

**WORKERS' COMPENSATION (AMENDMENT) ACT, 1985,
No. 91**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 91, 1985.

An Act to amend the Workers' Compensation Act, 1926, with respect to the licensing of insurers, the rates of insurance premiums, the payment of workers' compensation and the hearing of workers' compensation claims, and in other respects. [Assented to, 5th June, 1985.]

See also Compensation Court (Amendment) Act, 1985; Occupational Health and Safety (Workers' Compensation) Amendment Act, 1985; Miscellaneous Acts (Workers' Compensation) Amendment Act, 1985.

Workers' Compensation (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Workers' Compensation (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1–6 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 5, in its application to a provision of Schedules 1–6, shall commence on the day on which the provision commences.

Principal Act.

3. The Workers' Compensation Act, 1926, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENSES.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PAYMENT OF COMPENSATION.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS.

SCHEDULE 5.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT OF AN INSURERS' GUARANTEE FUND.

SCHEDULE 6.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 7.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

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Amendment of Act No. 15, 1926.

5. The Principal Act is amended in the manner set forth in Schedules 1-6.

Savings, transitional and other provisions.

6. Schedule 7 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENSES.

(1) Section 27 (3), (4)—

After section 27 (2), insert:—

(3) In determining an application under this section, the Board shall take into consideration only such matters as may be prescribed, including matters that relate to the workers' compensation system generally.

(4) Without affecting the generality of subsection (1), the conditions to which a license is to be subject may include—

(a) conditions which appear to the Board to be appropriate to promote an equitable distribution of high risk insurance business among insurers and, in particular, conditions for or with respect to—

(i) requiring an insurer to undertake workers' compensation insurance of a specified kind or to undertake a specified percentage of workers' compensation insurance of a specified kind; and

(ii) without affecting the generality of subparagraph (i), requiring an insurer to insure particular employers or classes of employers; and

(b) conditions for or with respect to contracts or arrangements for reinsurance.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENSES—*continued.*

(2) Sections 27A, 27B—

After section 27, insert:—

Annual review of licenses.

27A. The Board shall carry out an annual review of licenses granted under sections 18 (1A) and 27.

Termination of licenses.

27B. (1) The object of this section is to enable the number of licensed insurers to be reduced for the purpose of improving, rationalising and making more efficient the workers' compensation system, and this section and section 27 shall be construed and given effect to accordingly.

(2) All licenses granted under section 27 before the commencement of this section (other than licenses exempted from the operation of this section by an order under subsection (5)) are terminated by force of this section as from a date determined by the Minister.

(3) The date determined by the Minister under subsection (2) shall not be later than 12 months after the commencement of this section.

(4) Notice of the determination of the date under subsection (2) shall be given by the Minister by order published in the Gazette at least 3 months before that date.

(5) The Minister may, by order published in the Gazette, exempt from the operation of this section any license if the Minister is satisfied that the business of the licensee is specialised insurance for a particular industry or for employers of a particular class or particular classes.

(6) Any current policy of insurance or indemnity issued by the former holder of a license terminated under this section, being a policy issued before the date determined under subsection (2), shall, subject to section 30F, continue in force until the end of the indemnity period of the policy and have effect as if the license had not been terminated.

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. . . SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENSES—*continued.*

(7) A termination of a license under this section does not affect any right, obligation or liability acquired, accrued or incurred under a policy of insurance or indemnity issued by the former licensee.

(8) This section does not affect any powers that the Board may have under any other provision of this Act.

(9) Being the holder of a license granted under section 27 is not a bar to a person's applying for another license under that section to take effect on the termination of the license held.

(10) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of—

(a) any action taken by the Minister under this section; or

(b) any decision, proceeding, step or other matter involved in the taking of the action referred to in paragraph (a).

(3) (a) Section 29D (2)—

Omit the subsection, insert instead:—

(2) Any applicant or licensee aggrieved by a decision of the Board, notice of which has been served under subsection (1), may, within 28 days after the date of service of the notice, appeal against the decision—

(a) in the case of a decision to suspend or terminate a license granted under section 27 or a decision to refuse to grant a new license under section 27 to an applicant whose license is to be or has been terminated under section 27B—to the Supreme Court; or

(b) in any other case—to the Compensation Court.

(b) Section 29D (3)—

Omit "Court", insert instead "Supreme Court or the Compensation Court, as the case may require,".

(c) Section 29D (5)—

Omit "Court" where firstly occurring, insert instead "Supreme Court or Compensation Court".

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENSES—*continued.*

(d) Section 29D (5)—

Omit “the Court”, insert instead “that Court”.

(e) Section 29D (6)—

Omit “Court”, insert instead “Supreme Court or Compensation Court”.

(f) Section 29D (7) (b)—

Omit the paragraph, insert instead:—

- (b) where an appeal against the decision has been lodged under subsection (2) and the Supreme Court or Compensation Court has determined that the Board should take action under section 29C (1) in relation to the license—on or after the making of the determination.

(4) Section 30F (1), definition of “prescribed day”—

(a) From paragraph (a), omit “or”.

(b) Omit paragraph (b), insert instead:—

- (b) except as provided by paragraph (c), in the case of a policy the period of which is current on the day on which the license of the insurer ceases to be in force—that day; or
- (c) in the case of a policy issued by an insurer whose license is terminated under section 27B and who is not granted a new license to take effect on that termination—the day that is 12 months after the date the license of the insurer is terminated under that section.
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Workers' Compensation (Amendment) 1985

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS.

(1) Section 6 (3) (f) (iv)—

Omit "recommended annual rates of premiums", insert instead "annual rates".

(2) Section 18 (8) (d1)—

After section 18 (8) (d), insert:—

(d1) Where the Board finds that—

- (i) an employer has provided an insurer with information which was false or misleading in material particular; and
- (ii) the insurer, relying on that information, has calculated a premium for the issue or renewal of a policy of insurance or indemnity which is less by a certain amount than the premium would otherwise have been,

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

(3) (a) Section 18AA (1), definition of "prescribed rates"—

Omit the definition.

(b) Section 18AA (2)—

Omit the subsection, insert instead:—

(2) Where an employer claims that an insurer has, in demanding a premium (or any part thereof) for the issue of a policy to the employer or for the renewal of a policy issued to the employer, breached the scheme provided by section 30AC, and the case is not one to which subsection (11) applies, the employer may apply to the committee for a determination as to the premium to be charged for the issue or renewal of the policy.

Workers' Compensation (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS—
continued.

(c) Section 18AA (4) (c)—

Omit the paragraph, insert instead:—

(c) shall dismiss the application, if—

- (i) the policy is not a policy to which an order under section 30AB applies; or
- (ii) the committee is of the opinion that the premium to which the application relates is payable by the employer in accordance with section 30AC,

or shall, in any other case, determine in respect of the issue or renewal of the policy a premium which is payable by the employer in accordance with section 30AC; and

(d) Section 18AA (4) (d)—

Omit “recommendation”, insert instead “dismissal of the application or its determination, as the case may require”.

(e) Section 18AA (4A)—

After section 18AA (4), insert:—

(4A) Where—

- (a) the committee makes such 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 committee.

(f) Section 18AA (5) (a)—

Omit “recommendation”, insert instead “determination”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS—
continued.

- (g) Section 18AA (5) (b)—
Omit “rate of premium recommended”, insert instead “premium determined”.
- (h) Section 18AA (5)—
Omit “rate of premium so recommended”, insert instead “premium so determined”.
- (i) Section 18AA (6)—
Omit “An insurer”, insert instead “Except as may be provided otherwise by or under the conditions of the insurer’s license, an insurer”.
- (j) Section 18AA (11)—
Omit “rate of”.
- (k) Section 18AA (12) (c) (i)—
Omit “recommend”, insert instead “determine”.
- (l) Section 18AA (12) (c) (i)—
Omit “rate of premium not less than the appropriate prescribed rate”, insert instead “premium which is payable by the employer in accordance with section 30AC”.
- (4) Section 29 (1) (a) (iv)—
Omit “of a scheme referred to in section 30AB and such failure”, insert instead “has breached the scheme provided by section 30AC and that failure or breach”.
- (5) Sections 30AA—30AD—
Omit section 30AB, insert instead:—

Delegation by committee.

30AA. (1) In this section—

“committee” means the Insurance Premiums Committee constituted by section 30A;

“function” includes power, authority and duty.

Workers' Compensation (Amendment) 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS—
continued.

(2) With the consent of the Minister, the committee may, by instrument in writing, delegate to any other committee, person or body the exercise and performance of such of the functions of the committee (other than this power of delegation) as are specified in the instrument.

(3) A function the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time by the delegate in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the exercise or performance of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation under this section, the committee may continue to exercise or perform any function delegated.

(6) Any act or thing done or suffered by a delegate acting in the exercise or performance of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the committee and shall be deemed to have been done or suffered by the committee.

(7) The committee may by instrument in writing, revoke wholly or in part any delegation under this section.

(8) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the committee shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the committee and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the committee.

(9) In subsection (8), a reference to a delegate includes a reference to the chairman of a committee to which the exercise or performance of a function has been delegated under subsection (2).

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS—
continued.

Calculation of premiums.

30AB. (1) The Governor may, by an order made on the recommendation of the Insurance Premiums Committee and published in the Gazette, fix the manner in which the premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance or indemnity shall be calculated, whether by reference only to annual rates or otherwise.

(2) An order under this section shall—

- (a) take effect on and from the date of its publication in the Gazette or a later date specified in the order; and
- (b) apply to and in respect of policies of insurance or indemnity which are to be or have been issued or renewed so as to take effect while the order is in force.

(3) An order under this section may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) The regulations may make provision for or with respect to excepting policies of insurance or indemnity of a specified class from orders under this section.

Scheme for premiums.

30AC. (1) The premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance or indemnity to which an order under section 30AB applies shall be calculated in the manner fixed by the order.

*Workers' Compensation (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS—
continued.

(2) An insurer breaches the scheme provided by this section if the insurer demands or receives—

(a) for the issue of a policy of insurance or indemnity to which an order under section 30AB applies; or

(b) for the renewal of any such policy,

an amount which is, or amounts the sum of which is, different from a premium which is payable in accordance with subsection (1) by the employer (or the person who proposes to become an employer) to whom the policy relates.

Prohibited practices.

30AD. (1) In this section, “policy” means a policy of insurance or indemnity as defined in section 18 (1).

(2) A person who demands or receives payment of any amount being or in the nature of a premium or part of a premium for a policy issued or renewed so as to take effect after the commencement of this section is guilty of an offence against this Act if the amount is calculated wholly or partly by reference to the claims experience of the employer to which the policy relates, being claims experience occurring after the time at which the policy was so issued or renewed.

(3) Subsection (2) does not apply in respect of a policy or policies issued by the Government Insurance Office to a government department or administrative office or of a class declared by the regulations to be exempt from the operation of that subsection.

(4) No policy shall be illegal, void or unenforceable by reason only of subsection (2).

(6) Section 30G (1), definition of “deemed premium income”—

After “section 30AB”, insert “(as in force before the commencement of section 30AC) or been payable in accordance with section 30AC”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PREMIUMS—
continued.

(7) Section 30J (2A) (a)—

Omit the paragraph, insert instead:—

(a) the amount the self-insurer would have been liable to pay to a licensed insurer during that financial year for the period during which he was a self-insurer if the self-insurer had obtained from that insurer in respect of that period such policies of insurance or indemnity—

(i) at the rate of premium recommended pursuant to section 30AB (2) (a) (as in force before the commencement of section 30AC); or

(ii) at the premiums payable in accordance with section 30AC,

as the case may be, as the self-insurer would have been required by section 18 (1) to obtain if the self-insurer had not been a self-insurer during that period; and

(8) (a) Section 42 (4)—

Omit “and any scheme made under section 30AB”.

(b) Section 42 (4)—

Omit “and scheme”.

(c) Section 42 (4)—

Omit “or scheme”.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PAYMENT OF
COMPENSATION.

(1) Section 18 (3) (a)—

After “(a1)”, insert “or (a2)”.

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PAYMENT OF
COMPENSATION—*continued.*

(2) Section 18 (3) (a)—

Omit "Every such policy", insert instead "Subject to paragraph (a2), every such policy".

(3) Section 18 (3) (a2)—

After section 18 (3) (a1), insert:—

(a2) Every policy of insurance or indemnity issued or renewed after the commencement of this paragraph, in addition to containing the provisions referred to in paragraphs (a) and (a1)—

- (i) shall contain such provisions as are prescribed for, or in relation to, requiring the employer under the policy to pay the first \$500 of each claim under the policy where the total premiums for policies of insurance or indemnity payable by the employer for the current year exceed \$2,000; and
- (ii) may, if the employer and the insurer have so agreed, contain such provisions as are prescribed for, or in relation to, requiring the employer under the policy to pay the first \$500 of each claim under the policy (or such lesser amount as may be agreed upon) where the total premiums for policies of insurance or indemnity payable by the employer for the current year do not exceed \$2,000.

(4) Section 60A—

After section 60, insert:—

Termination of weekly payments.

60A. (1) Notwithstanding any other provision of this Act, where a male person, after the commencement of this section—

- (a) receives an injury before attaining the age of 65 years—a weekly payment of compensation under this Act shall not be made in respect of any resulting period of incapacity occurring after that person attains the age of 66 years; or

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PAYMENT OF
COMPENSATION—*continued.*

- (b) receives an injury on or after attaining the age of 65 years—
a weekly payment of compensation under this Act shall not
be made in respect of any resulting period of incapacity
occurring after the first anniversary of the date of the
happening of the injury.
 - (2) Notwithstanding any other provision of this Act, where a
female person, after the commencement of this section—
 - (a) receives an injury before attaining the age of 60 years—a
weekly payment of compensation under this Act shall not be
made in respect of any resulting period of incapacity
occurring after that person attains the age of 61 years; or
 - (b) receives an injury on or after attaining the age of 60 years—
a weekly payment of compensation under this Act shall not
be made in respect of any resulting period of incapacity
occurring after the first anniversary of the date of the
happening of the injury.
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SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS.

- (1) (a) Section 6 (1), definition of “Commissioner”—

After the definition of “Chief Executive Officer”, insert:—

“Commissioner” means a commissioner of the Court
appointed under Part IVA and, in relation to any
proceedings or other matter, means the commissioner to
whom the hearing of the proceedings or the dealing with
the matter is for the time being allocated under this Act.

- (b) Section 6 (1), definition of “Rules of Court”—

Omit the definition, insert instead:—

“Rules of Court”, in the application of a provision in which
the expression occurs to a function exercisable by a
Judge or registrar of the Court, means the rules of the

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

Court made under the Compensation Court Act, 1984, and, in the application of a provision in which the expression occurs to a function exercisable by a commissioner, means (subject to section 43 (4) of the Compensation Court Act, 1984) the rules of the Court made under that Act and the regulations made under or for the purposes of Part IVA.

(c) Section 6 (1), definition of "Senior Commissioner"—

After the definition of "Self-insurer", insert:—

"Senior Commissioner" means the Senior Commissioner of the Court appointed under Part IVA.

(2) Section 10 (8)—

Omit the subsection.

(3) Section 37 (9)—

After section 37 (8), insert:—

(9) The Board shall provide staff and facilities for the commissioners.

(4) (a) Section 41 (3) (a1)—

After section 41 (3) (a), insert:—

(a1) required for the remuneration, fees and allowances payable to the commissioners;

(b) Section 41 (3) (b) (i)—

Omit "commissioners and other".

*Workers' Compensation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

(5) Part IVA—

After Part IV, insert:—

PART IVA.

COMMISSIONERS.

Appointment of Commissioners.

42J. (1) The Governor may appoint persons to be commissioners of the Court.

(2) A person is qualified to be appointed as a commissioner if the person has not attained the age of 60 years and—

- (a) has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government; or
- (b) has, not less than 5 years previously, obtained a degree of a university or an educational qualification of a similar standard, after studies in the field of law, economics or industrial relations or some other field of study considered by the Governor to have substantial relevance to the duties of a commissioner,

and if the person is, in the opinion of the Governor, by reason of the person's qualifications, experience and standing in the community, a fit and proper person to discharge the duties of a commissioner.

(3) Of the persons appointed under subsection (1), one shall, by the person's instrument of appointment or a subsequent instrument executed by the Governor, be appointed as Senior Commissioner.

(4) Where a person is appointed as Senior Commissioner, any previous appointment of a person as Senior Commissioner shall cease to have effect.

(5) Except where otherwise expressly provided by this or any other Act, a commissioner is not, in the exercise of the commissioner's functions, subject to control or direction of the Court.

(6) Schedule 3 has effect.

*Workers' Compensation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
*continued.***Commissioners' functions.**

42K. (1) A commissioner may exercise the following functions of the Court:—

(a) the hearing of—

(i) any application for compensation under this Act; or

(ii) subject to subsection (5), any application under section 15 for redemption of weekly payments of compensation,

where, at the time the application is made, the amount to which the application relates (excluding the amount of any compensation under section 10) does not exceed or is not likely to exceed (as determined pursuant to section 42L)—

(iii) \$40,000; or

(iv) where some other amount is prescribed for the purposes of this paragraph—that other amount;

(b) in accordance with the terms of reference, any matter referred by a Judge of the Court pursuant to section 16 of the Compensation Court Act, 1984;

(c) the functions specified in Schedule 4;

(d) the hearing of any other matter, by leave of a commissioner and with the consent of all parties.

(2) Except to the extent that the regulations otherwise provide, a Judge or registrar of the Court shall not exercise a function of the Court that may be exercised by a commissioner under subsection (1).

(3) A commissioner, when exercising a function referred to in subsection (1), shall have and may exercise such other functions of the Court under this Act, the Compensation Court Act, 1984, or any other Act as are necessary or appropriate for the purpose of exercising the firstmentioned function.

(4) A commissioner shall, in the exercise of any function of the Court conferred on the commissioner by or under this or any other Act, be deemed to be the Court.

*Workers' Compensation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

(5) A commissioner shall not hear an application for a redemption of weekly payments of compensation under section 15 where any party to the application requests that it be heard by a Judge of the Court, whether or not the commissioner has commenced to hear the application, and thereafter the application shall be heard by a Judge of the Court.

- (6) The Governor may, by regulation, amend Schedule 4 by—
- (a) adding any matter thereto;
 - (b) altering any matter therein; or
 - (c) omitting any matter therefrom,

or may, by regulation, omit the Schedule and insert instead a new Schedule.

- (7) A reference in this Part to—
- (a) a function includes a reference to a power, authority and duty; and
 - (b) the exercise of a function includes, where that function is a duty, a reference to the performance of the duty.

Lodgment and allocation of applications, etc., under this Act.

42L. (1) The regulations may make provision for or with respect to—

- (a) the form or manner of lodgment of any application for compensation or other application or thing made or done under or for the purposes of this Act;
- (b) the determination, for the purposes of section 42k (1) (a), of the amount to which any application relates; and
- (c) the allocation to Judges and commissioners of the Court of applications for compensation and other matters.

(2) A determination referred to in subsection (1) (b) or an allocation referred to in subsection (1) (c) shall not, unless the regulations under subsection (1) otherwise provide, be liable to be challenged, appealed against, reviewed, quashed or called into question by any court.

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

- (3) Notwithstanding anything to the contrary in section 42K—
- (a) a Judge of the Court may, in respect of an application allocated to the Judges of the Court pursuant to this section, award an amount that is less than the appropriate amount under section 42K (1) (a); or
 - (b) a commissioner may, in respect of an application allocated to commissioners pursuant to this section, award an amount that exceeds the appropriate amount under section 42K (1) (a).

Procedure before commissioners.

42M. (1) Proceedings in any matter before a commissioner shall be conducted with as little formality and technicality as the proper consideration of the matter permits.

(2) In proceedings in any matter before a commissioner, the commissioner is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as the commissioner thinks appropriate and as the proper consideration of the matter before the commissioner permits.

(3) A party to any proceedings before a commissioner may be represented—

- (a) by a barrister or solicitor; or
- (b) if the regulations so provide—by an agent of a class specified in the regulations.

Sittings of commissioners.

42N. Subject to the regulations, commissioners shall sit at such places and times as the Senior Commissioner may direct.

Arrangement of business of commissioners.

42O. The Senior Commissioner is responsible for making, and may make, arrangements as to the commissioner who is to hear a particular matter or class of matters.

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

Pre-hearing conferences and arbitration.

42P. (1) Regulations may be made for or with respect to arranging and conducting pre-hearing conferences in respect of proceedings before commissioners.

(2) Where proceedings are pending before a commissioner, the commissioner may refer the proceedings, or any matter arising from the proceedings, for arbitration by an arbitrator.

(3) The procedure for appointing arbitrators for the purpose of subsection (2), and for arranging or conducting arbitration proceedings, shall be in accordance with the regulations.

(4) Without affecting the generality of subsection (1), regulations may be made requiring commissioners to refer proceedings or matters arising from proceedings for arbitration by an arbitrator following a request by the parties or in such other circumstances as may be prescribed.

Appeals from commissioners.

42Q. (1) If a party to any proceedings before a commissioner is aggrieved by an award of the commissioner in point of law, that party may appeal to the Court.

(2) If, in any proceedings before a commissioner, the commissioner has misused a statutory discretion, any party to those proceedings may appeal to the Court.

(3) Regulations may be made for or with respect to prescribing further grounds on which appeals may be made to the Court with respect to proceedings before commissioners.

(4) There shall be no re-hearing or new hearing of proceedings the subject of appeal under this section.

(5) An appeal shall not be made under subsection (2) without the leave of the Court.

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

- (6) The Court may, on the hearing of any appeal made to it under this section—
- (a) remit the matter to the commissioner for determination by the commissioner in accordance with any decision of the Court; or
 - (b) make such other order in relation to the appeal as the Court sees fit.
- (7) In this section, “award” includes order, decision, determination, ruling and direction.

References to the Court by a commissioner.

42R. (1) A commissioner may—

- (a) of the commissioner’s own motion ; or
- (b) on application by the parties, or any one of them,

refer for the opinion of the Court any question of law arising in proceedings before the commissioner.

(2) Notwithstanding the reference of a question to the Court by a commissioner under this section (not being the question of whether the commissioner may exercise powers under this Act in relation to a matter), the commissioner may make an award in the matter in which the question arose.

(3) Upon the determination by the Court of a question referred to it under this section—

- (a) if the commissioner has not made an award in the matter in which the question arose, the commissioner may make an award not inconsistent with the opinion of the Court; or
- (b) if the commissioner has made an award in the matter in which the question arose, the commissioner shall vary that award in such a way as will make it consistent with the opinion of the Court.

*Workers' Compensation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
*continued.***Fees and costs.**

42s. Notwithstanding any other provision of this Act or any provision of the Compensation Court Act, 1984, fees and costs included in an order made by a commissioner for the payment of costs by a party to proceedings before the commissioner or in an award made under section 56 shall not exceed the fees and costs calculated in accordance with the scale of fees and costs prescribed by the regulations.

Regulations.

42t. (1) The regulations may make provision for or with respect to carrying this Part into effect.

(2) Without affecting the generality of subsection (1), regulations made under or for the purposes of this Part may be made for or with respect to any matter in respect of which rules of Court under the Compensation Court Act, 1984, may be made.

(3) A regulation made under or for the purposes of this Part shall not be made without the concurrence of the Attorney General.

(6) Section 56 (2)—

After “under this Act” where secondly occurring, insert “(including proceedings on appeal to the Court)”.

(7) Schedules 3, 4—

After Schedule 2, insert:—

SCHEDULE 3.

(Sec. 42J.)

COMMISSIONERS.

Term of office, etc.

1. (1) A commissioner shall, subject to this Schedule, hold office until the commissioner attains the age of 60 years.

Workers' Compensation (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

(2) Subject to subclause (3), the Governor may, before the expiration of a commissioner's term of office, extend from time to time that term for a period or periods each not exceeding 12 months.

(3) A commissioner shall not hold office after attaining the age of 65 years.

(4) A commissioner shall devote the whole of his or her time to the duties of the office of commissioner.

Remuneration.

2. A commissioner is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the commissioner.

Application of Public Service Act, 1979.

3. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a commissioner and, subject to this Schedule, a commissioner is not, as a commissioner, subject to those provisions.

Leave.

4. (1) A commissioner is entitled to such leave as may be—

(a) prescribed; or

(b) specified in respect of the commissioner in the commissioner's instrument of appointment.

(2) Leave may be prescribed or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

Workers' Compensation (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

Oath of office.

5. The Oaths Act, 1900, applies to and in respect of a commissioner in the same way as it applies to and in respect of a Magistrate.

Removal from office.

6. The Governor may remove a commissioner from office for misbehaviour or incompetence.

Vacation of office.

7. A commissioner shall be deemed to have vacated office if the commissioner—

- (a) dies;
- (b) resigns the office by instrument in writing addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (d) is removed from office by the Governor under clause 6.

Preservation of rights of commissioner if previously public servant, etc.

8. (1) Subject to subclause (2) and to the terms of appointment, where a commissioner was, immediately before being appointed as a commissioner—

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

*Workers' Compensation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a commissioner; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a commissioner, and—

- (h) his or her service as a commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If a commissioner would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he or she shall not be so entitled upon becoming (whether upon appointment as a commissioner or at any later time while holding office as a commissioner) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Government of New South Wales in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to a commissioner upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

Workers' Compensation (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

(4) A commissioner shall not, in respect of the same period of service, be entitled to claim or receive a benefit under this Act and another Act.

Commissioner entitled to re-appointment in former employment in certain cases.

9. A person who—

- (a) ceases to be a commissioner, otherwise than by being removed from office;
- (b) was, immediately before being appointed as a commissioner—
 - (i) an officer of the Public Service; or
 - (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

shall be entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a commissioner.

Declaration of statutory bodies.

10. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Acting commissioners.

11. (1) The Governor may appoint a person to be an acting commissioner for a time not exceeding 12 months to be specified in the instrument of appointment.

(2) Acting commissioners shall, for the time and subject to the conditions or limitations specified in the instruments of their appointments, have and may exercise the functions of commissioners and shall, for the purposes of this or any other Act, be deemed to be commissioners.

*Workers' Compensation (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

(3) An acting commissioner is entitled to be paid—

(a) such remuneration as the Governor may determine; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the acting commissioner.

(4) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of acting commissioners, and acting commissioners are not, in their capacity as such, subject to those provisions during their terms of office.

Interpretation.

12. In this Schedule—

“statutory body” means any body declared under clause 10 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

SCHEDULE 4.

(Sec. 42k.)

COMMISSIONERS' ADDITIONAL FUNCTIONS.

1. The review under section 60 of any weekly payment awarded by a commissioner or, in such circumstances as may be prescribed, any weekly payment awarded before the commencement of Part IVA.

2. The variation under section 61 of an order of the Court made by a commissioner or, in such circumstances as may be prescribed, made before the commencement of Part IVA.

3. The functions of the Court under clause 4 of Schedule 5 to the Transport Authorities Act, 1980, or under section 124AA of the Transport Act, 1930.

Workers' Compensation (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONERS—
continued.

4. The award of an amount of costs to be paid to a solicitor or agent under section 56 in connection with proceedings before a commissioner.

5. The making of an order or assessment of the fees or costs payable by a party to proceedings before a commissioner in connection with those proceedings.

6. The hearing and determining of appeals against decisions of taxing officers in respect of the assessment of the fees or costs payable in connection with proceedings before commissioners.

7. The making of an order under section 58 except where application for the order is made in connection with proceedings before a Judge of the Court.

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT OF
AN INSURERS' GUARANTEE FUND.

(1) Section 6 (1), definition of "Guarantee Fund"—

After the definition of "Government Insurance Office", insert:—

"Guarantee Fund" means the Insurers' Guarantee Fund established under section 30Q.

(2) Section 30G (1), definition of "insurer"—

(a) From paragraph (c), omit "or".

(b) After paragraph (c), insert:—

(ca) an insolvent insurer within the meaning of Part IIIB; or

*Workers' Compensation (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

(3) Part IIIB—

After Part IIIA, insert:—

PART IIIB.

INSURERS' GUARANTEE FUND.

Interpretation.

30o. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“insolvent insurer” means an insurer to which an order of the Minister in force under section 30P relates;

“licensed insurer” means an insurer licensed under section 27 and a self-insurer but does not include an insolvent insurer;

“policy of insurance issued by an insolvent insurer” means—

- (a) a policy of insurance or indemnity issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer; or
- (b) a policy of insurance or indemnity, 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 shall have and may exercise and perform outside New South Wales the powers, authorities, duties and functions conferred or imposed on the liquidator by this Part, in addition to having, exercising and performing those powers, authorities, duties and functions within New South Wales.

Workers' Compensation (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

Insolvent insurers.

30p. Where the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of a licensed insurer, or that a licensed insurer has been dissolved, the Minister may, by order published in the Gazette, declare that the licensed insurer is an insolvent insurer for the purposes of this Part.

Insurers' Guarantee Fund.

30q. (1) There shall be a fund to be known as the Insurers' Guarantee Fund—

- (a) into which shall be paid—
 - (i) the contributions required by section 30r or the regulations to be paid by licensed insurers;
 - (ii) all income accruing from the investment or re-investment of money under subsection (3), or otherwise accruing to the Guarantee Fund;
 - (iii) any amounts received by the Government Insurance Office in the exercise of the rights, or the discharge of the obligations, referred to in section 30u (1) (c) (other than an amount required by section 30l to be paid into the Contribution Fund);
 - (iv) any amounts payable to the Government Insurance Office pursuant to section 30k as a result of the application of that section, in accordance with section 30w (2), to a payment made by the Government Insurance Office;
 - (v) any amounts payable to the Government Insurance Office pursuant to section 30y; and
 - (vi) any amounts authorised by the regulations to be paid into the Guarantee Fund from the funds of the Government Insurance Office; and
- (b) out of which shall be paid such amounts as may be authorised by this Part or the regulations to be paid thereout.

*Workers' Compensation (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

(2) The Guarantee Fund shall, subject to this Part and the regulations, be under the direction, control and management of the Government Insurance Office

(3) Subject to such directions, if any, as may be given from time to time by the Treasurer, the Government Insurance Office 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 that Office, or as may be determined in accordance with any rules, directions, procedures or other arrangements made, given or approved from time to time by that Office, and any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by that Office.

Contributions to Guarantee Fund.

30R. (1) The Government Insurance Office may, in respect of any year prescribed by the regulations (being a year commencing on 1st July, 1985, or on 1st July in any following year) determine the amount to be contributed to the Guarantee Fund in that year, being an amount which the Government Insurance Office considers is necessary—

- (a) to satisfy, during that year, claims, judgments and awards arising from or pertaining to policies of insurance issued by 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 year.

(2) Where the Government Insurance Office determines an amount pursuant to subsection (1) in respect of a year prescribed for the purposes of that subsection, each licensed insurer shall in that year pay to the Government Insurance Office for payment into the Guarantee Fund an appropriate contribution calculated in accordance with the following formula:—

$$\frac{A}{B} \times C$$

*Workers' Compensation (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

where—

“A” is the amount which the licensed insurer is required by or under this Act to contribute to the fund established by section 41 in the year immediately preceding the year so prescribed;

“B” is the total amount required by or under this Act to be contributed by all licensed insurers to that fund in that preceding year; and

“C” is the amount determined pursuant to subsection (1) in respect of the year so prescribed.

(3) An appropriate contribution, calculated in accordance with subsection (2), not paid within the time specified by the Government Insurance Office in a notice to a licensed insurer requiring the licensed insurer to pay the contribution may be recovered by the Government Insurance Office as a debt in any court of competent jurisdiction.

(4) In any proceedings under subsection (3), a certificate purporting to be executed by the Board as to the amount of the appropriate contribution payable, pursuant to this section, by the licensed insurer, and as to the time within which the contribution was required to be paid, as specified by the Government Insurance Office, shall without proof of its execution by the Board be evidence of the facts stated therein.

Liquidator to notify GIO of claims.

30s. The liquidator of an insolvent insurer shall, on receiving any claim pertaining to any policy of insurance issued by the insolvent insurer, forward the claim to the Government Insurance Office.

Delivery of documents, etc., to GIO.

30t. The liquidator of an insolvent insurer shall, whenever requested to do so by the Government Insurance Office, deliver to the Government Insurance Office all documents relating to policies of insurance issued by the insolvent insurer and all claims,

*Workers' Compensation (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

judgments or awards made in respect of any such policies in the liquidator's possession and furnish to the Government Insurance Office all information in the liquidator's possession relating to any such policies or any such claims, judgments or awards.

Appointment of GIO as agent and attorney of employer.

30U. (1) Where an employer is insured under a policy of insurance issued by an insolvent insurer, the Government Insurance Office, as manager of the Guarantee Fund, is by this section appointed the agent and attorney of the employer and as such may, in the name of the employer or in its own name, exercise the rights, or discharge the obligations, of the employer for the purpose of—

- (a) dealing with and finalising any claim against which the employer is indemnified under the policy of insurance;
- (b) satisfying any such claim or any judgment or award against which the employer is indemnified under the policy of insurance; or
- (c) to the extent that any such claim, judgment or award has been satisfied by the Government Insurance Office as agent and attorney of the employer—
 - (i) proving in the winding up of the insolvent insurer;
 - (ii) receiving any dividends or other money payable to the employer in the winding up of the insolvent insurer;
 - (iii) recovering any money which the employer is entitled to recover under section 64; or
 - (iv) recovering any money which the employer 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 30o,

or for any other prescribed purpose.

*Workers' Compensation (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

(2) All rights vested in an insurer and all obligations imposed on an insurer, being rights or obligations—

(a) arising from or pertaining to a policy of insurance issued by an insolvent insurer to an employer; and

(b) which may or shall be exercised or discharged for the purpose of—

(i) dealing with and finalising any claim; or

(ii) satisfying any claim, judgment or award,

against which the employer is indemnified under the policy, are hereby vested in or imposed on the employer.

(3) Subsection (2) shall not 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 to be indemnified by a reinsurer or an obligation of an insurer to indemnify an employer; or

(b) any other prescribed right or obligation.

(4) Where the Government Insurance Office is, under subsection (1), empowered to exercise any rights, or to discharge any obligations, of an employer as the employer's agent and attorney, the employer is not entitled, without the consent of the Government Insurance Office, to exercise those rights or discharge those obligations.

(5) The appointment effected pursuant to subsection (1) may be revoked only by an Act.

Payments to employer or liquidator.

30v. (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 Government Insurance Office, as manager of the Guarantee Fund, may pay from the Guarantee Fund

*Workers' Compensation (Amendment) 1985***SCHEDULE 5—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—continued.**

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 Government Insurance Office, 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 Government Insurance Office shall be 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 Government Insurance Office shall be 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 Government Insurance Office 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.

Workers' Compensation (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

Operation of certain provisions.

30w. (1) Section 18BA 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 Government Insurance Office were the insurer liable to indemnify the employer under the policy.

(2) Section 30k applies to and in respect of a payment made by the Government Insurance Office (as agent and attorney of an employer) pursuant to a policy of insurance issued by an insolvent insurer in the same way as it would apply and in respect of the payment had it been made by the Government Insurance Office as the insurer under the policy.

(3) Where the Government Insurance Office receives as agent and attorney of an employer a payment from the Contribution Fund in accordance with section 30k, section 30L applies to and in respect of that payment as if the Government Insurance Office were an insurer which had received that payment in respect of compensation paid by it.

(4) Sections 53B and 53E apply in relation to a claim being dealt with by the Government Insurance Office 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 Government Insurance Office.

(5) The Governor may make regulations, 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 Government Insurance Office as agent and attorney of an employer insured under a policy of insurance issued by an insolvent insurer.

*Workers' Compensation (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.***Application of Guarantee Fund.**

30x. (1) Out of the Guarantee Fund, the Government Insurance Office as manager of that Fund—

- (a) shall pay the amount of any claim, judgment or award arising from or pertaining 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; 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 or performance of its powers, authorities, duties and functions under this Part.

(2) Where a payment is made by the Government Insurance Office as agent and attorney of an employer, being a payment authorised by this Part, the Government Insurance Office shall not be entitled to recover the amount of that payment from the employer.

Recovery of amounts under contracts or arrangements for reinsurance.

30y. To the extent that any amounts are paid out of the Guarantee Fund in respect of a claim, judgment or award pursuant to section 30x (including the costs of the Government Insurance Office), the Government Insurance Office shall, 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, be 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 Government Insurance Office to recover from the reinsurer and pay into the Guarantee Fund the amount due under that contract or arrangement.

Workers' Compensation (Amendment) 1985

SCHEDULE 5—continued.

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—continued.**

Payments of workers' compensation when insolvent insurer dissolved.

30z. (1) When an insolvent insurer has been dissolved, the payments of compensation under judgments or awards pertaining to policies of insurance issued by the insolvent insurer which would, but for the dissolution taking place, be payable by the insolvent insurer shall continue and be paid out of the Guarantee Fund by the Government Insurance Office.

(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 pertaining to any policy of insurance issued by the insolvent insurer (being a policy in respect of which the insolvent insurer is the insurer) shall be 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 Government Insurance Office, as manager of the Guarantee Fund, in respect of an entitlement to payment of an amount under that subsection.

(4) The Government Insurance Office, 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.

Inspection of documents, etc., by person authorised by Minister.

30ZA. The liquidator of an insolvent insurer shall, 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.

Workers' Compensation (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

Board may take certain legal proceedings.

30ZB. (1) Where—

- (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding up;
- (b) the exercise or performance by the liquidator of an insolvent insurer of any of the liquidator's powers, authorities, duties or 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 Board may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a party to, and shall have 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 pertaining 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 Board shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.

(3) The Board is entitled to be paid, out of the Guarantee Fund, all the costs and expenses incurred by the Board in exercising the powers conferred by this section.

Workers' Compensation (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE ESTABLISHMENT
OF AN INSURERS' GUARANTEE FUND—*continued.*

Regulations.

30ZC. The regulations may make provision for or with respect to—

- (a) requiring licensed insurers to make further contributions to the Guarantee Fund;
- (b) the manner and method of determining any such further contributions;
- (c) varying in circumstances therein specified the periods with respect to which contributions are to be determined, or the method by which contributions are to be calculated, under section 30R;
- (d) the payment, and proceedings for the recovery, of contributions; and
- (e) the circumstances and the manner in which contributions of licensed insurers and other amounts standing to the credit of the Guarantee Fund may be repaid and otherwise distributed to licensed insurers and the liquidators of insolvent insurers.

SCHEDULE 6.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 18 (9A)—

After section 18 (9), insert:—

(9A) Any insurer who pays any amount by way of commission or other remuneration to an insurance broker or agent or intermediary in relation to the issue or renewal, after the commencement of this subsection, of a policy of insurance or indemnity is guilty of an offence against this Act.

Workers' Compensation (Amendment) 1985

SCHEDULE 6—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 31A—

After section 31, insert:—

Co-ordination of functions of Board and Department of Industrial Relations.

31A. (1) The Secretary of the Department of Industrial Relations may, with the concurrence of the Minister, make arrangements for the co-ordination or integration of the exercise of the functions of the Board (other than functions under section 41) with the activities of the Department of Industrial Relations.

(2) The Board may act in conformity with any arrangements referred to in this section, and (without affecting section 31 (2) (b)) shall do so if the Minister so directs.

(3) This section ceases to have effect at the expiration of 2 years after the commencement of this section.

(3) Section 66 (1A)—

After section 66 (1), insert:—

(1A) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) requiring employers to notify the Insurance Premiums Committee, or insurers, of the numbers of workers employed;
- (b) requiring employers to supply certificates by registered public accountants under the Public Accountants Registration Act, 1945, in respect of wages paid to workers and in respect of any other matter relating to the calculation of premiums for policies of insurance or indemnity;
- (c) requiring employers and insurers to take such steps as may be specified in the regulations (including the furnishing of statutory declarations) for ensuring that correct information concerning the numbers of workers employed, the wages paid to workers and the classification of workers and employers is supplied for the purposes of this Act;

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- (d) requiring a former licensed insurer which is a company and whose license has been terminated or surrendered to discharge its liabilities under this Act out of the assets of the company and the assets of any company which is, by reason of section 7 (5) of the Companies (New South Wales) Code, deemed to be related to the firstmentioned company for the purposes of that Code;
- (e) prohibiting or regulating the transfer of assets of licensed insurers or former licensed insurers in specified circumstances;
- (f) applying the provisions of section 28 to former licensed insurers for the purposes of paragraph (d) or (e);
- (g) providing that, where more than one employer or more than one insurer is or may be involved in an application for compensation or any other matter under this Act, such one of the employers or such one of the insurers as may be determined in accordance with the regulations, or (as prescribed) the Board, shall represent the employers or insurers in any proceedings relating to the application; and
- (h) any matters ancillary to any of the foregoing.

SCHEDULE 7.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“the amending Acts” means the Compensation Court (Amendment) Act, 1985, the Occupational Health and Safety (Workers' Compensation) Amendment Act, 1985, the Miscellaneous Acts (Workers' Compensation) Amendment Act, 1985, and this Act;

“the Principal Acts” means the Workers' Compensation Act, 1926, the Compensation Court Act, 1984, the Occupational Health and Safety Act, 1983, and the Acts amended by the Miscellaneous Acts (Workers' Compensation) Amendment Act, 1985.

Workers Compensation (Amendment) 1985

SCHEDULE 7—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Saving relating to certain premiums.

2. Sections 18AA and 30AB of the Workers' Compensation Act, 1926, as in force immediately before the commencement of Schedule 2, apply to and in respect of a premium demanded before that commencement—

- (a) for a policy of insurance or indemnity, within the meaning of the Workers' Compensation Act, 1926; or
- (b) for a renewal of any such policy,

being a premium related to a period of insurance that commenced before that Schedule.

Pending proceedings.

3. (1) Any application or other proceedings (being an application or proceedings that would, but for this clause, have been required to be heard by commissioners under the Workers' Compensation Act, 1926) made, commenced or set down for hearing before the Compensation Court before the commencement of section 42K of that Act shall be continued and disposed of as if the amending Acts had not been enacted.

(2) Any appeal made, or which (but for a provision of the amending Acts) could have been made, before the commencement of section 42Q of that Act shall be heard, or made and heard, as the case may be, as if the amending Acts had not been enacted.

Savings, transitional and other provisions.

4. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the amending Acts.

(2) A regulation shall not be made under subclause (1) without the concurrence of the Attorney General.

(3) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later day.

(4) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

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SCHEDULE 7—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(5) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding the foregoing clauses of this Schedule.
