



New South Wales

# WorkCover Legislation Amendment Act 1995 No 89

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New South Wales

## **WorkCover Legislation Amendment Act 1995 No 89**

Act No 89, 1995

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An Act to amend the *Workers Compensation Act 1987* and the *Compensation Court Act 1984* to make further provision with respect to workers compensation dispute resolution, claims procedures, lump sum and weekly payments of compensation and the duties of insurers, and in other respects; to amend the *Occupational Health and Safety Act 1983* and associated legislation to increase penalties and to make further provision with respect to powers of inspectors and entry to the workplace, and in other respects; to make miscellaneous amendments to various other Acts; and for other purposes. [Assented to 20 December 1995]

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

**1 Name of Act**

This Act is the *WorkCover Legislation Amendment Act 1995*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [30] which inserts sections 69A and 69B into the *Workers Compensation Act 1987*, and Schedule 1 [106] to the extent that it inserts clause 9 of Part 6 of Schedule 6 to that Act, commence on the date of assent.

**3 Amendment of Workers Compensation Act 1987 No 70**

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

**4 Amendment of Occupational Health and Safety Act 1983 No 20**

The *Occupational Health and Safety Act 1983* is amended as set out in Schedule 2.

**5 Amendment of Compensation Court Act 1984 No 89**

The *Compensation Court Act 1984* is amended as set out in Schedule 3.

**6 Amendment of Construction Safety Act 1912 No 38**

The *Construction Safety Act 1912* is amended as set out in Schedule 4.

**7 Amendment of Factories, Shops and industries Act 1962 No 43**

The *Factories, Shops and Industries Act 1962* is amended as set out in Schedule 5.

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**8 Amendment of Dangerous Goods Act 1975 No 68**

The *Dangerous Goods Act 1975* is amended as set out in Schedule 6.

**9 Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14**

The *Workers' Compensation (Dust Diseases) Act 1942* is amended as set out in Schedule 7.

**10 Amendment of other Acts**

The Acts specified in Schedule 8 are amended as set out in that Schedule.

## **Schedule 1 Amendment of Workers Compensation Act 1987**

(Section 3)

### **[1] Section 3 Definitions**

Insert “or appointed” after “employed” in the definition of *conciliation officer* in section 3 (1).

### **[2] Section 3 (1)**

Insert in alphabetical order:

*Commissioner* means a Commissioner of the Compensation Court under the *Compensation Court Act 1984*.

*Judge* means a Judge of the Compensation Court under the *Compensation Court Act 1984*.

### **[3] Section 3 (1A)**

Insert after section 3 (1):

(1A) A reference 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.

### **[4] Section 4A**

Insert after section 4:

#### **4A Directors of uninsured employer not entitled to compensation**

If an employer that is a corporation had not obtained, or was not maintaining in force, at the relevant time a policy of insurance for the full amount of the employer’s liability under this Act in respect of an injured worker and the injured worker was at the relevant time a director of the corporation, the injured worker is not entitled to any compensation under this Act in respect of that liability.

**[5] Section 7 Certain Acts not affected**

Omit “*Workmen's Compensation (Broken Hill) Act 1920*”.

**[6] Section 11A**

Insert after section 11:

**11A No compensation for psychological injury unless employment substantial cause and not due to reasonable actions by employer**

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury unless:
  - (a) the employment concerned was a substantial cause of the injury, and
  - (b) the injury was not wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.
- (2) If total or partial incapacity for work results from an injury that is a psychological injury, any compensation payable to the injured worker is not to include a weekly payment under Division 2 (Weekly compensation by way of income support) of Part 3 for any period of incapacity after the first 3 years of incapacity. A reference in this subsection to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.
- (3) *Psychological injury* is an injury (as defined in section 4) that is a psychological or psychiatric disorder. The term extends to include the physiological effect of such a disorder on the nervous system.

- (4) This section does not affect any entitlement to compensation under this Act for an injury of a physical nature even if the injury is a physical symptom or effect of a psychological injury, so long as the injury is not merely a physiological effect on the nervous system.
- (5) A worker's employment is not to be regarded as a substantial cause of a psychological injury merely because the employment is a real or actual cause of the injury. The term "substantial" is used in this section in the sense of real and important.
- (6) This section does not extend the definition of *injury* in section 4. In particular, this section does not affect the requirement in section 4 that a disease is not an injury unless it is contracted by the worker in the course of employment.
- (7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92):
  - (a) use, for the purpose of describing the worker's condition, accepted medical terminology and not terminology such as "stress" or "stress condition", and
  - (b) include a statement of the medical practitioner's opinion concerning the likelihood of the worker's employment being a cause (and, if so, how much of a cause) of the psychological injury (with expressions such as "work related" and similar expressions not being sufficient by themselves for this purpose).
- (8) If a claim is deficient because subsection (7) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the



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deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim:

- (a) the claim is not considered to have been duly made for the purposes of section 102 until subsection (7) is complied with, and
- (b) court proceedings cannot be commenced in respect of the claim until subsection (7) is complied with.

**[7] Section 22A Further provisions concerning apportionment of liability under section 22**

Insert after section 22A (8):

- (9) The operation of section 22 is not to be limited because of the fact that it provides for liability to be apportioned rather than providing for payment of contributions.

**[8] Section 40 Weekly payments during partial incapacity—general**

Omit “The regulations under section 100C may require insurers and self-insurers to refer such disputes to conciliation officers for conciliation.” from section 40 (4).

**[9] Section 42 Current weekly wage rate**

Insert after section 42 (7):

- (7A) If the application of subsection (7) to an injured worker results in the current weekly wage rate of the worker being less than the rate that would be determined under this section if regard was only had to employment with the employer for whom the worker was working at the time of the worker’s injury, a reference to the current weekly wage rate of the worker is, despite ‘that subsection, a reference to that higher rate.

**[ 1 0 ] Section 43 Computation of average weekly earnings**

Omit “at the request of” from section 43 (2). Insert instead “within 28 days, or such other period as may be prescribed, after a request from”.

**[ 1 1 ] Section 43 (2)**

Insert “and in accordance with any requirements of the regulations” after “in writing”.

**[ 1 2 ] Section 43 (2)**

Omit “Maximum penalty: 20 penalty units.”.

**[ 1 3 ] Section 43 (2A) and (2B)**

Insert after section 43 (2):

(2A) An employer who fails without reasonable excuse to comply with subsection (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

(2B) The regulations may make provision for or with respect to:

(a) the manner and form in which the details required to be provided by subsection (2) are to be provided, and

(b) requiring an employer to certify as to the completeness and accuracy of details provided by the employer for the purposes of subsection (2).

**[ 1 4 ] Section 43A Suitable employment**

Insert “or return-to-work plan” after “rehabilitation plan” wherever occurring in section 43A (1) and (2) (a).

**[ 1 5 ] Section 55 Review of weekly payments**

Insert after section 55 (2):

- (2A) If on any such review a weekly payment of compensation is ended or reduced with effect from a day that is earlier than the date of the Compensation Court's order on the review, the Compensation Court may order the worker to refund the amount of any payments made to the worker to which the worker is not entitled as a result of the order on the review.

**[ 1 6 ] Section 60A**

Insert after section 60:

**60A Worker not liable for medical, hospital and rehabilitation charges above applicable rates**

A worker is not liable to pay, and a person is not entitled to recover from a worker, any amount in respect of medical or related treatment, hospital treatment at a hospital or an occupational rehabilitation service, given or provided to the worker as a result of an injury, to the extent that the amount exceeds any applicable maximum, as follows:

- (a) in the case of a medical or related treatment for which a sum is prescribed under section 61 (2), the applicable maximum is that prescribed sum,
- (b) in the case of hospital treatment at a hospital, the applicable maximum is the amount calculated as prescribed under section 62 (1) as the cost to the hospital of the treatment,
- (c) in the case of an occupational rehabilitation service for which a sum is prescribed under section 63A (2), the applicable maximum is that prescribed sum.

**[17] Section 63A Rates applicable for occupational rehabilitation services**

Omit section 63A (5). Insert instead:

- (5) The regulations may exempt an employer from liability under this Division for occupational rehabilitation services unless the services are approved in the manner, or provided in the circumstances, specified in the regulations.

**[18] Section 65 Definitions**

Insert at the end of section 65 (2) (c):

, and

- (d) a disease mentioned in that Table.

**[19] Section 66 Compensation for permanent injuries**

Omit "\$123,400" and "\$150,150".

Insert instead "\$132,300" and "\$160,950", respectively.

**[20] Section 66A Registration of agreements for compensation**

Omit "under section 66 for a loss that is an occupational disease (within the meaning of section 71)" from section 66A (1) (a).

Insert instead "under section 66 or 67".

**[21] Section 66A (4A)**

Omit the subsection. Insert instead:

- (4A) The Authority must refuse to register an agreement unless it is satisfied that the worker received independent legal advice about the agreement before the worker entered into the agreement.

**[22] Section 66A (10)**

Insert after section 66A (9):

- (10) Nothing in this section prevents an agreement that is registered under this section from containing provision as to the payment of costs.

**[23] Section 66B**

Insert after section 66A:

**66B No proceedings to enter up award on agreement for compensation**

- (1) When a worker agrees to receive an amount of compensation under section 66 or 67, the Compensation Court is not to entertain proceedings for entry of an award to give effect to the agreement unless the proceedings also relate to some dispute in connection with the worker's claim for compensation under this Act.
- (2) The regulations may prescribe exceptions to this section.

**[24] Section 67 Compensation for pain and suffering**

Omit "\$61,750" from section 67 (1). Insert instead "\$66,200".

**[25] Section 67 (1A)**

Insert after section 67 (1):

- (1A) Because there is a distinction between *injury* and *loss resulting from an injury* (and compensation is payable under this section only for pain and suffering resulting from a loss), the pain and suffering for which compensation is payable under this section does not include pain and suffering that results from the injury but not from the loss.

**[26] Section 67 (3A)**

Omit the subsection.

**[27] Section 67 (4A)**

Insert after section 67 (4):

- (4A) It is permissible for an agreement as to the amount of compensation to be paid to a worker under this section to provide that the amount to be paid is the proportion of the maximum amount payable under this section that is the same as the proportion of the maximum amount payable under section 66 that is represented by the amount payable to the worker under that section in respect of the loss or losses concerned. This subsection does not prevent an agreement that some other amount is to be the amount to be paid to a worker under this section.

**[28] Section 67A**

Insert after section 67:

**67A Special provisions for HIV/AIDS**

- (1) For the purposes of section 67 (3), HIV infection and AIDS are each considered to be a most extreme case, so that the maximum amount of compensation under section 67 is payable.
- (2) Section 68 does not apply to a loss that is HIV infection or AIDS.
- (3) The regulations may make provision for methods for determining for the purposes of this Act whether a person is HIV infected or is suffering from AIDS. Regulations need not be made under this subsection and in the absence of regulations the determination of whether a person is HIV infected or suffering from AIDS is to be on the basis of medical opinion.

- (4) Compensation is not payable under section 66 or 67 for a loss that is HIV infection or AIDS if the loss resulted from voluntary sexual activity or illicit drug use. This subsection does not limit the operation of section 14.
- (5) In this section *HIV infection* means infection by the Human Immunodeficiency Virus, and *AIDS* means Acquired Immune Deficiency Syndrome.

**[29] Section 68A**

Insert after section 68:

**68A Special provisions for back, neck and pelvis impairment**

- (1) If a loss suffered by a worker as a result of an injury is permanent impairment of the back, neck or pelvis, no compensation is payable under this Division, by the employer who is liable in respect of the injury, for any proportion of the loss that is due to:
  - (a) a previous injury for which compensation has been paid or is payable under this Division, or
  - (b) any other previous injury or any pre-existing condition or abnormality.
- (2) The proportion of a loss for which no compensation is payable because of subsection (1) is the *deductible proportion* for that loss.
- (3) If the loss resulted from 2 or more injuries for which compensation has been paid or is payable under this Division (as referred to in section 22), there is to be no deduction under this section for any proportion of the loss that is due to any of those 2 or more injuries.
- (4) If the loss resulted from an injury to which section 15 applies (a disease that is of such a nature as to be contracted by a gradual process) there is to be no deduction under this section for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due.

- (5) If the loss resulted from an injury to which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under this section for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.
- (6) If another loss was suffered by the worker as a consequence of the permanent impairment of the back, neck or pelvis for which there is a deductible proportion under subsection (1) and that other loss and the impairment both resulted from the same injury, no compensation is payable under this Division for the proportion of the other loss that equals the deductible proportion for the impairment.
- (7) Section 68 does not apply to a loss that is permanent impairment of the back, neck or pelvis.
- (8) If there is a deductible proportion for a loss but the extent of the deductible proportion will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion is 10%, unless this assumption is at odds with the available evidence.

**[30] Sections 69A and 69B**

Insert after section 69:

**69A No compensation for less than 6% hearing loss**

- (1) There is no entitlement to compensation under section 66 for a loss of hearing (the *present loss*) due to boiler-makers deafness if the worker's total hearing loss due to boiler-makers deafness is less than 6%. The worker's *total hearing loss* is the aggregate of the present loss and all previous losses of hearing due to boiler-makers deafness.



- (2) Once a worker has been paid compensation under section 66 for a loss or further loss of hearing due to boilermakers deafness (whether the compensation was paid before or after the commencement of this section), the worker has no entitlement to compensation under section 66 for any further loss of hearing due to boilermakers deafness unless that further loss is at least 5%. This subsection is capable of applying to a worker on more than one occasion.
- (3) The fact that compensation is not payable for a loss or further loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss or further loss, and does not affect the operation of section 17 in respect of that loss or further loss (if and when the worker's total hearing loss reaches 6% or that further loss reaches 5%).
- (4) An example of the operation of this section is as follows (assume that all hearing losses mentioned are due to boilermakers deafness):
- (a) A worker suffers a hearing loss of 4% (the first hearing loss that the worker has suffered). No compensation is payable under section 66 for the loss because it is less than 6%. though notice of injury can be given or a claim can be made for the hearing loss.
  - (b) The worker suffers a further hearing loss of 4%, bringing the total loss to 8%. The total loss has now passed the 6% threshold and compensation is payable for the full 8%. Compensation for the initial 4% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for that initial hearing loss.
  - (c) The worker suffers a further hearing loss of 4%. The worker is not entitled to compensation for the 4% further loss (because it is less than the 5% further loss threshold). Again, notice of injury can be given or a claim can be made for that further loss even though compensation is not payable for it.

- (d) The worker suffers a further hearing loss of 3%. The total further loss has now passed the 5% threshold and compensation is payable for the full 7% further loss. Each time the worker suffers a further loss of hearing after compensation has been paid for any previous loss, no compensation is payable for the further loss until it reaches 5%.
- (5) For the purposes of determining the percentage of loss of hearing due to boilermakers deafness, that loss of hearing is to be determined as a proportionate loss of hearing of both ears, even if the loss is in one ear only. The regulations may prescribe a method for calculating the proportionate loss of hearing of both ears.
- (6) A legal practitioner or agent who acts for a worker on a claim for compensation for loss of hearing due to boilermakers deafness is not entitled to recover any costs from the worker or the employer in connection with acting on the claim if no compensation is payable on the claim because the worker's total hearing loss due to boilermakers deafness is less than 6% (even if compensation subsequently becomes payable because the worker's loss of hearing reaches 6% as a result of further hearing loss).
- (7) A worker who refuses or fails to submit himself or herself for, or who obstructs, an examination required under section 129 or 131 in connection with a claim for which no compensation is payable under section 66 because of this section is (for the purposes of that claim) presumed in the absence of evidence to the contrary to have no hearing loss due to boilermakers deafness.
- (8) A reference in this section and in section 69B to boilermakers deafness includes a reference to any deafness of similar origin.
- (9) For the purposes of the operation of section 71 in relation to compensation for loss of hearing, a reference in that section to compensation that becomes payable under this Division includes a reference to compensation that would have become payable were it not for the operation of this section.

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**69B Employer's responsibility to pay for hearing loss tests**

- (1) An employer who would, but for the operation of section 69A, be liable to pay compensation under section 66 for a loss or further loss of hearing suffered by a worker, is not liable under Division 3 to pay the cost of a hearing test for that loss or further loss, except any of the following tests:
  - (a) the test that is the first such test for that loss or further loss after the commencement of this section,
  - (b) any test carried out not less than 3 years, or such other period as may be prescribed, after any previous test that the employer has paid the cost of obtaining,
  - (c) any test that finds that the worker has suffered a total hearing loss due to boilermakers deafness of 6% or more (being hearing loss for which the worker has not received compensation under section 66),
  - (d) in the case of a worker who has received compensation under section 66 for loss of hearing (whether before or after the commencement of this section), any test that finds that the worker has suffered a further hearing loss due to boilermakers deafness of 5% more,
  - (e) any test carried out after the worker has left the worker's employment with the employer,
  - (f) any test carried out in such circumstances as may be prescribed by the regulations.
- (2) The cost of a hearing test is the cost of obtaining a medical certificate, and any examination required for the certificate, as to the extent of the hearing loss concerned.
- (3) This section does not operate to require payment by an employer for the cost of obtaining any hearing test that the employer would not otherwise be liable to pay for under Division 3.

**[31] Section 72A Restrictions on commencing proceedings concerning hearing loss claims**

Omit the section.

**[32] Section 73 Reimbursement for costs of medical certificate and examination**

Insert “report or” after “means a” in the definition of *medical certificate* in section 73 (1).

**[33] Part 3, Division 4, Table (Compensation for permanent injuries)**

Insert after the matter relating to Foot injuries:

**Bowel injury:**

Permanent loss of bowel function.....0-65

**[34] Part 3, Division 4, Table**

Insert after the matter relating to Disfigurement:

**Disease:**

HIV infection (Human Immunodeficiency Virus infection) ..... 100

AIDS (Acquired Immune Deficiency Syndrome) . 100

**[35] Part 3, Division 4, Table**

Omit paragraph (g) of the Interpretation notes at the end of the Table.

**[36] Part 3, Division 4, Table**

Insert after paragraph (i) of the Interpretation notes at the end of the Table:

- (j) For the purposes of determining whether and to what extent a worker has suffered permanent loss of bowel function:
  - (i) the bowel is taken to include the anal sphincter, and
  - (ii) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable.

**[37] Section 79 Definitions**

Omit the definitions of *adjustable amount* and *base index number*.  
Insert instead:

*adjustable amount* means:

- (a) each of the amounts specified in sections 25, 35, 37 and 40, without regard to any adjustment under this Division, and
- (b) such of the amounts specified in section 66 or 67 as may be declared by the regulations to be an adjustable amount for the purposes of this Division, without regard to any adjustment under this Division.

*base index number* means:

- (a) in respect of an adjustable amount that is an amount specified in section 25, 35, 37 or 40—the number 130.8, and
- (b) in respect of any adjustable amount that is an amount specified in section 66 or 67—the number declared by the regulations to be the base index number for that adjustable amount.

**[38] Section 81 Wounding off**

Omit ““(being \$211,850, \$150,150, \$123,400 or \$61,750)””.

Insert instead ““(being an amount specified in section 25, 66 or 67)””.

**[39] Section 92 Making of claim for compensation**

Insert after section 92 (1A):

- (1B) 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.

**[40] Section 92 (2A)–(2C)**

Insert after section 92 (2):

- (2A) If a claim for compensation was made by an injured worker within the period required by subsection (2), 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.
- (2B) For the purposes of subsection (2), 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.
- (2C) If there is no entitlement to compensation under section 66 for a loss of hearing because of section 69A (No compensation for less than 6% hearing loss) notice of injury given in accordance with section 89 suffices (for the purposes of this section) as a claim for the compensation concerned.

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**[41] Section 92(4)–(4E)**

Omit section 92 (4). Insert instead:

- (4) 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.
- (4A) The failure to make a claim within the period required by subsection (2) 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 it is found that it is in the interests of justice that the claim not be barred.
- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines, with the approval of the Authority, to accept the claim outside the period required by subsection (2).
- (4C) 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 (2) and (4A) 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 (2) and (4A) to a claim by that person, taken to be the date that the person became so aware.

- (4D) 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.
- (4E) 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 (2) and (4A) as the making of a claim for compensation in respect of the injury.

**[42] Section 92A Manner of making claim for compensation**

Omit section 92A (2).

**[43] Sections 94A and 94B**

Insert after section 94:

**94A Insurers to give notice and reasons when liability disputed**

- (1) If an insurer disputes liability in respect 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 conciliation officer,
  - (c) if the insurer has referred or proposes to refer the dispute for conciliation by a conciliation officer, 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.
  - (4) Notice is not required to be given under this section with respect to a dispute if notice has been given under section 54 with respect to the dispute and that notice contained the statements and information that a notice under this section is required to contain.
  - (5) An employer against whom a claim for compensation is made under this Act may require the employer's insurer in respect of the claim to defend the claim (whether by disputing liability or otherwise). An insurer is required to comply with such a requirement, subject to the regulations.
  - (6) The regulations may make provision for or with respect to the resolution of disputes between insurers and employers as to the defending of claims by insurers pursuant to a requirement under subsection (5).

**94B Report about delays and the incurring of unreasonable costs by insurers**

- (1) A Judge or Commissioner of the Compensation Court or a conciliation officer may make a report to the Authority on:
  - (a) delays by insurers in dealing with claims under this Act, and
  - (b) cases of insurers being responsible for costs in proceedings before the Compensation Court being unreasonably incurred, as provided by section 119.

- (2) The Authority may take such action as it considers appropriate on the basis of any such report, including (for example):
  - (a) by giving directions under section 93B to any insurer concerned, and
  - (b) in the case of an insurer to whom Division 4 of Part 7 applies, by reducing (by such amount as the Authority considers appropriate) the management expenses relating to the insurer's statutory fund that would otherwise be payable to the insurer.

**[44] Section 96 Conciliation officers**

Insert after section 96 (1):

- (1A) The Governor may, on the recommendation of the Minister, appoint other suitably qualified persons to be conciliation officers for the purposes of this Act, to conciliate on disputes as and when required to do so by the Senior Conciliation Officer. Schedule 2 has effect with respect to conciliation officers appointed under this subsection.

**[45] Section 97 Referral of disputes for conciliation**

Insert after section 97 (1):

- (1A) The Compensation Court may at any stage of proceedings refer a matter in dispute between the parties to the Senior Conciliation Officer for conciliation or further conciliation by a conciliation officer.

**[46] Section 98 Conciliation of disputes**

Insert "having proper regard to relevant entitlements and liabilities under the Act" after "bring the parties to agreement" in section 98 (1).

**[47] Sections 98A–98D**

Insert after section 98:

**98A Power of conciliation officer to require information**

- (1) A conciliation officer may give a direction in writing to a party to a dispute referred to the conciliation officer requiring the party:
  - (a) to produce to the conciliation officer, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the conciliation officer considers relevant to the dispute concerned, or
  - (b) to furnish specified information to the conciliation officer within a time specified in the direction, being information that the conciliation officer considers relevant to the dispute concerned.
- (2) A conciliation officer must not give a direction under this section to a worker unless the conciliation officer is satisfied that the worker will be represented by a legal practitioner at a conciliation conference on the dispute.
- (3) 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.
- (4) 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.

- (5) 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.

**98B Summons to appear at conciliation conference**

- (1) The Senior Conciliation Officer may issue a summons requiring the attendance of a party to a dispute at a conciliation conference (as defined in section 100A) on the dispute if the Senior Conciliation Officer is satisfied that the party has failed without reasonable excuse to comply with a request by a conciliation officer to attend a conciliation conference on the dispute.
- (2) The Senior Conciliation Officer 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.

**98C Role for conciliation officer in preparing for medical panel**

- (1) When a dispute referred to a conciliation officer concerns compensation payable under section 66 and it appears to the conciliation officer that any issues in dispute may be appropriate for referral to a medical panel, the Conciliation officer 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 conciliation officer can assist any party with respect to the making of an application under section 131 for referral of a medical dispute to a medical panel.

- (3) The conciliation officer can refer a completed application to the Senior Conciliation Officer for forwarding on to the registrar of the 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.

#### **98D Certificates as to conciliation of disputes**

- (1) The Senior Conciliation Officer is required, on the application of any person who is or has been a party to conciliation of a dispute under this Division, to issue to the person free of charge a conciliation certificate for the dispute. The Senior Conciliation Officer may delegate to any conciliation officer the function of issuing a conciliation certificate.
- (2) A conciliation officer may, during or after completion of conciliation of a dispute by the conciliation officer, issue to any party to the dispute on application by the party a conciliation certificate for the dispute.
- (3) A conciliation certificate is a certificate as to such of the following matters as the person applying for the certificate requests:
- (a) whether a dispute with respect to a claim under this Act is or has been the subject of conciliation under Division 2,
  - (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) whether (and, if so, how) a particular party to the dispute has in the opinion of the conciliation officer unreasonably failed to participate in conciliation.

- (4) A conciliation certificate is evidence of the matters that it certifies.
- (5) A conciliation officer (including the Senior Conciliation Officer) is competent to give evidence as to matters in a conciliation certificate issued by the conciliation officer under this section but the conciliation officer may not be compelled to give any such evidence.

**[48] Section 99 Control and direction of conciliation officers**

Insert after section 99 (1):

- (1A) Subject to subsection (1), Conciliation officers are, in the exercise of their functions, subject to the general control and direction of the Senior Conciliation Officer.
- (1B) Subsection (1) does not prevent the making of arrangements for the training of conciliation officers, and does not prevent conciliation officers obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations.
- (1C) Conciliation officers are subject to guidelines issued by the Senior Conciliation Officer 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 100C.

**[49] Section 100A Proceedings before conciliation officers**

Omit “not” from section 100A (2).

**[50] Section 100A (3)**

Omit the subsection.

**[51] Section 100A (3A), (38)**

Insert after section 100A (3):

- (3A) 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.
- (3B) A conciliation officer 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).

**[52] Section 100C Regulations**

Omit section 100C (a).

**[53] Section 102 Claim for weekly payments—commencement of payments**

Insert “in accordance with section 103B” after “refers the dispute” in section 102 (2) (b).

**[54] Section 102 (4) and (5)**

Omit the subsections. Insert instead:

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of the 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.

**[55] Sections 103A, 103B**

Insert after section 103:

**103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days**

- (1) If there is a dispute as to liability to continue to make weekly payments of compensation, the person making the weekly payments must, within 21 days after the dispute arises, refer the dispute in accordance with section 103B for conciliation under Division 2.

Maximum penalty: 50 penalty units.

- (2) For the purposes of this section, a dispute as to liability to make weekly payments of compensation for a period of incapacity (or alleged incapacity) is not considered to have arisen unless the worker has provided to the person making the payments a certificate by a medical practitioner certifying with respect to the worker's incapacity during that period.
- (3) For the purposes of this section, a dispute as to liability to make weekly payments of compensation is considered to have arisen:
- (a) on the commencement of the period of incapacity (or alleged incapacity) to which the reduction or discontinuation of payments relates, unless paragraph (b) applies, or
  - (b) if the certificate referred to in subsection (2) is provided by the worker after the commencement of that period—when that certificate is provided by the worker.
- (4) A person's failure to refer a dispute for conciliation under Division 2 in accordance with this section is not a contravention of this section if the dispute has already been referred by the claimant for conciliation under Division 2.



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**103B How disputes about weekly payments are to be referred to conciliation**

- (1) For the purposes of this Division, a dispute about weekly payments of compensation is referred to conciliation under Division 2 by forwarding the following material to the Senior Conciliation Officer:
  - (a) a statement of the matters in dispute (which, if the Authority approves a form for the purpose, is to be in such form as the Authority approves),
  - (b) a copy of the claim and all relevant documentation relating to the claim in the person's possession or reasonably obtainable by the person,
  - (c) a copy of the notice given to the worker under section 94A or 54 (whichever is relevant to the case),
  - (d) a copy of all medical or other information on which the decision to dispute liability was based,
  - (e) in a case to which section 102 (4) applies, details of the excuse for not commencing weekly payments (or the balance of weekly payments in dispute) within 21 days.
- (2) This section applies only to the referral of a dispute by the person on whom the claim was made or the person making the weekly payments of compensation. It does not apply to the referral of a dispute by the person claiming weekly payments of compensation.

**[56] Section 105 Maximum period of weekly payments of compensation under direction of conciliation officer**

Insert "constituted by a commissioner" after "Compensation Court" in section 105 (2).

**[57] Section 106 Revocation of directions of conciliation officer**

Insert "constituted by a commissioner" after "Compensation Court" in section 106 (2).

**[58] Part 4, Division 3A**

Insert after section 106C:

**Division 3A Restrictions on commencing court proceedings**

**106D Restrictions on commencing court proceedings about weekly payments**

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless:
  - (a) the person on whom a claim for the compensation was duly made has failed to commence weekly payments within 21 days, or
  - (b) if that person has commenced those payments—a dispute has arisen as to liability to continue to make those weekly payments (as referred to in section 103A) and a period of 21 days has elapsed since the dispute arose.
- (2) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate.
- (3) 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,
  - (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.

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**106E Restrictions on commencing court proceedings for lump sum compensation**

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 until:
- (a) 12 weeks after a claim for the compensation is duly made, or
  - (b) if the person on whom the claim is made has, within that 12 weeks, proceeded to deal with and decide the claim with reasonable promptness and duly applied under section 131 for reference of the matter to a medical panel—14 days after the panel has given its certificate under that section,

whichever is later. However, this subsection does not prevent the commencement of court proceedings by a worker in respect of compensation under section 66 after a period of 16 weeks has elapsed since a claim for the Compensation was duly made, so long as the worker has responded to any offer of settlement made to the worker during that period.

- (2) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss, or for related compensation, until subsection (1) allows the commencement of proceedings in respect of compensation under section 66 for the loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss or pain and suffering.
- (3) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, 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.

- (4) 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 (3).
- (5) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 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).
- (6) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 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.
- (7) This section does not prevent the commencement of court proceedings in such circumstances (if any) as may be prescribed by the regulations.
- (8) For the purposes of this section a person is not considered to have dealt with a claim with reasonable promptness unless the person has, within 21 days (or such other period as may be prescribed by the regulations) after receipt of the claim, given the claimant a written acknowledgment of receipt of the claim.

**106F Restrictions on commencing court proceedings about hospital, medical and other expenses**

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute has arisen about that compensation.

- (2) 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 and are commenced in compliance with section 106D or 106E (whichever is appropriate).
- (3) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.

**[59] Section 108**

Insert after section 107A:

**108 Applications to be heard together**

- (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.

**[60] Sections 113–119**

Insert after section 112:

**113 Interest before order for payment**

- (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, 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 106E.
- (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.

**114 Interest after order for payment**

- (1) Unless the 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.

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- (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.

### **115 Interest on agreed payment of lump sum compensation**

- (1) Unless the 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 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.

### 116 Costs

- (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 II 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 2 of Part 4), and
  - (d) costs incidental to an application for referral of a medical dispute under section 131, or to referral of a medical question by agreement under section 131A, and
  - (e) costs incidental to an application for registration of an agreement under section 66A, 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.

***decision*** includes award, order, determination, ruling and direction.

**117 Regulations fixing maximum costs recoverable by legal practitioners**

- (1) The regulations may make provision for or with respect to the following:
  - (a) fixing maximum costs for legal 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 but are related to proceedings on a workers compensation matter (for example, expenses for witnesses or medical opinions).
- (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.
- (3) To the extent that the regulations so provide, a legal practitioner 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 report 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 131 or by a medical practitioner under section 131A,
  - (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*.
- (7) In this section 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 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 2 of Part 4), and
  - (d) costs incidental to an application for referral of a medical dispute under section 131, or to referral of a medical question by agreement under section 131A, and
  - (e) costs incidental to an application for registration of an agreement under section 66A, and
  - (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.

**118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services**

- (1) The regulations may make provision for or with respect to fixing maximum fees for the provision by medical practitioners of the following services:

- (a) provision of any medical opinion or 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 by regulations under this section for the provision of the service.

**119 Limit on recovery of costs unreasonably incurred**

- (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.

- (3) 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.
- (4) The Court may by order exempt any costs or a proportion of any costs from the operation of subsection (3) 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.

**[61] Section 122 Solicitor/client costs in compensation proceedings**

Omit “any proceedings under this Act (including a conciliation conference as defined in section 100A)” from section 122 (1).  
Insert instead “the claim”.

**[62] Section 122 (5) and (6)**

Insert after section 122 (4):

- (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.

**[63] Section 131 Referral of medical disputes to referee or panel on application of worker or employer**

Omit 131 (5B) (a) and (b). Insert instead:

- (a) the dispute concerns 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 106E (3), or

**[64] Section 131 (5C)**

Omit the subsection.

**[65] Sections 131A**

Insert after section 131:

**131A Agreement to refer medical question to independent medical practitioner**

- (1) A worker and employer may agree to refer a medical question to a particular medical practitioner and agree that some or all of the medical practitioner's findings on that reference are to be binding on them for the purposes of the worker's claim for compensation. The medical practitioner need not be a medical referee.
- (2) In addition, the agreement can make provision for any of the following:
  - (a) for the worker to submit himself or herself for examination by the medical practitioner,
  - (b) for medical reports, X-rays and other test results to be furnished or disclosed to the medical practitioner.

- (3) The medical practitioner to whom a medical question is referred by agreement under this section is to give a certificate as to the medical practitioner's findings on the medical question as required by the terms of reference.
- (4) The certificate is, in any proceedings, evidence (but not conclusive evidence) as to the findings certified.
- (5) 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 medical certificate given by a medical practitioner pursuant to the agreement, and the Authority is to register the agreement and certificate, or such extract from them as the Authority considers appropriate. The Authority is to provide the Compensation Court with a copy of the agreements and certificates or the extracts from them that are registered by the Authority under this section.
- (6) The fees of the medical practitioner to whom a medical question is referred by agreement under this section are to be paid by the employer.
- (7) In this section *medical question* means any question (whether or not there is a dispute) as to any of the following:
  - (a) the worker's condition (including the existence, nature and extent of any loss or impairment and, if relevant, whether there exists, and the extent of, any deductible proportion under section 68A),
  - (b) the worker's fitness for employment (including the kind of employment for which the worker is fit),
  - (c) whether and to what extent the incapacity of the worker is due to the injury or alleged injury and whether or not there is any disagreement between the worker and the employer as to those matters.

**[66] Section 131B**

Insert before section 132:

**131B Reference of medical disputes by Senior Conciliation Officer**

- (1) When a medical dispute (as defined in section 131) is the subject of conciliation by a conciliation officer and concerns the compensation payable under section 66, the Senior Conciliation Officer 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.

**[67] Section 133 Reimbursement of worker for loss of wages and expenses associated with medical examination**

Insert after section 133 (4):

- (5) A worker who agrees under section 131A to submit himself or herself for examination by a medical practitioner 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.



**[68] Section 136A**

Insert after section 136:

**136A Power to correct mistakes in medical reports or certificates**

- (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 practitioner pursuant to section 13 1A as if the medical practitioner were a medical referee.

**[69] Section 145A**

Insert after section 145:

**145A Recovery from directors of corporations liable to reimburse Authority**

- (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 145 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 155 (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 155 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.

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**[70] Part 4, Division 7**

Insert after Division 6:

**Division 7 Prohibited conduct relating to touting for claims**

**148B Definitions**

(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 148C.

*protected claim* means:

- (a) a claim under section 66 for loss of hearing, and
- (b) any other claim that is declared by the regulations to be a protected claim for the purposes of this section.

(2) 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.
- (3) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division.

#### **148C Prohibited conduct by agents**

- (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.

#### **148D Offence of engaging in prohibited conduct**

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

Maximum penalty: 50 penalty units.

#### **148E Consequences of prohibited conduct for recovery of fees by agents**

- (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 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.

#### **148F Consequences of prohibited conduct for lawyers**

- (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 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.

**148G Lawyers and agents can be requested to certify as to prohibited conduct**

- (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.

**148H Power to restrict or ban recovery of costs by agents who engage in prohibited conduct**

- (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 148D or 122 (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.

**148I Power to restrict or ban agents who engage in prohibited conduct**

- (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 148D or 122 (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.

**148J Past conduct included in assessing persistent conduct**

- (1) A reference in section 148H and 148I to conduct that constitutes a contravention of section 148D or 122 (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 148D or 122 (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 148D or 122 (5) unless at least one instance of that conduct occurred after the commencement of this section.

**148K Duty of claimants to comply with requests for information about agents and lawyers**

- (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.

**[71] Section 151B Effect of recovery of damages from employer on payment of compensation**

Renumber section 151B (4) as section 151B (3).

**[72] Section 151B (4)**

Insert at the end of section 151B:

- (4) In applying subsection (2) or (3) to a particular case:
- (a) the reason for the non-recovery of damages for economic loss or non-economic loss (respectively) must be solely the operation of section 151H or 151G (respectively), and not a combination of reasons (including, for example, a partial settlement or partial compromise of a claim), and
- (b) the amount of damages for non-economic loss applied in determining the operation of the threshold test in the relevant section must be calculated on the basis of the actual loss, and must not be reduced on the basis of any settlement or compromise or otherwise.

**[73] Section 151M**

Omit the section. Insert instead:

**151M Payment of interest**

(1) **Limited statutory entitlement**

A plaintiff has only such right to interest on damages as is conferred by this section.

(2) **Domestic services, nursing and attendance**

No interest is payable OR damages comprising compensation under section 151K. A court cannot order the payment of interest on such damages.

(3) **Non-economic loss**

No interest is payable on damages awarded under section 151G. A court cannot order the payment of interest on such damages.

(4) **Other heads of damages**

The following provisions apply to damages, other than damages to which subsection (2) or (3) applies:

(a) Interest is not payable (and a court cannot order the payment of interest) on such damages unless:

- (i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or
- (ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or

(iii) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

(b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind.

(c) For the purposes of this subsection, an offer of settlement must be in writing.

(5) **Calculation of interest**

If a court is satisfied that interest is payable under subsection (4) on damages:

(a) the amount of interest is to be calculated for the period from the date of the death of or injury to the worker until the date on which the court determines the damages, and

(b) the amount of interest is to be calculated for the accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) **Rate of interest**

The rate of interest to be used in any such calculation is three-quarters of the rate that would otherwise be applicable under the rules of court.

(7) **Judgment debts**

Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

**[74] Section 151Z Recovery against both employer and stranger**

Insert “or is entitled to take” after “takes” in section 151Z (2) (a).

**[75] Section 151AB Special insurance provision relating to occupational diseases etc**

Omit section 151AB (1) and (2). Insert instead:

- (1) If an employer is liable independently of this Act for damages for an occupational disease contracted by a worker, the following provisions have effect for the purpose of identifying from among a number of insurers under policies of insurance obtained by the employer for different periods which insurer or insurers is liable to indemnify the employer for the full amount of the damages or which is liable to pay the full amount of damages to the worker (without any right to a contribution from those other insurers):
  - (a) Any liability of that employer that arose before the relevant commencement is taken to have arisen when the worker was last employed before that commencement by that employer in an employment to the nature of which the disease was due.
  - (b) Any liability of that employer that arose after the relevant commencement is taken to have arisen when the worker was last employed after that commencement by that employer in an employment to the nature of which the disease was due.
- (2) If the employer’s liability arose partly before and partly after the relevant commencement, the following additional provisions apply:
  - (a) Subsection (1) (a) applies to any liability that arose before that commencement and subsection (1) (b) applies to any liability that arose after that commencement, with the result that 2 insurers are identified as the insurers who are to be liable as referred to in subsection (1). These insurers are referred to in this subsection as the ***responsible insurers***.

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- (b) Of the responsible insurers, the one that is the insurer in respect of the employer's liability that arose after the relevant commencement is to be the insurer *primarily responsible* for the claim.
  - (c) The responsible insurers can however agree as to which of them is to be primarily responsible for the claim or the court can order that one of them is to be the insurer primarily responsible, and any such agreement or order overrides paragraph (b).
  - (d) The insurer who is primarily responsible for the claim is to act for both the responsible insurers in respect of any claim for the damages and has sole liability for the claim (that is, it is to indemnify the employer for the full amount of the damages or is to pay the full amount of damages to the worker, without any right to a contribution from any other insurer, except as provided by paragraph (e)).
  - (e) The insurer who is primarily responsible is entitled to recover from the other responsible insurer half of the amount paid as damages to the worker, half of the amount paid in respect of the worker's legal costs and half of such reasonable amount as the insurer primarily responsible may have incurred in respect of its own legal expenses in the matter.

**[76] Section 151AB (6)**

Insert after the definition of *occupational disease*:

*relevant commencement* means:

- (a) except as provided by paragraph (b)—4 p.m. on 30 June 1987, or
- (b) in the case of an employer who was insured under a policy of insurance that was assigned as referred to in clause 10 of Part 15 of Schedule 6 to this Act—the commencement of the period of insurance of the policy so assigned.

**[77] Section 152A**

Insert after section 152:

**152A Return-to-work plans for injured workers**

- (1) The regulations may prescribe circumstances in which the employer of an injured worker must prepare or arrange for the preparation of a return-to-work plan for the worker.
- (2) Any such return-to-work plan must, subject to the regulations, comply with any guidelines determined by the Authority.
- (3) The regulations may:
  - (a) require any such return-to-work plan to be approved by the Authority or other person or body, and
  - (b) create offences with respect to any failure to comply with the regulations under this section.

**[78] Section 155 Compulsory insurance for employers**

Omit “Maximum penalty: 200 penalty units.” from section 155 (1).  
Insert instead “Maximum penalty: 200 penalty units or imprisonment for 6 months, or both”.

**[79] Section 155 (4) and (5)**

Insert after section 155 (3):

- (4) 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 156 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.



- (5) 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 156 in respect of such a contravention.

**[80] Section 156 Recovery of double premiums from employer not obtaining policy of insurance**

Insert “or such lesser amount as the Authority may agree to accept in any particular case” after “that period” in section 156 (1).

**[81] Section 156 (5)–(7)**

Insert after section 156 (4):

- (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) A court that convicts an employer of an offence under section 155 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.
- (7) A Local Court cannot order the payment of an amount under subsection (5) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.

**[82] Section 161 Inspection of policies**

Insert after section 161 (3):

- (3A) A person is not liable to be prosecuted both for an offence under section 155 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.

**[83] Section 174 Records relating to wages, contracts etc to be kept and supplied by employers**

Omit section 174 (6A) and (6B). Insert instead:

- (6A) 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.

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- (6B) An order under subsection (6A) 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 173.

**[84] Section 196 Assets of statutory funds**

Insert at the end of section 196:

- (2) The assets of a statutory fund maintained by an insurer under this Division are held by the insurer on trust for the purposes to which the assets of the statutory fund are authorised or required to be applied under this Act. The insurer has no beneficial interest in or entitlement to assets of the statutory fund maintained by the insurer.
- (3) The assets of a statutory fund maintained by an insurer under this Division may not be applied for the purpose of enabling any payment by the Authority as a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or the *WorkCover Administration Act 1989* or pursuant to a requirement under section 59B of the *Public Finance and Audit Act 1983*, or otherwise.
- (4) The assets of the WorkCover Authority Fund under the *Workcover Administration Act 1989* may not be applied for the purpose of payment of a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or pursuant to a requirement under section 59B of the *Public Finance and Audit Act 1983*, or otherwise.

**[85] Section 199 Protection of assets of statutory funds**

Omit “all other” from section 199 (1).

**[86] Section 200 Directors of licensee companies under trustee duty**

Insert “the Authority and” wherever occurring before “the appropriate” in section 200 (1) (b) and (3).

**[87] Section 274 Powers of entry and inspection by officers of Authority**

Omit "employer or insurer" from section 274 (2) (a).  
Insert instead “employer, insurer or agent (as defined in section 148B)”.

**[88] Section 277 Offences by corporations**

Omit section 277 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, 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.

**[89] Section 278 Proceedings for offences**

Omit “100 penalty units” from section 278 (2).  
Insert instead “200 penalty units”.

**[90] Section 278 (5)**

Insert after section 278 (4):

- (5) Proceedings for an offence against this Act or the regulations may be instituted by (but not only by) the Authority.

**[91] Section 278A**

Insert after section 278:

**278A Penalty notices**

- (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 regulations under this Act), 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.

**[92] Section 279 Time for instituting proceedings**

Insert after section 279 (2):

- (3) Despite subsection (1), proceedings for an offence under section 155 (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—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.

**[93] Schedule 1 Deemed employment of workers**

Omit “nor employs workers” from clause 2 (1).  
Insert instead “nor employs any worker”.

**[94] Schedule 1, clause 2 (3)**

Insert after clause 2 (2):

- (3) A person excluded from the definition of *worker* in section 3 (I) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

**[95] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Provisions relating to appointed conciliation officers**

**1 Schedule applies to appointed conciliation officers**

This Schedule applies only to conciliation officers appointed under section 96 (1A).

**2 Terms of office**

Subject to this Schedule, a conciliation officer holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the conciliation officer, but is eligible for re-appointment.

**3 Remuneration**

A conciliation officer is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a conciliation officer as the Minister may from time to time determine in respect of the conciliation officer. Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*.

#### **4 Casual vacancies**

- (1) A conciliation officer is taken to have vacated office if the conciliation officer:
  - (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 remove a conciliation officer 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 conciliation officer or from accepting and retaining any remuneration payable to the person under this Act as a conciliation officer.



- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to a conciliation officer.

**[96] Schedule 6 Savings, transitional and other provisions, Part 1 Preliminary**

Insert at the end of Part 1:

**2 Extended definition of worker (section 3 (1A))**

Section 3(1A), which was inserted by the *WorkCover Legislation Amendment Act 1995*, was inserted to avoid doubt and accordingly the section is taken to apply in respect of any injured worker, including a worker who was injured or died before the commencement of that section, but not so as to affect any decision of a court made before the commencement of that section.

**[97] Schedule 6 Savings, transitional and other provisions, Part 2 Provisions relating to liability for compensation**

Insert after clause 6 (2):

- (3) Section 22A (9) (as inserted by the *WorkCover Legislation Amendment Act 1995*) was inserted for the purpose of avoiding doubt and accordingly is taken to have applied from the commencement of section 22A.

**[98] Schedule 6, Part 2**

Insert at the end of Part 2:

**7 Restrictions on psychological injury claims**

Section 11A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to injuries received before the commencement of that section.

## **8 Deemed employment of workers**

- (1) The amendments to clause 2 of Schedule 1 made by the *WorkCover Legislation Amendment Act 1995* are made for the purpose of avoiding doubt, and accordingly that clause is taken to have been so amended from its own commencement.
- (2) However, those amendments do not affect any determination of a court made before the commencement of the amendments.

## **[99] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation**

Insert at the end of Part 4:

### **12 Information to be provided at request of workers**

An amendment made to section 43 by the *WorkCover Legislation Amendment Act 1995* does not apply to a request made by a worker under that section before the commencement of the amendment.

### **13 Refund of weekly payments—amendments to section 55 of this Act**

The amendment to section 55 (Review of weekly payments) of this Act made by the *WorkCover Legislation Amendment Act 1995* extends to weekly payments of compensation made before the commencement of the amendment. However, the amendment does not apply to enable an order under that section (as so amended) to be made in respect of any case in which a court has, before that commencement, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that commencement.

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**[100] Schedule 6 Savings, transitional and other provisions, Part 5  
Provisions relating to compensation for medical, hospital and  
rehabilitation expenses**

Insert at the end of Part 5:

**9 Worker's liability for expenses above applicable rates**

Section 60A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) and the amendment made to section 63A by that Act do not apply to medical or related treatment, hospital treatment or occupational rehabilitation services given or provided before the commencement of section 60A.

**[101] Schedule 6 Savings, transitional and other provisions, Part 6  
Provisions relating to compensation for non-economic loss  
(Table of Disabilities)**

Insert after clause 2 (2):

- (3) To avoid doubt, if a loss mentioned in the Table to Division 4 of Part 3 of this Act results both from an injury received before the commencement of that Division and an injury received after that commencement, the part of the loss resulting from the injury received before that commencement is not to be taken into account for the purposes of determining under section 67 (2) of this Act whether section 67 applies to the loss (whether or not compensation has been paid or is payable under section 16 of the former Act for that part of the loss).

**[102] Schedule 6, Part 6**

Omit clause 2A.

**[103] Schedule 6, Part 6, clause 6 (2)**

Omit "if compensation has already been paid".

Insert instead "whether or not compensation has been paid or is payable".

**[104] Schedule 6, Part 6, clause 6 (2A)**

Insert after clause 6 (2):

- (2A) The amendment made to subclause (2) by the *WorkCover Legislation Amendment Act 1995* is made to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. The amendment extends to court proceedings commenced but not finally determined before the commencement of the amendment but does not affect any award of compensation made before that commencement or any compensation that a worker has received or agreed to receive before that commencement.

**[105] Schedule 6, Part 6, clause 8 (1)**

Omit the subclause.

**[106] Schedule 6, Part 6**

Insert at the end of Part 6:

**9 No compensation far less than 6% hearing loss**

- (1) Section 69A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to apply to any claim for compensation for loss of hearing made on or after 10 November 1995 even if the injury concerned was received before that date, but does not apply to:
- (a) a claim for compensation made before that date, or
  - (b) court proceedings commenced before that date.
- (2) In determining the extent of a worker's hearing loss for the purposes of section 69A, hearing loss suffered before the commencement of that section is to be taken into account.

- (3) Section 69A does not affect:
- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of this clause, or
  - (b) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of this clause.

#### **10 Compensation for pain and suffering resulting from loss rather than injury**

Section 67 (IA) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the purpose of avoiding doubt and accordingly that subsection is taken to have been so inserted from the commencement of this Act, but not so as to affect any decision of a court made before the commencement of the subsection or any compensation that a worker has received or agreed to receive before that commencement.

#### **11 HIV, AIDS and bowel injuries**

The amendments made to Division 3 of Part 4 by the *WorkCover Legislation Amendment Act 1995* with respect to HIV infection, AIDS, and permanent loss of bowel function do not apply to injuries received before the commencement of the amendments.

#### **12 Limit on costs recovery after offer of settlement**

- (1) Section 119 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to an offer of settlement, or request for particulars, as referred to in that section made before the commencement of that section.

- (2) Section 119 extends to an offer of settlement, or request for particulars, as referred to in that section made after the commencement of that section even if the offer or request relates to a claim for compensation made before the commencement of that section.

### **13 Cessation of indexation of amounts under sections 66 and 67**

Sections 66 and 67 continue to apply in respect of an injury received before the commencement of this clause (as inserted by the *WorkCover Legislation Amendment Act 1995*) as if the amendments made by that Act to the dollar amounts specified in those sections, and to sections 79 and 81, had not been made.

### **14 Lump sum compensation agreements**

The amendments made to section 66A by the *WorkCover Legislation Amendment Act 1995* extend to agreements with respect to compensation made before the commencement of the amendments.

### **15 Proceedings for award of agreed compensation**

Section 66B (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to agreements with respect to compensation made before the commencement of the amendments, but not so as to affect court proceedings pending at the commencement of that section.

### **16 Agreements as to proportion of compensation under section 67 payable**

Section 67 (4A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act.

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### **17 Special provisions for back, neck and pelvis impairment**

Section 68A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act, but not so as to affect:

- (a) any award of compensation made before the date of commencement of the section, or
- (b) any compensation that a worker has received or agreed to receive before that date, or
- (c) any award of, or compromise or settlement of a claim for, damages made before the commencement of the section, or
- (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the Commencement of the section.

### **[107] Schedule 6 Savings, transitional and other provisions, Part 9 Provisions relating to notice of injury and claims for compensation**

Insert at the end of Part 9:

#### **5 Time for making claim for compensation**

Section 92 (4A) (as inserted by the *Workcover Legislation Amendment Act 1995*) applies in respect of an injury, or death resulting from an injury, received before the substitution of that subsection (but not before 4 p.m. on 30 June 1987), as if paragraph (a) of that subsection read as follows:

- (a) the claim is made within 3 years after the commencement of this subsection (as inserted by the *Workcover Legislation Amendment Act 1995*), or

## **6 Legal and medico-legal costs**

Division 7 of Part 4 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to fees and costs incurred before the commencement of that Division.

## **7 Solicitor/client costs**

The amendments made to section 122 by the *WorkCover Legislation Amendment Act 1995* (except the insertion of section 122 (5)) are made for the purpose of avoiding doubt and accordingly:

- (a) the amendments apply to costs incurred before or after the commencement of the amendments, and
- (b) section 122 (6) applies to amounts paid before or after the commencement of that subsection.

## **[108] Schedule 6 Savings, transitional and other provisions, Part 11**

Insert after Part 10:

### **Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court**

#### **1 Interest before order for payment**

Section 113 (2) (as inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to the ordering of interest on compensation for injuries received before the insertion of that provision, but the following provisions do apply to the ordering of that interest:

- (a) interest must not be ordered on any compensation payable under this Act for any period before a claim for the compensation was duly made or (where no such claim was duly made before the commencement of the proceedings in the Court) for any period before the worker gave the



employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of compensation claimed,

- (b) the provisions of paragraph (a) extend to proceedings pending at that commencement but do not affect any order for interest made before that commencement.

## **2 Interest before commencement of section 19 of Compensation Court Act 1984**

- (1) Section 13 of this Act extends to authorise the ordering of interest for any period before the commencement of that section but not before 3 December 1984 (being the date of commencement of section 19 of the *Compensation Court Act 1984*).
- (2) To remove doubt it is declared that section 19 of the Compensation Court Act 1984 did not authorise the ordering of interest for any period before the commencement of that section (3 December 1984), despite any provision of Schedule 6 to this Act.
- (3) Subclause (2) is taken to have had effect on and from the commencement of section 19 of that Act (including for the purposes of any proceedings pending at the commencement of this clause) but not so as to affect any order for interest made before the commencement of this clause.

## **[109] Schedule 6 Savings, transitional and other provisions, Part 13 Provisions relating to uninsured liability and indemnity scheme**

Insert at the end of Part 13:

### **7 Claims by directors against uninsured corporations**

Section 4A (as inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply in respect of an injury received before the commencement of that section.

### **8 Recovery from directors of corporations liable to reimburse Authority**

Section 145A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply in respect of a contravention of section 155 that occurred before the commencement of section 145A.

### **[110] Schedule 6 Savings, transitional and other provisions, Part 14 Provisions relating to common law remedies**

Insert at the end of Part 14:

#### **7 Payment of interest**

Section 151M, as substituted by the *WorkCover Legislation Amendment Act 1995*, applies to any claim for damages that:

- (a) is a claim in respect of an injury received by a worker at or after 4 p.m. on 30 June 1987 or the death of a worker resulting from or caused by such an injury, and
- (b) was not settled or finally determined as at the date on which that section was so substituted.

#### **8 Effect of recovery of damages from employer on payment of compensation**

- (1) The amendment to section 151B made by the *WorkCover Legislation Amendment Act 1995* to insert section 151B (4) is made for the purpose of avoiding doubt, and accordingly section 151B is taken to have been so amended from the commencement of that section.
- (2) However, that amendment does not affect any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendment.

#### **9 Recovery against both employer and stranger**

- (1) The amendment made to section 151Z by the *WorkCover Legislation Amendment Act 1995* is made for the purpose of avoiding doubt, and accordingly section 151Z is taken to have been so amended from the commencement of that section.

- (2) However, those amendments do not affect:
- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or
  - (b) any decision of a court with respect to an action on an indemnity provided for by section 151Z (1) (d) made before that commencement.

#### **10 Amendment of section 151AB**

The amendments made to section 151AB by the *WorkCover Legislation Amendment Act 1995* do not affect:

- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or
- (b) any court proceedings commenced by a worker for damages from the workers' employer (or other person referred to in section 150) before that commencement.

#### **[111] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance**

Insert at the end of Part 15:

#### **23 Ownership of assets of insurer-managed statutory funds**

Section 196 (2), as inserted by the *WorkCover Legislation Amendment Act 1995*, is inserted for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of this Act.

**24 Time limit for proceedings for failure to insure**

Section 279 (2A), as inserted by the *WorkCover Legislation Amendment Act 1995*, does not apply to proceedings for an offence alleged to have been committed before the commencement of that subsection.

**[112] Schedule 6 Savings, transitional and other provisions, Part 20  
Savings and transitional regulations**

Insert at the end of clause 1 (1):

*WorkCover Legislation Amendment Act 1995*

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## **Schedule 2    Amendment of Occupational Health and Safety Act 1983**

(Section 4)

### **[1]    Section 4 Definitions**

Insert in alphabetical order:

*improvement notice* means a notice issued under section 31R.

*prohibition notice* means a notice issued under section 31S.

### **[2]    Section 15 Employers to ensure health, safety and welfare of their employees**

Omit “2,500” from section 15 (3). Insert instead “5,000”.

### **[3]    Section 15 (3)**

Omit “250”. Insert instead “500”.

### **[4]    Section 15 (4)**

Insert after section 15 (3):

- (4) If in proceedings against a person for an offence against this section the court is not satisfied that the person contravened this section but is satisfied that the act or omission concerned constituted a contravention of section 16, the court may convict the person of an offence against that section.

### **[5]    Section 16 Employers and self-employed persons to ensure health and safety of persons other than employees at places of work**

Omit “2,500” from section 16 (2). Insert instead “5,000”.

**[6] Section 16 (2)**

Omit “250”. Insert instead “500”.

**[7] Section 16 (3)**

Insert after section 16 (2).

- (3) If in proceedings against a person for an offence against this section the court is not satisfied that the person contravened this section but is satisfied that the act or omission concerned constituted a contravention of section 15, the court may convict the person of an offence against that section.

**[8] Section 17 Persons in control of workplaces, plants and substances used by non-employees to ensure health and safety**

Omit “2,500” from section 17 (1). Insert instead “5,000”.

**[9] Section 17 (1)**

Omit “250”. Insert instead “500”.

**[10] Section 18 Manufacturers, suppliers etc to ensure health and safety as regards plant and substances for use at work**

Insert “transfer,” after “sale,” in the definition of supply in section 18 (1).

**[11] Section 18 (10)**

Omit “2,500”. Insert instead “5,000”.

**[12] Section 18 (10)**

Omit “250”. Insert instead “500”.

**[13] Section 19 Employees at work to take care of others and to co-operate with employer**

Omit “25”. Insert instead “30”.

**[14] Section 20 Person not to interfere with or misuse things provided for health, safety and welfare**

Omit “25”. Insert instead “30”.

**[15] Section 21A Person not to hinder aid to injured worker etc**

Omit “2,500”. Insert instead “5,000”.

**[16] Section 21A**

Omit “250”. Insert instead “500”.

**[17] Sections 21B–21D**

Insert after section 21A:

**21B Plant or premises involved in dangerous occurrence**

- (1) The occupier (within the meaning of Division 4) of premises that are a place of work must take measures to ensure that plant on those premises is not used, moved, or interfered with after it has been involved in a dangerous occurrence.

Maximum penalty: 500 penalty units in the case of a corporation and 250 penalty units in any other case.

- (2) The occupier must also take measures to ensure that no person disturbs an area at the premises that is within 4 metres (or, if the regulations prescribe some other distance, that other distance) from the location where the dangerous occurrence occurred.
- Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.
- (3) If the regulations prescribe measures that satisfy the requirements of subsection (1) or (2), the occupier is taken to have satisfied the requirements of that subsection if the occupier has taken the measures so prescribed.
- (4) This section does not prevent use, movement, interference or disturbance:
- (a) to help or remove a trapped or injured person or to remove a body, or
  - (b) to avoid injury to a person or damage to property, or
  - (c) for the purposes of any police investigation, or
  - (d) in accordance with a direction or permission of an inspector, or
  - (e) in such other circumstances as may be prescribed by the regulations.
- (5) The requirements of this section in relation to any particular dangerous occurrence apply only for the period that ends at midnight on the first working day (that is, any day except a Saturday, Sunday or public holiday) after the day on which the occurrence was notified in accordance with section 27 or otherwise notified to the WorkCover Authority, subject to any extension of that period under subsection (6).
- (6) The period for which the requirements of this section apply in relation to a dangerous occurrence can be extended by an inspector by giving notice in writing to the occupier of the premises concerned, but only if



notice is given before the end of the period provided by subsection (5). Any such extension is to be on the basis of the period that the inspector considers, after an inspection, to be necessary for a proper examination of the relevant plant or area.

- (7) In this section, *dangerous occurrence* means:
- (a) an occurrence that causes death, or
  - (b) an occurrence that causes a serious injury that is prescribed by the regulations for the purposes of this definition, or
  - (c) an occurrence prescribed by the regulations for the purposes of this definition.

**21C Notice to stop plant or prevent disturbance of premises to allow inspection**

- (1) An inspector who has entered premises under Division 4 may issue a notice under this section to the occupier of the premises (within the meaning of Division 4) if the inspector believes on reasonable grounds that it is necessary to issue the notice in order to allow an inspection, examination, taking of measurements or conduct of tests on the premises, relating to the premises or any plant, substance or thing on the premises.
- (2) The notice must set out the grounds on which it is given.
- (3) While the notice is in force, the occupier must:
  - (a) stop the use of any plant, substance or thing that is specified in the notice, and
  - (b) take measures to prevent the disturbance of any plant, substance or thing that is specified in the notice.

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (4) A notice remains in force for the period, not exceeding 7 days, specified in the notice. A notice may be renewed more than once by an inspector by issuing a further notice in accordance with this section.
- (5) The occupier to whom a notice is issued under this section must, unless an inspector otherwise directs, display a copy of it while it is in force in a prominent place on the premises to which it applies.
- Maximum penalty: 10 penalty units.
- (6) An inspector who issues a direction under this section must take reasonable steps to inform the employer of the employees in the place of work on the premises to which the notice relates of the notice as soon as practicable after issuing it.

#### **21D Review in accordance with section 31U**

A notice under section 21B or 21C (including any terms of the notice and its period of operation) may be reviewed and appealed against in accordance with section 31U.

#### **[18] Section 24 Functions of occupational health and safety committees**

Omit “under the associated occupational health and safety legislation” from section 24 (1) (c).

#### **[19] Section 25 Powers of members of occupational health and safety committees**

Omit “50”. Insert instead “100”.

#### **[20] Section 26 Unlawful dismissal etc of employee**

Omit “150”. Insert instead “250”.

**[21] Section 26**

Omit “100”. Insert instead “150”.

**[22] Section 26**

Omit “5 penalty units”. Insert instead “10 penalty units”.

**[23] Section 27 Notification of accidents and other matters**

Omit “150”. Insert instead “500”.

**[24] Section 27**

Omit “100”. Insert instead “250”.

**[25] Section 31B**

Omit the section. Insert instead:

**31B Notice of entry**

- (1) An inspector authorised to enter premises under this Division may enter the premises without notice.
- (2) The inspector must notify the occupier of the premises of the inspector’s presence on the premises as soon as reasonably practicable after entering the premises, unless:
  - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the inspector in a case of urgency, or
  - (b) the occupier is already aware that the inspector has entered the premises or was notified in advance of when the inspector would enter the premises.

**[26] Section 31I Powers available on entry**

Insert “and make video and audio records” after “photographs” in section 31I (a).

**[27] Section 31I (b1)–(b3)**

Insert after section 31I (b):

- (b1) dismantle any plant or thing on the premises for the purpose of examination, if the inspector believes on reasonable grounds that the plant or thing has been used in the commission of an offence against the relevant legislation,
- (b2) take any plant, substance or thing (or any sample of a substance) from the premises, if the inspector believes on reasonable grounds that the plant, substance or thing has been used in the commission of an offence against the relevant legislation,
- (b3) keep any plant, substance, sample or thing taken under paragraph (b2) that:
  - (i) may reasonably be required as evidence in proceedings for an offence against the relevant legislation, or
  - (ii) might, if not so kept, be used to continue or repeat the offence,

**[28] Sections 31R–31AQ**

Insert after section 31Q:

**31R Inspector may issue improvement notices**

- (1) If an inspector is of the opinion that any person:
  - (a) is contravening any provision of this Act or the regulations, or
  - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may issue to the person a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice.

- (2) The period within which a person is required by an improvement notice to remedy a contravention or the matters occasioning the contravention must be at least 7 days after the issue of the notice.
- (3) However, an inspector may specify a period that is less than 7 days after the issue of the improvement notice if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period.
- (4) An improvement notice must:
  - (a) state that the inspector is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the provision of the Act or the regulations in respect of which that opinion is held, and
  - (d) include information about obtaining a review of the notice under section 31U.
- (5) A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence.

Maximum penalty:

- (a) 500 penalty units in the case of a corporation, or
- (b) 250 penalty units in the case of an individual who contravenes this subsection otherwise than in his or her capacity as an employee, or
- (c) 15 penalty units in the case of an individual who contravenes this subsection in his or her capacity as an employee.

### **31S Inspector may issue prohibition notices**

- (1) If an inspector is of the opinion that at any place of work there is occurring or about to occur any activity which involves or will involve an immediate risk to the health

or safety of any person, the inspector may issue to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters which give or will give rise to the risk are remedied.

- (2) A prohibition notice must:
- (a) state that the inspector is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the activity in respect of which that opinion is held, and
  - (d) if in the inspector's opinion the activity involves a contravention or likely contravention of any provision of the Act or the regulations—specify that provision and state the reasons for that opinion, and
  - (e) include information about obtaining a review of the notice under section 31U.
- (3) A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units in the case of a corporation, or
- (b) 500 penalty units in the case of an individual who contravenes this subsection otherwise than in his or her capacity as an employee, or
- (c) 30 penalty units in the case of an individual who contravenes this subsection in his or her capacity as an employee.

### **31T Notices may include directions**

- (1) An inspector may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.

- (2) Any such direction may:
  - (a) adopt, by reference, the requirements of any industrial or other code of practice, and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter.

### **31U Review of notices**

- (1) A person who is issued with a notice under section 21B, 21C or 31Z, an improvement notice or a prohibition notice may apply in writing to the Workcover Authority for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is issued or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.
- (4) If an application for review is duly made to the Workcover Authority:
  - (a) the Workcover Authority must review the notice, and
  - (b) the notice the subject of the application is stayed from the time of receipt of the application by the Workcover Authority until such time as the Workcover Authority gives notice to the applicant of the result of the review.
- (5) The Workcover Authority may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (6) An applicant who is not satisfied with the result of a review may appeal against the notice concerned to a Local Court constituted by an Industrial Magistrate sitting alone.

- (7) An appeal to a Local Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.
- (8) Regulations may be made with respect to reviews and appeals under this section, including as to the time and manner in which an application for such a review or appeal is to be made.

**31V Withdrawal of notices**

- (1) A notice under section 21C or 31Z or an improvement notice or a prohibition notice may be withdrawn at any time by the inspector who issued the notice or by the Workcover Authority if the inspector or the Workcover Authority is satisfied that the notice was issued in error or is incorrect in some respect.
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued.

**31W Revocation or withdrawal of notice does not prevent issue of another notice**

The revocation or withdrawal of a notice under section 21C or 31Z or an improvement notice or a prohibition notice does not prevent the issue of any other notice.

**31X Service and exhibition of notices**

- (1) A notice under section 21B, 21C or 31Z or an improvement notice or prohibition notice, or a notice confirming, revoking or withdrawing such a notice may be issued or given to a person:
  - (a) by delivering it personally to the person, or
  - (b) by leaving it with some other person at, or sending it by post to, the person's place of residence or business or the place of work to which the notice relates.



- (2) This section does not affect the operation of any provision of a law or the rules of a court authorising a notice or other document to be served in a manner not authorised by this section.
- (3) An inspector may cause a notice containing a copy of or extract from a notice referred to in subsection (1), or of the matter contained in the notice, to be exhibited at the place of work concerned in a manner approved by the Workcover Authority.
- (4) A person must not destroy, damage or remove a notice exhibited under subsection (3) except with the approval of the Workcover Authority or an inspector.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

### **31Y Proceedings for offences not affected by notices**

The issue, variation, revocation or withdrawal of a notice under section 21C or 31Z or a prohibition notice or improvement notice does not affect any proceedings for an offence against this Act, the regulations or the associated occupational health and safety legislation in connection with any matter in respect of which the notice was issued.

### **31Z Notice of taking or dismantling**

- (1) Before exercising any of the powers under section 31I (b1)–(b3), an inspector must give notice to the occupier of a place of work where the relevant plant, substance or thing is situated of the inspector's intention to exercise that power.
- (2) The notice must specify the date and time when the inspector proposes to exercise the powers as well as the plant, substance or thing in relation to which the powers are to be exercised.

### **31AA Powers supporting taking**

- (1) Having taken a thing under section 31I (b2), an inspector may:
  - (a) move the thing from the place where it was taken, or
  - (b) leave the thing at the place but take reasonable action to restrict access to it, or
  - (c) if the thing is plant—dismantle it.
- (2) The following are examples of restricting access to a thing:
  - (a) sealing a thing and marking it to show access to it is restricted,
  - (b) sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.
- (3) If an inspector restricts access to a thing taken, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty: 40 penalty units.
- (4) To enable a thing to be taken under section 31I (b2), an inspector may require the person in control of it:
  - (a) to take it to a stated reasonable place by a stated reasonable time, and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (5) The requirement:
  - (a) must be made by notice in the approved form, or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

- (6) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty: 40 penalty units.

- (7) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

### **31AB Receipt for things taken**

- (1) As soon as reasonably practicable after an inspector takes a thing under section 31I (b2), the inspector must give a receipt for it to the person from whom it was taken.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place where the thing was taken.
- (3) The receipt must describe generally each thing taken and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing's nature, condition and value).

### **31AC Forfeiture of things taken**

- (1) A thing taken under section 31I (b2) is forfeited to the State if the inspector who took the thing:
- (a) cannot find its owner after making reasonable inquiries, or
  - (b) cannot return it to its owner, after making reasonable efforts, or
  - (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.

- (2) Subsection (1) (a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1) (b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) If the inspector decides to forfeit a thing under subsection (1) (c), the inspector must tell the owner of the decision by written notice.
- (4) Subsection (3) does not apply if:
  - (a) the inspector cannot find its owner, after making reasonable inquiries, or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (5) The notice must state:
  - (a) the reasons for the decision, and
  - (b) that the owner may apply within 28 days for the decision to be reviewed, and
  - (c) how the owner may apply for the review, and
  - (d) that the owner may apply for a stay of the decision if the owner applies for a review.
- (6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

### **31AD Return of things taken**

- (1) If a thing taken under section 31I (b2) has not been forfeited, the inspector must return it to its owner at the end of:
  - (a) 6 months, or
  - (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.

- (2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing taken as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **31AE Access to things taken**

- (1) Until a thing taken under section 31I (b2) is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Division 5 Entry and inspection powers of employees' representatives**

### **31AF Definitions**

*authorised officer* of an industrial organisation of employees, means an officer of that organisation (including any person who is concerned in, or takes part in, the management of that organisation) who is authorised under section 733 of the *Industrial Relations Act 1991* (Right of entry of officer of industrial organisation of employees).

*industrial organisation of employees* has the same meaning it has in the *Industrial Relations Act 1991*.

*occupier* has the same meaning as in Division 4.

### **31AG Powers of entry of places of work**

An authorised officer of an industrial organisation of employees may, for the purpose of investigating any suspected breach of the occupational health and safety legislation, enter any premises the officer has reason to believe is a place of work where members of that organisation (or persons who are eligible to be members of that organisation) work.

### **31AH Notice of entry**

- (1) An authorised officer authorised to enter premises under this Division may enter the premises without notice.
- (2) The authorised officer must notify the occupier of the premises of the authorised officer's presence on the premises as soon as reasonably practicable after entering the premises, unless:
  - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency, or
  - (b) the occupier is already aware that the authorised officer has entered the premises or was notified in advance of when the authorised officer would enter the premises.

### **31AI Authority to enter premises**

- (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority issued by the Industrial Registrar under section 733 of the *Industrial Relations Act 1991* and produces the authority if required to do so by the occupier of the premises.
- (2) Entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on.

### **31AJ Entry to domestic premises**

The powers of entry conferred by this Division are not exercisable in relation to domestic premises except with the permission of the occupier of the premises.

### **31AK Powers available on entry**

For the purpose of investigating any suspected breach of the occupational health and safety legislation, an authorised officer who enters premises under this Division may do any of the following:

- (a) make searches and inspections (and take photographs),
- (b) require the occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the officer to exercise the officer's functions under this Division,
- (c) require the production of and inspect any records in or about those premises that directly affect or directly deal with the occupational health and safety of employees working at those premises,
- (d) take copies of or extracts from any such records.

### **31AL Care to be taken**

In the exercise of a function under this Division, an authorised officer must do as little damage as possible.

### **31AM Authorised officer may request assistance from inspector**

An inspector may accompany and take all reasonable steps to assist an authorised officer in the exercise of the officer's functions under this Division if the officer reasonably believes that the officer may be obstructed in the exercise of those functions.

### **31AN Offence of obstructing authorised officer**

A person must not:

- (a) obstruct, hinder or impede an authorised officer in the exercise of the officer's functions under this Division, or

- (b) directly or indirectly intimidate or threaten or attempt to intimidate an authorised officer in the exercise of the officer's functions under this Division, or
- (c) without reasonable excuse, refuse or fail to comply with a requirement made by an authorised officer in accordance with this Division.

Maximum penalty: 20 penalty units.

#### **31AQ Offence of impersonating an authorised officer**

A person must not impersonate, or falsely represent that the person is, an authorised officer.

Maximum penalty: 100 penalty units.

#### **31AP Disclosure of information**

- (1) A person who is, or was at any time, an authorised officer must not disclose any information relating to any manufacturing or commercial secrets or working processes that was obtained by the officer in connection with the exercise of functions under this Division.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is:
  - (a) made with the prior permission of the Minister, or
  - (b) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.



- (3) The Minister may grant the permission referred to in subsection (2) (a) only if the Minister is satisfied that to do so would be in the public interest.

#### **Division 6 Miscellaneous**

#### **31AQ Minister may require and publish special reports into accidents and dangerous occurrences**

- (1) The Minister may direct the Workcover Authority to prepare a special report for the Minister with respect to:
- (a) any accident that occurred at a place of work and that caused the death of or bodily injury to any person, or
  - (b) any occurrence at a place of work that constituted a danger to any person.
- (2) The Minister may, if the Minister thinks fit, cause such a report or any part of such a report to be made public, whether by causing the report or part of the report to be published or otherwise. The Minister may table a copy of the report in Parliament.
- (3) No liability is incurred by the Crown and no personal liability is incurred by, or by any person acting at the direction of, the Minister or the Workcover Authority in respect of anything done in good faith in connection with the preparation or making public of a report under this section.
- (4) No liability is incurred by a person for publishing in good faith:
- (a) a report made public under this section, or
  - (b) a fair report or summary of such a report.
- (5) In this section *liability* includes liability in defamation.

**[29] Section 44A Industry codes of practice**

Omit section 44A (7)–(9). Insert instead:

- (7) An approved industry code of practice commences on the day when the code is published in the Gazette or, if a later commencement date is specified in the code, on that date.
- (8) An approved amendment of an industry code of practice commences on the day when the amendment is published in the Gazette or, if a later Commencement date is specified in the amendment, on that date.
- (9) An approved revocation of an industry code of practice commences on the day when the revocation is published in the Gazette or, if a later commencement date is specified in the revocation, on that date.

**[30] Section 45 Regulations**

Omit “100” from section 45 (4). Insert instead “250”.

**[31] Section 49 Summary procedure for offences**

Insert after section 47 (1):

- (IA) If a person is convicted of an offence against this Act, the convicting court may order the offender to pay to the WorkCover Authority the reasonable cost of examining or testing any plant, substance or thing to which the conviction relates.
- (1B) That cost may be recovered by the WorkCover Authority as a judgment debt against the person convicted.

**[32] Section 47 (2)**

Omit “100 penalty units”.

Insert instead “500 penalty units or 2 years imprisonment (or both),”.

**[33] Section 47A**

Insert after section 47:

**47A Court may order cause of offence to be remedied**

- (1) If a court convicts a person of an offence against this Act or the regulations in respect of a matter which appears to the court to be within the person's power to remedy, the court may, in addition to imposing a penalty provided with respect to the offence, order the person to take such steps as may be specified in the order for remedying that matter within the period specified in the order.
- (2) A person must not, without reasonable excuse, fail to comply with an order under this section.  
  
Maximum penalty: 1,000 penalty units in the case of a corporation and 250 penalty units in any other case.
- (3) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if application for such an extension is made before the end of that period.

**[34] Section 49 Time for instituting proceedings for offences**

Insert at the end of section 49:

- (2) Proceedings for an offence against section 18 (Manufacturers, suppliers etc to ensure health and safety as regards plant substances for use at work) may be instituted, despite subsection (1):
  - (a) within 2 years after the act or omission alleged to constitute the offence, or
  - (b) within 6 months after it first becomes apparent to the Workcover Authority that the act or omission alleged to constitute the offence has occurred,whichever provides the longer time for proceedings to be instituted.

- (3) Proceedings for an offence against section 27 (Notification of accidents and other matters) may be instituted, despite subsection (1):
- (a) within 2 years after the act or omission alleged to constitute the offence, or
  - (b) within 6 months after the Workcover Authority first becomes aware of the act or omission alleged to constitute the offence,
- whichever provides the longer time for proceedings to be instituted.
- (4) If a coroner's inquest or inquiry is held and it appears from the coroner's report or proceedings at the inquest or inquiry that an offence has been committed against this Act or the regulations, proceedings in respect of that offence may be instituted, despite anything to the contrary in this section, within 2 years after the date the report was made or the inquest or inquiry was concluded, as the case may be.

**[35] Section 50 Offences by corporations**

Omit section 50 (1) (a).

**[36] Section 51A**

Omit the section. Insert instead:

**51A Additional penalty for further offence against the Act**

- (1) A Court that convicts a person of an offence (the *current offence*) against this Act may, if the person has previously been convicted of an offence against this Act

(whether the same offence or another), impose as additional penalty in respect of the current offence not exceeding the following penalties:

- (a) if the current offence is an offence against section 15, 16, 17 or 18 of this Act—2,500 penalty units in the case of a corporation or 250 penalty units or 2 years imprisonment, or both, in any other case, or
  - (b) if the current offence is any other offence against this Act—50% of the maximum penalty for the offence (that is, 50% of the maximum penalty that would apply but for this section).
- (2) For the purposes of section 47 (Summary procedure for offences), the maximum penalty provided in respect of an offence is, in the case of an offence to which this section applies, taken to include any additional penalty that may be imposed under this section.
  - (3) This section applies even if the previous offence concerned was committed before the commencement of this section.

**[37] Section 51C**

Insert after section 51B:

**51C Requirement to give name and address**

- (1) An authorised officer (within the meaning of section 51B) or an inspector may require a person whom the officer or inspector reasonably suspects has committed an offence against this Act or the associated occupational health and safety legislation or any regulation under this Act or that legislation to state the person's residential address and full name and to provide reasonable proof of the person's identity.

- (2) A person who, without reasonable excuse, fails to comply with a requirement of an officer or inspector under this section is guilty of an offence.

Maximum penalty: 15 penalty units.

- (3) A person does not commit an offence against this section if:
- (a) the officer or inspector does not, at the time when the officer or inspector makes the requirement, show the person proof of the officer's or inspector's authority, or
  - (b) the officer or inspector does not, at the time when the officer or inspector makes the requirement, warn the person that it would be an offence not to comply with the requirement.

**[38] Section 52 Offence: obstruction or hindering persons in exercise of powers**

Omit "150". Insert instead "500".

**[39] Section 52**

Omit "100". Insert instead "150".

**[40] Schedule 8 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*WorkCover Legislation Amendment Act 1995*

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**[41] Schedule 8, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of the  
WorkCover Legislation Amendment Act  
1995**

**9 Definition**

In this Part:

*amending Act* means the *WorkCover Legislation Amendment Act 1995*.

**10 Alternative convictions (section 15 and 16)**

- (1) The amendments made to sections 15 and 16 by the amending Act do not apply in respect of proceedings against a person for an offence against section 15 or 16 that were commenced in a court before the commencement of those amendments.
- (2) In respect of any proceedings against a person that are commenced in a court on or after the commencement of those amendments, the amendments apply whether the offence is alleged to have been committed before or after the commencement of those amendments.

**11 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 47 of this Act (Summary procedure for offences) by the amending Act does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after the commencement of the amendment.

**12 Power of court to order that Contravention of Act or regulations be remedied**

Section 47A of this Act (which was inserted by the amending Act) applies in respect of any person convicted of an offence against this Act or the regulations on or after the commencement of that section, even if the offence was committed before the commencement of that section.

**13 Increase in time limit for institution of offence proceedings**

Section 49 (2), (3) and (4) of this Act (as inserted by the amending Act) extend to apply in respect of an act or omission constituting an offence against this Act or the regulations which occurred within 2 years before the commencement of those subsections.

**14 Change in defences available to directors and managers**

The amendment made to section 50 of this Act by the amending Act does not apply in respect of a contravention of this Act or the regulations that occurred before the commencement of that amendment.

**15 Increased penalty for additional offence**

- (1) The amendment made to section 51A of this Act by the amending Act does not apply in respect of proceedings for an offence against this Act which was committed before the commencement of that amendment.
- (2) Section 51A, as in force immediately before that amendment, continues to apply in respect of such proceedings as if the amendment had not been made.



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## **Schedule 3    Amendment of Compensation Court Act 1984**

(Section 5)

### **[ 1 ]    Section 14A Medical referees**

Insert after section 14A (2):

(2A) Of the medical practitioners appointed as medical referees:

- (a) some are to be appointed from amongst persons nominated by such employer organisations as the Minister invites to make nominations, and
- (b) some are to be appointed from amongst persons nominated by such employee organisations as the Minister invites to make nominations, and
- (c) some may be appointed from amongst persons nominated by the Director-General of the Department of Health.

(2B) The Minister can, when inviting nominations for the purposes of subsection (2A), specify the minimum number of persons required to be nominated.

### **[ 2 ]    Section 14B Medical panels**

Insert after section 14B (2):

(2A) As far as reasonably practicable, one of the medical referees constituting a medical panel must be a medical referee appointed under section 14A (2A) (a) and one must be a medical referee appointed under section 14A (2A) (b).

(2B) Of the medical referees constituting a medical panel, no more than one is to be a medical referee appointed under section 14A (2A) (a) and no more than one is to be a medical referee appointed under section 14A (2A) (b).

- (2C) The medical referees constituting a medical panel must be chosen on the basis of their relevant specialty or experience in the particular matter or class of matters concerned.
- (2D) When a medical panel is constituted by 2 medical referees, their decision is the decision of the panel. When a medical panel is constituted by more than 2 medical referees, the decision of a majority of them is the decision of the panel.
- (2E) When a medical panel is constituted by 2 medical referees and they cannot agree as to their decision, the medical panel is to be reconstituted as a panel of 3 medical referees (whether or not including either or both of the medical referees from the original panel).

**[3] Section 16 References to commissioner**

Omit the section.

**[4] Section 18 Costs**

Omit the section. Insert instead:

**18 Costs**

Section 116 (Costs) of the *Workers Compensation Act 1987* applies to and in respect of any proceedings in the Court, not just proceedings under that Act.

**[5] Section 19 Interest before order for payment**

Omit the section.

**[6] Section 19A Interest after order for payment**

Omit the section.

**[7] Section 22 Arrangement of business of the Court**

Insert before section 22 (3) (a):

- (a1) the need for proceedings to be disposed of efficiently by the Court, including the need to make full use of the commissioners, and

**[8] Section 25**

insert after section 24:

**25 Special provision for evidence of exposure to noise**

Historical evidence and general medical or other expert evidence concerning exposure of workers to noise in employment with particular employers or in employment of a particular class, which has been admitted in any proceedings before the Court, may, with the leave of the Court, be received as evidence in any other proceedings before the Court, whether or not the proceedings are between the same parties.

**[9] Section 25A Applications to be heard together**

Omit the section.

**[10] Section 26 Commissioners' jurisdiction**

Omit section 26 (3).

**[11] Section 27 Procedure before commissioners**

Omit section 27 (3). Insert instead:

- (3) Proceedings before a commissioner are to be recorded unless the commissioner otherwise orders or the rules otherwise provide.
- (4) The decision of a commissioner in any proceedings is, subject to the rules, to include details of the findings made by the commissioner on material questions of fact and of the commissioner's reasons for the decision.

**[12] Part 4, Division 1, heading**

Omit the heading. Insert instead **“Division 1 Appeals from Judges”**.

**[13] Sections 32–34**

Omit the sections. Insert instead:

**32 Appeal to Court of Appeal from Judge on question of law**

- (1) If a party to any proceedings before the Court constituted by a Judge is aggrieved by an award of the Judge in point of law or on a question as to the admission or rejection of evidence, that party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the Compensation Court for determination by the Compensation Court in accordance with any decision of the Court of Appeal and may make such other order in relation to the appeal as the Court of Appeal sees fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the Compensation Court and on all the parties to the proceedings in respect of which the appeal was made.

**[14] Part 4, Division 1A**

Insert after section 34:

**Division 1A Appeal etc from commissioners**

**34A Appeal to Judge from commissioner**

- (1) If a party to any proceedings before a commissioner is aggrieved by an award of the commissioner in point of law or on a question as to the admission or rejection of evidence, that party may appeal to a Judge.

- (2) If, in any proceedings before a commissioner, the commissioner has misused a statutory discretion, any party to those proceedings may appeal to a Judge but such an appeal cannot be made without the leave of a Judge.
- (3) Regulations may be made for or with respect to prescribing further grounds on which appeals may be made to a Judge with respect to proceedings before a commissioner.
- (4) There is to be no re-hearing or new hearing of proceedings the subject of appeal under this section. However, the Judge hearing the appeal may, by leave, receive further evidence if the Judge considers that special grounds exist or if the evidence concerns matters occurring after the decision appealed against.
- (5) A Judge may, on the hearing of any appeal under this section:
  - (a) remit the matter to the appropriate commissioner for determination by the commissioner in accordance with any decision of the Judge, or
  - (b) make such other order in relation to the appeal as the Judge sees fit.
- (6) In this section, *award* includes interim award, order, decision, determination, ruling and direction.

#### **34B References of questions of law to a Judge**

- (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 a Judge any question arising in proceedings before the commissioner that is a question of law or a question that the commissioner thinks is of sufficient importance to warrant consideration by a Judge.

- (2) Despite the reference of a question to a Judge 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 a Judge of a question referred 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 Judge, or
  - (b) if the commissioner has made an award in the matter in which the question arose, the commissioner is to vary that award in such a way as will make it consistent with the opinion of the Judge.

**[15] Part 4, Division 2, heading**

Omit “Commissioners or”.

**[16] Section 36 Review of decisions**

Omit “commissioner or” from section 36 (1).

**[17] Section 37 References to the Court**

Omit “commissioner or a” from section 37 (1).

**[18] Section 37 (1)**

Omit “commissioner’s or”.

**[19] Section 37**

Omit “commissioner or” wherever occurring.

**[20] Section 38 Stay of proceedings**

Insert “to the extent that the payments are in respect of a period after the award is made” after “under the award” in section 38 (3).

**[21] Section 38F**

Omit the section. Insert instead:

**38F Costs of mediation and neutral evaluation**

The cost of providing mediation and neutral evaluation for the purposes of this Part (including the remuneration of mediators and neutral evaluators and the cost of administrative support) is a cost of operation of the Compensation Court and accordingly is payable under section 19 (2) (c) of the *WorkCover Administration Act 1989*.

**[22] Section 39 Costs of operation of the Court**

Omit “Workers Compensation and Rehabilitation Authority”.  
Insert instead “WorkCover Authority”.

**[23] Section 41 Liaison with WorkCover Authority**

Omit “Workers Compensation and Rehabilitation Authority” wherever occurring.  
Insert instead “WorkCover Authority”.

**[24] Schedule 2 Commissioners**

Omit clause 3. Insert instead:

**3 Full-time or part-time Commissioners**

- (1) A Commissioner may be appointed as either a full-time or part-time Commissioner.
- (2) A full-time Commissioner is required to devote the whole of his or her time to the duties of the office of Commissioner.

**[25] Schedule 3 Functions of the Court that may be exercised by Commissioners**

Omit paragraph (c).

**[26] Schedule 3, paragraph (g)**

Omit “(excluding compensation for pain and suffering under section 67 of that Act)”.

**[27] Schedule 3, paragraph (h)**

Omit “(including compensation for pain and suffering under section 67 of that Act)”.

**[28] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*WorkCover Legislation Amendment Act 1995*

**[29] Schedule 4, Part 4**

Insert after Part 3:

**Part 4 WorkCover Legislation Amendment Act 1995**

**7 Application of amendments to pending proceedings**

- (1) An amendment made to this Act by the *WorkCover Legislation Amendment Act 1995 (the 1985 Act)* does not apply to proceedings in the Court commenced before the Commencement of the amendment (except as provided by subclause (2)) but applies to proceedings commenced after the commencement of the amendment whenever the cause of action arose.



- (2) An amendment made by the 1995 Act to Division 1 (Appeals from Judges) of Part 4 extends to proceedings commenced before the commencement of the amendment but only if no hearing in the proceedings has commenced to be heard before the commencement of the amendment.

#### **8 Application of medical referee/panel amendments**

An amendment made by the *WorkCover Legislation Amendment Act 1995* to section 14A or 14B does not apply to a medical panel constituted for any purpose before the commencement of the amendment.

## **Schedule 4 Amendment of Construction Safety Act 1912**

(Section 6)

### **[1] Section 17A Riggers, divers, powdermen and certain other tradespersons**

Insert after section 17A (2) (b):

- (c) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person against whom an apprehended violence order (whether or not the order is an interim order) is in force under Part 15A of the *Crimes Act 1900*.

### **[2] Section 17A (5AA)**

Insert “If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a powderman’s certificate of competency (whether or not the person has been served with a notice under subsection (5)) the Authority may suspend the certificate of competency for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force.” at the end of the subsection.

### **[3] Section 17B Endorsement of certificates**

Omit “15” from section 17B (2). Insert instead “50”.

### **[4] Section 18 Notice of accidents**

Insert at the end of section 18 (2):

This subsection does not apply to anything on premises that are a place of work within the meaning of the *Occupational Health and Safety Act 1983* (as to which see section 21B of that Act).

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**[5] Section 21 Penalties and proceedings for offences**

Omit “250” from section 21 (1). Insert instead “500”.

**[6] Section 21**

Omit “100” from section 21 (1). Insert instead “250”.

**[7] Section 21**

Omit “100” from section 21 (3). Insert instead “500”.

**[8] Section 22 Regulations**

Omit “100” from section 22 (4). Insert instead “250”.

**[9] Second Schedule Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*WorkCover Legislation Amendment Act 1995*

**[10] Second Schedule, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of the WorkCover Legislation Amendment Act 1995**

**7 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 21 (3) of this Act by the *WorkCover Legislation Amendment Act 1995* does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

## **Schedule 5 Amendment of Factories, Shops and Industries Act 1962**

(Section 7)

**[1] Section 45 Means of escape from and extinguishing fires**

Omit “250” from section 45 (2). Insert instead “500”.

**[2] Section 45 (2)**

Omit “100”. Insert instead “250”.

**[3] Section 45 (2)**

Omit “2.5”. Insert instead “5”.

**[4] Section 144 Regulations**

Omit “100” from section 144 (1) (e) (i). Insert instead “250”.

**[5] Section 144 (1) (e) (i)**

Omit “25”. Insert instead “50”.

**[6] Section 145 Proceedings**

Omit “100” from section 145 (3A). Insert instead “500”.

**[7] Section 149 Penalties**

Omit “250” from section 147 (1) (a). Insert instead “500”.

**[8] Section 147 (1) (a)**

Omit “100”. Insert instead “250”.

**[9] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*WorkCover Legislation Amendment Act 1995*

**[10] Schedule 2, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
the WorkCover Legislation Amendment  
Act 1995**

**7 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 145 (3A) of this Act by the *WorkCover Legislation Amendment Act 1995* does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

## **Schedule 6 Amendment of Dangerous Goods Act 1975**

(Section 8)

**[1] Section 9 Keeping generally**

Omit “50” from section 9 (2) (a). Insert instead “250”.

**[2] Section 9 (2) (b)**

Omit “250”. Insert instead “500”.

**[3] Section 9 (2)**

Omit “50” where secondly occurring.  
Insert instead “100”.

**[4] Section 11 Offence of unlicensed conveyance**

Omit “250” from section 11 (1). Insert instead “500”.

**[5] Section 11 (1)**

Omit “30”. Insert instead “250”.

**[6] Section 12 Conveyance generally**

Omit “250” from section 12 wherever occurring.  
Insert instead “500”.

**[7] Section 12**

Omit “50” from section 12 wherever occurring.  
Insert instead “250”.

**[8] Section 13 Offence of sale in public place**

Omit “250”. Insert instead “500”.

**[9] Section 13**

Omit “50”. Insert instead “250”.

**[10] Section 14 Negligent or careless use etc**

Omit “50”. Insert instead “250”.

**[11] Section 20 Offence of unlicensed manufacture**

Omit “250” from section 20 (1). Insert instead “500”.

**[12] Section 20**

Omit “50” wherever occurring. Insert instead “250”.

**[13] Section 24 Supply to minors**

Omit “10” from section 24 (1). Insert instead “50”.

**[14] Section 26 Possession of explosives**

Omit “50” from section 26 (1). Insert instead “250”.

**[15] Section 26 (1)**

Omit “250”. Insert instead “500”.

**[16] Section 32 Obstruction of inspectors etc**

Omit “50” from section 32 (1). Insert instead “250”.

**[17] Section 33 Proceedings for offences**

Omit “100” from section 33 (IA). Insert instead “500”.

**[18] Section 41 Regulations**

Omit “100” from section 41 (3) (g). Insert instead “250”.

**[19] Section 41 (3) (g)**

Omit “5”. Insert instead “10”.

**[20] Section 41 (3A)**

Omit “100”. Insert instead “250”.

**[21] Schedule 3 Transitional and other provisions**

Insert at the end of clause 1 (1):

*WorkCover Legislation Amendment Act 1995*

**[22] Schedule 3, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
the WorkCover Legislation Amendment  
Act 1995**

**10 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 33 (1A) of this Act by the *WorkCover Legislation Amendment Act 1995* does



not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.

- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

**Schedule 7 Amendment of Workers'  
Compensation (Dust Diseases)  
Act 1942**

(Section 9)

**[ 1 ] The whole Act**

Omit "the Schedule" wherever occurring.  
Insert instead "Schedule 1".

**[2] Section 3 Definitions**

Omit the definitions of *Broken Hill mine* and *Broken Hill mine-owner* from section 3 (1).

**[3] Section 3 (1), definition of "worker"**

Omit the definition. Insert instead:

worker does not include a worker in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

**[4] Section 3 (2)**

Omit the subsection.

**[5] Section 6 Constitution of Fund**

Insert after section 6 (1) (a):

(a1) all balances, investments and moneys of\* which the fund established under the scheme of the *Workmen's Compensation (Broken Hill) Act 1920* consisted immediately before the repeal of that Act, and all moneys that, immediately before that repeal, were owing to that fund and are paid after that repeal,

**[6] Section 6 (9)**

Omit "by a Broken Hill mine owner, or".

**[7] Section 10 Regulations**

Omit "Broken Hill mines or" from section 10 (2) (b2).

**[8] Sections 12 and 13:**

Insert after section 11:

**12 Repeal of Workmen's Compensation (Broken Hill) Act 1920 No 36**

*The Workmen's Compensation (Broken Hill) Act 1920 is repealed.*

**13 Savings, transitional and other provisions**

Schedule 2 has effect.

**[9] Schedule 1**

Omit the heading to the Schedule.  
Insert instead "Schedule 1 Dust diseases".

**[10] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Savings, transitional and other provisions**

(Section 13)

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of:

*WorkCover Legislation Amendment Act 1995*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.
- (3) 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:
  - (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, 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.

## **Part 2 Provisions consequent on enactment of WorkCover Legislation Amendment Act 1995**

### **2 Definitions**

In this Part:

***Broken Hill Compensation Fund*** means the fund established under the scheme of the Broken Hill Act.

***Broken Hill Act*** means the *Workmen's Compensation (Broken Hill) Act 1920*, as in force immediately before its repeal.

### **3 Transfer of balance of Broken Hill Compensation Fund to Dust Diseases Fund**

The balance of and any investments to the credit of the Broken Hill Compensation Fund immediately before the repeal of the Broken Hill Act are, on that repeal, transferred to the Fund established under this Act and any liability of the Broken Hill Compensation Fund becomes, on and from that repeal, a liability of the Fund established under this Act.

#### **4 Continuation of entitlements under Broken Hill Act**

- (1) On the repeal of the Broken Hill Act the scheme of compensation under that Act ceases to have effect.
- (2) Any person who, immediately before that repeal, was in receipt of compensation under that Act, is entitled, on and from the repeal, to receive compensation from the Fund constituted under this Act in accordance with this Act.

#### **5 Applications and appeals under Broken Hill Act**

- (1) Any application for an award of compensation under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an application for compensation under this Act.
- (2) An appeal to the Industrial Court from an order, determination or award of compensation of the joint committee under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an appeal under this Act from an order, determination or award of compensation of the board.

#### **6 Functions exercised by joint committee under Broken Hill Act**

Anything done by the joint committee under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the board under this Act.

#### **7 Functions exercised by medical authority under Broken Hill Act**

Anything done by the medical authority under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the medical authority under this Act.

## **Schedule 8 Amendment of other Acts**

(Section 10)

### **8.1 Defamation Act 1974 No 18**

#### **[1] Section 19BB Conciliation officers under Workers Compensation Act 1987**

Insert at the end of section 17BB:

, and

- (c) for the publication by any such conciliation officer of a conciliation certificate under section 98B of the *Workers Compensation Act 1987*.

#### **[2] Schedule 2 Proceedings of public concern and official and public documents and records**

Insert “or that consists of a conciliation certificate under section 98D of that Act” after “1987” in clause 3 (6).

### **8.2 Justices Act 1902 No 27**

#### **Section 100I Interpretation**

Insert at the end of paragraph (a) of the definition of penalty notice in section 100I:

*Workers Compensation Act 1987*, section 278A;

### **8.3 Public Finance and Audit Act 1983 No 152**

#### **Schedule 2 Statutory bodies**

Omit “Joint Committee established under paragraph 30 of the Schedule to the *Workmen’s Compensation (Broken Hill) Act 1920.*”

### **8.4 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

#### **Schedule 2 Public offices**

Omit from Part 1

Senior Workers Compensation Commissioner.

Workers Compensation Commissioner, other than the Senior Workers Compensation Commissioner.

Insert instead:

Full-time commissioner under the *Compensation Court Act 1984*

Part-time commissioner under the *Compensation Court Act 1984.*

### **8.5 Workcover Administration Act 1989 No 120**

#### **Section 3 Definitions**

Omit paragraph (d) from the definition of *workers compensation legislation* in section 3 (1).

**8.6 Workers Compensation Legislation Amendment Act  
1995 No 30**

**Schedule 3 Amendments relating to interim payment of  
damages**

Omit the Schedule.

[Minister's second reading speech made in—  
Legislative Assembly on 6 December 1995  
Legislative Council on 13 December 1995]