



New South Wales

# Workplace Injury Management and Workers Compensation Act 1998 No 86

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New South Wales

# **Workplace Injury Management and Workers Compensation Act 1998 No 86**

Act No 86, 1998

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An Act to provide for the effective management of work-related injuries and injury compensation for workers in respect of such injuries; and for other purposes. [Assented to 14 July 1998]

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See also *Workers Compensation Legislation Amendment Act 1998*.

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**The Legislature of New South Wales enacts:**

## **Chapter 1 Preliminary**

### **1 Name of Act**

This Act is the *Workplace Injury Management and Workers Compensation Act 1998*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 System objectives**

The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives:

- (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
- (b) to provide:
  - prompt treatment of injuries, and
  - effective and proactive management of injuries, and
  - necessary medical and vocational rehabilitation following injuries,in order to assist injured workers and to promote their return to work as soon as possible,
- (c) to provide injured workers and their dependants with income support during incapacity. payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
- (d) to be fair, affordable, and financially viable,

- 
- (e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
  - (f) to deliver the above objectives efficiently and effectively.

#### 4 Definitions (cf 1987 s 3; 1989 s 3)

- (1) In this Act:

*Advisory Council* means the Workers Compensation Advisory Council of New South Wales constituted under this Act.

*Authority* means the WorkCover Authority of New South Wales constituted under this Act.

*Board of Directors* means the Board of Directors of the Authority.

*compensation* includes any monetary benefit under this Act.

*Compensation Court* means the Compensation Court of New South Wales constituted under the *Compensation Court Act 1984*.

*conciliator* means conciliator as referred to in section 77. and includes the Principal Conciliator.

*dependants* of a worker means such of the members of the worker's family as were wholly or in part dependent for support on the worker at the time of the worker's death, or would but for the incapacity due to the injury have been so dependent, and includes:

- (a) a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker, and
- (b) a divorced spouse of the worker so dependent. and
- (c) a person so dependent who, although not legally married to the worker. lived with the worker as the worker's husband or wife on a permanent and genuine domestic basis.

**dust disease** has the same meaning as it has in the *Workers' Compensation (Dust Diseases) Act 1942*.

**employer** includes:

- (a) the legal personal representative of a deceased employer, or
- (b) a government employer, or
- (c) a former employer.

Without limiting the meaning of the expression, an employer can be an individual, a corporation, a firm, an unincorporated body of persons, a government agency or the Crown.

**exercise** a function includes perform a duty.

**financial year** means a year commencing 1 July.

**former 1926 Act** means the *Workers' Compensation Act 1926*.

**former licensed insurer** means a person (not being a licensed insurer) who:

- (a) was previously a licensed insurer under this Act, the 1987 Act or section 27 of the former 1926 Act, and
- (b) continues to have liabilities under policies of insurance previously issued or renewed by the person.

**function** includes a power, authority or duty.

**General Manager** means the General Manager of the Authority.

**government agency** means any department, person or body exercising executive or administrative functions on behalf of the Government.

**government employer** means the Crown or any government agency, and includes:

- (a) a public health organisation within the meaning of the *Health Services Act 1997*, and
- (b) an employer prescribed by the regulations.

**government worker** means a worker whose employer is a government employer.

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***Guarantee Fund*** means the Insurers' Guarantee Fund established under section 205.

***incapacity*** includes a disfigurement that is sufficient to affect the earning capacity of a worker or a worker's opportunities for employment.

***injury:***

- (a) means a personal injury arising out of or in the course of employment, and
- (b) includes:
  - (i) a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease, or
  - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration, but
- (c) does not include (except in the case of a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies):
  - (i) a dust disease, or
  - (ii) the aggravation, acceleration, exacerbation or deterioration of a dust disease.

***insurance*** includes indemnity.

***Insurance Ministerial Corporation*** means the NSW Insurance Ministerial Corporation constituted under the *Government Insurance Office (Privatisation) Act 1991*.

***licensed insurer*** means an insurer who is the holder of a licence granted under Part 5 of Chapter 5 and in force.

***medical panel*** means a medical panel constituted under section 14B of the *Compensation Court Act 1984*.

***medical referee*** means a medical referee appointed under section 14A of the *Compensation Court Act 1984*. and includes the chief medical officer appointed under that Act.

***member of a family*** means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.

***occupational health and safety legislation*** means:

- (a) the *Occupational Health and Safety Act 1983* and the instruments under that Act, or
- (b) the associated occupational health and safety legislation within the meaning of that Act, or
- (c) any other Act or instrument (or part) prescribed by the regulations.

***OHS Council*** means the Occupational Health and Safety Council of New South Wales constituted under this Act.

***policy of insurance*** means a policy of insurance that an employer obtains under this Act, the 1987 Act or the former 1926 Act.

***premium income:***

- (a) in relation to contributions payable under this Act by an insurer (other than a specialised insurer) in respect of a financial year—means the amount the insurer receives during that financial year as premiums in respect of policies of insurance issued or renewed by the insurer (whether the policies are issued or renewed during that financial year or during a previous financial year), or
- (b) in relation to contributions payable under this Act by a specialised insurer in respect of a financial year—means the amount the insurer receives, whether during or after that financial year, as premiums in respect of policies of insurance issued or renewed by the insurer during that financial year,

and, in relation to contributions payable by any insurer, includes any amount prescribed by the regulations as included for the purposes of this definition in relation to that financial year. but does not include any amount prescribed by the regulations as excluded for the purposes of this definition in relation to that financial year.

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**Principal Conciliator** means the Principal Conciliator as referred to in section 77.

**Rating Bureau** means the Workers Compensation Premiums Rating Bureau of New South Wales constituted under this Act.

**records** includes books, accounts, minutes, registers, deeds, documents and any other sources of information compiled, recorded or stored in written form, on microfilm, by electronic process or in any other manner.

**related body corporate** has the same meaning as it has in the *Corporations Law*.

**self-insurer** means:

- (a) the holder of a licence in force under Part 6 of Chapter 5, and
- (b) a subsidiary of the licence holder covered for the time being by the licence (as provided by section 192), and
- (c) any Government employer covered for the time being by the Government's managed fund scheme (as provided by section 193).

**specialised insurer** means:

- (a) any of the following corporations:
  - Catholic Church Insurances Ltd
  - The Guild Insurance Co. Ltd
  - Joint Coal Board
  - North Insurances Pty Ltd
  - NSW Thoroughbred Racing Board
- (b) any other corporation declared by order of the Authority to be a specialised insurer, being a corporation that the Authority is satisfied has acquired the business undertaking of a corporation mentioned in paragraph (a) or a corporation which issues policies only in respect of domestic or similar workers.

**the 1987 Act** means the *Workers Compensation Act 1987*.

***Uninsured Liability and Indemnity Scheme*** means the scheme established under Part 9 of Chapter 5.

***weekly payment***, in relation to compensation, means a weekly payment of compensation under Division 2 of Part 3 of the 1987 Act in respect of a period of total or partial incapacity for work.

***WorkCover Authority Fund*** means the WorkCover Authority Fund established under this Act.

***worker*** means a person who has entered into or works under a contract of service or apprenticeship with an employer. (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:

- (a) a member of the Police Service who is a contributor to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906*, or
- (b) a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer's trade or business, or
- (c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year, or
- (d) except as provided by Schedule 1, a registered player of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*) while:
  - (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or
  - (ii) engaged in training or preparing himself or herself with a view to so participating, or
  - (iii) engaged on any daily or periodic journey or other journey in connection with the registered player so participating or the registered player being so engaged,

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if, under the contract pursuant to which the registered player does any of the things referred to above in this paragraph, the registered player is not entitled to remuneration other than for the doing of those things.

*workers compensation legislation* means:

- (a) this Act and the instruments under this Act, or
- (b) the 1987 Act and the instruments under that Act, or
- (c) the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* and the instruments under that Act, or
- (d) the *Workers' Compensation (Dust Diseases) Act 1942* and the instruments under that Act, or
- (e) any other Act or instrument (or part) prescribed by the regulations.

(2) **Extended meaning of injured worker**

A reference in this Act to a worker who has been injured includes, if the worker is dead, a reference to the worker's legal personal representative, or the worker's dependants, or any other person to whom or for whose benefit compensation is payable.

(3) **Notes**

Notes in the text of this Act do not form part of this Act.

**Note.** Section 2A of the 1987 Act provides that the 1987 Act is to be construed with, and as if it formed part of, this Act. Accordingly, a reference in this Act to this Act generally includes a reference to the 1987 Act.

**5 Deemed employment of workers** (cf 1987 s 5)

Schedule 1 has effect.

**6 Application of Act in certain respects** (cf 1987 s 3 (3), (4), (5))

(1) **Public or local authority**

For the purposes of this Act, the exercise of the functions of a public or local authority is taken to be its trade or business.

(2) **Racing or recreation club**

For the purposes of this Act, the operations of a racing or recreation club are taken to be its trade or business.

(3) **Police Service**

For the purposes of this Act, the Crown is taken to be the employer of members of the Police Service.

**Note.** Members of the Police Service who are contributors to the Police Superannuation Fund under the Police Regulation (Superannuation) Act 1906 are not workers within the meaning of this Act. That fund was closed to new members on and from 1 April 1988. Accordingly members of the Police Service who are not contributors to that fund are workers within the meaning of this Act. Attention is also drawn to section 216 of the Police Service Act 1990, which makes further provision for payment of compensation for those members if they are hurt on duty.

**7 Act binds Crown** (cf 1987 s 6)

- (1) This Act binds the Crown in right of New South Wales and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

**8 Certain in Acts not affected** (cf 1987 s 7)

Nothing in this Act affects the operation of the following Acts:

*Workers' Compensation (Dust Diseases) Act 1942,*

*Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987.*

**9 Agreements with the insurance industry**

- (1) In this section *insurer* means a licensed insurer, a specialised insurer or a self-insurer.

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- (2) The Minister (for and on behalf of the State of New South Wales) and the Authority may enter into an agreement (*an insurer agreement*) with any insurer or insurers for the purpose of facilitating the proper and efficient implementation, operation and administration of this Act.
- (3) Without limiting subsection (2), an insurer agreement can provide for any of the following:
- (a) the conferral of functions on the Minister or the Authority with respect to any of the matters for which this Act and the 1987 Act provide (being functions that are not inconsistent with this Act or the 1987 Act),
  - (b) the way in which the Minister or the Authority are to exercise their functions under this Act or the 1987 Act,
  - (c) the payment by the State of an amount by way of compensation to an insurer who is a party to the agreement in respect of any adverse effect on the insurer that results or is likely to result from an amendment (including repeal or substitution) of this Act, the 1987 Act or the *Compensation Court Act 1984*, or the regulations under any of those Acts,
  - (d) the determination of the cases in which compensation is payable as referred to in paragraph (c), including the determination of whether any such amendment has an adverse effect on an insurer and the method of determining the amount of compensation to be paid.
- (4) The Minister and the Authority may exercise the functions conferred on them, respectively, under an insurer agreement. In exercising any function under this Act or the 1987 Act, the Minister and the Authority must have regard to and must comply with the provisions of an insurer agreement.
- (5) An insurer agreement may be amended from time to time by agreement in writing between the parties to it, and the agreement as so amended becomes the agreement in force for the purposes of this section.

## **Chapter 2 Administration**

### **Part 1 Workers Compensation Advisory Council of New South Wales**

#### **10 Constitution of Advisory Council**

- (1) There is constituted by this Act a body corporate with the corporate name of the Workers Compensation Advisory Council of New South Wales.
- (2) The Advisory Council is subject to the control and direction of the Minister, except in relation to the contents of any advice, report or recommendation given to the Minister.

#### **11 Membership and procedure of Advisory Council**

- (1) The Advisory Council is to consist of the following members:
  - (a) 5 persons appointed by the Minister as employer representatives from a panel of at least 6 persons nominated by such bodies or organisations representing employers as are approved by the Minister,
  - (b) 5 persons appointed by the Minister as employee representatives on the nomination of the Labor Council of New South Wales,
  - (c) 2 persons appointed by the Minister as insurer representatives, being persons nominated by the Rating Bureau,
  - (d) the General Manager, who is to be Chairperson.
- (2) The members who are employer representatives and employee representatives are voting members.
- (3) Schedule 2 has effect with respect to the Advisory Council.

#### **12 Functions of Advisory Council**

- (1) The principal functions of the Advisory Council are as follows:
  - (a) to be responsible for the formulation of recommendations to the Minister with respect to the objectives and policy directions of the workers compensation legislation and the occupational health and safety legislation,

- (b) to be responsible for the formulation of recommendations to the Minister with respect to the amendment or replacement of any such legislation,
  - (c) to monitor and report to the Minister on the operation and effectiveness of any such legislation, and on the performance of the schemes to which any such legislation relates,
  - (d) to undertake consultation in connection with current or proposed legislation relating to any such scheme as it thinks fit,
  - (e) to report its views about any proposed legislation that might impact on any such scheme to the Minister or the proponent of the proposed legislation,
  - (f) to monitor and review key indicators of financial viability and other aspects of any such schemes,
  - (g) to advise the Minister on any matter relating to any such legislation or any such scheme that the Minister refers to the Advisory Council for advice,
  - (h) to monitor and review the operations of the Authority in connection with the exercise of the Authority's functions under this or any other Act.
- (2) The Advisory Council has such other functions as are conferred or imposed on it by or under this or any other Act.
  - (3) The Advisory Council is to exercise its functions consistently with the system objectives set out in section 3.
  - (4) The Advisory Council may seek advice from any appropriate source, and accordingly is not limited to seeking advice from bodies constituted under this Act.
  - (5) The Advisory Council is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Authority.

### **13 Working parties**

- (1) The Advisory Council may establish working parties and assign to them terms of reference that include, but are not limited to, the investigation and reporting to the Advisory Council of specific

matters of legislative concern arising under or in connection with any workers compensation legislation or any occupational health and safety legislation.

- (2) It does not matter that any or all of the members of a working party are not members of the Advisory Council.
- (3) The procedure for the calling of meetings of a working party and for the conduct of business at those meetings is to be as determined by the Advisory Council or (subject to any determination of the Advisory Council) by the working party.

## **Part 2 WorkCover Authority of New South Wales**

### **Division 1 Constitution of Authority**

#### **14 Constitution of Authority**

- (1) There is constituted by this Act a corporation with the corporate name of the WorkCover Authority of New South Wales.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

#### **15 Board of Directors** (cf 1989 s 5)

- (1) There is to be a Board of Directors of the Authority.
- (2) The Board is to consist of 7 directors, being:
  - (a) the General Manager of the Authority, and
  - (b) 6 part-time directors appointed by the Governor on the recommendation of the Minister.
- (3) The persons recommended for appointment by the Minister must have such managerial, commercial or other qualifications or experience as the Minister considers necessary to enable the Board of Directors to exercise its functions.
- (4) The Advisory Council and such other persons or bodies as the Minister considers appropriate may make recommendations to the Minister regarding the persons to be appointed as directors and the Minister is to have regard to any such recommendations when recommending a person for appointment as a director.
- (5) A person (other than the General Manager of the Authority) cannot be a member of both the Advisory Council and the Board at the same time.
- (6) Schedule 3 has effect with respect to the Board of Directors.

#### **16 General Manager** (cf 1989 s 7)

The General Manager of the Authority is the General Manager holding office as such under Part 2 of the *Public Sector Management Act 1988*.

**17 Staff of Authority** (cf 1989 s 10)

- (1) Such staff as may be necessary to enable the Authority to exercise its functions may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Authority may arrange for the use of the services of a government department or a public or local authority.
- (3) The Authority may, with the approval of the Minister, employ casual staff to assist it to exercise its functions.
- (4) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of casual staff under this section.
- (5) The Authority may engage such consultants as the Authority requires to assist it to exercise its functions.
- (6) For the purposes of the workers compensation legislation and the occupational health and safety legislation, a person who is employed under subsection (1) or (3) or whose services are made use of under subsection (2) is an officer of the Authority.

**Division 2 Management of Authority**

**18 The Minister** (cf 1989 s 9)

The Board of Directors and the General Manager are, in the exercise of their respective functions, subject to the control and direction of the Minister, except in relation to the contents of any advice, report or recommendation given to the Minister.

**19 Board of Directors** (cf 1989 s 6)

- (1) The Board of Directors has the function of determining the administrative policies of the Authority.
- (2) In exercising that function, the Board of Directors must, as far as practicable, ensure that the activities of the Authority are carried out properly and efficiently and must have regard to the policies of the Advisory Council.

## **20 General Manager** (cf 1989 s 8)

- (1) Subject to sections 18 and 19, the affairs of the Authority are to be managed and controlled by the General Manager.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the General Manager is taken to have been done by the Authority.

## **21 Delegation of functions** (cf 1989 s 11)

- (1) The Authority may delegate to an authorised person any of the functions of the Authority (other than this power of delegation).
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.
- (3) In this section:

*authorised person* means:

- (a) an officer of the Authority, or
- (b) a person of a class prescribed by the regulations or of a class approved by the Board of Directors.

## **Division 3 Functions of Authority**

### **22 General functions** (cf 1989 s 12)

- (1) The general functions of the Authority are:
  - (a) to be responsible for ensuring compliance with the workers compensation legislation and the occupational health and safety legislation.
  - (b) to be responsible for the day to day operational matters relating to the schemes to which any such legislation relates,
  - (c) to provide administrative and other support to the Advisory Council. sufficient to assist the Advisory Council to meet its priorities,

- (d) to provide advice and make recommendations to the Advisory Council on such matters as the Advisory Council requests or the Authority considers appropriate,
  - (e) to report and make recommendations to the Minister on such matters as the Minister requests or the Authority considers appropriate.
- (2) The Authority has such other functions as are conferred or imposed on it by or under the workers compensation legislation, the occupational health and safety legislation or any other legislation.
- (3) In exercising its functions, the Authority must:
- (a) promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces, and
  - (b) promote the prompt, efficient and effective management of injuries to persons at work, and
  - (c) ensure the efficient operation of workers compensation insurance arrangements having regard to policies of the Advisory Council, and
  - (d) ensure the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the occupational health and safety legislation relates.

**23 Specific functions** (cf 1989 s 13)

- (1) The Authority has, in particular, the following functions:
- (a) to initiate and encourage research to identify efficient and effective strategies for the prevention and management of occupational injury and for the rehabilitation of injured workers,
  - (b) to ensure the availability of high quality education and training in such prevention, management and rehabilitation,
  - (c) to assist in developing equitable and effective programs to identify areas of unnecessarily high costs in or for schemes to which the workers compensation legislation or the occupational health and safety legislation relates.

- (d) to foster a co-operative relationship between management and labour in relation to the health, safety and welfare of persons at work,
- (e) to encourage liaison between employers, insurers, accredited rehabilitation providers, medical practitioners and other health professionals in the interests of early and effective injury management and rehabilitation of injured workers,
- (f) to assist in identifying (and as far as practicable minimising or removing) disincentives for injured workers to return to work or for employers to employ injured workers, or both,
- (g) to assist in the provision of measures to deter and detect fraudulent workers compensation claims,
- (h) to assist in developing programs to meet the special needs of target groups, including:
  - workers who suffer severe injuries
  - injured workers who are unable to return to their pre-injury occupation
  - injured workers who are unemployed
  - persons who live in remote areas
  - women
  - persons of non-English speaking background
  - persons who have a disability,
- (i) to assist in the establishment and operation of:
  - occupational health and safety committees at places of work
  - workplace rehabilitation programs,
- (j) to investigate workplace accidents.
- (k) to assist in the development of policies for injury management, worker rehabilitation. and assistance to injured workers,

- (l) to monitor the operation of requirements and arrangements imposed or made by or under the workers compensation legislation or the occupational health and safety legislation, including requirements and arrangements for all or any of the following:
- injury management
  - worker rehabilitation
  - workers compensation insurance
  - workers compensation insurer licensing,
- and to commence and conduct prosecutions for offences in connection with any such requirements and arrangements,
- (m) to collect, analyse and publish data and statistics, as appropriate, including such data and statistics as the Advisory Council and the Rating Bureau may require to enable them to exercise their functions,
- (n) to provide advisory services to workers, employers, insurers and the general community (including information in languages other than English),
- (o) to provide funds for or in relation to:
- measures for the prevention or minimisation of occupational injuries or diseases
  - occupational health and safety education,
- (p) to arrange, or facilitate the provision of, interpreter services to assist injured workers,
- (q) to provide and administer (subject to the regulations) a legal aid service for persons who are parties to proceedings relating to workers compensation,
- (r) to provide data and other information to the Advisory Council, Rating Bureau and Industry Reference Groups.
- (2) The Authority is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Advisory Council.

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## **Part 3 Workers Compensation Premiums Rating Bureau of New South Wales**

### **24 Constitution of Rating Bureau**

- (1) There is constituted by this Act a body corporate with the corporate name of the Workers Compensation Premiums Rating Bureau of New South Wales.
- (2) The Rating Bureau is, for the purposes of any Act, a statutory body representing the Crown.
- (3) The Rating Bureau is subject to the control and direction of the Minister, except in relation to:
  - (a) the determination and submission to the Authority of a proposed methodology to be used for the calculation of risk premiums, as provided by Part 3 (Insurance premiums) of Chapter 5, and
  - (b) the contents of any advice, report, recommendation or estimates given to the Minister, the Authority or the Advisory Council.
- (4) The Minister is to cause a notice to be published in the Gazette giving details of any action taken by the Minister under this section to control or direct the Rating Bureau.
- (5) The Minister may enter into arrangements with licensed insurers for the payment by licensed insurers of the costs of operation of the Rating Bureau.

### **25 Membership and procedure of the Rating Bureau**

- (1) The membership of the Rating Bureau is as follows:
  - (a) members appointed by the Minister on the nomination of licensed insurers (the *nominating insurers*), as provided by subsection (2),
  - (b) one person appointed by the Minister as an employer representative on the nomination of the Advisory Council,
  - (c) one person appointed by the Minister as an employee representative on the nomination of the Advisory Council.

- (2) Each nominating insurer is entitled to nominate one person from time to time for appointment to membership of the Rating Bureau, so that each nominating insurer has one nominee as a member at any time. Specialised insurers that issue policies only in respect of domestic or similar workers are not entitled to make such a nomination.
- (3) Schedule 4 has effect with respect to the Rating Bureau.

## **26 Functions of the Rating Bureau**

- (1) The functions of the Rating Bureau are as follows:
  - (a) to be responsible for the determination and submission to the Authority of a proposed methodology to be used for the calculation of risk premiums, as provided by Part 3 (Insurance premiums) of Chapter 5,
  - (b) to provide advice and statistical and actuarial information on workers compensation scheme performance and costings (including emerging performance and costings) to the Minister, the Authority, the Advisory Council and licensed insurers,
  - (c) to provide costing estimates in relation to any proposal for changes to the workers compensation scheme or other changes that may have an impact on the scheme,
  - (d) to provide advice and assistance in the development of workers compensation insurance industry standards,
  - (e) such other functions with respect to workplace injury management and workers compensation as may be prescribed by the regulations.
- (2) The Rating Bureau has such other functions as are conferred or imposed on it by or under this or any other Act.
- (3) The Rating Bureau may engage actuaries, consultants and other persons for the purpose of getting expert advice and assistance.
- (4) The Rating Bureau may arrange for the use of the services of any licensed insurer or insurance industry organisation.

## **27 Rating Bureau exemptions**

- (1) The Rating Bureau is exempt from the operation of the *Freedom of Information Act 1989*.
- (2) The *Ombudsman Act 1974* does not apply to conduct of the Rating Bureau.
- (3) The name of the Rating Bureau cannot be added to Schedule 2 (Statutory bodies) to the *Public Finance and Audit Act 1983*.

## **Part 4      Occupational Health and Safety Council                  of New South Wales**

### **28    Constitution of OHS Council** (cf 1989 s 14)

There is constituted by this Act an Occupational Health and Safety Council of New South Wales.

### **29    Membership and procedure of OHS Council** (cf 1989 s 15)

- (1) The OHS Council is to consist of 9 members, being:
  - (a) 2 persons appointed by the Minister, one of whom is to be appointed as Chairperson of the Council, and
  - (b) 1 person appointed by the Minister on the nomination of the Minister for Health, and
  - (c) 3 persons appointed by the Minister from a panel of at least 6 persons nominated by the Labor Council of New South Wales, and
  - (d) 3 persons appointed by the Minister from a panel of at least 6 persons nominated by such bodies or organisations representing employers as are approved by the Minister.
- (2) Schedule 5 has effect with respect to the OHS Council.

### **30    Functions of OHS Council** (cf 1989 s 16)

- (1) The functions of the OHS Council are:
  - (a) to advise the Advisory Council on any matter relating to occupational health and safety that the Advisory Council refers to the OHS Council for advice, and
  - (b) to advise the Authority on any matter relating to occupational health and safety that the Authority refers to the OHS Council for advice.
- (2) The Authority must refer to the OHS Council for advice any matter requested by the Minister and report to the Minister on the advice furnished by the OHS Council on the matter.
- (3) The OHS Council is to keep the Advisory Council informed of the matters that it has under consideration from time to time.

- (4) The OHS Council has such other functions as are conferred or imposed on it by or under this or any other Act.
- (5) For the purposes of the exercise by the OHS Council of its functions, a member of the OHS Council may at any reasonable time enter and inspect any premises that are a place of work (except premises occupied as a private dwelling).

### **31 Committees of OHS Council** (cf 1989 s 17)

- (1) The OHS Council may, with the approval of the Authority, establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the OHS Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the OHS Council or (subject to any determination of the OHS Council) by the committee.

## **Part 5 Industry Reference Groups**

### **32 Industry Reference Groups**

- (1) The Advisory Council is to establish a system of Industry Reference Groups. The Advisory Council may abolish any such Group at any time.
- (2) The Advisory Council may establish an Industry Reference Group consisting of such number of members as the Advisory Council thinks fit and may assign to it terms of reference.
- (3) An Industry Reference Group is:
  - (a) to consist of equal numbers of representatives of workers and employers, and
  - (b) to comprise persons who in the opinion of the Advisory Council have appropriate expertise or experience in matters relating to workers compensation, occupational health and safety or injury management.
- (4) Members of the Advisory Council may, but need not, be members of Industry Reference Groups.
- (5) The procedure for the calling of meetings of an Industry Reference Group and for the conduct of business at those meetings is to be as determined by the Advisory Council or (subject to any determination of the Advisory Council) by the Group.

### **33 Function**

- (1) The functions of an Industry Reference Group are as set out in the terms of reference assigned to it.
- (2) The functions of an Industry Reference Group may include the following:
  - (a) to develop industry specific strategies for:
    - injury prevention
    - injury management
    - the education of and giving of practical advice to workers and employers,

- (b) to liaise with the OHS Council,
- (c) to investigate and report to the Advisory Council on specific matters of concern arising under or in connection with any workers compensation legislation.

## **Part 6 Financial provisions**

### **Division 1 WorkCover Authority Fund**

#### **34 WorkCover Authority Fund** (cf 1989 s 18)

The Authority is required to establish and maintain a WorkCover Authority Fund.

#### **35 Payments into and from Fund** (cf 1989 s 19)

- (1) The following is to be paid into the WorkCover Authority Fund:
  - (a) money contributed by insurers and self-insurers under Division 2,
  - (b) money required to be paid into the Fund by or under this or any other Act,
  - (c) all other money received by the Authority and not otherwise appropriated.
- (2) The following is to be paid from the WorkCover Authority Fund:
  - (a) the remuneration (including allowances) of the Board of Directors and staff of the Authority,
  - (b) the remuneration (including allowances) of members of the Advisory Council and the OHS Council and any other costs of operation of those bodies,
  - (c) the costs of operation of the Rating Bureau (except to the extent that those costs are paid by licensed insurers under arrangements made with the Minister),
  - (d) expenditure incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliators under this Act by conciliators who are officers of that Department. including the remuneration payable to those officers.

- (e) the remuneration (including allowances) of conciliators appointed under this Act who are not officers of the Department of Industrial Relations,
  - (f) the costs of operation of the Compensation Court, including:
    - (i) the remuneration (including allowances) of Judges, commissioners, officers and staff of the Compensation Court, and
    - (ii) court accommodation,
  - (g) all payments required to meet expenditure incurred in relation to the functions of the Authority,
  - (h) all other money required by or under this or any other Act to be paid from the Fund.
- (3) The maximum amount payable from the WorkCover Authority Fund for the costs of operation of the Compensation Court is to be the amount determined by the Minister administering the *Compensation Court Act 1984* after consultation with the Minister administering this Act.

### **36 Investment** (cf 1989 s 20)

The Authority may invest money held by it:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power to invest money held by the Authority, in any other manner approved by the Minister with the concurrence of the Treasurer.

## **Division 2 Contributions to WorkCover Authority Fund**

### **37 Definitions** (cf 1987 s 258)

In this Division:

*deemed risk premium income*, in relation to the contribution payable by a self-insurer under this Division for any period during a financial year. means the amount that the self-insurer

would have been liable to pay (in such circumstances as may be prescribed by the regulations) to a licensed insurer as risk premiums on policies of insurance that would otherwise be required under this Act during that period if the person were not a self-insurer, and:

- (a) includes any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year, and
- (b) does not include any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year.

*financial year*, in relation to an insurer:

- (a) includes the period after 4 pm on the day preceding the first day of the financial year, and
- (b) does not include the period after 4 pm on the last day of the financial year.

*insurer* means a licensed insurer or a former licensed insurer who was previously a licensed insurer under this Act.

*risk premium* means the amount determined as risk premium in accordance with an insurer's total premium methodology approved by the Authority under Part 3 of Chapter 5 or, in a case where a risk premium cannot be so determined, the amount determined as the risk premium in accordance with the regulations.

### **38 Assessment by Authority of amount to be contributed to Fund** (cf 1987 s 260)

The Authority is required, as soon as practicable in respect of each financial year:

- (a) to make an estimate of the total of the amounts already paid and the amounts to be paid from the WorkCover Authority Fund during that financial year, and
- (b) to determine what amounts, if any, are to be set aside as provision to meet expenditure from the Fund in future years, and specify for what purpose each such provision is being made, and

- (c) to make an estimate of the total amounts (including the amounts already received) to be received into the Fund during that financial year otherwise than by way of contributions in respect of that financial year from insurers and self-insurers under this Division, and
- (d) to determine the total amount to be contributed to the Fund in respect of that financial year by insurers and self-insurers under this Division after having regard to the amounts standing to the credit of the Fund at the beginning of the year, including any amounts set aside in earlier years as provisions to meet expenditure in later years, and the amounts estimated under paragraph (c) to be received into the Fund during the year, and
- (e) to specify in writing the estimates, provisions and amounts to be contributed to the Fund by insurers and self-insurers.

**39 Contributions to Fund by insurers and self-insurers** (cf 1987 s 261)

- (1) Each insurer and self-insurer must pay the contributions prescribed by this section to the Authority for payment into the WorkCover Authority Fund.
- (2) The contribution to be paid by an insurer in respect of each financial year is an amount equal to the percentage (determined by the Authority in accordance with this section) of the risk premium that is paid to the insurer (whether or not paid during the financial year) in respect of each policy of insurance that is issued or renewed by the insurer to commence during that financial year.
- (3) The contribution to be paid by a self-insurer, in respect of each financial year (being a financial year during the whole or part of which the person was a self-insurer) is an amount equal to the percentage (determined by the Authority in accordance with this section) of the deemed premium income of the self-insurer during the relevant period when the person was a self-insurer.
- (4) The percentage determined by the Authority pursuant to subsections (2) and (3):

- (a) is to be such as, in the opinion of the Authority, will be sufficient to yield the total amount to be contributed to the Fund by insurers and self-insurers in respect of the relevant financial year as determined pursuant to section 38, and
  - (b) is to be the same percentage for all insurers and for all self-insurers, and
  - (c) in the case of a percentage determined pursuant to subsection (2), does not apply in respect of any policy of insurance issued or renewed for a period that commences before the determination is made.
- (5) A contribution by an insurer is payable at such times and in respect of premium income received during such periods in such manner as may be determined by the Authority and notified to the insurer.
- (6) A contribution by a self-insurer is payable in such instalments and at such times as may be determined by the Authority and notified to the self-insurer.
- (7) If a contribution payable by an insurer or a self-insurer has not been paid within the time prescribed by or under this section:
  - (a) the insurer or self-insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
  - (b) the amount of that contribution together with interest calculated at the rate of 15 per cent per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (8) Subject to subsection (4), more than one percentage may be determined by the Authority for different portions of a financial year for the purposes of subsection (2) or (3).
- (9) A certificate executed by the Authority as to the amount of a contribution payable under this section by an insurer or self-insurer specified in the certificate and the due date for payment is (without proof of its execution by the Authority) admissible in proceedings under this section and is evidence of the matters specified in the certificate.

- (10) The obligation of a person (being a self-insurer) to make a contribution under this section in respect of any period during which the person was a self-insurer does not cease merely because the person subsequently ceases to be a self-insurer.

### **Division 3 Financial year of Authority**

#### **40 Financial year of Authority** (cf 1989 s 21)

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

## Chapter 3 Workplace injury management

### 41 Object and application of Chapter

- (1) The object of this Chapter is to establish a system that seeks to achieve optimum results in terms of the timely, safe and durable return to work for workers following workplace injuries.
- (2) The various provisions of this Chapter apply only in respect of injuries that happen after the commencement of the provision concerned.

### 42 Definitions

- (1) In this Chapter:

*injured worker* means a worker who has received a workplace injury.

*injury management* means the process that comprises activities and procedures that are undertaken or established for the purpose of achieving a timely, safe and durable return to work for workers following workplace injuries.

*injury management plan* means a plan for co-ordinating and managing those aspects of injury management that concern the treatment, rehabilitation and retraining of an injured worker, for the purpose of achieving a timely, safe and durable return to work for the worker.

*injury management program* means a co-ordinated and managed program that integrates all aspects of injury management (including treatment, rehabilitation, retraining, claims management and employment management practices) for the purpose of achieving optimum results in terms of a timely, safe and durable return to work for injured workers.

*insurer* means a licensed insurer or a self-insurer.

*nominated treating doctor* means the treating doctor nominated from time to time by a worker for the purposes of an injury management plan for the worker.

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*significant injury* means a workplace injury that is likely to result in the worker being incapacitated for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both.

*workplace injury* means an injury to a worker in respect of which compensation is or may be payable under this Act.

- (2) If 2 or more employers are or may be liable to pay compensation to an injured worker, a reference in this Chapter to the employer is a reference to whichever of those employers last employed the worker and a reference to the insurer is a reference to that employer's insurer.

#### **43 Injury management programs**

- (1) An insurer must establish and maintain an injury management program and must revise its injury management program from time to time or when the Authority directs. An insurer must lodge a copy of its injury management program, and any revised injury management program, with the Authority.
- (2) An insurer must give effect to its injury management program and for that purpose must comply with the obligations imposed on the insurer by or under the program.
- (3) An insurer must take appropriate steps to ensure that each employer who is insured by the insurer is made aware of the employer's obligations under this Chapter and made and kept aware of the requirements of the insurer's injury management program. This subsection does not apply to a self-insurer.
- (4) Within 3 working days after being notified of a significant injury to a worker, the insurer must initiate action under the insurer's injury management program and must (in accordance with that program) make contact with the worker, the employer (except when the insurer is a self-insurer) and (if appropriate and reasonably practicable) the worker's treating doctor. A *working day* is any day except a Saturday, Sunday or public holiday.

- (5) An employer must comply with the obligations imposed on the employer by or under the insurer's injury management program. This subsection does not apply when the employer is a self-insurer.

#### **44 Early notification of workplace injury**

- (1) An injured worker must notify the employer that the worker has received a workplace injury as soon as possible after the injury happens.
- (2) The employer of an injured worker must notify the insurer within 48 hours after becoming aware that a worker has received a workplace injury that seems to be a significant injury.
- (3) If a workplace injury does not seem to be a significant injury, the employer must notify the insurer within 7 days after becoming aware that the worker has received the injury.
- (4) Subsections (2) and (3) do not apply when the insurer is a self-insurer.

**Note.** The obligations imposed by this section are in addition to those imposed by sections 61–69.

#### **45 Injury management plan for worker with significant injury**

- (1) When it appears that a workplace injury is a significant injury, an insurer who is or may be liable to pay compensation to the injured worker must establish an injury management plan for the injured worker.
- (2) The injury management plan must be established in consultation with the employer (except when the insurer is a self-insurer) and the worker concerned, to the maximum extent that their co-operation and participation allow.
- (3) The insurer must provide both the employer and the injured worker with information with respect to the injury management plan.

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- (4) The information that the insurer must provide to the injured worker includes a statement to the effect that the worker may have no entitlement to weekly payments of compensation if the worker fails unreasonably to comply with the requirements of this Chapter after being requested to do so by the insurer.
  - (5) The insurer must keep the employer of a worker who has received a significant injury informed of significant steps taken or proposed to be taken under the injury management plan for the worker. This subsection does not apply when the insurer is a self-insurer.
  - (6) An insurer must as far as possible ensure that vocational retraining provided or arranged for an injured worker under an injury management plan is such as may reasonably be thought likely to lead to a real prospect of employment or an appropriate increase in earnings for the injured worker.
  - (7) An insurer must give effect to an injury management plan established for an injured worker and for that purpose must comply with the obligations imposed on the insurer by or under the plan.

#### **46 Employer's injury management plan obligations**

- (1) The employer must participate and co-operate in the establishment of an injury management plan required to be established for an injured worker.
- (2) The employer must comply with obligations imposed on the employer by or under an injury management plan for an injured worker.
- (3) This section does not apply when the employer is a self-insurer.

#### **47 Worker's injury management plan obligations**

- (1) An injured worker must participate and co-operate in the establishment of an injury management plan required to be established for the worker.
- (2) The worker must comply with obligations imposed on the worker by or under an injury management plan for the worker.

- (3) The worker must, when requested to do so by the insurer, nominate as the worker's treating doctor for the purposes of an injury management plan for the worker a medical practitioner who is prepared to participate in the development of, and in the arrangements under, the plan.
- (4) A medical practice can be nominated as treating doctor for the purposes of subsection (3). Such a nomination operates as a nomination of the members of the practice who treat the worker from time to time and a reference in this Chapter to the nominated treating doctor is a reference to those members of the practice.
- (5) The worker must authorise the worker's nominated treating doctor to provide relevant information to the insurer or the employer for the purposes of an injury management plan for the worker.
- (6) An injury management plan must provide for the procedure for changing the worker's nominated treating doctor.

#### **48 Injured worker's obligation to return to work**

An injured worker must make all reasonable efforts to return to work with his or her pre-injury employer (that is, the employer liable to pay compensation to the worker) as soon as possible, having regard to the nature of the injury.

#### **49 Employer must provide suitable work**

- (1) If a worker who has been totally or partially incapacitated for work as a result of an injury is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer liable to pay compensation to the worker under this Act in respect of the injury must at the request of the worker provide suitable employment for the worker.
- (2) The employment that the employer must provide is employment that is both suitable employment (as defined in section 43A of the 1987 Act) and (subject to that qualification) so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was at the time of the injury.

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- (3) This section does not apply if:
- (a) it is not reasonably practicable to provide employment in accordance with this section, or
  - (b) the worker voluntarily left the employment of that employer after the injury happened (whether before or after the commencement of the incapacity for work), or
  - (c) the employer terminated the worker's employment after the injury happened, other than for the reason that the worker was not fit for employment as a result of the injury.

**Note.** See also Part 7 Chapter 2 of the *Industrial Relations Act 1996* for provisions for protection of employment of injured workers.

#### **50 Payment of cost of treatment of injured worker**

- (1) An injury management plan may provide for the insurer to pay the following costs:
- (a) the cost of any treatment for the workplace injury provided to the worker by the nominated treating doctor if the nominated treating doctor is prepared to participate in the arrangements under the plan,
  - (b) the cost of other specified treatment provided to the worker for the workplace injury (specified by reference to such factors as the kind of treatment, the identity of the health care professional who provides the treatment, and the circumstances in which the treatment is provided).
- (2) For the purposes of any such payment, it does not matter that the worker has not made a claim for compensation, the insurer has not accepted liability in respect of the injury or the insurer disputes liability in respect of the injury.
- (3) If the insurer pays any such costs and another insurer or another employer accepts liability to pay compensation to the worker in respect of the injury concerned, the insurer is entitled to recover those costs (to the extent that compensation is payable under this Act in respect of those costs) as a debt from that other insurer or other employer. Any amount so recoverable is taken to be payable by the other insurer or other employer as compensation to the injured worker.

## **51 Second-injury arrangements**

- (1) Arrangements may be entered into under this section to encourage the employment of injured workers by providing financial incentives to their employers in connection with insurance liabilities arising from further injuries to the workers.
- (2) An insurer who is liable to pay compensation to an injured worker may enter into an arrangement with a new employer of the injured worker providing for either or both of the following:
  - (a) for the insurer to indemnify the new employer in respect of the employer's liability to pay compensation to the injured worker under this Act,
  - (b) for the insurer to pay a wage subsidy to the new employer in respect of the employment of the worker.
- (3) An arrangement under this section:
  - (a) applies for a period of 6 months of any such employment or such other period as is specified in the arrangement, and
  - (b) in the case of an arrangement that provides for an indemnity, applies to all injuries or only to particular injuries, or injuries of a class, specified in the indemnity arrangement, and
  - (c) is subject to such conditions as the insurer may determine.
- (4) An indemnity under this section indemnifies the employer against payment of an amount that the employer would otherwise be required to pay under section 152 (Recovery of excess from employer) in respect of an injury to the worker to which the indemnity arrangement applies.
- (5) A claim for compensation in respect of an injury to the worker to which an indemnity under this section applies is to be excluded from the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.
- (6) This section applies only in respect of insurers who are licensed insurers under this Act.

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**52 Workplace rehabilitation** (cf 1987 s 152)

- (1) An employer must establish a return-to-work program with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer. An employer's return-to-work program must not be inconsistent with the injury management program of the employer's insurer and is of no effect to the extent of any such inconsistency.
- (2) A return-to-work program is to be established in accordance with the regulations and must, subject to the regulations:
  - (a) comply with any guidelines determined by the Authority, and
  - (b) be developed by the employer in consultation with the workers concerned and any industrial union of employees representing those workers, and
  - (c) be in writing and be displayed or notified at places of work.
- (3) The Authority may, in determining guidelines for the purposes of this section, consult with such persons and bodies as the Authority considers to be appropriate.
- (4) The regulations:
  - (a) may require a return-to-work program to be approved by the Authority or other person or body, and
  - (b) may exempt specified classes of employers from this section, and
  - (c) may provide for the accreditation of providers of rehabilitation services for the purposes of return-to-work programs and may require employers to use the services of accredited providers in connection with the program, and
  - (d) may create offences with respect to any failure to comply with this section or with a return-to-work program, and
  - (e) may make other provisions that are necessary or convenient for the purposes of giving effect to this section.

- (5) A group of 2 or more employers may establish a single return-to-work program under this section for each member of the group if the employers are authorised to do so by the regulations.

**53 Vocational re-education etc provided by Authority** (cf 1987 s 153)

- (1) The Authority may institute, administer or co-ordinate vocational re-education and rehabilitation schemes for injured workers.
- (2) The Authority may draw from the Workcover Authority Fund such amounts as may be necessary or desirable for the purposes of the vocational re-education and rehabilitation of injured workers.
- (3) Without limiting the generality of subsection (2), the Authority may draw from the Workcover Authority Fund such amounts as the Authority considers appropriate:
- (a) to provide financial incentives to employers who offer employment to injured workers unable to find suitable employment and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers, or
  - (b) to provide financial incentives to employers who retain or re-employ their injured workers and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers, or
  - (c) to provide financial assistance to employers or others who offer injured workers work-trial experience or other voluntary work as part of the workers' rehabilitation training (being assistance in connection with the cost of any necessary insurance arrangements relating to the workers or for other incidental expenses).
- (4) The Authority may establish within the Workcover Authority Fund an account, to be known as the Vocational Re-education and Rehabilitation Account. for the purpose of keeping a separate record of the money in that Fund set aside by the Authority for the purposes of this section and the money paid from that Fund under this section.

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**54 Second-injury scheme for injuries before 1 October 1999** (cf 1987 s 153A)

- (1) The Authority is to institute and administer under section 53 a scheme (to be called *the second-injury scheme*) to encourage the employment of injured workers by providing financial incentives to their employers in connection with insurance liabilities arising from further injuries to the workers. The second-injury scheme under this section does not apply in respect of injuries that happen on or after 1 October 1999.
- (2) The second-injury scheme applies to such injured workers as are approved by the Authority as being suitable for inclusion in the scheme.
- (3) Any such approval:
  - (a) applies to such employment of the injured worker as is specified in the approval (including employment that is limited to, or excludes, employment with particular employers), and
  - (b) applies for a period of 6 months of any such employment or such other period as is specified in the approval, and
  - (c) applies to all injuries or only to particular injuries, or injuries of a class, specified in the approval, and
  - (d) is subject to any other conditions imposed by the Authority.
- (4) If the second-injury scheme applies to an injured worker:
  - (a) the employer of the worker is not required under section 152 (Recovery of excess from employer) to repay the relevant part of any weekly compensation claim paid under a policy of insurance for compensation for an injury to the worker to which the scheme applies, and
  - (b) any such claim (or any liability of the employer independently of this Act for that injury) is to be excluded from the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.

- (5) Subsection (4) is subject to:
  - (a) the regulations, and
  - (b) the terms and conditions of the Authority's approval for the inclusion of the injured worker in the second-injury scheme, and
  - (c) any other limitation imposed by the Authority when giving that approval.
- (6) The regulations may make provision for or with respect to the operation of the second-injury scheme.

## **55 Compliance by insurers**

- (1) It is a condition of an insurer's licence that the insurer must comply with the requirements of this Chapter.
- (2) If the Authority is satisfied that an insurer has persistently or repeatedly failed to comply with the requirements of this Chapter without reasonable excuse, the Authority can do any of the following:
  - (a) cancel or suspend the insurer's licence,
  - (b) impose a pecuniary penalty of up to an amount that is equivalent to 100 penalty units,
  - (c) amend the terms or conditions of the insurer's licence (for example by the inclusion of a condition providing for increased supervision of the insurer by the Authority),
  - (d) issue a letter of censure to the insurer.
- (3) Before the Authority takes action under this section, the Authority must give the insurer concerned an opportunity to make submissions to the Authority regarding the proposed action. The Authority is to consider any submissions so made.
- (4) If the Authority then decides to take the proposed action or other action authorised by this section, the Authority is to give the insurer written notice of the action. Any action taken by the Authority under this section takes effect when notice of it is given to the insurer or on such later date as the notice may provide.

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- (5) The Authority may, at any time, terminate or reduce a period of suspension of an insurer's licence.
  - (6) A pecuniary penalty imposed on an insurer under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Crown.
  - (7) The Authority is to monitor compliance by insurers with the requirements of this Chapter.

## **56 Compliance by employer**

- (1) Any increased costs associated with a failure by an employer to comply with a requirement of this Chapter can be taken into account (in conformity with the requirements of this Act with respect to the determination of premiums) in the calculation of a claims experience factor for the employer for use in the determination of the premium payable for an insurance policy by the employer.
- (2) The regulations may make provision for or with respect to the payment by an employer who fails to comply with a requirement of this Chapter of an amount by way of a premium surcharge.
- (3) The amount of any such premium surcharge payable under the regulations need not be referable to any increase in costs attributable to or associated with the employer's failure to comply.
- (4) The amount of a premium surcharge payable under the regulations is to be added to, and becomes payable as part of the premium payable by the employer for the issue or renewal of a policy of insurance as provided by the regulations.
- (5) Subsections (1)–(4) apply only to employers insured under policies of insurance issued or renewed by licensed insurers under this Act. It is a condition of any policy of insurance issued under the 1987 Act that the employer must comply with the requirements of this Chapter, but only if the insurer has taken appropriate steps to ensure that the employer is made aware of those obligations.

### **57 Compliance by worker**

- (1) If a worker fails unreasonably to comply with a requirement of this Chapter after being requested to do so by the insurer, the worker has no entitlement to weekly payments of compensation during any period that the failure continues, subject to subsection (2).
- (2) A worker's entitlement to weekly payments does not cease under this section until the insurer has given the worker written notice to that effect, together with a statement of the reasons for the entitlement ceasing and the action that the insurer considers the worker must take to be entitled to the resumption of weekly payments.
- (3) The resumption of weekly payments does not entitle the worker to weekly payments for the period in respect of which the worker had no entitlement to weekly payments.

**Note.** See also provisions for discontinuation of weekly payments in the 1987 Act (ss 52A, 54).

### **58 Liability not affected**

None of the following things done by an insurer or employer constitutes an admission of liability by the employer or insurer under this Act or independently of this Act:

- (a) anything done under or for the purposes of an injury management program or injury management plan,
- (b) anything done in connection with the assessment of an injured worker for rehabilitation or for employment or the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers (whether done under a workplace rehabilitation program or otherwise).

### **59 Regulations**

The regulations:

- (a) may provide for the way in which an injury management program or injury management plan is to be established by an insurer, and
- (b) may require an injury management program or injury management plan to be approved by the Authority or by some other person or body, and

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- (c) may provide for the accreditation of persons to act as injury management consultants under injury management plans and may provide that only accredited persons can act as injury management consultants, and
  - (d) may provide for the functions of injury management consultants under injury management plans (for example, functions with respect to the avoidance or minimisation of disputes about what constitutes suitable employment for a worker), and
  - (e) may create offences with respect to any failure to comply with this Chapter or with any injury management program or injury management plan, and
  - (f) may modify the operation of any provision of this Chapter in its application to self-insurers and may exempt self-insurers or a particular class of self-insurers from the operation of any provision of this Chapter, and
  - (g) may make other provisions that are necessary or convenient for the purposes of giving effect to this Chapter.

## Chapter 4      Workers compensation

### Part 1      Compensation—general

#### 68      Liability, benefits, common law and other matters

- (1)      Provisions relating to a worker's entitlement to compensation, the benefits payable, common law remedies and other matters are contained in the 1987 Act.
- (2)      The 1987 Act is, by the operation of section 2A of that Act, to be construed as if it formed part of this Act.

**Note.**      See, in particular, sections 9–87C and 149–151AB of, and Schedule 6 to, the 1987 Act, as amended by the *Workers Compensation Legislation Amendment Act 1998*.

## **Part 2 Compensation—claims and proceedings**

### **Division 1 Notice of injury etc and claims for compensation**

#### **61 Notice of injury to be given to employer** (cf former s 88)

- (1) Compensation may not be recovered under this Act unless notice of the injury has been given to the employer as soon as possible after the injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury.
- (2) Notwithstanding subsection (1), the absence of, or any defect or inaccuracy in, any such notice is not a bar to the recovery of compensation if it is found in proceedings to recover that compensation:
  - (a) that the person against whom the proceedings are taken has not been prejudiced in respect of the proceedings, or
  - (b) that the absence of, or defect or inaccuracy in, the notice was occasioned by ignorance, mistake, absence from the State or other reasonable cause, or
  - (c) that the person against whom the proceedings are taken had knowledge of the injury from any source at or about the time when the injury happened, or
  - (d) where the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, office or shop:
    - (i) that the summary referred to in section 231 has not been posted up in accordance with that section or the employer has otherwise contravened that section, or
    - (ii) that the injury has been reported by or on behalf of the employer to an inspector of mines or factories, shops and industries, or
    - (iii) that the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop, or

- (e) that the injury has been reported by the employer to the Authority in accordance with this Act.

**62 Provisions relating to giving of notice of injury** (cf former s 89)

- (1) A notice of injury must state:
  - (a) the name and address of the person injured, and
  - (b) the cause of the injury (in ordinary language), and
  - (c) the date on which the injury happened.
- (2) A notice of injury may be given orally or in writing.
- (3) If there is more than one employer, a notice of injury may be given to any one of those employers.
- (4) A notice of injury is taken to have been given to an employer:
  - (a) if it is given to any person designated for the purpose by the employer, or
  - (b) if it is given to any person under whose supervision the worker is employed.
- (5) A written notice of injury may be served by delivering it, or by sending it by post to, the residence or any place of business of the person on whom it is to be served.
- (6) If the regulations so require (and notwithstanding anything to the contrary in this section), a notice of injury must be given in the manner, and contain the particulars, prescribed by the regulations.

**63 Register of injuries** (cf former s 90)

- (1) There is to be kept at every mine, quarry, factory, workshop, office or shop in some readily accessible place a register of injuries.
- (2) A worker employed at any such mine, quarry, factory, workshop, office or shop, or any person acting on the worker's behalf, may enter in the register of injuries particulars of any injury received by the worker.
- (3) The regulations may prescribe the form of a register of injuries and the particulars to be entered in the register.

- (4) If particulars of an injury are duly entered in a register of injuries as soon as possible after an injury happened, the entry is sufficient notice of the injury for the purposes of this Act.
- (5) If subsection (1) is contravened, the manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, is guilty of an offence and liable to a penalty not exceeding 50 penalty units.

**64 Notice of incapacity, medical etc treatment and damage to property** (cf former s 91)

- (1) Sections 61–63 apply with respect to:
  - (a) the giving of notice of incapacity resulting from injury that happens after the worker leaves the employment in which the worker was at the time of the injury, and
  - (b) the giving of notice of any medical or related treatment, hospital treatment, occupational rehabilitation service or ambulance service to which Division 3 of Part 3 of the 1987 Act applies, and
  - (c) the giving of notice of any damage to property to which Division 5 of Part 3 of the 1987 Act applies,in the same way as those sections apply to notice of injury.
- (2) The particulars required to be given in any such notice are (subject to the regulations) reasonable particulars of the incapacity, of the treatment or service or of the damage to property.

**65 Making a claim for compensation** (cf former s 92)

- (1) A claim for compensation must be:
  - (a) in writing, and
  - (b) in such form or contain such information as may be prescribed by the regulations or approved by the Authority, and
  - (c) in the case of a claim for weekly payments of compensation—accompanied by a medical certificate that is in or to the effect of the approved form, or that is in any other form and contains information that is reasonably sufficient in the circumstances to assist in the determination of the claim, and

- (d) accompanied by such additional medical certificates or other documents as may be prescribed by the regulations, and
  - (e) made in the manner prescribed by section 66.
- (2) A claim for compensation need not be accompanied by a medical certificate or other document under this section if the medical certificate or document relates to information that is substantially available to the person on whom the claim is made from other appropriate documentation given or served by or on behalf of the claimant.
- (3) To the extent that information has been furnished or material provided in the course of the making of a claim for compensation, it is not necessary to furnish that information or provide that material when making any further claim for compensation in respect of the same injury.
- (4) The medical certificate required to accompany a claim for weekly payments of compensation must (unless the claim is a claim under section 10, 11 or 12 of the 1987 Act) include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor.
- (5) If a claim is deficient because subsection (4) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as possible after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement):
- (a) the claim is not considered to have been duly made for the purposes of section 93 until subsection (4) is complied with. and
  - (b) court proceedings cannot be commenced in respect of the claim until subsection (4) is complied with.
- (6) All claims for compensation under sections 66 and 67 of the 1987 Act in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for

a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later.

- (7) Compensation may not be recovered under this Act unless a claim for the compensation has been made within 6 months after the injury or accident happened or, in the case of death, within 6 months of the date of death.
- (8) If a claim for compensation was made by an injured worker within the period required by subsection (7), that subsection does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker's claim related.
- (9) For the purposes of subsection (7), a person is considered to have made a claim for compensation when the person makes any claim for compensation under this Act in respect of the injury or death concerned, even if the person's claim did not relate to the particular compensation in question.
- (10) If there is no entitlement to compensation under section 66 of the 1987 Act for a loss of hearing because of section 69A of the 1987 Act (No compensation for less than 6% hearing loss) notice of injury given in accordance with section 62 suffices (for the purposes of this section) as a claim for the compensation concerned.
- (11) If a claim for compensation and any medical certificate or other document required to accompany the claim are not given or served at the same time, the claim for compensation is taken not to have been made until the day on which the last of those documents is given or served. In that case, all of those documents are taken to have accompanied the claim.
- (12) The failure to make a claim in accordance with subsection (1) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause.

- (13) The failure to make a claim within the period required by subsection (7) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either:
- (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or
  - (b) the claim is not made within that 3 years but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.
- (14) The failure to make a claim within the period required by subsection (7) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.
- (15) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of subsections (7) and (13) taken to have been received when the worker first became so aware. If death results from an injury and a person who is entitled to claim compensation under this Act in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of subsections (7) and (13) to a claim by that person, taken to be the date that the person became so aware.
- (16) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries) a claim for the compensation is for the purposes of this section taken to have been made when a claim is made on any one of those persons.
- (17) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of subsections (7) and (13) as the making of a claim for compensation in respect of the injury.

- (18) In this section, *approved form*, in relation to a medical certificate, means a form in or to the effect of:
- (a) a form approved by the Authority for the purposes of this section or any form previously approved by the Authority for the purposes of this section, or
  - (b) any form previously prescribed by the regulations for the purposes of this section.
- (19) The regulations may provide that, despite subsection (18), the approved form of a medical certificate must be in or to the effect of a particular form only in the case of any specified class of claims for compensation.
- (20) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliator information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.

**66 Manner of making claim for compensation** (cf former 92A)

- (1) The manner of making a claim for compensation is by serving the claim on the employer from whom the compensation is claimed.
- (2) A claim for compensation may be made by serving the claim on an insurer who has indemnified the employer in respect of the claim if:
  - (a) the person making the claim has reason to believe that the employer may not forward the claim to the insurer in accordance with section 69 (1) (a), or
  - (b) the employer has refused to receive the claim, or
  - (c) the person making the claim cannot identify or find the employer, or
  - (d) the employer (being a natural person) is dead, or
  - (e) the employer (being a corporation) has been wound up.

- (3) For the purposes of this section, a claim for compensation is served on a person if:
- (a) it is given personally to the person, or
  - (b) it is delivered or sent by post to the residence or any place of business of the person, or
  - (c) it is served in any other manner authorised by sections 220 and 363 of the *Corporations Law*.

**67 False claims etc** (cf former 92B)

- (1) A person who makes a statement knowing that it is false or misleading in a material particular:
- (a) in a notice given by the person under this Division, or
  - (b) in a claim for compensation made by the person, or
  - (c) in a medical certificate or other document that relates to a claim for compensation, or
  - (d) when furnishing information to any person concerning a claim for compensation (whether the information is furnished by the person who made the claim or not),

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) This section does not apply to statements:
- (a) made in documents filed, or information furnished, in court proceedings, or
  - (b) made in any document or information in any case in which the person who made the statement did not know that the document or information was to be given, served or furnished in connection with a claim for compensation, or
  - (c) made before the commencement of this section.
- (3) This section applies to a statement even though it has been verified by statutory declaration.

**68 Order for refund of overpayments of compensation** (cf former s 92C)

- (1) This section applies to a payment to a person, purportedly made pursuant to an obligation arising under this Act, to which the person is not entitled under this Act. Such a payment is referred to in this section as an *overpayment*.
- (2) If a court before which proceedings for an offence under section 67 are taken against a person is satisfied on the balance of probabilities that the person has received an overpayment as a result or partly as a result of the act that is alleged to constitute the offence, the court may, on the application of the Authority (whether or not the person is convicted of the offence), order the person to refund the amount of the overpayment to the person who made the payment.
- (3) Any such refund may, in accordance with the terms of the court's order, be deducted from future payments of compensation, even if (in the case of weekly payments of compensation) the compensation is payable under a direction of a conciliator, but not (whatever the type of compensation) if it is payable under an award of the Compensation Court.
- (4) The refund of an overpayment cannot be ordered both under this section and under section 58 of the 1987 Act.
- (5) An order under this section is enforceable as a civil debt and may be recovered as such in any court of competent jurisdiction by the person to whom the order requires payment to be made.
- (6) A Local Court cannot order the payment of an amount under this section that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.
- (7) This section does not limit any other right of recovery that a person may have against another person in respect of any overpayment to that other person.

**69 Action by employer in respect of claims** (cf former s 93)

- (1) An employer (not being a self-insurer):

- (a) who receives a claim for compensation or any other documentation in respect of such a claim—must, within 7 days after receipt of the claim or documentation, forward it to the insurer who the employer believes is liable to indemnify the employer in respect of the claim, or
- (b) who receives a request from that insurer for further specified information in respect of the claim or documentation—must, within 7 days after receipt of the request, furnish that insurer with such of the specified information as is in the employer’s possession or reasonably obtainable by the employer, or
- (c) who has received compensation money under this Act from an insurer—must, as soon as practicable, pay the money to the person entitled to the compensation.

Maximum penalty: 50 penalty units.

- (2) A person is not guilty of an offence for a failure to comply with any provision of subsection (1) if there was a reasonable excuse for that failure.

## **Division 2 Administration by insurers of claims for compensation or damages**

### **70 Definitions** (cf former s 93A)

In this Division:

*claim* means a claim for compensation under this Act or any claim for damages to which a policy of insurance applies, whether the claim was made before or after the commencement of this Division.

*claimant* means a person who makes or is entitled to make a claim.

*insurer* means a licensed insurer under this Act or the 1987 Act, a former licensed insurer or a self-insurer.

**71 Duty of claimant to co-operate** (cf former s 93C)

- (1) A claimant must co-operate fully in respect of the claim with the insurer liable under the claim.
- (2) In particular, the claimant must comply with any reasonable request by the insurer to furnish specified information (in addition to the information furnished in the claim form).
- (3) The duty under this section applies only until court proceedings are commenced in respect of the claim but if the claimant fails without reasonable excuse to comply with this section, court proceedings cannot be commenced in respect of the claim while the failure continues.

**72 Inspection of relevant claims information etc** (cf former s 93D)

- (1) The Authority may allow:
  - (a) an insurer, or
  - (b) such other persons or bodies as the Authority thinks appropriate,

to inspect information held by the Authority relating to claims or any other information held by the Authority that is prescribed by the regulations.

- (2) Insurers are authorised to exchange information held by them relating to claims or any other information held by them that is prescribed by the regulations.

- (3) In this section:

*claims* includes claims for compensation under the 1987 Act or the former 1926 Act, claims for compensation or other benefits under any other Act and potential claims.

*insurer* includes the Insurance Ministerial Corporation and a licensed insurer under the *Motor Accidents Act 1988*.

**73 Insurer to provide copies of reports to worker** (cf former s 93E)

- (1) The regulations may make provision for or with respect to requiring an insurer to provide a worker, a worker's legal

representative or any other person, within the period required by the regulations, with a copy of a specified report, or a report of a specified kind, obtained by the insurer in relation to a claim by the worker.

- (2) Without limiting subsection (1), the kind of reports to which the regulations under this section can apply include investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.
- (3) If an insurer fails to provide a copy of a report as required by the regulations under this section:
  - (a) the insurer cannot use the report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
  - (b) the report is not admissible in proceedings on such a dispute before a conciliator or the Compensation Court.

**74 Insurers to give notice and reasons when liability disputed** (cf former s 94A)

- (1) If an insurer disputes liability in respect of a claim or any aspect of a claim, the insurer must give notice of the dispute to the claimant.
- (2) The notice must contain the following:
  - (a) a statement of the reason the insurer disputes liability,
  - (b) unless paragraph (c) applies, a statement to the effect that the worker can refer the dispute for conciliation by a conciliator,
  - (c) if the insurer has referred or proposes to refer the dispute for conciliation by a conciliator, a statement to that effect specifying the date of referral or proposed referral,
  - (d) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer,
  - (e) such other information as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers.

- (3) The regulations may make provision for the form of and for other information to be included in or to accompany a notice under this section.

The regulations may require an insurer to give a copy of a notice under this section to the claimant's employer.

- (4) Notice is not required to be given under this section with respect to a dispute if notice has been given under section 54 of the 1987 Act with respect to the dispute and that notice contained the statements and information that a notice under this section is required to contain.

**75 Report about delays and the incurring of unreasonable costs by insurers** (cf former s 94B)

- (1) A Judge or commissioner of the Compensation Court or a conciliator may make a report to the Authority on:
- (a) delays by insurers in dealing with claims under this Act, and
  - (b) cases of the unreasonable cessation of weekly payments of compensation to injured workers by insurers, and
  - (c) cases of unreasonable interference by insurers in the medical treatment of injured workers, and
  - (d) cases of insurers being responsible for costs in proceedings before the Compensation Court being unreasonably incurred, as provided by section 115, and
  - (e) cases of insurers making unreasonable determinations as to the kind of work that is suitable for an injured worker.
- (2) The Authority may take such action as it considers appropriate on the basis of any such report.

**Division 3 Conciliation of disputes by conciliator**

**76 Definition of "dispute"** (cf former s 95)

In this Division:

*Department* means the Department of Industrial Relations.

*dispute* means a dispute in connection with a claim for compensation between:

- (a) the person who makes the claim and the person on whom the claim is made (or the insurer on whom the claim has been served under section 66 (3) or to whom the claim has been forwarded under section 69), or
- (b) the person on whom the claim is made and that insurer.

**77 Principal Conciliator and other conciliators** (cf former s 96)

- (1) For the purposes of this Act, the Principal Conciliator is the person holding office as such in the Department under Part 2 of the *Public Sector Management Act 1988*.
- (2) For the purposes of this Act, a conciliator is:
  - (a) the Principal Conciliator, or
  - (b) a person holding office as such in the Department under Part 2 of the *Public Sector Management Act 1988*, or
  - (c) a person holding any other office in the Department that is designated by the Department Head as a conciliator for the purposes of this Act, or
  - (d) a person appointed under subsection (3).
- (3) The Governor may, on the recommendation of the Minister, appoint other suitably qualified persons to be conciliators for the purposes of this Act, to conciliate on disputes as and when required to do so by the Principal Conciliator. Schedule 6 has effect with respect to conciliators appointed under this subsection.
- (4) The Principal Conciliator can delegate to any conciliator any of the Principal Conciliator's functions under this Part, except this power of delegation.
- (5) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department in relation to the exercise of the functions of the Principal Conciliator and other conciliators, including the remuneration payable to them.

**78 Referral of disputes for conciliation** (cf former s 97)

- (1) Any party to a dispute may refer the dispute to the Principal Conciliator for conciliation by a conciliator.
- (2) The Compensation Court may at any stage of proceedings refer a matter in dispute between the parties to the Principal Conciliator for conciliation or further conciliation by a conciliator.
- (3) The Principal Conciliator is responsible for making arrangements as to the conciliator who is to conciliate in connection with a particular dispute or class of disputes.

**79 Conciliation of disputes** (cf former s 98)

- (1) A conciliator is to make all reasonable efforts to conciliate in connection with a dispute referred to him or her and to bring the parties to agreement having proper regard to relevant entitlements and liabilities under this Act.
- (2) The conciliator may do any one or more of the following things in connection with the dispute or any part of the dispute:
  - (a) make such recommendations to the parties to the dispute as he or she considers appropriate,
  - (b) in the case of a dispute to which Division 4 applies—give directions under that Division,
  - (c) decline to make any recommendation or give any direction.
- (3) A conciliator may conciliate with respect to a dispute (and make or give relevant recommendations or directions) even though the dispute is pending determination in the Compensation Court, unless the Court otherwise orders.

**80 Power of conciliator to require information** (cf former s 98A)

- (1) A conciliator may give a direction in writing to a party to a dispute referred to the conciliator requiring the party:
  - (a) to produce to the conciliator at a time and place specified in the direction, specified documents in the possession of the party. being documents that the conciliator considers relevant to the dispute concerned, or

- (b) to furnish specified information to the conciliator within a time specified in the direction, being information that the conciliator considers relevant to the dispute concerned.
- (2) If a dispute in respect of a claim for weekly payments of compensation has been referred for conciliation by the worker and the person on whom the claim was made has or claims to have a reasonable excuse for failing to commence the weekly payments (or the balance of weekly payments in dispute) within 21 days after the claim was duly made, the information that a conciliator can require that person to furnish includes details of that excuse.
- (3) A conciliator must not give a direction under this section to a worker unless the conciliator is satisfied that the worker will be represented by a legal practitioner at a conciliation conference on the dispute.
- (4) A direction under this section can extend to copies of documents lodged or produced in proceedings before the Compensation Court unless the Court otherwise orders in those proceedings.
- (5) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (6) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Compensation Court have the document or information admitted into evidence in the proceedings unless the Court otherwise orders in the special circumstances of the case. This subsection does not apply to a worker unless the worker was represented by a legal practitioner at the time of the failure.
- (7) The regulations may make provision for or with respect to any of the following matters:
  - (a) excepting specified kinds of information or documents from the operation of this section,

- (b) specifying cases and circumstances in which a conciliator is required to exercise the conciliator's powers under subsection (1).

**81 Power of conciliator to provide information and documents to a party** (cf former s 98AA)

- (1) When information or documents are furnished or produced to a conciliator by a party to a dispute (whether or not pursuant to a requirement under this Act), the conciliator may furnish or produce the information or documents to any other party to the dispute.
- (2) The regulations may make provision for or with respect to any of the following matters:
  - (a) specifying cases and circumstances in which a conciliator is required to exercise the conciliator's powers under subsection (1),
  - (b) excepting specified kinds of information or documents from the operation of this section,
  - (c) specifying circumstances in which information or documents furnished or produced to a conciliator may not be furnished or produced by the conciliator to another party to the dispute.

**82 Summons to appear at conciliation conference** (cf former s 988)

- (1) The Principal Conciliator may issue a summons requiring the attendance of a party to a dispute at a conciliation conference (as defined in section 90) on the dispute if the Principal Conciliator is satisfied that the party has failed without reasonable excuse to comply with a request by a conciliator to attend a conciliation conference on the dispute.
- (2) The Principal Conciliator must not issue a summons under this section requiring the attendance of a worker at a conciliation conference unless satisfied that the worker will be represented by a legal practitioner at the conciliation conference.
- (3) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.

Maximum penalty: 50 penalty units.

**83 Role for Conciliator in preparing for medical panel** (cf former s 98C)

- (1) When a dispute referred to a conciliator concerns compensation payable under section 66 of the 1987 Act and it appears to the conciliator that any issues in dispute may be appropriate for referral to a medical panel, the conciliator can take such steps as may be necessary or desirable for the purpose of ensuring that the matter is properly prepared for referral to a medical panel.
- (2) The conciliator can assist any party with respect to the making of an application under section 122 for referral of a medical dispute to a medical panel.
- (3) The conciliator can refer a completed application to the Principal Conciliator for forwarding on to the registrar of the Compensation Court, and any such application is taken to have been made by the party or parties on whose behalf it was forwarded to the registrar.

**84 Certificates as to conciliation of disputes** (cf former s 98D)

- (1) A conciliation certificate is a certificate referred to in subsection (5) that is issued by a conciliator with respect to the conciliation of a dispute free of charge to the parties to the dispute.
- (2) A conciliator is to issue a conciliation certificate for a dispute only when directed to do so by the Principal Conciliator.
- (3) The Principal Conciliator must direct the issue of a conciliation certificate as to the matters referred to in subsection (5) (a) and (b) if any person who is or has been a party to conciliation of the dispute applies for such a certificate.
- (4) The Principal Conciliator may, either on the recommendation of the conciliator or on his or her own initiative, refer a conciliation certificate to the registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned.
- (5) A conciliation certificate is a certificate as to such of the following matters as the Principal Conciliator directs:
  - (a) whether a dispute with respect to a claim under this Act is or has been the subject of conciliation under this Division.

- (b) the date of referral of the dispute to conciliation,
  - (c) the current position (as at the date of the certificate) with respect to conciliation of the dispute,
  - (d) any final outcome of the conciliation (including, if applicable, matters identified as remaining in dispute at the conclusion of the conciliation),
  - (e) if conciliation was unsuccessful (wholly or partially) the reasons for that,
  - (f) whether (and, if so, how) a particular party to the dispute has unreasonably failed to participate in conciliation.
- (6) A conciliation certificate is evidence of the matters that it certifies.

**85 Time within which disputes must be referred to conciliation** (cf former s 98E)

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a claim can be referred for conciliation under this Division.

**86 Agreements arising from conciliation** (cf former s 98F)

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliator may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement.
- (2) If the agreement relates to compensation under section 66 or 67 of the 1987 Act, the conciliator can refer the agreement to the Principal Conciliator for forwarding on to the Authority to be registered under section 66A of the 1987 Act. An application for registration of the agreement under section 66A of the 1987 Act is then taken to have been made by a party to the agreement.
- (3) If the agreement relates to other compensation, it may, with the consent of the parties be registered by the Principal Conciliator.

- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
- (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions,
  - (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work,
  - (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliator concerning any dispute or potential dispute,
  - (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliator,
  - (e) provisions designed to deal with any further disputes that might arise. so as to resolve them quickly while keeping costs to a minimum.

**87 Control and direction of conciliators** (cf former s 99)

- (1) A conciliator is not subject to control and direction by the Authority, the appropriate Department Head or any other public servant with regard to any of the decisions of the conciliator that affect the interests of the parties to the dispute and the Authority, appropriate Department Head or other public servant may not overrule or interfere with any such decision of the conciliator in respect of any such dispute.
- (2) Subject to subsection (1), conciliators are, in the exercise of their functions, subject to the general control and direction of the Principal Conciliator.
- (3) Subsection (1) does not prevent the making of arrangements for the training of conciliators, and does not prevent conciliators obtaining advice. to ensure consistently correct application of the provisions of this Act and the regulations.

- (4) Conciliators are subject to guidelines issued by the Principal Conciliator with respect to the procedures to be followed in the conciliation of disputes, being guidelines issued for the purpose of achieving consistency in the application of the provisions of this Act and the regulations. Any such guidelines are subject to the regulations under section 91.
- (5) This section does not affect the exercise of the functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to conciliators.

#### **88 Payment of costs of conciliation by employer**

- (1) In this section:  
*conciliation costs* means the following costs incurred in conciliating a dispute under this Division:
  - (a) the costs for legal services provided to a worker (or other claimant) in connection with any such conciliation,
  - (b) the costs of services provided to a worker (or other claimant) of an agent acting in that capacity in connection with any such conciliation.
- (2) The regulations may require all or any conciliation costs to be paid by the employer.

#### **89 Protection of conciliators** (cf former s 100)

- (1) A matter or thing done or omitted to be done by a conciliator in the exercise of the conciliator's functions does not, if the matter or thing was done or omitted in good faith, subject the conciliator personally to any action, liability, claim or demand.
- (2) A conciliator is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a conciliator (including as to matters in a conciliation certificate issued by a conciliator).

#### **90 Proceedings before conciliators** (cf former s 100A)

- (1) In this section, *conciliation conference* means any conference or other proceeding held with or before a conciliator:
  - (a) to resolve a dispute referred for conciliation, or

- (b) for the purpose of giving directions under Division 4 in connection with any such dispute.
- (2) A person who is a party to any dispute referred for conciliation is entitled to be represented by a legal practitioner, and by an agent of such a class as may be prescribed by the regulations. The conciliator may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
- (3) A party to a dispute at a conciliation conference is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to adequately communicate at the conciliation conference.
- (4) A conciliator must take into account any written submission prepared by a legal practitioner acting for a party to the dispute and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at a conciliation conference on the dispute).
- (5) A conciliator may, subject to any general directions by the Principal Conciliator:
  - (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliator considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and
  - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute.
- (6) If the conciliator is satisfied that sufficient information has been supplied to him or her in connection with a dispute the conciliator may exercise functions under this Division and Division 4:
  - (a) without holding any conciliation conference or formal hearing, and

- (b) without requesting submissions from the parties to the dispute.
- (7) A person who, in connection with a dispute referred for conciliation, makes a statement that the person knows to be false or misleading in a material particular is guilty of an offence.  
Maximum penalty: 50 penalty units.
- (8) In proceedings before the Compensation Court, evidence of a statement made during any conciliation conference is not admissible unless the person who made the statement agrees to the evidence being admitted.
- (9) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
  - (a) when the parties to the agreement otherwise agree, or
  - (b) in such circumstances as the regulations may specify.

**91 Regulations** (cf former s 100C)

The regulations may make provision for or with respect to the exercise of a conciliator's functions under this Division and Division 4 and, in particular, for or with respect to:

- (a) the manner in which disputes are to be referred for conciliation, and
- (b) excluding disputes (other than disputes to which Division 4 applies) from this Division.

**Division 4 Special provisions with respect to weekly payments of compensation**

**92 Definitions** (cf former s 101)

- (1) In this Division:  
*weekly payment*, in relation to compensation, includes a payment of compensation under section 25 (1) (b) of the 1987 Act with respect to a dependent child of a deceased worker.

- (2) In this Division, a reference to a person on whom a claim for a weekly payment of compensation is made includes a reference to an insurer on whom the claim has been served under section 66 (3) or to whom the claim has been forwarded under section 69.
- (3) In this Division, a reference to a dispute as to liability to make or continue to make weekly payments includes a reference to a dispute as to whether a worker is or should be treated as totally incapacitated for work or as to any other matter which affects the amount of the weekly payments.

**93 Claims for weekly payments—commencement of payments** (cf former s 102A)

- (1) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.
- (2) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply.

**Note.** If liability is disputed the worker can refer the dispute to conciliation. See section 101.
- (3) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (1) and (2) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends:
  - (a) 42 days after the claim for compensation is duly made, or
  - (b) when the person ceases to have that reasonable excuse, whichever is earlier.
- (4) An employer has such a reasonable excuse if:
  - (a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and

- (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
- (5) A person who has or anticipates having such a reasonable excuse must notify the claimant in writing as soon as practicable.
- (6) This section ceases to apply if the claim for compensation is withdrawn.

**94 Offences—commencement of weekly payments** (cf former s 103)

- (1) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person fails to commence those payments within the time required by section 93.
- (2) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person refers a matter which the person knows is not a genuine dispute for the purpose of delaying, without good cause, the commencement of weekly payments of compensation.

Maximum penalty: 50 penalty units.

**95 Direction by conciliator—commencement or continuation of weekly payments** (cf former s 104)

- (1) This section applies if a dispute relating to:
  - (a) a claim for weekly payments of compensation, or
  - (b) the continuation of weekly payments of compensation,has been referred for conciliation under Division 3, but a conciliator is unable to bring the parties to agreement by conciliation.
- (2) If the conciliator is satisfied that there is no genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliator may direct:
  - (a) the person on whom the claim for weekly payments was made, or
  - (b) the person who was making the weekly payments,to pay or continue to pay compensation in accordance with the direction.

- (3) There is considered to be no genuine dispute with respect to a liability if there is no sufficient basis or no reasonable basis for dispute (but this does not limit the circumstances in which there can be considered to be no genuine dispute).
- (4) If the conciliator is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliator must notify the person who made the claim for weekly payments, or who was receiving weekly payments, of that fact and that an application may be made to the Compensation Court to determine the matter.
- (5) A direction of the conciliator may be given subject to such conditions as are specified in the direction.

**96 Maximum period of weekly payments of compensation under direction of conciliator** (cf former s 105)

- (1) A direction (or further direction) of a conciliator under this Division may require a person to pay or continue to pay weekly payments for such period (not exceeding 12 weeks) as is specified in the direction.
- (2) Nothing in this section prevents a conciliator from giving a further direction (or further directions) for payment of compensation after the expiry of an earlier direction (except where the earlier direction is revoked by the Compensation Court constituted by a commissioner).
- (3) A conciliator may direct payment of weekly payments during a period that is before the direction is given, but that period must not exceed 10 weeks.

**97 Revocation of directions of conciliator** (cf former s 106)

- (1) A direction given by a conciliator under this Division may be revoked by the conciliator or by any other conciliator.
- (2) The Compensation Court constituted by a commissioner may, on the application of a person who is liable to make weekly payments in accordance with a direction of a conciliator under this Division, revoke the direction.

- (3) The applicant must serve a copy of the application on the Principal Conciliator within 7 days (or such other period as the rules of the Compensation Court may specify) after the application is made. The Compensation Court must not hear or determine the application until a copy of the application has been served on the Principal Conciliator.
- (4) If a direction is revoked, the obligation to make weekly payments under the direction ceases.
- (5) If the Compensation Court subsequently determines that a person is not liable under this Act to make the weekly payments of compensation that have been paid in accordance with a direction of a conciliator, the following provisions apply:
  - (a) the worker or other person who received those payments is not required to refund those payments unless the Court otherwise orders under paragraph (b),
  - (b) if the Court is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, it may order the worker or other person concerned to refund the whole or a specified part of those payments,
  - (c) the Court may order that the Uninsured Liability and Indemnity Scheme bear the liability for the refund of the whole or a specified part of those payments (unless it makes an order under paragraph (b) for a refund),
  - (d) the Court may (instead of making an order for a refund) order any other person whom it determines was liable for the whole or any part of those payments to reimburse the person who made those payments,
  - (e) those payments are to be excluded from any determination of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.
- (6) This section does not affect the recovery of weekly payments under section 58 of the 1987 Act.

**98 Offence—failure to comply with directions** (cf former s 106A)

A person who fails to comply with a direction of a conciliator under this Division is guilty of an offence.

Maximum penalty: 50 penalty units.

**99 Payment under direction etc not admission of liability** (cf former s 106B)

- (1) The fact that a person:
  - (a) pays or continues to pay compensation in accordance with a direction of a conciliator under this Division, or
  - (b) does not apply for a revocation of any such direction,is not an admission of liability by the person.
- (2) The grant or refusal by the Compensation Court of an application for revocation of a direction is not a finding as to liability in respect of the matter in dispute.

**100 Direction under section 95 not to be challenged on technicality** (cf former s 106C)

The validity of a direction under section 95 is not affected merely because the referral of the dispute to which the direction relates contained, or was done on a basis containing, a defect of manner or form.

**Division 5 Restrictions on commencing court proceedings**

**101 Restrictions on commencing court proceedings about weekly payments** (cf former s 106FB)

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 3 and either:
  - (a) the conciliator has issued a certificate of conciliation outcome that indicates that conciliation was wholly or partially unsuccessful, or
  - (b) the conciliator has given a notification under section 95 (4) in respect of the dispute, or
  - (c) a period of 35 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.

- (2) Further, if the conciliator has issued a certificate of conciliation outcome indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the liability has subsequently been referred for conciliation under Division 3 and either:
- (a) the conciliator has issued a further certificate of conciliation outcome, or
  - (b) the conciliator has given a notification under section 95 (4) in respect of the dispute, or
  - (c) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was subsequently referred for conciliation,

whichever happens first.

- (3) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 3 until:
- (a) the person on whom the claim is made has disputed liability to make the payments, or
  - (b) the time within which the person on whom the claim is made is required under section 93 to commence those payments (including any extension under section 93 (3)) has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),

whichever happens first.

**Note.** Section 93 allows up to 42 days for the commencement of weekly payments of compensation.

- (4) A worker cannot commence court proceedings in respect of related compensation until this section allows the commencement of proceedings in respect of the weekly payments of compensation concerned. *Related compensation* is compensation under Division 3 of Part 3 of the 1987 Act that relates to the incapacity for work to which the weekly payments of compensation relate.

- (5) This section does not prevent the commencement of court proceedings in any of the following circumstances:
- (a) if the proceedings concern an application for a determination under section 53 of the 1987 Act,
  - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
  - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act,
  - (d) any circumstances prescribed by the regulations.

**102 Restrictions on commencing court proceedings for lump sum Compensation** (cf former s 106FC)

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 of the 1987 Act unless a dispute about that compensation has been referred for conciliation under Division 3 and either:
- (a) the conciliator has issued a certificate of conciliation outcome that indicates that conciliation was wholly or partially unsuccessful, or
  - (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- whichever happens first.
- (2) Further, if the conciliator has issued a certificate of conciliation outcome indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the compensation has subsequently been referred for conciliation under Division 3 and either:
- (a) the conciliator has issued a further certificate of conciliation outcome, or
  - (b) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was subsequently referred for conciliation.

whichever happens first.

- (3) A worker cannot refer a dispute about compensation under section 66 of the 1987 Act for conciliation under Division 3 until:
- (a) 12 weeks after the claim for the compensation is duly made, or
  - (b) the person on whom the claim is made disputes liability to pay the compensation,
- whichever happens first.
- (4) If the person on whom a claim for compensation under section 66 of the 1987 Act is made has, within 12 weeks after that claim is duly made, duly applied under section 122 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) or (2) would otherwise prevent commencement of proceedings at that time.
- (5) A worker cannot commence court proceedings in respect of compensation under section 67 of the 1987 Act for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 of the 1987 Act for the loss or further loss. **Related compensation** is compensation under Division 3 of Part 3 of the 1987 Act that relates to that loss, further loss or pain and suffering.
- (6) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66 of the 1987 Act, the proceedings are to be adjourned until:
- (a) 12 weeks after the claim was amended, or
  - (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates,
- whichever is later.
- (7) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (6).

- (8) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 of the 1987 Act unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3) of the 1987 Act.
- (9) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 of the 1987 Act without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim.
- (10) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations.

**103 Restrictions on commencing court proceedings about medical, hospital and other expenses** (cf former s 106FD)

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) or Division 5 (Compensation for property damage) of Part 3 of the 1987 Act unless a dispute about that compensation has been referred for conciliation under Division 3 and either:
  - (a) the conciliator has issued a certificate of conciliation outcome that indicates that conciliation was wholly or partially unsuccessful, or
  - (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.
- (2) Further, if the conciliator has issued a certificate of conciliation outcome indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the compensation has subsequently been referred for conciliation under Division 3 and either:

- (a) the conciliator has issued a further certificate of conciliation outcome, or
- (b) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was subsequently referred for conciliation,

whichever happens first.

- (3) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 of the 1987 Act for conciliation under Division 3 until:
  - (a) 28 days after the claim for compensation is duly made, or
  - (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.

- (4) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 of the 1987 Act and are commenced in compliance with section 101 or 102 (whichever is appropriate).
- (5) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.

**104 Court rules and regulations providing for evidence of compliance** (cf former s 106FE)

The rules of the Compensation Court or the regulations may make provision for or with respect to:

- (a) requiring an application commencing proceedings in the Compensation Court to which section 101 or 102 applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and

- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

## **Division 6 Proceedings before the Compensation Court**

### **105 Jurisdiction of Court** (cf former s 107)

Subject to this Act and the *Compensation Court Act 1984*, the Compensation Court has exclusive jurisdiction to examine, hear and determine all matters arising under this Act (except Part 5 of the 1987 Act).

### **106 Authority may intervene in proceedings** (cf former s 107A)

- (1) The Authority has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority may, for that purpose, be represented by a legal practitioner or an officer of the Authority or by any other person.
- (3) In any such proceedings the Authority may apply for an order for which any party may apply in those proceedings.

### **107 Applications to be heard together** (cf former s 108)

- (1) A person who has applied to the Compensation Court for a determination of a claim for compensation under this Act against 2 or more persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any of the applications heard together.
- (2) If more than one employer or more than one insurer may be involved in an application for compensation or any other matter under this Act, the regulations or the rules of the Compensation Court may make provision for or with respect to requiring one of those insurers or one of those employers, the Authority or some other person, to represent the employers or insurers in any proceedings relating to the application.

**108 Interim awards** (cf former s 112)

- (1) This section applies where:
- (a) there is a dispute between employers or insurers, between a self-insurer and an insurer or between an employer and an insurer, as to whether incapacity or death resulted from more than one injury, or
  - (b) there is a dispute between employers or insurers, or between a self-insurer and an insurer, as to the apportionment between them of liability as referred to in section 22 (Compensation to be apportioned where more than one injury etc) of the 1987 Act, or
  - (c) an employer has at any time or from time to time been a self-insurer under this Act, the 1987 Act or the former 1926 Act and at another time or at other times has obtained a policy of insurance from an insurer, and a dispute arises as to whether an insurer is liable to indemnify the employer in respect of compensation payable under this Act for a particular injury, or
  - (d) an insurer is, pursuant to section 224 (2) (b), joined as a party to proceedings, or
  - (e) a person is, by the operation of this Act, deemed to be a worker employed by more than one principal or other person, and there is a dispute as to which principal or other person is liable to pay compensation under this Act.
- (2) Where this section applies, the Compensation Court may:
- (a) if the Compensation Court is satisfied that compensation is payable (but is not yet able to finally determine that compensation is payable, the amount of the compensation, the appropriate apportionment of liability for the compensation or the person liable to pay the compensation), make such interim awards as the Compensation Court thinks fit:
    - (i) for compensation by an insurer or self-insurer, or
    - (ii) for indemnity by an insurer, or
    - (iii) for payment under the Uninsured Liability and Indemnity Scheme.

- and make such interim orders as the Compensation Court thinks fit for contribution on the part of an insurer, employer or principal or other person or under the Uninsured Liability and Indemnity Scheme, and
- (b) make such final awards and orders as the Compensation Court thinks fit with respect to any of the matters the subject of an interim award or order under paragraph (a), and
  - (c) if the Compensation Court makes a final award or order, make such orders as the Compensation Court thinks fit with respect to adjustments to be made between persons against whom orders have been made under paragraphs (a) and (b) or between any such persons and the Uninsured Liability and Indemnity Scheme.
- (3) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court:
- (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and
  - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (4) This section does not affect the recovery of weekly payments under section 58 of the 1987 Act.

**109 Interest before order for payment** (cf former s 113)

- (1) In any proceedings in the Compensation Court, the Court may order that there is to be included, in any sum to be paid, interest at such rate as it thinks fit on the whole or any part of the sum for the whole or any part of the period before the sum is payable, subject to the limitations imposed by this section.
- (2) Interest cannot be ordered under this section:
  - (a) on any compensation payable under Division 4 of Part 3 of the 1987 Act, or
  - (b) on any compensation payable under this Act for any period before a claim for the compensation was duly made, or

- (c) on any compensation payable under this Act for any period during which proceedings before the Court were adjourned on the application of the claimant for the compensation or pursuant to section 102.
- (3) This section does not:
- (a) authorise the giving of interest upon interest, or
  - (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

**110 Interest after order for payment** (cf former s 114)

- (1) Unless the Compensation Court orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum ordered to be paid by the Court as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum ordered to be paid:
  - (a) is to be calculated as from the date when the order was made or from such later date as the Court in any particular case fixes, and
  - (b) is to be calculated at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and
  - (c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest.
- (3) Despite subsections (1) and (2), where:
  - (a) the amount of any sum ordered to be paid (excluding the amount of costs to be assessed) is paid in full within 21 days after the sum becomes payable, or
  - (b) the amount of costs assessed is paid in full within 21 days after that amount is assessed, interest is not payable on the amount so paid. unless the Court otherwise orders.

**111 Interest on agreed payment of lump sum compensation** (cf former s 115)

- (1) Unless the Compensation Court orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum agreed to be paid as compensation under section 66 or 67 of the 1987 Act as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum so agreed to be paid:
  - (a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or (if the agreement does not so provide) the date that is 21 days after the date the agreement was made, and
  - (b) is to be calculated at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and
  - (c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

**112 Costs** (cf former s 116)

- (1) In this section, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.
- (2) Subject to this Act and the regulations and the rules of the Compensation Court and subject to any other Act:
  - (a) costs in or in relation to any proceedings are in the discretion of the Court, and
  - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings, and
  - (c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* or on an indemnity basis.
- (3) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation was frivolous or vexatious, fraudulent or made without proper justification.

- (4) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application.
- (5) If a person claiming compensation appeals under section 34A (Appeal to Judge from commissioner) of the *Compensation Court Act 1984*, costs in or in relation to the appeal are to be paid by the unsuccessful party unless the Compensation Court is of the opinion that such a requirement would be unjust in the circumstances of the case.
- (6) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under this Act if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker.
- (7) An order of the Court for payment of costs may include:
  - (a) the costs actually incurred or to be incurred by a person claiming compensation, and
  - (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
  - (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 3), and
  - (d) costs incidental to an application for referral of a medical dispute under section 121 or 122, and
  - (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act, and
  - (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.

- (8) In this section:

***application for compensation*** includes any proceedings in connection with an application for compensation.

***compensation*** means compensation under this Act.

**113 Regulations fixing maximum costs recoverable by legal practitioners or agents (cf former s 117)**

- (1) The regulations may make provision for or with respect to the following:
  - (a) fixing maximum costs for legal services or agent services provided to a worker (or other claimant), an employer or an insurer in any workers compensation matter,
  - (b) fixing maximum costs for matters that are not legal services or agent services but are related to proceedings on a workers compensation matter (for example, expenses for witnesses or medical reports (including certificates)).
- (2) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section. An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (3) To the extent that the regulations so provide, a legal practitioner or agent is not entitled to be paid or recover costs of the kind referred to in subsection (1) (b) that are incurred in connection with the obtaining of any medical report (including any certificate) or opinion for use for any of the following purposes and which is not used for the purpose for which it was obtained:
  - (a) for use in the making of a claim for compensation under this Act.
  - (b) for use in negotiations or conciliation in respect of a claim for compensation,
  - (c) for consideration by a medical panel or medical referee under section 122 or by a medical specialist under section 121.
  - (d) for use in court proceedings.
- (4) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

(5) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 1987* (in particular section 196 of that Act) and the regulations under that Act. An assessment under Division 6 of Part 11 of that Act of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.

(6) Expressions used in this section have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*, except as provided by this section.

(7) In this section:

**agent** means a person who acts as agent for a person in connection with a claim for compensation under this Act.

**agent service** means any service performed by a person in the person's capacity as an agent.

**costs** includes:

- (a) costs actually incurred or to be incurred by a person claiming compensation, and
- (b) if liability for a claim for compensation is admitted without recourse to the Compensation Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
- (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 3), and
- (d) costs incidental to an application for referral of a medical dispute under section 121 or 122, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act, and
- (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.

**114 Maximum fees recoverable by medical practitioners for medico-legal services** (cf former s 118)

- (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by medical practitioners of the following services:

- (a) provision of any medical report (including any certificate) for use in court proceedings in connection with a claim for compensation under this Act,
  - (b) appearance as a witness in court proceedings on a claim for compensation under this Act.
- (2) A medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.
- (3) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

**115 Limit on recovery of costs unreasonably incurred** (cf former s 119)

- (1) If the Compensation Court is satisfied that any costs in proceedings under this Act before the Court were unreasonably incurred, the Court is to order that those costs are to be treated as unreasonably incurred for the purposes of this section and the Court is not to make an order for payment of those costs by any other party to the proceedings.
- (2) Costs incurred by a party to proceedings are considered to have been unreasonably incurred for the purposes of this section only if they were incurred by the party:
- (a) after a reasonable offer of settlement in the proceedings was made to the party, or
  - (b) after the party has failed without reasonable excuse to comply with a written request from another party to the proceedings to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or
  - (c) after the party has unreasonably failed to participate in a conciliation of the dispute with which the proceedings are concerned and the Court is of the opinion that the failure has resulted in unnecessary litigation, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 128 (2)) and the Court is of the opinion that the application was frivolous or vexatious.
- (3) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 84 certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate.
- (4) A legal practitioner representing a party to proceedings in the Compensation Court is not entitled to recover from the party any costs that the Court has ordered are to be treated as unreasonably incurred.
- (5) The Court may by order exempt any costs or a proportion of any costs from the operation of subsection (4) if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.

**116 Solicitor/client costs in compensation proceedings** (cf former s 122)

- (1) The legal representative or agent of a person claiming compensation under this Act is not entitled:
  - (a) to recover from the person any costs in respect of the claim, or
  - (b) to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation,

unless those costs are awarded by the Compensation Court.

- (2) Any such award may be made on the application either of the person claiming compensation or the person's legal representative or agent.

- (3) Any sum so awarded is subject to assessment in accordance with Division 6 of Part 11 of the *Legal Profession Act 1987*.
- (4) This section prevails to the extent of any inconsistency with Part 11 of the *Legal Profession Act 1987*.
- (5) A person must not:
  - (a) claim a lien that the person is not entitled to claim because of subsection (1), or
  - (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of subsection (1).

Maximum penalty: 50 penalty units.

- (6) A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of subsection (1) is entitled to recover the amount paid as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.
- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

**117 Admissibility of statements by injured workers** (cf former s 124)

- (1) If a worker after receiving an injury makes any statement in writing in relation to that injury to the worker's employer or to an insurer or to any person acting on behalf of the employer or insurer, the statement may not be admitted in evidence if tendered or used by the employer or insurer in any proceedings before the Compensation Court unless the employer or insurer has, at least 14 days before the hearing, furnished to the worker or to the legal representative or agent of the worker a copy in writing of the statement.
- (2) In proceedings for revocation of a direction given by a conciliator, the Compensation Court may dispense with the requirement that a copy of the statement be furnished at least 14 days before the hearing or may shorten that period.

(3) In this section:

*employer*, in relation to a worker, includes a principal referred to in section 20 of the 1987 Act who is liable to pay compensation to the worker.

*insurer* means licensed insurer under this Act or the 1987 Act or former licensed insurer.

**118 Registration of certain persons providing interpreting etc services** (cf former s 125)

- (1) On and from the commencement date prescribed by the regulations for the purposes of this section, a person who:
- (a) for fee or reward, acts as interpreter for a worker in connection with a claim for compensation under this Act, whether or not the claim is eventually made and whether or not the person also provides a related service, or
  - (b) holds himself or herself out as being available to do so,
- is guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units if the person is not registered under this section.
- (2) A person who acts as interpreter for a worker is taken to act for fee or reward if the fee or reward:
- (a) is payable or given by some person on behalf of the worker, or
  - (b) is payable or given to some person who employs, or is nominated by, the person acting as interpreter, or
  - (c) is payable or given for any related service provided to the worker by the person acting as interpreter.
- (3) This section does not apply to a person who acts as interpreter:
- (a) if the person is a solicitor, barrister, medical practitioner or other person prescribed by the regulations, or
  - (b) if the person is engaged by, and the person's services are paid for by:
    - (i) the Authority, or
    - (ii) the Ethnic Affairs Commission, or

- (iii) an employer or insurer, or
  - (iv) an industrial union of employees or employers, or
  - (v) any other person or body prescribed by the regulations.
- (4) The regulations may make provision for or with respect to:
  - (a) applications for registration under this section and the disposal of any such applications, and
  - (b) the fees to be paid by applicants for registration, and
  - (c) the qualifications, experience, fitness and character of applicants for registration, and
  - (d) the duration of registration, and
  - (e) the conditions to which any registration is subject (including conditions regulating any related service provided by the registered person), and
  - (f) the cancellation or suspension of registration, and
  - (g) any other matter in connection with registration under this section.
- (5) The regulations under this section are to provide for a right of appeal against a decision of the Authority:
  - (a) to refuse to register a person under this section, or
  - (b) to cancel or suspend any such registration, or
  - (c) to attach any condition to any such registration.
- (6) The regulations may make provision for or with respect to the maximum amount that may be charged by a person who is registered or required to be registered under this section:
  - (a) for acting as interpreter as referred to in subsection (1), and
  - (b) for any related service provided to the worker concerned.
- (7) A person who acts as interpreter in contravention of subsection (1) is not entitled to charge or recover any fee for so acting or for any related service provided to the worker concerned.

- (8) A reference in this section:
- (a) to a person acting as interpreter includes a reference to a person who translates documents into another language, or
  - (b) to a related service includes a reference to the services of an agent or adviser.

## **Division 7 Medical examinations and disputes**

### **119 Medical examination of workers at direction of employer (cf formers129)**

- (1) A worker who has given notice of an injury must, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
- (2) A worker receiving weekly payments of compensation under this Act must, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
- (3) If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination:
  - (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to the weekly payments,is suspended until the examination has taken place.
- (4) A worker must not be required to submit himself or herself for examination by a medical practitioner under this section otherwise than in accordance with the regulations or at more frequent intervals than may be prescribed by the regulations.
- (5) The regulations may make provision for or with respect to requiring an employer or insurer to provide a worker, a worker's legal representative or any other person, within the period

required by the regulations, with a copy of any medical opinion or report furnished to the employer or insurer by a medical practitioner in connection with an examination of the worker pursuant to a requirement under this section.

- (6) If an employer or insurer fails to provide a copy of an opinion or report as required by the regulations under subsection (5):
  - (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the opinion or report for any other purpose prescribed by the regulations for the purposes of this section, and
  - (b) the opinion or report is not admissible in proceedings on such a dispute before a conciliator or the Compensation court.

**120 Medical examination of worker at direction of Court etc** (cf former s 130)

- (1) The Compensation Court, a conciliator or the Authority may, at any time or from time to time, require any worker:
  - (a) who claims compensation under this Act, or
  - (b) who is in receipt of weekly payments of compensation under this Act,

to submit himself or herself for examination by a medical referee or medical panel on a date and at a place arranged by the registrar of the Compensation Court.

- (2) If a worker refuses to submit himself or herself for any such examination or in any way obstructs the examination:
  - (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to weekly payments,is suspended until the examination has taken place.

## 121 Assessment of medical disputes by approved medical specialists

- (1) In this section:

***approved medical specialist*** means a medical practitioner who is on a list of medical practitioners approved from time to time by the Advisory Council as approved medical specialists for the purposes of this section.

***medical dispute*** means a disagreement between a worker and the employer as to:

- (a) the worker's condition, or
- (b) the worker's fitness for employment,

but does not include a medical dispute concerning the extent of a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.

**Note.** See section 72 of the 1987 Act which requires a dispute concerning the extent of any such deafness to be referred to a medical panel under section 122.

- (2) A worker or employer can refer a medical dispute for assessment to:
- (a) an approved medical specialist agreed to by the worker and employer,
  - (b) an approved medical specialist nominated by the Principal Conciliator if the worker and employer are not able to agree on the matter.

The worker and the employer can agree that some or all of the approved medical specialist's findings on the dispute are to be binding on them for the purposes of the worker's claim for compensation.

- (3) The approved medical specialist is to make an assessment of a dispute referred under this section and:
- (a) make findings on the dispute as required by the terms of reference, and
  - (b) give a certificate as to those findings.

- (4) The certificate is, in any proceedings:
  - (a) conclusive evidence of those matters certified on which the parties agreed to be bound, and
  - (b) prima facie evidence of any other matters certified.
- (5) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (6) and (7).
- (6) If a medical dispute is referred under this section after the commencement of court proceedings in respect of the compensation to which the referral relates, subsection (4) (a) does not apply to any certificate issued as a result of the referral unless the worker and the employer agree that subsection (4) (a) is to apply.
- (7) Once the hearing (or part of the hearing) of court proceedings that deals with a medical dispute has commenced, a medical dispute relating to the proceedings may not be referred under this section unless the other party consents or the court grants leave.
- (8) An approved medical specialist is competent to give evidence as to matters in a certificate given by the specialist under this section. but the specialist may not be compelled to give any such evidence.
- (9) A worker or employer who is a party to an agreement under this section may apply to the Authority for registration of the agreement and any certificate given under this section, and the Authority is to register the agreement and certificate. The Authority is to provide the Compensation Court with a copy of the agreements and certificates that are registered by the Authority under this section.
- (10) The regulations may make provision for or with respect to the approval of medical practitioners for the purposes of this section and the referral of medical disputes to approved medical specialists for the purposes of this section.

- (11) An approved medical specialist may:
- (a) consult with any medical practitioner who is treating or has treated the worker in connection with the worker's claim, and
  - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of the fair and proper consideration of the matter.
- (12) If a worker refuses to submit himself or herself for examination by the approved medical specialist to whom the medical dispute has been referred if required to do so, or in any way obstructs the examination:
- (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.
- (13) The fees of the approved medical specialist to whom a medical dispute is referred under this section are to be paid by the employer.

**122 Referral of medical disputes to referee or panel on application of worker or employer** (cf former s 131)

- (1) In this section:
- medical dispute* means a disagreement between a worker and the employer as to:
- (a) the worker's condition, or
  - (b) the worker's fitness for employment.
- (2) If there is a medical dispute, the registrar of the Compensation Court must, on the application of either the worker or the employer, refer the medical dispute to a medical panel or (if subsection (3) permits) to a medical referee, but only if:

- (a) the worker has submitted himself or herself for examination by a medical practitioner in accordance with a requirement of the employer under section 119 or has been examined by a medical practitioner selected by the worker, and
  - (b) the employer or worker (as the case may be) has furnished the other with a copy of the medical practitioner's report of the examination (being a report relevant to the medical dispute).
- (3) A medical dispute can be referred under this section to a medical referee only if the registrar is satisfied that it is not reasonably practicable in the circumstances to constitute a medical panel. A medical dispute must not in any circumstances be referred to a medical referee if the dispute concerns the extent of a loss, or a further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.
- (4) The registrar of the Compensation Court may refuse to refer any such medical dispute to a medical referee or medical panel if the medical practitioner's report was not furnished to the other party within 30 days (or such longer period as the worker and the employer may agree) after it was received from the medical practitioner or within such longer period as the registrar of the Compensation Court, in the circumstances of the case, considers justified.
- (5) The medical referee or medical panel to whom a medical dispute is so referred is to give a certificate as to:
  - (a) the worker's condition, or
  - (b) the worker's fitness for employment (specifying, where necessary, the kind of employment for which the worker is fit).
- (6) Any such certificate of a medical panel is conclusive evidence as to the matters certified, except in relation to the following:
  - (a) the fitness of the worker for employment,
  - (b) the question of whether any of the following losses or impairments exist and, if so, the nature and extent of the loss or impairment:

- (i) the loss of the sense of taste or smell,
  - (ii) the loss of sexual organs,
  - (iii) permanent brain damage,
  - (iv) the impairment of the back, neck or pelvis,
  - (v) any loss or impairment added to the Table to Division 4 of Part 3 of the 1987 Act by the regulations.
- (7) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (8) and (9).
- (8) If an application for referral of a medical dispute is made under this section after the commencement of court proceedings in respect of the compensation to which the application relates, subsection (4) does not apply to any certificate issued on the application unless:
- (a) the dispute concerns the extent of a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin, or
  - (b) the dispute concerns compensation that is the subject of proceedings by reason of the amendment of a claim as referred to in section 102 (5), or
  - (c) the worker and the employer agree that subsection (6) is to apply.
- (9) Once the hearing (or part of the hearing) of court proceedings that deals with a medical dispute has commenced, an application may not be made under this section in respect of the medical dispute concerned unless the other party consents or the Compensation Court grants leave.
- (10) A medical panel or medical referee may call for the production of such medical records (including X-rays and the results of other tests) and other information as the panel or referee considers necessary or desirable for the purposes of the fair and proper consideration of the matter.

- (11) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical referee or medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
- (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.
- (12) If there is a disagreement between a worker and the employer as to whether or to what extent the incapacity of the worker is due to the injury, this section applies (subject to the regulations) as if the question were one as to the condition of the worker.
- (13) The rules of the Compensation Court may make provision for or with respect to:
- (a) applications and certificates under this section, and
  - (b) the application of this section for the purposes of subsection (12).

**123 Reference of medical disputes by Principal Conciliator** (cf former s 1318)

- (1) When a medical dispute (as defined in section 122) is the subject of conciliation by a conciliator and concerns the compensation payable under section 66 of the 1987 Act, the Principal Conciliator may request the registrar of the Compensation Court to refer the dispute to a medical panel and the registrar is to refer the dispute accordingly.
- (2) The medical panel to whom a medical dispute is so referred is to give a certificate as to the worker's condition, in accordance with the terms of reference of the dispute.
- (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.

- (4) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
- (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.

**124 Submission by Court, conciliator etc of matters to medical referee or panel for report** (cf former s 132 and s 20 (1) (c) Compensation Court Act 1984)

- (1) The Compensation Court or a conciliator may refer to a medical referee or medical panel for report any matter which appears to be relevant to any question arising in proceedings before the Compensation Court or the conciliator.
- (2) The Authority may refer to a medical referee or medical panel for report any matter which appears to be relevant to the exercise of its functions.
- (3) A medical referee or medical panel is to submit a report to the Compensation Court or the conciliator or the Authority in accordance with the terms of a reference under this section.

**125 Reimbursement of worker for loss of wages and expenses associated with medical examination** (cf former s 133)

- (1) If a worker is required to submit himself or herself for examination pursuant to this Division, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided:
  - (a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and
  - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.

- (2) A worker required to submit himself or herself for examination by a medical referee or medical panel is not entitled to recover any amount if:
  - (a) the matter was referred on the application of the worker, and
  - (b) the Compensation Court finds that the application was unreasonable or unnecessary.
- (3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.
- (4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of section 64 of the 1987 Act.
- (5) A worker who agrees under section 121 to submit himself or herself for examination by a medical specialist is taken for the purposes of this section (except subsection (2)) to be required to submit himself or herself for examination pursuant to this Division.

**126 Copies of certain medical reports to be supplied to worker**  
(cf former s 134)

- (1) In this section:

*insurer* means a licensed insurer under this Act or the 1987 Act or a former licensed insurer.

*medical report*, in relation to an injured worker, means a written report by:

  - (a) a medical practitioner by whom the worker has been referred to another medical practitioner for treatment or tests related to the injury. or
  - (b) a medical practitioner who has treated the injury, or

- (c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the injury.
- (2) If:
- (a) an employer or insurer has in his or her possession a copy of a medical report relating to an injured worker, and
  - (b) the worker's claim is disputed,
- the employer or insurer must, at the request of the worker and within the period of 10 days after that request, supply the worker with a copy of the report.

Maximum penalty: 20 penalty units.

**127 Admissibility of medical reports** (cf former 135)

- (1) A medical report is admissible in evidence in proceedings before the Compensation Court.
- (2) Subsection (1) is subject to any provision of the rules of the Compensation Court or the regulations relating to the giving of notice of the admission in evidence of the medical report.
- (3) A medical practitioner whose medical report is, pursuant to subsection (1), admissible in evidence, may be required, in accordance with the rules of the Compensation Court or the regulations, to attend and be cross-examined on the contents of the report.
- (4) In proceedings relating to the making of an interim award, a medical practitioner whose medical report is, pursuant to subsection (1), admissible in evidence may not be required to attend and be cross-examined on the contents of the report without the leave of the Compensation Court given in any case where the Court is satisfied there is a real issue as to whether the worker is entitled to receive compensation from any of the parties.
- (5) In this section, *medical report* means any written report of a medical practitioner relating to the worker. but does not include a certificate or report to which section 121 or 128 applies.

**128 Admissibility and evidentiary value of certificates and reports of medical referees and panels** (cf former s 136 and s 20 (2) Compensation Court Act 1984)

- (1) A certificate or report given by a medical referee or medical panel is admissible in evidence in any proceedings before the Compensation Court.
- (2) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report.
- (3) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.
- (4) A medical referee is competent to give evidence as to matters in a certificate or report given by the referee or by a medical panel of which the referee was a member, but the referee may not be compelled to give any such evidence.

**129 Power to correct mistakes in medical reports or certificates** (cf former s 136A)

- (1) A medical referee or medical panel may, of the referee's or panel's own motion or on the application of a party to proceedings (and without formally reconvening), correct a certificate or report given by the referee or panel if it contains:
  - (a) a clerical mistake, or
  - (b) an error arising from an accidental slip or omission, or
  - (c) a material miscalculation of figures or material mistake in the description of any person, thing or matter referred to in the certificate or report. or
  - (d) a defect of form.

- (2) This section applies to a medical certificate given by a medical specialist pursuant to section 121 as if the medical specialist were a medical referee.

**130 Rules of Court and regulations with respect to medical evidence** (cf former s 137)

The rules of the Compensation Court and the regulations may make provision for or with respect to:

- (a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence), and
- (b) the disclosure of medical reports (including X-rays and the results of other tests) to medical referees and medical panels (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report), and
- (c) limiting the number of medical witnesses that may be called by any party, and
- (d) the manner of referring matters to a medical referee or medical panel for report.

**Division 8 Prohibited conduct relating to touting for claims**

**131 Definitions** (cf former s 148B)

- (1) In this Division:

*agent* means a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a claim, but does not (unless the regulations otherwise provide) include a legal practitioner.

*claim* means a claim for compensation under this Act.

*lawyer* means a legal practitioner.

*prohibited conduct* has the meaning given by section 132.

*protected claim* means:

- (a) a claim under section 66 of the 1987 Act for loss of hearing, and
  - (b) a claim for the cost of provision of a hearing aid, and
  - (c) any other claim that is declared by the regulations to be a protected claim for the purposes of this section.
- (2) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 132 does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct.
- (3) Each of the following activities is considered to constitute acting as agent for a person in connection with a claim:
- (a) advising the person with respect to the making of a claim,
  - (b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim,
  - (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,
  - (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim,
  - (e) any other activity prescribed by the regulations.
- (4) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division.

**132 Prohibited conduct by agents** (cf former s 148C)

- (1) The following conduct by an agent is prohibited conduct for the purposes of this Division:
- (a) making a statement to a person, knowing that the statement is false or misleading in a material particular, for the purpose of encouraging the person or any other person to make a protected claim and to use (in connection with the

- protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
- (b) using information obtained by the agent in connection with a claim to contact any other person for the purpose of encouraging that other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
  - (c) seeking to obtain information from a client of the agent for the purpose of using that information as described in paragraph (b),
  - (d) inducing or attempting to induce a client of the agent to encourage any other person to make a claim (whether or not it is a protected claim) and to use (in connection with the claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the claim,
  - (e) making any unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client of the agent, for the purpose of encouraging the person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
  - (f) such other conduct as may be prescribed by the regulations as prohibited conduct for the purposes of this section.
- (2) The regulations can specify circumstances in which conduct that would otherwise be prohibited conduct under subsection (1) is not to be regarded as prohibited conduct for the purposes of this Division.
  - (3) For the purposes of this Division, any conduct engaged in by a person on behalf of an agent, or that an agent has caused or procured the person to engage in, is taken to have been engaged in by the agent.

**133 Offence of engaging in prohibited conduct** (cf former s 148D)

An agent who engages in prohibited conduct is guilty of an offence.

Maximum penalty: 50 penalty units.

**134 Consequences of prohibited conduct for recovery of fees by agents** (cf former s 148E)

- (1) An agent is not entitled to recover from a person any fees, costs or other charges that would otherwise be payable by the person in connection with services made use of by the person if the services were made use of as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.
- (2) If prohibited conduct engaged in by an agent involved encouraging a person to make use of services and the person makes use of those services after the conduct is engaged in, it is to be presumed for the purposes of this section that the services were made use of as a result of that prohibited conduct, unless the agent concerned establishes otherwise.
- (3) If the services of an agent were made use of as a result of prohibited conduct engaged in by the agent in connection with a claim under section 66 of the 1987 Act for loss of hearing, it is to be presumed for the purposes of this section that any services of the agent made use of in connection with a subsequent claim for further loss of hearing made by the same worker (whether or not made against the same employer) were made use of as a result of prohibited conduct engaged in by the agent, unless the agent concerned establishes otherwise.
- (4) A person who has paid any amount in respect of fees, costs or other charges to an agent that the agent would not have been entitled to recover because of this section is entitled to recover the amount from the agent as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.

**135 Consequences of prohibited conduct for lawyers** (cf former s 148F)

- (1) A lawyer who acts for a person on a claim must not include in any bill given to the person, and must not otherwise seek to recover from the person, any amount by way of disbursements for fees paid to an agent in connection with referral of the person to the lawyer by the agent if the lawyer knows or has reasonable cause to suspect that the agent engaged in prohibited conduct that involved encouraging the person to make the claim, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

Maximum penalty: 50 penalty units.

- (2) A lawyer who acts for a person on a claim is not entitled to recover from any person any amount by way of disbursements for fees paid to an agent in connection with the claim if the claim was made as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.
- (3) If prohibited conduct engaged in by an agent involved encouraging a person to make a claim and the person makes a claim after the conduct is engaged in, it is to be presumed for the purposes of subsection (2) that the claim was made as a result of that prohibited conduct unless the lawyer establishes otherwise.
- (4) If a claim under section 66 of the 1987 Act for loss of hearing was made as a result of prohibited conduct engaged in by an agent, it is to be presumed for the purposes of subsection (2) that any subsequent claim for further loss of hearing made by the same worker (whether or not made against the same employer) in connection with which that agent performed any service was made as a result of prohibited conduct engaged in by that agent, unless the lawyer concerned establishes otherwise.
- (5) A person who has paid any amount in respect of disbursements to a lawyer that the lawyer would not have been entitled to recover because of subsection (2) is entitled to recover the amount from the lawyer as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.

**136 Lawyers and agents can be requested to certify as to prohibited conduct** (cf former s 148G)

- (1) An employer or insurer who is liable to pay a lawyer or agent any fees, costs or other charges incurred in connection with a protected claim made by a person is entitled to request the lawyer or agent to provide a certificate under this section about the claim (unless the lawyer or agent has already provided it). The request must be in writing.
- (2) A certificate under this section is a certificate that to the best of the lawyer's or agent's knowledge, no agent has engaged in prohibited conduct that involved encouraging the person to make the claim or any previous claim, except as may be disclosed in the certificate.
- (3) If a certificate is requested:
  - (a) the lawyer or agent is not entitled to be paid by or recover from the employer or insurer any fees, costs or other charges incurred in connection with the claim concerned until the certificate is provided (even if the fees, costs or other charges are payable under an award or order of a court), and
  - (b) no interest that might otherwise be payable on those fees, costs or other charges is payable for the period from when the certificate is requested until it is provided (despite any order or award of a court for the payment of that interest).
- (4) A lawyer or agent can provide an employer or insurer with a certificate under this section even if the employer or insurer has not requested it.
- (5) A lawyer or agent who gives a certificate under this section about a claim made by a person is guilty of an offence if the lawyer or agent knew or had reasonable cause to suspect that an agent had engaged in prohibited conduct that involved encouraging the person to make the claim.

Maximum penalty: 50 penalty units.

**137 Power to restrict or ban recovery of costs by agents who engage in prohibited conduct** (cf former s 148H)

- (1) The Authority can by notification given to insurers and self-insurers direct that an agent specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that:
  - (a) the agent has persistently engaged in conduct that constitutes a contravention of section 133 or 116 (5), or
  - (b) in the case of an agent that is a corporation, a director of the corporation or other person concerned in the management of the corporation has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the agent a reasonable opportunity to make written submissions to the Authority on the matter.
- (4) The effect of a notification under this section is that the agent specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) An agent aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the agent to whom it applies.

**138 Power to restrict or ban recovery of costs by solicitors** (cf former s 148HA)

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and:
  - (a) the agent has persistently engaged in conduct that constitutes a contravention of section 133 or 116 (5), or
  - (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.
- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned.

- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

**139 Power to restrict or ban agents who engage in prohibited conduct** (cf former s 1481)

- (1) The Authority can by direction in writing given to an agent prohibit the agent from acting for any person in connection with any claims or in connection with specified types of claims. The prohibition can be absolute or subject to conditions.
- (2) Such a direction cannot be given unless:
- (a) the Authority is satisfied that the agent concerned has persistently engaged in conduct that constitutes a contravention of section 133 or 116 (5) and as a result is not a fit and proper person to act in connection with claims to which the direction relates, and
  - (b) the Authority has given the agent a reasonable opportunity to make written submissions to the Authority on the matter.
- (3) An agent who acts in contravention of a direction given under this section:
- (a) is guilty of an offence for which the maximum penalty is 200 penalty units, and
  - (b) is not entitled to recover any fees, costs or other charges from a person for anything done by the agent in contravention of the direction.
- (4) A person aggrieved by a direction under this section can appeal against the direction to the Compensation Court within 14 days after the direction is given to the agent. An appeal does not stay the operation of the direction unless the Court otherwise orders.
- (5) A direction remains in force until it is withdrawn. A direction can be withdrawn at any time by the Authority by giving written notice of withdrawal to the agent concerned.

**140 Past conduct included in assessing persistent conduct** (cf former s 148J)

- (1) A reference in sections 137, 138 and 139 to conduct that constitutes a contravention of section 133 or 116 (5) includes a reference to:
  - (a) conduct engaged in by a person before the commencement of this section, and
  - (b) conduct engaged in before the commencement of section 133 or 116 (5) that would, if engaged in after that commencement, have constituted a contravention of the provision.
- (2) However, a person cannot be considered to have persistently engaged in conduct that constitutes a contravention of section 133 or 116 (5) unless at least one instance of that conduct occurred after the commencement of this section.

For the purposes of section 138, at least one instance of the conduct must have occurred after the commencement of that section.

**141 Duty of claimants to comply with requests for information about agents and lawyers** (cf former s 148K)

- (1) A person who makes a protected claim must comply with a request from the insurer or self-insurer concerned for information as to whether the person made use of the services of an agent or lawyer in respect of the claim and how the person came to make use of those services. Such a request by the insurer may be made at any time (whether or not court proceedings have been commenced in respect of the claim).
- (2) The regulations may make provision for limiting the operation of this section with respect to lawyers.

**142 Regulation of advertising** (cf form s 148L)

- (1) The regulations may make provision for or with respect to regulating (including prohibiting) conduct by any person (including advertising) that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act.

- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the *Legal Profession Act 1987*.
- (3) Any such regulation can impose a penalty not exceeding 200 penalty units for any contravention of the regulations.

## **Chapter 5      Workers compensation insurance**

### **Part 1        Application of Chapter**

#### **143 Chapter applies to insurance after 30 September 1999**

- (1) This Chapter applies to insurance for any period after 30 September 1999.
- (2) Part 2 (Insurance policies) does not apply to an employer to the extent that the employer is covered by a policy of insurance issued or renewed under the 1987 Act for any period commencing before 1 October 1999.

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## Part 2 Insurance policies

### 144 Compulsory insurance for employers (cf former s 155)

- (1) An employer (other than a self-insurer) must obtain from a licensed insurer, and maintain in force, a policy of insurance that complies with this Part for the full amount of the employer's liability under this Act in respect of all workers employed by the employer and for an unlimited amount in respect of the employer's liability independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury to any such worker.

Maximum penalty: 200 penalty units or imprisonment for 6 months, or both.

- (2) In subsection (1), *injury* includes a dust disease as defined in the *Workers' Compensation (Dust Diseases) Act 1942* and the aggravation, acceleration, exacerbation or deterioration of a dust disease as so defined.
- (3) Where several persons may become liable in respect of an injury to the same worker:
- (a) it is sufficient to obtain a joint policy of insurance in respect of that liability, and
  - (b) the premium chargeable in respect of the policy is not to exceed the premium chargeable in respect of a policy of insurance taken out by a single employer.
- (4) In any proceedings for an offence against subsection (1), proof:
- (a) that an employer, not being a self-insurer, who has been served pursuant to section 153 (1) with a notice requiring the employer to produce for inspection (or to supply particulars, specified in the notice, of) a policy of insurance obtained by the employer and in force at a specified date or between specified dates has not so produced (or so supplied specified particulars of) any such policy so in force, and

- (b) that the time for compliance with the notice has expired, is sufficient evidence, unless the contrary is proved, that at that date or between those dates the employer had failed to comply with subsection (1).
- (5) The Authority may undertake not to prosecute a person for an offence under this section in respect of a failure by the person to obtain or maintain in force a policy of insurance on condition that the person pays to the Authority the amount that the Authority is entitled to recover under section 146 in respect of the failure or such lesser amount as the Authority may determine to accept. If the person pays the amount in compliance with any terms and conditions of the undertaking, the person is not liable to be proceeded against or convicted for an offence under this section in respect of the failure concerned.
- (6) The Authority may impose such conditions on an undertaking under subsection (5) as it considers appropriate. It is a condition of every such undertaking that the person to whom it is given must produce for inspection by the Authority a policy of insurance in force at the time the undertaking is given, or establish to the satisfaction of the Authority that the person is not required at that time to have a policy of insurance.
- (7) The regulations may make provision for or with respect to an amnesty for contraventions of this section, such that a person who satisfies the conditions of the amnesty is not liable to be prosecuted for an offence under this section in respect of such a contravention and is not liable to recovery under section 146 in respect of such a contravention.

#### **145 Policies to be for 12 month periods**

A policy of insurance issued to have effect during the period from 1 October 1999 to 30 September 2000 (both dates inclusive) must be issued for a period of 12 months, unless the Authority otherwise approves in a particular case or class of cases.

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**146 Recovery of double premiums from employer not obtaining policy of insurance** (cf former s 156)

- (1) If an employer fails to obtain or maintain in force a policy of insurance as required by section 144 (1) in respect of any period, the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice the amount of the premium that would have been payable for the issue of a policy of insurance to the employer in respect of that period or such lesser amount as the Authority may agree to accept in any particular case.
- (2) The Authority may recover any such sum from an employer whether or not the employer has been proceeded against or been convicted for an offence against section 144 (1) in respect of the employer's failure to obtain or maintain in force the policy of insurance.
- (3) Any such sum recovered by the Authority is to be paid into the WorkCover Authority Fund.
- (4) A certificate executed by the Authority and certifying that a sum specified in the certificate is the sum equal to twice the amount of premium that would have been payable for the issue of a policy of insurance to an employer so specified in respect of a period so specified is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the matters specified in the certificate.
- (5) In the absence of information that would enable the Authority to accurately determine the premium that would have been payable for the issue of a particular policy of insurance, the following provisions have effect:
  - (a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority),
  - (b) the Authority's estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made.

- (c) if the Authority's estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.
- (6) In determining or estimating a premium for the purposes of this section, the Authority is required to use the methodology approved by the Authority under this Chapter for the calculation of risk premiums (for the purpose of determining or estimating the risk premium component of the premium) and to then add to that risk premium amount such amount as the Authority considers appropriate (by way of notional insurer loadings and levies and other charges notionally payable by an insurer) to result in a total premium that fully funds the liabilities to which the premium relates.
- (7) A court that convicts an employer of an offence under section 144 may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the failure to which the offence relates. Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) and is to be dealt with accordingly.
- (8) A Local Court cannot order the payment of an amount under subsection (7) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.

**147 Misleading conduct by insurers and insurance intermediaries**

(cf former s 156A)

- (1) In this section:

*insurance intermediary* means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

*insurer* means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

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- (2) An insurer or insurance intermediary must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
- (a) the insurance includes the insurance required by this Act, or
  - (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or insurance intermediary who contravenes this section is guilty of an offence.
- Maximum penalty: 200 penalty units.
- (4) In any action under section 146, 224, 225 or 226 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or insurance intermediary be joined as a party in the proceedings if the court thinks that the insurer or insurance intermediary may be culpable in the matter.
- (5) An insurer or insurance intermediary is culpable in a matter if it appears that the insurer or insurance intermediary has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or insurance intermediary has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or insurance intermediary is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or insurance intermediary is culpable in the matter, order that the insurer or insurance intermediary is to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

**148 Insurers not to refuse insurance** (cf former s 157)

- (1) A licensed insurer must not, except with the consent of the Authority, refuse to issue a policy of insurance to any employer or to renew a policy of insurance issued to an employer. In the case of a licensed insurer who is a specialised insurer, this section applies only in respect of employers within the industry for which the insurer is a specialised insurer.
- (2) Without affecting the generality of subsection (1), the Authority may consent to any such refusal in order that the licensed insurer does not contravene any condition of the licence.
- (3) This section does not apply in any case where the employer has not complied with any conditions prescribed by this Act or the regulations in respect of the issue or renewal of the policy of insurance.

Maximum penalty: 100 penalty units.

**149 Insurer to notify expiration of policy**

- (1) Not later than 30 days before the day on which a policy of insurance under this Act (in this section called the *original insurance*) expires, the insurer must give to the insured a notice in writing informing the person to whom the notice is given of the day on which and the time at which the policy will expire and that the insurer is prepared to renew the policy.
- (2) Notice is not required to be given under this section if the insurer has given the insured a notice under section 168 (Cancellation of policy for non-payment of premium) at any time during the period of insurance of the policy concerned or if the policy concerned has been cancelled under that section.
- (3) If an insurer has failed to comply with subsection (1) and, before the original insurance expired, the insured had not obtained a policy of insurance from some other insurer, then, by force of this section, there exists between the parties to the original insurance a policy of insurance that provides insurance as provided by the original insurance, except that the insurance provided is in respect of the period that:
  - (a) commences immediately after the insurance provided by the original insurance expires. and

- (b) expires, unless the policy is sooner cancelled, at whichever is the earlier of the following:
  - (i) the expiration of a period equal to the period during which insurance was provided by the original insurance, or
  - (ii) the time when the insured obtains from the original insurer or some other insurer a policy of insurance to replace the original insurance.
- (4) No premium is payable in respect of a policy of insurance in force because of subsection (3) unless a claim is made under that policy, in which case there is payable by the insured to the insurer, as a premium in respect of the policy, an amount calculated in accordance with the regulations.

**150 Insurance for trainees** (cf former s 158)

- (1) In this section:
  - trainee* means:
    - (a) a person who is a trainee under a traineeship approved by the Industrial and Commercial Training Council of New South Wales for the purposes of the Australian Traineeship System, and
    - (b) if the Chairperson of that Council or a delegate of the Chairperson has determined that a person should be regarded as a trainee for the purposes of this section during a specified period before the time when an application for approval by that Council of a traineeship for the purposes of the Australian Traineeship System in respect of that person is dealt with—that person during that period.
- (2) Section 144 does not require an employer to obtain a policy of insurance in respect of a trainee.
- (3) The employer of a trainee is deemed to hold a policy of insurance with the Insurance Ministerial Corporation for the full amount of the employer's liability under this Act in respect of that trainee and for an unlimited amount in respect of the employer's liability independently of this Act (but not including a liability for compensation in the nature of workers compensation arising

under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury (as defined in section 144 (2)) to that trainee.

- (4) A policy of insurance deemed by this section to be held by an employer is to contain such provisions as are prescribed by the regulations.
- (5) A licensed insurer is not subject to any liability in respect of a trainee to the extent that the employer of the trainee is indemnified under a policy of insurance deemed by this section to be held by the employer.
- (6) Except as otherwise provided by this Act, a reference in this Act (other than in this section and section 151) to a policy of insurance includes a reference to a policy of insurance deemed by this section to be held by an employer.
- (7) The regulations may provide that any provision of this Act (other than this section) or the regulations:
  - (a) is to apply with such modifications as are prescribed, or
  - (b) is not to apply,to or in respect of:
  - (c) a trainee,
  - (d) the employer or a person deemed to be the employer (including an employer who is a self-insurer) of a trainee,
  - (e) the insurer of an employer of a trainee,
  - (f) a policy of insurance deemed by this section to be held by an employer,
  - (g) a policy of insurance held by the employer of a trainee, or
  - (h) the Insurance Ministerial Corporation in its role of deemed insurer under this section,and that provision applies, or does not apply, accordingly.
- (8) The regulations may require an employer to supply to a prescribed person or body, at the prescribed times or within prescribed periods, such information with respect to trainees employed or formerly employed by the employer as may be set out in the regulations.

- (9) This section does not require the Insurance Ministerial Corporation to be a licensed insurer.

**151 Provisions of policies of insurance** (cf former s 159)

- (1) A policy of insurance must, in so far as it relates to any liability under this Act, contain only such provisions as are prescribed by the regulations, but (subject to the regulations) may contain such other provisions relating to any liability at common law or under any Act or Commonwealth Act as are appropriate to any particular case.
- (2) The regulations may prescribe different provisions for different classes of policies. The regulations may also authorise the Authority to approve different provisions for policies of insurance issued by a specialised insurer in respect of domestic or similar workers.
- (3) A policy of insurance must provide that:
- (a) the insurer as well as the employer is directly liable to any worker insured under the policy and, in the event of the worker's death, to the dependants or other persons to pay the compensation under this Act or other amount independently of this Act for which the employer is liable, and
  - (b) the insurer is bound by and subject to any judgment, order, decision or award given or made against the employer of any such worker in respect of the injury for which the compensation or amount is payable.
- (4) A policy of insurance issued to a person must, in addition to containing any other provisions required under this section, contain such provisions as are prescribed by the regulations for or in relation to:
- (a) the insurance of the person, in the event of the person being, or becoming, a principal under a contract as referred to in section 20 (1) of the 1987 Act, against a liability arising under section 20 of the 1987 Act,
  - (b) providing that the insurer, as well as the person, must, while that person is a principal under a contract as referred to in section 20 (1) of the 1987 Act, be directly liable to pay to a worker employed by a contractor under that

contract and, in the event of the worker's death, the dependants or other persons, the compensation for which that person is liable under section 20 (1) of the 1987 Act, and

- (c) providing that the insurer is bound by, and subject to, any judgment, order, decision or award given or made against the person in respect of any liability arising under section 20 of the 1987 Act.
- (5) A policy of insurance obtained by an employer in respect of workers in any trade or business applies to and has effect in respect of all workers employed by the employer in that trade or business, despite anything contained in that policy.
- (6) A liability, under a policy of insurance, of an insurer to a worker under a provision inserted in the policy under subsection (3) or (4) is enforceable as if the worker were a party to the policy.
- (7) A contravention of subsection (1), (3) or (4) does not annul a policy of insurance or affect the liability of the insurer to the person insured under the policy.
- (8) A licensed insurer must not issue a policy of insurance in contravention of subsection (1), (3) or (4).

Maximum penalty (subsection (8)): 50 penalty units.

**152 Recovery of excess from employer** (cf former s 160)

- (1) In this section:

*prescribed excess amount* means:

- (a) \$500 (or such other amount as may be prescribed by the regulations), or
- (b) such other amount as the employer and the insurer concerned agree is to be the prescribed excess amount for the purposes of this section,

whichever is greater.

*small business employer*, in relation to a policy of insurance, means an employer who, under the policy, is liable to pay premiums not exceeding such amount as is prescribed by the regulations (the calculation of that liability being determined in the manner so prescribed).

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*weekly compensation claim* means a claim for weekly payments of compensation payable to a worker in respect of any period of total or partial incapacity for work.

- (2) An employer is required to repay to the insurer under a policy of insurance that the employer has obtained under section 144:
  - (a) the prescribed excess amount in respect of each weekly compensation claim that the insurer has paid under the policy, or
  - (b) if the amount that the insurer has paid in respect of any such claim is less than the prescribed excess amount—the amount so paid.
- (3) An employer is not required to comply with subsection (2) to the extent that:
  - (a) the employer has paid an amount of money directly to an injured worker in relation to a period that is the subject of a weekly compensation claim made by the worker, and
  - (b) the amount paid by the employer is an amount or is included in an amount for which the employer's insurer is liable under the relevant policy of insurance to indemnify the employer in respect of the claim, and
  - (c) the employer's insurer has offset against the amount payable under that policy in respect of the claim the amount referred to in paragraph (a).
- (4) An employer who, in relation to a period that is the subject of a weekly compensation claim made by an injured worker:
  - (a) has paid no money to the worker, or
  - (b) has paid an amount to the worker that is less than the amount which the employer would, but for this subsection, be required to repay under subsection (2),

is nevertheless not required to comply with that subsection to the extent that the employer's insurer has debited against any amount standing to the employer's credit in respect of the premiums payable for the relevant policy of insurance:

- (c) in the case referred to in paragraph (a)—the amount that the employer would otherwise be required to repay under that subsection, or

- (d) in the case referred to in paragraph (b)—the difference between the amounts referred to in that paragraph.
- (5) Subsection (2) applies to a small business employer who has obtained a policy of insurance under section 144 only to the extent that the employer and the insurer have agreed that the employer is required to repay to the insurer the prescribed excess amount (or such smaller amount as is agreed on) in respect of each weekly compensation claim paid by the insurer under the policy.
- (6) For the purposes of this section, the amount of a weekly compensation claim paid under a policy of insurance is the total amount of weekly payments made to the claimant in respect of the injury concerned, and that amount does not include any other payments associated with the claim.
- (7) If liability for a claim is apportioned between 2 or more successive insurers of an employer, the amount repayable by the employer is to be similarly apportioned.
- (8) An amount repayable under this section may be recovered by the insurer as a debt in a court of competent jurisdiction.
- (9) The following policies of insurance are exempt from this section:
  - (a) policies of insurance in respect of domestic or similar workers,
  - (b) policies of insurance of any class exempted from this section by the regulations.
- (10) This section does not apply to:
  - (a) a weekly compensation claim made in respect of a worker who receives an injury on a journey to which section 10 of the 1987 Act applies. or
  - (b) a weekly compensation claim of any other class prescribed by the regulations for the purposes of this subsection.

**153 Inspection of policies** (cf former s 161)

- (1) The Authority or a person authorised by the Authority may, by notice in writing, require an employer to do either or both of the following:

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- (a) to produce for inspection (or to supply specified particulars of) the policy of insurance obtained by the employer and in force at a specified date or between specified dates,
  - (b) to supply such particulars of matters relating to the policy as the Authority or person may consider necessary.
- (2) A worker who has received an injury, or has met with an accident in circumstances giving rise to a claim for compensation under this Act, or a solicitor for the time being authorised by the worker to act on behalf of the worker in relation to the claim, or a representative of a union to which the worker belongs, may, by notice in writing, require the employer to make available for inspection a policy of insurance in force in respect of the worker at the time (whether before or after the commencement of this section) when the injury was received or the accident happened.
- (3) A person on whom a notice is served under subsection (1) or (2) must comply with the notice:
- (a) within 21 days after service or such longer period as may be specified, or
  - (b) if the Authority otherwise than in the notice allows a further period for compliance—within the further period.

Maximum penalty: 20 penalty units.

- (4) A person is not liable to be prosecuted both for an offence under section 144 of failing to obtain and maintain in force a policy of insurance and for an offence under this section in respect of a failure to produce that policy of insurance for inspection.
- (5) An employer who obtains a policy of insurance must retain the policy in his or her possession in good order and condition until:
- (a) there are no longer any workers in respect of whom the policy is in force, or
  - (b) the policy is at least 7 years old,

whichever occurs later.

Maximum penalty: 20 penalty units.

(6) In this section:

**employer**, in relation to a worker, includes a principal within the meaning of section 20 of the 1987 Act who is liable to pay compensation to the worker.

**representative** means an officer of an industrial organisation of employees for the time being authorised under Part 7 of Chapter 5 of the *Industrial Relations Act 1996* to exercise powers under that section.

**specified** means specified in the notice concerned.

**union** means an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996*.

#### **154 Death of employer** (cf former s 162)

- (1) The Compensation Court may, on application by a worker and if satisfied as to the matter sought to be declared, declare that an employer has entered into a contract with an insurer, named in the declaration, in respect of any liability under this Act to that worker and that the employer:
- (a) being a natural person, has died, or is permanently resident outside the Commonwealth of Australia and its Territories, or cannot after due inquiry and search be found, or
  - (b) being a corporation (other than a company which has commenced to be wound up), has ceased to exist, or
  - (c) being a company, corporation, society, association or other body (other than a company which has commenced to be wound up), was at the time when it commenced to employ the worker incorporated outside the Commonwealth of Australia and its Territories and registered as a foreign company under the laws of any State or Territory of the Commonwealth of Australia and is not at the time of the declaration so registered under any such law, or
  - (d) being a company, has commenced to be wound up after entering into the contract with the insurer.

- (2) Where the Compensation Court makes a declaration under subsection (1), the Compensation Court may make an award of compensation for an injury to the worker (being, in the case referred to in subsection (1) (d), an injury that took place before the commencement of the winding up of the employer) and such an award is, for the purposes of section 151, deemed to be an award against an employer of the worker with whom the insurer referred to in the declaration entered into a contract with respect to any liability under this Act to that worker.

**155 Records relating to policies and claims etc to be kept by insurers and self-insurers** (cf former s 163)

- (1) A licensed insurer must keep a register of all policies of insurance issued or renewed by the insurer containing the following particulars in respect of each policy:
- (a) the name and address of the policy holder,
  - (b) the number of the policy,
  - (c) any premium rate classification applicable to the policy,
  - (d) the date of issue or renewal of the policy,
  - (e) such other particulars as may be prescribed by the regulations.
- (2) A person who ceases to be a licensed insurer must deliver the register to the Authority.
- (3) An insurer must retain in good order and condition for at least 7 years all the insurer's records that relate to the issue, renewal or discontinuance of policies of insurance and the receipt, administration and payment of claims under this Act.
- (4) In subsection (3):

*insurer* means licensed insurer, former licensed insurer previously a licensed insurer under this Act, or self-insurer.

Maximum penalty: 20 penalty units.

**156 Employer—offences relating to policies of insurance** (cf former s 164)

An employer must not:

- (a) supply any information to a licensed insurer which the employer knows is false or misleading in a material particular with the object of procuring the issue or renewal of a policy of insurance, or
- (b) wilfully fail to observe any of the terms of a policy of insurance obtained by the employer.

Maximum penalty: 100 penalty units.

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## Part 3 Insurance premiums

### 157 Definitions

- (1) In this Part:

*insurer* means a licensed insurer (subject, in the case of specialised insurers to any regulations under subsection (2)).

*risk premium* means the part of total premium that funds claims liabilities.

*total premium* means the total amount of the premium payable for a policy of insurance.

- (2) The regulations may exempt specified specialised insurers from all or specified provisions of this Part.
- (3) A reference in this Part to a premium is a reference to a total premium, unless the context or subject-matter otherwise indicates or requires.

### 158 Full funding of claims liabilities

For the purposes of this Part, an amount is sufficient to fully fund claims liabilities if it is an amount that together with anticipated investment income is equal to the actuarial central estimate of the net cost of claims (in inflated dollars) at the assumed date of settlement.

### 159 Approval of methodology for calculating risk premiums

- (1) The Authority is to approve a methodology to be used for the calculation of risk premiums. The Rating Bureau is to submit a proposed methodology to the Authority for that purpose at least once in each year commencing 1 January, before 31 March in the year, and may submit a proposed methodology at such other times as the Rating Bureau considers desirable.
- (2) The methodology submitted by the Rating Bureau is to use such rates, formulae, weightings and other factors and parameters as the Rating Bureau considers appropriate. The Rating Bureau must submit with a proposed methodology relevant actuarial reports and such supporting information as the Authority may reasonably require.

- (3) Before submitting a proposed methodology to the Authority, the Rating Bureau must consult with the Advisory Council on the formulae (but not the rates or weightings) that the proposed methodology uses. That consultation is to take place in the 6-month period that commences 9 months before the proposed methodology is to be submitted to the Authority.
- (4) In formulating a proposed methodology for submission to the Authority, the Rating Bureau is to have regard to actuarial advice, any advice provided by the Advisory Council in consultation between the Advisory Council and the Rating Bureau, and advice and information from such other sources as the Rating Bureau considers appropriate.
- (5) The Authority must have regard to actuarial advice in considering a proposed methodology submitted by the Rating Bureau.
- (6) The Authority cannot reject a proposed methodology submitted by the Rating Bureau unless the Authority is of the opinion that:
  - (a) the total amount of risk premiums to be generated by use of that methodology will not be sufficient to fully fund claims liabilities arising from the policies of insurance to which the premiums relate, or
  - (b) the total amount of risk premiums to be generated by use of that methodology will materially exceed that which is required to fully fund claims liabilities arising from the policies of insurance to which the premiums relate, or
  - (c) the methodology is not structured so as to minimise, as far as reasonably practicable, cross-subsidy between premium rating groups.
- (7) The Authority cannot reject a methodology more than 30 days after it was submitted by the Rating Bureau and is taken to have approved a methodology that it has not rejected within that 30 days.
- (8) The Authority can, on the basis of actuarial advice, approve a methodology for the purposes of this section that has not been submitted by the Rating Bureau if the Rating Bureau has not submitted a methodology when required to do so under this section.

- (9) The Authority must, at the request of the Rating Bureau, obtain and provide to the Rating Bureau such information as the Rating Bureau may request for the purpose of enabling the Rating Bureau to exercise its functions under this Part.

#### **160 Fully funded total premiums**

For the purposes of this Act, total premiums are sufficient to fully fund the liabilities to which those premiums relate if the premiums are sufficient:

- (a) to fully fund claims liabilities arising from the policies of insurance to which the premiums relate, and
- (b) to pay all acquisition, policy administration and claims settlement expenses of the licensed insurer concerned, and
- (c) to provide a profit margin in excess of all claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken, and
- (d) to provide for such other matters as a prudent insurer should, in all the circumstances, make provision for, and
- (e) to provide for all contributions or other charges payable by the insurer under this Act or the *Workers' Compensation (Dust Diseases) Act 1942*.

#### **161 Insurers required to file premiums with Authority for approval**

- (1) An insurer must file its premiums with the Authority. An insurer does this by submitting to the Authority for its approval details of the methodology (*total premium methodology*) to be used to calculate the total premium payable in respect of a policy of insurance issued by the insurer under this Act. The insurer must also provide the Authority with such additional information (including actuarial reports) as the Authority may reasonably require.
- (2) The insurer's total premium methodology must use the methodology approved by the Authority under this Part for the calculation of risk premiums. The insurer's total premium methodology need not use that approved methodology if it would result in a risk premium of more than \$500,000 (or such other amount as may be prescribed for the purposes of this section by the regulations), so long as the insurer submits another methodology for calculation of the risk premium.

- (3) The Authority must have regard to actuarial advice in considering a proposed total premium methodology submitted by an insurer.
- (4) The Authority must reject or approve a total premium methodology submitted by an insurer. The Authority can only reject a total premium methodology if the Authority is of the opinion that premiums calculated in accordance with it will not be sufficient to fully fund the liabilities to which the premiums relate.
- (5) The Authority cannot reject a total premium methodology more than 30 days after details of it were submitted for its approval, and is taken to have approved a methodology that it has not rejected within that 30 days.
- (6) The Authority may establish guidelines with respect to the manner and form of filings by insurers under this section. Any filing not in accordance with those guidelines may be rejected by the Authority.

## **162 Approval of special premiums**

- (1) The Authority may, on the application of an insurer, approve a special premium in respect of a particular risk or class of risk if the Authority is of the opinion that the underwriting of that risk or class of risk at a premium determined in accordance with the total premium methodology approved by the Authority and applicable to the risk concerned would be inappropriate having regard to the full funding principles and the special risks associated with that business.
- (2) Section 161 (Insurers required to file premiums with Authority for approval) does not apply to a special premium approved under this section.
- (3) A special premium approved by the Authority under this section is for the purposes of this Part taken to be a premium determined in accordance with total premium methodology approved for the insurer by the Authority and applicable to the risk concerned.

### **163 Rejection of methodology—dispute resolution**

- (1) When the Authority rejects a methodology submitted to the Authority under this Part by the Rating Bureau or an insurer, the Authority must:
  - (a) give written notice of the rejection and the reasons for it to the Rating Bureau or to the insurer concerned, and
  - (b) determine a provisional methodology having regard to the Authority's actuarial advice.
- (2) The Rating Bureau or the insurer may request the Authority to reconsider the rejection.
- (3) A provisional methodology determined by the Authority has effect as if it were the methodology submitted by the Rating Bureau or the insurer and approved by the Authority. The provisional methodology continues in force until the Authority withdraws its rejection of the submitted methodology or the methodology in question is determined by an arbitrator under this section.
- (4) If the Authority has not withdrawn its rejection of a methodology within 21 days after a request to reconsider the rejection, the matter is to be arbitrated under the *Commercial Arbitration Act 1984* before an arbitrator who is a Fellow of The Institute of Actuaries of Australia appointed by the President for the time being of that Institute.
- (5) The arbitrator is to determine the methodology in question and that methodology is taken to have been submitted by the Rating Bureau or the insurer, as appropriate, and approved by the Authority. It supersedes the provisional methodology in force under this section. The determination of a methodology under this section does not prevent the subsequent approval under this Part of a different methodology.

### **164 Premiums to be calculated in accordance with filed premiums**

(cf former s 169)

- (1) The premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance to be issued or renewed by a licensed insurer is to be determined by the insurer in accordance with a total premium methodology approved by the Authority and applicable to the policy concerned.

- (2) An insurer breaches the insurer's approved total premium methodology if the insurer demands or receives:
  - (a) for the issue of a policy of insurance to which the methodology applies, or
  - (b) for the renewal of any such policy,  
an amount that is, or amounts the sum of which is, different from a premium that is payable in accordance with subsection (1) by the employer (or the person who proposes to become an employer) to whom the policy relates.
- (3) An insurer who wilfully breaches the insurer's approved total premium methodology is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

**165 Action by employer where insurer breaches approved total premium methodology** (cf former s 170)

- (1) If an employer claims that an insurer has, in demanding a premium (or any part of a premium) for the issue of a policy of insurance to the employer or for the renewal of such a policy, breached the insurer's approved total premium methodology, the employer may apply to the Authority for a determination as to the premium to be charged for the issue or renewal of the policy.
- (2) Any such application must be made:
  - (a) in the case of the issue of a policy of insurance—within 1 month after the date of the demand for the premium as referred to in subsection (1), or
  - (b) in the case of the renewal of a policy of insurance—before or within 1 month after:
    - (i) the date of expiry of the period for which premiums have been paid in respect of the policy, or
    - (ii) the date of the demand for the premium as referred to in subsection (1),whichever is the later.

or within such further period as the Authority may, in special circumstances, approve in relation to that application.

- (3) When any such application is made, the Authority:
- (a) must notify the insurer of the making of the application,
  - (b) must consider the application and may have regard to such oral or written evidence or representations as it thinks fit,
  - (c) must dismiss the application, if:
    - (i) the policy is not a policy to which the insurer's approved total premium methodology applies, or
    - (ii) the Authority is of the opinion that the premium to which the application relates is payable by the employer in accordance with the insurer's approved total premium methodology,or must, in any other case, determine in respect of the issue or renewal of the policy a premium that is payable by the employer in accordance with the insurer's approved total premium methodology, and
  - (d) must, in such manner as it thinks fit, inform the employer and the insurer of its dismissal of the application or its determination, as the case may require.

- (4) Where:
- (a) the Authority makes a determination, and
  - (b) the employer has already paid to the insurer the premium to which the application relates,

the employer may recover from the insurer, in a court of competent jurisdiction as a debt due to the employer, so much of the premium paid as exceeds the premium determined by the Authority.

- (5) Where:
- (a) the Authority makes a determination, and
  - (b) the insurer does not within 1 month after the date of the decision of the Authority:
    - (i) in the case of the issue of a policy of insurance— issue to the employer a policy of insurance having effect for such period (not exceeding 1 year) and from such date as the Authority determines, or

- (ii) in the case of the renewal of a policy of insurance—  
effect the renewal of the policy for such period (not exceeding 1 year) as the Authority determines from the date of expiry referred to in subsection (2) (b),  
at the premium determined by the Authority, and
  - (c) the employer does not otherwise agree or request,  
the insurer is deemed to have issued to the employer a policy of insurance at the premium so determined and having effect for the period and from the date referred to in paragraph (b) (i) or (ii).
- (6) The insurer must forthwith supply to the employer a document setting out the provisions of a policy of insurance deemed by subsection (5) to be issued to the employer.  
  
Maximum penalty: 20 penalty units.
- (7) In this section, a reference to an employer includes a reference to a person who proposes to become an employer.

**166 Payment of premiums by instalments** (cf former s 171)

- (1) The regulations may provide that an employer is entitled to elect to pay the premiums under a policy of insurance by instalments, at such times and of such amounts as may be prescribed by the regulations, and an employer is entitled to so elect.
- (2) This section does not prevent an insurer and an employer agreeing to the payment of premiums by instalments at other times or of other amounts.

**Note.** The regulations under subsection (1) confer the minimum entitlement to payment by instalments.

**167 Recovery of unpaid premiums** (cf former s 172)

- (1) Where:
  - (a) the premium payable by an employer is not to be paid by instalments and the employer fails to pay the full amount of the premium within 1 month after service on the employer of a notice that payment of the premium is due, or

- (b) the premium payable by an employer is to be paid by instalments and the employer fails to pay an instalment by the due date, or
- (c) an employer has failed to pay an adjustment of premium within 1 month after service on the employer of a notice that payment of the amount of the adjustment is due,

the full amount of the premium (in the case referred to in paragraph (a)), the balance of the premium unpaid or, where no instalment has been paid, the full amount of the premium (in the case referred to in paragraph (b)) or the amount of the adjustment (in the case referred to in paragraph (c)) together with interest calculated at the rate of 1.2% per month compounded monthly (or, where some other rate of interest is prescribed, that other rate) may be recovered as a debt in a court of competent jurisdiction.

- (2) The payment of interest under this section may be waived by the insurer concerned.
- (3) In proceedings under this section for the recovery of any unpaid premium with interest, the court may, if satisfied that a notice for payment was delayed because of delay of the employer in providing returns to the insurer, for the purpose of assessing the premiums, treat the notice as having been served on an earlier date.
- (4) The making of an application to the Authority under section 165 (Determination of premium to be charged) does not affect the entitlement of an insurer under this section to recover the premium (or part of the premium) concerned.
- (5) If the rate of interest under this section changes (whether by an amendment to this section or by a regulation under this section), the new rate applies to an unpaid premium for a policy of insurance whether issued or renewed before or after the change, but only in respect of any period after the change when the premium remains unpaid.

**168 Cancellation of policy for non-payment of premium**

- (1) If an employer fails to pay a premium or instalment of premium within 90 days after payment is due, the insurer may cancel the policy of insurance by following the procedure provided by this section.
- (2) The insurer is to give the employer a notice in a form approved by the Authority for the purposes of this section. The notice is to specify a day that is not less than 30 days after the notice is given as the day on which the policy will be cancelled if payment of the amount due is not made before the end of that day. If payment is not made before the end of that day, the policy is cancelled at the end of that day.
- (3) The cancellation of a policy of insurance under this section does not affect the operation of section 167 (Recovery of unpaid premiums).

**169 Furnishing information for calculation of premiums** (cf former s 173)

- (1) The regulations may make provision for or with respect to:
  - (a) requiring the supply of information relevant to the calculation of the premiums payable under policies of insurance (whether to be supplied before or after the issue or renewal of any such policy), and
  - (b) requiring any such information to be verified by statutory declaration or be accompanied by a certificate from a registered tax agent, a registered company auditor (within the meaning of the *Corporations Law*) or any other person.
- (2) Regulations under this section may require information to be supplied to or by employers, licensed insurers or former licensed insurers previously licensed insurers under this Act.

**170 Records relating to wages, contracts etc to be kept and supplied by employers** (cf former s 174)

- (1) An employer must keep correct records of:
  - (a) all wages paid to workers employed by the employer,

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- (b) the trade, occupation or calling of each such worker, and
  - (c) such other matters relating to those wages (or otherwise relevant to the calculation of premiums payable under policies of insurance) as may be prescribed by the regulations.
- (2) An employer must retain any such record in good order and condition for at least 7 years after the last entry was made in the record.
  - (3) If the regulations so provide, any such record must be kept in such manner as may be specified in the regulations.
  - (4) Any such record may be combined with any record of wages required to be kept by an employer by or under any other Act. However, it is not to be combined in such a manner as would prevent its disclosure under any law.
  - (5) The Authority may order an employer to do either or both of the following:
    - (a) to supply to the Authority, within the time specified in the order, a full and correct statement of the information required to be recorded by the employer under subsection (1) during a period so specified (being a period during which the record is required to be kept under this section), or
    - (b) to make available, at such time and at such place as is specified in the order, for inspection by a specified person authorised by the Authority, the records required to be kept by the employer under this section during a period so specified (being a period during which the record is required to be kept under this section).
  - (6) The Authority may, by an order under subsection (5), require information to be supplied to, or made available for inspection by, an insurer who has issued a policy of insurance to the employer and who requests the Authority to make the order for the purpose of determining whether the correct premium has been paid under the policy.

- (7) The Authority may order that an employer supply to the Authority, or (at the request of the insurer) to an insurer who has issued a policy of insurance to the employer, any records in the employer's possession relating to any contract (however described) under which the employer has made payments to an individual to perform work during such period (not exceeding 7 years after the work was performed) as is specified in the order.
- (8) An order under subsection (7) may be made only if the Authority is satisfied that:
- (a) in the case of a request made by an insurer, the request has been made by the insurer for the purpose of determining whether the correct premium has been paid under the policy of insurance, and
  - (b) the information contained in the records has not already been supplied or made available elsewhere under this section or under section 169.
- (9) A person authorised under subsection (5) (b), (6) or (7) may inspect the records in accordance with the terms of the order and make copies of, or take extracts from, those records.
- (10) An employer on whom an order under subsection (5) or (7) is served:
- (a) must comply with the order, and
  - (b) must not wilfully obstruct or delay an authorised person when exercising any power under subsection (9).
- (11) In this section:
- insurer*** means a licensed insurer or a former licensed insurer.
- wages***, in relation to a worker:
- (a) includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors, payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money's worth given to the worker under a contract of service or apprenticeship. and

- (b) includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by the Authority, and
- (c) does not include:
  - (i) any sum that the employer has been accustomed to pay to the worker to cover any special expenses incurred by the worker because of the nature of the employment, or
  - (ii) any allowance to reimburse costs arising out of an obligation incurred under a contract, or
  - (iii) any amount expended on behalf of the worker, or
  - (iv) directors' fees, or
  - (v) compensation under this Act, or
  - (vi) any payment for long service leave, a lump sum payment instead of long service leave or any payment under the *Building and Construction Industry Long Service Payments Act 1986*.

Maximum penalty: 50 penalty units.

**171 Employers evading payment of correct premiums** (cf former s 175)

- (1) The Authority may, on application by an insurer who has issued a policy of insurance to an employer (whether or not the policy is still in force), order the employer to pay to the insurer such amount as the Authority may, having regard to the information obtained under section 170 or otherwise, find to be due and payable as a premium or balance of premium in respect of the policy of insurance or any renewal of that policy.

- (2) Interest at the rate for the time being in force under section 167 is payable in respect of an amount ordered to be paid under subsection (1) as from the date it first became due to be paid.
- (3) An amount ordered to be paid under subsection (1), together with any interest payable under subsection (2), may be recovered as a debt in a court of competent jurisdiction by the insurer in whose favour the order was made.
- (4) If the Authority finds that:
- (a) an employer has provided an insurer with information which was false or misleading in a material particular, and
  - (b) the insurer, relying on that information, has calculated a premium for the issue or renewal of a policy of insurance which is less by a certain amount than the premium would otherwise have been,

the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority, a sum equal to twice that amount, half of which sum is to be paid by the Authority to the insurer and the other half into the WorkCover Authority Fund.

- (5) A certificate executed by the Authority and certifying that an amount specified in the certificate is payable under subsection (1), (2) or (4) by a person so specified is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the matters specified in the certificate.
- (6) In this section:
- insurer*** means a licensed insurer or a former licensed insurer previously a licensed insurer under this Act.

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## **Part 4 Premium rebates and deficit reduction**

### **172 Power to direct premium rebate**

- (1) If the Authority is satisfied that average premiums to be charged for policies of insurance that commence during the period from 1 October 1999 to 30 September 2000 (the *relevant period*) will exceed 2.8% of the wages in respect of which those premiums are calculated, the Authority is to direct the allowance of a rebate to employers in accordance with this section.
- (2) The rebate is to be allowed by licensed insurers on the premiums payable by employers for policies of insurance that commence during the relevant period.
- (3) The rebate is to be calculated in accordance with the regulations. The regulations may make provision for the method by which and the times when the rebate is to be allowed.
- (4) Before directing the allowance of a rebate under this section, the Authority is to seek the advice of the Advisory Council on the matter. If the Advisory Council advises that it is of the opinion that trends in scheme cost are declining to an extent that indicates that the rebate is not necessary to result in a long term average premium rate of 2.8% of wages, the Authority is not to direct the allowance of the rebate under this section.
- (5) An insurer is not required to allow a rebate under this section until the insurer has been reimbursed as provided by section 173.
- (6) The regulations may modify this section in its application to specialised insurers.

### **173 Payment of rebate out of managed funds**

- (1) Licensed insurers are to be reimbursed from the statutory funds under the 1987 Act or the Premiums Adjustment Fund under that Act for the rebates required to be allowed by them under section 172. as provided by this section.
- (2) The amount to which a particular insurer is entitled by way of reimbursement under this section is to be paid to the insurer out of whichever of the statutory funds under the 1987 Act is referable to the insurer or out of the Premiums Adjustment Fund under the 1987 Act, as determined by the Authority.

- (3) The statutory fund that is referable to an insurer is the statutory fund that is maintained by an insurer under the 1987 Act that the Authority considers is related to that insurer.
- (4) If the Authority considers that there is no statutory fund referable to an insurer, the amount is to be paid to the insurer out of the Premiums Adjustment Fund under the 1987 Act.
- (5) The regulations may make provision for or with respect to the determination of the amounts to be paid to insurers under this section and the timing of those payments.

#### **174 Deficit reduction contribution**

- (1) If the Authority is satisfied (from the results of an actuarial investigation or from other information) that there is an overall deficit among the statutory funds of insurers under the 1987 Act or a deficiency in particular statutory funds, the Authority may determine an amount to be contributed to the Premiums Adjustment Fund under the 1987 Act and direct payment of a contribution under this section to raise that amount.
- (2) The Authority is not to direct payment of a contribution under this section without giving the Advisory Council at least 6 months notice of its intention to do so.
- (3) If the payment of a contribution is directed:
  - (a) a contribution is payable by each licensed insurer in respect of premiums paid to the insurer for policies of insurance issued or renewed by the insurer for such period or periods as the Authority may determine and notify to insurers, and
  - (b) a contribution calculated in accordance with the regulations is payable by each self-insurer.
- (4) The contribution payable by a licensed insurer is an amount equal to a proportion (determined by the Authority and notified to insurers) of the risk premium that is paid to the insurer for each policy of insurance to which the contribution relates. The *risk premium* is the amount determined as risk premium in accordance with the insurer's total premium methodology approved by the Authority under this Part or, in a case where a risk premium is not so determined, the amount determined as the risk premium in accordance with the regulations.

- (5) The contributions payable under this section must be paid to the Authority at such times and in such manner as the regulations may provide. The contributions paid to the Authority are to be paid into the Premiums Adjustment Fund under the 1987 Act.
- (6) If an insurer has not paid a contribution to the Authority within the time required by the regulations, the amount of the contribution together with interest calculated at the rate of 15% per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (7) A certificate executed by the Authority certifying that an amount specified in the certificate was the risk premium income received by a licensed insurer so specified in respect of a particular period so specified is (without proof of its execution by the Authority) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.
- (8) A contribution is not payable under this section by:
  - (a) a self-insurer who first became a self-insurer before 1 July 1998, or
  - (b) a Government employer covered for the time being by the Government's Managed Fund scheme, or
  - (c) a specialised insurer, except in respect of premiums paid by employers who were first insured with the specialised insurer after 30 June 1998.

## **Part 5      Licensing of insurers**

### **175    Applications for licences** (cf former s 177)

- (1) An application for a licence under this Part may be made to the Authority by:
  - (a) any corporation authorised under the *Insurance Act 1973* of the Commonwealth, or
  - (b) any other body corporate that carries on insurance business to which the *Insurance Act 1973* of the Commonwealth does not apply as a result of section 5 of that Act.
- (2) An application is to be in such form and accompanied by such documents:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to any such regulations, as may be determined by the Authority.
- (3) Without affecting the generality of subsection (2), an applicant for a licence may be required to furnish the following particulars and documents:
  - (a) particulars of the shareholders, directors and other managers of the applicant,
  - (b) previous returns and accounts under the *Corporations Law* and the *Insurance Act 1973* of the Commonwealth.
- (4) The Authority may, before determining an application for a licence, require the applicant to advertise or give other notice of the application.
- (5) An application is to be accompanied by such fee (if any) as is prescribed by the regulations or (subject to the regulations) as is determined by the Authority. Any such fee is to be paid into the WorkCover Authority Fund.

### **176    Determination of application for licence** (cf former s 178)

- (1) The Authority is to consider each application for a licence under this Part and may:
  - (a) grant a licence to the applicant, or
  - (b) refuse the application.

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- (2) The Authority may, in determining an application for a licence, take into consideration:
    - (a) the suitability of the applicant, and
    - (b) the paid-up share capital and reserves of the applicant, and
    - (c) the memorandum and articles of association of the applicant, and
    - (d) the re-insurance arrangements of the applicant, and
    - (e) the appropriate maximum number of licensed insurers, and
    - (f) the efficiency of the workers compensation scheme under this Act generally, and
    - (g) such other matters as the Authority thinks fit.
  - (3) Despite subsection (1), the Authority must refuse an application for a licence from a corporation that does not comply with such requirements as are prescribed by the regulations for the purposes of this section.
  - (4) When the Authority proposes to grant a licence to a corporation, it must give 14 days' notice of the proposal to all licensed insurers specifying the name of the corporation.

**177 Offence—unlicensed insurers** (cf former s 179)

- (1) A person (other than a licensed insurer) must not issue or renew policies of insurance.  
Maximum penalty: 100 penalty units.
- (2) A contravention of subsection (1), or of a condition to which a licence is subject under this Part, does not annul a policy of insurance issued or renewed by an insurer or affect the liability of the insurer to the person insured under the policy.

**178 Duration of licences** (cf former s 180)

- (1) A licence granted under this Part continues in force for a term of 5 years unless it is sooner cancelled under this Act.
- (2) A licensee is entitled to the renewal of its licence by the issue of another licence, but only if the licensee satisfies the requirements of this Act for the grant of a licence.

- (3) The Authority cannot refuse to renew a licensee's licence unless the Authority has given the licensee at least 6 months notice of the Authority's intention not to renew the licence stating the grounds on which it proposes to refuse the renewal.
- (4) The Authority can refuse to renew a licence without giving notice under subsection (3) only if the Authority did not become aware of the grounds for refusal until less than 7 months before the expiry of the licence and the reason for the Authority not becoming aware of those grounds was solely or primarily that the insurer provided misleading information or withheld from the Authority information relevant to the Authority's consideration of the renewal.
- (5) Nothing in this section affects any power of the Authority to suspend or cancel a licence under section 182 or 183.

**179 Conditions of licences** (cf former s 181)

- (1) A licence granted to an insurer under this Part is subject to:
  - (a) such conditions as may be prescribed by this Act or the regulations, and
  - (b) such conditions (not inconsistent with this Act or the regulations) as may be imposed by the Authority:
    - (i) on the granting of the licence, or
    - (ii) at any time during the currency of the licence.
- (2) The Authority may, by notice served on a licensed insurer, impose conditions (or further conditions) to which the licence is to be subject or vary any conditions imposed on the licence by the Authority.
- (3) A condition must not be prescribed or imposed or varied by the Authority if it gives or is likely to give a competitive advantage to the licensed insurer over other licensed insurers.
- (4) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.

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- (5) A licensed insurer must comply with any condition to which the licence is subject.

Maximum penalty: 100 penalty units.

**180 Matters that may be regulated by conditions of licences** (cf former s 182)

Without limiting the generality of section 179, the conditions to which a licence granted under this Part may be subject include conditions:

- (a) for the purpose of ensuring compliance with the obligations of the licensed insurer, or
- (b) for the purpose of ensuring that insurance premiums for policies of insurance are available to meet claims, or
- (c) for the purpose of the efficiency of the workers compensation scheme under this Act generally.

**181 Assignment of licences**

- (1) A licensed insurer may, with the approval of the Authority, assign its licence to another licensed insurer or to a corporation to whom the Authority proposes to grant a licence.
- (2) The Authority must not approve the assignment of a licence unless the Authority is satisfied that the proposed assignee is able to meet the past, present and future liabilities of the assignor:
  - (a) under any policy of insurance under this Act in respect of which the assignor is the insurer, and
  - (b) to the WorkCover Authority Fund, and
  - (c) to any other licensed insurer.

**182 Suspension of licences**

- (1) The Authority may, by notice served on a licensed insurer, suspend the insurer's licence and the insurer is thereby prohibited from issuing any policies of insurance under this Act after such date as is specified in the notice for the purpose.

- (2) A licensed insurer who contravenes the terms of any such notice is guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) A suspension may be effected only if:
- (a) subject to subsection (4), a licensed insurer has contravened its licence or this Act or the regulations, or
  - (b) the insurer ceases to be an insurer authorised to carry on business under the *Insurance Act 1973* of the Commonwealth, or
  - (c) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the insurer, or
  - (d) the insurer is given a direction under section 51 or 62 of the *Insurance Act 1973* of the Commonwealth or an inspector is appointed to investigate the affairs of the insurer under Part V of that Act, or
  - (e) there is any default by the insurer in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the insurer (except where the default occurs because the insurer genuinely disputes its liability to make the payment), or
  - (f) the insurer enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
  - (g) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the insurer or a resolution is passed for the winding up or dissolution of the insurer (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or

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- (h) there is a change in the effective control of the insurer or the insurer becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence, or
  - (i) the Authority is of the opinion that the insurer has failed to comply at any time with a condition imposed on its authority to carry on insurance business under the *Insurance Act 1973* of the Commonwealth, or
  - (j) a person claiming to be a creditor by assignment or otherwise of the insurer for a sum exceeding \$100,000 then due has served on the insurer, by leaving at its registered office, a demand requiring the insurer to pay the sum so claimed to be due, and the insurer has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor, or
  - (k) there is returned unsatisfied, in whole or part, any execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the insurer and the amount unsatisfied exceeds \$100,000, or
  - (l) the insurer has agreed to the suspension.
- (4) If the contravention by a licensed insurer of its licence or this Act or the regulations is capable, in the opinion of the Authority, of being remedied within 21 days after the contravention occurred (or such longer period as the Authority, having regard to the nature of the contravention and the need to protect the interests of policy holders and other persons, may reasonably allow), the Authority must not suspend the licence during that period.
- (5) The Authority may, by notice served on the licensed insurer, terminate the suspension of the insurer's licence if the Authority is satisfied that the licensed insurer is able to comply with the requirements that would be imposed on the licensed insurer if it were then to be granted a licence for the first time.

### **183 Cancellation of licences**

- (1) The Authority may, by notice served on the licensed insurer, cancel a licence granted under this Part.

- (2) The Authority may cancel a licence for any reason it thinks fit, but must give the reasons for its decision.
- (3) Without affecting the generality of subsection (2), the Authority may cancel a licence for reasons that relate to the workers compensation scheme under this Act generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer.
- (4) The Authority must, as far as practicable, give a licensed insurer whose licence it proposes to cancel an opportunity to make representations on the matter.
- (5) A licence surrendered by a licensed insurer is not cancelled until the Authority approves of the surrender.

#### **184 Assignment of policies following cancellation of licence etc**

- (1) In this section:  
*insurer* means a licensed insurer, and includes a person whose licence has been cancelled or has otherwise ceased to be in force.
- (2) The Authority may assign the policies of insurance of an insurer to another insurer if:
  - (a) the licence of the insurer is cancelled or otherwise ceases to be in force, or
  - (b) the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject.
- (3) Policies may be assigned under this section by notice served by the Authority on the insurers concerned.
- (4) On the service of any such notice:
  - (a) the policies of insurance to which it relates are cancelled as from the date and time specified in the notice, and
  - (b) the insurer to whom those policies are assigned is taken (as from the time and date of cancellation) to have issued policies of insurance on the same terms as, and for the balance of the periods of, those policies.

- (5) On the cancellation of a policy of insurance under subsection (4) (a), the insurer whose policy is cancelled must pay to the insurer to whom the policy is assigned:
  - (a) the same proportion of the premium paid or to be paid in respect of the policy as the balance of the indemnity period of the policy bears to the whole indemnity period of the policy, and
  - (b) such additional amount as the Authority directs relating to the income from investment and the management fee with respect to the premium.
- (6) Any amount payable under subsection (5) to an insurer may be recovered by the insurer as a debt in a court of competent jurisdiction.
- (7) The effect of the cancellation of a policy of insurance under this section is to terminate the indemnity period of the policy but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.

**185 Records and evidence relating to licences** (cf former s 186)

- (1) The Authority must keep records in relation to all licences granted by the Authority under this Part, including particulars of:
  - (a) the granting, refusal, duration, conditions, cancellation and suspension of licences, and
  - (b) such other matters relating to licences as the Authority thinks fit.
- (2) A certificate executed by the Authority and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without proof of its execution by the Authority and without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

**186 Information and records as to business etc to be supplied to Authority by insurers** (cf former s 189)

(1) In this section:

*insurer* means a licensed insurer, a former licensed insurer previously a licensed insurer under this Act, a self-insurer or a former self-insurer.

(2) The Authority may require an insurer:

(a) to disclose to the Authority specified information relating to the business and financial position of the insurer or of any body corporate that is a related body corporate, or

(b) to forward to the Authority, or make available for inspection, specified records, or copies or extracts from specified records, kept by the insurer or by any body corporate that is a related body corporate.

(3) A requirement under this section:

(a) must be made in writing and served on the insurer, and

(b) must specify the manner in which and the time within which the requirement is to be complied with.

(4) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by a registered tax agent, a registered company auditor (within the meaning of the *Corporations Law*) or an actuary approved by the Authority as to the correctness of any specified information or specified records (or copies of or extracts from specified records).

(5) Unless the insurer satisfies the court that it is not within its power to comply with the requirement, an insurer who fails to comply with the requirement is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

**187 Notification to Authority of certain defaults in relation to insurers** (cf former s 190)

(1) In this section:

*insurer* means a licensed insurer, a former licensed insurer previously a licensed insurer under this Act, or a self-insurer.

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- (2) An insurer must notify the Authority in writing of the occurrence of any of the events or things referred to in section 182 (3) (paragraphs (a), (e), (i) and (m) excepted) within 21 days after the event or thing happens (whether within or outside the State).
  - (3) An insurer must notify the Authority in writing of:
    - (a) a decrease or proposed decrease in the issued capital of the insurer within 21 days after the decrease or proposal to effect the decrease, and
    - (b) the receipt by the insurer of any Part A, B, C or D statement as defined for the purposes of the *Corporations Law*.

Maximum penalty: 100 penalty units.

**188 Power of Supreme Court to deal with insurers or former insurers unable to meet liabilities etc** (cf former s 191)

- (1) The Supreme Court may, on the application of the Authority, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of:
  - (a) the holders of policies of insurance issued or renewed by a licensed insurer or a former licensed insurer (whether before or after the commencement of this section), and
  - (b) the workers to whom those policies apply.
- (2) The Supreme Court may make such an order if it is satisfied that the licensed insurer or former licensed insurer:
  - (a) is not able to meet the insurer's liabilities under the policies of insurance or may not be able to do so, or
  - (b) has acted or may act in a manner that is prejudicial to the interests of the holders of the policies of insurance or the workers to whom those policies apply.
- (3) Without limiting the generality of subsection (1), the Supreme Court may make the following orders:
  - (a) an order regulating the administration and payment of claims under the policies of insurance,

- (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer or former licensed insurer,
  - (c) if the licensed insurer or former licensed insurer is a body corporate—an order requiring it to discharge its liabilities under the policies of insurance out of the assets of the body and the assets of any related body corporate,
  - (d) if the licensed insurer or former licensed insurer is a body corporate—an order appointing a receiver or receiver and manager, having such powers as the Supreme Court orders, of the property or of part of the property of the body or of any related body corporate.
- (4) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court is not to require the Authority or any other person, as a condition of granting an interim order, to give any undertaking as to damages.
- (6) If the Supreme Court has made an order under this section, the Supreme Court may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the firstmentioned order.
- (7) A person must not contravene, whether by act or omission, an order made by the Supreme Court under this section that is applicable to the person.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (8) The Supreme Court is not to exercise its powers under this section in respect of a corporation which is in the course of being wound up.

- (9) The powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.
- (10) In this section, *former licensed insurer* means a former licensed insurer previously a licensed insurer under this Act.

**189 Insurance brokers, agents or intermediaries** (cf former s 192)

- (1) If a licensed insurer pays any amount by way of commission or other remuneration to an insurance broker, agent or intermediary in relation to the issue or renewal of a policy of insurance the insurance broker, agent or intermediary must disclose that payment (including the amount of the payment) to the employer concerned. This subsection does not apply to a payment to a sole agent of an insurer.
- (2) The regulations may make provision for or with respect to the way in which a payment is to be disclosed for the purposes of subsection (1).
- (3) A licensed insurer must send any cover note, policy of insurance or renewal notice (or any notice under any policy of insurance) direct to the employer concerned, but may also send a copy to an insurance broker, agent or intermediary.
- (4) An employer must pay any premium under a policy of insurance direct to the licensed insurer and not to an insurance broker, agent or intermediary. This subsection does not prevent payment to a sole agent of an insurer.
- (5) This section does not apply in any case specified in the regulations or approved by the Authority.
- (6) This section does not apply to a specialised insurer.
- (7) For the purposes of this section a *sole agent of an insurer* is an agent who, in respect of workers compensation business, acts for one insurer only.

Maximum penalty: 50 penalty units.

## **Part 6 Self-insurers**

### **190 Applications for licences** (cf former s 210)

- (1) An application for a licence under this Part may be made to the Authority by any employer.
- (2) An application may be made by a company that is not an employer if the licence is to cover subsidiaries of the company that are employers.
- (3) An application is to be in such form and accompanied by such documents:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to any such regulations, as may be determined by the Authority.
- (4) The Authority may, before determining an application for a licence, require the applicant to advertise or give other notice of the application.
- (5) An application is to be accompanied by such fee (if any) as is prescribed by the regulations or (subject to the regulations) as is determined by the Authority. Any such fee is to be paid into the WorkCover Authority Fund.

### **191 Determination of application for licence** (cf former s 211)

- (1) The Authority is to consider each application for a licence under this Part and may, in its discretion:
  - (a) grant a licence to the applicant, or
  - (b) refuse the application.
- (2) The Authority may, in determining an application for a licence, take into consideration:
  - (a) the suitability of the applicant, and
  - (b) the financial ability of the applicant to undertake the liabilities under this Act. and
  - (c) the efficiency of the workers compensation scheme generally, and
  - (d) such other matters as the Authority thinks fit.

- (3) The Authority may take the matters under subsection (2) into consideration in respect of both the applicant for the licence and any subsidiary to be covered by the licence.
- (4) The Authority may issue guidelines relating to the matters that the Authority takes into consideration under subsection (2) in determining an application for a licence.

**192 Endorsement of subsidiaries on self-insurer's licence** (cf former s 211A)

- (1) The Authority may endorse on a licence granted under this Part the name of one or more wholly-owned subsidiaries of the licence holder. While the name of a company is endorsed on an employer's licence, the company is taken to be covered by the licence.
- (2) The Authority may at any time amend such an endorsement by adding, altering or deleting the name of a company. An amendment is made by the Authority giving notice of it to the licence holder and takes effect on the day notice is given or on a later day specified in the notice.
- (3) A company which holds a licence under this Part and any subsidiary covered by the licence are jointly and severally liable for any contribution required to be made to any fund under this Act by the subsidiary.
- (4) The licence of a company under this Part:
  - (a) may be subject to conditions under this Act relating to the obligations of a subsidiary covered by the licence, and
  - (b) may be cancelled or suspended under this Act because of the acts or omissions of the subsidiary.
- (5) The meaning of *wholly-owned subsidiary* is the same as in the *Corporations Law*.

**193 Government employers covered by Government managed fund scheme to be self-insurers** (cf former s 2118)

- (1) Any Government employer covered for the time being by the Government's managed fund scheme is taken to be a self-insurer for the purposes of this Act.

- (2) The Government's managed fund scheme is any arrangement under which the self-insurer liabilities (within the meaning of section 199) of particular Government employers covered by the arrangement are paid by the Government of the State or by the Insurance Ministerial Corporation on its behalf.
- (3) The Insurance Ministerial Corporation may enter into an arrangement with the Authority under which the Corporation acts on behalf of Government employers for the purpose of paying contributions under this Act and for other purposes of this Act.
- (4) The other provisions of this Part do not apply to self-insurers referred to in this section. However, the Authority may, with the approval of the Treasurer, impose conditions on the authority conferred by this section on such self-insurers (being conditions of a kind that the Authority could impose on the licence of a self-insurer under this Part).
- (5) This section does not apply to any Government employers who are separately licensed under this Part as self-insurers.

**194 Provisions relating to licences** (cf former s 212)

- (1) The following provisions of Part 5 (Licensing of insurers) apply to and in respect of licences granted under this Part in the same way as they apply to licences granted under Part 5:
  - (a) section 178 (Duration of licences),
  - (b) section 179 (Conditions of licences),
  - (c) section 180 (Matters that may be regulated by conditions of licences),
  - (d) section 182 (Suspension of licences),
  - (e) section 183 (Cancellation of licences),
  - (f) section 185 (Records and evidence relating to licences).
- (2) An applicant for a licence, or the holder of a licence, under this Part who is aggrieved by a decision of the Authority:
  - (a) refusing to grant a licence, or
  - (b) imposing a condition on a licence or varying a condition of a licence, or
  - (c) suspending or cancelling a licence,may apply to the Administrative Decisions Tribunal for a review of the decision.

**195 Deposit required for self-insurers** (cf former s 213)

- (1) A self-insurer who is granted a licence under this Part must deposit with the Authority:
  - (a) on the grant of the licence—an amount of money determined by the Authority in respect of the self-insurer, and
  - (b) at such other time or times as the Authority may direct by notice to the self-insurer—such additional amount or amounts of money determined by the Authority in respect of the self-insurer.

Maximum penalty: 100 penalty units.

- (2) The Authority may from time to time refund to a self-insurer any part of the deposit of a self-insurer.
- (3) A deposit is not payable by:
  - (a) a Government employer, or
  - (b) any other employer approved by the Authority.

**196 Investments of deposits** (cf former s 214)

- (1) Every amount of money deposited with the Authority by a self-insurer under this Part is to be invested and re-invested from time to time as occasion requires in any manner for the time being authorised for the investment of trust funds.
- (2) The interest on any such investment is to be paid to the self-insurer depositing the sum of money.
- (3) The investment and redemption are to be at par.

**197 Alternative method of giving security** (cf former s 215)

- (1) The obligation imposed by this Part on a self-insurer to deposit with the Authority any specified amount of money may be satisfied in whole or in part by the deposit by the self-insurer of securities of equal value issued or guaranteed by the State or the Commonwealth.
- (2) The value of any such securities is, for the purposes of this section, deemed to be their face value.
- (3) If the market value of any such securities is at any time below par. the Authority may require the self-insurer to deposit further securities to such an amount that the total market value of all the

securities deposited by the self-insurer equals the amount of the deposit required to be made by the self-insurer.

- (4) A self-insurer who does not comply with a requirement under subsection (3) is in breach of section 195.
- (5) Every security so deposited with the Authority must (unless it is negotiable) bear or be accompanied by an assignment in blank executed by the self-insurer making the deposit.
- (6) A reference in this Part to the amount of money required to be deposited with the Authority is deemed to include a reference to any securities substituted in whole or in part for that amount under the authority of this section.
- (7) The Authority may convert any such securities into money by sale, hypothecation or otherwise for the purpose of paying or satisfying under section 199 any claims, judgments or awards against a self-insurer.

**198 Guarantees as alternative to deposit** (cf former s 215A)

- (1) It is sufficient compliance with a requirement of this Part to deposit an amount of money with the Authority if a guarantee from a bank, building society or credit union guaranteeing payment of the amount is provided on terms acceptable to the Authority.
- (2) If a refund of part of a deposit is authorised under section 195 (2), the authorisation operates as authority for the Authority to give the appropriate partial release from a guarantee provided instead of a deposit.
- (3) Any amount paid to the Authority pursuant to such a guarantee is to be regarded for the purposes of this Part as having been deposited with the Authority by the self-insurer concerned and is to be dealt with accordingly.
- (4) In this section:  
*guarantee* includes undertaking.

**199 Application and refund of deposit** (cf former s 216)

- (1) The Authority is to hold every amount of money deposited under this Part on trust for the payment and satisfaction of all claims, judgments or awards (not otherwise paid or satisfied):

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- (a) against the self-insurer making the deposit in respect of its self-insurer liabilities, and
    - (b) against any other self-insurer that is a subsidiary of the self-insurer making the deposit (being a subsidiary that is covered for the time being by the licence of that self-insurer) in respect of the subsidiary's self-insurer liabilities.
  - (2) An amount of money deposited with the Authority under this Part is not liable to be attached or levied on or made subject to any debts of or claims against the self-insurer making the deposit, except as provided by subsection (1).
  - (3) A person who has deposited an amount of money with the Authority under this Part is, if the person ceases to be a self-insurer, entitled to a refund of the amount so deposited and standing to the person's credit with the Authority:
    - (a) on the expiration of 3 months after service on the Authority of a written request for the refund, and
    - (b) on satisfying the Authority that all accrued, continuing, future and contingent self-insurer liabilities of the person or the person's subsidiaries have been discharged or adequately provided for.
  - (4) In this section:

*self-insurer liabilities* of a person means:

- (a) any liabilities of the person under this Act in respect of workers employed by the person while a self-insurer under this Act or under the 1987 Act, or
- (b) any liabilities of the person independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for injuries received by workers employed by the person while a self-insurer under this Act or under the 1987 Act.

## Part 7 Defaulting insurers

### 200 Definitions (cf former s 224A)

In this Part:

*defaulting insurer* means an insurer to which an order of the Minister in force under section 201 relates, but does not include an insolvent insurer.

*insolvent insurer* means an insolvent insurer within the meaning of Part 8.

### 201 Declaration of defaulting insurers (cf former s 224B)

- (1) If the Minister is satisfied that a licensed insurer or an insurer previously licensed under section 27 of the former 1926 Act is unable to meet claims and other liabilities under policies of insurance issued or renewed by it, the Minister may, by order in writing, declare that the insurer is a defaulting insurer for the purposes of this Part.
- (2) An insolvent insurer may not be declared to be a defaulting insurer and the declaration of a defaulting insurer ceases to have effect if the insurer is or becomes an insolvent insurer.
- (3) A declaration is not to be made under this section before 1 October 1999.

### 202 Guarantee Fund may be applied to meet claims etc of defaulting insurer (cf former s 224C)

- (1) Amounts standing to the credit of the Guarantee Fund may, if the regulations so provide, be applied by the Authority for the purposes of:
  - (a) satisfying, on behalf of the defaulting insurer, claims, judgments or awards arising from or relating to policies of insurance issued or renewed by the defaulting insurer (whether before or after the commencement of this section), and
  - (b) meeting the management expenses incurred in respect of satisfying those claims, judgments or awards.

- (2) Amounts applied by the Authority under this section are to be applied in accordance with such priorities among claims, judgments or awards as the Authority determines.
- (3) The Authority may recover from the defaulting insurer as a debt in any court of competent jurisdiction the payments made on its behalf by the Authority under this section and not repaid to the Authority by the defaulting insurer.
- (4) Any amounts repaid by or recovered from a defaulting insurer are to be credited to the Guarantee Fund.
- (5) The obligation of a defaulting insurer to repay any amounts paid on its behalf under this section does not cease because the insurer becomes an insolvent insurer.

## Part 8 Insurers' Guarantee Fund

### 203 Definitions (cf former s 225)

- (1) In this Part:

***financial year*** in relation to an insurer other than a self-insurer:

- (a) includes the period after 4 pm on the day preceding the first day of the financial year, and
- (b) does not include the period after 4 pm on the last day of the financial year.

***insolvent insurer*** means an insurer to which an order of the Minister in force under section 204 relates.

***insurer*** means a licensed insurer, a former licensed insurer (whether previously a licensed insurer under this Act or the 1987 Act) or a self-insurer, but does not include an insolvent insurer or a licensed insurer under the 1987 Act.

***policy of insurance issued by an insolvent insurer*** means:

- (a) a policy of insurance issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer, or
  - (b) a policy of insurance, issued by a person other than an insolvent insurer, in respect of which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement whereby the insolvent insurer is (or would but for its dissolution be) liable to indemnify the person against liability of the person under the policy.
- (2) In this Part, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.
- (3) So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer has and may exercise outside New South Wales the functions conferred or imposed on the liquidator by this Part, in addition to having and exercising those functions within New South Wales.

**204 Insolvent insurers** (cf former s 226)

If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Part.

**205 Insurers' Guarantee Fund** (cf former s 227)

- (1) There is established a fund to be known as the "Insurers' Guarantee Fund".
- (2) There is to be paid into the Guarantee Fund:
  - (a) the contributions required by section 206 or the regulations to be paid by insurers,
  - (b) all income accruing from the investment or re-investment of money in the Guarantee Fund or otherwise accruing to the Guarantee Fund,
  - (c) any amounts received by the Authority in the exercise of the rights, or the discharge of the obligations, referred to in section 209 (2) or (3),
  - (d) any amounts payable to the Authority pursuant to section 213, and
  - (e) any amounts authorised by the regulations to be paid into the Guarantee Fund from the funds of the Authority.
- (3) There is to be paid out of the Guarantee Fund such amounts as may be authorised by this Part, any other Act or the regulations to be paid out of that Fund.
- (4) The Guarantee Fund is, subject to this Act, to be under the direction, control and management of the Authority.
- (5) Subject to such directions, if any, as may be given from time to time by the Treasurer, the Authority may invest and re-invest or otherwise use or employ the Guarantee Fund in such investments as may be determined from time to time by the Authority, and any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by the Authority.

**206 Contributions to Guarantee Fund** (cf former s 228)

- (1) The Authority may, in respect of any financial year specified by the regulations, determine the amount to be contributed to the Guarantee Fund in respect of that year, being an amount that the Authority considers is necessary:
  - (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insurers declared under section 204 to be insolvent insurers, and
  - (b) to provide for the payment of any other amounts to be paid under this Part from the Guarantee Fund during that financial year (not being amounts which directly or indirectly relate to insurers, declared under that section to be insolvent insurers).
- (2) Where the Authority determines an amount under subsection (1) in respect of a financial year prescribed for the purposes of that subsection, each insurer (other than a self-insurer or a former licensed insurer) must pay to the Authority for payment into the Guarantee Fund a contribution as provided by this section.
- (3) The contribution is payable by an insurer in respect of premiums paid to the insurer for policies of insurance issued or renewed by the insurer for such period or periods as the Authority may determine and notify to insurers (not being any period before the determination is made and notified).
- (4) The contribution payable is an amount equal to a proportion (determined by the Authority and notified to insurers) of the risk premium that is paid to the insurer for each policy of insurance to which the contribution relates. The *risk premium* is the amount determined as risk premium in accordance with the insurer's total premium methodology approved by the Authority under this Chapter or, in a case where a risk premium is not so determined, the amount determined as the risk premium in accordance with the regulations.
- (5) The contributions payable under this section must be paid to the Authority at such times and in such manner as the regulations may provide.

- (6) If an insurer has not paid a contribution to the Authority within the time required by the regulations, the amount of the contribution together with interest calculated at the rate of 15% per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (7) A certificate executed by the Authority certifying that an amount specified in the certificate was the risk premium income received by a licensed insurer so specified in respect of a particular period so specified is (without proof of its execution by the Authority) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.

**207 Liquidator to notify Authority of claims** (cf former s 229)

The liquidator of an insolvent insurer must, on receiving any claim relating to any policy of insurance issued by the insolvent insurer, forward the claim to the Authority.

Maximum penalty: 20 penalty units.

**208 Delivery of documents etc to Authority** (cf former s 230)

The liquidator of an insolvent insurer must, whenever requested to do so by the Authority:

- (a) deliver to the Authority all documents relating to policies of insurance issued by the insolvent insurer and all claims, judgments or awards made in respect of any such policies in the liquidator's possession, and
- (b) supply to the Authority all information in the liquidator's possession relating to any such policies or any such claims, judgments or awards.

Maximum penalty: 20 penalty units.

**209 Appointment of Authority as agent and attorney of employer and worker** (cf former s 231)

- (1) The Authority is by this section appointed the agent and attorney of an employer and a worker insured under a policy of insurance issued by an insolvent insurer.

- (2) As agent and attorney of such an employer, the Authority may exercise the rights and discharge the obligations of the employer:
  - (a) for the purpose of dealing with and finalising any claim against which the employer is indemnified under the policy of insurance, and
  - (b) for the purpose of satisfying any such claim or any judgment or award against which the employer is indemnified under the policy of insurance, and
  - (c) for any other purpose prescribed by the regulations.
- (3) As agent and attorney of such an employer or a worker, the Authority may exercise the rights of the employer or worker in connection with the policy of insurance:
  - (a) for the purpose of proving in the winding up of the insolvent insurer and receiving any dividends or other money payable to the employer or worker in the winding up, and
  - (b) for the purpose of recovering any money which the employer or worker is entitled to recover under section 151Z of the 1987 Act or section 64 of the former 1926 Act, and
  - (c) for the purpose of recovering any money which the employer or worker is entitled under the policy of insurance to recover from the person who issued the policy, being a policy referred to in paragraph (b) of the definition of *policy of insurance issued by an insolvent insurer* in section 203, and
  - (d) for any other purpose prescribed by the regulations.
- (4) The Authority may exercise rights and discharge obligations as agent in the name of the employer or worker concerned, or in its own name.
- (5) All rights vested in an insurer or insolvent insurer and all obligations imposed on an insurer or insolvent insurer, being rights or obligations:
  - (a) arising from or relating to a policy of insurance issued by an insolvent insurer to an employer, and

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- (b) which may or must be exercised or discharged for the purpose of:
- (i) dealing with and finalising any claim against which the employer is indemnified under the policy, or
  - (ii) satisfying any claim, judgment or award, against which the employer is indemnified under the policy,
- are vested in or imposed on the employer.
- (6) Subsection (5) is not to be construed so as to vest in or impose on an employer, or to affect in any other way:
- (a) a right of an insurer or insolvent insurer to be indemnified by a reinsurer or an obligation of an insurer or insolvent insurer to indemnify an employer, or
  - (b) any other prescribed right or obligation.
- (7) If the Authority is, under this section, empowered to exercise any rights, or to discharge any obligations, of an employer or a worker as agent and attorney, the employer or worker is not entitled, without the consent of the Authority, to exercise those rights or discharge those obligations.
- (8) The appointment effected by this section may be revoked only by an Act.

**210 Payments to employer or liquidator** (cf former s 232)

- (1) Where an employer insured under a policy of insurance issued by an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Part or before or after the commencement of this Part) any claim, judgment or award in respect of which the employer has not been indemnified under that policy, the Authority, as manager of the Guarantee Fund, may pay from the Guarantee Fund to the employer an amount equal to the whole or any part of the amount paid by the employer in satisfaction of the claim, judgment or award.
- (2) Where the liquidator of an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Part or before or after the commencement

of this Part) any claim, judgment or award in respect of which an employer is entitled to be indemnified under a policy of insurance issued by the insolvent insurer, the Authority, as manager of the Guarantee Fund, may pay from the Guarantee Fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim, judgment or award.

- (3) Where:
- (a) a payment is made under subsection (1) to an employer in respect of a claim, judgment or award, the Authority is deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer, or
  - (b) a payment is made under subsection (2) to the liquidator of an insolvent insurer in respect of a claim by or on behalf of any person or a judgment or award for the benefit of any person, the Authority is deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer of the person in respect of whom the payment is made.
- (4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Authority and neither those subsections operate nor the exercise of any of those powers operates so as to confer, directly or indirectly, any right on any person to whom a payment is or may be made under those subsections or on any other person.

**211 Operation of certain provisions** (cf former s 233)

- (1) Section 69 applies in relation to an employer insured under a policy of insurance issued by an insolvent insurer (or who would be so insured if the insolvent insurer had not been dissolved) as if the Authority were the insurer liable to indemnify the employer under the policy.
- (2) Section 221 of the 1987 Act (Payments from the Contribution Fund) applies to and in respect of a payment made by the Authority (as agent and attorney of an employer) pursuant to a

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policy of insurance issued by an insolvent insurer in the same way as it would apply to and in respect of the payment had it been made by the Authority as the insurer under the policy.

- (3) Where the Authority receives as agent and attorney of an employer a payment from the Contribution Fund in accordance with section 221 of the 1987 Act (Payments from the Contribution Fund), section 222 of the 1987 Act (Repayments to the Contribution Fund) applies to and in respect of that payment as if the Authority were an insurer which had received that payment in respect of compensation paid by it.
- (4) Sections 117 and 126 apply in relation to a claim being dealt with by the Authority as agent and attorney of an employer insured under a policy of insurance issued by an insolvent insurer as if a reference in those sections to an insurer included a reference to the Authority.
- (5) The regulations may make provision, not inconsistent with this Part, for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of this Act (including the provisions referred to in subsections (1)–(4)) in relation to the dealing with or finalising of claims, or the satisfying of judgments or awards, by the Authority as agent and attorney of an employer insured under a policy of insurance issued by an insolvent insurer.

**212 Application of Guarantee Fund** (cf former s 234)

- (1) Out of the Guarantee Fund, the Authority as manager of that Fund:
  - (a) is to pay the amount of any claim, judgment or award arising from or relating to any policy of insurance issued by an insolvent insurer, being a claim, judgment or award that it proposes to satisfy as agent and attorney of an employer, and any other amounts required by this Part to be paid from that Fund, and
  - (b) is entitled:
    - (i) to be paid the costs of administration of the Guarantee Fund (including any legal or other costs connected with the declaration of an insurer as an insolvent insurer), and

- (ii) to be indemnified against all payments made by it and all costs and expenses that it may incur in or in connection with the exercise of its functions under this Part.
- (2) Where a payment is made by the Authority as agent and attorney of an employer, being a payment authorised by this Part, the Authority is not entitled to recover the amount of that payment from the employer.

**213 Recovery of amounts under contracts or arrangements for reinsurance** (cf former s 235)

To the extent that any amounts are paid out of the Guarantee Fund in respect of a claim, judgment or award pursuant to section 212 (including the costs of the Authority), the Authority is, where an insolvent insurer (if it had provided indemnity to that extent under a policy of insurance) would have been entitled to recover any sum under a contract or arrangement for reinsurance, entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Authority to recover from the reinsurer and pay into the Guarantee Fund the amount due under that contract or arrangement.

**214 Payments of workers compensation when insolvent insurer dissolved** (cf former s 236)

- (1) When an insolvent insurer has been dissolved, the payments of compensation under judgments or awards relating to policies of insurance issued by the insolvent insurer which would, but for the dissolution taking place, be payable by the insolvent insurer are to continue and be paid out of the Guarantee Fund by the Authority.
- (2) When an insolvent insurer has been dissolved, a person who would have had, but for the dissolution of the insolvent insurer, an entitlement to payment of any amount arising from or relating to any policy of insurance issued by the insolvent insurer (being a policy in respect of which the insolvent insurer is the insurer) is entitled to payment of that amount out of the Guarantee Fund.

- (3) A person referred to in subsection (2) may make a claim against the Authority, as manager of the Guarantee Fund, in respect of an entitlement to payment of an amount under that subsection.
- (4) The Authority, as manager of the Guarantee Fund, is entitled to deal with and finalise a claim made under subsection (3) in relation to a policy of insurance issued by an insolvent insurer to the same extent as it would have been entitled to do so if the insolvent insurer had not been dissolved.

**215 Inspection of documents etc by person authorised by Minister**  
(cf former s 237)

The liquidator of an insolvent insurer must, whenever requested to do so by a person authorised by the Minister, make any documents relating to policies of insurance issued by the insolvent insurer and any claims, judgments or awards made in respect of any such policies in the liquidator's possession available for inspection by that person.

Maximum penalty: 20 penalty units.

**216 Authority may take certain legal proceedings** (cf former s 238)

- (1) If:
  - (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding up, or
  - (b) the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Part or not, is challenged, reviewed or called into question in proceedings before any court, or
  - (c) any other matter that concerns or may affect the operation of this Part is raised in proceedings before any court.

the Authority may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and thereupon becomes a party to, and has all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

- (2) In any case in which the Attorney General might take proceedings on the relation or on behalf or for the benefit of a person who is (or who would but for the dissolution of the insolvent insurer be) entitled, under a policy of insurance issued by an insolvent insurer, to be indemnified against a claim, judgment or award arising from or relating to the policy, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Part, any Act or any rule of law, the Authority is deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.
- (3) The Authority is entitled to be paid, out of the Guarantee Fund, all the costs and expenses incurred by the Authority in exercising the powers conferred by this section.

**217 Regulations** (cf former s 239)

The regulations may make provision for or with respect to:

- (a) requiring insurers (including former licensed insurers) to make contributions or further contributions to the Guarantee Fund, and
- (b) the manner and method of determining any such contributions or further contributions, and
- (c) varying in specified circumstances the periods with respect to which contributions are to be determined, or the method by which contributions are to be calculated, under section 206, and
- (d) the payment, and proceedings for the recovery, of contributions, and
- (e) the circumstances and the manner in which contributions of insurers and other amounts standing to the credit of the Guarantee Fund may be repaid and otherwise distributed to insurers and the liquidators of insolvent insurers.

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## Part 9 Uninsured Liability and Indemnity Scheme

### 218 Definitions (cf former s 138)

In this Part:

*employer*, in relation to a worker, includes a principal within the meaning of section 20 of the 1987 Act who is liable to pay compensation to the worker.

*Scheme* means the Uninsured Liability and Indemnity Scheme.

*the relevant time*, in relation to an injured worker, means the time of the happening of that worker's injury.

### 219 The Scheme (cf former s 139)

There is constituted a scheme called the "Uninsured Liability and Indemnity Scheme", which is to be administered by the Authority. The Scheme is a continuation of and the same Scheme as the Scheme of the same name under the 1987 Act. Any act, matter or thing done or having effect under or for the purposes of the Scheme under the 1987 Act is taken to have been done or to have effect under or for the purposes of the Scheme under this Act.

### 220 Persons eligible to make claims (cf former s 140)

- (1) A claim may be made under the Scheme by any person who considers he or she has a claim for compensation under this Act against an employer in respect of an injury to a worker, if the employer:
  - (a) had not obtained, or was not maintaining in force, a policy of insurance for the full amount of the employer's liability under this Act in respect of the injured worker at the relevant time, or
  - (b) having been a self-insurer at the relevant time, has ceased to undertake liability to pay compensation to the employer's own workers (but only if the claim cannot be paid under section 199 from any money deposited with the Authority or under any arrangement relating to the refund of any such deposit).

- (2) A claim may be made under the Scheme if the person claiming the compensation has been unable, after due search and inquiry, to identify the relevant employer.
- (3) If a payment is made by the Authority in respect of a claim under subsection (2) and the employer is subsequently identified, the Authority may recover the amount paid from the employer or the employer's insurer in the manner provided by this Part.
- (4) A claim cannot be made under the Scheme if the person claiming the compensation is entitled under section 20 of the 1987 Act to claim compensation against a principal within the meaning of section 20 of the 1987 Act.
- (5) If a person is entitled to claim compensation against a principal within the meaning of section 20 of the 1987 Act and the principal was not maintaining in force a policy of insurance for the full amount of the principal's liability under this Act at the relevant time:
  - (a) the person may make to the Authority a claim for compensation under the Scheme, and
  - (b) the Authority may deal with any such claim as it thinks fit.

**221 Making claims under Scheme** (cf s 141 1987 Act)

- (1) Claims under the Scheme are to be made in the form and manner for the time being determined by the Authority.
- (2) The Authority may, by notice, require an employer to furnish to the Authority within the period (being not less than 7 days) specified in the notice any information described in the notice that:
  - (a) is available to the employer, and
  - (b) is required by the Authority in order for it to deal with a claim under the Scheme.
- (3) An employer must comply with a notice given under subsection (2).

Maximum penalty: 20 penalty units.

(4) In this section:

*employer* includes any person whom the Authority has reason to suspect is an employer.

**222 Publication of claims etc** (cf s 142 1987 Act)

- (1) The Authority may, before considering a claim under the Scheme, publish a notice of the claim in such manner as the Authority considers appropriate.
- (2) If notice of a claim is so published, any person who, without reasonable cause, fails to notify the Authority within the time specified in the notice that the person is the insurer of the liability under this Act of any person who is an employer within the meaning of this Part in respect of the claimant, or who fails to supply the Authority with any information it has that may be material to the matter:
  - (a) is liable to reimburse the WorkCover Authority Fund such amount as the Authority has paid out in respect of the claim and any costs incurred in connection with the claim, and
  - (b) is guilty of an offence and liable to a penalty not exceeding 100 penalty units.
- (3) If, in respect of a claim under the Scheme, a licensed insurer with whom the Authority considers the injured worker's employer had a relevant policy of insurance at the relevant time is located, the following provisions apply:
  - (a) the Authority must supply the insurer with all relevant details of the claim,
  - (b) the insurer must, within 14 days of being advised of the claim, either accept or deny liability to indemnify the employer,
  - (c) if the insurer accepts liability to indemnify the employer, the Authority must:
    - (i) inform the claimant of the existence of the insurance. and
    - (ii) transfer the claim documents to the insurer,

- (d) if the insurer denies liability to indemnify the employer, or does not either accept or deny liability to indemnify the employer within 14 days of being advised of the claim, the Authority is to deal with the claim in the manner provided by this Part.

**223 Determination of claim by Authority** (cf s 143 1987)

- (1) From the WorkCover Authority Fund the Authority may, in respect of a claim under the Scheme:
  - (a) pay compensation in accordance with this Act, with or without admission of liability, or
  - (b) make ex gratia payments.
- (2) The Authority may refuse to satisfy a claim under the Scheme.
- (3) If the Authority does not, wholly or in part, satisfy a claim under the Scheme, it must, within 14 days of making the relevant decision, advise the claimant of its decision and the reasons for its decision.
- (4) A dispute between the Authority and a claimant may be assigned under this Act to a conciliator for conciliation, but the Authority is not bound by any decision of the conciliator.

**224 Appeal against Authority's decision on claim** (cf s 144 1987 Act)

- (1) A claimant under the Scheme who is dissatisfied with a decision of the Authority in respect of the claim may apply to the Compensation Court for a determination of the claim.
- (2) If such an application is made:
  - (a) the applicant must name the employer by whom the applicant alleges compensation is payable and the Authority as respondents to the proceedings, and
  - (b) the Authority may, by service of a notice on any person who, in the opinion of the Authority, may be liable to pay to the applicant compensation under this Act (or may have insured that liability), join that person as a party to the proceedings.

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- (3) The Compensation Court may hear and determine any such application and may make such orders in relation to the application as the Compensation Court thinks fit.
  - (4) Where an order under subsection (3) directs the doing of anything by the Authority or any other person, the Authority or that person, as the case may be, must comply with that direction.
  - (5) An order under subsection (3) may provide for the reimbursement of the Workcover Authority Fund under section 225.

**225 Employer or insurer to reimburse Authority** (cf s 145 1987 Act)

- (1) The Authority may serve on a person who, in the opinion of the Authority, was:
  - (a) in respect of an injured worker to or in respect of whom a payment has been made under the Scheme, an employer at the relevant time, or
  - (b) an insurer under this Act of such an employer,a notice requiring that person, within a period specified in the notice, to reimburse the Workcover Authority Fund an amount (not being an amount exceeding the amount of the payment made) specified in the notice.
- (2) The Authority may, by instrument in writing, waive the liability of an employer under subsection (1) to reimburse the Workcover Authority Fund an amount, if the Authority, in respect of the amount, is satisfied that:
  - (a) the amount is beyond the capacity of the employer to pay, or
  - (b) the employer could not reasonably have been expected to regard himself or herself as an employer at the relevant time, or
  - (c) the employer, not being a corporation, is bankrupt and the liability under this section is not provable in the bankruptcy, or
  - (d) the employer, being a corporation, is being wound up and the liability under this section is not provable in the winding up, or

- (e) the employer, being a corporation, has been dissolved, or
  - (f) it would not be commercially feasible for the Authority to attempt to recover the amount.
- (3) A person on whom a notice has been served under subsection (1) in respect of an injured worker may, within the period specified in the notice, apply to the Compensation Court for a determination as to the person's liability under this Act.
- (4) The Compensation Court may hear any such application and may:
- (a) make such determination in relation to the application, and
  - (b) make such awards or orders as to the payment of compensation under this Act to or in respect of the injured worker concerned,
- as the Compensation Court thinks fit.
- (5) In any proceedings under subsection (4), a certificate executed by the Authority and certifying that:
- (a) the payments specified in the certificate were paid to or in respect of an injured worker named in the certificate, and
  - (b) a person named in the certificate was, in the opinion of the Authority, liable at the relevant time to pay to or in respect of the injured worker compensation under this Act,
- is (without proof of its execution by the Authority) admissible in evidence in any proceedings and is evidence of the matters stated in the certificate.
- (6) The Authority may recover an amount specified in a notice served under subsection (1) (being a notice in respect of which an application has not been made under subsection (3)) from the person to whom the notice was given as a debt in a court of competent jurisdiction.
- (7) An order by the Compensation Court that the Authority is to be reimbursed by a person named in the determination concerned may be enforced under section 23 of the *Compensation Court Act 1984*.

**226 Recovery from directors of corporations liable to reimburse Authority** (cf s 145A 1987 Act)

- (1) If a corporation is liable to reimburse the Authority an amount for a payment made under the Scheme and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.
- (2) A corporation is considered to be liable to reimburse the Authority an amount for a payment made under the Scheme if the Authority is entitled to recover the amount either under section 225 or under an order of the Compensation Court made on application under that section, even if the corporation has ceased to exist.
- (3) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.
- (4) A person is a culpable director of a corporation at the relevant time if:
  - (a) the corporation contravened section 144 (Compulsory insurance for employers) in respect of a policy of insurance that would have covered the corporation for the liability to which the payment made under the Scheme related (whether or not the corporation has been proceeded against or convicted of an offence for the contravention), and
  - (b) at the time of the contravention the person was a director of the corporation.
- (5) A person is not a culpable director of a corporation if the person establishes that:
  - (a) the corporation contravened section 144 without the person's knowledge. or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to that contravention, or

- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (6) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.
- (7) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

**227 Commutation of weekly payments from Scheme** (cf s 146 1987 Act)

- (1) Section 51 of the 1987 Act applies to the commutation of a liability under the Scheme.
- (2) On the application of an employer, the Compensation Court may, if the Compensation Court thinks fit, refuse to determine a lump sum payment in respect of any such liability, but the making of such an application in no way fetters the discretion of the Compensation Court to make the determination, and a commutation made in consequence of the determination is binding on the employer whether or not the employer has made such an application.

**228 Miscellaneous provisions** (cf s 147 1987 Act)

- (1) If:
  - (a) a claim under the Scheme has been made and the employer does not appear and defend the application for an award of compensation, or
  - (b) an award of compensation has, prior to the making of the claim, been obtained in default of appearance by the employer, or by consent of the worker and the employer, or
  - (c) the Authority for any reason thinks fit,

the Authority may cause to be made such inquiries as it thinks fit to determine the genuineness of the grounds on which the award is sought or was based.

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- (2) The Compensation Court may adjourn an application referred to in subsection (1) or, if an award has been made, may reopen the proceedings and order some fit person to take and defend the proceedings in substitution for the employer, and for those purposes all the rights of the employer are subrogated to that person.
  - (3) A lump sum payable to a claimant under the Scheme may by agreement with the Authority, or by order of the Compensation Court, be paid to the Authority to be invested, applied, paid out or otherwise dealt with as agreed upon or ordered or, subject to any such agreement or order, as provided by section 85 of the 1987 Act.
  - (4) At any hearing of an application to the Compensation Court under this Part, the Authority or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Compensation Court and exercise in respect of any matters and questions arising out of the application the same powers, rights and authorities as an employer may exercise in respect of a claim between a worker and an employer under this Act.
  - (5) The provisions of sections 471B and 500 of the *Corporations Law* do not preclude a person from applying for an award of compensation or proceeding with such an application without the leave of the Supreme Court.
  - (6) Any award of compensation made pursuant to an application authorised by this section has effect only for the purposes of this Chapter and not otherwise, despite any such provisions of the *Corporations Law*.

**229 Application of other provisions of the Act to Scheme** (cf s 148  
1987 Act)

- (1) For the purposes of section 13 (3) of the 1987 Act, the Authority is to have the same entitlement to recover payments it has made to a worker under the Scheme as an employer has in respect of payments the employer has made to a worker under section 13 of the 1987 Act.

- (2) If a worker has received payments under the Scheme, the payments are to be treated as compensation recovered by the worker for the purposes of:
  - (a) section 64 of the former 1926 Act as continued in operation by clause 1 (2) of Part 14 of Schedule 6 to the 1987 Act, and
  - (b) section 151Z of the 1987 Act.
- (3) The regulations may provide for the application (with such modifications as may be prescribed) of other provisions of this Act with respect to any matter arising under this Part.

**230 Authority's right of subrogation** (cf s 148A 1987 Act)

If the Authority has paid or is liable to pay an amount as compensation for which an employer is liable under this Act or the former 1926 Act, the Authority is subrogated to any right of the employer and any insurer of the employer to recover any amount from any other person in respect of that payment (had the payment been made by the employer or insurer), whether the right arises by way of a liability for contribution, apportionment of liability or otherwise.

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## Chapter 6 Miscellaneous

### 236 Posting summary of Act (cf 1926 s 43 (1)–(3); 1987 s 269)

- (1) There must be kept constantly posted up in some conspicuous place at or near every mine, quarry, factory, workshop, office or shop, and on every ship to which this Act applies, where it may be conveniently read by a person employed there:
  - (a) a summary (in or to the effect of the prescribed form) of the requirements of this Act with regard to the giving of notice of injuries and the making of claims, and
  - (b) if the employer has obtained a policy of insurance in respect of the persons employed there and the policy is for the time being in force—a statement setting out the name and address of the insurer from whom the policy was obtained and stating that insurance under this Act has been effected with that insurer, and
  - (c) if the employer is a self-insurer—a statement that the employer is a self-insurer under this Act, and
  - (d) such other information as may be prescribed by the regulations.
- (2) If the summary or statement is damaged, obliterated or destroyed, it must be renewed as soon as possible.
- (3) If this section is contravened, the manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, or the master of the ship, as the case requires, is guilty of an offence.

Maximum penalty: 20 penalty units.

### 232 Worker's right to information (cf 1926 s 18B; 1987 s 270)

- (1) A worker may request the employer of the worker to supply the following information:
  - (a) the employer's name and address for the service of documents for the purposes of this Act, and
  - (b) the name and address of the insurer from whom the employer has obtained a policy of insurance or, if the employer is a self-insurer, to be so informed.

- (2) An employer, or a person acting for an employer in the management of the employer's trade or business, must not:
  - (a) fail to supply any such information, or
  - (b) supply information which the employer or person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

- (3) In this section:

*employer*, in relation to a worker, includes a principal within the meaning of section 20 of the 1987 Act who is liable to pay compensation to the worker.

**233 No contribution from workers** (cf 1926 s 48; 1987 s 271)

- (1) An employer must not, directly or indirectly, take or receive any money from a worker, whether by way of deduction from wages or otherwise, in respect of any liability under this Act (including under the 1987 Act or the former 1926 Act).

Maximum penalty: 100 penalty units.

- (2) Any money so taken or received from a worker, whether with the consent of the worker or not, may be recovered by the worker as a debt from the employer, or from the person who took or received it.

**234 No contracting out** (cf 1926 s 45; 1987 s 272)

This Act and the 1987 Act apply despite any contract to the contrary.

**235 Non-assignability of compensation** (cf 1926 s 55; 1987 s 273)

- (1) Compensation under this Act (including the 1987 Act and the former 1926 Act):
  - (a) is not capable of being assigned, charged or attached, and
  - (b) does not pass to any other person by operation of law, nor can any claim be set off against that compensation.

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- (2) Subsection (1) has no effect to the extent to which (but for this subsection) it would operate to prevent:
- (a) the satisfaction of an obligation by the worker to maintain another person pursuant to an order of a court of competent jurisdiction, or
  - (b) the passing of accrued vested rights of a deceased worker to the legal personal representative.

**236 Service of notices** (cf 1926 s 66E; 1987 s 275)

A notice required or authorised to be given to, or served on, a person by or under this Act or the 1987 Act must be in writing and must be given to, or served on, that person:

- (a) personally or by post, or
- (b) if a manner of giving or serving the notice is prescribed by or under this Act or the 1987 Act, in the manner so prescribed.

**237 Service of documents on Authority or other bodies** (cf 1989 s 25)

- (1) In this section:

*body* means the Authority, the Advisory Council, the OHS Council or the Rating Bureau.

- (2) A document may be served on a body by leaving it at, or by sending it by post to:
- (a) the office of the body, or
  - (b) if it has more than one office—any one of its offices.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a body in any other manner.

**238 Powers of entry and inspection by officers of Authority** (cf 1926 ss 18A (18)–(1E), (2D), (2E), 308; 1987 s 274)

- (1) In this section:

*authorised officer* means an officer of the Authority authorised by the Authority for the purposes of this section.

***insurer*** means a licensed insurer under this Act or the 1987 Act, former licensed insurer or self-insurer, and includes any insurance broker or commission agent engaged in workers compensation insurance business.

***premises*** includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not).

- (2) An authorised officer may do any or all of the following:
- (a) on production of his or her authority, enter at any reasonable hour any premises (not being a dwelling-house) used, or that the authorised officer reasonably suspects to be used, by an employer, insurer or agent (as defined in section 131) for the storage or custody of any record,
  - (b) on production of his or her authority, enter at any reasonable hour any premises (not being a dwelling-house) in or on which the authorised officer knows, or reasonably suspects, an employer, worker or insurer to be,
  - (c) remain in or on premises while exercising any power conferred by this section,
  - (d) require an employer, insurer or any other person in or on those premises to produce any such record that is in his or her possession or under his or her control and is capable of being produced,
  - (e) require an employer, insurer or any other person having possession or control of any such record that is not written, or is not written in the English language, or is not decipherable on sight, to produce a statement, written in the English language and decipherable on sight, of the information contained in the record,
  - (f) inspect, or make copies of or extracts from, a record produced pursuant to paragraph (d) or a statement produced pursuant to paragraph (e), or retain such a statement,
  - (g) require an employer, insurer or any other person in or on those premises to answer questions relating to:
    - (i) an injury to, or incapacity of, a worker, or
    - (ii) the business or financial position of an insurer, or
    - (iii) the observance of this Act, the 1987 Act or the regulations under those Acts.

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- (3) A person must not:
- (a) refuse or fail to allow an authorised officer to enter premises under this section, or
  - (b) wilfully obstruct or delay an authorised officer when exercising any powers under this section, or
  - (c) unreasonably refuse or fail to produce a record or statement to an authorised officer under this section, or
  - (d) if an authorised officer informs a person that by virtue of this Act the person is obliged to answer questions relating to any matter referred to in subsection (2) (g):
    - (i) refuse or fail to answer such a question, or
    - (ii) give an answer to such a question that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

- (4) A person may not refuse to answer a question under subsection (2) on the ground that it might tend to incriminate the person, but neither the question nor the answer is admissible in any civil or criminal proceedings against the person other than proceedings for an offence under this section.

**239 Authority may obtain documents from court registry** (cf 1989 s 22)

- (1) The Authority is entitled, for the purpose of exercising its functions:
- (a) to take away, inspect or copy documents or extracts from documents, or
  - (b) to obtain from the compensation Court Registry copies of, or extracts from, documents.

maintained or available at the Compensation Court Registry.

- (2) The Registrar of the Compensation Court is required to give all necessary assistance to the Authority to enable it to exercise its powers under this section.
- (3) The Compensation Court may, in respect of any information obtained by the Authority from that Court under this section, order that the information is not to be used in any proceedings, or any specified proceedings, before that Court.

- (4) The regulations may make provision for or with respect to the keeping of statistics or other information at the Compensation Court Registry and the supply of the statistics or information to the Authority.

**240 Personal liability** (cf 1989 s 23)

- (1) In this section:

*body* means the Authority, the Board of Directors, the Advisory Council, the OHS Council or the Rating Bureau.

- (2) A matter or thing done by a body, by a member of a body or by a person acting under the direction of a body does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of a body or a person so acting personally to any action, liability, claim or demand.

**241 Seal of Authority or other bodies** (cf 1989 s 24)

- (1) The seal of the Authority is to be kept by the General Manager and may be affixed to a document only:
- (a) in the presence of the General Manager or an officer of the Authority authorised for the purpose by the General Manager, and
  - (b) with an attestation by the signature of the General Manager or that officer of the fact of the affixing of the seal.
- (2) The regulations may make provision for or with respect to the seal of the Advisory Council or of the Rating Bureau.

**242 Recovery of money by Authority**

Any charge, fee or money due to the Authority, or to the Crown in respect of the activities of the Authority, may be recovered by the Authority as a debt in a court of competent jurisdiction if no express provision is otherwise made for its recovery.

**243 Disclosure of information** (cf 1926 s 66F; 1987 s 276)

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

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- (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) in accordance with section 72 (Inspection of relevant claims information etc), or
  - (e) in accordance with the requirement imposed under the *Ombudsman Act 1974*, or
  - (f) with other lawful excuse.

Maximum penalty: 50 penalty units or imprisonment for 2 years.

- (2) The Authority may disclose any information obtained in connection with the administration or execution of this Act to:
  - (a) the Advisory Council, and
  - (b) the Rating Bureau, and
  - (c) the Insurance and Superannuation Commissioner under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth, and
  - (d) any other person or body prescribed by the regulations for the purposes of this paragraph.
- (3) In this section, *this Act* includes the 1987 Act and the former 1926 Act.

**244 Offences by corporations** (cf 1926 s 68 (3); 1987 s 277)

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, the 1987 Act or a regulation under those Acts, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
  - (a) the corporation contravened the provision without the person's knowledge, or

- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
  - (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act, the 1987 Act or the regulations under those Acts.

**245 Proceedings for offences** (cf 1926 s 68; 1987 s 278)

- (1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts are to be dealt with summarily:
  - (a) before a Local Court constituted by a Magistrate sitting alone, or
  - (b) before the Industrial Relations Commission in Court Session.
- (2) The maximum penalty that may be imposed in those proceedings by a Local Court is 200 penalty units or the maximum penalty provided in respect of the offence, whichever is the lesser.
- (3) The maximum penalty that may be imposed in those proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.
- (4) The provisions of section 197 of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Relations Commission in Court Session apply to proceedings before a Local Court for offences against this Act, the 1987 Act or the regulations under those Acts.
- (5) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts may be instituted by (but not only by) the Authority.

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**246 Penalty notices** (cf 1987 s 2788)

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the 1987 Act (or the regulations under those Acts), being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

- (9) In this section, *authorised officer* means a person declared by the regulations to be an authorised officer for the purposes of this section.

**247 Time for instituting proceedings** (cf 1926 s 18 (5); 1987 s 279)

- (1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.
- (2) Any such proceedings may be instituted by (but not only by) the Authority.
- (3) Despite subsection (1), proceedings for an offence under section 144 of this Act or 155 of the 1987 Act (Compulsory insurance for employers) may be instituted by the Authority:
- (a) within 2 years after the act or omission alleged to constitute the offence. or
  - (b) in a case where the Authority first becomes aware of the act or omission alleged to constitute the offence because of a claim made by a worker of the employer concerned under Division 6 of Part 4 of the 1987 Act—within 6 months after the Authority pays compensation or makes any other payment to the worker in respect of the claim under that Division or the Compensation Court determines the claim (whichever occurs later),

whichever provides the longer time for proceedings to be instituted.

**248 Regulations** (cf 1926 s 66; 1987 s 280)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may be made under this Act for or with respect to any matter for which regulations may be made under the 1987 Act.

- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

**249 Repeal of WorkCover Administration Act 1989 No 129**

The *WorkCover Administration Act 1989* is repealed.

## Schedule 1 Deemed employment of workers

(Section 5)

### 1 Workers lent or on hire (cf former Sch 1 cl 1)

If the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter is, for the purposes of this Act, taken to continue to be the employer of the worker while the worker is working for that other person.

### 2 Outworkers and other contractors (cf former Sch 1 cl 2)

(1) Where a contract:

- (a) to perform any work exceeding \$10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor's own name, or under a business or firm name), or
- (b) to perform any work as an outworker,

is made with the contractor, who neither sublets the contract nor employs any worker, the contractor is, for the purposes of this Act, taken to be a worker employed by the person who made the contract with the contractor.

(2) In this clause:

**outworker** means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale:

- (a) in the person's own home, or
- (b) on other premises not under the control or management of the person who gave out the articles or materials.

(3) A person excluded from the definition of **worker** in section 4 (1) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

**3 Rural work** (cf former Sch 1 d 3)

- (1) This clause applies to the following work:
- (a) The work of supplying timber, if the timber is obtained, or is to be obtained, from trees felled, or to be felled, by a contractor (whether the trees are the property of the principal or the contractor or any other person).
  - (b) The work of felling or ringbarking trees, or cutting scrub, or hauling or loading timber.
  - (c) The work of clearing land of stumps or logs.
  - (d) The work of cutting sugar cane.
  - (e) The work of erecting, constructing or demolishing or assisting in the erection, construction or demolition of:
    - (i) fences, or
    - (ii) yards or enclosures for horses, cattle, sheep or other animals,on farms, orchards, vineyards or agricultural or pastoral holdings.
  - (f) All classes of work normally carried out or performed by derrick operators in or in connection with the transport of sugar cane to a mill.
  - (g) Any other class of work prescribed by the regulations.
- (2) If:
- (a) any person (in this clause referred to as *the principal*) in the course of, or for the purposes of, the person's trade or business enters into a contract, agreement or arrangement with any other person (in this clause referred to as *the contractor*) under which the contractor agrees to carry out work to which this clause applies, and
  - (b) the contractor:
    - (i) does not either sublet any part of the work to be carried out, or employ a worker, or

- (ii) (although either subletting part of the work or employing a worker) actually performs some part of the work himself or herself,

the contractor and any worker so employed by the contractor are, for the purposes of this Act, taken to be workers employed by the principal, and a worker so employed by the contractor is, for the purposes of this Act, other than this clause, taken not to be a worker employed by the contractor.

- (3) If the principal has given or offered the contractor the option to or the opportunity to so supply timber if the contractor so desires, then, for the purposes of this clause, the contractor is taken to have agreed to supply timber.
- (4) This clause does not apply to or in respect of a contract, agreement or arrangement to haul or load timber if the timber has been subjected to a manufacturing process as defined by the *Factories, Shops and Industries Act 1962* in a factory as defined by that Act.
- (5) All the principals by whom a person is taken to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Compensation Court determines.
- (6) For the purposes of this Act, a notice of injury given by a person employed by the contractor is taken to be given to the employer if it is given either to the contractor or the principal.
- (7) The contractor must, on request, inform a person employed by the contractor of the name and address of the principal.
- (8) In this clause:  
*timber* includes sleepers, piles, poles and logs.

#### **4 Timbergetters** (cf former Sch 1 cl 4)

- (1) If any person (in this clause referred to as *the principal*) advertises or otherwise notifies that he or she will accept timber delivered or supplied in accordance with the advertisement or

notification, any person who gives notice to the principal that he or she will deliver or supply the timber or any part of the timber is, for the purposes of this Act, taken to be a worker employed by the principal.

- (2) Notice of intention to deliver or supply timber:
  - (a) must indicate the nature of the actual work to be undertaken, and
  - (b) must be given prior to injury.
- (3) All the principals by whom a person is taken to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Compensation Court determines.
- (4) In this clause:

*timber* includes sleepers, piles, poles and logs.

**5 Salespersons, canvassers, collectors and others** (cf former Sch 1 cl 5)

- (1) A salesperson, canvasser, collector or other person paid wholly or partly by commission is, for the purposes of this Act, taken to be a worker in the employment of the person by whom the commission is payable, unless the commission is received for or in connection with work incidental to a trade or business regularly carried on by the salesperson, canvasser, collector or other person or by a firm of which he or she is a member.
- (2) All the employers who engaged any such salesperson, canvasser, collector or other person at the time of an injury to the salesperson, canvasser, collector or other person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Compensation Court determines.

**6 Tributers** (cf former Sch 1 cl 6)

A tributer working in connection with any mine (as defined in the *Mining Act 1992*) and also any workers employed by any

such tributer are, for the purposes of this Act, taken to be workers employed by the person with whom the tribute agreement was made by the tributer.

**7 Mine employees** (cf former Sch 1 cl 7)

Any person usually employed about a mine or in connection with the operations of a mine whose remuneration is provided wholly or partly by the workers employed at the mine is, for the purposes of this Act, taken to be a worker employed by the person by or for whom the mine is being worked.

**8 Mines rescue personnel** (cf former Sch 1 cl 8)

- (1) For the purposes of this Act:
  - (a) a member of the New South Wales Mines Rescue Brigade engaged in mine rescue work, or undergoing training, for the purposes of the *Mines Rescue Act 1994* is, while so engaged or undergoing training, taken to be a worker employed by the Mines Rescue Board, and
  - (b) a place at which such a member is so engaged or undergoing training is taken to be a place at which the member is employed.
- (2) A member of the New South Wales Mines Rescue Brigade who receives an injury while journeying between the place from which the member was required to attend for the purpose of engaging in mine rescue work or of undergoing training and a place referred to in subclause (1) (b) is, if the journeying was exclusively and genuinely for that purpose, entitled to receive compensation in accordance with this Act from the Mines Rescue Board.

**9 Jockeys and harness racing drivers** (cf former Sch 1 cl 9)

- (1) A person who:
  - (a) is engaged to ride a horse for fee or reward at a meeting for horse racing conducted or held by a racing club or association, or

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- (b) drives a horse at a meeting for harness racing conducted or held by a racing club or association and at which betting is allowed, or
  - (c) is engaged in riding work in connection with horse racing (but not harness racing) on the racecourse or other premises of a racing club or association,

is, for the purposes of this Act, taken to be a worker employed by the racing club or association.

- (2) Subclause (1) does not apply to a racing club or association having its headquarters in a town with a population not exceeding 3,000 people if:
  - (a) the meetings of the racing club or association are conducted or held within a radius of 8 kilometres from the town, and
  - (b) the profits derived from the operations of the racing club or association are applied for charitable purposes.
- (3) For the purpose of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are:
  - (a) to be calculated in such manner (if any) as may be prescribed by the regulations, or
  - (b) if the person was not working under contract of service— to be calculated in such manner as the Compensation Court considers to be reasonable in the circumstances.
- (4) The regulations may make provision for or with respect to the exemption of any class of persons from the operation of subclause (1) (b).

**10 Drivers of hire-vehicles or hire-vessels—contract of bailment** (cf former Sch 1 cl 10)

A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, is, for the purposes of this Act, taken to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.

**11 Caddies and others employed through club** (cf former Sch 1 cl 11)

A person (not being a person excluded from being a worker by reason of paragraph (d) of the definition of *worker* in section 4

(1)):

- (a) whose employment is of a casual nature, and
- (b) who is employed otherwise than for the purposes of his or her employer's trade or business, and
- (c) who is employed for the purposes of any game or recreation, and
- (d) who is engaged or paid through a club,

is, for the purposes of this Act, taken to be a worker employed by the club.

**12 Shearers' cooks and others** (cf former Sch 1 cl 12)

Any person employed in connection with a pastoral or agricultural occupation, as cook, cook's help or hut-keeper, whose remuneration is provided wholly or partly by the employees in any such occupation is, for the purposes of this Act, taken to be a worker employed by the person by or for whom the work in any such occupation is undertaken.

**13 Fire fighters in fire districts** (cf former Sch 1 cl 13)

- (1) A person who (without remuneration or reward):
  - (a) voluntarily and without obligation engages in fighting a bush fire in any fire district constituted under the *Fire Brigades Act 1989* with the consent of or under the authority and supervision of or in co-operation with:
    - (i) any volunteer fire brigade within the meaning of that Act, or
    - (ii) the Director-General or any officer of New South Wales Fire Brigades or any member of a permanent fire brigade, or
  - (b) is undergoing training for the purposes of fighting bush fires in those circumstances.

is, for the purposes of this Act, taken to be a worker employed by the Director-General of New South Wales Fire Brigades.

- (2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are:
- (a) if the person was working under a contract of service immediately before fighting the bush fire—to be computed according to the earnings of the person under that contract of employment, or
  - (b) if the person was not working under a contract of service immediately before fighting the bush fire—to be such amount as the Compensation Court considers to be reasonable in the circumstances.
- (3) In this clause:

*bush fire* means a fire burning in grass, bush, scrub or timber and any fire arising from such a fire.

*fighting*, in relation to a bush fire, includes any reasonable act or operation performed by the person concerned at or about the scene of or in connection with a bush fire, which is necessary for, directed towards or incidental to the control or suppression of the fire or the prevention of the spread of the fire, or in any other way necessarily associated with the fire.

#### **14 Workers at place of pick-up** (cf former Sch 1 cl 14)

Where any person is ordinarily engaged in any employment in connection with which persons customarily attend certain prearranged places at which employers select and engage persons for employment, any such person is:

- (a) while in attendance at any such place of pick-up for the purpose of being so selected, or
- (b) while travelling thereto from his or her place of abode, or
- (c) where the person is not so selected, while travelling from such place of pick-up to his or her place of abode.

taken to be a worker employed by the employer who last employed the person in his or her customary employment.

**15 Boxers, wrestlers, referees and entertainers** (cf former Sch 1 d 15)

- (1) A person engaged for fee or reward to take part:
- (a) as a boxer, wrestler or referee in any public boxing or wrestling contest in a stadium or place to which the public is admitted on payment of a fee or charge, or
  - (b) as a boxer, wrestler or referee in any boxing or wrestling contest in or on the premises of a club registered under the *Registered Clubs Act 1976*, or
  - (c) as an entertainer in any public performance in a place of public entertainment to which the public is admitted on payment of a fee or charge, or
  - (d) as an entertainer in any performance in or on the premises of a club registered under the *Registered Clubs Act 1976*,

is, for the purposes of this Act, taken to be a worker employed by the person conducting or holding the contest or public or other performance.

- (2) A person who takes part in a genuine amateur contest or performance conducted or held by a person who holds or is taken to hold an authority granted under the *Charitable Fundraising Act 1991*, is not, for the purposes of this clause, taken to be engaged for fee or reward only because a trophy or certificate is offered or awarded as a prize in the contest or performance.
- (3) A person excluded from being a worker because of paragraph (d) of the definition of **worker** in section 4 (1) is taken not to be a person referred to in subclause (1) (c) or (d).
- (4) If 2 or more persons conduct or hold a contest or public or other performance, those persons are liable to contribute to any compensation payable under this Act for the injury in such proportion as, in default of agreement, the Compensation Court determines.

**16 Voluntary ambulance workers** (cf former Sch 1 cl 16)

- (1) A person who (without remuneration or reward) voluntarily and without obligation engages in any ambulance work with the consent of or under the authority and supervision of or in

co-operation with the Health Administration Corporation constituted by the *Health Administration Act 1982* is, for the purposes of this Act, taken to be a worker employed by that Corporation.

- (2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are:
  - (a) if the person was working under a contract of service immediately before engaging in the ambulance work—to be computed according to the earnings of the person under that contract of employment, or
  - (b) if the person was not working under a contract of service immediately before engaging in the ambulance work—to be such amount as the Compensation Court considers to be reasonable in the circumstances.
- (3) In this clause, ***ambulance work*** means work in or in connection with the rendering of first aid to, or the transport of, sick or injured persons.

**17 Ministers of religion** (cf former Sch 1cl 17)

- (1) The regulations may declare that persons within a specified class are ministers of religion of a specified religious body or organisation.
- (2) A person within such a class is, for the purposes of this Act, taken to be a worker employed by a person specified in the regulation as the employer of persons within that class.
- (3) A regulation relating to a religious body or organisation may not be made except at the request of that body or organisation.
- (4) An order under section 6 (14E) of the former 1926 Act, continued in force by clause 17 of Schedule 1 to the 1987 Act and in force immediately before the commencement of this clause has effect as if it were a regulation under this clause (but may be revoked by any such regulation).

**18 Ministers of religion covered by policies** (cf former Sch 1 cl 17A)

- (1) For the purposes of this Act, if a policy of insurance covers a minister of religion, that minister of religion is taken to be a worker and the person insured under the policy is taken to be the minister's employer.
- (2) A minister of religion is considered to be covered by a policy of insurance if the policy provides (whether on its own terms or in some other document recognised by or referred to in the policy) that the coverage provided by the policy extends to the minister or to ministers of a class of which that minister is a member.
- (3) A religious body or organisation, and any official of the body or organisation, is taken to have an insurable interest for the purpose of enabling the body, organisation or official to obtain and maintain in force a policy of insurance that covers a minister of religion of that body or organisation.
- (4) If there is a conflict between the operation of this clause and clause 17 in respect of a particular minister of religion, this clause prevails.
- (5) In this clause:

*official* of a religious body or organisation includes a person or body who or which holds an office or position, or exercises official functions, within the religious body or organisation.

**19 Participants in training programs** (cf former Sch 1 cl 18)

- (1) The regulations may:
  - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
  - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.

- (2) A person who is a participant in a declared training program is, for the purposes of this Act, taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.
- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is, for the purposes of this Act, taken to be the participant's wages in the employment by the person who provides the workplace based training.
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause.

## **Schedule 2 Provisions relating to Advisory Council**

(Section 11)

### **1 Definitions**

In this Schedule:

*appointed member* means any member of the Advisory Council other than the Chairperson.

*Chairperson* means the Chairperson of the Advisory Council.

*member* means any member of the Advisory Council.

*voting member* means an appointed member who is an employer representative or an employee representative.

### **2 Nominations of appointed members**

- (1) If a nomination for appointment to the Advisory Council is not made within the time and in the manner directed by the Minister, the Minister may appoint a person to be a voting member instead of the person required to be appointed on that nomination.
- (2) A person so appointed is taken to have been duly nominated for appointment.

### **3 Deputies of appointed members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (2) In the absence of an appointed member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### **4 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Allowances**

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

#### **6 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings. or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may at any time remove an appointed member from office:
  - (a) on the recommendation of the body that nominated the member, or
  - (b) for misbehaviour or incompetence, or
  - (c) without limiting paragraph (b), for a contravention of clause 7.

#### **7 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council.
- (2) A disclosure by a member at a meeting of the Advisory Council that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person.

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Advisory Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Advisory Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Council otherwise determines:
  - (a) be present during any deliberation of the Advisory Council with respect to the matter, or
  - (b) take part in any decision of the Advisory Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Advisory Council for the purpose of making the determination, or
  - (b) take part in the making by the Advisory Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Council.
- (7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing that arises by reason only of the member's function as a representative of employees, employers or insurers.

### **8 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **10 General procedure**

The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Council.

## **11 Quorum**

The quorum for a meeting of the Advisory Council is constituted by the presence of a majority of the voting members, of whom one must be an employer representative, and one must be an employee representative.

## **12 Presiding member**

- (1) The Chairperson is to preside at a meeting of the Advisory Council.
- (2) In the absence of the Chairperson at a meeting of the Advisory Council, a member chosen by the voting members present at the meeting is to preside at the meeting.

### **43 Voting**

- (1) Subject to subclause (3), a decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present is the decision of the Advisory Council.
- (2) Each voting member present at a meeting has one vote in relation to each matter arising at the meeting.
- (3) In the event of an equality of votes on a particular motion, the Chairperson has a casting vote, but only if all the voting members present decide unanimously to give the Chairperson a casting vote in relation to the motion.
- (4) In the event of an equality of votes on a particular motion, the motion is taken to have been lost if:
  - (a) all the voting members present do not decide Unanimously to give the Chairperson a casting vote, or
  - (b) the Chairperson, having been given a casting vote, does not cast it,

unless the Advisory Council resolves at the meeting to defer further consideration of the motion to a later time in the meeting or to another meeting.

### **14 Transaction of business outside meetings or by telephone**

- (1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of the voting members is taken to be a decision of the Advisory Council.
- (2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or

- (b) a meeting held in accordance with subclause (2),
- each member has the same voting rights (if any) as they have at an ordinary meeting of the Advisory Council, and clause 13 applies accordingly.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **15 Attendance by non-members**

- (1) An actuary engaged by the Rating Bureau may attend and participate in meetings of the Advisory Council, except to the extent that the Advisory Council otherwise determines.
- (2) A person authorised by the Advisory Council or Chairperson may attend a meeting of the Advisory Council, and may participate in the meeting to the extent that the Advisory Council determines.
- (3) An actuary or other person attending a meeting of the Advisory Council under this clause cannot cast a vote at the meeting.

#### **16 First meeting**

The Minister is to call the first meeting of the Advisory Council in such manner as the Minister thinks fit.

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## **Schedule 3 Provisions relating to Board of Directors**

(Section 15)

### **1 Definitions**

In this Schedule:

*appointed director* means a director of the Board other than the General Manager.

*Board* means the Board of Directors.

*director* means any director of the Board.

### **2 Chairperson and Deputy Chairperson**

- (1) Of the appointed directors, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Governor) to be appointed as Chairperson and Deputy Chairperson of the Board respectively.
- (2) The Governor may at any time remove an appointed director from the office of Chairperson or Deputy Chairperson.
- (3) A director holding the office of Chairperson or Deputy Chairperson vacates that office if the person:
  - (a) is removed from that office by the Governor, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a director.

### **3 Deputies of appointed directors**

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed director, and the Minister may revoke any such appointment.
- (2) In the absence of an appointed director, the director's deputy:
  - (a) may, if available, act in the place of the director, and
  - (b) while so acting, has all the functions of the director and is taken to be a director.

- (3) A person while acting in the place of an appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a director is taken to be an absence of the director.

#### **4 Term of office of appointed directors**

Subject to this Schedule, an appointed director holds office for such period (not exceeding 3 years) as is specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Remuneration**

An appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

#### **6 Vacancy in office of appointed director**

- (1) The office of an appointed director becomes vacant if the director:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause or Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may at any time remove an appointed director from office.
- (3) Without limiting subclause (2), an appointed director may be removed from office under that subclause for a contravention of clause 7.

## **7 Disclosure of pecuniary interests**

- (1) If:
- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,
- the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a director at a meeting of the Board that the director:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

## **8 Filling of vacancy in office of appointed director**

If the office of an appointed director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed director.

- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

#### **10 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

#### **11 Quorum**

The quorum for a meeting of the Board is 4 directors.

#### **12 Presiding member**

- (1) The Chairperson of the Board or (in the absence of the Chairperson) the Deputy Chairperson is to preside at a meeting of the Board.
- (2) In the absence of both the Chairperson and the Deputy Chairperson at a meeting of the Board, another director chosen by the directors present at the meeting is to preside at the meeting.
- (3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

#### **14 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the Board for the time being, and a resolution in writing approved in writing by a majority of those directors is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **15 Committees of Board**

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not directors of the Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

#### **16 First meeting**

The Minister is to call the first meeting of the Board in such manner as the Minister thinks fit.

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## Schedule 4 Provisions relating to Rating Bureau

(Section 25)

### 1 Definitions

In this Schedule:

*employee member* means a member of the Rating Bureau referred to in section 25 (1) (c).

*employer member* means a member of the Rating Bureau referred to in section 25 (1) (b).

*insurer member* means a member of the Rating Bureau referred to in section 25 (1) (a).

*member* means a member of the Rating Bureau.

### 2 Nominations of members

- (1) If a nomination for appointment to the Rating Bureau is not made within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be appointed on that nomination.
- (2) A person so appointed is taken to have been duly nominated for appointment by the nominating body concerned.

### 3 Deputies of members

- (1) Each licensed insurer may, from time to time, appoint a person to be the deputy of the member nominated by the insurer, and the insurer may revoke any such appointment.
- (2) The Advisory Council may, from time to time, appoint a person to be the deputy of an employee member or employer member, and the Advisory Council may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.

- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### **4 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Rating Bureau of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Rating Bureau or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Rating Bureau for having been absent from those meetings, or
  - (f) becomes bankrupt. applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may at any time remove a member from office:
  - (a) for misbehaviour or incompetence, or
  - (b) without limiting paragraph (a), for a contravention of clause 6.
- (3) The Minister must remove a member from office if the body or bodies that nominated the member withdraw that nomination by notice in writing to the Minister.

## **6 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Rating Bureau, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Rating Bureau.

- (2) A disclosure by a member at a meeting of the Rating Bureau that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Rating Bureau in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Rating Bureau.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Rating Bureau otherwise determines:
  - (a) be present during any deliberation of the Rating Bureau with respect to the matter, or
  - (b) take part in any decision of the Rating Bureau with respect to the matter.
- (5) For the purposes of the making of a determination by the Rating Bureau under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Rating Bureau for the purpose of making the determination, or
  - (b) take part in the making by the Rating Bureau of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Rating Bureau.
- (7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing that arises by reason only of the member's function as the nominee of a licensed insurer.

## **7 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person as a member.

## **9 General procedure**

The procedure for the calling of meetings of the Rating Bureau and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Rating Bureau.

## **10 Quorum**

- (1) The quorum for a meeting of the Rating Bureau is constituted by the presence of a majority of the members, subject to any determination of the Rating Bureau under this clause.
- (2) The Rating Bureau may from time to time make determinations as to the constitution of a quorum for meetings of the Rating Bureau.

## **11 Presiding member**

- (1) At a meeting of the Rating Bureau, a member chosen by the members present at the meeting is to preside at the meeting.
- (2) The person presiding at a meeting of the Rating Bureau has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

- (1) At meetings of the Rating Bureau, each member present has one vote and a decision supported by a majority of the votes cast at the meeting is the decision of the Rating Bureau, subject to any determination of the Rating Bureau under this clause.
- (2) The Rating Bureau may from time to time make determinations as to the voting entitlements of members and the procedure (including majority requirements) for the making of decisions by the Rating Bureau.
- (3) Despite any other provision of this Schedule, neither the employer member nor the employee member has a vote.

### **13 Transaction of business outside meetings or by telephone**

- (1) The Rating Bureau may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved by members in accordance with procedures determined by the Rating Bureau for the purposes of this subclause is taken to be a decision of the Rating Bureau.
- (2) The Rating Bureau may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),each member has the same voting rights as they have at an ordinary meeting of the Rating Bureau, and clause 12 applies accordingly.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Rating Bureau.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **14 Attendance by non-members**

- (1) An actuary engaged by the Rating Bureau may attend and participate in meetings of the Rating Bureau, except to the extent that the Rating Bureau otherwise determines.
- (2) A person authorised by the Rating Bureau or the person presiding at a meeting may attend a meeting of the Rating Bureau, and may participate in the meeting to the extent that the Rating Bureau determines.
- (3) An actuary or other person attending a meeting of the Rating Bureau under this clause does not have a vote.

### **15 First meeting**

The Minister is to call the first meeting of the Rating Bureau in such manner as the Minister thinks fit.

### **16 Transitional—constitution of Rating Bureau before insurer licences issue**

For the purpose of enabling the Rating Bureau to be constituted and exercise its functions before 1 October 1999, the nominating insurers for the purposes of section 25 (Membership and procedures of the Rating Bureau) are until that date:

- (a) applicants for licences under Part 5 (Licensing of insurers) of Chapter 5, except an applicant for a licence as a specialised insurer that issues policies only in respect of domestic or similar workers, and
- (b) the holders of licences under Division 3 of Part 7 of the 1987 Act, except those that are specialised insurers that issue policies only in respect of domestic or similar workers and except those that are related to an applicant for a licence referred to in paragraph (a).

## **Schedule 5 Provisions relating to Occupational Health and Safety Council**

(Section 29)

### **1 Definitions**

In this Schedule:

*Council* means the OHS Council.

*member* means a member of the Council.

### **2 Nomination of panels for appointment as members**

- (1) If nominations to constitute a panel are not made within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be appointed from the panel.
- (2) A person so appointed is taken to have been duly nominated for appointment.

### **3 Deputies of appointed members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) The deputy of a member appointed from a panel is to be appointed from the same or a further panel.
- (3) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (4) The deputy of a member who is Chairperson of the Council does not (because of this clause) have the member's functions as Chairperson.
- (5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### **4 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Allowances**

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

#### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12

months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may at any time remove a member from office.

### **7 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **9 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

### **10 Quorum**

The quorum for a meeting of the Council is 5 members.

### **11 Presiding member**

- (1) The Chairperson of the Council is to preside at a meeting of the Council.

- (2) In the absence of the Chairperson at a meeting of the Council, a member chosen by the members present at the meeting is to preside at the meeting.
- (3) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

### **13 Attendance by nonmembers**

A person authorised by the Council or the Chairperson of the Council may attend a meeting of the Council for the purpose of assisting the Council to exercise its functions.

### **14 First meeting**

The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

## **Schedule 6 Provisions relating to appointed conciliators**

(Section 77 (3))

### **1 Schedule applies to appointed conciliators**

This Schedule applies only to conciliators appointed under section 77 (3).

### **2 Terms of office**

Subject to this Schedule, a conciliator holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the conciliator, but is eligible for re-appointment.

### **3 Remuneration**

A conciliator is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a conciliator as the Minister may from time to time determine in respect of the conciliator.

### **4 Casual vacancies**

- (1) A conciliator is taken to have vacated office if the conciliator:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) becomes a mentally incapacitated person, or
  - (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (f) resigns the office by instrument in writing addressed to the Governor, or
  - (g) is removed from office by the Governor under subclause (2).
- (2) The Governor may at any time remove a conciliator from office.

## **5 Effect of certain other Acts**

- (1) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a conciliator or from accepting and retaining any remuneration payable to the person under this Act as a conciliator.

- (2) Part 2 of the Public Sector Management Act 1988 does not apply to a conciliator.

[Minister's second reading speech made in—  
Legislative Council on 26 June 1998  
Legislative Assembly on 3 July 1998]