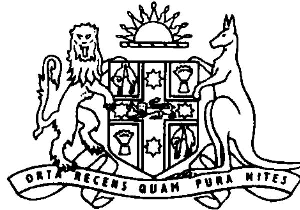


New South Wales

Workers Compensation Legislation Amendment Act 2000 No 87

Contents

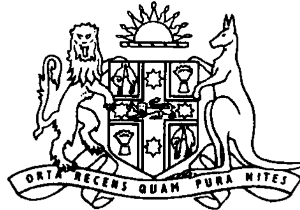
Page

1	Name of Act	2
2	Commencement	2
3	Amendments	2
4	Explanatory notes	2

Schedules

1	Amendments relating to corporate governance	3
2	Amendments relating to injury management pilot projects and market incentives	18
3	Amendments relating to claims procedures	24
4	Amendments relating to common law elections	26
5	Amendments relating to contributory negligence in contract actions	28
6	Amendments relating to disputes about liability	30
7	Amendments relating to medical reports	32
8	Amendments relating to information exchange	34
9	Amendments relating to liability involving multiple managed fund insurers	39
10	Amendments relating to recovery from directors of uninsured corporations	47

		Page
11	Amendments relating to recovery of inspection costs	58
12	Amendments relating to late payment fees on unpaid insurance premiums	61
13	Amendments relating to certificates of currency with respect to insurance	63
14	Amendments relating to fraud against the workers compensation scheme	68
15	Amendments relating to powers of inspectors	71
16	Amendments relating to increased penalties	75
17	Amendments relating to insurer penalties	78
18	Amendment relating to deduction of workers compensation costs from wages	81
19	Amendments relating to criminal liability of Crown	82
20	Amendments relating to specialised insurers and self-insurers	83
21	Amendments relating to insurance premiums appeals	92
22	Amendments relating to the transfer of provisions from the regulations	99
23	Miscellaneous amendments	104



New South Wales

Workers Compensation Legislation Amendment Act 2000 No 87

Act No 87, 2000

An Act to amend the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and certain other Acts to make further provision with respect to workers compensation benefits, claims, insurance, injury management, administration, conciliation and other matters; and for other purposes. [Assented to 6 December 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Workers Compensation Legislation Amendment Act 2000*.

2 Commencement

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

(2) A proclamation under this section may appoint a particular time on a day as the time for commencement on that day.

3 Amendments

Each Act specified in Schedules 1–23 is amended as set out in those Schedules.

4 Explanatory notes

The matter appearing under the heading "Explanatory note" in any of the Schedules does not form part of this Act.

Schedule 1 Amendments relating to corporate governance

(Section 3)

1.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definition of ***Advisory Council*** from section 4 (1).

[2] Section 4 (1), definition of "Council"

Insert in alphabetical order:

> ***Council*** means the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales constituted under this Act.

[3] Section 4 (1), definition of "OHS Council"

Omit the definition.

Explanatory note

Items [1]–[3] are consequential on the other amendments made by this Schedule.

[4] Chapter 2, Part 1 Workers Compensation Advisory Council of New South Wales

Omit the Part.

Explanatory note

Item [4] repeals provisions that constitute and provide for the membership and functions of the Advisory Council.

[5] Section 15 Board of directors

Omit section 15 (4).

Explanatory note

Item [5] repeals a provision that provided for the Advisory Council and others to make recommendations to the Minister regarding the persons to be appointed to the Board of Directors of the Authority.

[6] Section 15 (5)

Omit "Advisory".

Explanatory note

Item [6] is consequential on the abolition of the Advisory Council.

[7] Section 19 Board of Directors

Omit "and must have regard to the policies of the Advisory Council".

Explanatory note

Item [7] removes the requirement that the Board of the Authority must have regard to the policies of the Advisory Council, and is consequential on the abolition of the Advisory Council.

[8] Section 22 General functions of the Authority

Omit section 22 (1) (c) and (d). Insert instead:

(c) to monitor and report to the Minister on the operation and effectiveness of the workers compensation legislation and the occupational health and safety legislation, and on the performance of the schemes to which that legislation relates,

(d) to undertake such consultation as it thinks fit in connection with current or proposed legislation relating to any such scheme as it thinks fit,

(d1) to monitor and review key indicators of financial viability and other aspects of any such schemes,

Explanatory note

Item [8] omits certain functions of the Authority that the abolition of the Advisory Council will make redundant and adds certain monitoring, reporting and consultation functions that were previously functions of the Advisory Council.

[9] Section 22 (3) (c)

Omit "having regard to policies of the Advisory Council".

Explanatory note

Item [9] repeals (consequentially on the abolition of the Advisory Council) provisions that required the Authority to ensure the efficient operation of workers compensation insurance arrangements having regard to policies of the Advisory Council.

[10] Section 23 Specific functions of the Authority

Omit “to assist in developing” from section 23 (1) (c).
Insert instead “to develop”.

[11] Section 23 (1) (f)

Omit “to assist in identifying (and as far as practicable minimising or removing)”.
Insert instead “to identify (and facilitate or promote the development of programs that minimise or remove)”.

[12] Section 23 (1) (h)

Omit “to assist in developing”. Insert instead “to develop”.

[13] Section 23 (1) (i)

Omit “assist in”. Insert “facilitate and promote”.

[14] Section 23 (1) (i)

Insert at the end of the paragraph:

- occupational health and safety representatives or other agreed arrangements for consultation at places of work,

[15] Section 23 (1) (k)

Omit “to assist in the development of”. Insert instead “to develop”.

[16] Section 23 (1) (m)

Omit the paragraph. Insert instead:

(m) to collect, analyse and publish data and statistics, as the Authority considers appropriate,

[17] Section 23 (1) (r)

Omit the paragraph. Insert instead:

(r) to provide administrative and other support to the Council, the Rating Bureau and Industry Reference Groups.

[18] Section 23 (2)

Omit “Advisory”.

[19] Section 24 Constitution of Rating Bureau

Omit section 24 (3) (b).

Explanatory note

Items [10]–[19] make amendments that are consequential on the abolition of the Advisory Council and the redistribution of its functions between the Authority and the Council.

[20] Section 25 Membership and procedure of Rating Bureau

Omit section 25 (1) (b) and (c). Insert instead:

(b) 1 person appointed by the Minister as an employer representative from a panel of at least 3 persons nominated by such bodies or organisations representing employers as are approved by the Minister,

(c) 1 person appointed by the Minister as an employee representative from a panel of at least 3 persons nominated by the Labor Council of New South Wales,

Explanatory note

Item [20] provides for the employer and employee representatives on the Rating Bureau to be nominated by certain organisations, rather than by the Advisory Council as at present.

[21] Section 26 Functions of Rating Bureau

Omit section 26 (1) (b) and (c).

Explanatory note

Item [21] is consequential on the abolition of the Advisory Council and the redistribution of its functions between the Authority and the Council.

[22] Chapter 2, Part 4

Omit Part 4. Insert instead:

Part 4 Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales

28 Constitution of Council

There is constituted by this Act a Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales.

29 Membership and procedure of Council

(1) The Council is to consist of the following members:

(a) 1 person appointed by the Minister who is to be Chairperson of the Council,

(b) 5 persons appointed by the Minister as employer representatives from a panel of at least 6 persons nominated by such bodies or organisations representing employers as are approved by the Minister,

(c) 5 persons appointed by the Minister as employee representatives from a panel of at least 6 persons nominated by the Labor Council of New South Wales, with one of those 5 appointed to represent injured workers,

(d) 1 person appointed by the Minister to represent legal practitioners,

(e) 1 person appointed by the Minister to represent medical practitioners,

(f) 1 person appointed by the Minister to represent other health care professionals,

(g) 1 person appointed by the Minister to represent insurers,

(h) 1 person appointed by the Minister, being a person whom the Minister considers has expertise in injury management and rehabilitation,

(i) 1 person appointed by the Minister, being a person whom the Minister considers has expertise in occupational health and safety.

(2) In appointing members of the Council, the Minister is to ensure that the interests of rural employers and employees are adequately represented.

(3) Schedule 2 has effect with respect to the Council.

30 Functions of Council

(1) The Council has the following functions:

(a) to provide advice to the Minister on any matter relating to occupational health and safety, injury management and workers compensation that the Minister refers to the Council for advice,

(b) to provide advice to the Minister on matters of concern to scheme participants arising from the operation of current workers compensation legislation and occupational health and safety legislation, including advice on more appropriate strategies for achieving the objectives of that legislation,

(c) to serve as a channel of communication between scheme participants and the Minister,

(d) to provide advice to the Minister on emerging issues, problems or trends in relation to occupational health and safety, injury management and workers compensation,

(e) to examine the operation of the WorkCover scheme,

(f) such other functions as are conferred or imposed on it by or under this or any other Act.

(2) In this section:

scheme participants means employers, employees and other participants in the schemes to which the workers compensation legislation and occupational health and safety legislation relate.

Explanatory note

Item [22] repeals the provisions that constitute and provide for the membership and functions of the Occupational Health and Safety Council (the ***OHS Council***) and replaces those provisions with provisions for the Workers Compensation and Workplace Occupational Health and Safety Council.

[23] Chapter 2, Part 5 Industry Reference Groups

Omit "Advisory Council" wherever occurring. Insert instead "Authority".

Explanatory note

Item [23] makes a consequential amendment that transfers the functions of the Advisory Council with respect to Industry Reference Groups to the WorkCover Authority.

[24] Section 33 Functions of Industry Reference Groups

Omit "OHS Council" from section 33 (2) (b). Insert instead "Authority".

Explanatory note

Item [24] makes an amendment that is consequential on the abolition of the OHS Council and the Advisory Council.

[25] Section 33 (2) (c)

Omit "Advisory Council". Insert instead "Authority".

Explanatory note

Item [25] makes an amendment to the functions of the Industry Reference Groups that is consequential on the abolition of the Advisory Council.

[26] Section 35 Payments into and from Fund

Omit section 35 (2) (b). Insert instead:

(b) the remuneration (including allowances) of members of, and any other costs of operation of, the Council and any consultative body established by the Authority,

Explanatory note

Item [26] makes a consequential amendment.

[27] Section 121 Assessment of medical disputes by approved medical specialists

Omit "Advisory Council" from the definition of ***approved medical specialist*** in section 121 (1).

Insert instead "Authority".

Explanatory note

Item [27] transfers from the Advisory Council to the Authority the function of approving medical specialists to assess medical disputes.

[28] Section 159 Approval of methodology for calculating risk premiums

Omit section 159 (3) and (4). Insert instead:

(4) In formulating a proposed methodology for submission to the Authority, the Rating Bureau is to have regard to actuarial advice and other advice and information from such sources as the Rating Bureau considers appropriate.

Explanatory note

Item [28] removes the requirement for the Rating Bureau to consult with and have regard to the advice of the Advisory Council in the formulation of a risk premium calculation methodology.

[29] Section 172 Power to direct premium rebate

Omit section 172 (4).

Explanatory note

Item [29] abolishes the role of the Advisory Council in giving advice to the Authority on the exercise of a power to direct a premium rebate to employers.

[30] Section 174 Deficit reduction contribution

Omit section 174 (2).

Explanatory note

Item [30] repeals the provision that requires the Authority to give the Advisory Council 6 months' notice of its intention to direct payment of a deficit reduction contribution.

[31] Section 237 Service of documents

Omit the definition of ***body*** from section 237 (1). Insert instead:

body means the Authority, the Council or the Rating Bureau.

[32] Section 240 Personal liability

Omit the definition of ***body*** from section 240 (1). Insert instead:

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

[33] Section 241 Seals

Omit "of the Advisory Council or" from section 241 (2).

[34] Section 243 Disclosure of information

Omit section 243 (2) (a). Insert instead:

(a) the Council and any consultative body established by the Authority for the purposes of the workers compensation legislation, and

Explanatory note

Items [31]–[34] make consequential amendments.

[35] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Provisions relating to Council

(Section 29)

1 Definition

In this Schedule:

member means a member of the Council.

2 Nomination of panels for appointment as members

(1) If nominations to constitute a panel are not made within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be appointed from the panel.

(2) A person so appointed is taken to have been duly nominated for appointment.

3 Deputies of members

(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) The deputy of a member appointed from a panel is to be appointed from the same or a further panel.

(3) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member, and

(b) while so acting, has all the functions of the member and is taken to be a member.

(4) The deputy of a member who is Chairperson of the Council does not (because of this clause) have the member's functions as Chairperson.

(5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

(6) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

4 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

5 Allowances

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

6 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or

(e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the

expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove a member from office.

(3) The Minister must remove a member from office if:

(a) the member is a member appointed under section 29 (1) (b) or (c), and

(b) the bodies or organisations that nominated the panel of persons from whom the member was appointed request the Minister in writing to remove the member from office.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

9 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

10 Quorum

The quorum for a meeting of the Council is 9 members.

11 Presiding member

(1) The Chairperson of the Council is to preside at a meeting of the Council.

(2) In the absence of the Chairperson at a meeting of the Council, a member chosen by the members present at the meeting is to preside at the meeting.

(3) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

13 Attendance by non-members

A person authorised by the Council or the Chairperson of the Council may attend a meeting of the Council for the purpose of assisting the Council to exercise its functions.

14 First meeting

The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

Explanatory note

Item [35] inserts new provisions relating to the membership and procedures of the Council to replace those dealing with the Advisory Council.

[36] Schedule 4 Provisions relating to Rating Bureau

Omit "Advisory Council" from clause 3 (2) wherever occurring.

Insert instead "Minister".

Explanatory note

Item [36] provides for the Minister (instead of the Advisory Council) to appoint the deputies of members of the Rating Bureau.

[37] Schedule 5 Provisions relating to Occupational Health and Safety Council

Omit the Schedule.

Explanatory note

Item [37] repeals provisions dealing with the membership and procedures of the Occupational Health and Safety Council.

1.2 Workers Compensation Act 1987 No 70

[1] Schedule 6, Part 4 Provisions relating to weekly payments of compensation

Omit "A regulation may not be made under this subclause except with the concurrence of the Advisory Council." from clause 6A.

Explanatory note

Item [1] repeals a provision that required the concurrence of the Advisory Council before a regulation could be made with respect to the operation of certain amendments to the provisions of the Act concerning commutation of liabilities.

[2] Schedule 6 Savings, transitional and other provisions

Insert after Part 18A of Schedule 6:

Part 18B Additional provisions consequent on enactment of Workers Compensation Legislation Amendment Act 2000

1 Abolition of Advisory Council and OHS Council

(1) In this clause:

former body means the Workers Compensation Advisory Council of New South Wales or the Occupational Health and Safety Council of New South Wales, constituted under the 1998 Act.

(2) The former bodies are abolished.

(3) A person who held office as a member of a former body immediately before its abolition ceases to hold office and is not entitled to any remuneration or compensation for loss of that office.

(4) Any such person is eligible (if otherwise qualified) to be appointed to the Council.

2 Membership of Rating Bureau

A person holding office as a member of the Rating Bureau under section 25 (1) (b) or (c) of the 1998 Act immediately before the substitution of the relevant paragraph by the *Workers Compensation Legislation Amendment Act 2000* is taken to have been duly appointed under the relevant paragraph as so substituted.

3 Industry Reference Groups

Any act, matter or thing done before the commencement of this clause by the Advisory Council under or for the purposes of Part 5 (Industry Reference Groups) of Chapter 2 of the 1998 Act (including the establishment of a system of Industry Reference Groups) is taken to have been done by the Authority.

4 Approved medical specialists

A list of medical specialists approved by the Advisory Council for the purposes of the definition of ***approved medical specialist*** in section 121 of the 1998 Act as at the commencement of this clause is taken to have been approved by the Authority.

Explanatory note

Item [2] provides for the formal abolition of the Advisory Council and the Occupational Health and Safety Council and enacts a savings provision to save the following:

(a) the current membership of the Rating Bureau, as a consequence of changes to the provisions for the appointment of its members,

(b) the current arrangements for Industry Reference Groups, as a consequence of the abolition of the Advisory Council and the transfer of its functions with respect to Industry Reference Groups to the WorkCover Authority,

(c) the current list of approved medical specialists, as a consequence of the abolition of the Advisory Council and the transfer of its functions with respect to the approval of medical specialists to the WorkCover Authority.

Schedule 2 Amendments relating to injury management pilot projects and market incentives

(Section 3)

Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 42A

Insert after section 42:

42A Injury management pilot projects

Schedule 5A has effect.

Explanatory note

Item [1] inserts a provision that gives effect to proposed Schedule 5A (see item [3]).

[2] Section 230A

Insert before section 231:

230A Premium Discount Schemes

(1) The Authority may establish a Premium Discount Scheme to encourage employers to improve occupational health and safety and injury management performance so as to minimise the financial and social costs of workplace injury.

(2) A Premium Discount Scheme can provide for any of the following:

(a) the conditions or requirements that must be met to be eligible to participate in the scheme,

(b) the awarding to employers who participate in the scheme of discounts on the premiums payable by them for policies of insurance under this Act or the 1987 Act,

(c) the approval of persons (***approved persons***) to exercise functions under the scheme, including the function of awarding premium discounts under the scheme to employers, and the suspension or withdrawal of any such approval,

(d) the regulation of the conduct and activities of approved persons and employers under the scheme,

(e) the review and measurement of the occupational health and safety and injury management performance of approved persons and employers participating in the scheme,

(f) the authorisation of different approved persons to award different levels of premium discounts, depending on such factors as the Authority determines.

(3) The regulations may make provision for or with respect to premium discount schemes.

(4) In particular (but without limiting the generality of subsection (3)) the regulations may do any of the following:

(a) make provision for or with respect to any of the matters provided for in subsection (2),

(b) provide for a review by the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* of specified decisions made by the Authority in connection with the operation of a Premium Discount Scheme,

(c) create offences punishable by a penalty not exceeding 50 penalty units.

(5) An insurance premiums order may include provision for or with respect to requiring the calculation of the premium payable by an employer for a policy of insurance under the 1987 Act to take account of any premium discount awarded to the employer under a Premium Discount Scheme.

(6) If the Authority so directs, the methodology to be used for the calculation of risk premiums (as referred to in section 159) in respect of a policy of insurance under this Act is to include provision to give effect to any premium discount awarded to an employer under a Premium Discount Scheme.

(7) The determination under section 164 of the premium payable by an employer for a policy of insurance under this Act is to give effect to any premium discount awarded to the employer under a Premium Discount Scheme.

Explanatory note

Item [2] inserts proposed section 230A which provides for the Authority to establish Premium Discount Schemes to encourage employers to improve occupational health and safety and injury management performance so as to minimise the financial and social costs of workplace injury. Among other things, a Premium Discount Scheme can provide for the awarding of discounts on workers compensation insurance premiums to employers who participate in the Scheme.

[3] Schedule 5A

Insert after Schedule 5:

Schedule 5A Injury management pilot projects

(Section 42A)

1 2 year pilot scheme

(1) This Schedule (except subclause (2)) operates for a 2 year period following the commencement of this Schedule.

(2) The effectiveness of this Schedule is to be evaluated by an independent person or body, chosen by the Authority by private tender, and the results of the evaluation are to be referred to the Law and Justice Committee of the Legislative Council which is to review the results and report to Parliament.

2 Definitions

In this Schedule:

employer's injury manager means the person for the time being appointed under this Schedule as injury manager for the group of employers of which the employer is a member.

injury management functions means:

(a) any function arising under Chapter 3 (Workplace injury management),

(b) any function that may be exercised in connection with dealing with and satisfying any claim against which an employer is indemnified under a policy of insurance,

(c) such other functions in connection with the operation of this Act or the 1987 Act or the regulations under those Acts as may be prescribed by the regulations for the purposes of this definition.

3 Appointment of injury manager for group of employers

(1) The Authority may, by order published in the Gazette, appoint a person as injury manager for the employers in a group of employers identified in the order as the group of employers to whom the order applies.

(2) A group of employers may be identified in an order by reference to employers in a geographical area or to employers engaged in a particular business or industry or may be identified in any other manner.

(3) The appointment of an injury manager may be made so as to apply in respect of all claims or injuries or be limited to apply in respect of a specified class or classes of claims or injuries, and may be made subject to specified terms and conditions.

(4) The Authority may by order in writing direct that an order under subclause (1) is not to apply to a specified employer or to a specified class of employers, and such a direction has effect accordingly.

4 Injury manager appointed as agent and attorney of employers and insurers

(1) An employer's injury manager is by this clause appointed as the agent and attorney of the employer, and of any insurer of the employer, in respect of such of the injury management functions of the employer or insurer as are specified in the order appointing the injury manager.

(2) As agent and attorney of an employer or insurer, an injury manager may exercise such of the rights and discharge such of the obligations of the employer and the insurer as may be necessary or convenient for the effectual exercise by the injury manager of the functions in respect of which the injury

manager is appointed agent and attorney of the employer or insurer.

(3) The functions of an injury manager under this Schedule are subject to:

(a) the terms and conditions of the appointment of the injury manager, and

(b) such directions as the Authority may give to the injury manager in writing from time to time.

(4) An injury manager may exercise rights and discharge obligations as agent of an employer in the name of the employer or in the injury manager's own name.

(5) When an injury manager is authorised under this Schedule to exercise any rights or discharge any obligations of an employer or insurer as agent and attorney, the employer or insurer is not entitled to exercise those rights or discharge those obligations, except with the consent of the injury manager or the Authority.

(6) The order appointing an injury manager may require that any specified reference in this Act, the 1987 Act, the regulations under those Acts or a policy of insurance to an insurer or to an employer is, in connection with the exercise of any functions of the injury manager under this Schedule, to be read as a reference to the injury manager.

(7) The appointment effected by this clause may be revoked only by order under this Schedule.

5 Disclosure of information

The regulations may make provision for or with respect to authorising the Authority to disclose information obtained by the Authority as a result of or in connection with the operation of this Schedule.

6 Funding

(1) The Authority may establish a fund (an ***injury management fund***) to be used for the payment of amounts by an injury manager in the performance of functions as agent and attorney of an employer or insurer.

(2) The Authority may, by direction in writing to an insurer, require the insurer to pay amounts into an injury management fund out of the insurer's statutory fund.

(3) The regulations may make provision for or with respect to the following matters in connection with injury management funds:

(a) requiring the payment of interest on and the recovery of overdue payments required to be made by insurers into an injury management fund,

(b) the functions of an injury manager in connection with the administration of an injury management fund,

(c) the winding up of any such fund and the payment into the statutory funds of insurers of amounts standing to the credit of the fund,

(d) the auditing of an injury management fund.

(4) The assets of the statutory fund of an insurer are authorised to be applied as required by or under this clause.

Explanatory note

Item [2] authorises the Authority to establish pilot projects under which the Authority will appoint an injury manager for the employers in a particular area or in a particular business or industry to act as agent and attorney for the employers and their workers compensation insurers in respect of the following functions:

(a) any function arising under Chapter 3 (Workplace injury management),

(b) any function that may be exercised in connection with dealing with and finalising any claim against which the employer is indemnified under a policy of insurance or satisfying any such claim or any judgment or award against which the employer is indemnified under a policy of insurance,

(c) such other functions in connection with the operation of the Act as may be prescribed by the regulations.

The functions of the injury manager will be specifically stated in the order appointing the injury manager and the power of the injury manager to act as agent and attorney of an insurer or employer will be limited to those functions.

Schedule 3 Amendments relating to claims procedures

(Section 3)

3.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 66 Manner of making claim for compensation

Insert after section 66 (2):

(2A) Once a claim for compensation (the ***initial claim***) in respect of injury or death has been duly made by a person in accordance with subsection (1) or (2), any further claim by the person for compensation in respect of the injury or death may be made by serving it on either the employer from whom compensation is claimed or the insurer who has indemnified the employer.

(2B) In subsection (2A), ***further claim*** includes:

(a) any claim by the person for compensation of a different kind from that claimed in respect of the injury or death by the initial claim, or

(b) any claim that is supplementary to or associated with the initial claim.

(2C) An insurer must notify the employer concerned when a further claim is made by serving it on the insurer if the claim:

(a) is for compensation under Division 4 (Compensation for non-economic loss) of Part 3 of the 1987 Act, or

(b) is a claim of a kind that is prescribed by the regulations for the purposes of this section.

(2D) The regulations may provide that in a specified class or classes of case a further claim must, despite subsection (2A), be served on the employer from whom the compensation is claimed.

Explanatory note

Item [1] allows an injured worker (who has made an initial claim for compensation through his or her employer) to make a claim for further payments in respect of the same injury (eg payment for permanent disability), or a claim that is supplementary to or associated with the initial claim, directly to the employer's insurer as an alternative to making it to the employer.

3.2 Workers Compensation Act 1987 No 70

Schedule 6, Part 9 Provisions relating to notice of injury and claims for compensation

Insert as clause 10 of Part 9 of Schedule 6:

10 Serving claims on insurer

(1) The amendments made to section 66 of the 1998 Act by the *Workers Compensation Legislation Amendment Act 2000* do not apply to a claim made before the commencement of those amendments.

(2) However, those amendments extend to a claim made after the commencement of those amendments where the initial claim referred to in the amendments was made before the commencement of those amendments.

Explanatory note

Clause 10 is a transitional provision that is consequential on the amendments made by this Schedule to section 66 of the 1998 Act which allow further claims for compensation (after the initial claim is made to the employer) to be made directly to the workers compensation insurer. The transitional provision extends those amendments to cases where the initial claim on the employer is made before the commencement of the amendments, and makes it clear that the amendment does not otherwise apply in respect of claims made before the amendments commence.

Schedule 4 Amendments relating to common law elections

(Section 3)

Workers Compensation Act 1987 No 70

[1] Section 151A Election—damages or "Table of disabilities" compensation

Omit section 151A (3) (b). Insert instead:

(b) by commencing proceedings in the Compensation Court to recover that permanent loss compensation or by accepting payment of that permanent loss compensation (in which case the person ceases to be entitled to recover damages in respect of the injury).

Explanatory note

Item [1] amends the provision of the 1987 Act that requires a person entitled to compensation to elect whether to claim permanent loss compensation under the Act or damages from the employer at common law. The amendment provides that the commencement of proceedings in the Compensation Court to recover permanent loss compensation under the Act is an election to claim that compensation which prevents the claimant from claiming common law damages from the employer.

[2] Section 151A (3A)

Insert after section 151A (3):

(3A) The amendment of a claim that is the subject of proceedings before the Compensation Court to include a claim for permanent loss compensation is (for the purposes of subsection (3) (b)) taken to constitute the commencement of proceedings in the Compensation Court to recover that permanent loss compensation.

Explanatory note

Item [2] provides that for the purposes of the amendment in item [1] the amendment of a claim before the Compensation Court to include a claim for permanent loss compensation constitutes the commencement of proceedings to recover that compensation.

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

Insert as clause 12 of Part 14 of Schedule 6:

12 Election to claim compensation—2000 amending Act

(1) The amendments made to section 151A by the *Workers Compensation Legislation Amendment Act 2000* apply in respect of injuries received before or after the commencement of those amendments, but do not apply in respect of the commencement of proceedings in the Compensation Court before that commencement.

(2) In a case in which proceedings in the Compensation Court are commenced before the commencement of those amendments:

(a) section 151A (3) (b) continues to apply as it was in force when the proceedings were commenced, and

(b) section 151A (3) (b) is taken to have been amended by replacing the words "or by the Compensation Court making an award in respect of that permanent loss compensation" with the words "or by the Compensation Court awarding that permanent loss compensation (whether by award, interim award or order)".

(3) A reference in this clause to the commencement of proceedings has the extended meaning given to that expression in section 151A (3) (b) by section 151A (3A).

Explanatory note

Item [3] inserts a transitional provision dealing with how the amendments made by items [1] and [2] apply in respect of injuries received before the amendments commence. Generally, the amendments apply to injuries received before or after the amendments commence but do not apply to the commencement of proceedings before the amendments commence.

Schedule 5 Amendments relating to contributory negligence in contract actions

(Section 3)

Workers Compensation Act 1987 No 70

[1] Section 151N Contributory negligence—generally

Insert after section 151N (1):

(1A) Part 3 (Amendment of doctrine of contributory negligence) of the *Law Reform (Miscellaneous Provisions) Act 1965* applies in respect of awards of damages as if a reference in that Part to fault included a reference to an act or omission that amounts to a breach of a contractual duty of care that is concurrent and co-extensive with a duty of care in tort.

Explanatory note

Item [1] extends the contributory negligence provisions of the *Law Reform (Miscellaneous Provisions) Act 1965* (with certain modifications made by section 151N of the 1987 Act) to an action to recover damages in a work injury case when the action is an action for breach of contract founded on a breach of a contractual duty of care. Those provisions provide that contributory negligence is not a defence in an action and that the damages to be awarded are to be reduced having regard to the claimant's share in the responsibility for the damage.

The amendment is in response to the High Court's decision in *Astley v Austrust Limited* [1999] HCA 6 that similar provisions in the law of South Australia applied only to claims for damages in tort and did not apply to claims founded on a breach of a contractual duty of care.

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

Insert as clause 13 of Part 14 of Schedule 6:

13 Contributory negligence in contract actions—2000 amending Act

The amendment made to section 151N by the *Workers Compensation Legislation Amendment Act 2000* applies in respect of injuries received before or after the commencement of the amendment, but does not apply in respect of:

(a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendment, or

(b) any court proceedings commenced before that commencement.

Explanatory note

Item [2] inserts a transitional provision that applies the amendment made by item [1] to injuries received before or after the commencement of the amendment except when an award, compromise or settlement of the claim has been made, or proceedings on the claim have been commenced, before that commencement.

Schedule 6 Amendments relating to disputes about liability

(Section 3)

Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 74 Insurers to give notice and reasons when liability disputed

Insert after section 74 (2):

(2A) In the case of a claim for compensation under this Act, a statement of reasons in a notice under this section is to indicate the provision of the workers compensation legislation on which the insurer relies to dispute liability.

(2B) A notice under this section must be expressed in plain language.

[2] Section 74 (3A)

Insert after section 74 (3):

(3A) The regulations may create offences in connection with any failure to comply with this section.

Note. A dispute as to liability to commence weekly payments within the requisite period after a claim for compensation is made must be notified in accordance with this section (See section 93 and the offence arising under section 94).

Explanatory note

Items [1] and [2] make further provision with respect to notices by insurers disputing liability in order to make the notices more informative and to provide for criminal sanctions.

[3] Section 93 Claims for weekly compensation—commencement of payments

Insert "in accordance with section 74" after "disputes liability" in section 93 (2).

Explanatory note

Section 93 (1) requires weekly payments of compensation to commence as soon as practicable (but in any case within 21 days) after a claim is made unless the person on whom the claim is made disputes liability. The amendment requires the person to comply with the requirements of section 74 when disputing liability (requiring the insurer to give notice of a disputed claim containing reasons and other relevant particulars). Accordingly, if an appropriate notice is not given for disputing a claim, the offence under section 94 of not commencing weekly payments within the time required will apply (maximum penalty: 50 penalty units).

Schedule 7 Amendments relating to medical reports

(Section 3)

Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 127 Admissibility of medical reports

Insert after section 127 (2):

(2A) Subsection (1) is also subject to any provision of the rules of the Compensation Court or the regulations relating to the number of medical reports that may be admitted in evidence in connection with a claim or any aspect of a claim.

[2] Section 130 Rules of Court and regulations with respect to medical evidence

Insert after section 130 (b):

(b1) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular:

- (i) limiting the number of medical reports that may be produced in connection with the conciliation of a dispute, and
- (ii) limiting the number of medical reports that may be admitted in evidence in proceedings before the Compensation Court, and
- (iii) limiting the medical reports that may be so admitted in evidence to those produced in connection with the conciliation of the dispute concerned, and
- (iv) excluding the costs of excess medical reports from the costs recoverable in connection with a claim (whether the reports were obtained for the purposes of making or dealing with a claim or for the purposes of conciliation or court proceedings), and

[3] Section 130 (2)

Insert at the end of section 130:

(2) This section only authorises rules of the Compensation Court in connection with proceedings before that Court or matters referred to a medical panel or medical referee.

Explanatory note

The amendments will enable the regulations and (if appropriate) rules of court to limit the number of medical reports in respect of a claim for compensation or any particular aspect of the claim. Provision will be able to be made to limit the number of medical reports produced for conciliation or court proceedings and to limit the medical reports in court proceedings to those produced in the relevant conciliation proceedings. In addition, provision will be able to be made to exclude the cost of excess reports from an award for costs in connection with a workers compensation claim. Section 113 (3) also authorises the making of regulations that prevent legal practitioners from being paid or recovering costs incurred in obtaining excess medical reports that cannot be used for the purpose for which they were obtained.

Schedule 8 Amendments relating to information exchange

(Section 3)

8.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 79A

Insert after section 79:

79A Exchange of information before conciliation

(1) A party (***the applicant***) to a dispute who refers the dispute for conciliation must, at the time it is referred, provide the following material to the Principal Conciliator:

(a) a list identifying the documents on which the applicant proposes to rely in connection with the conciliation of the dispute,

(b) a list identifying all other documents that the applicant has that are relevant to the dispute,

(c) such other documents or information as the regulations may require the applicant to provide.

(2) The applicant must also provide that material to the other party (***the respondent***) to the dispute at or before the time the dispute is referred for conciliation.

(3) Within 7 days after the applicant provides that material to the respondent, the respondent must provide the following material to the applicant and to the Principal Conciliator:

(a) a list identifying the documents on which the respondent proposes to rely in connection with the conciliation of the dispute,

(b) a list identifying all other documents that the respondent has that are relevant to the dispute,

(c) such other documents or information as the regulations may require the respondent to provide.

(4) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(5) A document that a party to a dispute has failed to identify in a list provided as required by this section (being a document that the person has when the list is required to be provided) is not admissible on behalf of the party in proceedings on such a dispute before a conciliator or the Compensation Court.

(6) Subsections (4) and (5) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.

(7) The regulations may provide for exceptions to subsection (5). In particular, the regulations may authorise a conciliator or the Compensation Court to permit the admission in proceedings before the conciliator or Court in specified circumstances of a document that would otherwise be not admissible under that subsection.

(8) If a conciliator is satisfied that a party to a dispute has failed without reasonable excuse to comply with a requirement of this section, the conciliator may:

(a) refer the matter to the Authority, and

(b) note the matter in a conciliation certificate issued by the conciliator in respect of the dispute (together with details of the documents to which the failure relates).

Note. Examples of the documents to which this section applies are medical reports, investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.

Explanatory note

Item [1] requires the parties to the conciliation of a dispute about compensation to provide a list of the evidence on which they propose to rely (and other relevant evidence that they have) when the dispute is referred for conciliation. The failure by a party to provide the required evidence lists will be an offence and will result in the party being unable to rely on that evidence to dispute liability or to use that evidence in conciliation proceedings or proceedings in the Compensation Court.

[2] Section 80 Power of conciliator to require information

Insert "or to another party to the dispute" after "to the conciliator" wherever occurring in section 80 (1) (a) and (b).

Explanatory note

Item [2] broadens the existing power of a conciliator to order a party to conciliation of a dispute to provide documents or information to the conciliator to include a power to order that the documents or information be provided to another party to the dispute also.

[3] Section 80 (6)

Insert "or a conciliator" after "Court" where firstly occurring.

[4] Section 80 (6)

Insert "or the conciliator" after "Court" where secondly occurring.

Explanatory note

Items [3] and [4] extend to proceedings before a conciliator the prohibition against admitting evidence in proceedings before the Compensation Court if a party has failed to produce the evidence when required to do so by direction of a conciliator.

[5] Section 81A

Insert after section 81:

81A Parties to conciliation to provide copies of documents before conciliation conference

(1) At least 7 days before a conciliation conference on the dispute, each party to the dispute must provide to the other party and to the conciliator a copy of any documents on which the party proposes to rely in connection with the conciliation of the dispute.

(2) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) Subsection (2) does not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.

(4) Any document that a party has that is not provided by the party as required by this section is not admissible on behalf of the party in proceedings on such a dispute before a conciliator or the Compensation Court.

(5) The regulations may provide for exceptions to subsection (4). In particular, the regulations may authorise a conciliator or the Compensation Court to permit the admission in proceedings before the conciliator or Court in specified circumstances of a document that would otherwise be not admissible under that subsection.

(6) If a conciliator is satisfied that a party to a dispute has failed without reasonable excuse to comply with a requirement of this section, the conciliator may:

(a) refer the matter to the Authority, and

(b) note the matter in a conciliation certificate issued by the conciliator in respect of the dispute (together with details of the documents to which the failure relates).

(7) Nothing in this section affects any power of the conciliator under section 80 (Power of conciliator to require information) or 81 (Power of conciliator to provide information and documents to a party).

Note. Examples of the documents to which this section applies are medical reports, investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.

Explanatory note

Item [5] requires a party to the conciliation of a dispute to provide the other party with a copy of the documentary evidence on which the party proposes to rely at conciliation at least 7 days before the conciliation conference. A failure by a party to provide that evidence will result in the party being unable to rely on that evidence to dispute liability and being unable to use that evidence in conciliation proceedings or proceedings in the Compensation Court.

8.2 Workers Compensation Act 1987 No 70

Schedule 6, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

Insert as clause 6 of Part 10 of Schedule 6:

6 2000 amending Act—providing copies of evidence before conciliation

Sections 79A and 81A of the 1998 Act do not apply to a dispute referred for conciliation before the commencement of those sections.

Explanatory note

The amendment inserts a transitional provision that makes it clear that the new provisions inserted by this Schedule do not apply in respect of the conciliation of disputes referred for conciliation before the new provisions commence.

Schedule 9 Amendments relating to liability involving multiple managed fund insurers

(Section 3)

Workers Compensation Act 1987 No 70

[1] Section 18 Special insurance provisions relating to occupational diseases

Omit section 18 (3). Insert instead:

(3) The provisions of this section are subject to section 22D.

Explanatory note

Item [1] amends section 18 as a consequence of the enactment of proposed section 22D by item [4].

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

Omit "The person" from section 22A (5).

Insert instead "Subject to section 22D, the person".

Explanatory note

Item [2] amends section 22A (5) as a consequence of the enactment of proposed section 22D by item [4].

[3] Section 22A (8)

Omit the subsection.

Explanatory note

Item [3] omits section 22A (8) as a consequence of the enactment of proposed section 22D by item [4].

[4] Section 22D

Insert after section 22C:

22D Provisions concerning liability involving multiple managed fund insurers

(1) This section applies to an injury or series of injuries:

(a) to which any one or more of sections 15, 16, 17 and 22 apply or are alleged to apply, and

(b) assuming that compensation is payable in relation to that injury or series of injuries, more than one managed fund insurer is or may become liable to make or contribute to a payment of compensation in accordance with any one or more of those sections,

and so applies whether or not any other insurer is or may become liable to make or contribute to such a payment, and whether or not any employer is or may become liable as a self-insurer, in respect of that injury or series of injuries.

(2) Subject to the regulations, any compensation or contribution that would (but for this subsection) be payable in accordance with any one or more of sections 15, 16, 17 and 22 by managed fund insurers in relation to an injury or series of injuries is to be paid by the primary insurer:

(a) with no contribution from any other managed fund insurer (or from any employer insured by a managed fund insurer) under section 15, 16 or 17, and

(b) with no apportionment of liability between managed fund insurers (or between any employers to the extent to which they are insured by managed fund insurers) under section 22.

(3) Subject to the regulations, in and for the purposes of any proceedings under this Act or the 1998 Act in relation to an injury or series of injuries, other than proceedings under Division 2 of Part 7:

(a) the primary insurer is, alone among the managed fund insurers, a party to the proceedings, and

(b) the primary insurer is subrogated to the rights of:
   (i) the other managed fund insurers who (but for paragraph (a)) would have been party to the proceedings, and
   (ii) any employers insured by those other managed fund insurers,

   in respect of that injury or series of injuries, and

(c) in the case of an injury or series of injuries in respect of which:
   (i) an employer that is a self-insurer, or
   (ii) an insurer that is not a managed fund insurer,

   is or may become liable to make or contribute to a payment of compensation, the managed fund insurers are taken to be a single insurer.

(4) The primary insurer has, by operation of this subsection:

(a) all of the powers, authorities, duties and functions, and all of the protections and immunities, that, by or under this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, are conferred or imposed on an insurer, or

(b) all of the powers, authorities, duties and functions, and all of the protections and immunities, that, by or under this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, are conferred or imposed on an employer, to the extent to which they may, under this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, attach to or be exercised or performed by an insurer,

in relation to an injury or series of injuries.

(5) Without limiting subsection (4):

(a) the primary insurer may make any request or requirement of an employer or worker that an insurer is empowered to make under the provisions of this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, and

(b) the employer or worker to whom such a request or requirement is made has the same obligations to comply with the request or requirement as if it had been made

by an insurer under the provisions of this Act or the 1998 Act, the regulations under those Acts or a policy of insurance,

and the provisions of this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, as the case may be, apply accordingly.

(6) If the primary insurer gives a written direction:

(a) to a managed fund insurer, or

(b) to an employer who is, or has at any relevant time, been insured by the primary insurer or any other managed fund insurer,

in relation to an injury or series of injuries, being a direction requiring the production of any document or the provision of any information in relation to the injury or series of injuries, the insurer or employer to whom the direction is given must comply with the direction, within such reasonable time as is specified in the direction, to the fullest extent to which it is practicable for the insurer or employer to do so.

Maximum penalty: 50 penalty units.

(7) For the purposes of section 243 of the 1998 Act, the production of any document or the provision of any information to a managed fund insurer by an employer or another managed fund insurer, in connection with the operation of this section, is taken to have been made in connection with the administration or execution of this Act.

(8) The regulations may provide for the modification of the other provisions of this Act or the 1998 Act with respect to any matter arising under this section.

(9) For the purposes of this section, a managed fund insurer is liable to make or contribute to a payment of compensation if, under a policy of insurance, it is liable to indemnify an employer in relation to the making of, or contribution to, such a payment.

(10) Subject to the regulations:

(a) anything done by or in relation to a managed fund insurer (other than the primary insurer) for the purposes of this Act or the 1998 Act on the basis that the insurer

is the primary insurer is taken to have been done by or in relation to the primary insurer, an

(b) anything done by or in relation to the primary insurer for the purposes of this Act or the 1998 Act on the basis that this section applies to an injury or series of injuries is, if it is subsequently determined that this section does not apply to that injury or series of injuries, taken to have been done by or in relation to the managed fund insurer by or in relation to whom it would (but for this section) have been permitted or required to be done.

(11) For the purpose of calculating the insurance premiums payable by employers insured by managed fund insurers, their claims histories are to be determined, subject to the regulations, on the basis of the following assumptions:

(a) that the contributions that (but for this section) would have become payable by them are payable, without the need for a determination or agreement as to the amount of any such contribution,

(b) that the liability that (but for this section) would have been apportioned between any employers or managed fund insurers under section 22 has been apportioned, without the need for a determination or agreement as to any such apportionment.

(12) In this section:

managed fund insurer means an insurer to which Division 4 of Part 7 applies.

primary insurer, in relation to an injury or series of injuries, means:

(a) unless and until some other managed fund insurer is designated as the primary insurer under paragraph (b), the managed fund insurer under the most recent policy of insurance with respect to that injury or those injuries, or

(b) if in a particular case or class of cases the Authority designates some other managed fund insurer as the primary insurer for the purposes of this section (being a managed fund insurer under a policy of insurance with

respect to that injury or any of those injuries), the managed fund insurer so designated.

proceedings, in relation to an injury or series of injuries, includes anything done pursuant to a claim made under this Act or the 1998 Act in relation to the injury or series of injuries, including (without limitation) any negotiation and conciliation with respect to the claim.

Explanatory note

Item [4] inserts a new section 22D into the 1987 Act. The new section applies in situations in which there are multiple managed fund insurers for one or more injuries, and allows all of the insurers to be represented by one of them (the ***primary insurer***). This includes situations where the managed fund insurers cover either different employers or the same employer at different times. The new section then makes provision (in a similar way to current section 22A (8)) for the payment of compensation in such situations, both where liability is disputed and where liability is undisputed.

Under this arrangement, the primary insurer's role will include the duty to properly represent the interests of relevant employers insured by the other managed fund insurers, as well as the interests of the employer actually insured by the primary insurer. Any compensation that is payable to the worker in those circumstances (and any related contributions) should be paid by, and any negotiations or defence of proceedings required by the claim should be conducted by, the primary insurer in the name of the relevant employer or employers.

The extended role given by the amendments to the primary insurer applies only in relation to periods of insurance covered by managed fund insurers, so that if, for example, an employer was at another time covered by a non-managed fund insurer or operating as a self-insurer, that insurer's or self-insurer's separate right of representation is not affected.

As with the current procedure, there is to be no actual apportionment between managed fund insurers (and the employers insured by them) but merely a notional apportionment for the purpose of calculating the claims histories of the employers concerned. However, apportionment (or contributions) involving other parties will still be the subject of agreement by the primary insurer or determination under normal provisions. Employers whose interests in respect of a claim are represented by the primary insurer will continue to be able to appeal under existing provisions against their insurer's premium assessment.

The primary insurer's role will apply even at the stage when it is only alleged (by the worker's claim or by an insurer or self-insurer following the claim) that 2 or more managed fund insurers are concurrently liable in respect of the claim. That is because it is sometimes not possible to establish whether the provisions relating to concurrent liability (section 15, 16, 17 or 22 of the 1987 Act) apply until court proceedings are finalised. The proposed provisions aim to avoid multiple representation of managed fund insurers in such proceedings.

[5] Section 68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

Insert after section 68B (1):

(1A) Subsection (1) extends to any liability for compensation that, but for section 22D, would be apportionable under section 22.

Explanatory note

Item [5] amends section 68B of the 1987 Act so as to extend subsection (1) of that section to any liability for compensation that, but for proposed section 22D, would be apportionable under section 22.

[6] Schedule 6, Part 2 Provisions relating to liability for compensation

Insert as clause 10 of Part 2 of Schedule 6:

10 Claims involving multiple managed fund insurers

(1) Subject to subclauses (2) and (3), the provisions of section 22D and 68B (1A), as inserted by the *Workers Compensation Legislation Amendment Act 2000*, extend:

(a) to any injury received before the commencement of those provisions, and

(b) to any series of injuries where the first injury was received before the commencement of those provisions,

and (in the case of a series of injuries) so extend even if the first such injury was received before the commencement of this Act.

(2) The provisions of section 22D (as so inserted) do not apply to or in respect of an injury (other than one of a series of injuries) if, before the commencement of those provisions:

(a) a managed fund insurer has entered into a contribution agreement under section 15 or 16 in relation to the injury, or

(b) a worker or other person has received or agreed to receive compensation in relation to the injury, or

(c) court proceedings have been commenced or determined in relation to the injury.

(3) The provisions of section 22D and 68B (1A) (as so inserted) do not apply to or in respect of any series of injuries if, before the commencement of those provisions:

(a) a managed fund insurer has entered into an apportionment agreement under section 22 in relation to that series of injuries, or

(b) a worker or other person has received or agreed to receive compensation in respect of any matter referred to in section 22 (1) (a), (b) or (c) resulting from that series of injuries, or

(c) court proceedings have been commenced or determined in respect of any matter referred to in section 22 (1) (a), (b) or (c) resulting from that series of injuries.

Explanatory note

Item [6] inserts a transitional provision to apply the amendment made by this Schedule to injuries arising before the commencement of the amendments.

Schedule 10 Amendments relating to recovery from directors of uninsured corporations

(Section 3)

10.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 146 Recovery of double premiums from employer not obtaining policy of insurance

Insert after section 146 (7):

(7A) For the purposes of subsection (7), a court that makes a finding that an employer is guilty of an offence under section 144 without proceeding to a conviction is taken to have convicted the employer of the offence.

Explanatory note

Section 146 of the 1998 Act entitles the Authority to recover from an employer who fails to take out workers compensation insurance twice the amount of premium that would have been payable. Subsection (7) allows a court that convicts an employer for the offence of failing to insure to order the employer to pay the Authority the amount that the Authority is entitled to recover. The amendment made by item [1] provides that for this purpose a finding that a person is guilty of that offence without proceeding to a conviction is considered to be a conviction for the offence.

[2] Section 146A

Insert after section 146:

146A Recover from directors of corporation not obtaining policy of insurance

(1) If the Authority is entitled to recover an amount from a corporation under section 146 (even if the corporation has ceased to exist) and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.

(2) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.

(3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at any time during the period in respect of which the corporation failed to obtain or maintain in force the policy of insurance to which the entitlement of the Authority relates (whether or not the corporation has been proceeded against or convicted of an offence in respect of that failure).

(4) A person is not a culpable director of a corporation if the person establishes that:

(a) the corporation failed to obtain or maintain the policy of insurance concerned without the person's knowledge, or

(b) the person was not in a position to influence the conduct of the corporation in relation to that failure, or

(c) the person, being in such a position, used all due diligence to prevent the failure by the corporation.

(5) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.

(6) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

Explanatory note

Section 144 of the Act requires employers to obtain and maintain workers compensation insurance. If an employer fails to do so, section 146 entitles the Authority to recover from the employer double the insurance premiums evaded by the employer. Item [2] inserts a new provision that will enable the Authority to recover those double premiums from the directors of the employer when the employer is a corporation and the amount is not recoverable from the corporation.

[3] Section 171 Employers evading payment of correct premiums

Omit section 171 (1). Insert instead:

(1) If the Authority finds, having regard to information obtained under section 170 or otherwise, an amount to be due and payable by an employer to an insurer as a premium or balance of premium in respect of the issue or renewal of a policy of insurance (whether or not the policy is still in force), the Authority may order the employer to pay that amount to the insurer.

Explanatory note

Item [3] restates the provision of the Act that authorises the Authority to order an employer to pay an insurer an amount that the Authority determines is due and payable as premium or balance of premium under a policy of insurance, so as to remove the requirement that an application for the order be made to the Authority by the insurer.

[4] Section 171 (5A)–(5E)

Insert after section 171 (5):

(5A) In the absence of information that would enable the Authority to accurately determine the premium that would have been payable for the issue or renewal of a particular policy of insurance, the following provisions have effect:

(a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority),

(b) the Authority's estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made,

(c) if the Authority's estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.

(5B) In determining or estimating a premium for the purposes of this section, the Authority is required to use the methodology approved by the Authority under this Chapter for the calculation of risk premiums (for the purpose of determining or estimating the risk premium component of the premium) and to then add to that risk premium amount such amount as the Authority considers appropriate (by way of notional insurer loadings and levies and other charges notionally payable by an insurer) to result in a total premium that fully funds the liabilities to which the premium relates.

(5C) A court that convicts an employer of an offence under section 169A (Giving false information for premium calculation) may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the matter to which the offence relates. For the purposes of this subsection, a court that makes a finding that an employer is guilty of an offence under section 169A without proceeding to a conviction is taken to have convicted the employer of the offence.

(5D) Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) and is to be dealt with accordingly.

(5E) A Local Court cannot order the payment of an amount under subsection (5C) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.

Explanatory note

Section 171 (4) of the 1998 Act entitles the Authority to recover from an employer double the amount of insurance premiums that are evaded by the employer by providing the insurer with false or misleading information to be used to calculate premium. Item [4] inserts new provisions to facilitate recovery of this amount. The new provisions provide as follows:

(a) the Authority will be entitled to make an estimate of the premium that should have been paid in the case,

(b) that estimate is presumed to be accurate and cannot be challenged on the basis that insufficient information was available but can be challenged by providing information that allows a more accurate estimate to be made,

(c) if the Authority's estimate is successfully challenged and some other estimate is substituted, the recovery proceedings are to continue on the basis of the substituted assessment,

(d) a court that convicts a person of providing false or misleading information or making a false declaration in connection with the provision of premium calculation information can order the convicted person to pay the Authority the amount that the Authority would be entitled to recover (and for this purpose a finding of guilt without proceeding to conviction is considered to be a conviction).

[5] Section 171A

Insert after section 171:

171A Recovery from directors of corporation evading payment of correct premium

(1) If the Authority is entitled to recover an amount from a corporation under section 171 (4) (even if the corporation has ceased to exist) and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.

(2) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.

(3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at the time that the false or misleading information to which the entitlement of the Authority relates was provided to the insurer concerned (whether or not the corporation has been proceeded against or convicted of an offence in respect of the provision of that information).

(4) A person is not a culpable director of a corporation if the person establishes that:

(a) the person did not know that the information provided by the corporation was false or misleading in a material particular, or

(b) the person was not in a position to influence the conduct of the corporation in relation to the provision of false or misleading information, or

(c) the person, being in such a position, used all due diligence to prevent the provision by the corporation of false or misleading information.

(5) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.

(6) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

(7) This section does not apply to an entitlement of the Authority that arises from the provision of false or misleading information by a corporation before the commencement of this section.

Explanatory note

Section 171 (4) of the 1998 Act entitles the Authority to recover from an employer double the amount of insurance premiums that are evaded by the employer by providing the insurer with false or misleading information to be used to calculate premium. Item [5] inserts a new provision that will enable the Authority to recover the amount from the directors of the employer when the employer is a corporation and the amount is not recoverable from the corporation.

10.2 Workers Compensation Act 1987 No 70

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

Insert after section 156 (6):

(6A) For the purposes of subsection (6), a court that makes a finding that an employer is guilty of an offence under section 155 without proceeding to a conviction is taken to have convicted the employer of the offence.

Explanatory note

Section 156 of the 1987 Act entitles the Authority to recover from an employer who fails to take out workers compensation insurance twice the amount of premium that would have been payable. Subsection (6) allows a court that convicts an employer for the offence of failing to insure to order the employer to pay the Authority the amount that the Authority is entitled to recover. Item [1] provides that for this purpose a finding that a person is guilty of that offence without proceeding to a conviction is considered to be a conviction for the offence.

[2] Section 156B

Insert after section 156A:

156B Recovery from directors of corporation not obtaining policy of insurance

(1) If the Authority is entitled to recover an amount from a corporation under section 156 (even if the corporation has ceased to exist) and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.

(2) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.

(3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at any time during the period in respect of which the corporation failed to obtain or maintain in force the policy of insurance to which the entitlement of the Authority relates (whether or not the corporation has been proceeded against or convicted of an offence in respect of that failure).

(4) A person is not a culpable director of a corporation if the person establishes that:

(a) the corporation failed to obtain or maintain the policy of insurance concerned without the person's knowledge, or

(b) the person was not in a position to influence the conduct of the corporation in relation to that failure, or

(c) the person, being in such a position, used all due diligence to prevent the failure by the corporation.

(5) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.

(6) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

(7) This section does not apply to an entitlement of the Authority under section 156 that arises from the failure by a corporation to obtain or maintain insurance in respect of any period before the commencement of this section.

Explanatory note

Section 155 of the 1987 Act requires employers to obtain and maintain workers compensation insurance. If an employer fails to do so, section 156 entitles the Authority to recover from the employer double the insurance premiums evaded by the employer. Item [2] inserts a new provision that will enable the Authority to recover those double premiums from the directors of the employer when the employer is a corporation and the amount is not recoverable from the corporation.

[3] Section 175 Employers evading payment of correct premiums

Omit section 175 (1). Insert instead:

(1) If the Authority finds, having regard to information obtained under section 174 or otherwise, an amount to be due and payable by an employer to an insurer as a premium or balance of premium in respect of the issue or renewal of a policy of insurance (whether or not the policy is still in force), the Authority may order the employer to pay that amount to the insurer.

Explanatory note

Item [3] restates the provision of the Act that authorises the Authority to order an employer to pay an insurer an amount that the Authority determines is due and payable as premium or balance of premium under a policy of insurance, so as to remove the requirement that an application for the order be made to the Authority by the insurer.

[4] Section 175 (6)–(7B)

Insert after section 175 (5):

(6) In the absence of information that would enable the Authority to accurately determine the premium that would have been payable for the issue or renewal of a particular policy of insurance, the following provisions have effect:

(a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority),

(b) the Authority's estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the

provision of information that enables a more accurate estimate to be made,

(c) if the Authority's estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.

(7) A court that convicts an employer of an offence under section 173A (Giving false information for premium calculation) may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the matter to which the offence relates. For the purposes of this subsection, a court that makes a finding that an employer is guilty of an offence under section 173A without proceeding to a conviction is taken to have convicted the employer of the offence.

(7A) Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) and is to be dealt with accordingly.

(7B) A Local Court cannot order the payment of an amount under subsection (7) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.

Explanatory note

Section 175 (4) of the 1987 Act entitles the Authority to recover from an employer double the amount of insurance premiums that are evaded by the employer by providing the insurer with false or misleading information to be used to calculate premium. Item [4] inserts new provisions to facilitate recovery of this amount. The new provisions provide as follows:

(a) the Authority will be entitled to make an estimate of the premium that should have been paid in the case,

(b) that estimate is presumed to be accurate and cannot be challenged on the basis that insufficient information was available but can be challenged by providing information that allows a more accurate estimate to be made,

(c) if the Authority's estimate is successfully challenged and some other estimate is substituted, the recovery proceedings are to continue on the basis of the substituted assessment,

(d) a court that convicts a person of providing false or misleading information or making a false declaration in connection with the provision of premium calculation information can order the convicted person to pay the Authority the amount that the Authority would be entitled to recover (and for this purpose a finding of guilt without proceeding to conviction is considered to be a conviction).

[5] Section 175A

Insert after section 175:

175A Recovery from directors of corporation evading payment of correct premium

(1) If the Authority is entitled to recover an amount from a corporation under section 175 (4) (even if the corporation has ceased to exist) and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.

(2) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.

(3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at the time that the false or misleading information to which the entitlement of the Authority relates was provided to the insurer concerned (whether or not the corporation has been proceeded against or convicted of an offence in respect of the provision of that information).

(4) A person is not a culpable director of a corporation if the person establishes that:

(a) the person did not know that the information provided by the corporation was false or misleading in a material particular, or

(b) the person was not in a position to influence the conduct of the corporation in relation to the provision of false or misleading information, or

(c) the person, being in such a position, used all due diligence to prevent the provision by the corporation of false or misleading information.

(5) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.

(6) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

(7) This section does not apply to an entitlement of the Authority that arises from the provision of false or misleading information by a corporation before the commencement of this section.

Explanatory note

Section 175 (4) of the 1987 Act entitles the Authority to recover from an employer double the amount of insurance premiums that are evaded by the employer by providing the insurer with false or misleading information to be used to calculate premium. Item [5] inserts a new provision that will enable the Authority to recover the amount from the directors of the employer when the employer is a corporation and the amount is not recoverable from the corporation.

Schedule 11 Amendments relating to recovery of inspection costs

(Section 3)

11.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 170A

Insert after section 170:

170A Recovery of inspection costs of Authority or insurer when wages understated

(1) When an inspection by an insurer or a person authorised by the Authority reveals a significant understatement of wages by an employer, the insurer or Authority is entitled to recover from the employer the costs incurred by the Authority or insurer in connection with that inspection.

(2) An inspection is considered to reveal a significant understatement of wages by an employer if the inspection reveals that the employer has, in connection with the calculation of the premium or balance of premium payable for the issue or renewal of a policy of insurance, understated by 25% or more the wages paid to workers employed by the employer.

(3) The amount that the Authority or insurer is entitled to recover is recoverable in a court of competent jurisdiction as a debt due to the Authority or insurer.

(4) A certificate issued by the Authority certifying as to the costs incurred by the Authority or an insurer in connection with such an inspection is evidence of the matters certified.

(5) This section does not apply in respect of inspections carried out before the commencement of this section.

(6) In this section:

inspection means an inspection or audit of an employer's records carried out under a provision of this Act or the regulations or of a policy of insurance.

Explanatory note

Proposed section 170A provides for the Authority or an insurer to recover the costs of inspecting or auditing the records of an employer if the inspection or audit reveals that the employer has, in connection with the issue or renewal of a workers compensation insurance policy under the 1998 Act, understated the wages paid to the employer's workers by 25% or more.

11.2 Workers Compensation Act 1987 No 70

Section 174A

Insert after section 174:

174A Recovery of inspection costs of Authority or insurer when wages understated

(1) When an inspection by an insurer or a person authorised by the Authority reveals a significant understatement of wages by an employer, the insurer or Authority is entitled to recover from the employer the costs incurred by the Authority or insurer in connection with that inspection.

(2) An inspection is considered to reveal a significant understatement of wages by an employer if the inspection reveals that the employer has, in connection with the calculation of the premium or balance of premium payable for the issue or renewal of a policy of insurance, understated by 25% or more the wages paid to workers employed by the employer.

(3) The amount that the Authority or insurer is entitled to recover is recoverable in a court of competent jurisdiction as a debt due to the Authority or insurer.

(4) A certificate issued by the Authority certifying as to the costs incurred by the Authority or an insurer in connection with such an inspection is evidence of the matters certified.

(5) This section does not apply in respect of inspections carried out made before the commencement of this section.

(6) In this section:

inspection means an inspection or audit of an employer's records carried out under a provision of this Act or the regulations or of a policy of insurance.

Explanatory note

Proposed section 174A provides for the Authority or an insurer to recover the costs of inspecting or auditing the records of an employer if the inspection or audit reveals that the employer has, in connection with the issue or renewal of a workers compensation insurance policy under the 1987 Act, understated the wages paid to the employer's workers by 25% or more.

Schedule 12 Amendments relating to late payment fees on unpaid insurance premiums

(Section 3)

12.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 171 Employers evading payment of correct premiums

Omit "as from the date it first became due to be paid" from section 171 (2). Insert instead "as from the date determined by the Authority as the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer".

Explanatory note

Section 171 (1) of the Act currently provides that the Authority may order an employer to pay to the insurer the amount of any premium or balance of premium due and payable under a policy of insurance. Section 171 (2) requires a late payment fee to be paid on the amount that the Authority orders be paid. Item [1] makes it clear that the calculation of late payment fee dates from when the premium for the insurance first became payable to the insurer (and not from when the Authority orders that the amount unpaid be paid).

[2] Section 171 (4)

Insert "plus the late payment fee provided for by subsection (4A)" after "twice that amount".

[3] Section 171 (4A)

Insert after section 171 (4):

(4A) The late payment fee at the rate for the time being in force under section 167 is payable under subsection (4) as from the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer.

Explanatory note

Section 171 (4) of the Act currently allows the Authority to recover from an employer who evades payment of the correct premium on a workers compensation insurance policy by providing false information twice the amount of premium evaded. Items [2] and [3] require the payment of a late payment fee on the amount that the Authority can recover, with the late payment fee dating from when the evaded premium first became due and payable.

12.2 Workers Compensation Act 1987 No 70

[1] Section 175 Employers evading payment of correct premiums

Omit "as from the date it first became due to be paid" from section 175 (2). Insert instead "as from the date determined by the Authority as the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer".

Explanatory note

Section 175 (1) of the Act currently provides that the Authority may order an employer to pay to the insurer the amount of any premium or balance of premium due and payable under a policy of insurance. Section 175 (2) requires interest to be paid on the amount that the Authority orders be paid. Item [1] makes it clear that the calculation of interest dates from when the premium or balance of premium originally became payable to the insurer (and not from when the Authority orders that it be paid).

[2] Section 175 (4)

Insert "plus the late payment fee provided for by subsection (4A)" after "twice that amount".

[3] Section 175 (4A)

Insert after section 175 (4):

(4A) The late payment fee at the rate for the time being in force under section 172 is payable under subsection (4) as from the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer.

Explanatory note

Section 175 (4) of the Act currently allows the Authority to recover from an employer who evades payment of the correct premium on a workers compensation insurance policy by providing false information twice the amount of premium evaded. Items [2] and [3] require the payment of a late payment fee on the amount that the Authority can recover, with the late payment fee dating from when the evaded premium first became due and payable.

Schedule 13 Amendments relating to certificates of currency with respect to insurance

(Section 3)

13.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 155A

Insert after section 155:

155A Certificate of currency

(1) In this section:

certificate of currency means a certificate issued to an employer by the insurer under a policy of insurance obtained by the employer that certifies the period (not exceeding 4 months or such other period as may be prescribed by the regulations) from the date of its issue during which the employer is insured under the policy, being a certificate that:

(a) is in the form (if any) approved by the Authority, and

(b) states the nature of the business and the number of workers of the employer, and the amount of the wages estimated to be payable by the employer, in respect of which the premium for the policy was determined by the insurer, and

(c) states such other matters as the Authority may direct from time to time by notice in writing to insurers.

(2) An employer who is required to obtain a policy of insurance must, within 5 days of a request to do so by a person authorised under this section to make the request, produce a certificate of currency for inspection by the person that certifies that the employer is insured under the policy at that time.

Maximum penalty: 50 penalty units.

(3) The following persons are authorised to request an employer to produce the employer's certificate of currency:

(a) an authorised officer (within the meaning of section 238) or any other officer of the Authority authorised by the Authority to make such a request,

(b) an authorised industrial officer (within the meaning of Part 7 of Chapter 5 of the *Industrial Relations Act 1996*),

(c) any person who has, in the course of or for the purposes of the person's trade or business, contracted with the employer for the employer to carry out the whole or part of any work that the person has undertaken, or who proposes to enter into such a contract.

Note. Section 20 of the 1987 Act makes a principal liable to pay compensation for injured workers of a contractor if the contractor has not taken out a policy of insurance.

(4) The insurer under a current policy of insurance must, at the request of the employer insured under the policy, issue to the employer a certificate of currency with respect to the policy free of charge. The insurer may refuse to issue the certificate if any premium (or instalment of premium) for the policy is due and payable pursuant to a written demand for payment and has not been paid, or the employer is otherwise in default under the policy.

(5) A person who is insured under a policy of insurance at the time a request is made under subsection (2) for the production of a certificate of currency does not commit an offence against that subsection if the person satisfies the court that an attempt to obtain a certificate within 5 days of the request for production was not successful.

(6) A person who fraudulently alters a certificate of currency issued under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) An employer to whom a certificate of currency is issued under this section must notify the insurer within 7 days after the certificate is issued if the certificate contains an error as to the nature of the business, or the number of workers of the

employer, in respect of which the premium for the policy was determined by the insurer.

Maximum penalty: 50 penalty units.

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

(a) requiring the supply by an employer to an insurer of information relevant to the issue of a certificate of currency to the employer (including information relevant to the calculation of premium), and

(b) providing that an insurer is not required to issue a certificate of currency to an employer who has failed to supply information to the insurer as required by the regulations.

(9) A certificate of currency issued under this section is evidence of the matters that it certifies.

Explanatory note

Proposed section 155A provides for the issue by insurers of certificates of currency to employers, as evidence that an employer has a policy of insurance in force in respect of the employer's workers. Certain persons (such as WorkCover inspectors, principals for whom an employer does work, and authorised union representatives) will be able to demand to see an employer's certificate of currency.

13.2 Workers Compensation Act 1987 No 70

Section 163A

Insert after section 163:

163A Certificate of currency

(1) In this section:

certificate of currency means a certificate issued to an employer by the insurer under a policy of insurance obtained by the employer that certifies the period (not exceeding 4 months or such other period as may be prescribed by the regulations) from the date of its issue during which the employer is insured under the policy, being a certificate that:

(a) is in the form (if any) approved by the Authority, and

(b) states the nature of the business and the number of workers of the employer, and the amount of the wages estimated to be payable by the employer, in respect of which the premium for the policy was determined by the insurer, and

(c) states such other matters as the Authority may direct from time to time by notice in writing to insurers.

(2) An employer who is required to obtain a policy of insurance must, within 5 days of a request to do so by a person authorised under this section to make the request, produce a certificate of currency for inspection by the person that certifies that the employer is insured under the policy at that time.

Maximum penalty: 50 penalty units.

(3) The following persons are authorised to request an employer to produce the employer's certificate of currency:

(a) an authorised officer (within the meaning of section 238 of the 1998 Act) or any other officer of the Authority authorised by the Authority to make such a request,

(b) an authorised industrial officer (within the meaning of Part 7 of Chapter 5 of the *Industrial Relations Act 1996*),

(c) any person who has, in the course of or for the purposes of the person's trade or business, contracted with the employer for the employer to carry out the whole or part of any work that the person has undertaken, or who proposes to enter into such a contract.

Note. Section 20 makes a principal liable to pay compensation for injured workers of a contractor if the contractor has not taken out a policy of insurance.

(4) The insurer under a current policy of insurance must, at the request of the employer insured under the policy, issue to the employer a certificate of currency with respect to the policy free of charge. The insurer may refuse to issue the certificate if the premium (or instalment of premium) for the policy is due and payable pursuant to a written demand for payment and has not been paid, or the employer is otherwise in default under the policy.

(5) A person who is insured under a policy of insurance at the time a request is made under subsection (2) for the production of a certificate of currency does not commit an offence against that subsection if the person satisfies the court that an attempt to obtain a certificate within 5 days of the request for production was not successful.

(6) A person who fraudulently alters a certificate of currency issued under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) An employer to whom a certificate of currency is issued under this section must notify the insurer within 7 days after the certificate is issued if the certificate contains an error as to the nature of the business, or the number of workers of the employer, in respect of which the premium for the policy was determined by the insurer.

Maximum penalty: 50 penalty units.

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

(a) requiring the supply by an employer to an insurer of information relevant to the issue of a certificate of currency to the employer (including information relevant to the calculation of premium), and

(b) providing that an insurer is not required to issue a certificate of currency to an employer who has failed to supply information to the insurer as required by the regulations.

(9) A certificate of currency issued under this section is evidence of the matters that it certifies.

Explanatory note

Proposed section 163A provides for the issue by insurers of certificates of currency to employers, as evidence that an employer has a policy of insurance in force in respect of the employer's workers. Certain persons (such as WorkCover inspectors, principals for whom an employer does work, and authorised union representatives) will be able to demand to see an employer's certificate of currency.

Schedule 14 Amendments relating to fraud against the workers compensation scheme

(Section 3)

14.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 169A

Insert after section 169:

169A Giving false information for premium calculation

A person must not, when supplying information to an insurer relevant to the calculation of the premium payable for the issue or renewal of a policy of insurance by the insurer (whether or not the information is supplied pursuant to a requirement of this Act or the regulations) supply information that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Explanatory note

Item [1] creates an offence of knowingly supplying false or misleading information when supplying information to an insurer to be used in connection with the calculation of the premium payable for a policy of insurance.

[2] Sections 235A, 235B

Insert after section 235:

235A Fraud on workers compensation scheme

(1) A person who by deception obtains, or attempts to obtain, for himself or herself any financial advantage in connection with the workers compensation scheme under this Act or the 1987 Act is guilty of an offence if the person knows or has reason to believe that the person is not eligible to receive that financial advantage.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

(2) A person who by deception obtains, or attempts to obtain, for another person any financial advantage in connection with the workers compensation scheme under this Act or the 1987 Act is guilty of an offence if the person knows or has reason to believe that the other person is not eligible to receive that financial advantage.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

(3) A person is not liable to be convicted of an offence against this section and any other provision of this Act or the 1987 Act as a result of the same conduct.

(4) In this section:

deception means any deception, by words or other conduct, as to fact or as to law, including the making of a statement or the production of a document that is false or misleading.

financial advantage includes a financial advantage for an injured worker (or a person who claims to be an injured worker), an employer, an insurer or a medical or other service provider.

235B Remedy available where claim fraudulent

(1) This section applies to a claimant or insurer if it is established that, for the purpose of obtaining a financial advantage, the claimant or insurer did or omitted to do anything (including the making of a statement) concerning an injury or any claim relating to an injury with knowledge that the doing of the thing or the omission to do the thing was false or misleading.

(2) If this section applies to a claimant:

(a) a person who has a liability in respect of a payment, settlement, compromise or judgment relating to the claim is relieved from that liability to the extent of the financial advantage so obtained by the claimant, and

(b) a person who has paid an amount to the claimant in connection with the claim (whether under a settlement, compromise or judgment, or otherwise) is entitled to recover from the claimant the amount of the financial advantage so obtained by the claimant and any costs incurred in connection with the claim.

(3) If this section applies to an insurer, the claimant is entitled to recover from the insurer as a debt the amount of the financial advantage so obtained by the insurer and any costs incurred by the claimant in connection with the claim.

Explanatory note

Item [2] inserts 2 new sections dealing with fraud. Proposed section 235A creates a general fraud offence with respect to persons who obtain a financial advantage by deception from the workers compensation scheme. The offence is not limited to injured workers. Proposed section 235B provides for the recovery from a fraudulent claimant and others of a fraudulently obtained financial advantage.

14.2 Workers Compensation Act 1987 No 70

Section 173A

Insert after section 173:

173A Giving false information for premium calculation

A person must not, when supplying information to an insurer relevant to the calculation of the premium payable under a policy of insurance issued or renewed or to be issued or renewed by the insurer (whether or not the information is supplied pursuant to a requirement of this Act or the regulations) supply information that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Explanatory note

The amendment creates an offence of knowingly supplying false or misleading information when supplying information to an insurer to be used in connection with the calculation of the premium payable for a policy of insurance.

Schedule 15 Amendments relating to powers of inspectors

(Section 3)

15.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 238 Powers of entry and inspection by officers of Authority

Omit "(not being a dwelling-house)" from section 238 (2) wherever occurring.

Explanatory note

Item [1] is consequential on the amendment made by item [3] which inserts a new provision restricting entry to residential premises under a power of entry.

[2] Section 238 (2) (h)

Insert after section 238 (2) (g):

(h) require an employer, insurer or other person, by notice in writing served on the person, to produce to the authorised officer for inspection (in accordance with the notice) any record that the authorised officer has reasonable grounds to believe that the person is capable of producing in relation to a possible contravention of this Act, the 1987 Act or the regulations under those Acts.

Explanatory note

Item [2] will enable authorised officers of the Authority to request the production of relevant records by notice in writing instead of only by a demand made after entry into premises.

[3] Section 238 (4)

Omit the subsection. Insert instead:

(4) The powers of entry conferred by this section are not exercisable in relation to any part of premises used only for residential purposes except:

(a) with the permission of the occupier of the premises, or

(b) under the authority conferred by a search warrant.

Explanatory note

Section 238 (4) of the Act currently provides that any person has a privilege to refuse to answer a question that might incriminate the person. A new provision with respect to self-incrimination is inserted by item [4] (proposed section 238B). Section 238 (4) becomes a provision that imposes restrictions on the use of a power of entry to enter residential premises.

[4] Sections 238A–238C

Insert after section 238:

238A Search warrant

(1) An authorised officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing that a provision of this Act, the 1987 Act or the regulations under those Acts has been or is being or is about to be contravened in or about any premises.

(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant:

(a) to enter the premises, and

(b) to search the premises for evidence of a contravention of this Act, the 1987 Act or the regulations under those Acts, and

(c) to exercise in the premises any powers conferred on the officer under section 238.

(3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

(4) In this section:

authorised justice has the same meaning as it has in the *Search Warrants Act 1985*.

authorised officer has the same meaning as it has in section 238.

premises has the same meaning as it has in section 238.

238B Protection from incrimination

(1) **Self-incrimination not an excuse**

A person is not excused from a requirement under section 238 to produce a record or statement or to answer a question on the ground that the record, statement or answer might incriminate the person or make the person liable to a penalty.

(2) **Answer not admissible if objection made**

However, any answer given by a natural person in compliance with a requirement under section 238 is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 238) if:

(a) the person objected at the time to doing so on the ground that it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to giving the answer on the ground that it might incriminate the person.

(3) **Records or statements admissible**

Any record or statement produced by a person in compliance with a requirement under section 238 is not inadmissible in evidence against the person in criminal proceedings on the ground that the record or statement might incriminate the person.

(4) **Further information**

Further information obtained as a result of a record or statement produced or answer given in compliance with a requirement under section 238 is not inadmissible on the ground:

(a) that the record, statement or answer had to be produced or given, or

(b) that the record, statement or answer might incriminate the person.

238C Authorised officer may request assistance

(1) A police officer may accompany and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Act:

(a) in executing a search warrant issued under section 238A, or

(b) if the authorised officer reasonably believes that he or she may be obstructed in the exercise of those functions.

(2) Any person whom an authorised officer believes to be capable of providing assistance in the exercise of the officer's functions under this Act may accompany the officer and take all reasonable steps to assist the officer in the exercise of the officer's functions.

(3) Nothing in subsection (1) is to be taken to limit the generality of section 18 of the *Search Warrants Act 1985*.

Explanatory note

Item [4] inserts proposed sections 238A–238C. Proposed section 238A will enable authorised officers of the Authority to obtain a search warrant for the purposes of enforcing the workers compensation legislation. Proposed section 238B applies the rules on self-incrimination under the occupational health and safety legislation to the workers compensation legislation (namely that only natural persons have a right to claim privilege on that ground in respect of providing answers to questions asked by authorised officers of the Authority). Proposed section 238C authorises a police officer to accompany and assist an authorised officer exercising functions under the Act.

15.2 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert in alphabetical order of Acts in the definition of ***search warrant***:

section 238A of the *Workplace Injury Management and Workers Compensation Act 1998*.

Explanatory note

The amendment is consequential on the amendments made by Schedule 15.1.

Schedule 16 Amendments relating to increased penalties

(Section 3)

16.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 144 Compulsory insurance for employers

Omit "200 penalty units" from section 144 (1).

Insert instead "500 penalty units".

Explanatory note

Section 144 of the 1998 Act requires employers to take out workers compensation insurance and creates an offence for failure to do so. Item [1] increases the penalty for the offence from 200 penalty units (currently $22,000) to 500 penalty units (currently $55,000).

[2] Section 153 Inspection of policies

Omit "20 penalty units" from section 153 (3) and (5) wherever occurring.

Insert instead "50 penalty units".

Explanatory note

Section 153 of the 1998 Act provides for the WorkCover Authority to require an employer to produce for inspection the employer's workers compensation policy, and requires an employer to keep the employer's workers compensation policy for a certain period. Offences are created for a failure to comply with these requirements. Item [2] increases the penalty of each offence from 20 penalty units (currently $2,200) to 50 penalty units (currently $5,500).

[3] Section 170 Records relating to wages, contracts etc to be kept and supplied by employers

Omit "50 penalty units". Insert instead "500 penalty units".

Explanatory note

Section 170 of the 1998 Act imposes obligations on employers with respect to the keeping of records of workers and the wages paid to workers. Item [3] increases the penalty for a contravention of the section from 50 penalty units (currently $5,500) to 500 penalty units (currently $55,000).

[4] Section 238 Powers of entry and inspection by officers of Authority

Omit "50 penalty units" from section 238 (3).

Insert instead "100 penalty units".

Explanatory note

Section 238 of the 1998 Act confers powers on authorised officers of the WorkCover Authority with respect to the entry of premises, the production and inspection of records and the asking of questions. Item [4] increases the penalty for an offence under the section from 50 penalty units (currently $5,500) to 100 penalty units (currently $11,000).

16.2 Workers Compensation Act 1987 No 70

[1] Section 155 Compulsory insurance for employers

Omit "200 penalty units" from section 155 (1).

Insert instead "500 penalty units".

Explanatory note

Section 155 of the 1987 Act requires employers to take out workers compensation insurance and creates an offence for failure to do so. Item [1] increases the penalty for the offence from 200 penalty units (currently $22,000) to 500 penalty units (currently $55,000).

[2] Section 161 Inspection of policies

Omit "20 penalty units" from section 161 (3) and (4) wherever occurring.

Insert instead "50 penalty units".

Explanatory note

Section 161 of the 1987 Act provides for the WorkCover Authority to require an employer to produce for inspection the employer's workers compensation policy, and requires an employer to keep the employer's workers compensation policy for a certain period. Offences are created for a failure to comply with these requirements. Item [2] increases the penalty of each offence from 20 penalty units (currently $2,200) to 50 penalty units (currently $5,500).

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

Omit "50 penalty units". Insert instead "500 penalty units".

Explanatory note

Section 174 of the 1987 Act imposes obligations on employers with respect to the keeping of records of workers and the wages paid to workers. Item [3] increases the penalty for a contravention of the section from 50 penalty units (currently $5,500) to 500 penalty units (currently $55,000).

Schedule 17 Amendments relating to insurer penalties

(Section 3)

17.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 183A

Insert after section 183:

183A Imposition of civil penalty on or censure of licensed insurer or self-insurer

(1) If the Board of Directors of the Authority is satisfied that a person who is or was a licensed insurer or self-insurer has contravened its licence or this Act or the regulations or an insurer agreement under section 9, the Board may:

(a) impose a civil penalty on the person not exceeding $50,000, or

(b) issue a letter of censure to the person.

(2) Before imposing a civil penalty, the Board is required to give the person concerned an opportunity to make written submissions with respect to the alleged contravention, but is not required to conduct a hearing into the matter.

(3) A civil penalty that has been imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Crown.

(4) While a civil penalty imposed under this section remains unpaid by a licensed insurer or self-insurer, the insurer is not entitled to be paid any amount that the insurer would otherwise be entitled to be paid pursuant to an insurer agreement under section 9.

(5) The Board may cause a letter of censure issued by it under this section to be published.

(6) A civil penalty that is paid or recovered is payable into the WorkCover Authority Fund.

(7) The powers of the Board under this section do not limit any powers of the Authority under this Act or the Regulations.

Explanatory note

Proposed section 183A provides for the imposition of a civil penalty of up to $50,000 or the issue of a letter of censure for a contravention by an insurer of its licence, the Act, the regulations or an insurer agreement under section 9 of the Act.

17.2 Workers Compensation Act 1987 No 70

Section 183A

Insert after section 183:

183A Imposition of civil penalty on or censure of licensed insurer or self-insurer

(1) If the Board of Directors of the Authority is satisfied that a person who is or was a licensed insurer or self-insurer has contravened its licence or this Act or the regulations, the Board may:

(a) impose a civil penalty on the person not exceeding $50,000, or

(b) issue a letter of censure to the person.

(2) Before imposing a civil penalty, the Board is required to give the person concerned an opportunity to make written submissions with respect to the alleged contravention, but is not required to conduct a hearing into the matter.

(3) A civil penalty that has been imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Crown.

(4) A civil penalty is not to be paid from a statutory fund of the licensed insurer.

(5) The Board may cause a letter of censure issued by it under this section to be published.

(6) A civil penalty that is paid or recovered is payable into the WorkCover Authority Fund.

(7) The powers of the Board under this section do not limit any powers of the Authority under this Act or the Regulations.

Explanatory note

Proposed section 183A provides for the imposition of a civil penalty of up to $50,000 or the issue of a letter of censure for a contravention by an insurer of its licence, the Act or the regulations.

Schedule 18 Amendment relating to deduction of workers compensation costs from wages

(Section 3)

Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 233 No contribution from workers

Insert after section 233 (2):

(3) To avoid doubt, a reference in this section to a liability under this Act includes a reference to a liability to pay a premium for a policy of insurance.

Explanatory note

Section 233 of the Act prohibits an employer from taking or receiving money from a worker (such as by deduction from wages) in respect of any liability of the employer under the workers compensation legislation. The amendment makes it clear that the prohibition extends to the liability of the employer to pay a premium for a workers compensation insurance policy.

Schedule 19 Amendments relating to criminal liability of Crown

(Section 3)

19.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 7 Act binds Crown

Omit section 7 (2).

Explanatory note

Section 7 of the Act provides that the Act binds the Crown and accordingly government departments and agencies are subject to the requirements of the Act. Section 7 (2) provides, however, that the section does not make the Crown (or any of its agencies) liable to be prosecuted for a criminal offence for contravening the Act. The amendment removes that exemption from prosecution.

19.2 Workers Compensation Act 1987 No 70

Section 6 Act binds Crown

Omit section 6 (2).

Explanatory note

Section 6 of the Act provides that the Act binds the Crown and accordingly government departments and agencies are subject to the requirements of the Act. Section 6 (2) provides, however, that the section does not make the Crown (or any of its agencies) liable to be prosecuted for a criminal offence for contravening the Act. The amendment removes that exemption from prosecution.

Schedule 20 Amendments relating to specialised insurers and self-insurers

20.1 Workers Compensation Act 1987 No 70

[1] Section 3 Definitions

Omit the definition of ***specialised insurer*** in section 3 (1).

Insert instead:

> ***specialised insurer*** means a licensed insurer whose licence is endorsed with a specialised insurer endorsement.

Explanatory note

Item [1] is a consequential amendment.

[2] Section 177 Applications for licences

Omit section 177 (1) (b). Insert instead:

> (b) any body corporate (subject to the regulations) if the application is conditional on the licence being endorsed with a specialised insurer endorsement.

Explanatory note

Item [2] provides that any body corporate may (subject to the regulations) apply for a workers compensation insurance licence with a specialised insurer endorsement. The granting of such an endorsement is to be the new mechanism for achieving specialised insurer status under the Act (in place of the existing arrangements applicable under the current definition of ***specialised insurer*** whereby specialised insurers are listed in the definition or declared by order of the Authority).

[3] Section 177A

Insert after section 177:

177A Special provisions for specialised insurers

(1) An application for a licence under this Division may be made conditional on the licence being endorsed with a specialised insurer endorsement.

(2) The Authority may endorse the licence with a specialised insurer endorsement but only if the Authority is satisfied that the insurance business to be carried on pursuant to the licence will be limited to a particular industry or class of business or employer, and that:

(a) the applicant is eligible for such an endorsement (as provided by this section), or

(b) the applicant will issue policies only in respect of domestic or similar workers.

(3) An applicant for a licence under this Division is eligible for a specialised insurer endorsement if the Authority is satisfied:

(a) that the insurance business to be carried on pursuant to the licence will not have an adverse effect on the efficiency of the workers compensation scheme under this Act generally, and

(b) that the application is supported by relevant professional, business and other industry bodies involved in the particular industry or class of business or employer concerned, and

(c) that an authority has been granted to the applicant under section 23 (Authority to commence carrying on insurance business) of the *Insurance Act 1973* of the Commonwealth and is in force, and

(d) as to such other matters as the Authority considers relevant.

(4) The Authority may by notice in writing to a licensed insurer withdraw a specialised insurer endorsement that the licence is endorsed with if the Authority is of the opinion that the Authority would not be authorised (on an application for a licence by the insurer) to endorse the licence with a specialised insurer endorsement.

(5) The withdrawal of a specialised insurer endorsement is grounds for the suspension or cancellation of the relevant licence under this Division.

Explanatory note

Item [3] provides for the requirements to be satisfied before a specialised insurer endorsement can be granted and provides for the cancellation of the endorsement if those requirements do not continue to be met.

[4] Section 208AA

Insert after section 208:

208AA Contributions by employers exiting the managed fund scheme

(1) In this section:

exiting employer means an employer who on or after 1 July 1998 became or becomes:

(a) a self-insurer under this Act or the 1998 Act, or

(b) insured for the purposes of this Act by a specialised insurer under this Act or the 1998 Act, or

(c) licensed under Part VIIIB of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth (pursuant to a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority).

managed fund insurer means an insurer to which Division 4 of Part 7 applies.

managed fund liabilities of an exiting employer means the following outstanding liabilities of the exiting employer:

(a) any liabilities of the exiting employer under this Act in respect of workers employed by the exiting employer while insured under a policy of insurance issued by a managed fund insurer,

(b) any liabilities of the exiting employer independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for injuries received by workers employed by the person while insured under a policy of insurance issued by a managed fund insurer.

responsible insurer for an exiting employer means:

(a) the exiting employer, except in a case in which paragraph (b) or (c) applies, or

(b) in the case of an exiting employer that is covered by a licence under section 211A of this Act or section 192 of the 1998 Act—the exiting employer and the licence holder (jointly and severally), or

(c) in the case of an exiting employer that is insured by a specialised insurer—the specialised insurer that insures the exiting employer.

(2) The object of this section is to provide for the protection of the statutory funds of managed fund insurers against deficiencies that may result from the managed fund liabilities of exiting employers.

(3) The Authority may by order published in the Gazette require the responsible insurer for an exiting employer to pay contributions for the purposes of this section. The order is to provide for the amount of the required contributions or for the manner in which they are to be calculated and may require different contributions to be paid by different responsible insurers or in respect of different exiting employers.

(4) The following provisions apply in respect of the contributions required to be paid by such an order:

(a) the responsible insurer for an exiting employer must pay the required contributions to the Authority for payment into the Premiums Adjustment Fund,

(b) the required contributions must be paid at such times and in such manner as the order requires,

(c) if the responsible insurer has not paid a contribution within the required time, the amount of the contribution together with a late payment fee calculated at the rate of 15% of that amount per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction,

(d) a certificate executed by the Authority certifying that an amount specified in the certificate is the amount recoverable by the Authority under paragraph (c) is

(without proof of its execution by the Authority) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.

(5) The Authority may for the purposes of this section enter into an agreement with the responsible insurer for an exiting employer under which the responsible insurer agrees to assume the exiting employer's managed fund liabilities.

(6) When the Authority enters into such an agreement the following provisions have effect (whether or not there is any breach of the agreement):

(a) the responsible insurer is not liable to pay any contribution that would otherwise be payable by the responsible insurer under this section or under section 174 of the 1998 Act,

(b) a licensed insurer is not liable under any policy of insurance (despite the terms of the policy) in respect of any liability that the responsible insurer has agreed to assume under the agreement with the Authority,

(c) a licensed insurer who would otherwise be liable under a policy of insurance in respect of any such liability must comply with any direction of the Authority to provide information to the responsible insurer with respect to such a liability and any related claim,

(d) a licensed insurer must pay to the responsible insurer such amount as the Authority may determine as the unspent portion of any premium paid by the exiting employer to the licensed insurer,

(e) the Authority may from time to time direct that the provisions of the agreement (and the provisions of this clause) do not apply in respect of a specified claim or class of claims,

(f) an exiting employer who is a self-insurer is taken to be a self-insurer in respect of any liability that the exiting employer has (as responsible insurer) agreed to assume under the agreement with the Authority.

(7) It is a condition of the licence of a licensed insurer that the licensed insurer must comply with any direction of the Authority under this section.

Explanatory note

Item [4] inserts a section that provides for the levying of contributions to the Premiums Adjustment Fund in respect of employers who on or after 1 July 1998 become self-insurers, become insured by a specialised insurer or become covered under certain Commonwealth arrangements. The provision provides, as an alternative to the making of a contribution to the Premiums Adjustment Fund, for the entering into an agreement with the Authority for the assumption of responsibility for outstanding claims against the employer that would otherwise be payable by the managed fund insurer who previously insured the employer.

[5] Schedule 6, Part 15 Provisions relating to insurance

Insert after clause 25 of Part 15 of Schedule 6:

26 Specialised insurers—2000 amendments

(1) In this clause:

existing specialised insurer means an insurer who is a specialised insurer immediately before the commencement of this clause.

(2) On the commencement of section 177A (Special provisions for specialised insurers) of this Act, the licence under this Act of an existing specialised insurer is taken to have been endorsed with a specialised insurer endorsement under that section.

(3) The licence under the 1998 Act of an existing specialised insurer is taken to have been endorsed at the private insurance start time with a specialised insurer endorsement under section 175A of the 1998 Act.

(4) An existing specialised insurer is taken to be eligible for a specialised insurer endorsement for the purposes of section 177A of this Act and 175A of the 1998 Act, until the regulations otherwise provide or the Authority otherwise directs in a particular case by notice in writing to the specialised insurer.

(5) The Authority may by order declare a body corporate to be a body corporate that the Authority is satisfied has acquired the business undertaking of an existing specialised insurer, and the effect of such an order is as follows:

(a) the body corporate is taken to be the holder of the licence held by that existing specialised insurer as a licensed insurer under this Act or the 1998 Act, as appropriate, and

(b) the body corporate is taken to be an existing specialised insurer within the meaning of this clause.

Explanatory note

Item [5] enacts a transitional provision that confers a specialised insurer endorsement on a workers compensation insurer that is currently a specialised insurer. The eligibility requirements for a specialised insurer endorsement will not apply to such an insurer until the regulations otherwise provide or the Authority otherwise directs in a particular case.

20.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definition of ***specialised insurer*** in section 4 (1).

Insert instead:

specialised insurer means a licensed insurer whose licence is endorsed with a specialised insurer endorsement.

Explanatory note

Item [1] is a consequential amendment.

[2] Section 175 Applications for licences

Insert at the end of section 175 (1) (b):

, or

(c) any body corporate (subject to the regulations) if the application is conditional on the licence being endorsed with a specialised insurer endorsement.

Explanatory note

Item [2] provides that any body corporate may (subject to the regulations) apply for a workers compensation insurance licence with a specialised insurer endorsement. The granting of such an endorsement is to be the new mechanism for achieving specialised insurer status under the Act (in place of the existing arrangements applicable under the current definition of ***specialised insurer*** whereby specialised insurers are listed in the definition or declared by order of the Authority).

[3] Section 175A

Insert after section 175:

175A Special provisions for specialised insurers

(1) An application for a licence under this Division may be made conditional on the licence being endorsed with a specialised insurer endorsement.

(2) The Authority may endorse the licence with a specialised insurer endorsement but only if the Authority is satisfied that the insurance business to be carried on pursuant to the licence will be limited to a particular industry or class of business or employer, and that:

(a) the applicant is eligible for such an endorsement (as provided by this section), or

(b) the applicant will issue policies only in respect of domestic or similar workers.

(3) An applicant for a licence under this Division is eligible for a specialised insurer endorsement if the Authority is satisfied:

(a) that the insurance business to be carried on pursuant to the licence will not have an adverse effect on the efficiency of the workers compensation scheme under this Act generally, and

(b) that the application is supported by relevant professional, business and other industry bodies involved in the particular industry or class of business or employer concerned, and

(c) that an authority has been granted to the applicant under section 23 (Authority to commence carrying on insurance business) of the *Insurance Act 1973* of the Commonwealth and is in force, and

(d) as to such other matters as the Authority considers relevant.

(4) The Authority may by notice in writing to a licensed insurer withdraw a specialised insurer endorsement that the licence is endorsed with if the Authority is of the opinion that the Authority would not be authorised (on an application for a licence by the insurer) to endorse the licence with a specialised insurer endorsement.

(5) The withdrawal of a specialised insurer endorsement is grounds for the suspension or cancellation of the relevant licence under this Division.

Explanatory note

Item [3] provides for the requirements to be satisfied before a specialised insurer endorsement can be granted and provides for the cancellation of the endorsement if those requirements do not continue to be met.

Schedule 21 Amendments relating to insurance premiums appeals

(Section 3)

21.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 165 Action by employer where premium not in accordance with approved methodology

Omit section 165 (1) and (2). Insert instead:

(1) An employer from whom an insurer has demanded a premium for the issue or renewal of a policy of insurance may dispute an aspect of the insurer's determination of that premium on the basis that it is not in accordance with the insurer's approved total premium methodology. The employer may apply to the Authority for a review by the Authority of that aspect (***the disputed aspect***) of the insurer's determination.

(2) Any such application must be made within 1 month after the date of the demand for the premium concerned, or within such further period as the Authority may, in special circumstances, approve in relation to the application.

[2] Section 165 (3) (c)

Omit the paragraph. Insert instead:

(c) must dismiss the application if the Authority decides that:

(i) the policy is not a policy to which the insurer's approved total premium methodology applies, or

(ii) the disputed aspect was determined by the insurer in accordance with the insurer's approved total premium methodology,

or must in any other case determine the disputed aspect in accordance with the insurer's approved total premium methodology, and

[3] Section 165 (3A) and (3B)

Insert after section 165 (3):

(3A) The Authority's determination of the disputed aspect is to be made as a review of the insurer's determination and accordingly is to be made as if it were the determination required to be made by the insurer at the time of the determination of the premium concerned.

(3B) When the Authority makes a determination on a review under this section, the insurer must redetermine the relevant premium in accordance with the Authority's determination.

[4] Section 165 (4) (a)

Omit the paragraph. Insert instead:

(a) the insurer redetermines a premium following the Authority's determination, and

[5] Section 165 (4)

Omit "determined by the Authority". Insert instead "as redetermined, together with interest on the amount of premium recoverable calculated at the rate of 1.2% per month compounded monthly (or, where some other rate of interest is prescribed by the regulations, that other rate)".

[6] Section 165 (5) (b)

Omit "decision". Insert instead "determination".

[7] Section 165 (5) (b)

Omit "at the premium determined by the Authority".

Insert instead "at such premium as would result from a redetermination by the insurer of the premium in accordance with the Authority's determination".

[8] Section 165 (5)

Omit "at the premium so determined". Insert instead "at that premium".

Explanatory note

Section 165 of the Act currently provides for the determination by the Authority of an employer's workers compensation insurance premium on the application of the employer on the basis that the premium demanded by the insurer is in breach of the insurer's total premium methodology.

Items [1]–[8] will enable an employer to apply for a determination by the Authority of a particular aspect of the insurer's determination that the employer disputes. The Authority will determine the issue in dispute without proceeding to determine the correct premium, and the insurer will then be required to redetermine the premium in accordance with the Authority's determination. The Authority's determination will be made as a review of the insurer's determination and accordingly will be made on the same basis as that on which the insurer's determination was required to be made at the time the premium was originally determined.

The amendments also provide for interest to be payable by the insurer in respect of an overpaid premium that is recoverable by the employer following a determination of the dispute.

21.2 Workers Compensation Act 1987 No 70

[1] Section 170 Action by employer where premium not in accordance with insurance premiums order

Omit section 170 (1) and (2). Insert instead:

(1) An employer from whom an insurer has demanded a premium for the issue or renewal of a policy of insurance may dispute an aspect of the insurer's determination of that premium on the basis that it is not in accordance with the relevant insurance premiums order. The employer may apply to the Authority for a review by the Authority of that aspect (***the disputed aspect***) of the insurer's determination.

(2) Any such application must be made within 1 month after the date of the demand for the premium concerned, or within such further period as the Authority may, in special circumstances, approve in relation to the application.

[2] Section 170 (3) (c)

Omit the paragraph. Insert instead:

(c) must dismiss the application if the Authority decides that:

(i) the policy is not a policy to which a relevant insurance premiums order applies, or

(ii) the disputed aspect was determined by the insurer in accordance with the relevant insurance premiums order,

or must in any other case determine the disputed aspect in accordance with the relevant insurance premiums order, and

[3] Section 170 (3A) and (3B)

Insert after section 170 (3):

(3A) The Authority's determination of the disputed aspect is to be made as a review of the insurer's determination and accordingly is to be made as if it were the determination required to be made by the insurer at the time of the determination of the premium concerned.

(3B) When the Authority makes a determination on a review under this section, the insurer must redetermine the relevant premium in accordance with the Authority's determination.

[4] Section 170 (4) (a)

Omit the paragraph. Insert instead:

(a) the insurer redetermines a premium following the Authority's determination, and

[5] Section 170 (4)

Omit "determined by the Authority". Insert instead "as redetermined, together with interest on the amount of premium recoverable calculated at the rate of 1.2% per month compounded monthly (or, where some other rate of interest is prescribed by the regulations, that other rate)".

[6] Section 170 (5) (b)

Omit "decision". Insert instead "determination".

[7] Section 170 (5) (b)

Omit "at the premium determined by the Authority".

Insert instead "at such premium as would result from a redetermination by the insurer of the premium in accordance with the Authority's determination".

[8] Section 170 (5)

Omit "at the premium so determined". Insert instead "at that premium".

Explanatory note

Section 170 of the Act currently provides for the determination by the Authority of an employer's workers compensation insurance premium on the application of the employer on the basis that the premium demanded by the insurer is in breach of an insurance premiums order.

Items [1]–[8] will enable an employer to apply for a determination by the Authority of a particular aspect of the insurer's determination that the employer disputes. The Authority will determine the issue in dispute without proceeding to determine the correct premium, and the insurer will then be required to redetermine the premium in accordance with the Authority's determination. The Authority's determination will be made as a review of the insurer's determination and accordingly will be made on the same basis as that on which the determination by the insurer was required to be made at the time the premium was originally determined.

The amendments also provide for interest to be payable by the insurer in respect of an overpaid premium that is recoverable by the employer following a determination of the dispute.

[9] Schedule 6, Part 15 Provisions relating to insurance

Insert as clause 6B of Part 15 of Schedule 6:

6B Premium calculation disputes

(1) In this clause:

premium dispute application means an application under an insurance premiums order, the *Workers Compensation (Insurance Premiums) Regulation 1987* or the *Workers Compensation (Insurance Premiums) Regulation 1995* for the calculation or variation by the Authority of any matter (***the disputed matter***) relevant to the determination by an insurer of the premium payable for the issue or renewal of a policy of insurance.

(2) After the commencement of this clause:

(a) no further premium dispute applications can be made, and

(b) any matter that could before the commencement of this clause have been the subject of a premium dispute application can instead be the subject of an application for determination by the Authority under section 170 (as amended by the *Workers Compensation Legislation Amendment Act 2000*), and

(c) any premium dispute application made but not determined before the commencement of this clause is to be dealt with as an application under section 170 (as amended by the *Workers Compensation Legislation Amendment Act 2000*) for determination by the Authority of the relevant aspect of the insurer's determination.

(3) Any premium dispute application dealt with before the commencement of this clause as an application under section170 for a determination as to the premium to be charged for the issue or renewal of the policy concerned is taken to have been validly dealt with, and any determination of the premium payable is taken to have been validly made, as if the premium dispute application had been a valid application under that section.

(4) Subclause (3) does not affect any determination of a court made before the commencement of this clause.

(5) The amendments made to section 170 by the *Workers Compensation Legislation Amendment Act 2000* apply to an application made under that section, but not determined, before the commencement of the amendments. The application is to be dealt with as an application under section 170 (as so amended) for determination by the Authority of the relevant aspect of the insurer's determination.

(6) The amendment made to section 170 (4) of this Act by the *Workers Compensation Legislation Amendment Act 2000* relating to the payment of interest extends to premiums paid before the commencement of the amendment, but so that interest is payable only in respect of periods after that commencement.

Explanatory note

Item [10] provides that various applications under a current and former regulation, or an insurance premiums order, for the calculation or determination by the Authority of disputed amounts that are relevant to the determination of an insurance premium under the 1987 Act are instead to be made and dealt with as applications under section 170 of the 1987 Act. This will result in such an application being dealt with as a dispute about the relevant aspect of the insurer's determination of premium. The Authority will determine the dispute and, rather than actually calculating the amount in dispute, remit the matter for redetermination by the insurer. The amendment also:

(a) validates the determination of applications made before the commencement of the amendments, and

(b) provides that the amendments made to section 170 of the 1987 Act also apply to applications made under that section, but not determined, before the amendments commence, and

(c) provides that the amendment made to section 170 (4) of the 1987 Act relating to the payment of interest to employers on overpaid premiums extends to premiums paid before the commencement of the amendments.

Schedule 22 Amendments relating to the transfer of provisions from the regulations

(Section 3)

22.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 23 Specific functions

Omit "workplace rehabilitation programs" from section 23 (1) (i). Insert instead "return-to-work programs".

[2] Section 86 Agreements arising from conciliation

Omit "workplace rehabilitation program" from section 86 (4) (b). Insert instead "return-to-work program".

Explanatory note

Items [1] and [2] update the terminology used in provisions that presently refer to "workplace rehabilitation programs" or a "workplace rehabilitation program". Such programs are now referred to as "return-to-work programs" (see section 52 of the Act). The amendments are transferred from the regulations.

[3] Section 101 Restrictions on commencing court proceedings about weekly payments

Omit "commencement of this Act" from section 101 (5) (c). Insert instead "commencement of the 1987 Act".

Explanatory note

Item [3] changes a reference to the commencement of the 1998 Act to a reference to the commencement of the 1987 Act, so that restrictions on the commencement of court proceedings about weekly payments of compensation will not apply if the injury was received before the commencement of the 1987 Act, to reflect the intended operation of the provision. The amendment is transferred from the regulations.

22.2 Workers Compensation Act 1987 No 70

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

Omit "workplace rehabilitation program" from section 38A (5) (b).
Insert instead "return-to-work program".

Explanatory note

Item [1] updates the terminology used in a provision that presently refers to a "workplace rehabilitation program". Such programs are now referred to as "return-to-work programs" (see section 52 of the 1998 Act). The amendment is transferred from the regulations.

[2] Schedule 6, Part 4 Provisions relating to weekly payments of compensation

Omit clause 5D (2) of Part 4 of Schedule 6. Insert instead:

(2) The amendments made to section 38 of this Act by the *Workers Compensation Legislation Amendment Act 1998* do not apply to a worker in respect of any period of incapacity after the commencement of those amendments that results from an injury before that commencement if the worker was in receipt of compensation in accordance with that section before that commencement for any period of incapacity resulting from that injury.

Explanatory note

Item [2] transfers to the 1987 Act a provision of the regulations under that Act (clause 73N of the *Workers Compensation (General) Regulation 1995*) that makes it clear that the reduction in the maximum period from 104 weeks to 52 weeks of the section 38 benefit (that is the payment for a partially incapacitated worker of total incapacity payments while the worker seeks but is not provided with suitable employment) does not apply to a worker who was in receipt of compensation before the reduction in that period.

[3] Schedule 6, Part 4

Insert as clause 6B of Part 4 of Schedule 6:

6B Amendment to section 51 by 1998 amending Act—savings

(1) In this clause, ***the section 51 amendment*** means the amendment made to section 51 (9) of this Act by the *Workers Compensation Legislation Amendment Act 1998*.

(2) The section 51 amendment does not affect established procedure (in accordance with relevant decisions of courts of competent jurisdiction) with respect to the operation of section 51 of this Act, namely, that the commutation of a liability to pay weekly compensation by the payment of a lump sum determined by the Compensation Court is not a payment of compensation to which a worker is entitled but a payment that the employer may make with the consent of the worker in order to commute that liability.

(3) This clause applies whether the liability that is to be commuted arose before or after the commencement of this clause.

(4) Section 51 is taken to be amended to the extent (if any) as is necessary for the purposes of giving effect to this clause.

Explanatory note

Item [3] transfers to the 1987 Act a provision of the regulations under that Act that makes it clear that an amendment to the provision of the Act that provides for the commutation to a lump sum of an employer's liability to pay weekly compensation is not to be construed as altering a long-established procedure with respect to the operation of the provision. Under that procedure, an employer may pay an amount determined by the Compensation Court to commute or redeem the liability if the worker consents, but the worker is not entitled to payment of such a lump sum.

[4] Schedule 6, Part 9 Provisions relating to notice of injury and claims for compensation

Insert as clause 11 of Part 9 of Schedule 6:

11 Time within claim may be made—application of 3-year limit in section 65 (13) of 1998 Act (Clause 73K of Regs)

(1) A reference in section 65 (13) or (14) of the 1998 Act to the period of 3 years after the injury or accident happened is to be construed, in the case of a claim for compensation made in respect of an injury or accident that happened more than 2 years before the commencement of this clause, as a reference to the period ending 1 year after that commencement.

(2) The provisions of section 92 of this Act relating to the time within which a claim for compensation may be made continue to apply to a claim:

(a) that is made before the commencement of this clause or within the period of 1 year after that commencement, and

(b) that relates to an injury or accident that happened before the commencement of the 1998 Act.

Explanatory note

Item [4] transfers to the 1987 Act a provision of the regulations under that Act that deals with transitional arrangements consequent on the enactment of the new provisions in the 1998 Act relating to the making of claims for compensation. The transitional regulation provided that the 3-year limit on making a claim (except in the case of death and serious and permanent disablement) was increased to 1 year after the enactment of the 1998 Act if the injury or accident happened more than 2 years before that enactment. The principal change effected in this area by the 1998 Act was that, under the 1987 Act, the 3 year limit did not apply in the case of death or if it was in the interests of justice. The above clause provides claimants with a further year from the commencement of the clause within which to make their claim without compliance with the stricter limits on bringing late claims introduced by the 1998 Act.

[5] Schedule 6, Part 11 Provisions relating to proceedings before commissioners and the Compensation Court

Insert as clause 4 of Part 11 of Schedule 6:

4 Restrictions on commencement of proceedings—1998 Act

The amendment made to section 101 (5) (c) of the 1998 Act by the *Workers Compensation Legislation Amendment Act 2000* is taken to have had effect on and from 1 August 1998 but not so as to affect any decision of a court made before the commencement of this clause.

Explanatory note

Item [5] inserts a transitional provision consequent on the amendment to section 101 (5) (c) of the 1998 Act made in this Schedule. The transitional provision gives the amendment effect on and from 1 August 1998, being the date of commencement of the section being amended, without affecting any decision of a court already made.

[6] Schedule 6, Part 14 Provisions relating to common law remedies, clause 11 Amendment of section 151A—1998 amending Act

Insert "of compensation" after "awards" wherever occurring.

Explanatory note

Item [6] transfers to the 1987 Act a provision of the regulations under that Act that makes it clear that an amendment to the provision of the Act that deals with elections for damages or compensation applies to awards of compensation by the Compensation Court whether the awards are by award, interim award or order.

[7] Schedule 6, Part 18A Additional provisions consequent on 1998 Act and 1998 amending Act

Insert as clause 2A of Part 18A of Schedule 6:

2A Application of 1998 Act provisions corresponding to repealed provisions of Part 4 of this Act (making of claims etc)

(1) The provisions of the 1998 Act that correspond to the repealed provisions of Part 4 of this Act apply to a thing referred to in clause 2 (1) given, made or done after the repeal of Part 4 even if the thing relates to an injury or other relevant matter received or occurring before that repeal.

(2) The clause does not affect the operation of clause 11 of Part 9 or any decision made by a court before the commencement of the clause.

Explanatory note

Item [7] makes it abundantly clear that the provisions of the 1998 Act relating to the making of claims and related matters apply to the making of claims and other matters after the enactment of the 1998 Act even if they relate to injuries received or other matters occurring before the enactment of that Act. Clause 2 of Part 18A already makes it clear that pending claims and other matters under Part 4 of the 1987 Act on the enactment of the 1998 Act became claims and other matters pending under the provisions of the 1998 Act. This amendment is made in connection with the transfer of a related provision of the regulations to the Act effected by item [4].

Schedule 23 Miscellaneous amendments

(Section 3)

23.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 41A

Insert after section 41:

41A Chapter applies even when liability disputed

The requirements of this Chapter apply even when there is a dispute as to liability.

Explanatory note

Item [1] makes it clear that the provisions of Chapter 3 (Workplace injury management) apply even when the insurer disputes liability.

[2] Section 45 Injury management plan for worker with significant injury

Insert ", the treating doctor" after "self-insurer)" in section 45 (2).

Explanatory note

Section 45 (2) provides that an injury management plan for an injured worker with a significant injury is to be established by the insurer in consultation with the employer and the worker. Item [2] provides that the treating doctor is also to be consulted.

[3] Section 77 Principal Conciliator and other conciliators

Omit "May" from section 77 (5).

Insert instead "March (or such other month as the Minister may determine)".

Explanatory note

Section 77 (5) requires an estimate of expenditure to be incurred in connection with the Workers Compensation Resolution Service to be forwarded to the Authority in May of each year. Item [3] changes this to March, in line with Government budgetary practices, or such other month as the Minister may determine.

[4] Section 84 Certificates as to conciliation of disputes

Insert after section 84 (5) (f):

(g) if the worker has unreasonably failed to participate in conciliation, whether the amount of the conciliation costs payable by the employer should be reduced and, if so, by what amount.

Explanatory note

Item [4] enables a conciliation certificate to include a recommendation that the amount that the employer would otherwise be required to pay as conciliation costs should be reduced if the worker has unreasonably failed to participate in conciliation.

[5] Section 88 Conciliation costs

Insert at the end of section 88 (1):

conciliation disbursements means disbursements in relation to the services referred to in the definition of ***conciliation costs*** in this subsection.

[6] Section 88 (2)–(5)

Omit section 88 (2). Insert instead:

(2) The conciliation costs in a dispute are payable by the employer unless the Principal Conciliator reduces the amount payable by the employer on the basis of a recommendation in a conciliation certificate. The regulations may fix the maximum amount of conciliation costs in a dispute that are payable by the employer.

(3) Conciliation costs are payable at the end of the conciliation proceedings concerned, regardless of outcome.

(4) The regulations may make provision for or with respect to the following:

(a) requiring all or any conciliation disbursements to be paid by the employer,

(b) fixing the maximum amount of conciliation disbursements that are payable by the employer,

(c) requiring the payment of conciliation disbursements at the end of the conciliation proceedings concerned, regardless of outcome.

(5) A requirement imposed by or under this section may be enforced as if it were a requirement of an order for the payment of costs made by the Compensation Court under section 112.

Explanatory note

Items [5] and [6] require the employer to pay the workers conciliation costs unless the Principal Conciliator otherwise orders on the basis of a recommendation in a conciliation certificate. The amendments replace an existing provision that allows regulations to be made requiring conciliation costs to be paid by the employer. The amendments provide that conciliation costs are payable at the end of conciliation, regardless of outcome. The amendments also allow similar provision to be made by regulations in respect of conciliation disbursements.

[7] Section 176 Determination of application for licence

Omit section 176 (2) (e).

Explanatory note

Section 176 of the Act deals with applications by insurers to be licensed to provide workers compensation insurance. Section 176 (2) lists the matters that the Authority may take into consideration for the purposes of determining an application for a licence, including the appropriate maximum number of licensed insurers (subsection (2) (e)). Consistently with national competition policy, item [7] omits specific mention of consideration of that matter.

[8] Section 231 Posting summary of Act

Omit "in or to the effect of the prescribed form" from section 231 (1) (a).

Insert instead "in the form prescribed by the regulations or approved by the Authority from time to time".

Explanatory note

Section 231 of the Act currently requires a summary of the Act in the form prescribed by the regulations to be posted up at every place of work. Item [8] allows the Authority to approve an alternative form of summary to be posted up instead of the summary prescribed by the regulations.

[9] Section 247 Time for instituting proceedings

Insert " or Part 9 of Chapter 5 of this Act" after "1987 Act" in section 247 (3) (b).

[10] Section 247 (3) (b)

Insert "of the 1987 Act or that Part of this Act" after "that Division".

Explanatory note

Section 247 (3) of the Act deals with the time within which proceedings must be instituted for offences by employers of failing to obtain and maintain insurance policies as required under section 144 of the 1998 Act or section 155 of the 1987 Act. Items [9] and [10] make the time within which the WorkCover Authority can institute proceedings for such an offence under section 144 of the 1998 Act the same as for the corresponding offence under the 1987 Act.

23.2 Workers Compensation Act 1987 No 70

[1] Section 68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

Omit section 68B (2)–(4). Insert instead:

(2) When determining the compensation payable by an employer in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process), section 68A applies to that compensation subject to the following:

(a) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division or section 16 of the former Act has been paid or is payable,

(b) for the purposes of paragraph (a), ***previous relevant employment*** is employment to the nature of which the disease was due by a previous employer who is liable under section 15 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),

(c) in the case of permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.

(3) When determining the compensation payable by an employer in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease), section 68A applies to that compensation subject to the following:

(a) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division or section 16 of the former Act has been paid or is payable,

(b) for the purposes of paragraph (a), ***previous relevant employment*** is employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration by a previous employer who is liable under section 16 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),

(c) in the case of permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.

(4) When determining the compensation payable by an employer in a case in which section 17 applies (loss or further loss of hearing), section 68A applies to that compensation subject to the following:

(a) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division or section 16 of the former Act has been paid or is payable,

(b) for the purposes of paragraph (a), ***previous relevant employment*** is employment to the nature of which the disease was due by a previous employer who is liable under section 17 to contribute in respect of the compensation being determined (or who would be so

liable if the requirement to contribute were not limited to employers who employed the worker during a particular period).

Explanatory note

Section 68B makes special provision for deductions from lump sum compensation entitlements in the case of gradual diseases and hearing loss. The section operates as an exception to section 68A which requires a deduction from those entitlements. Section 68A aims to ensure that the employer will only be liable for the part of a worker's permanent loss that is actually caused by work with that employer, and thereby to minimise reluctance of employers to employ workers with existing losses. The exception in section 68B currently provides that there is to be no deduction for loss due to employment by a previous employer in relevant injury causing employment ("noisy" employment in the case of hearing loss, for example). There should be no deduction in such a case because the most recent "noisy" employer is liable to pay compensation for the full extent of the loss suffered (including loss suffered in previous employment) with a right of contribution against previous "noisy" employers. The effect of recovering such contributions is similar to deducting the relevant amount from the most recent employer's liability, so that it is not necessary to apply the general deduction requirement in section 68A. The amendment provides by way of clarification that this exception is not to apply to any proportion of the loss for which compensation has already been paid by a previous employer (or is payable by a previous employer, such as where the worker has given notice of injury with the previous employer before starting with the most recent employer) and is not to apply to employment by previous employers who would not be liable to contribute (such as employers in other jurisdictions).

In addition, the amendments prevent unintended reductions in benefits by clarifying that the requirement under present section 68B for the part of a loss due to employment before the commencement of the *Workers Compensation Act 1987* to be deducted from lump sum entitlements in gradual disease cases (that is, for the exception provided by section 68B not to apply to that employment) only applies in cases of impairment of the back, neck or pelvis, because lump sum benefits for those kinds of impairment were only introduced as from the commencement of that Act.

The amendments provide that the general provisions of section 68A will apply subject to the above special exceptions contained in the amendments to section 68B, so that both sections may still have to be used for a particular claim. For example, in a case of loss of hearing, a deduction as referred to in section 68B would be made from the worker's lump sum entitlement for any part of the current loss for which lump sum compensation has already been paid (or is payable) by a previous employer who employed the worker in employment of a nature likely to cause loss of hearing. However, existing section 68A would also operate directly to require a deduction for any part of the loss for which compensation has already been paid (or is payable) on any basis by the most recent employer (against whom the current loss is claimed) or for any part of the loss that is due to previous work outside the compensation contribution arrangements mentioned above or other pre-existing condition or abnormality.

[2] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (9). Insert instead:

(9) For the purposes of the operation of section 68B in relation to compensation for loss of hearing, a reference in that section to compensation that is payable under this Division includes a reference to compensation that would be payable were it not for the operation of this section.

Explanatory note

Item [2] updates a cross-reference.

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

Insert as clause 20 of Part 6 of Schedule 6:

20 Section 68B—2000 amending Act

(1) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, section 68B (3) is, in its application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in it 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).

(2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68B applies in respect of 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.

(3) This clause and the amendments made by the *Workers Compensation Legislation Amendment Act 2000* to substitute section 68B (2)–(4) are for the avoidance of doubt and accordingly are taken to have had effect from the commencement of section 68B, but not so as to affect:

(a) any award of compensation made before the commencement of this clause, or

(b) any compensation that a worker has received or agreed to receive before the commencement of this clause, or

(c) any award of, or compromise or settlement of a claim for, damages made before the commencement of this clause, or

(d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of this clause.

Explanatory note

Item [3] inserts a transitional provision that provides that the clarifying changes made to section 68B by item [1] apply as from the commencement of that section.

[4] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of clause 1 (1) of Part 20 of Schedule 6:

Workers Compensation Legislation Amendment Act 2000

Explanatory note

Item [4] extends the operation of an existing savings and transitional regulation making power to the amendments made by this Bill.

23.3 Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 6 Constitution of Fund

Omit section 6 (1) (b). Insert instead:

(b) all money paid to the board as contributions by insurers under and in accordance with this section, and

[2] Section 6 (6)

Omit "WorkCover Authority" where firstly occurring.
Insert instead "board".

[3] Section 6 (7C)

Omit the subsection.

[4] Section 6 (7D)

Omit "Fund" where firstly occurring. Insert instead "board".

[5] Section 6 (7E)

Omit "WorkCover Authority" where secondly and thirdly occurring. Insert instead "board".

Explanatory note

The Act currently requires contributions by workers compensation insurers for payment into the Workers' Compensation (Dust Diseases) Fund (***the Fund***) to be paid to the WorkCover Authority. The Authority is then required to pay the contributions to the Workers' Compensation (Dust Diseases) Board for payment into the Fund. Items [1]–[5] will provide for the contributions paid by insurers to be paid directly to the Board for payment into the Fund.

[Minister's second reading speech made in—

Legislative Council on 1 November 2000

Legislative Assembly on 17 November 2000]

BY AUTHORITY