duties. Any employer considering terminating an injured worker's employment contract should be mindful of protections under anti-discrimination and industrial law, and discuss the matter with their insurer.

The employer must also find suitable alternative duties for the worker for 12 months following the date of incapacity, unless it can be shown that it would not be reasonably practicable to provide duties that the worker could undertake.

Section 138B

Return-to-work plans will vary according to the needs of the injured worker, but the main aim will remain the same: to get the worker back into the workplace at the earliest possible stage.

Section 139

Rehabilitation

The Act provides for the payment of all reasonable costs of rehabilitation programs or services for up to 10 years.

Under the Act, a rehabilitation service is defined as:

Section 74

- treatment, training, or other assistance provided to facilitate or assist the worker's rehabilitation
- the supply of material or equipment in respect of any occupational therapy projects undertaken by the worker
- any necessary and reasonable modifications required to be made to the worker's workplace, place of residence, or motor vehicle.

The injured worker is entitled to reimbursement of all reasonable expenses necessarily incurred as a result of their injury. These may include medical, hospital, nursing, constant attendance, rehabilitation or ambulance services.

The Tribunal also has jurisdiction to consider the necessity for a medical or rehabilitation service before it is obtained and a cost incurred.

The return-to-work plan

If the worker is incapacitated for more than 14 days, a return-to-work plan must be prepared. This plan should be completed within five days of the 14 day limit being reached.

Section 139

The plan should be designed in full consultation with the injured worker, the treating medical practitioner and rehabilitation provider. The plan should be realistic and achievable, ensuring that the injured worker returns to work in a safe and timely manner.

The basic objective is to ensure that everything possible is done to enable the injured worker to return to the workforce as soon as possible and to minimise the physical, psychological, social, vocational and economic consequences of work-related injuries.

Ideally, the plan should be signed by the employer and the worker.

The worker, the treating doctor and the insurer should each receive a copy of the plan. The plan may include alternative duties and details of graduated return to work.

The return-to-work plan must include:

- the name of the injured worker
- the date on which the worker is expected to return to work
- an offer of suitable alternative duties
- the steps to be taken to facilitate the worker's return to work
- evidence of reasonable attempts to consult with the worker's treating general practitioner.

A sample return-to-work plan is set out on page 30.

Criteria for rehabilitation policies

Employers with 20 or more workers are required to have a rehabilitation policy that incorporates the following criteria:

- it must be a short statement of the employer's commitment to the principles of effective return to work for injured/ill workers
- it must be easily understood and capable of being implemented in the workplace
- it must be a clear statement of the rights and responsibilities of all parties, including the right of injured/ill workers to choose their treating medical practitioner and have a say in choosing their rehabilitation service provider
- it should be consistent with the workplace health and safety policy of the workplace
- it should be endorsed by the workplace parties, with provision for input by unions if requested by workers
- it must be supplemented by adequate written procedures that are readily available in the workplace, and that name key workplace personnel and the role of each in implementing the policy
- it must be displayed prominently in the workplace where the workers can readily refer to it
- rehabilitation programs and plans should be developed in consultation with all relevant parties, including the worker, the medical practitioner, the worker's supervisor, the rehabilitation service provider and, if applicable, the insurer and the worker's union representative
- the employer must arrange for the policy to be reviewed regularly (at least once a year) to establish that there is continuing commitment to the policy by management and workers
- it must be consistent with the provisions of the Act.

DISPUTE RESOLUTION

How are disputes or questions relating to workers compensation claims resolved?

Workplace Standards Tasmania offers a number of services to help workers and employers with questions or concerns about workers compensation matters, as follows:

- any general query regarding workers compensation may be directed to the Helpline, which provides free information and assistance. See the back cover for contact details
- any unresolved compliance matter may be referred on to a Workplace Standards Tasmania inspector by the Helpline, for investigation and enforcement under the Act
- a formal complaint may be directed to Workplace Standards in writing.

If agreement cannot be reached regarding a specific claim, the dispute may be referred to the Tribunal for conciliation or adjudication.

Workers Rehabilitation and Compensation Tribunal

The Workers Rehabilitation and Compensation Tribunal is an independent statutory tribunal established under the Act. The Tribunal has primary responsibility for determining all disputes. If the parties cannot reach agreement through the conciliation process, the Tribunal determines the dispute through arbitration hearings.

Conciliation process

Disputed claims will be the subject of a conciliation process in order to try and resolve the disputes informally and at the minimum cost.

Initially a conciliator from the Tribunal will contact the parties to establish what issues are in dispute and what is being done to investigate those matters. If the claim is not resolved during this preliminary stage, then a more formal conciliation conference will be held.

All parties to the dispute should be prepared to discuss the claim when contacted by the conciliator, and should be able to:

- identify the issues in dispute and what benefits are being claimed
- advise the conciliator of any investigations or medical examinations that have been arranged, or are to be arranged
- discuss the claim generally, with the aim of identifying any possible options to resolve the dispute.

During this preliminary stage, the conciliator may give directions to either or all parties as to what is to be done to facilitate a resolution.

Conciliation conferences

If the dispute has not been resolved during the preliminary stage, the conciliator will hold a conciliation conference usually after all investigations and medical examinations have taken place.

A conciliation conference is a meeting where the worker, employer and insurer discuss all issues relating to the dispute and try to resolve it. All parties are encouraged to put their views, to listen to the views of the other parties, and to develop ways to resolve the dispute themselves.

Each party will receive a letter giving Notice to Attend the conference. Attendance is compulsory.

Employers and insurers must be represented by someone with full authority to act on their behalf and to bind the employer and insurer to any agreement reached.

At the conference the parties will be given the opportunity to have open and unprejudiced discussions in an endeavour to resolve the issues. Nothing said at the conference can be used in evidence at any Tribunal hearing.

If any of the parties intends to rely on any report or proof of evidence at a future Tribunal hearing, it can only be used if it has been produced at the conciliation conference (unless it was not available at the time of conciliation).

The Act provides that neither party can be represented by a legal practitioner at a conciliation conference unless the conciliator determines that a person's interests would be materially disadvantaged by not being represented, or that the conference would be more likely to resolve the claim with the presence of a legal practitioner. In practice, many parties have legal representation during conciliation.

How to prepare for a conference: the worker

The worker is required to provide the conciliator with any information to support their case; for example, medical or other reports. This information should be supplied to the conciliator and the other party well before the conference or, if that is not possible, brought to the conference.

If the worker does not have a medical report in support of the claim, they may have to obtain one from their treating general practitioner or specialist.

If the worker is in any doubt about what needs to be taken to a conference or what will be involved, they should get in touch with the contact person at the Tribunal named on the Notice to Attend.

The worker may wish to bring someone to the conference to assist and provide support, and this is acceptable. This may be a friend, family member, union official or other helper.

The worker needs to be prepared to speak clearly and calmly about the merits of the claim, or express disagreement over action taken by the employer or insurer. It is acceptable practice to refer to notes during a conference, and the worker should prepare the case beforehand.

The worker should consider what outcome they want from the conference, and be prepared to discuss that and other options.

How to prepare for a conference: the employer and the insurer

The employer should discuss the claim with their insurer before the conference. The employer and the insurer should be ready to explain why the claim has been disputed, or other action taken, and should be prepared to hear and consider the reasons why the worker disagrees with the employer's decision. If the employer is to be represented by another person, that person should know all the circumstances of the dispute and be authorised to discuss the issues fully and reach a binding agreement.

The employer and the insurer should bring with them any information they have which relates to the dispute. If they are in any doubt about what needs to be taken to a conference they should get in touch with the contact person at the Tribunal named on the Notice to Attend.

If the worker is not presently at work, the employer should develop possible options for a return to work for the worker, and be prepared to discuss these options at the conference.

A representative of an employer organisation may attend the conference to advise and support the employer.

What happens at a conference?

First, all parties should check their Notice to Attend to ensure that they know both the location of the conference and the correct date and time.

On arrival, the parties should remain in the waiting area until taken into the conference by the conciliator.

The conciliator will explain how the conference will proceed, and will establish some ground rules to ensure fairness and equity in the proceedings.

All parties will be asked in turn to express their views on the issues, and any assistant or advisor present may also be asked for their views.

The conciliator will remain impartial throughout, but will play an active role by asking questions, making sure all parties understand the others' views, making suggestions and helping the parties to reach an agreement that is fair and durable.

The conciliator may talk with one or all of the parties in private meetings, so that any party can express views to the conciliator that they may feel uncomfortable about discussing openly.

Likely outcomes of a conciliation conference

At the end of the conference it may have been possible to reach agreement between the parties, or the conciliator may let the parties adjourn for a time to seek advice or to think about the outcome.

Where the parties are unable to reach an agreement, but have made reasonable attempts to do so and the parties require the dispute to be resolved, the conciliator will refer the matter to the Tribunal for determination.

The conciliator may recommend that a medical question (see *Definition of terms*) be referred to a medical panel for determination.

Adjudication

Disputes under Section 81A of the Act

Section 81A

This section of the Act allows an employer to dispute liability for a claim after it has been delivered to the employer.

Employers have 84 days from receipt of the claim to dispute liability and must, within this 84 day period, serve on the worker a written notice stating that liability is disputed, giving the reasons why, and refer the matter to the Tribunal, together with all evidentiary material the employer intends to rely upon at the hearing.

During this process the employer is under an obligation to pay weekly payments to the injured worker, but not medical or other costs, unless otherwise ordered by the Tribunal.

The dispute will be scheduled for a hearing before either the Chief Commissioner or Commissioner. Legal representation is not necessary at these hearings, but the worker may have a union advocate, lawyer or other person present to assist them, and the employer may also be represented.

The purpose of this hearing is not to decide whether there is a valid claim for workers compensation, but to determine whether a reasonably arguable case exists concerning the employer's liability to pay compensation under the Act.

If the finding of the Tribunal is that a reasonably arguable case exists, then the worker, the employer or the licensed insurer may refer the matter back to the Tribunal for resolution. The dispute will then be the subject of the conciliation process.

Appealing the termination or reduction of weekly payments under Section 86(1) of the Act

Subsection 86(1)

Disputes under this section of the Act arise where the employer intends to stop or reduce the amount of weekly payments being paid.

Under this section, the employer can reduce or terminate a worker's weekly payments in the following circumstances:

- 1 the weekly payments the worker is receiving are in respect of total incapacity and the worker has returned to work
- 2 the worker is receiving weekly payments for partial incapacity and is earning more than the amount of weekly payments
- 3 an accredited medical practitioner has examined the worker and certified in writing that, in their opinion, the worker has wholly or substantially recovered from the effects of the injury, or that the incapacity is no longer wholly or substantially due to the injury
- 4 the worker has failed or refused to undertake or participate in a rehabilitation program or suitable alternative duties recommended by the employer
- 5 the worker's entitlement to weekly payments has expired (after nine years).

If the reason for reducing or terminating the weekly payment is any one of items 3, 4 or 5 above, the employer must serve a written notice on the worker stating the employer's intentions and advising the worker of the worker's rights. The weekly payments will be reduced or terminated ten days after the notice has been served.

The worker has the right to dispute a reduction or termination of weekly payments by referring the matter to the Tribunal within 60 days (a Referral to Tribunal form available from the Tribunal).

Disputes under Section 77AA of the Act

This section of the Act allows an employer to dispute liability for medical and other services expenses.

Section 77AA

Within 28 days after receiving a claim for payment of a medical or other expense, an employer must pay the expense; or serve the worker with notice in writing disputing the claim (and notify the service provider that liability for the expense is disputed and why).

The employer must state on the notice what expenses are being disputed. The employer can dispute:

Subsections 77AA(2)

- a particular expense, or
- all current and future expenses of a particular kind; or all current and future expenses incurred with a particular provider; or all current and future travelling and maintenance expenses related to the provision of a particular service, or
- all current and future liability for expenses of any kind whatsoever.

The notice must also state that the worker has the right to refer the matter to the Tribunal within 60 days from the date of the written notice.

The notice means the employer need not pay the particular expense, or any current and future expense of the same kind described in the notice, unless the worker obtains a determination from the Tribunal to the contrary.

Subsections 77AA(3) and (4)

If the worker disagrees with the employer's decision, then it is up to the worker to refer the matter to the Tribunal within 60 days of receiving the notice of the employer's decision, or the employer's decision stands.

Subsection 77AA(5)

Referrals to the Tribunal are made by completing a Referral to Tribunal form, available from the Tribunal, or www.workerscomp.tas.gov.au/forms2

Other Sections of the Act where disputes may arise

Disputes under the Act can be initiated by the worker, by the employer or by the licensed insurer, to resolve issues affecting the claim and/or to obtain a determination by the Tribunal. If any party intends referring a claim to the Tribunal, the necessary Referral to Tribunal form should be completed first.

Either the worker, the employer or the insurer can refer a claim to the Tribunal at any time during the life of the claim and, if liability for the claim in dispute has already been accepted, the employer will have to continue making weekly payments and continue paying medical and other expenses until the dispute has been determined.

Medical panels

Sections 50-55C

The Act allows the Tribunal to refer any medical question to a medical panel, but only where there is conflicting medical opinion and one of the parties wishes to continue with the proceedings. A medical panel can also determine medical questions relating to the percentage of whole of person impairment.

Panels will consist of two or three persons drawn from a register of medical practitioners who have indicated their willingness to serve. On each panel, one of the members is to be a general practitioner and one is to be a specialist in the discipline being examined. Panel members must not have treated, examined or provided any medical service to the worker in respect of their claim.

A medical panel is empowered to examine a worker, to require a worker to answer questions and to produce relevant documents, but is not bound by the rules of evidence.

The decision of a medical panel is final and binding on all parties, including the Tribunal, but only in respect of the medical question.

DEFINITION OF TERMS

Found in this Section
of the Act:

accredited medical practitioner

A medical practitioner accredited by the WorkCover Tasmania Board to issue workers compensation medical certificates. Does not apply to interstate and overseas practitioners (unless providing a service in Tasmania).

Section 3

accredited person

A person accredited by the WorkCover Tasmania Board to provide prescribed services.

Section 3

Act

For the purposes of this guide, the Act refers to the *Tasmanian Workers Rehabilitation and Compensation Act 1988*.

AMA Guides

The American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition as modified by the Act or such later edition of those Guides as may be prescribed.

Section 3

basic salary

During the year beginning 1 January 2008, \$602.35 a week (in 2007: \$564.69) and during any subsequent year beginning 1 January, the basic salary for that year as determined by the Minister and published in the *Tasmanian Government Gazette*. Also called a unit.

Section 3

Board

The WorkCover Tasmania Board.

Section 3

caring partner

This means:

Section 3

(a) the person who is in a caring relationship with a worker which is the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003* or

(b) the person who was, at the time of the death of a worker, in a caring relationship with that worker which was the subject of a deed of relationship registered under Part 2 of the *Relationship Act 2003*.

Chief Commissioner

The Chief Workers Rehabilitation and Compensation Commissioner appointed and holding office under the Act.

Section 3

claim for compensation

A claim for compensation under the Act, which includes any matter or question arising in connection with or incidental to such a claim.

Section 3

Commissioner

A Workers Rehabilitation and Compensation Commissioner appointed and holding office under the Act.

Section 3

dependants

Such members of the family of the worker as were dependent, wholly or in part, upon the earnings of the worker at the time of their death or would have been so dependent but for the incapacity due to the injury.

Section 3

disease

Any ailment, disorder, defect, or morbid condition, whether of sudden or gradual development. *Section 3*

employer

The person with whom a worker has entered into a contract of service or training agreement. This may include the Crown, the employer of any person or class of persons taken to be a worker for the purposes of the Act, and the legal personal representative of a deceased employer. *Section 3*

Fund

The Workers Rehabilitation and Compensation Fund. *Section 3*

industrial deafness

Permanent loss of hearing caused by exposure to industrial noise in a worker's employment. *Section 3*

injury

Includes a disease and the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor. *Section 3*

injury management

The management of an injured worker, intended to provide the worker with a timely, safe and durable return to work following an injury. *Section 3*

licensed insurer

An insurer who is the holder of a licence to undertake workers compensation business from the WorkCover Tasmania Board. *Section 3*

medical assessor

A medical practitioner accredited by the WorkCover Tasmania Board for the purposes of assessing the degree of a worker's permanent impairment. *Section 3*

medical panel

A medical panel formed under section 50 of the Act. *Section 3*

medical practitioner

A person who is resident in a State or Territory of the Commonwealth of Australia and is entitled to practise as a medical practitioner in accordance with the laws of that State or Territory; or a person who is not resident in a State or Territory of the Commonwealth but who is entitled to practise as a medical practitioner under the laws of another jurisdiction. *Section 3*

medical question

A question relating to: *Section 3*

- the existence, nature or extent of an injury, or
- whether an injury is, or is likely to be, permanent or temporary, or
- a worker's capacity for work or specific work duties, or
- a question relating to the loss, or the degree of loss, of any of the parts or faculties of the body, or
- the permanent loss of the effective use of a part of the body, or
- the assessment of the degree of permanent impairment, including whether the impairment is permanent, or
- a medical service provided or to be provided to a worker for an injury, including the adequacy, appropriateness or frequency of that service.

member of the family

In relation to a worker, means the spouse, caring partner, father, stepfather, grandfather, mother, stepmother, grandmother, son, grandson, daughter, granddaughter, stepson, stepdaughter, brother, sister, half-brother and half-sister of the worker or a person to whom the worker acted in place of a parent.

Section 3

Nominal Insurer

The body established as the Nominal Insurer under section 121 of the Act.

Section 3

notified dispute

Means a claim for liability disputed under section 77AA of the Act.

Section 3

outworker

A person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale, in premises not under the management or control of the person giving them out.

Section 3

period of incapacity

A period of incapacity for work, whether partial, total, or a combination of both, commencing on the date of initial incapacity, and in the case of separate periods of incapacity resulting from the same injury, the aggregate of those periods.

Section 69B

Note: Entitlement to weekly payments ceases nine calendar years from the date of initial incapacity in any case.

policy of insurance

A policy of insurance that an employer is required to maintain under the Act.

Section 3

practitioner

A legal practitioner within the meaning of the *Legal Profession Act 1993*.

Section 3

psychiatric impairment

An illness of the mind or a disorder of the mind.

Section 3

Registrar

The Registrar of the Workers Rehabilitation and Compensation Tribunal appointed and holding office under the Act.

Section 3

regulations

The *Workers Rehabilitation and Compensation Regulations 2001* made and in force under the Act.

Section 3

rehabilitation service

Treatment, training, or other assistance provided to facilitate or assist a worker's rehabilitation. The supply of material or equipment in respect of any occupational therapy projects undertaken by the worker. Any necessary and reasonable modifications required to be made to a worker's workplace, place of residence, or motor vehicle.

Section 74

Secretary

The Head of the Agency that administers the Act. At present, this Agency is the Department of Justice.

Section 3

self-insurer

An employer who is the holder of a permit to self-insure issued by the WorkCover Tasmania Board.

Section 3

specialised insurer

An insurer or proposed insurer whose business is, or is intended to be, specialised insurance for employers of a particular class or particular classes. Section 3

spouse

Includes the person with whom the worker is, or was at the time of their death, in a significant relationship, within the meaning of the *Relationships Act 2003*. Section 3

State

Includes a Territory. Section 3

State of connection

Means the State within which the worker's employment is connected as determined by the Act. Section 3

training agreement

An agreement or contract between an employer and a trainee as described in the *Vocational Education and Training Act 1994*. Section 3

Tribunal

The Workers Rehabilitation and Compensation Tribunal. Section 3

unit

The amount represented by the 'basic salary'. During the year beginning 1 January 2008, \$602.35. This is not the same as a 'penalty unit'. Section 65

weekly payment

The weekly payment made to an incapacitated worker. The amount of weekly payment is determined by the Act. To be paid on the same days and at the same intervals as the worker's normal payday. Section 3

worker

Any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing and any person or class of persons taken to be a worker for the purposes of the Act. When used in relation to a person who has been injured and has died as a result of the injury, the term includes the legal personal representatives or dependants of that person, or other person, to whom or for whose benefit compensation is payable. Section 3

workers compensation insurance business

The business of insuring employers against their liability to their workers under the Act. Section 3

working day

In relation to a worker's place of employment, any day on which work is normally carried on at that place. Section 3

WHO'S WHO

The WorkCover Tasmania Board

Composition of the Board

The WorkCover Tasmania Board is established by the *Workers Rehabilitation and Compensation Act 1988*. The Board consists of:

- a Chairperson who is the Secretary of the Department administering the Act, or a person nominated by the Secretary
- two members nominated by the Minister from a list provided by the Tasmanian Chamber of Commerce and Industry Ltd
- two members nominated by the Minister from a list provided by Unions Tasmania
- three members with legal, medical and insurance experience in workers rehabilitation and compensation.

Functions of the Board

The Board is responsible for:

- making recommendations to the Minister on the policy and objectives of legislation relating to workers rehabilitation and compensation and OHS in Tasmania, and the amendment or replacement of that legislation
- monitoring and reporting to the Minister on the operation and effectiveness of that legislation and on the performance of the systems to which the legislation relates
- monitoring and reviewing the Department's exercise of powers and the performance of functions under the *Workers Rehabilitation and Compensation Act 1988* and the *Workplace Health and Safety Act 1995*
- controlling and administering the Workers Rehabilitation and Compensation Fund
- promoting the prevention of injury and disease in the workplace, and promoting the development of healthy and safe workplaces
- promoting and supporting the effective injury management of injured workers
- monitoring and reviewing the performance of licensed insurers and self-insurers and the operation of the Nominal Insurer
- monitoring and reviewing premium rates and, so far as is practicable, ensuring insurance arrangements are efficient and competitive
- collecting and publishing statistics on any matter the Board considers necessary or relevant to the performance of its functions under, or the administration of, the *Workers Rehabilitation and Compensation Act 1988*
- promoting an understanding of the *Workers Rehabilitation and Compensation Act 1988* and the *Workplace Health and Safety Act 1995* through education and any other appropriate means
- advising the Minister on any matter relating to the *Workers Rehabilitation and Compensation Act 1988* that the Minister refers to the Board
- issuing guidelines for the assessment of permanent impairment under this Act.
- any other function as may be prescribed.

The Board is also responsible for various administrative functions connected with the legislation, such as approving the accreditation of medical practitioners, licensing insurers and self insurers; and approving the format of workers compensation forms.

Found in this Section of the Act:

Sections 9-15

Section 10

Nominal Insurer

The Nominal Insurer is a body established under Section 121 of the Act. The Nominal Insurer consists of four members appointed after consultation with insurers and self-insurers; one member nominated by the Treasurer and one member appointed by the Minister responsible for the Act.

Its main purpose is to ensure that injured workers are not disadvantaged in circumstances where:

- the employer is not insured
- the employer has left the State and its whereabouts are unknown
- the employer or licensed insurer has become insolvent
- for any other reason there are reasonable grounds for believing that the employer or licensed insurer is, or is likely to be, unable to discharge in full any liability under the Act.

The Nominal Insurer is involved in managing claims incurred under the *Workers Compensation Act 1927* and the current Act. It is funded by contributions from licensed insurers and self-insurers

Workplace Standards Tasmania

Workplace Standards Tasmania is a division of the Department of Justice. It has a strategic focus on developing and maintaining a regulatory framework for workplace health and safety; workers rehabilitation and compensation; the storage, handling and security of dangerous goods; standards and safety in electrical, gas and building infrastructure; and industrial relations. Workplace Standards administers much of the legislation that regulates business in Tasmania, such as:

- workers compensation
- workplace health and safety
- long service leave
- industrial relations compliance
- shop trading hours
- statutory holidays.

Workplace Standards inspectors and officers:

- inspect, advise and enforce legislative compliance issues
- investigate workplace accidents, incidents and complaints
- register, approve or accredit individuals to do certain work
- issue licences for storing and using dangerous goods, selling fireworks, certain construction work and asbestos removal work
- educate workers and employers about workplace standards by visiting workplaces and supplying publications
- assist the WorkCover Tasmania Board carry out its functions.

The Workers Rehabilitation and Compensation Tribunal

The Workers Rehabilitation and Compensation Tribunal determines all workers compensation disputes.

Sections 16-24

It has the status of a court of law, and its findings can be reviewed only on matters of law by appeal to the Supreme Court of Tasmania.

The Tribunal holds hearings in Hobart, Launceston and the North West Coast as required. Hearings are held in a non-threatening, semi-legal atmosphere.

Licensed insurers

A licensed insurer is an insurer licensed by the WorkCover Tasmania Board to insure employers against their workers compensation liabilities.

What provisions apply to the licensing of insurers?

In considering licence applications from insurers, the WorkCover Tasmania Board is to be satisfied that the insurer:

Sections 98-113

- will provide the necessary insurance service, including the ability to meet time limits imposed by the Act
- will set premiums that reflect:
 - the claims experience of an employer
 - an employer's commitment to workplace health and safety
 - an employer's agreement to provide suitable alternative duties to injured workers
- is financially viable
- will commit an appropriate level of resources in this State to manage claims for compensation in a manner that furthers the objective of rehabilitating injured workers
- will involve an employer in the management of claims for compensation
- will deal directly with an employer in the setting of premiums and the management of claims
- will provide statistical and other information required or likely to be required.

Licences are granted for periods of up to three years and are subject to review when applications for renewal are made.

The WorkCover Tasmania Board may at any time, and subject to a right of appeal to the Supreme Court of Tasmania, revoke or suspend a licence where it is satisfied that certain circumstances exist. These circumstances may include failure to comply with any provision or requirement of the Act or any determination of the Tribunal.

Self-insurers

A self-insurer is an employer who has been granted a permit, by the WorkCover Tasmania Board, to self-insure. This means it will manage and be liable for its workers compensation claims. In all other cases, employers must purchase a policy of insurance from a licensed insurer.

Sections 98-113

An employer who wishes to become a self-insurer must apply to the WorkCover Tasmania Board for a permit. The Board will consider the application, taking into account the employer's:

- financial history
- ability to provide the statistical and other information required (or likely to be required) under the Act
- ability to satisfy prudential standards determined by the Board
- capacity to provide high-quality injury management to injured workers
- commitment to workplace health and safety.

Permits are granted for a period of up to three years and are subject to review when applications for renewal are made.

When the WorkCover Tasmania Board issues a permit to a self-insurer, the permit has a number of conditions attached to it, to which the permit holder is bound. Permit conditions may vary between permit holders depending on the individual circumstances of the permit holder and the requirements the Board sees fit to apply. The Board has the power under the Act to alter, modify or vary any or all of the conditions at any time by notice.

The WorkCover Tasmania Board may at any time revoke or suspend a permit where it is satisfied that certain specified circumstances exist. These circumstances may include failure to comply with any of the legislative provisions.

SAMPLE RETURN-TO-WORK PLAN

The following return-to-work (RTW) plan has been developed for:

1. Surname: Given names:

2. Job title: 3. Supervisor:

4. Work location:

5. Name of rehabilitation coordinator, treating doctor or employee representative:

6. Suitable Alternative Duties: <input type="text"/>	Restrictions (including specific medical): <input type="text"/>
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7. Specific duties to be avoided:

8. Long term goals and/or steps to be taken to facilitate a return to work:

9. Hours/days of work:

10. Wages, award (if applicable):

11. Return date:

12. Length of plan:

13. Review dates:

14. Predicted completion date:

The following parties have agreed to the plan:

<input type="text"/>	Date: <input type="text"/>	Worker
<input type="text"/>	Date: <input type="text"/>	Supervisor/Manager
<input type="text"/>	Date: <input type="text"/>	Treating GP

We have reviewed, understand and agree to the tasks assigned and the above medical restrictions. If any problems occur in completing tasks, they will be immediately communicated to the worker's supervisor/manager.

A return-to-work plan is to be prepared when a worker is incapacitated for more than 14 days. The plan is to be drawn up within five days of the 14-day limit being reached. The legislation provides a penalty for non-compliance. Copies of this document are to be given to the insurer, treating doctor, worker and supervisor/manager.

LICENSED INSURERS

Allianz Australia Insurance Limited

93 Cameron Street
Launceston TAS 7250
PO Box 576
Launceston TAS 7250
Phone: (03) 6332 3113
Fax (03) 6332 3117
AUSDOC DX 70140 Launceston

Catholic Church Insurances Limited

(Specialised Licence)
Level 6, 324 St Kilda Road
Melbourne VIC 3004
PO Box 180B St Kilda Road
Melbourne VIC 3004
Phone: (03) 9934 3000 or
1300 655 001
Fax: (03) 9934 3462
AUSDOC DX 30577 South
Melbourne

GIO General Ltd

111 Macquarie Street
Hobart TAS 7000
GPO Box 1136
Hobart TAS 7001
Phone: 131010
Fax: (03) 6223 8973
AUSDOC DX 189

Guild Insurance Limited

3rd Floor/38 Montpelier Retreat
Battery Point TAS 7004
Phone (03) 6220 2900 or
1800 810 213
Fax: (03) 6220 2999
AUSDOC DX 70808 Salamanca

Insurance Australia Limited trading as: CGU Workers Compensation

Level 5/188 Collins Street
Hobart TAS 7000
GPO Box 9960
Hobart TAS 7001
Phone: (03) 6270 4700
Fax: (03) 6270 4799
DX 173 Hobart

QBE Insurance (Australia) Limited

Level 6/85 Macquarie Street
Hobart TAS 7000
GPO Box 1352N
Hobart TAS 7001
Phone: (03) 6237 3960
Fax: (03) 6237 3955
AUSDOC DX 171 Hobart

Vero Insurance Limited

Level 6/111 Macquarie Street
Hobart TAS 7000
GPO Box 509
Hobart TAS 7001
Phone: (03) 6215 6333
Fax: (03) 6215 6334
AUSDOC DX 102 Hobart

Zurich Australian Insurance Limited

24 Murray Street
Hobart TAS 7000
GPO Box 1104L
Hobart TAS 7001
Phone (03) 6220 6111
Fax: (03) 6223 8017
AUSDOC DX 174 Hobart

WORKERS REHABILITATION AND COMPENSATION TRIBUNAL

Level 4, 169 Liverpool Street
Hobart Tas 7000
Phone: (03) 6233 4697
Fax: (03) 6234 3304
AUSDOC DX 52 Hobart



1300 366 322 www.workcover.tas.gov.au

HOBART 30 Gordons Hill Road, PO Box 56, Rosny Park 7018
LAUNCESTON Henty House, 1 Civic Square, Launceston 7250
BURNIE Reece House, 46 Mount Street, PO Box 287, Burnie 7320

For more information contact
Workplace Standards Tasmania
Phone: 1300 366 322 (within Tasmania)
(03) 6233 7657 (outside Tasmania)
Fax: (03) 6233 8338
Email: wstinfo@justice.tas.gov.au