



WORKCOVER CORPORATION ACT 1994

No. 51 of 1994

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 THE WORKCOVER CORPORATION OF SOUTH AUSTRALIA

DIVISION 1—THE CORPORATION

4. Continuation of Corporation

DIVISION 2—THE BOARD OF MANAGEMENT

5. Constitution of board of management
6. Conditions of membership
7. Allowances and expenses
8. Disclosure of interest
9. Members' duties of honesty, care and diligence
10. Validity of acts and immunity of members
11. Proceedings
12. Primary objects

PART 3 FUNCTIONS AND POWERS

13. Functions
14. Powers
15. Corporation to have regard to various differences in the workforce
16. Committees
17. Delegations

PART 4 ACCOUNTS, AUDIT AND REPORTS

18. Accounts
19. Audit
20. Annual reports

**PART 5
STAFF**

- 21. Chief Executive Officer
- 22. Other staff of the Corporation
- 23. Superannuation
- 24. Use of facilities

**PART 6
MISCELLANEOUS**

- 25. Government Finance Authority Act not to apply to Corporation
- 26. Protection of special name
- 27. Exemption from stamp duty
- 28. Regulations

SCHEDULE
Transitional Provisions



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ELIZABETHAE II REGINAE

A.D. 1994

No. 51 of 1994

An Act to provide for the reconstitution of the Workers Rehabilitation and Compensation Corporation and its continuation under the name "WorkCover Corporation of South Australia"; to provide for its functions and powers; and for other purposes.

[Assented to 16 June 1994]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *WorkCover Corporation Act 1994*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) However—

(a) the day fixed for the commencement of this Act must be the same as the day fixed for the commencement of the *Workers Rehabilitation and Compensation (Administration) Amendment Act 1994* and the *Occupational Health, Safety and Welfare (Administration) Amendment Act 1994*; and

(b) all provisions of this Act must be brought into operation simultaneously.

Interpretation

3. In this Act—

“board” means the Corporation’s board of management;

“CEO” means the Corporation’s Chief Executive Officer;

“Corporation” means the *WorkCover Corporation of South Australia*.

PART 2
THE WORKCOVER CORPORATION OF SOUTH AUSTRALIA

DIVISION 1—THE CORPORATION

Continuation of Corporation

4. (1) The *Workers Rehabilitation and Compensation Corporation* continues as the *WorkCover Corporation of South Australia*.

(2) The Corporation continues as a body corporate.

(3) The Corporation holds its property on behalf of the Crown.

(4) The Corporation is subject to the general control and direction of the Minister.

(5) If a document appears to bear the common seal of the Corporation and to be signed by two members of the board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Corporation was duly affixed to the document.

DIVISION 2—THE BOARD OF MANAGEMENT

Constitution of board of management

5. (1) The Corporation is managed by a board of management.

(2) The board consists of nine members appointed by the Governor of whom—

(a) at least two must be nominated by the Minister after consulting with associations representing the interests of employers (including employers involved in small business and farming); and

(b) at least two must be nominated by the Minister after consulting with associations representing the interests of employees (including the UTLC); and

(c) at least one must be a person experienced in occupational health and safety; and

(d) at least one must be a person experienced in rehabilitation.

(3) At least three members of the Board must be women and at least three members must be men.

(4) The Governor will appoint one member of the board to chair its meetings.

(5) The Minister may grant a member of the board leave of absence from the board and appoint a suitable person to act as a member of the board during that period of absence.

Conditions of membership

6. (1) A member of the board is appointed on conditions determined by the Governor and for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Governor may remove a member of the board from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(3) The office of a member of the board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is convicted of an indictable offence; or
- (e) is found guilty of an offence against section 8 (Disclosure of interest); or
- (f) is removed from office under subsection (2).

(4) On the office of a member of the Board becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

Allowances and expenses

7. (1) A member of the board is entitled to fees, allowances and expenses approved by the Governor.

(2) The fees, allowances and expenses are payable out of the Compensation Fund under the *Workers Rehabilitation and Compensation Act 1986*.

Disclosure of interest

8. (1) A member who has a direct or indirect personal or pecuniary interest in a matter under consideration by the board—

- (a) must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the board; and
- (b) must not take part in any deliberations or decision of the board on the matter and must be absent from the room when any such deliberations are taking place or decision is being made.

Penalty: Division 5 fine or division 5 imprisonment.

(2) If a member discloses an interest in a contract or proposed contract and complies with the other requirements of this section—

- (a) the contract is not liable to be avoided by the Corporation; and
- (b) the member is not liable to account for profits derived from the contract.

(3) If a member fails to make a disclosure of interest or fails to comply with the other requirements of this section in respect of a proposed contract, the contract is liable to be avoided by the Corporation.

(4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

(5) If, in the Minister's opinion, the holding of a particular interest is not consistent with the proper discharge of the duties of a member of the board, the Minister may direct the member either to divest himself or herself of the interest or to resign from the board (and non-compliance with the direction constitutes misconduct and hence a ground for removal of the member from the board).

(6) A disclosure under this section must be recorded in the minutes of the board and reported to the Minister.

Members' duties of honesty, care and diligence

9. (1) A member of the board must at all times act honestly in the performance of official functions.

Penalty: Division 4 fine or division 4 imprisonment or both.

(2) A member of the board must at all times act with reasonable care and diligence in the performance of official functions.

Penalty: Division 4 fine.

(3) A member or former member of the board must not make improper use of information acquired because of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the Corporation.

Penalty: Division 4 fine or division 4 imprisonment or both.

(4) A member of the board must not make improper use of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the Corporation.

Penalty: Division 4 fine or division 4 imprisonment or both.

(5) This section—

- (a) operates both inside and outside the State; and
- (b) is in addition to, and does not derogate from, other laws.

Validity of acts and immunity of members

10. (1) An act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) A member of the board incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of the member's or the board's functions, duties or powers under this or any other Act.

(3) The immunity conferred by subsection (2) does not extend to culpable negligence.

(4) A civil liability that would, but for this section, attach to a member attaches instead to the Crown.

Proceedings

11. (1) A quorum of the board consists of six members.

(2) The member appointed to chair meetings of the board will preside at meetings of the board or, in the absence of that member, a member chosen to preside by those present.

(3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the board.

(4) Each member present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A telephone or video conference between members of the board constituted in accordance with procedures determined by the board will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present.

(6) A resolution of the board—

- (a) of which prior notice was given to all members of the board in accordance with procedures determined by the board; and
- (b) in which a majority of the members of the board expressed their concurrence in writing,

will be taken to be a decision of the board made at a meeting of the board.

(7) The board must have accurate minutes kept of its proceedings.

(8) Subject to this Act, the board may determine its own procedures.

**PART 3
FUNCTIONS AND POWERS**

Primary objects

12. The Corporation's primary objects are—

- (a) to reduce, as far as practicable, the incidence and the severity of work-related injuries; and
- (b) to ensure, as far as practicable, the prompt and effective rehabilitation of workers who suffer work-related injuries; and
- (c) to provide fair compensation for work-related injuries; and
- (d) to keep employers' costs to the minimum that is consistent with the attainment of the objects mentioned above.

Functions

13. (1) The functions of the Corporation are—

- (a) to administer—
 - (i) the *Occupational Health, Safety and Welfare Act 1986*; and
 - (ii) the *Workers Rehabilitation and Compensation Act 1986*; and
 - (iii) other legislation prescribed by regulation; and
- (b) to provide resources to support or facilitate the formulation of standards, policies and strategies that promote occupational health, safety or welfare; and
- (c) to promote the rehabilitation of persons who suffer disabilities arising from employment; and
- (d) to manage, and ensure the financial viability of, funds that come under its control; and
- (e) to ensure the efficient and economic operation of the workers rehabilitation and compensation scheme under the *Workers Rehabilitation and Compensation Act 1986*, to keep all aspects of that scheme under review, and, if appropriate, to make recommendations for change; and
- (f) to encourage consultation with employers, employees and associations representing the interests of employers or employees in relation to injury prevention, rehabilitation and workers compensation arrangements; and
- (g) to encourage associations representing the interests of employers or employees to take a constructive role in promoting injury prevention, rehabilitation, and appropriate compensation for persons who suffer disabilities arising from employment; and

- (h) to promote awareness of the value of effective occupational health, safety and welfare strategies and programs, to foster a consultative and co-operative relationship between management and labour in occupational health, safety and welfare, and to promote the adoption of policies, practices, procedures and arrangements in the workplace that enhance occupational health, safety and welfare; and
- (i) to prepare, promote or endorse guidelines to assist people who are subject to the operation of an Act administered by the Corporation; and
- (j) to devise, promote or approve courses of training in occupational health, safety or welfare or workers rehabilitation, and, with the approval of the Minister, to accredit service providers in the fields of occupational health, safety and welfare or workers rehabilitation and compensation; and
- (k) to initiate, carry out, support or promote research, projects, courses, programs, activities or other initiatives relating to—

 - (i) occupational health, safety or welfare; or
 - (ii) work-related disabilities; or
 - (iii) workers rehabilitation; or
 - (iv) workers compensation; and
- (l) to collect, analyse and publish information and statistics relating to—

 - (i) occupational health, safety or welfare; and
 - (ii) workers rehabilitation; and
 - (iii) workers compensation; and
- (m) to monitor the enforcement of codes of practice and standards of occupational health, safety and welfare; and
- (n) to conduct public inquiries in relation to matters that arise under an Act administered by the Corporation; and
- (o) to report to the Minister (on its own initiative or at the request of the Minister)—

 - (i) on the adequacy, operation, administration or enforcement of legislation for which the Corporation is responsible; or
 - (ii) on any matter relevant to the performance of its functions or any Act administered by the Corporation; and
- (p) to report to the Minister on any matter referred to the Corporation by the Minister; and

- (q) to carry out other functions assigned to the Corporation by or under an Act, or by the Minister.
- (2) The Corporation may, with the approval of the Minister—
- (a) perform functions conferred on the Corporation by or under a law of the Commonwealth, another State or a Territory;
- (b) confer (subject to conditions or limitations (if any) specified by the Minister) functions of the Corporation on an authority established by or under a law of the Commonwealth, another State or a Territory.

Powers

14. (1) The Corporation has the powers necessary for, or incidental to, the performance of its functions.

- (2) The Corporation may, for example—
- (a) enter into any form of contract or arrangement;
- (b) engage experts or consultants to assist the Corporation in the performance of its functions or to advise it in relation to technical matters;
- (c) acquire, hold, deal with or dispose of real and personal property;
- (d) establish and operate bank accounts and invest money;
- (e) with the consent of the Minister and the Treasurer, borrow money and give security for the repayment of loans;
- (f) establish and maintain a central office and regional offices;
- (g) collaborate or consult with other bodies in relation to the performance of its functions.

(3) The Corporation may only enter into a contract or arrangement with a private sector body involving—

- (a) the conferral of power on the body to manage claims (including to provide rehabilitation services and to manage or implement other programmes designed to assist or encourage workers who have suffered compensable disabilities to return to work), or to collect levies; or
- (b) the conferral of other substantial powers on, or the transfer of substantial responsibilities to, the body,

to the extent that the contract or arrangement is authorised by regulation.

(4) However—

(a) subsection (3) does not apply—

- (i) if the contract or arrangement is with an exempt employer under the *Workers Rehabilitation and Compensation Act 1986*, or with a person who has been appointed as a rehabilitation provider or rehabilitation adviser under that Act; or
- (ii) if the contract or arrangement is with a registered employer under the *Workers Rehabilitation and Compensation Act 1986* and entered into as part of a pilot scheme (involving a representative sample of not more than 20 registered employers) relating to a proposal to allow employers to manage claims brought by their own workers under that Act; and

(b) a regulation made for the purposes of subsection (3) cannot come into operation until the time for disallowance has passed.

(5) For the purpose of ascertaining the extent of prospective liabilities, or other matters relevant to its functions, the Corporation may carry out investigations and inquiries it thinks appropriate.

Corporation to have regard to various differences in the workforce

15. (1) The Corporation must, in carrying out its functions, take into account racial, ethnic and linguistic diversity in the population of the State, the interests of both sexes, and the interests of those who may be physically, mentally or intellectually impaired, and seek to ensure that people who are entitled to benefits under Acts administered by the Corporation are not disadvantaged because of their origins or background, their sex, or some physical, mental or intellectual impairment.

(2) The Corporation should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.

Committees

16. (1) The Corporation—

- (a) must establish the committees the Minister may require; and
- (b) may establish other committees the Corporation considers appropriate,

to advise the Corporation on any aspect of its functions, or to assist the Corporation in the performance of its functions or in the exercise of its powers.

(2) A committee may, but need not, consist of, or include, members of the board.

(3) The Corporation must allocate sufficient resources to ensure that the committees established under this Act, the *Workers Rehabilitation and Compensation Act 1986* and the *Occupational Health Safety and Welfare Act 1986* can operate effectively.

Delegations

17. (1) The Corporation may, by instrument in writing, delegate a function or power conferred on or vested in the Corporation.

(2) A delegation—

(a) may be made—

(i) to a member of the board; or

(ii) to a committee established by the Corporation or by or under an Act; or

(iii) to a particular officer of the Corporation, or to any officer of the Corporation occupying (or acting in) a particular office or position; or

(iv) to a public authority or public instrumentality; or

(v) to a private sector body in connection with a contract or arrangement authorised under section 14(3); and

(b) may be made subject to conditions and limitations specified in the instrument of delegation; and

(c) is revocable at will and does not derogate from the Corporation's power.

(3) In legal proceedings an apparently genuine certificate, purporting to be signed by an officer of the Corporation, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of the particulars.

PART 4
ACCOUNTS, AUDIT AND REPORTS

Accounts

18. (1) The Corporation must cause proper accounts to be kept of its financial affairs.

(2) The Corporation must—

- (a) ensure that all money payable to the Corporation is properly collected; and
- (b) ensure that all liabilities and expenditures of the Corporation are properly authorised; and
- (c) ensure that adequate control is maintained over its assets; and
- (d) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
- (e) develop and maintain an adequate budgeting and accounting system; and
- (f) develop and maintain an adequate internal audit system.

(3) The Corporation must, in complying with subsection (2), take into account any relevant recommendation made by an auditor in reporting on the accounts of the Corporation.

Audit

19. (1) The accounts of the Corporation must be audited at least once in each year.

(2) For the purposes of audit, the Corporation must, within the first three months of each financial year, appoint two or more auditors of the Corporation for the financial year.

(3) An auditor appointed under subsection (2) must be a registered company auditor or a firm of registered company auditors.

(4) It is the duty of the auditors to report on the Corporation's accounting records and on the accounts to be laid before Parliament for the financial year for which they are appointed auditors of the Corporation.

(5) The auditors have a right of access at all reasonable times to the accounting and other records of the Corporation and are entitled to require from any officer of the Corporation such information and explanations they think necessary for the purposes of the audit.

(6) An auditor's statement made in the course of carrying out duties involved in, or related to, the audit of the Corporation's accounts is protected by qualified privilege.

Annual reports

20. (1) The Corporation must, on or before 31 December in every year, forward to the Minister a report on the work and operations of the Corporation for the financial year ending on the preceding 30 June.

(2) The report must include—

- (a) the audited accounts of the Corporation for the relevant financial year; and
- (b) information required under the *Workers Rehabilitation and Compensation Act 1986* and the *Occupational Health, Safety and Welfare Act 1986*; and
- (c) other information required by regulation.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

**PART 5
STAFF**

Chief Executive Officer

21. (1) The Corporation has a Chief Executive Officer.

(2) The CEO is responsible to the board for—

- (a) implementing its policies and decisions; and
- (b) managing the Corporation's business efficiently and effectively; and
- (c) supervising the Corporation's staff.

(3) The CEO will be appointed by the board on terms and conditions determined by the board.

(4) A person must not be appointed as CEO unless the board has first consulted with the Minister about the proposed appointment and the proposed terms and conditions of appointment.

(5) The CEO may, by instrument in writing, delegate the CEO's functions or powers under an Act.

(6) A delegation—

- (a) may be made subject to conditions and limitations as the CEO thinks fit; and
- (b) is revocable at will and does not derogate from the CEO's power.

Other staff of the Corporation

22. (1) The Corporation may appoint, on terms and conditions fixed by the Corporation, such employees of the Corporation as it thinks necessary or desirable.

(2) The employees of the Corporation are not members of the Public Service.

(3) The Corporation may, with the approval of the responsible Minister, on terms and conditions mutually arranged, make use of the services of DIA employees or other Crown employees.

(4) The Minister may, after consultation with the Corporation and any relevant industrial organisation, transfer specified DIA employees or DIA employees of a specified class to the employment of the Corporation on terms and conditions approved by the Minister.

(5) A transfer under subsection (4) will occur without reduction in remuneration and without prejudice to accrued or accruing rights in respect of employment.

(6) In this section—

“DIA employee” means a person employed in the Public Service in the Department for Industrial Affairs;

“relevant industrial organisation”, in relation to a DIA employee, means an association registered under the *Industrial Relations Act (SA) 1972* or the *Industrial Relations Act 1988* of the Commonwealth that represents the interests of DIA employees of a class to which that employee belongs.

Superannuation

23. The Corporation is a public authority for the purposes of the *Superannuation Act 1974*, and may enter into arrangements with the South Australian Superannuation Board about superannuation of its staff.

Use of facilities

24. (1) The Corporation may, by arrangement with an administrative unit of the Public Service of the State, a public authority or a public instrumentality, on terms and conditions mutually arranged, make use of the services or facilities of the administrative unit, authority or instrumentality.

(2) The Corporation may, as it thinks fit (and subject to any conditions or limitations determined by the Minister), make use of services, facilities or personnel provided by the private sector.

**PART 6
MISCELLANEOUS**

Government Finance Authority Act not to apply to Corporation

25. The Corporation is not a semi-government authority under the *Government Financing Authority Act 1982*.

Protection of special name

26. (1) In this section—

“the prescribed name” means the name “WorkCover”.

(2) The Corporation has a proprietary interest in the prescribed name.

(3) A person who, without the consent of the Corporation, in the course of a trade or business, uses the prescribed name for the purpose of promoting the sale of goods or services is guilty of an offence.

Penalty: Division 5 fine.

(4) A consent under subsection (3) may be given with or without conditions.

(5) The Supreme Court may, on the application of the Corporation, grant an injunction to restrain a breach of this section.

(6) Subsection (5) does not derogate from any civil remedy that may be available to the Corporation apart from those subsections.

Exemption from stamp duty

27. The Corporation is exempt from stamp duty in respect of insurance business carried on by the Corporation and is not required to take out an annual licence under the *Stamp Duties Act 1923* in respect of such business.

Regulations

28. (1) The Governor may make regulations as contemplated by this Act, or as necessary or expedient for the purposes of this Act.

(2) The regulations—

(a) may be of general or limited application;

(b) may allow for matters to be determined at the discretion of the Corporation (or a delegate of the Corporation) or confer other forms of discretionary power on the Corporation (or a delegate of the Corporation);

(c) may create summary offences, punishable by a fine not exceeding a division 7 fine, for non-compliance with a regulation.

SCHEDULE
Transitional Provisions

The board

1. The members of the board of the Workers Rehabilitation and Compensation Corporation cease to hold office on the commencement of this clause.

Staff of SAOHSC

2. (1) The Governor may, by proclamation, transfer a person who was a member of the staff of the South Australian Occupational Health and Safety Commission immediately before the commencement of this clause to—

- (a) the Department for Industrial Affairs; or
- (b) another administrative unit in the Public Service of the State; or
- (c) the Corporation.

(2) A transfer under subclause (1) will occur without reduction in remuneration and without prejudice to accrued or accruing rights in respect of employment.

(3) A person who is transferred to the Corporation under subclause (1)(c) becomes an employee of the Corporation.

(4) A person who is transferred to the employment of the Corporation under subclause (1)(c)—

- (a) continues, while he or she remains an employee of the Corporation, to be entitled to receive notice of vacant positions in the Public Service and to be appointed or transferred to such positions as if he or she were still a member of the Public Service; and
- (b) retains accrued and accruing rights in respect of employment (including the right to the accrual of long service leave) on the same basis as applies to persons employed in the Public Service.

Property, etc.

3. (1) The real and personal property, and rights and liabilities (vested or contingent), of the South Australian Occupational Health and Safety Commission become, on the commencement of this clause, property, rights and liabilities of the Corporation.

(2) No fees or stamp duty are payable in respect of the vesting of property under this clause, or in respect of any instrument evidencing or giving effect to such vesting.

References

4. A reference in another Act or in any instrument to—

- (a) the Workers Rehabilitation and Compensation Corporation; or
- (b) the South Australian Occupational Health and Safety Commission,

will be construed as a reference to the Corporation.

Regulations

5. The regulations may contain other provisions of a saving or transitional nature consequent on the enactment of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor