



## **SECTION 3**

### *Who is a Worker under the Act, what is a Contract of Service, etc*

A worker is a person by whom work is done under a contract of service. The worker can be voluntary, self employed, a former worker or a legal personal representative of a deceased worker. The definition of a worker includes company directors, persons under the age of 21, an apprentice, or a person with a gradually occurring disability.

A contract of service is the employment of one person (the worker) by another (the employer) under contract. This can also include an arrangement for work of a prescribed class, an apprentice, or a worker receiving on the job training with remuneration.

## **SECTION 4**

### *Average weekly earnings and how they are calculated?*

Average weekly earnings (AWE's) are calculated based on the amount of money the worker earned in employment during the 12 months preceding the relevant date (ie: date of injury). AWE includes all earnings from relevant employment, defined as employment with the employer from whose employment the disability arose and if the worker was in the employment of two or more employers, employment with each such employer. The AWE may also include annual, sick or other leave payments, overtime where it is likely to continue in the future, voluntary salary sacrificed superannuation, allowances paid to the worker, non cash benefits normally provided to but not retained by the worker. Note that leave loading is not included in the calculation.

## **SECTION 30**

### *What constitutes a compensable disability?*

A disability is generally compensable if the worker's disability arose out of or in the course of their employment. South Australia has a "no fault" workers compensation scheme. Negligence on the part of the worker or employer that caused or contributed to the disability is not considered. (It is taken into account if a 3<sup>rd</sup> party is involved).

## **SECTION 30(5)**

### *When is a journey accident compensable?*

A journey accident that occurs during the course of the worker undertaking the duties of his/her employment is compensable if there is a real and substantial connection between the accident and the employment. Generally, if the employer has instructed or approved the worker to take the journey then it will fall within the scope of employment.

## **SECTION 30A**

### *When is a psychiatric disability compensable?*

A Psychiatric disability is only compensable if the employment was a substantial cause of the disability and the disability did not arise wholly or predominately from reasonable action taken in a reasonable manner to address issues related to the worker's employment eg discipline, counsel, transfer, demote, retrench, promotion etc.

## **SECTION 32**

### *Medical expenses.*

A worker is entitled to be compensated for any medical expenses reasonably incurred as a result of medical treatment, approved rehabilitation, and travel to and from any place for the purpose of such treatment. Provisions are also made for the costs associated with hospitalisation, nursing care, etc, in specific cases requiring this type of care.

## **SECTION 33**

### *What is the employer's liability in relation to initial transport costs for an injured worker?*

The employer is responsible for the immediate transportation costs in relation to the initial treatment. The amount is prescribed by regulation and will be indexed annually according to changes in the CPI.

## **SECTION 35**

### *Weekly compensation payments*

#### *New claims with a date injury on or after 1/7/2008*

During the first entitlement period a worker is entitled to weekly compensation which, where they are either totally or partially incapacitated for work, is equal to their NEW.

During the second entitlement period the worker is entitled, for any period of total incapacity, to weekly payments equal to 90% of their NEW. For periods of partial incapacity the worker is entitled to weekly payments equal to 90% of the difference between their NWE and their designated weekly earnings.

During the third entitlement period the worker is entitled, for any period of total incapacity, to weekly payments equal to 80% of their NEW. For periods or partial incapacity the worker is entitled to weekly payments equal to 80% of the difference between their NWE and their designated weekly earnings.

#### *For existing claims with a date of injury prior to 1 July 2008*

The old Act applies being 80% at 52 weeks.

Note the definition of a week is Sunday to Sunday.

## **SECTION 36**

### *Discontinuance of weekly payments.*

The discontinuance of weekly payments may occur for a variety of reasons. These include, but are not limited to, the worker has returned to work, the worker ceases to be incapacitated for work; the worker has obtained work as an employee or self-employed contractor that is providing remuneration equal to or above his/her national weekly earnings; the worker consents to a discontinuance; the worker breaches the obligation of mutuality (eg by not participating in or frustrating a rehabilitation plan or programme); the worker's entitlement to weekly payments cease because of the passage of time; the worker's entitlement to weekly payments ceases because of the occurrence of some other event or the making of some other decision or determination that, under another provision of this Act, brings the entitlement to weekly payments to an end or the discontinuance of weekly payments is authorized or required by some other provision of the Act.

### **Notice Periods**

In most circumstances a worker must be given the prescribed number of days notice before weekly payments cease. The prescribed number of days is as follows: for claims where the worker has been receiving weekly payments for a period that is less than 52 weeks or for 2 or more periods that aggregate less than 52 weeks 14 days, in any other cases 28 days.



## **Ombudsman**

If a determination is disputed by the worker or their representative, weekly payments will not be re-instated unless the worker applies to the Ombudsman for a review of the decision. The Ombudsman may suspend the operation to discontinue weekly payments as a result payments will be e-instated until either, the notice of dispute is withdrawn; the matter is resolved or a determination is made by the Tribunal.

## **SECTION 37**

### *Adjustments to weekly payments*

A review of the calculation of average weekly earnings can occur by the claims agent on their own initiative or if the worker requests it by way of a designated form. A review can be undertaken because of a change in a component of the workers remuneration or a change in the equipment or facilities provided to them if relevant to average weekly earnings. A reduction of the weekly payments under this section cannot disadvantage the worker on claims with a date injury on or prior to 1 July 2008.

## **SECTION 38**

### *Weekly payments for second and subsequent years of incapacity.*

When a worker is incapacitated for work in excess of two years a review of weekly payments must be completed. This review is completed in conjunction with Section 35 of the Act. An initial letter is sent to the worker outlining the proposed review. This is sent to the worker at least one month before the actual determination is to be issued. At the second and subsequent years of review a worker can be job matched to suitable hypothetical employment which may result in weekly payments being reduced or discontinued. As with any reduction of weekly payments, 21 days notice must be given to the worker before this takes effect. If the decision is disputed within 28 days of the notice being received by the worker, weekly payments must continue until the matter is resolved at the Workers Compensation Tribunal.

## **SECTION 39**

### *Economic adjustments to weekly payments.*

On the anniversary date of incapacity the worker's AWE's are adjusted to take into account either the current Labour Price Index (formerly known as Consumer Price Index) or any increase under the applicable Award or Enterprise Bargaining Agreement. It is the worker's choice as to which one of these is applied.

## **SECTION 40**

### *Weekly payments and leave entitlements.*

When a worker has been in receipt of weekly payments in respect of total incapacity for a period of 52 weeks, the liability of the employer to grant annual leave to the worker is deemed to have been satisfied.

## **SECTION 42**

### *Redemption of weekly payments and medical expenses.*

A redemption payment is a lump sum amount offered to the worker in order to finalise their claim. The actual amount offered varies depending upon the specifics of each case. Employers Mutual must authorize the amount offered and the worker is under no obligation to accept the offer. A worker is required to obtain both legal and financial advice, the costs of which are borne by the claim.

## **SECTION 43**

### *Lump sum payments.*

A non-economic lump sum payment is paid to a worker who has suffered a permanent loss of function as a result of their compensable disability. It is based on medical evidence and is only payable once the worker's disability is considered to be permanent and stable. This payment in no way finalises a claim and is paid on top of all other entitlements.

## **SECTION 46**

### *Employer's liability*

In any calendar year, an employer is liable to pay weekly compensation to a worker on an accepted claim equal to the amount of two weeks of his/her notional weekly earnings. This amount may be made up of separate periods of incapacity throughout the year but will not exceed two weeks of wages in any calendar year. Any further periods of incapacity, in excess of the first two weeks of wages, will be reimbursed by Employers Mutual.

## **SECTION 52**

### *Claim for compensation.*

When an employer receives a Compensation Claim Form from a worker, the employer has an obligation to submit the claim within 5 business days to Employers Mutual. There is a \$1,000 fine for employers who do not lodge claims within the designated 5 business days.

## **SECTION 53**

### *Determination of a claim.*

Section 53 provides for relevant investigations to be undertaken prior to the determination of a claim being made. If a worker fails or refuses to provide information that is reasonably required to determine their claim, then the claim can be rejected. Claims must be determined within 10 business days of receipt by Employers Mutual where it is reasonably practicable to do so. If a determination cannot be made both the worker and employer are informed that further time is required.

## **SECTION 58B**

### *Employer's obligation to provide suitable duties*

Where an injured worker has the ability to return to work, either full or part time, the employer has an obligation to provide suitable duties to them within their medical constraints. The employer must pay an appropriate wage or salary in respect of those duties. Exceptions to this rule are few and a decision regarding the pre-injury employer's obligations can only be made by the NET panel. If an employer refuses to provide suitable duties to an injured worker penalty up to \$25,000 may be imposed by WorkCover.

## **SECTION 58C**

### *Termination of employment.*

If the employer of an injured worker intends to terminate the employment relationship they must provide both Employers Mutual and the worker with 28 days notice, in writing, of their intention. An investigation would then take place by a Section 58 Officer and a decision made as to whether or not the termination could proceed without a levy imposition. An employer who terminates a worker without providing the appropriate notice may be subject to a fine of up to \$15,000 and/or a supplementary levy may be applied to the employer's WorkCover levy.