



New South Wales

# Workcover Legislation Amendment Act 1996 No 120

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

---

### Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	55

---



New South Wales

# WorkCover Legislation Amendment Act 1996 No 120

Act No 120, 1996

---

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes. [Assented to 3 December 1996]

---

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

**1 Name of Act**

This Act is the *WorkCover Legislation Amendment Act 1996*.

**2 Commencement**

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

**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 other Acts**

Each Act set out in Schedule 2 is amended as set out in that Schedule.

---

## Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

### 1.1 Amendments—new conciliation arrangements

#### [1] Section 3 Definitions

Insert the following definitions in section 3 (1) in alphabetical order:

*existing claim* has the meaning given by section 87D.

*new claim* has the meaning given by section 87D.

*Principal Conciliator* means the Principal Conciliator appointed under section 87F.

#### [2] Section 3 (6)

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

#### [3] Part 4, Division 1A

Insert before Division 1 of Part 4:

### Division 1A Special conciliation provisions for new claims

#### 87D Definitions

- (1) In this Act:

*existing claim* means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

*new claim* means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of *existing claim* in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims.
- (3) In modifying the definition of *existing claim*, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims).

#### **87E Conciliation officers for new claims or existing claims**

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a *new claims conciliation officer*) or for existing claims (an *existing claims conciliation officer*). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer.
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators.

#### **87F Principal Conciliator for new claims**

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect.
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer.

- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

**[4] Section 96 Conciliation officers**

Omit "Officers of the Authority" from section 96 (1).  
Insert instead "Officers of the Authority or of the Department of Industrial Relations".

**[5] Section 96 (4)**

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the Workcover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

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

Insert at the end of section 97:

**Note.** Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

**[7] Section 98A Power of conciliation officer to require information**

Insert after section 98A (1):

- (1A) If a dispute in respect of a new claim for weekly payments of compensation has been referred for conciliation by the worker and the person on whom the claim was made has or claims to have a reasonable excuse for failing to commence the weekly payments (or the balance of weekly payments in dispute) within 21 days after the claim was duly made, the information that a conciliation officer can require that person to furnish includes details of that excuse.

**[8] Section 98A (6)**

Insert after section 98A (5):

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

**[9] Section 98D Certificates as to conciliation of disputes**

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer.

(2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned.

**[10] Section 98D (3)**

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit “in the opinion of the conciliation officer” from that paragraph.

**[11] Section 98D (3) (e)**

Insert after section 98D (3) (d):

(e) if conciliation was unsuccessful (wholly or partially) the reasons for that,

**[12] Sections 98E, 98F**

Insert after section 98D:

**98E Time within which disputes must be referred to conciliation**

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

**98F Agreements arising from conciliation**

(1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement.



- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement.
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims).
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
  - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions,
  - (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work,
  - (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute,
  - (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
  - (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum.

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

Insert “in respect of an existing claim” after “dispute” wherever occurring in section 100A (2) and (3).

**[14] Section 100A (2A)**

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.

**[15] Section 100A (3C)**

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer’s own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and
  - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute.

**[16] Section 100A (7)**

Insert after section 100A (6):

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
  - (a) when the parties to the agreement otherwise agree, or
  - (b) in such circumstances as the regulations may specify.

**[17] Section 102 Existing claims for weekly payments—commencement of payments**

Insert at the end of section 102 (1):

This section does not apply to new claims.

**[18] Section 102A**

Insert after section 102:

**102A New claims for weekly payments—commencement of payments**

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

**Note.** If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

- 
- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) 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.
- (5) An employer has such a reasonable excuse if
- (a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
  - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
- (6) This section ceases to apply if the claim for compensation is withdrawn.

**[19] Section 103 Offences—commencement of weekly payments**

Insert “or 102A” after “102” in section 103 (1).

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

Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1).

**[21] Section 106CA**

Insert before section 106D:

**106CA Division applies only to existing claims**

This Division applies only to court proceedings in respect of an existing claim.

**[22] Part 4 Division 3B**

Insert after Division 3A of Part 4:

**Division 3B Restrictions on commencing court proceedings—new claims**

**106FA Division applies only to new claims**

This Division applies only to court proceedings in respect of a new claim.

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

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
  - (a) the conciliation officer has issued a certificate of conciliation outcome, or
  - (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
  - (c) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
  - (a) the person on whom the claim is made has disputed liability to make the payments, or

- 
- (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute), whichever happens first.

**Note.** Section 102A allows up to 42 days for the commencement of weekly payments of compensation.

- (3) 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.
- (4) 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.

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

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
- (a) the conciliation officer has issued a certificate of conciliation outcome, or

- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until:
  - (a) 12 weeks after the claim for the compensation is duly made, or
  - (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time.
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering.
- (5) 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.
- (6) 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 (5).
- (7) 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).
- (8) 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.
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations.

**106FD 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 about that compensation has been referred for conciliation under Division 2 and either:

- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.

- (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:

- (a) 28 days after the claim for compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.

- (3) 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 106FB or 106FC (whichever is appropriate).

- (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.

- (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim.

---

**106FE Court rules and regulations providing for evidence of compliance**

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

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

**[23] Section 107A**

Omit the section. Insert instead:

**107A Authority or DIR may intervene in proceedings**

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

**[24] Section 119 Limit on recovery of costs unreasonably incurred**

Insert after section 119 (2):

(2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate.

**[25] Schedule 2 Provisions relating to appointed conciliation officers**

Omit “Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*.” from clause 3.

**[26] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation**

Insert after clause 4:

**5 New conciliation arrangements—Workcover Legislation Amendment Act 1996**

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

## **1.2 Amendments—employment required to be substantial contributing factor**

### **[1] Section 9A**

Insert after section 9:

#### **9A No compensation payable unless employment substantial contributing factor to injury**

- (1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.
- (2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):
  - (a) the time and place of the injury,
  - (b) the nature of the work performed and the particular tasks of that work,
  - (c) the duration of the employment,
  - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment,
  - (e) the worker's state of health before the injury and the existence of any hereditary risks,
  - (f) the worker's lifestyle and his or her activities outside the workplace.
- (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following:

- (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
  - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury.
- (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.

**[2] Section 11A No compensation for psychological injury caused by reasonable actions of employer**

Omit section 11A (1). Insert instead:

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was 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.

**[3] Section 11A (5)**

Omit the subsection.

**[4] Section 11A (6)**

Insert at the end of section 11A (6):

This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury).

**[5] Section 11A (7)**

Omit the subsection. Insert instead:

- (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) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition".

**[6] Section 11A (8)**

Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".

**[7] Section 11A (8) (a)**

Insert "or 102A" after "102".

**[8] Section 16 Aggravation etc of diseases—employer liable, date of injury etc**

Omit "contributing factor" wherever occurring.  
Insert instead "substantial contributing factor".

**[9] Section 19 Diseases deemed work related**

Omit "contributing factor" from section 19 (1) (b).  
Insert instead "substantial contributing factor".

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

Insert after section 92 (1B):

- (1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however

expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor.

- (1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement):
- (a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and
  - (b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with.
- (1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later.

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

Insert after clause 8:

**9 Requirement that employment be substantial contributing factor**

- (1) Section 9A of this Act, as inserted by the *WorkCover Legislation Amendment Act 1996*, does not apply to injuries received before the commencement of that section.

- 
- (2) The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the *WorkCover Legislation Amendment Act 1996* do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3).
  - (3) Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A.
  - (4) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor).

### **1.3 Amendments—journey claims**

#### **[1] Section 10 Journey claims**

Omit section 10 (1A). Insert instead:

- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

#### **[2] Section 10 (1B)**

Omit “to have been caused by the fault of the worker”.  
Insert instead “to be attributable to the serious and wilful misconduct of the worker”.

#### **[3] Section 10 (1C)**

Omit the subsection.

#### **[4] Section 10 (6)**

Omit the definition of *fault*.



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

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the WorkCover Legislation Amendment Act 1996 as if those amendments had not been made.

**1.4 Amendments—reduction in maximum lump sum  
compensation amounts**

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

Omit “\$132,300” from section 66 (1).  
Insert instead “\$100,000”.

**[2] Section 66 (2)**

Omit “\$160,950”. Insert instead “\$121,000”.

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

Omit “\$66,200” from section 67 (1).  
Insert instead “\$50,000”.

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

Insert after clause 17:

**18 Reduction in lump sum compensation amounts-1996  
amendments**

- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of

those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act.

- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if
  - (a) no claim for that compensation was duly made before the commencement of those amendments, or
  - (b) the worker did not, before the commencement of those amendments, give 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 the compensation claimed.
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

## **1.5 Amendments—discontinuation of weekly payments after 2 years**

### **[1] Section 38A Determination of whether worker is seeking suitable employment**

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1).

**[2] Section 38A (4)**

Insert “or to the discontinuation of weekly payments under section 52A” after “section 38”.

**[3] Section 40A Assessment of incapacitated worker’s ability to earn**

Insert “, and about the possible effects of section 52A on the worker” after “those entitlements” in section 40A (2).

**[4] Sections 52A and 52B**

Insert after section 52:

**52A Discontinuation of weekly payments after 2 years**

- (1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker:
  - (a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A), has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A),
  - (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training,

- (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury).
- (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (*a payment discontinuation notice*) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases.
- (3) The following requirements apply to a payment discontinuation notice:
  - (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments,
  - (b) the notice is to be given to the worker personally or by post,
  - (c) the notice must contain such information and be in such form (if any) 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.
- (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.

- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that.
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise).
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice.
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated.
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

---

**52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years**

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:
  - (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
  - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain

suitable employment for the purposes of section 38 (as determined in accordance with section 38A).

- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute.
- (7) The Compensation Court can make a determination under this section whether or-not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A.
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court:
  - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and
  - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (9) This section does not affect the recovery of weekly payments under section 58.

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

Insert after clause 13:

**14 Discontinuation of weekly payments after 2 years**

- (1) Section 52A (as inserted by the *WorkCover Legislation Amendment Act 1996*) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause.

- 
- (2) Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following:
- (a) A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a *preliminary notice*) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker.
  - (b) The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks).
  - (c) The preliminary notice is to contain such information and be in such form (if any) 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.
  - (d) The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is:
    - (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
    - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b),even if this would result in the worker receiving the payments for more than 104 weeks.



- (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded.
  - (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows:
    - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either:
      - (i) the worker's employer has not failed to provide suitable employment, or
      - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training,as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6.
- (3) Section 52A does not apply in any of the following cases:
- (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
  - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,

- 
- (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement.
  - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
  - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.

**1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities**

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

Omit “section 71” from section 66A (7).  
Insert instead “this Part”.

**[2] Section 68 Proportionate loss of use**

Insert after section 68 (3):

- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

**[3] Sections 68A and 688**

Omit section 68A. Insert instead:

**68A Deduction for previous injury or pre-existing condition or abnormality**

- (1) In determining the compensation payable under this Division for a loss, there is to be a deduction for any proportion of the loss that is due to any previous injury

(whether or not it is an injury for which compensation has been paid or is payable under this Division) or that is due to any pre-existing condition or abnormality.

- (2) The proportion of a loss that is required to be deducted because of subsection (1) is the *deductible proportion* for that loss.
- (3) If another loss (the *secondary* loss) was suffered by the worker as a consequence of a loss (the *primary* loss) for which there is a deductible proportion under subsection (1) and both losses resulted from the same injury, then in determining the compensation payable under this Division for the secondary loss there is to be a deduction of the proportion equal to the deductible proportion for the primary loss.
- (4) Subsection (3) does not limit the application of subsection (1) in relation to the secondary loss, with the result that there can be a deductible proportion for the secondary loss in its own right under subsection (1) (as well as under subsection (3) for the loss as a secondary loss).
- (5) This section is not limited to applying in respect of a loss of a proportion of a thing mentioned in the Table to this Division and applies even if the loss consists of the loss of all of such a thing.
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) 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 for the loss (or the relevant part of it) is 10% of the loss, unless this assumption is at odds with the available evidence.

**Note.** If subsection (6) applies in a particular case to require it to be assumed that the deductible proportion is 10% and the loss in that case is (for example) 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

- 
- (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court.
  - (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis.

**68B Deductions under section 68A—operation of sections 15, 16, 17 and 22**

- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality).
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A 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 (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).
- (3) When determining the compensation payable in a case in 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 section 68A 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

substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality).

- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A 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 (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).

**[4] Section 71 Further loss of function—occupational diseases**

Omit the section.

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

Insert at the end of the Part:

**19 Deduction for previous injuries and pre-existing conditions and abnormalities**

- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are 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 amendments, 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 that date, 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 that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3.

**1.7 Amendments—evidentiary value of medical panel reports and certificates**

**[1] Section 119 Limit on recovery of costs unreasonably incurred**

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was frivolous or vexatious.

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

Omit section 131 (5E).

**[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels**

Insert after section 136 (1):

- (1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report.
- (1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.

**[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes**

Insert after clause 7:

**8 Evidentiary value of certificates and reports of medical panels**

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement.

**1.8 Amendments—marketing of legal and agency services**

**[1] Section 148B Definitions**

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

- (b) a claim for the cost of provision of a hearing aid, and

**[2] Section 148B (1A)**

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct.

**[3] Section 148HA**

Insert after section 148H:

**148HA Power to restrict or ban recovery of costs by solicitors**

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and:
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.



- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned.
- (7) For the purposes of this section, a financial interest in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

**[4] Section 148J Past conduct included in assessing persistent conduct**

Omit “section 148H and 148I”.

Insert instead “sections 148H, 148HA and 148I”.

**[5] Section 148J (2)**

Insert at the end of section 148J (2):

For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

**[6] Section 148L**

Insert after section 148K:

**148L Regulation of advertising**

- (1) The regulations may make provision for or with respect to regulating (including prohibiting) conduct by any person (including advertising) that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act.
- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the *Legal Profession Act 1987*.
- (3) Any such regulation can impose a penalty not exceeding 200 penalty units for any contravention of the regulations.

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

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation Amendment Act 1996* to insert section 148B (1A) is made for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of that section as inserted by the *WorkCover Legislation Amendment Act 1995*.

**1.9 Amendments—transfer of WorkCover Authority functions to Public Trustee**

**[I] Sections 29 and 30**

Omit “the Authority” and “The Authority” wherever occurring. Insert instead “the Public Trustee” and “The Public Trustee” respectively.

**[2] Section 31 Payment in respect of dependent children**

Omit “to the Authority”.

Insert instead “to the Public Trustee in trust”.

**[3] Section 31**

Omit “by the Authority”.

Insert instead “by the Public Trustee”.

**[4] Section 83 Manner of payment of compensation**

Insert “or the Public Trustee” after “the Authority” in section 83 (7).

**[5] Section 85 Payments to Public Trustee for benefit of beneficiary**

Omit “to the Authority” where firstly occurring.

Insert instead “to the Public Trustee in trust”.

**[6] Section 85**

Omit “the Authority” and “The Authority” wherever occurring (except where firstly occurring).

Insert instead “the Public Trustee” and “The Public Trustee” respectively.

**[7] Section 86**

Omit the section. Insert instead:

**86 Public Trustee’s powers of investment**

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee.

**[8] Section 87 Unclaimed money**

Omit “the Authority” wherever occurring.  
Insert instead “the Public Trustee”.

**[9] Schedule 6 Savings, transitional and other provisions, Part 19  
Miscellaneous provisions**

Insert after clause 5:

**6 Transfer of functions from Authority to Public Trustee**

- (1) In this clause:  
*the Public Trustee amendments* means the amendments made by Schedule 1.9 to the *WorkCover Legislation Amendment Act 1996*.
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made.
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*.

- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee.
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee.

#### **1.10 Amendment—rules and regulations with respect to medical evidence**

##### **Section 137 Rules of Court and regulations with respect to medical evidence**

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b).

#### **1.11 Amendments—making a claim for compensation**

##### **[1] Section 92 Making of claim for compensation**

Omit section 92 (4B). Insert instead:

- (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 to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.

**[2] Section 92 (6)**

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.

**1.12 Amendment—deemed employment of participants in workplace based training programs**

**Schedule 1 Deemed employment of workers**

Insert after clause 17A:

**18 Participants in training programs**

- (1) The regulations may:
  - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
  - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training.
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause.

### **1.13 Amendment—penalty increase (requirement to keep register of injuries)**

#### **Section 90 Register of injuries**

Omit “20 penalty units” from section 90 (5).  
Insert instead “50 penalty units”.

### **1.14 Amendments—misleading conduct by insurers and brokers**

#### **[1] Section 156A**

Insert after section 156:

#### **156A Misleading conduct by insurers and brokers with respect to business insurance**

- (1) In this section:

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

---

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

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
  - (a) the insurance includes the insurance required by this Act, or
  - (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.  
Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is



to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

**[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurers**

Insert after clause 24:

**25 Conduct of insurers and brokers—1996 amendments**

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section.

**1.15 Amendments—compliance with provisions that restrict commencement of proceedings**

**[ 1 ] Section 66B No proceedings to enter up award on agreement for compensation**

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
  - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and

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

**[2] Section 106G**

Insert after section 106F:

**106G Court rules and regulations providing for evidence of compliance**

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

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

**1.16 Amendment—rate of interest on common law damages**

**Section 151M Payment of interest**

Omit section 151M (6). Insert instead:

**(6) Rate of interest**

The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the Supreme Court Act 1970 for the period concerned.

## **1.17 Amendments—special provisions for coal miners**

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

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act.

### **[2] Schedule 6, Part 18 Special provision relating to coal miners**

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
  - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and
  - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
  - (c) occurs more than 78 weeks after the date of the injury concerned, and
  - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference 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.

## **1.18 Amendments—hearing loss claims**

### **[1] Section 69A No compensation for less than 6% hearing loss**

Omit section 69A (2).

### **[2] Section 69A (3)**

Omit “or further loss” wherever occurring.

### **[3] Section 69A (3)**

Omit “or that further loss reaches 5%”.

### **[4] Section 69A (4) (c) and (d)**

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%. The worker is entitled in the usual way to compensation for the 5% further loss because the 6% threshold has already been passed (the total loss is now 13%).

### **[5] Section 69B Employer’s responsibility to pay for hearing loss tests**

Omit “or further loss” wherever occurring in section 69B (1).

### **[6] Section 69B (1) (c)**

Omit “(being hearing loss for which the worker has not received compensation under section 66)”.

### **[7] Section 69B (1) (d)**

Omit the paragraph.

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

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the *WorkCover Legislation Amendment Act 1996* are taken to have had effect on and from the commencement of those sections.

**1.19 Amendments—clarifications and miscellaneous amendments**

**[1] Section 94A Insurers to give notice and reasons when liability disputed**

Insert at the end of section 94A (3):

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

**[2] Section 117 Regulations fixing maximum costs recoverable by legal practitioners**

Omit "medical opinions" from section 117 (1) (b).  
Insert instead "medical reports (including certificates)".

**[3] Section 117 (3)**

Omit "any report".  
Insert instead "any medical report (including any certificate)".

**[4] Section 118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services**

Omit "medical opinion or certificate" from section 118 (1) (a).  
Insert instead "medical report (including any certificate)".

**[5] Section 118 (3)**

Insert after section 118 (2):

- (3) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

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

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

**[7] Section 152A Return-to-work plans for injured workers**

Insert “or any such plan” after “section” in section 152A (3) (b).

**[8] Section 168 Insurance premiums orders**

Insert after section 168 (3A):

- (3B) The Insurance Premiums Order (1996–1997) (published in Gazette No 76 of 26 June 1996) is amended by omitting Note 15 from Table A (Basic Tariff Rates Notes), with effect from immediately before 4 pm on 30 June 1996. An insurance premiums order applying in any period before 30 June 1998 must not contain provision to the same or similar effect as that Note.

**[9] Section 270 Worker’s right to information**

Omit “refuse” from section 270 (2) (a). Insert instead “fail”.

**[10] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court**

Omit “the insertion” from clause 1.  
Insert instead “the commencement”.

**[11] Schedule 6, Part 11**

Insert after clause 2:

**3 Restrictions on commencement of proceedings**

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

**[12] Schedule 6, Part 20 Savings and transitional regulations**

Insert at the end of the list of Acts in clause 1 (1):

*WorkCover Legislation Amendment Act 1996*

---

## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Compensation Court Act 1984 No 89

#### Section 14A Medical referees

Insert at the end of section 14A (2):

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate.

### 2.2 Construction Safety Act 1912 No 38

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

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

(d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

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

Omit “may suspend”. Insert instead “may, at any time, suspend”.



**[3] Section 17A (5AA)**

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection.

In this subsection, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

**2.3 Dangerous Goods Act 1975 No 68**

**[1] Section 27A Commissioner of Police to report on explosives licences and permits**

Insert after section 27A (2) (d):

(d1) whether the applicant has a history of violence or threats of violence, with violence including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*,

(d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant,

**[2] Section 28A**

Insert after section 28:

**28A Special provision for suspension or cancellation of explosives licences and permits**

(1) This section applies to licences and permits to which section 27A applies.

- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3).
- (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit.
- (4) 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 licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit 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.
- (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies.
- (6) In this section *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

## 2.4 Industrial Relations Act 1996 No 17

### Section 197A

Insert after section 197:

**197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation**

- (1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.
- (2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.
- (3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.
- (4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.
- (5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.
- (6) Section 191 applies to an appeal under this section.
- (7) On an appeal under this section, the Full Bench may:
  - (a) dismiss the appeal, or
  - (b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).
- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence.

- 
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:  
*occupational health and safety legislation* means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.
- (11) This section does not apply to a decision made before the commencement of this section.

## **2.5 Occupational Health and Safety Act 1983 No 20**

### **[1] Section 21B Plant or premises involved in serious occurrence**

Omit “dangerous occurrence” wherever occurring.  
Insert instead “serious occurrence”.

### **[2] Section 21B (5)–(5B)**

Omit section 21B (5). Insert instead:

- (5) The requirements of subsections (1) and (2) in relation to any particular serious occurrence apply only for the period of 36 hours following notification of the occurrence in accordance with this section, subject to any extension of that period under subsection (6).
- (5A) When a serious occurrence occurs at a place of work, the occupier of the place, or such other person as may be prescribed by the regulations, must give notice of the occurrence to the Authority within such time and in such manner as may be prescribed by the regulations.

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

(5B) The regulations may provide for the acknowledgment by the Authority of the receipt by it of a notice under this section in respect of a serious occurrence and may provide that such a notice is, for the purposes of subsection (5), taken not to have been given until receipt of it is so acknowledged.

**[3] Section 21B (6)**

Omit “requirements of this section”.

Insert instead “requirements of subsections (1) and (2)”.

**[4] Section 31KA**

Insert after section 31K:

**31KA Power of inspectors to obtain information, documents and evidence**

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things:
  - (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,
  - (b) to produce to an inspector, in accordance with the notice, any such documents,
  - (c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.
- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.

- (3) An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
- (4) An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.
- (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
- (6) Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.

**[5] Section 31M**

Omit the section. Insert instead:

**31M Protection from incrimination**

- (1) A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information, document or evidence may tend to incriminate the person.
- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if
  - (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or

- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced.
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate.

**[6] Section 31N Offence: obstruction and compliance**

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular.

**[7] Section 31U Review of notices**

Omit section 31U (4). Insert instead:

- (4) The Workcover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the Workcover Authority until the Workcover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

**[8] Section 31UA**

Insert after section 31U:

**31UA Application to Industrial Magistrate for stay of prohibition notice**

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice.

- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the Workcover Authority.
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court.

## **2.6 Workcover Legislation Amendment Act 1995 No 89**

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

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

### **[2] Schedule 1 [43]**

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

### **[3] Schedule 1 [49], [50]**

Omit the items.

### **[4] Schedule 3 Amendment of Compensation Court Act 1984**

Omit items [1] and [2].

### **[5] Schedule 3 [29]**

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.



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

### **Section 19 Payments into and from Fund**

Insert after section 19 (2) (b):

- (b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers,
- (b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*,

## **2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83**

### **[1] Section 23 Definitions**

Insert in alphabetical order:

*relevant journey*, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity.

### **[2] Section 24 Injuries to which this Part applies**

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

---

**[3] Sections 28A and 28B**

Insert after section 28:

**28A Compensation for damage to personal effects, vehicles and other things**

- (1) Compensation is payable under this Part in respect of
  - (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and
  - (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and
  - (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker.
- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss.
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion.

- (4) Compensation is not payable under this section in respect of any loss:
  - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
  - (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source.
- (6) In this section *personal effects* does not include personal effects referred to in section 28.

**28B Prohibition on increased premium under motor vehicle insurance policy**

- (1) In this section:

*authorised activity damage* means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5).

*insurance policy* means policy of insurance in respect of damage to or destruction or loss of a vehicle.

*insurer* means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged

---

in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage.

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it.
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

**[4] Section 32 Application of Principal Act**

Omit “section 52” from section 32 (1) (c).  
Insert instead “sections 52, 52A and 52B”.

**[5] Schedule 1 Transitional and other provisions**

Omit the heading to the Schedule. Insert instead:

**Schedule 1 Savings and transitional provisions**

(Section 35)

**Part 1 General**

**1A Savings and transitional regulations**

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

*WorkCover Legislation Amendment Act 1996*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned 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 so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, 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 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987**

**[6] Schedule 1, Part 3**

Insert after clause 2:

**Part 3 Workcover Legislation Amendment Act 1996**

**3 Operation of amendments**

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section.

**2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14**

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

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

- , and
- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and
  - (f) all amounts contributed by insurers under subsection (6) or (7D).

**[2] Section 6 (7C)**

Omit the subsection. Insert instead:

(7C) The Workcover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund.

**[3] Section 6 (7D)**

Omit “Dust Diseases Reserve”.

**[4] Section 8 Certificate of medical authority and rates of compensation**

Omit “sections 51 and 52” from section 8 (3) (b).  
Insert instead “sections 51, 52, 52A and 52B”.

[Minister’s second reading speech made in—  
Legislative Assembly on 20 November 1996  
Legislative Council on 26 November 1996]