

Workers Compensation (General) Regulation 1995

[1995-540]



New South Wales

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Workers Compensation (General) Regulation 1995



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation may be cited as the *Workers Compensation (General) Regulation 1995*.

2 Commencement

(1) This Regulation commences on 1 September 1995, except as provided by subclause (2).

(2) Clause 75 commences on 1 July 1996.

3 Definitions

In this Regulation:

approved means approved by the Authority.

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

the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

3A Notes

Notes included in this Regulation are explanatory notes and do not form part of this Regulation.

4 Forms

A reference to a form in this Regulation is a reference to a form in Schedule 1.

Part 2 Work related diseases

5 Diseases deemed work related

Employments of the kinds set out in Column 2 of Schedule 2 are prescribed as

employments to which section 19 (1) of the Act applies. A disease set out in Column 1 of Schedule 2 is prescribed as a disease that is related to the employment or, as the case may require, each of the employments, set out in Column 2 of that Schedule opposite the description of that disease.

6 Brucellosis, Q fever and leptospirosis—medical tests and results to determine whether work related

For the purposes of section 19 (2) of the Act, any one of the results set out in Column 3 of Schedule 3, if obtained by means of the medical test the requirements of which are set out opposite that result in Column 2 of that Schedule, is a result prescribed in respect of the disease, the name of which appears opposite that result in Column 1 of that Schedule.

Part 3 Funeral expenses

7 Sec 27 (b): maximum amount for funeral expenses

- (1) For the purposes of section 27 (b) of the Act, the maximum amount for which an employer is liable in respect of reasonable funeral expenses, if death results from an injury and the worker leaves no dependants, is:
 - (a) in the case of a funeral held before 1 February 1992—\$2,700, or
 - (b) in the case of a funeral held on or after 1 February 1992 but before 1 July 2000—\$4,000, or
 - (c) in any other case—\$4,400.
- (2) This clause applies regardless of when the injury which caused the death of the worker concerned was received.

Part 4 Current weekly wage rate

8 Definitions

- (1) In this Part:

Federal Act means the *Industrial Relations Act 1988* of the Commonwealth.

State Act means the *Industrial Relations Act 1991*.

- (2) A reference:

- (a) in clause 10 (2) to an amount of money specified in an award,

- (b) in clause 11 (1) to an amount of a rate per 5 days or week or a minimum weekly rate fixed by an award or a Part or Division of an award,

is a reference to the amount or minimum weekly rate which is for the time being specified in, or fixed by, the award, Part, Division or industrial agreement, as the case

may be, as in force from time to time.

9 Sec 42 (1) (c), (5) (b): prescribed classes of workers by Ministerial order

- (1) The Authority may by order published in the Gazette:
 - (a) declare a specified class or classes of workers to be a class of workers to which this clause applies, and
 - (b) specify the manner in which the current weekly wage rate of a worker of each such class is to be calculated for the purposes of section 42 (1) (c) of the Act.
- (2) Each class of workers to which this clause applies by virtue of an order of the Authority under this clause is prescribed for the purposes of section 42 (1) (c) and (5) (b) of the Act.
- (3) The manner specified in the order as the manner of calculating the current weekly wage rate of a class of workers is prescribed for the purposes of section 42 (1) (c) of the Act in respect of that class of workers.
- (4) While an order of the Authority in force under this clause applies to a class of workers, clauses 10 and 11 do not apply to that class of workers.

10 Sec 42 (1) (c), (5) (b): prescribed classes of workers etc—shearers

- (1) For the purposes of section 42 (1) (c) and (5) (b) of the Act, the following classes of workers are prescribed:
 - (a) shearers bound by the Pastoral Employees (State) Award under the State Act,
 - (b) shearers bound by the Pastoral Industry Award 1965 under the Federal Act.
- (2) For the purposes of section 42 (1) (c) of the Act, the formula prescribed in respect of each class of workers prescribed by subclause (1) is $A \times 5$ per week, where “A” is the amount of money specified in clause 14 (a) (i) of the award referred to in subclause (1) (b).

11 Sec 42 (1) (c), (5) (b): prescribed classes of workers etc—certain meat industry workers

- (1) For the purposes of section 42 (1) (c) and (5) (b) of the Act, the following classes of workers are prescribed:
 - (a) each class of workers who are:
 - (i) regular daily employees (working under any tally or piece-work system) bound by Part III of the Federal Meat Industry Award 1981 under the Federal Act, made on 23 July 1982, and
 - (ii) normally employed at a common place of employment under a particular classification for which that Part of that award fixes a minimum tally rate per 5

days,

- (b) each class of workers who are:
 - (i) regular daily employees, being piece-workers, bound by the Meat Processing Interim Award 1973 under the Federal Act, and
 - (ii) normally employed at a common place of employment under a particular classification for which that award fixes an ordinary rate per 5 days,
- (c) each class of workers who are:
 - (i) regular daily employees, being piece-workers, bound by the Field Group and the Australasian Meat Industry Employees' Union Industrial-Agreement Award 1973 under the Federal Act, and
 - (ii) normally employed at a common place of employment under a particular classification for which that award fixes an ordinary rate per 5 days for piece-work,
- (d) each class of workers who are:
 - (i) employees, being members of a piece-work team, to whom Division 24 of the Meat Industry—J.C. Hutton Pty Ltd Industrial Agreement-Award 1974 under the Federal Act applies, and
 - (ii) normally employed at a common place of employment under a particular classification for which that Division of that award fixes an ordinary weekly rate,
- (e) each class of workers who are:
 - (i) regular daily employees, being piece-workers, bound by the Queensland Meatworks Industrial Agreement Award 1979 under the Federal Act, and
 - (ii) normally employed at a common place of employment under a particular classification for which that award fixes an ordinary rate per 5 days,
- (f) each class of workers who are:
 - (i) employees engaged as slaughtermen or following labour entitled to "overs", either as weekly hands or regular casuals, bound by the Butchers' Wholesale (Cumberland) Award under the State Act, and
 - (ii) normally employed at a common place of employment under a particular classification for which that award fixes a minimum weekly rate of pay,
- (g) each class of workers who are:
 - (i) employees engaged as slaughtermen, boners, slicers or following labour

entitled to “overs”, either as daily hands (being regular casuals within the meaning of clause 32 (iii) of the Butchers, Wholesale (Newcastle and Northern) Award under the State Act) or as weekly hands, in each case being employees bound by that award, and

- (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that award fixes a minimum weekly rate of pay,
- (h) each class of workers who are:
- (i) employees engaged as slaughtermen, boners, slicers or following labour entitled to “overs”, either as daily hands (being regular casuals within the meaning of clause 31 (iii) of the Butchers’ Wholesale (Country) Award under the State Act) or as weekly hands, in each case being employees bound by that award, and
 - (ii) normally employed at a common place of employment under a particular classification for which clause 17 of that award fixes a minimum weekly rate of pay,
- (i) each class of workers who are:
- (i) employees engaged as slaughtermen, boners, slicers or following labour entitled to “overs”, either as weekly hands or daily hands, bound by industrial agreement No 5856 in force under the State Act between the Australasian Meat Industry Employees’ Union, Newcastle and Northern Branch, and F. J. Walker Limited—Aberdeen Division, and filed with the Registrar on 20 October 1977, and
 - (ii) normally employed at a common place of employment under a particular classification for which clause 19 of that agreement fixes a minimum weekly rate of pay,
- (j) each class of workers who are:
- (i) employees engaged as slaughtermen, boners, slicers or following labour entitled to “overs”, either as weekly hands or regular casuals, bound by an industrial agreement in force under the State Act between the Australasian Meat Industry Employees’ Union, Newcastle and Northern Branch, and Gosford Meats Pty Limited and Central Coast Cold Stores, and filed with the Registrar on 8 December 1980, and
 - (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that agreement fixes a minimum weekly rate of pay,

(k) each class of workers who are:

- (i) employees engaged as slaughtermen, boners, slicers or following labour entitled to “overs”, either as weekly hands or regular casuals, bound by an industrial agreement in force under the State Act between the Australasian Meat Industry Employees’ Union, Newcastle and Northern Branch, and Northern Co-operative Meat Company Limited—Casino, and filed with the Registrar on 4 May 1981, and
- (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that agreement fixes a minimum weekly rate of pay,

(l) each class of workers who are:

- (i) employees engaged as slaughtermen, boners, slicers or following labour entitled to “overs”, either as weekly hands or regular casuals, bound by industrial agreement No 6090 in force under the State Act between Anderson Meat Packing Company Pty Limited, Wallangarra, and the Australasian Meat Industry Employees’ Union, Newcastle and Northern Branch, and filed with the Registrar on 27 July 1979, and
- (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that agreement fixes a minimum weekly rate of pay,

(m) each class of workers who are:

- (i) employees (not being employees described in paragraph (g) (i)) engaged either as daily hands (being regular casuals within the meaning of clause 32 (iii) of the Butchers, Wholesale (Newcastle and Northern) Award under the State Act) or as weekly hands, in each case being employees bound by that award and to whom clause 17 or clause 41 (x) of that award applies, and
- (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that award fixes a minimum weekly rate of pay,

(n) each class of workers who are:

- (i) employees (not being employees described in paragraph (h) (i)) engaged either as daily hands (being regular casuals within the meaning of clause 31 (iii) of the Butchers’ Wholesale (Country) Award under the State Act) or as weekly hands, in each case being employees bound by that award and to whom clause 16 or clause 40 (x) of that award applies, and
- (ii) normally employed at a common place of employment under a particular

classification for which clause 17 of that award fixes a minimum weekly rate of pay,

(o) each class of workers who are:

- (i) employees (not being employees described in paragraph (i) (i)) engaged as weekly hands or daily hands, bound by industrial agreement No 5856 in force under the State Act between the Australasian Meat Industry Employees' Union, Newcastle and Northern Branch, and F. J. Walker Limited—Aberdeen Division, and filed with the Registrar on 20 October 1977, in each case being employees to whom clause 12 or clause 39 (x) of that agreement applies, and
- (ii) normally employed at a common place of employment under a particular classification for which clause 19 of that agreement fixes a minimum weekly rate of pay,

(p) each class of workers who are:

- (i) employees (not being employees described in paragraph (j) (i)) engaged as weekly hands or regular casuals, bound by an industrial agreement in force under the State Act between the Australasian Meat Industry Employees' Union, Newcastle and Northern Branch, and Gosford Meats Pty Limited and Central Coast Cold Stores, and filed with the Registrar on 8 December 1980, in each case being employees to whom clause 17 of that agreement applies, and
- (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that agreement fixes a minimum weekly rate of pay,

(q) each class of workers who are:

- (i) employees (not being employees described in paragraph (k) (i)) engaged as weekly hands or regular casuals, bound by an industrial agreement in force under the State Act between the Australasian Meat Industry Employees' Union, Newcastle and Northern Branch, and Northern Co-operative Meat Company Limited—Casino, and filed with the Registrar on 4 May 1981, in each case being employees to whom clause 17 or 41 (xi) of that agreement applies, and
- (ii) normally employed at a common place of employment under a particular classification for which clause 18 of that agreement fixes a minimum weekly rate of pay,

(r) each class of workers who are:

- (i) employees (not being employees described in paragraph (l) (i)) engaged either as weekly hands or regular casuals, bound by industrial agreement No 6090 in force under the State Act between Anderson Meat Packing Company Pty

Limited, Wallangarra, and the Australasian Meat Industry Employees' Union, Newcastle and Northern Branch, and filed with the Registrar on 27 July 1979, in each case being employees to whom clause 17 or 41 (xi) of that agreement applies, and

(ii) normally employed at a common place of employment under a particular classification for which clause 18 of that agreement fixes a minimum weekly rate of pay.

(2) For the purposes of section 42 (1) (c) of the Act, the formula prescribed for each worker of a class prescribed by subclause (1) is whichever of the following formulae is appropriate:

(a) except as provided by paragraphs (b) and (c), the formula is:

$$\frac{A1 + A2 + A3 + A4 + A5}{B} \times 5 \text{ per week}$$

(b) where the formula prescribed by paragraph (a) provides a greater rate for a particular week for the worker (being a worker of any one of the classes prescribed by subclause (1) (a)–(l)) than the rate of $C \times 21/16$ per week, the formula is $C \times 21/16$ per week for that week for that worker, or

(c) where the formula prescribed by paragraph (a) provides a smaller rate for a particular week for the worker than the rate of $C \times 1$ per week, the formula is $C \times 1$ per week for that week for that worker.

(3) In the application of the formulae prescribed by subclause (2) for the purpose of determining compensation payable in respect of a period of incapacity (consisting of a week or any part thereof) of a worker of any one of the classes prescribed by subclause (1):

A1 equals:

(a) where that period consists of, or includes, Monday of that week and any other worker of that class worked on that Monday—the prescribed amount payable to that other worker for that Monday, or

(b) in any other case—0.

A2 equals:

(a) where that period consists of, or includes, Tuesday of that week and any other worker of that class worked on that Tuesday—the prescribed amount payable to that other worker for that Tuesday, or

(b) in any other case—0.

A3 equals:

- (a) where that period consists of, or includes, Wednesday of that week and any other worker of that class worked on that Wednesday—the prescribed amount payable to that other worker for that Wednesday, or
- (b) in any other case—0.

A4 equals:

- (a) where that period consists of, or includes, Thursday of that week and any other worker of that class worked on that Thursday—the prescribed amount payable to that other worker for that Thursday, or
- (b) in any other case—0.

A5 equals:

- (a) where that period consists of, or includes, Friday of that week and any other worker of that class worked on that Friday—the prescribed amount payable to that other worker for that Friday, or
- (b) in any other case—0.

B equals:

- (a) the total number of days of that period on which other workers of that class worked, or
- (b) where there are no such days—0.

C equals the amount of the rate per 5 days or week, or the minimum weekly rate, as the case may be, referred to in whichever paragraph of subclause (1) is applicable to each worker of that class.

- (4) A reference in subclause (3) to the prescribed amount payable to a worker for a day on which the worker worked is a reference to the amount of money which that worker is entitled, under the award or industrial agreement, as appropriate, by which the worker is bound, to be paid for that day's work:
 - (a) in any case, exclusive of any amount which the worker is so entitled to be paid in respect of shift work or overtime or otherwise at penalty rates, and
 - (b) subject to subclause (5), in the case of a worker of any one of the classes prescribed by subclause (1) (m), (n), (o), (p), (q) or (r), inclusive of any amount which the worker is so entitled to be paid in respect of production loading.
- (5) For the purposes only of subclause (4) (b), an amount a worker is entitled to be paid in respect of production loading for a day's work is taken not to include:

- (a) in the case of a worker of any one of the classes prescribed by subclause (1) (m), (n), (o) or (r), any amount in excess of one fifth of the production loading which would be payable to the worker in respect of the week in which that day occurs if the workers, in relation to whose “overs” that production loading is calculated, completed during that week a number of “overs” which provided each of those workers with pay for that week which is equivalent to the amount of money calculated in accordance with the formula $C \times 21/16$, or
- (b) in the case of a worker of any one of the classes prescribed by subclause (1) (p) or (q), any amount in excess of the production loading which would be payable to the worker in respect of that day if the workers, in relation to whose “overs” that production loading is calculated, completed during that day a number of “overs” which provided each of those workers with pay for that day which is equivalent to the amount of money calculated in accordance with the formula $C/5 \times 21/16$,
- in each case with “C” having the value ascribed to it, in relation to workers of the class to which each of those workers belongs, by subclause (3).

12 Sec 42 (1) (d): prescribed rate

- (1) For the purposes of section 42 (1) (d) of the Act, and clause 7 (2) (b) of Part 4 of Schedule 6 to the Act, the prescribed rate in respect of a period specified in Column 1 of the Table to this clause is the rate specified in Column 2 of that Table opposite that period.
- (2) This clause applies only to workers who, before 1 February 1992, became entitled to receive weekly payments in respect of incapacity for work.

Table

Column 1	Column 2
Period	Amount per week
1 On and after 1 October 1987 and before 1 April 1988	\$284.70
2 On and after 1 April 1988 and before 1 October 1988	\$288.60
3 On and after 1 October 1988 and before 1 April 1989	\$294.80
4 On and after 1 April 1989 and before 1 October 1989	\$302.20
5 On and after 1 October 1989 and before 1 April 1990	\$313.20
6 On and after 1 April 1990 and before 1 October 1990	\$319.80
7 On and after 1 October 1990 and before 1 April 1991	\$334.60
8 On and after 1 April 1991 and before 1 October 1991	\$339.00
9 On and after 1 October 1991 and before 1 April 1992	\$341.30

10	On and after 1 April 1992 and before 1 October 1992	\$351.50
11	On and after 1 October 1992 and before 1 April 1993	\$355.90
12	On and after 1 April 1993 and before 1 October 1993	\$357.20
13	On and after 1 October 1993 and before 1 April 1994	\$359.00
14	On and after 1 April 1994	\$360.60

Part 5 Indexation of amounts of benefits

13 Sec 79: definition of “latest index number”

For the purposes of paragraph (b) of the definition of **latest index number** in section 79 of the Act, the latest index number in respect of an adjustment date specified in Column 1 of the Table to this clause is the number specified in Column 2 of that Table opposite that date.

Table

Column 1	Column 2
Adjustment date	Latest index number
1 April 1988	229.3
1 October 1988	234.2
1 April 1989	240.1
1 October 1989	248.8
1 April 1990	254.1
1 April 1998	146.4
1 October 1998	149.0
1 April 1999	151.6
1 October 1999	154.1
1 April 2000	156.6
1 October 2000	158.3
1 April 2001	161.9
1 October 2001	164.7
1 April 2002	167.6
1 October 2002	170.0

Part 6 Weekly compensation

14 Notice of requirement to obtain suitable employment from other person

- (1) A notice under section 38A (3) of the Act:
 - (a) may be based on the model form (if any) set out in the claims procedures referred to in section 38A (3) (d) of the Act, and
 - (b) may include additional information and explanatory matter to assist in the understanding of the notice, and
 - (c) may be varied or replaced by a further notice given to the worker in accordance with section 38A (3) of the Act.
- (2) Reminder copies of a notice under section 38A (3) of the Act may be given to the worker concerned from time to time.
- (3) A notice given to a worker in accordance with section 38A (3) of the Act is sufficient notice for any further period of unemployment in respect of the same injury.
- (4) In the case of any worker:
 - (a) who, before the commencement of Schedule 1 to the *Workers Compensation Legislation (Amendment) Act 1994*, was at the same time both partially incapacitated for work as the result of an injury and unemployed, and
 - (b) who is, as at or at any time after that commencement, both partially incapacitated for work as the result of that injury and unemployed,

the requirement under section 38A (2) (d) of the Act applies regardless of whether the worker has been notified in accordance with section 38A (3) of the Act.

15 Notice of intention to discontinue or reduce weekly payments

- (1) The notice referred to in section 54 of the 1987 Act must:
 - (a) include a statement of the reason for the decision to discontinue payment, or reduce the amount, of weekly payments of compensation, and
 - (b) include a statement of the particulars that support the reason for the decision, including the required details for each report (if any) that is relied on to support that reason, and
 - (c) include a statement advising that the worker may request a copy of a report specified in the statement of particulars from the person paying compensation, and
 - (d) include a statement advising that the worker may request the person paying the

compensation to review the decision and advising of the procedure for making such a request, and

- (e) include a statement advising that if the worker disputes the discontinuation or reduction of weekly payments:
 - (i) in the case of a dispute about a claim that is an existing claim within the meaning of Chapter 7 of the 1998 Act, the worker may apply to the Compensation Court for determination of the dispute, or
 - (ii) in the case of a dispute about a claim that is a new claim within the meaning of Chapter 7 of the 1998 Act, the worker may refer the dispute to the Registrar for determination by the Commission, and
- (f) include the address and fax number for the registrar of the Compensation Court or the Registrar of the Commission, as appropriate.

(2) If:

- (a) the notice referred to in section 54 relates to a reduction in the amount of weekly payments of compensation as a result of the application of section 40 of the 1987 Act, and
- (b) the worker is not in receipt of earnings (or the compensation is otherwise calculated on the basis of the worker's ability to earn after the injury, rather than on the worker's actual earnings after the injury),

the notice must also include a statement of how the compensation (to be so reduced) has been calculated.

(3) In this clause:

required details, in relation to a report, means the subject matter of the report, the name and relevant professional qualifications of the person who wrote the report and the date of the report.

Part 7 Treatment in a hospital other than a public hospital

16 Definitions

(1) In this Part:

advanced surgical patient means a worker classified as an advanced surgical patient for basic health insurance benefits in the Patient Classification Schedule attached to Private Hospitals Circular No 66 dated July 1987 issued by the Commonwealth Department of Community Services and Health.

day patient means a worker whose hospital treatment as an in-patient is restricted to the day of use of the hospital theatre.

day procedure centre means a day procedure centre licensed under the *Private Hospitals and Day Procedure Centres Act 1988*.

hospital category A means a hospital (other than a public hospital) notified as a category A hospital by the Director-General of the Department of Health by order published in the Gazette, being a hospital which has an intensive care unit approved by that Director-General, 24 hour resident medical cover and one or more of the following:

- (a) a surgical class licence issued under the *Private Hospitals and Day Procedure Centres Act 1988*,
- (b) an obstetric class licence issued under the *Private Hospitals and Day Procedure Centres Act 1988*,
- (c) a medical program approved in writing by the Director-General of the Department of Health,
- (d) a rehabilitation program approved in writing by that Director-General,
- (e) a psychiatric program approved in writing by that Director-General.

hospital category B means a hospital (other than a public hospital) notified as a category B hospital by the Director-General of the Department of Health by order published in the Gazette and which has one or more of the following:

- (a) a surgical class licence issued under the *Private Hospitals and Day Procedure Centres Act 1988*,
- (b) an obstetric class licence issued under the *Private Hospitals and Day Procedure Centres Act 1988*,
- (c) a medical program approved in writing by the Director-General of the Department of Health,
- (d) a rehabilitation program approved in writing by that Director-General,
- (e) a psychiatric program approved in writing by that Director-General.

hospital category C means a hospital in New South Wales (other than a public hospital) which is not a hospital category A, hospital category B or hospital category D.

hospital category D means:

- (a) a hospital outside New South Wales, or
- (b) a hospital in New South Wales that is conducted by the Commonwealth.

intensive care unit—level 1 patient means a worker receiving intensive care treatment at an intensive care unit in a hospital (other than a public hospital), being an intensive care unit approved by the Director-General of the Department of Health as being of a standard described as level 4 in the Guide to the Delineation of the Roles of Area Health Services and Hospitals (dated June 1986 and issued by the Department of Health).

intensive care unit—level 2 patient means a worker receiving intensive care treatment at an intensive care unit in a hospital (other than a public hospital), being an intensive care unit approved by the Director-General of the Department of Health as being of a standard described as level 3 in the Guide to the Delineation of the Roles of Area Health Services and Hospitals (dated June 1986 and issued by the Department of Health).

other patient (medical) means any worker who is not an advanced surgical patient, a surgical patient, a psychiatric patient, a rehabilitation patient, a day patient, an intensive care unit—level 1 patient or an intensive care unit—level 2 patient.

procedure benefit band means a category of treatment requiring the use of an operating theatre and listed in the Medibank Private Procedure Benefit Bandings, published by Medibank Private and as in force on 10 May 1991.

psychiatric patient means a worker receiving psychiatric treatment of a kind that is normally afforded at psychiatric units conducted by public hospitals.

rehabilitation patient means a worker receiving treatment by way of rehabilitation.

same day benefit band means a category of treatment for day patients as referred to in the Day Only Procedures Manual (dated November 1992) issued by the Commonwealth Department of Health, Housing and Community Services.

surgical patient means a worker classified as a surgical patient for basic health insurance benefits in the Patient Classification Schedule attached to Private Hospitals Circular No 66 dated July 1987 issued by the Commonwealth Department of Community Services and Health.

- (2) For the avoidance of doubt, a day procedure centre is, for the purposes of this Part, a hospital (other than a public hospital).
- (3) In calculating the number of days of treatment at a hospital (other than a public hospital) for the purposes of this Part, the date of admission to such a hospital and the date of discharge from such a hospital are, if those days occur on different days, to be counted as one day and not as separate days.

17 Sec 62 (1)—prescribed rates

For the purposes of section 62 (1) of the Act, the amount for which an employer is liable in

respect of hospital treatment of a worker at a hospital (other than a public hospital) is to be calculated as follows:

- (a) in respect of each day or part of a day that the worker is an in-patient of the hospital, being an in-patient:
- (i) of a classification specified in Column 1 of the following Table, and
 - (ii) during a period of hospitalisation specified in Column 2 of the Table,

the amount specified in respect of the category of hospital (if any) in Column 3 of the Table opposite that classification and period:

Table

Column 1 Patient classification	Column 2 Period of hospitalisation	Column 3 Amount per day			
		Hospital category A	Hospital category B	Hospital category C	Hospital category D
		\$	\$	\$	\$
Advanced surgical patient	1 to 14 days	440	415	—	415
	Over 14 days	300	300	—	300
Surgical patient	1 to 14 days	415	395	—	395
	Over 14 days	300	300	—	300
	1 to 42 days	395	365	310	365
Psychiatric patient	43 to 65 days	305	275	255	275
	Over 65 days	280	240	235	240
Rehabilitation patient	1 to 49 days	430	365	310	365
	Over 49 days	315	270	250	270
Other patient (medical)	1 to 14 days	370	355	310	355
	Over 14 days	300	260	250	260

- (b) in respect of each day or part of a day that the worker is an in-patient of the hospital, being an in-patient:
- (i) of a classification specified in Column 1 of the following Table, and
 - (ii) during a period of hospitalisation specified in Column 2 of the Table,

the amount specified in Column 3 of the Table opposite that classification and period:

Table

Column 1	Column 2	Column 3
Patient classification	Period of hospitalisation	Amount per day \$
Intensive care unit—level 1 patient	up to 5 days	1715
Intensive care unit—level 2 patient	up to 5 days	1190

(c) in respect of each day or part of a day that the worker is a day patient of the hospital, the amount specified in Column 2 of the following Table (under the relevant category of hospital opposite the same day benefit band (specified in Column 1 of the Table) applicable to the worker:

Table

Column 1	Column 2				
	Hospital category A	Hospital category B	Hospital category C	Hospital category D	Day procedure centre
	\$	\$	\$	\$	\$
Band 1	190	190	190	120	175
Band 2	220	220	220	120	205
Band 3	250	250	250	120	235
Band 4	280	280	280	120	265

(d) in respect of each treatment at a hospital category A, hospital category B, hospital category C or day procedure centre as an in-patient which necessitates the use of the hospital theatre—the amount specified in Column 2 of the following Table opposite the procedure benefit band applicable to that treatment specified in Column 1 of the Table:

Table

Column 1	Column 2
	\$
Band 1A	104
Band 1	187
Band 2	327
Band 3	395
Band 4	540
Band 5	795

Band 6	905
Band 7	1210
Band 8	1685
Band 9A	1750
Band 9	2230
Band 10	2640
Band 11	3125
Band 12	3380
Band 13	4095

- (e) in respect of each treatment at a hospital category D as an in-patient which necessitates the use of the hospital theatre—the amount specified in Column 2 of the following Table opposite the period of that use specified in Column 1 of the Table:

Table

Column 1	Column 2
	\$
1-15 minutes	110
16-30 minutes	327
31-45 minutes	515
46-60 minutes	825
61-90 minutes	1535
91-120 minutes	2030
Over 120 minutes	2840

- (f) in respect of each X-ray photograph of the worker taken at the hospital as an in-patient—the amount specified as the schedule fee in the current Commonwealth Medicare Benefits Schedule Book in respect of radiological services and computerised tomography.

Part 8 Treatment in a public hospital

18 Definitions

- (1) In this Part:

critical care, in relation to a patient, has the same meaning as in Circular No 92/56 headed “Glossary of Terms for DOHRS Activity Reporting 1992/93”, dated 24 July 1992

and issued by the Department of Health.

metropolitan (non-referral) hospital means a public hospital notified as a metropolitan (non-referral) hospital for the purposes of this Regulation by the Director-General of the Department of Health by order published in the Gazette.

metropolitan (referral) hospital means a public hospital notified as a metropolitan (referral) hospital for the purposes of this Regulation by the Director-General of the Department of Health by order published in the Gazette.

non-metropolitan hospital means a public hospital notified as a non-metropolitan hospital for the purposes of this Regulation by the Director-General of the Department of Health by order published in the Gazette.

occasion of service means a non-inpatient occasion of service within the meaning of Circular No 92/56 headed "Glossary of Terms for DOHRS Activity Reporting 1992/93", dated 24 July 1992 and issued by the Department of Health.

other public hospital means a public hospital other than a metropolitan (non-referral) hospital, a metropolitan (referral) hospital, a non-metropolitan hospital or a psychiatric hospital.

psychiatric hospital means a public hospital notified as a psychiatric hospital for the purposes of this Regulation by the Director-General of the Department of Health by order published in the Gazette.

- (2) An order under this clause may provide that a hospital is not a public hospital of a particular kind in respect of treatment provided to a specified class of patients.

19 Sec 62 (1)—prescribed rates

- (1) For the purposes of section 62 (1) of the Act, the amount for which an employer is liable in respect of hospital treatment of a worker at a public hospital is, subject to subclause (2), the amount specified in the Table to this clause for the relevant classifications of public hospital and patient:
- (a) in the case of an in-patient—for each day (or part of a day) that the worker is such a patient at the hospital, and
 - (b) in the case of an out-patient—for each occasion of service provided to the worker.

Table

Column 1	Column 2
Patient classification	Hospital classification

	Metropolitan (referral)	Metropolitan (non- referral)	Non- metropolitan	Psychiatric	Other
	\$	\$	\$	\$	\$
Critical care patient	1605	930	740	—	—
In-patient (other than critical care patient)	645	485	450	270	145
Out-patient	70	55	45	45	45

- (2) For the purposes of section 62 (1) of the Act, the amount for which an employer is liable in respect of hospital treatment of a worker at a brain and spine special treatment centre at a public hospital is \$550 for each day (or part of a day) that the worker is such a patient at the hospital.

Part 9 Motor vehicle travel associated with treatment or service

20 Sec 64 (b): prescribed rate applicable for travel associated with treatment or service

- (1) For the purposes of section 64 (b) of the Act, the prescribed rate for which an employer is liable under section 60 (2) (a) or (b) of the Act in respect of travel by private motor vehicle associated with treatment or service is:
- (a) in the case of travel before 1 July 2000—38 cents per kilometre, or
 - (b) in any other case—42 cents per kilometre.
- (2) This clause applies to travel undertaken after the commencement of this clause whether the injury was received by the worker concerned before or after the commencement of this clause.

Part 10 Occupational rehabilitation services

21 Definition

In this Part, **approved guidelines** means guidelines that are approved by the Authority and issued to insurers.

22 Occupational rehabilitation service—additional services

For the purposes of the definition of **occupational rehabilitation service** in section 59 of the Act, the following additional services are prescribed:

- (a) functional education,

- (b) monitoring a return to work program,
- (c) work conditioning.

23 Occupational rehabilitation services—maximum amount for which employer liable

- (1) For the purposes of section 63A (3) (b) of the Act, the prescribed amount is \$1,500, adjusted in accordance with Division 6 of Part 3 of the Act as if it were an adjustable amount for the purposes of that Division.
- (2) The prescribed amount applies in relation to occupational rehabilitation services in respect of injuries received before the commencement of this clause (or before any adjustment of that amount as referred to in subsection (1)) in the same way as it applies in relation to services in respect of injuries received after that commencement.

24 Directions to employers under sec 63A (4)—insurers authorised

For the purposes of section 63A (4) of the Act, an insurer who is liable to indemnify an employer for any occupational rehabilitation service provided to or for the benefit of a worker is prescribed (in addition to the Authority) as a person who may direct that the employer is liable for a further amount to that prescribed by section 63A (3) of the Act.

25 Applications under sec 63A—generally

- (1) An application under section 63A (4) of the Act:
 - (a) is to be in the form of a rehabilitation plan or in such other form (if any) as the Authority may approve, and
 - (b) is to contain such particulars as the Authority may determine.
- (2) An accredited provider is required to make an application under section 63A (4) as soon as practicable after the accredited provider becomes aware that the total cost of occupational rehabilitation services provided to or for the benefit of a worker in respect of an injury will, or is likely to, exceed the maximum amount prescribed by section 63A (3).

26 Applications under sec 63A (4)—services provided by more than one provider etc

- (1) An accredited provider may, for the purpose of determining whether an application under section 63A (4) of the Act is necessary, request the relevant insurer (in writing) to supply details of any costs that have been claimed from the insurer in respect of occupational rehabilitation services previously provided by another provider in respect of the same injury.
- (2) If the insurer does not, within 14 days or such longer period as the Authority may determine, supply the accredited provider with those details, the provider need only make an application under section 63A (4) of the Act if the total cost of services

provided by that provider to or for the benefit of the worker concerned will, or is likely to, exceed the maximum amount prescribed by section 63A (3) of the Act.

27 Directions by insurers—special provisions

- (1) If an application under section 63A (4) of the Act is made to an insurer:
 - (a) the insurer may request further information from the applicant, and
 - (b) the insurer is, as far as practicable, to deal with the application within 7 days after receiving it or the further information (whichever is the later).
- (2) A direction by an insurer under section 63A (4) of the Act must be in accordance with the approved guidelines (if any) relating to such directions.
- (3) Any such direction may, subject to those approved guidelines:
 - (a) specify that an employer's liability for a further amount to that prescribed by section 63A (3) of the Act is limited by reference to a maximum further amount for which the employer is liable for the proposed services (including, if appropriate, particular services) or to the nature, number or duration of those services, or both, or
 - (b) specify that the employer is liable for such amount as is reasonably appropriate, having regard to the reasonable necessity for the provision of the services concerned.

28 Conditions etc—directions under sec 63A (4)

- (1) If a direction is given under section 63A (4) of the Act and the accredited provider concerned becomes aware that, because of a change of circumstances or otherwise, it is no longer necessary for the occupational rehabilitation service covered by the direction to be provided to or for the benefit of the worker, the provider is to cease providing the service and notify the Authority or the relevant insurer.
- (2) The Authority or an insurer may, subject to any approved guidelines, give a direction under section 63A (4) of the Act:
 - (a) that is subject to such conditions as may be specified in the direction, and
 - (b) by notice in writing given to the provider concerned, amend or revoke the conditions specified in any such direction or add to those conditions,and any such amendment, revocation or addition takes effect on and from the time the notice is served on the provider concerned or from a later time specified in the notice.
- (3) The Authority or the insurer is to ensure that the employer concerned also receives a copy of the notice as soon as practicable after it takes effect.

29 Review by the Authority

- (1) If an insurer, after an application under section 63A (4) of the Act has been made to it:
 - (a) refuses to give a direction under section 63A (4) of the Act, or
 - (b) gives only part of any such direction applied for by or on behalf of the worker or the accredited provider concerned,the insurer must refer the matter as soon as practicable to the Authority in such form and in such manner as the Authority may determine.
- (2) If an insurer gives a direction under section 63A (4) of the Act, the worker or accredited provider concerned may apply to the Authority for a review of the direction:
 - (a) if the worker or provider objects to a condition (or an amendment or revocation of a condition) that the insurer has attached or added to the direction, or
 - (b) if the insurer declines further liability on behalf of the relevant employer for any occupational rehabilitation service covered by a direction previously given by the insurer.
- (3) An application for review is required to be:
 - (a) made in such form, and
 - (b) accompanied by such information, and
 - (c) made in such manner,as the Authority may determine.
- (4) The Authority may, in relation to a matter that has been referred to it or in relation to an application for a review under this clause:
 - (a) confirm the decision of the insurer, or
 - (b) confirm the decision with such modification as the Authority considers to be appropriate, or
 - (c) give a direction under section 63A (4) of the Act that the Authority considers to be appropriate.
- (5) The Authority is to notify in writing the relevant insurer, employer, accredited provider and worker of the outcome of its review.

30 Revocation by Authority of direction under sec 63A (4)

- (1) The Authority may, after giving a direction under section 63A (4) of the Act, revoke (in whole or in part) the direction if it considers it appropriate to do so in the

circumstances.

- (2) The Authority may suspend any such direction pending its decision on whether to revoke the direction.
- (3) The Authority is to give notice in writing to all parties of any such suspension or revocation (but may, in the case of suspension, give oral notice and confirm the notice later in writing).
- (4) If the Authority suspends or revokes a direction under section 63A (4) of the Act, the employer concerned ceases to be liable (subject to any order of the Compensation Court or the Commission) for any occupational rehabilitation services or class of service specified in the notice of suspension or revocation and to which the direction relates.
- (5) The suspension or revocation has effect in respect of services provided after the accredited provider concerned receives notice of the suspension or revocation or after such later time as may be specified in the notice.

31 Submissions to Authority

The Authority must, before making a decision on:

- (a) an application for a direction under section 63A (4) of the Act or a review of an insurer's decision in respect of such an application, or
- (b) whether to amend, revoke or add to the conditions to which any such direction is subject, or
- (c) whether to suspend or revoke any such direction,

give any person who may be adversely affected by the decision a reasonable opportunity to make submissions to the Authority on the matter.

32 Payment under direction by Authority not admission of liability

The payment of any amount in accordance with a direction by the Authority under section 63A (4) of the Act is not to be taken as an admission of liability.

33 Claims under Uninsured Liability and Indemnity Scheme

In the case of a claim under the Uninsured Liability and Indemnity Scheme involving the provision of occupational rehabilitation services to or for the benefit of the worker concerned:

- (a) any application for a direction under section 63A (4) of the Act may only be made to the Authority, and
- (b) for the purpose of the definition of ***occupational rehabilitation service*** in section

59 of the Act, services may be provided to or for the benefit of the worker by any person determined by the Authority to be suitable (as well as by a provider accredited under section 152 of the Act) and, in that case, references in this Part to an accredited provider are to be read as references to such a person.

34 Application of Part to self-insurers

If, in respect of an application under section 63A (4) of the Act, a self-insurer decides or refuses to pay a further amount to that prescribed by section 63A (3) of the Act:

- (a) the decision is, for the purposes of this Part, taken to be a direction that the employer concerned is liable for that further amount, or
- (b) the refusal is, for the purposes of this Part, taken to be a refusal to give a direction under section 63A (4) of the Act,

and for any such purposes, a reference in this Part to an insurer includes a reference to a self-insurer.

35 Application of Part to proceedings pending in Compensation Court or Commission

If proceedings are pending in the Compensation Court or the Commission, the Authority may, in relation to an application or a reference for review received by it under this Part which is connected with the proceedings:

- (a) give a direction under section 63A (4) of the Act (unless the Court or the Commission otherwise orders), or
- (b) decline to deal with the matter.

36 (Repealed)

37 Authority not prevented from giving opinion on rehabilitation liability

Nothing in this Part (for example clause 30 (Review by the Authority)) prevents the Authority from giving its opinion on matters relating to the liability of an employer under the Act for particular occupational rehabilitation services.

Part 11 Notices and claims procedure

38 Notice of injury involving loss of hearing

- (1) If an injury is a loss, or further loss, of hearing which is of such a nature as to be caused by a gradual process (including boilermaker's deafness and any deafness of a similar origin):
 - (a) notice of injury is to be given by the worker under section 89 of the Act:
 - (i) if the worker is employed by an employer in an employment to the nature of which the injury is due to that employer, or

- (ii) if the worker is not so employed to the last employer by whom the employer was employed in an employment to the nature of which the injury is due, and
- (b) the notice must be in writing and be:
 - (i) in the form set out in Form 1, or
 - (ii) in any other form that contains at least the particulars required by Form 1 (though not necessarily in the same format as that Form).
- (2) Any forms issued by insurers and self-insurers for the giving of notice by workers of an injury referred to in subclause (1) must also contain such information (if any) as the Authority may from time to time approve and notify to insurers and self-insurers.

39, 40 (Repealed)

40A Notice of dispute about liability

- (1) The notice given to a claimant under section 74 of the 1998 Act must:
 - (a) include a statement of the particulars that support the reason for the decision, including the required details for each report (if any) on which the insurer relies to support that reason, and
 - (b) include a statement advising that the claimant may request a copy of a report specified in the statement of particulars from the insurer, and
 - (c) include a statement advising that the claimant may request the insurer to review the decision, and advising of the procedure for making such a request, and
 - (d) include a statement to the effect that:
 - (i) in the case of a dispute about a claim that is an existing claim within the meaning of Chapter 7 of the 1998 Act, the claimant may apply to the Compensation Court for determination of the dispute, or
 - (ii) in the case of a dispute about a claim that is a new claim within the meaning of Chapter 7 of the 1998 Act, the claimant may refer the dispute to the Registrar for determination by the Commission, and
 - (e) include the address and fax number for the registrar of the Court or the Registrar of the Commission, as appropriate.

Note—

Section 74 of the 1998 Act also requires the notice to include a statement of the reason the insurer disputes liability.

- (2) A person who fails to comply with section 74 of the 1998 Act in respect of a claim for compensation is guilty of an offence.

Maximum penalty: 20 penalty units.

- (3) It is a defence to a prosecution for an offence of failing to comply with section 74 (2B) of the 1998 Act if it is established that the notice complied with guidelines issued by the Authority as to how the notice concerned was to be expressed.
- (4) In this clause:
required details, in relation to a report, means the subject matter of the report, the name and relevant professional qualifications of the person who wrote the report and the date of the report.

41 Form of notice to be posted up at workplace

- (1) For the purposes of section 231 (1) of the 1998 Act:
 - (a) the summary of the requirements of that Act with regard to the giving of notice of injuries and the making of claims is to be in the form of an approved form, and
 - (b) the other information required to be posted up in accordance with that section is the other information contained in the approved form.
- (2) Any form approved for the time being by the Authority is an **approved form** for the purposes of this clause.
- (3) An approved form that ceases to be an approved form (as a result of the amendment or substitution of a form approved by the Authority) continues to be an approved form for the purposes of a notice posted up under section 231 of the 1998 Act that was in that form immediately before it ceased to be an approved form, but only until the earlier of:
 - (a) the renewal or replacement of the notice, or
 - (b) 12 months after the form ceases to be an approved form.
- (4) A notice posted up under section 231 of the 1998 Act that, immediately before the commencement of this subclause (as inserted by the [Workers Compensation \(General\) Amendment \(Savings, Transitional and Other Matters\) Regulation 2001](#)), was in the form of Form 2 of Schedule 1 (as in force immediately before its repeal by that Regulation) continues to be in the form of an approved form for the purposes of section 231 until 30 June 2002.
- (5), (6) (Repealed)

42 Form of register of injuries to be kept at mine etc

- (1) The register of injuries required to be kept under section 90 of the Act is to be a book with entries in the form set out in Form 3.

- (2) The particulars to be entered in the register of injuries are the particulars required to complete Form 3.

42A Access to certain reports obtained by insurer: sec 73 of 1998 Act

- (1) A worker may request an insurer to supply the worker with a copy of a report obtained by the insurer and specified in a notice to the worker under section 54 ((Notice required before termination or reduction of payment of weekly compensation) of the 1987 Act or a notice under section 74 (Insurers to give notice and reasons when liability disputed) of the 1998 Act.
- (2) An insurer who receives a request for a copy of such a report must, within 10 days after receiving the request, supply the worker (or a legal practitioner or agent acting on behalf of the worker) with a copy of the report.

Note—

A worker may also request from the employer or insurer under clause 43A a copy of a medical opinion or report obtained by the employer, or a medical report relating to treatment of the worker on a disputed claim under section 126 of the 1998 Act.

- (3) If the insurer is of the opinion that supplying the worker with a copy of a medical report would pose a serious threat to the life or health of the worker or any other person, the insurer may instead supply the medical report to a medical practitioner nominated by the worker for that purpose.

42B Interim payment direction not presumed to be warranted: sec 297 of 1998 Act

For the purposes of section 297 (3) (e) of the 1998 Act, it is not to be presumed that an interim payment direction for weekly payments of compensation is warranted in circumstances where the insurer has given the worker notice under section 74 of the 1998 Act (Insurers to give notice and reasons when liability disputed).

Part 12 Medical examinations and disputes

43 Medical examination of worker at direction of employer

- (1) A worker must not, under section 129 of the Act, be required to submit himself or herself for examination by a medical practitioner otherwise than at reasonable hours.
- (2) After a period of 1 month has elapsed from the date on which the first payment of compensation was made to a worker who is receiving weekly payments of compensation or, if the first payment was made pursuant to an award, from the date of the award, the worker must not, under section 129 of the Act, be required to submit himself or herself for examination by a medical practitioner except at the following intervals:
 - (a) once a week during the second month, and
 - (b) once a month during the third, fourth, fifth and sixth months, and

(c) thereafter once in every 2 months.

- (3) Where, after the second month, an application has been made for review of the weekly payment of compensation, the worker may be required, pending and for the purposes of the determination of the application, to submit himself or herself for 1 additional examination.
- (4) Subclauses (2) and (3) do not apply to any examination by a medical practitioner made for the purposes of the determination of a claim for compensation under section 66 or 67 of the Act for 12 weeks after the claim is duly made or during an adjournment of court proceedings in respect of the claim under section 106E (3) or 106FC (5) of the Act or section 102 (6) of the 1998 Act.

43A Access to medical opinion or report obtained by employer: sec 119 of 1998 Act

- (1) A worker may request the employer or insurer to supply the worker with a copy of a medical opinion or report furnished to the employer or insurer under section 119 (Medical examination of workers at direction of employer) of the 1998 Act and specified in a notice to the worker under section 54 (Notice required before termination or reduction of payment of weekly compensation) of the 1987 Act or a notice under section 74 (Insurers to give notice and reasons when liability disputed) of the 1998 Act.
- (2) An employer or insurer who receives a request for a copy of such a report must, within 10 days after receiving the request, supply the worker (or a legal practitioner or agent acting on behalf of the worker) with a copy of the report.

Note—

A worker may also request from the insurer under clause 42A a copy of other reports obtained by the insurer, or a medical report relating to treatment of the worker on a disputed claim under section 126 of the 1998 Act.

- (3) If the employer or insurer is of the opinion that supplying the worker with a copy of a medical opinion or report would pose a serious threat to the life or health of the worker or any other person, the employer or insurer may instead supply the medical report to a medical practitioner nominated by the worker for that purpose.

44 Application to refer matter to medical referee or panel etc

- (1) In the application of section 131 of the Act for the purposes of section 131 (7) of the Act, section 131 (2) of the Act is to be construed as requiring any applications to be made jointly by the worker and the employer.
- (2) This clause applies only in respect of existing claims and existing claim matters within the meaning of Chapter 7 of the 1998 Act.

Part 13

44AA-51D (Repealed)

Part 13A Restrictions on obtaining medical reports

51E Definitions

In this Part:

claim means a claim for compensation payable or claimed to be payable under the 1987 Act.

proceedings means proceedings before the Commission or the Compensation Court.

51F Restrictions on number of medical reports that can be admitted

(1A) This clause applies only in respect of existing claims and existing claim matters within the meaning of Chapter 7 of the 1998 Act.

(1) In any proceedings on a claim:

(a) only one medical report in any particular specialty may be admitted on behalf of a party to the proceedings, and

(b) a medical report in a specialty may not be admitted on behalf of a party to the proceedings if another medical report in that specialty has already been admitted on behalf of the party in any other proceedings on the claim or in proceedings on a related claim.

(2) Despite subclause (1) (b), a medical report in a specialty may be admitted in proceedings even if another medical report in that specialty has already been admitted in other proceedings on the claim or a related claim if:

(a) the medical report to be admitted is a permissible update (under clause 51G) of the medical report already admitted in the other proceedings, or

(b) the proceedings are lump sum compensation proceedings and the other proceedings were not lump sum compensation proceedings, but only so as to allow the admission of a medical report provided by the same medical practitioner who provided the medical report already admitted in the other proceedings.

(3) The medical report allowed to be admitted under subclause (2) (b) can however be provided by another medical practitioner if the medical practitioner who provided the medical report already admitted in the other proceedings has ceased (permanently or temporarily) to practise in the specialty concerned.

(4) Subclause (2) operates only as an exception to subclause (1) (b) and does not affect the requirement under subclause (1) (a) that only one medical report in a particular specialty may be admitted in proceedings on behalf of a party.

(5) For the purposes of this clause, a medical report in more than one specialty is to be regarded as a medical report in each of those specialties.

(6) In this clause:

lump sum compensation proceedings means proceedings on a claim for compensation under Division 4 of Part 3 of the 1987 Act (whether or not the proceedings are also proceedings on a claim for any other compensation).

related claims are claims or further claims for compensation in respect of the same injury, whether or not the claims are in respect of the same kind of compensation.

51G Permissible updates of medical reports

(1A) This clause applies only in respect of existing claims and existing claim matters within the meaning of Chapter 7 of the 1998 Act.

(1) A medical report (***the update report***) is a permissible update of another medical report (***the original report***) if the update report is provided for the purpose of updating the original report and is provided:

- (a) more than 6 months after the original report was provided, or
- (b) because there has been a further material change in the worker's condition.

(2) The update report must have been provided by the medical practitioner who provided the original report except when that medical practitioner has ceased (permanently or temporarily) to practise in the specialty concerned, in which case the update report can be provided by another medical practitioner.

(3) The update report can be provided as an addendum to the original report and in such a case the original report together with that addendum constitute the permissible update.

51H Restrictions on recovery of cost of medical reports

(1) A party to proceedings on a claim is not entitled to be paid for or recover the cost of obtaining a medical report in connection with the claim unless the report:

- (a) has been admitted in those proceedings on behalf of the party, or
- (b) is a claims management phase report (as provided by subclause (2)).

(2) The following medical reports are ***claims management phase reports***:

- (a) a medical certificate that accompanies a claim for weekly payments of compensation,
 - (a1) a medical certificate that accompanies an initial notification of injury,
- (b) any medical report provided by a medical practitioner as part of and in the course of treatment of the injured worker by the medical practitioner,

(c) any medical report provided by a medical practitioner in respect of an examination of the injured worker pursuant to a requirement of the employer in accordance with section 119 of the 1998 Act.

(3) In this clause:

(a) a reference to a claim includes an initial notification of injury (as defined in Part 3 of Chapter 7 of the 1998 Act), and

(b) a reference to proceedings on a claim includes proceedings in respect of the payment of provisional weekly payments of compensation under that Part.

51I Medical treatment not affected

This Part does not affect any entitlement of an injured worker to be paid for or recover the cost of obtaining medical treatment.

51J Reports of medical panels and referees not affected

(1) This Part does not apply in respect of:

(a) a medical report provided in respect of the examination of an injured worker by a medical panel or medical referee in connection with an existing claim, or

(b) a medical report provided for the purposes of section 121 of the 1998 Act in connection with an existing claim by an approved medical specialist under that section, or

(c) a medical report provided by an approved medical specialist under Part 7 of Chapter 7 (Medical assessment) of the 1998 Act in respect of the assessment of a new claim.

(2) In this clause:

existing claim and **new claim** have the same meaning as in Chapter 7 of the 1998 Act.

51K Transitional

(1) This Part applies only in respect of proceedings commenced after the commencement of this Part. In its application in respect of those proceedings, this Part extends to medical reports obtained before the commencement of this Part (subject to subclause (2)).

(2) Clause 51H (Restrictions on recovery of cost of medical reports) does not apply in respect of a medical report that was obtained before the commencement of this Part, or that was obtained after that commencement as a result of an appointment made before that commencement.

Part 14 Insurance policies

52 Provisions of policies of insurance

- (1) For the purposes of section 159 of the Act, a policy of insurance (except one to which subclause (2) applies):
 - (a) must contain the provisions specified in Form 4, and
 - (b) may contain any other provisions, but only if those provisions have been agreed on by the insurer and employer concerned and approved by the Authority.
- (2) A policy of insurance issued or renewed before 31 December 1995 must contain the provisions that were specified in Form 7 in the *Workers Compensation (General) Regulation 1987* immediately before its repeal, except that:
 - (a) the words “independently of this Act (being a liability under a law of New South Wales)” in the third paragraph of the Form are to be deleted and the words “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)” are to be inserted instead, and
 - (b) such a policy may contain other provisions, but only if those provisions have been agreed on by the insurer and employer concerned and approved by the Authority.

53 Trainees under Australian Traineeship System

- (1) A policy of insurance deemed to be held by an employer under section 158 of the Act must contain the provisions specified in Form 4 in respect of domestic or similar workers, subject to the omission of any reference to the payment of premiums for the policy and the making of a proposal in relation to the policy.
- (2) Pursuant to section 158 (7) of the Act, the definition of **wages** in section 174 (9) of the Act is modified by excluding from that definition wages paid or payable to a trainee within the meaning of section 158 of the Act in respect of a period of employment as a trainee.

54 Prescriptions for purposes of \$500 excess recoverable from employer

- (1) For the purposes of section 160 of the Act, a small business employer, in relation to a policy of insurance, is an employer who is liable under the policy to pay premiums not exceeding \$3,000.
- (2) The amount of premiums payable is to be determined by reference to the amount of the basic tariff premium (within the meaning of the relevant insurance premiums order) at the time the insurer first demands a premium for the policy, assuming the period of insurance to which the premium relates to be 12 months (whether or not

that period of insurance is in fact 12 months).

- (3) A weekly compensation claim made in respect of a worker who receives an injury in the circumstances referred to in section 11 (Recess claims) of the Act is prescribed for the purposes of section 160 (8) of the Act.

54A Amnesty for insurance contraventions

- (1) There is an amnesty for a contravention of section 155 of the Act by a person who satisfies the condition of the amnesty during the amnesty period, such that the person is not liable to be prosecuted for an offence under that section in respect of a contravention that occurred before the person satisfied that condition and is not liable to recovery under section 156 of the Act in respect of a contravention that occurred before the person satisfied that condition. The amnesty period is the period of 3 months that begins on the commencement of this clause.
- (2) The condition of the amnesty is that the person obtains any policy of insurance that the person is at the time required to obtain under section 155 of the Act.
- (3) The amnesty applies only to a person who is contravening section 155 of the Act at the commencement of this clause.
- (4) The amnesty does not prevent a person being prosecuted for an offence under section 155 of the Act if:
 - (a) proceedings for the offence were commenced before the person satisfied the condition of the amnesty, or
 - (b) proceedings for recovery under section 156 of the Act in respect of the contravention with which the offence is concerned were commenced before the person satisfied the condition of the amnesty, or
 - (c) an uninsured liability claim was made against the person (as provided by subclause (6)) before the person satisfied the condition of the amnesty, even if that uninsured liability claim does not relate to the prosecution concerned.
- (5) The amnesty does not prevent recovery from a person under section 156 of the Act if:
 - (a) proceedings for recovery were commenced before the person satisfied the condition of the amnesty, or
 - (b) proceedings for an offence under section 155 of the Act in respect of the contravention with which recovery is concerned were commenced before the person satisfied the condition of the amnesty, or
 - (c) an uninsured liability claim was made against the person (as provided by subclause (6)) before the person satisfied the condition of the amnesty, even if that uninsured liability claim does not relate to the recovery proceedings

concerned.

- (6) An uninsured liability claim is considered to have been made against a person if a claim has been made under section 140 of the Act, or proceedings have been commenced in the Compensation Court, against the person in respect of a claim for compensation under the Act in respect of an injury to a worker, and the person:
 - (a) in contravention of the Act had not obtained, or was not maintaining in force, a policy of insurance for the full amount of the person's liability under the Act as employer in respect of the injured worker at the relevant time, and
 - (b) was not a self-insurer at that relevant time.
- (7) When the amnesty applies in respect of a contravention by a corporation, the amnesty extends in respect of that contravention to a person who is a director of the corporation or concerned in the management of the corporation.

54B Information to be provided for certificate of currency

- (1) An employer who requests an insurer to provide a certificate of currency with respect to a policy of insurance must provide the insurer with a statement in a form approved by the Authority that contains a reasonable estimate of the wages that will be payable during the current period of insurance to workers employed by the employer.
- (2) An insurer may refuse to issue the requested certificate of currency until the employer complies with this clause.

Part 15 Insurers' contribution fund

55 Definition of "financial year"

- (1) In this Part:

financial year means a year commencing 1 July.

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

56 Definition of "premium income"

For the purposes of the contribution payable by an insurer under section 220 of the Act for a financial year, premium income (as defined in section 3 (1) of the Act) does not include any part of such a premium which is attributable to:

- (a) the application of an excess surcharge factor (as defined in the insurance premiums

order in force in respect of that financial year), or

(b) a dust diseases contribution (as so defined), or

(c) a premiums adjustment contribution (as so defined).

57 Prescribed contribution payable by insurer

For the purposes of section 220 (2) of the Act, the prescribed percentage of the premium income of an insurer for a financial year specified in Column 1 of the Table to this clause is the percentage specified in Column 2 of that Table opposite that year.

Table

Column 1	Column 2
Financial Year	Percentage of premium income
1 Financial year commencing 1 July 1987	8.5 per cent
2 Financial year commencing 1 July 1988	10.5 per cent
3 Financial year commencing 1 July 1989	5 per cent
4 Financial year commencing 1 July 1990:	
(a) in the case of a specialised insurer	5 per cent
(b) in the case of an insurer other than a specialised insurer	NIL
5 Financial years commencing 1 July 1991 and 1 July 1992	7 per cent
6 Financial years commencing 1 July 1993 and 1 July 1994	4 per cent
7 Financial year commencing 1 July 1995 and any subsequent financial year	NIL

58 Time for payment of insurer's contribution

The prescribed contribution payable by an insurer under section 220 of the Act in relation to a financial year is to be paid:

(a) except as provided by paragraph (b)—in respect of premium income received during any quarter of a financial year (whether during or after the financial year in relation to which the contribution is payable), within 15 days after the end of that quarter, or

(b) at such other times as may be determined by the Authority and notified to insurers.

Part 16 WorkCover Authority Fund

59 Definitions

In this Part:

basic tariff premium, **excess surcharge factor**, **experience adjustment factor** and **dust diseases contribution** have the same meanings respectively as they have in the insurance premiums order in force in respect of the relevant financial year.

60 Definition of “premium income” for purposes of insurers’ contributions

For the purposes of the contribution payable by an insurer under section 261 of the Act for a financial year, premium income (as defined in section 3 (1) of the Act) does not include any part of such a premium which is attributable to the application of an excess surcharge factor or a dust diseases contribution in the calculation of the premium.

61 Definition of “deemed premium income” for purposes of self-insurers’ contributions

- (1) The prescribed circumstances referred to in the definition of **deemed premium income** in section 258 of the Act are the circumstances in which the amount payable as premiums referred to in that definition is calculated in the manner fixed by the insurance premiums order in force in respect of the relevant financial year.
- (2) The amount defined as deemed premium income in section 258 of the Act in relation to the contribution payable by a self-insurer for any period during a financial year does not include:
 - (a) any amount attributable to the application of any factor other than the basic tariff premium that would have been payable as referred to in that definition in respect of that period, and
 - (b) any amount attributable to any GST that would have been payable in relation to the premiums on policies of insurance that the self-insurer would otherwise have been required to obtain under the Act had the self-insurer not been a self-insurer.
- (3) Subclause (2) does not apply to any financial year to which clause 62 applies.

62 Alternative contribution by self-insurers

- (1) This clause applies to any financial year determined by the Authority and notified in the Gazette before the commencement of that financial year as a financial year to which this clause applies.
- (2) When this clause applies to a financial year, the amount defined as deemed premium income in section 258 of the Act in relation to the contribution payable by a self-insurer for any period during that financial year:
 - (a) does not include any amount attributable to the application of an excess

surcharge factor or a dust diseases contribution, and

- (b) includes any amount attributable to the application of the experience adjustment factor, but only if the self-insurer has been a self-insurer (or insured with an insurer) for at least 2 years immediately before the commencement of that period.

Part 17 Deemed employment

63 Ministers of religion

For the purposes of clause 17 of Schedule 1 to the Act, it is declared that persons within a class specified in Column 2 of Schedule 4 to this Regulation are ministers of religion of the religious body or organisation specified opposite the class in Column 1 of Schedule 4 and the employer of those persons is the person specified opposite the class in Column 3 of Schedule 4.

Part 18 Premiums Adjustment Fund

64 Definitions of “financial year” and “Fund”

- (1) In this Part:

financial year means a year commencing 1 July and includes the period after 4 pm on the day preceding the first day of the financial year but does not include the period after 4 pm on the last day of the financial year.

Fund means the Premiums Adjustment Fund established under section 203 of the Act.

- (2) Expressions used in this Part have the same meanings as in Division 4 of Part 7 of the Act.

65 Definition of “premium income”

For the purposes of the contributions payable by an insurer into the Fund for a financial year, premium income (as defined in section 3 (1) of the Act) does not include any part of such a premium which is attributable to:

- (a) the application of an excess surcharge factor (as defined in the insurance premiums order in force in respect of that financial year), or
- (b) a dust diseases contribution (as so defined), or
- (c) a premiums adjustment contribution (as so defined).

66 Amount of contribution payable by insurer into Fund

- (1) For the purposes of section 208 (2) of the Act, the percentage of the premium income of a licensed insurer for a financial year specified in Column 1 of the Table to this subclause (being the contribution payable into the Fund) is the percentage specified in

Column 2 of that Table opposite that year.

Table

Column 1	Column 2
Financial year	Percentage of premium income
Financial year commencing 1 July 1989	NIL
Financial year commencing 1 July 1990 and any subsequent financial year	NIL

- (2) If a percentage is prescribed by this clause during a financial year, the new percentage does not apply to premium income received in respect of policies of insurance issued or renewed to take effect before the new percentage is so prescribed.

67 Time for payment of contribution by insurer into Fund

The contribution payable by an insurer into the Fund under section 208 of the Act must, in respect of premium income received in any calendar month, be paid within 15 working days after the end of that month.

Part 19 Insurers' Guarantee Fund

68 Definitions

Expressions used in this Part have the same meanings as in Division 7 of Part 7 of the Act.

69 Financial years for contributions to Insurers' Guarantee Fund

For the purposes of section 228 (1) of the Act, the financial year commencing 1 July 1989 and any subsequent financial year are prescribed.

70 Time etc for payment of insurer's contribution

The contribution payable by an insurer under section 228 of the Act in respect of any financial year is payable:

- (a) except as provided by paragraph (b), in quarterly instalments (each being equal to one-fourth of the contribution payable) due on the last day of each quarter of the financial year, or
- (b) in such other instalments and within such other time as may be determined by the Authority and specified in a notice to the insurer.

71 Further contributions payable by insurers

- (1) If the Authority has determined an amount under section 228 (1) of the Act in respect

of a financial year, it may subsequently determine under that provision a further amount to be contributed to the Guarantee Fund in respect of that year, being an amount which it considers is necessary:

- (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insolvent insurers, and
- (b) to provide for the payment of any other amounts to be paid under Division 7 of Part 7 of the Act from the Guarantee Fund during that financial year.

(2) Section 228 of the Act applies to and in respect of the payment of any such further contribution.

72 Rebates for insurers who contributed to an advance from the Premiums Adjustment Fund

(1) The Authority is to determine the amount under section 228 (1) of the Act on the basis that money advanced to the Guarantee Fund from the Premiums Adjustment Fund under section 224D of the Act is to be repaid during the financial year in which the money was advanced to the Guarantee Fund.

(2) However, if the Authority:

- (a) under section 224 (4) of the Act dispenses with the repayment of money so advanced, or
- (b) determines that it is not to be repaid during that financial year, it may reduce the contributions of eligible insurers to the Guarantee Fund by such proportion as it considers appropriate.

(3) In this clause, ***eligible insurer***, in relation to an advance made to the Guarantee Fund, means an insurer who contributed money to the Premiums Adjustment Fund which the Authority determines was used to make the advance.

73 Determination of contributions and further contributions

(1) For the purpose of determining the amount of any contribution (or further contribution) to the Guarantee Fund, the Authority is entitled to rely on an estimate determined by it of the amount required to be contributed by insurers to the WorkCover Authority Fund.

(2) If the Authority determines that any change in that estimate is appropriate, it is to re-determine the contributions (or further contributions) of insurers to the Guarantee Fund, and the relevant amounts become payable by, or repayable to, insurers.

Part 19A Penalty notice offences

73A Penalty notice offences

For the purposes of section 246 of the 1998 Act:

- (a) each of the following offences is declared to be a penalty notice offence:
 - (i) an offence created by a provision of the 1987 Act specified in Column 1 of Part 1 of Schedule 5,
 - (ii) an offence created by a provision of the 1998 Act specified in Column 1 of Part 2 of Schedule 5,
 - (iii) an offence created by a provision of the *Workers Compensation (General) Regulation 1995* specified in Column 1 of Part 3 of Schedule 5,
 - (iv) an offence created by a provision of the *Workers Compensation (Insurance Premiums) Regulation 1995* specified in Column 1 of Part 4 of Schedule 5,
- (b) the prescribed penalty for such an offence is the amount specified opposite it in Column 3 of Schedule 5, and
- (c) the following persons are declared to be authorised officers:
 - (i) each officer of the Authority authorised by the Authority for the purposes of section 246 of the 1998 Act,
 - (ii) each inspector appointed under section 31 of the *Occupational Health and Safety Act 1983*,
 - (iii) each officer of the Authority authorised by the Authority for the purposes of section 238 of the 1998 Act.

73B Short descriptions

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision specified in Column 1 of Schedule 5 is:
 - (a) the expression specified opposite it in Column 2 of that Schedule, or
 - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision specified in Column 1 of Schedule 5, the prescribed expression for the offence is taken to relate to the offence created by the provision as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used and any such document continues to have effect as if

that expression had not been amended or repealed.

- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

Part 19B Advertising of workers compensation services

Note—

Expressions used in this Part have the same meaning as in Division 8 of Part 2 of Chapter 4 of the 1998 Act. An **agent** is a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a claim, but does not include a legal practitioner. **Lawyer** means a legal practitioner and, as provided below, includes solicitor corporations and incorporated legal practices.

Each of the following activities is considered to constitute acting as agent for a person in relation to a claim:

- (a) advising the person with respect to the making of a claim,
- (b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim,
- (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,
- (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim.

A reference to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

73C Definitions

In this Part:

lawyer includes a solicitor corporation and an incorporated legal practice.

printed publication means a newspaper, magazine, journal, periodical, directory or other printed publication.

public place means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

73D Restriction on advertising workers compensation services

- (1) A lawyer or agent must not advertise workers compensation services except by means of a statement that:
- (a) states only the name and contact details of the lawyer or agent, together with information as to any area of practice or specialty of the lawyer or agent, and
 - (b) is published by an allowable publication method, as provided by subclause (2).
- (2) Each of the following is an allowable publication method:

- (a) publication of the statement in a printed publication,
- (b) publication of the statement on an Internet website by means of the publication of an electronic version of a printed publication, but only if the statement merely reproduces a statement as published in that printed publication and the printed publication is published independently of the lawyer or agent,
- (c) publication of the statement on an Internet website by the publication of the contents of a directory or database that includes the statement and that is published or maintained independently of the lawyer or agent,
- (d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place,
- (e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle,
- (f) display of the statement on any printed document provided to a person as a receipt or record in respect of a transaction or bet.

Note—

Examples of these kinds of documents are shopping docketts and betting tickets.

- (3) This clause does not prevent a lawyer or agent from advertising workers compensation services:
 - (a) to any person who is already a client of the lawyer or agent, or
 - (b) to any person at a place of business of the lawyer or agent.
- (4) A printed publication, directory or database is considered to be published or maintained independently of a lawyer or agent only if:
 - (a) it is not published or maintained by the lawyer or agent or by a partner, employee or member of the practice of the lawyer or agent, and
 - (b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.

73E What constitutes advertising of workers compensation services

- (1) For the purposes of this Part, a person advertises workers compensation services when the person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person:
 - (a) to make a claim for compensation or damages for a work-related injury, or
 - (b) to use the services of a lawyer or agent in connection with the making of such a

claim.

- (2) It does not matter that the statement also relates to compensation or damages for injuries that are not work-related.
- (3) For the purposes of this clause, a statement is published if it is:
 - (a) published in a printed publication, or
 - (b) disseminated by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or
 - (c) broadcast by radio or television, or
 - (d) displayed on an Internet website or otherwise publicly disseminated by means of the Internet, or
 - (e) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or
 - (f) displayed on any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle, or
 - (g) displayed on any document provided to a person as a receipt or record in respect of a transaction or bet.

73F Offence

- (1) A lawyer or agent who contravenes this Part is guilty of an offence.
Maximum penalty: 200 penalty units.
- (2) For the purposes of a prosecution for an offence under this clause, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate.

73G Operation of other laws not affected

This Part does not limit the operation of any other law with respect to advertising.

Part 19C Savings and transitional provisions

73H Application of Chapter 4 of 1998 Act

Chapter 4 (Workers compensation) of the 1998 Act extends to an injury received before the commencement of that Part, subject to this Part.

73I Restrictions on commencing court proceedings

- (1) Division 5 (Restrictions on commencing court proceedings) of Part 2 of Chapter 4 of the 1998 Act does not apply to the commencement of court proceedings in respect of compensation if:
 - (a) a dispute about that compensation was referred for conciliation under Division 2 of Part 4 of the 1987 Act before the commencement of this clause, or
 - (b) court proceedings in respect of that compensation were validly commenced under the 1987 Act before the commencement of this clause.
- (2) The provisions of Divisions 3A and 3B of Part 4 of the 1987 Act continue to apply (as if they had not been repealed) to and in respect of the commencement of the court proceedings referred to in those provisions except court proceedings in respect of which Division 5 of Part 2 of Chapter 4 of the 1998 Act applies. The application of Division 3A of Part 4 of the 1987 Act is subject to clause 44AA.
- (3) Pursuant to clause 1 (6) of Part 20 of Schedule 6 to the 1987 Act, section 101 (5) (c) of the 1998 Act is deemed to be amended by omitting the words “commencement of this Act” and by inserting instead the words “commencement of the 1987 Act”. This subclause ceases to have effect on 31 December 1999.

73J Submission of methodology for calculating risk premium

The reference in section 159 (Approval of methodology for calculating risk premium) of the 1998 Act to 31 March is, in the case of the year 1999, to be read as a reference to 30 June.

73K Time for making claim

Section 65 (13) of the 1998 Act applies in respect of an injury, or death resulting from an injury, received before the commencement of that subsection (but not before 4 pm on 30 June 1987), as if paragraphs (a) and (b) of that subsection read as follows:

- (a) the claim is made within whichever of the following periods ends later:
 - (i) the period of 3 years commencing when the injury or accident happened or, in the case of death, on the date of death,
 - (ii) the period of 1 year that commences when this section commences,
- (b) the claim is not made within that period but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.

73L Continuation of OHS Council

- (1) The Occupational Health, Safety and Rehabilitation Council of New South Wales as constituted under the [WorkCover Administration Act 1989](#) immediately before the

commencement of this clause continues and is taken to be the OHS Council under the 1998 Act until the appointment of the members of that Council under section 9 of the 1998 Act.

- (2) This clause ceases to operate on 1 April 1999 (so as to require the appointment of members of the OHS Council before that date).
- (3) This clause applies despite clause 6 (Abolition of former bodies) of Part 18A of Schedule 6 to the 1987 Act.

73M Contributions to WorkCover Authority Fund

Part 9 (WorkCover Authority Fund) of the 1987 Act continues to apply (despite its repeal) to and in respect of financial years up to and including the financial year commencing on 1 July 2001.

73N Reduction of maximum section 38 benefits period

- (1) The amendments made to section 38 of the 1987 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.
- (2) Clause 5D (2) of Part 4 of Schedule 6 to the 1987 Act is subject to this clause.

73O Election of damages or compensation

- (1) Pursuant to clause 1 (6) of Part 20 of Schedule 6 to the 1987 Act:
 - (a) section 151A (3) (b) of the 1987 Act is deemed to be amended by omitting the words “or by the Compensation Court making an award in respect of that permanent loss compensation” and by inserting instead the words “or by the Compensation Court awarding that permanent loss compensation (whether by award, interim award or order)”, and
 - (b) clause 11 of Part 14 of Schedule 6 to the 1987 Act is deemed to be amended by inserting after the word “awards” wherever occurring the words “of compensation”.
- (2) This clause ceases to have effect on 31 December 1999.

73P Saving in connection with amendment to section 51 of the 1987 Act

- (1) In this clause, **the section 51 amendment** means the amendment made to section 51 (9) of the 1987 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 the 1987 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) Pursuant to Part 20 of Schedule 6 to the 1987 Act, section 51 of the 1987 Act is deemed to be amended to the extent (if any) as is necessary for the purposes of giving effect to this clause.
- (5) This clause expires on 31 December 1999.

73Q Application of amendment to section 52 of the 1987 Act

- (1) In this clause, **the 2001 amendment** means the amendment to section 52 (2) (b) of the *Workers Compensation Act 1987* made by the *Workers Compensation Legislation Amendment Act 2001*.
- (2) Section 52 (2) (b) of the 1987 Act, as amended by the 2001 amendment, applies to an injury received before or after the commencement of that amendment.
- (3) However, this clause does not revive or create any entitlement to weekly payments of compensation for a person who, before the commencement of the 2001 amendment, had ceased to receive a weekly payment of compensation by virtue of the operation of section 52 (2) (b) before its amendment by the 2001 amendment (being an entitlement that the person would not have apart from this clause).

Part 20 Miscellaneous

74 Amendment relating to 18 month limit for common law claims—transitional provision

The amendment to section 151D (1) of the Act made by Schedule 5 (7) to the *Workers Compensation Legislation (Amendment) Act 1994* extends to proceedings in respect of injuries received before the commencement of the amendment (including proceedings pending at that commencement).

75 Additional records to be kept by employers

Pursuant to section 174 of the Act, an employer must keep records of the following additional matters:

- (a) to the extent that is relevant to the employer—the number of taxi plates of the employer, the number of rides for jockeys, the number of bouts for boxers and wrestlers and the number of games for football players,

- (b) in the case of workers paid under contracts of the kind referred to in paragraph (b) of the definition of **wages** in section 174 (9) of the Act—details of the contract concerned and related documentation, sufficient to enable an insurer to determine the amount of any costs to be deducted as referred to in that paragraph.

76 Interest on compensation for loss of hearing in some cases

For the purposes of section 72A (3) of the Act, the rate of interest is:

- (a) 6 per cent per annum on compensation under section 66 of the Act, and
- (b) 3 per cent per annum on other compensation.

77 Uninsured Liability and Indemnity Scheme—modification of provisions of the Act

For the purposes of section 148 (3) of the Act, the following modifications are made to the provisions of the Act in their application to claims made under the Scheme:

- (a) references in sections 40A, 54, 83, 84, 93C, 129, 131, 133 and 134 to an insurer, self-insurer or employer are to be read as references to the Authority,
- (b) references in sections 11A (8), 38A, 134, 92 (1D) and 154A to an insurer or self-insurer are to be read as references to the Authority,
- (c) in a case where the employer named as a respondent as referred to in section 144 (2) (a) of the Act is a corporation which has ceased to exist or a deceased person whose estate has been distributed—section 144 (2) is to be read as if it also provided that (in such a case) the application is not, subject to any rules of the Compensation Court, required to serve a copy of the application on that person,
- (d) section 174 (6A) of the Act is to be read as if:
 - (i) the words “, at the request of an insurer who has issued a policy of insurance to an employer,” were omitted, and
 - (ii) the reference to the insurer were a reference to the Authority or a person authorised by the Authority, and
 - (iii) section 174 (6B) were omitted,
- (e) in section 52A (2) the reference to the person liable to make the payments is to be read as reference to the Authority, and the reference to the person’s intention is to be read as reference to the Authority’s intention,
- (f) there is to be inserted at the end of section 52A (2) “This subsection applies whether or not the payments are made under an award or order of the Compensation Court.”,
- (g) the reference in section 52A (6) to the worker’s employer or the employer’s insurer is to be read as a reference to the Authority.

78 Repeal of 1987 Regulation

- (1) The *Workers Compensation (General) Regulation 1987* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the repealed Regulation, had effect under that Regulation is taken to have effect under this Regulation.

79 Application of sections 52A and 52B to cases of late claims and early disputes

- (1) If a claim for weekly payments of compensation is first made by a worker after the earliest time at which a payment discontinuation notice could have been given to the worker under section 52A of the Act:
 - (a) section 52A of the Act applies without any such notice being given, and
 - (b) the worker may apply to the Compensation Court under section 52B (1) of the Act for a determination of any dispute about the operation of section 52A of the Act (even though no such notice has been given).
- (2) If proceedings involving a claim for weekly payments of compensation in respect of any period of incapacity for work that includes any period beyond the first 104 weeks of incapacity referred to in section 52A (1) of the Act are before the Compensation Court and relate to a dispute that arose before the earliest time at which a payment discontinuation notice could have been given to the worker under section 52A of the Act:
 - (a) section 52A of the Act applies without any such notice being given, and
 - (b) the worker may apply to the Compensation Court under section 52B (1) of the Act for a determination of any dispute about the operation of section 52A of the Act (even though no such notice has been given).
- (3) This clause does not prevent the person on whom the claim has been made from giving the worker a notice informing the worker about the existence and effect of section 52A of the Act and alerting the worker to the application, or possible application, of that section to the worker. The giving of such a notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

81 Exemptions for coal miners—1996 amendments

A worker employed in or about a mine to which the [Coal Mines Regulation Act 1982](#) applies is exempt from the operation of the amendments made by the following provisions of the [WorkCover Legislation Amendment Act 1996](#), with effect from the date of assent to that Act:

- (a) Schedule 1.2 (Employment required to be substantial contributing factor),

- (b) Schedule 1.4 (Reduction in maximum lump sum compensation amounts),
- (c) Schedule 1.6 (Deduction for previous injuries and pre-existing conditions and abnormalities).

82 Costs of medical assessment: sec 330 of 1998 Act

- (1) An employer or insurer is not required to pay any costs of medical assessment in connection with:
 - (a) a medical assessment under Part 7 of Chapter 7 of the 1998 Act, if the worker failed without reasonable excuse to submit himself or herself to a medical examination conducted for the assessment, or
 - (b) any further examination conducted for a medical assessment referred to in paragraph (a), or
 - (c) an appeal against such a medical assessment, if the worker failed without reasonable excuse to attend a hearing on the appeal, or
 - (d) any further hearing held on an appeal referred to in paragraph (c).
- (2) The worker is required to pay any costs of assessment referred to in subclause (1) (a)-(d).

83 Arrangement of business before Commission: sec 349 of 1998 Act

- (1) The President determines which Presidential member will hear an appeal against a decision of an Arbitrator or an application for leave to appeal.
- (2) The Registrar determines which Arbitrator will hear any other matter before the Commission.

84 Proceedings to enter up award on agreement for compensation: sec 66B of 1987 Act

An application for determination of a claim for compensation by way of an award to give effect to an agreement between the parties may be lodged only if the application is accompanied by such evidence that the proceedings are not prevented by section 66B of the 1987 Act from being entertained by the Commission as is specified by the Rules of the Commission for that purpose.

Part 21 Provisions consequent on enactment of 2001 amending Acts

Division 1 Preliminary

85 Definitions

In this Part:

existing claim, existing claim matter, new claim and **new claim matter** have the same meaning as in Chapter 7 of the 1998 Act.

amending Acts means the [Workers Compensation Legislation Amendment Act 2001](#) and the [Workers Compensation Legislation Further Amendment Act 2001](#).

Division 2 Cessation of conciliation

86 Cessation of conciliation

- (1) On and from 1 January 2002:
 - (a) Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act cease to apply to all existing claims and there is to be no further conciliation of disputes in respect of existing claims on and from that date, and
 - (b) a provision of the 1987 Act or the 1998 Act is of no further force or effect to the extent that it confers or imposes a power, authority, duty or function on a conciliator or the Principal Conciliator or provides for conciliation of a dispute.
- (2) If a dispute has been referred to conciliation before the commencement of this clause and a conciliation certificate has not been issued before that commencement, court proceedings may be commenced with respect to the dispute in accordance with sections 101–103 of the 1998 Act (as modified by clauses 87–90).

87 Modification of section 101 of 1998 Act (Restrictions on commencing court proceedings about weekly payments)

- (1) Section 101 of the 1998 Act is modified by replacing subsections (1)–(3) with the following subsection:
 - (1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of weekly payments of compensation within 21 days after the worker made the claim for that compensation.
 - (2) This clause applies whether the claim for compensation was made before or after the commencement of this clause.

88 Modification of section 102 of 1998 Act (Restrictions on commencing court proceedings for lump sum compensation)

- (1) Section 102 of the 1998 Act is modified by replacing subsections (1)–(3) with the following subsection:
 - (1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of compensation under section 66 of the 1987 Act (as in force immediately before its amendment by the amending Acts) within 2 months after

the worker made the claim for that compensation.

- (2) This clause applies whether the claim for compensation was made before or after the commencement of this clause.

89 Modification of section 103 of 1998 Act (Restrictions on commencing court proceedings about medical, hospital and other expenses)

- (1) Section 103 of the 1998 Act is modified by replacing subsections (1)-(3) with the following subsection:

(1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) or Division 5 (Compensation for property damage) of Part 3 of the 1987 Act within 28 days after the worker made the claim for that compensation.

- (2) This clause applies whether the claim for compensation was made before or after the commencement of this clause.

90 Modification of sec 74 of 1998 Act (Insurers to give notice and reasons when liability disputed)

On and from 1 January 2002, section 74 of the 1998 Act as it applies to existing claims (that is, as in force immediately before its amendment by the [Workers Compensation Legislation Amendment Act 2001](#)) is modified by omitting section 74 (2) (b) and (c).

91 Modification of sec 121 of 1998 Act (Assessment of medical disputes by approved medical specialists)

On and from 1 January 2002, section 121 is modified by reading the reference to the Principal Conciliator in section 121 (2) (b) as a reference to the Registrar of the Commission.

Division 3 Medical assessment of new claims in respect of pre-commencement injuries

92 Assessment of impairment dispute

The following modifications are prescribed to Part 7 of Chapter 7 of the 1998 Act as that Part applies to a new claim in respect of an injury received before the day on which that Part commences:

- (a) omit section 322 (Assessment of impairment),
- (b) omit section 323 (Deduction for previous injury or pre-existing condition or abnormality).

Division 4 Transfer of existing claims

93 Transfer of existing claims

- (1) On and from 1 April 2002, each existing claim in respect of which there is no pending application for determination by the Compensation Court is to be treated as a new claim for the purposes of the Workers Compensation Acts (under clause 5 of Part 18C of Schedule 6 to the 1987 Act).
- (2) An existing claim in respect of which an application for determination by the Compensation Court is pending on 1 April 2002 is to be treated as a new claim for the purposes of the Workers Compensation Acts (under clause 5 of Part 18C of Schedule 6 to the 1987 Act):
 - (a) on the day on which the Compensation Court makes a final award or order determining the claim (including a consent award or order), or
 - (b) on the day on which the claim is resolved by an agreement between the parties being registered under section 66A of the 1987 Act,whichever occurs first.
- (2A) An application for determination by the Compensation Court that is pending on 1 April 2002 may be amended after that day if the amendment relates to the injury in respect of which the application for determination is made.
- (3) Despite section 105 of the 1998 Act, the Compensation Court has jurisdiction to examine, hear and determine the following matters with respect to existing claims that are treated as new claims under this clause:
 - (a) reconsideration of a matter to amend a judgment, award or order of the Compensation Court within 28 days after the judgment, award or order was made or given,
 - (b) reconsideration of a matter that has been remitted to the Compensation Court for reconsideration by the Court of Appeal,
 - (c) matters arising under section 112 (Costs) of the 1998 Act, if an application for an order with respect to costs is made within 28 days after the day on which the final award or order determining the claim was made,
 - (d) the making of orders as to matters ancillary to proceedings before the court (for example, matters such as the return of exhibits or enforcement of awards).

94 Transitional provision—certificates

- (1) If a certificate has been given for a medical dispute with respect to an existing claim before the day on which the existing claim is to be treated as a new claim under this

Division, then after that day:

- (a) the certificate is conclusive evidence as to a matter on which the certificate was conclusive evidence when it was issued, and
- (b) a medical dispute about a matter as to which the certificate is conclusive evidence is not required to be assessed under Part 7 of Chapter 7 of the 1998 Act (despite section 293 of that Act and clause 4 of Part 18C of Schedule 6 to the 1987 Act).

(1A) If:

- (a) a medical dispute with respect to an existing claim was referred to an approved medical specialist under section 121 of the 1998 Act, or to a medical panel or medical referee under section 122 of the 1998 Act, before 1 April 2002, and
- (b) a certificate was not given for the dispute before 1 April 2002,

then after that day the specialist, panel or referee may proceed to (or continue to) make an assessment of the dispute and give a certificate as to findings on the dispute under the relevant section.

(1B) If a certificate is given as referred to in subclause (1A):

- (a) the certificate continues on and from 1 April 2002 to be conclusive evidence as to a matter on which it would have been conclusive evidence under section 121 or 122 of the 1998 Act or section 72 of the 1987 Act (as in force before its repeal by the *Workers Compensation Legislation Amendment Act 2001*), and
- (b) the certificate is admissible after that day in proceedings before the Commission, and
- (c) a medical dispute about a matter as to which the certificate is conclusive evidence is not required to be assessed under Part 7 of Chapter 7 of the 1998 Act (despite section 293 of the 1998 Act and clause 4 of Part 18C of Schedule 6 to the 1987 Act).

(2) In this clause:

certificate means a certificate given under one of the following provisions of the 1998 Act:

- (a) section 121 (Assessment of medical disputes by approved medical specialists),
- (b) section 122 (Referral of medical disputes to referee or panel on application of worker or employer).

94A Modification of sec 281 of 1998 Act

Section 281 of the 1998 Act, as it applies to a claim in respect of an injury received before 1 January 2002, is modified for the purposes of clause 8 of Part 18C of Schedule 6 to the 1987 Act by replacing subsections (2) and (2A) with the following subsection:

- (2) A claim must be so determined within 2 months after the claimant has provided to the insurer all relevant particulars about the claim.

94B Modification of sec 282 of 1998 Act

Section 282 of the 1998 Act is modified for the purposes of clause 8 of Part 18C of Schedule 6 to the 1987 Act by inserting at the end of the section:

- (5) In the application of this section to a claim in respect of an injury received before 1 January 2002, a reference in subsection (1) to “impairment” or “permanent impairment” is to be read as a reference to “loss” within the meaning of Division 4 of Part 3 of the 1987 Act (as in force before the commencement of the amendments made to that Division by the [Workers Compensation Legislation Amendment Act 2001](#) and the [Workers Compensation Legislation Further Amendment Act 2001](#)).

Division 5 Miscellaneous

95 Uninsured Liability and Indemnity Scheme

An amendment made by Schedule 9 to the [Workers Compensation Legislation Further Amendment Act 2001](#) does not apply in respect of an injury received before the commencement of the amendment.

96 Repeal of private insurance arrangements

The commencement of an amendment made by Schedule 6 to the [Workers Compensation Legislation Further Amendment Act 2001](#) does not affect clause 73M (Contributions to WorkCover Authority Fund) or anything done under that clause.

97 Appointment of mediators

- (1) The President may select one or more Arbitrators to act as mediators until such time as the President appoints one or more persons to be mediators under section 318F of the 1998 Act.
- (2) An Arbitrator selected by the President under this clause:
 - (a) has and may exercise all the functions of a mediator under the 1998 Act, and
 - (b) ceases to have those functions when one or more mediators are appointed.

Part 22 Provisions for coal miners consequent on enactment of 2001 amending Acts

98 Definitions

In this Part:

amending Acts means the *Workers Compensation Legislation Amendment Act 2001* and the *Workers Compensation Legislation Further Amendment Act 2001*.

Compensation Court conciliator means an officer or employee of the Compensation Court nominated by the registrar of the Compensation Court to carry out conciliation in connection with a claim for compensation in respect of an injury received by a coal miner.

coal miners has the same meaning as in clause 3 of Part 18 of Schedule 6 to the 1987 Act.

99 Compensation Court conciliators

- (1) A Compensation Court conciliator has and may exercise all the powers, authorities, duties and functions conferred on a Compensation Court conciliator as a result of the operation of this Part.
- (2) The Chief Judge of the Compensation Court may issue guidelines for or with respect to the referral of disputes for conciliation and the conduct of conciliations.

100 Conciliation

On and from 1 January 2002, Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act apply to coal miners subject to the following modifications:

- (a) read a reference in those provisions to a conciliator as a reference to a Compensation Court conciliator,
- (b) read a reference in those provisions to the Principal Conciliator as a reference to the Chief Judge of the Compensation Court,
- (c) omit sections 77 and 78 (1),
- (d) read section 78 (2) as requiring the Compensation Court to refer a dispute in respect of which proceedings have been commenced in the Court to a Compensation Court conciliator for conciliation,
- (e) omit sections 79A and 81A,
- (f) read section 84 (2) as requiring a Compensation Court conciliator to issue a conciliation certificate at the conclusion of the conciliation (including conclusion by way of cessation pursuant to section 90 (as modified by paragraph (j))),

- (g) read section 84 (5) as if the words “A conciliation certificate is a certificate as to such of the following matters as the Principal Conciliator directs” were omitted and the following words were inserted instead: “A conciliation certificate is a certificate as to the following matters”,
- (h) omit section 87 (1) and (5) and read section 87 (4) as providing that Compensation Court conciliators are subject to Rules of the Compensation Court as well as to guidelines issued by the Chief Judge,
- (i) omit section 88,
- (j) read section 90 as providing (in addition to the matters provided for in that section) that:
 - (i) conciliation must cease 35 days after the Compensation Court conciliator notifies the parties that the dispute has been referred to conciliation if, before the expiry of that period, the conciliator has not issued a certificate certifying that the conciliation was successful, unless the parties to the conciliation agree to continue the conciliation for a specified period of time (which period may be extended by further agreement), and
 - (ii) the Compensation Court may not proceed to hear or determine a dispute that has been referred to conciliation until conciliation of the dispute has concluded (whether or not by way of cessation pursuant to section 90 (as modified by this paragraph)).

101 Modification of section 101 of 1998 Act (Restrictions on commencing court proceedings about weekly payments)

- (1) Section 101 of the 1998 Act is modified in its application to coal miners by replacing subsections (1)–(3) with the following subsection:
 - (1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of weekly payments of compensation within 28 days after the worker made the claim for that compensation.
- (2) This clause applies whether the claim was made before or after the commencement of this clause.

102 Modification of section 102 of 1998 Act (Restrictions on commencing court proceedings for lump sum compensation)

- (1) Section 102 of the 1998 Act is modified in its application to coal miners by replacing subsections (1)–(3) with the following subsection:
 - (1) On and from 1 January 2002, a worker cannot commence court proceedings in

respect of compensation under section 66 of the 1987 Act (as in force immediately before its amendment by the amending Acts) within 2 months after the worker made the claim for that compensation.

- (2) This clause applies whether the claim was made before or after the commencement of this clause.

103 Modification of section 103 of 1998 Act (Restrictions on commencing court proceedings about medical, hospital and other expenses)

- (1) Section 103 of the 1998 Act is modified in its application to coal miners by replacing subsections (1)–(3) with the following subsection:

(1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) or Division 5 (Compensation for property damage) of Part 3 of the 1987 Act within 28 days after the worker made the claim for that compensation.

- (2) This clause applies whether the claim was made before or after the commencement of this clause.

104 Application of amendments made by [Workers Compensation \(General\) Amendment \(Savings, Transitional and Other Matters\) Regulation 2001](#)

- (1) Subject to subclause (2), the amendments made by the [Workers Compensation \(General\) Amendment \(Savings, Transitional and Other Matters\) Regulation 2001](#) do not apply to or in respect of coal miners.
- (2) The following amendments made by that Regulation apply to and in respect of coal miners:
- (a) the amendment that inserts this Part, and
 - (b) the amendment that repeals Part 13 (Conciliation of disputes).

Part 23 Costs

Division 1 Preliminary

105 Definition

In this Part, and in Schedules 6 and 7:

insurer includes an employer.

Note—

Section 332 (2) of the 1998 Act provides that expressions in Division 1 (Costs) of Part 8 of Chapter 7 of that Act

(and consequently expressions used in this Part) have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*, except where otherwise provided. Under the *Legal Profession Act 1987*, **costs** includes barristers' and solicitors' fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

106 Costs not regulated by this Part

Costs referred to in this Part do not include any of the following:

- (a) costs for legal services provided for an appeal under section 353 (Appeal against decision of Commission constituted by Presidential Member) of the 1998 Act,
- (b) fees for investigators' reports or for other material produced or obtained by investigators (such as witness statements or other evidence),
- (c) fees for accident reconstruction reports,
- (d) fees for accountants' reports,
- (e) fees for reports from health service providers,
- (f) fees for other professional reports relating to treatment or rehabilitation (for example, architects' reports concerning house modifications),
- (g) fees for interpreter or translation services,
- (h) fees imposed by a court or the Commission,
- (i) travel costs and expenses of the claimant in the matter for attendance at medical examinations, a court or the Commission,
- (j) witness expenses at a court or the Commission.

Note—

Under section 339 of the 1998 Act, the WorkCover Authority may fix maximum fees for the provision of reports, or appearance before the Commission, by health service providers.

Division 2 Costs recoverable in compensation matters

Subdivision 1 Preliminary

107 Application of Division

This Division is made under section 337 of the 1998 Act and applies to the following costs payable on a party and party basis, on a practitioner or agent and client basis or on any other basis:

- (a) costs for legal services or agent services provided in or in relation to a claim for compensation, and

- (b) costs for matters that are not legal or agent services but are related to a claim for compensation.

Note—

Section 337 (3) and (4) of the 1998 Act provide that a legal practitioner or an agent is not entitled to be paid or recover for a legal service or agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 337.

Subdivision 2 Maximum costs recoverable by legal practitioners and agents in compensation matters

108 Fixing of maximum costs recoverable by legal practitioners and agents

- (1) The costs that are recoverable, and the maximum costs that are recoverable, for:
 - (a) legal services or agent services provided in or in relation to a claim for compensation, and
 - (b) matters that are not legal or agent services but are related to a claim for compensation,

are the costs set out in Schedule 6, except as otherwise provided by this Part.

Note—

The effect of this clause is that a legal practitioner or agent cannot recover any costs in relation to a claim for compensation unless those costs are set out in Schedule 6, except as otherwise provided in this Part.

- (2) If there is a change in the legal practitioner or agent retained by a party in or in relation to a claim made or to be made for compensation, the relevant costs are to be apportioned between the legal practitioners or agents concerned.
- (3) If there is a dispute as to such an apportionment, either legal practitioner or agent concerned (or the client) may refer the dispute to the Commission for determination.
- (4) A legal practitioner or agent has the same right of appeal against a determination made under subclause (3) as the legal practitioner or agent would have under clause 142 if the determination were a determination made by the Registrar in relation to a bill of costs.

Note—

Division 2 of Part 11 of the [Legal Profession Act 1987](#) requires barristers and solicitors, before providing any legal services to a client, to provide the client with a written disclosure of the basis of the costs (or an estimate of the likely costs) of legal services concerned.

Division 3 Costs recoverable in work injury damages matters

Subdivision 1 Maximum costs recoverable by legal practitioners in

work injury damages matters

109 Application of Division

This Division is made under section 337 of the 1998 Act and applies to the following costs payable on a party and party basis, on a solicitor and client basis or on any other basis:

- (a) costs for legal services or agent services provided in or in relation to a claim for work injury damages, and
- (b) costs for matters that are not legal or agent services but are related to a claim for work injury damages.

Note—

Section 337 (3) of the 1998 Act provides that a legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 337.

110 Fixing of maximum costs recoverable by legal practitioners

(1) The maximum costs for:

- (a) legal services provided in or in relation to a claim for work injury damages, and
- (b) matters that are not legal services but are related to a claim for work injury damages,

are the costs set out in Schedule 7, except as otherwise provided by this Part.

Note—

The effect of this clause is that a legal practitioner or agent cannot recover any costs in relation to a claim for work injury damages unless those costs are set out in Schedule 7, except as otherwise provided in this Part.

- (2) If there is a change in the legal practitioner retained by a party in or in relation to a claim for work injury damages, the relevant costs are to be apportioned between the legal practitioners concerned.
- (3) If there is a dispute as to such an apportionment, either legal practitioner concerned (or the client concerned) may refer the dispute to the Commission for determination.
- (4) A legal practitioner has the same right of appeal against a determination made under subclause (3) as the practitioner would have under clause 142 if the determination were a determination made by the Registrar in relation to a bill of costs.

Note—

Division 2 of Part 11 of the [Legal Profession Act 1987](#) requires barristers and solicitors, before providing any legal services to a client, to provide the client with a written disclosure of the basis of the costs (or an estimate of the likely costs) of legal services concerned.

111 Contracting out—practitioner/client costs

- (1) This clause applies in respect of costs in or in relation to a claim for work injury damages if a legal practitioner:
 - (a) makes a disclosure under Division 2 of Part 11 of the *Legal Profession Act 1987* (sections 180 and 181 excepted) to a party to the matter with respect to the costs, and
 - (b) enters into a costs agreement (other than a conditional costs agreement, within the meaning of that Part, that provides for the payment of a premium of more than 10% of the costs otherwise payable under the agreement on the successful outcome of the matter concerned) with that party as to those costs in accordance with Division 3 of that Part, and
 - (c) before entering into the costs agreement, advises the party (in a separate written document) that, even if costs are awarded in favour of the party, the party will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the amount that would be payable under the 1998 Act in the absence of a costs agreement.
- (2) Schedule 7 does not apply to the costs concerned to the extent that they are payable on a practitioner and client basis.

Subdivision 2 Restriction on awarding of costs

Note—

This Subdivision is made under section 346 of the 1998 Act, which provides that a party is not entitled to an award of costs to which that section applies (being costs payable by a party in or in relation to a claim for work injury damages, including court proceedings for work injury damages) except as prescribed by the regulations or by the rules of the court concerned.

In the event of any inconsistency between the provisions of this Regulation and rules of court, the provisions of this Regulation prevail to the extent of the inconsistency: section 346 (4).

112 Costs where claimant no less successful than claimant's final offer

If a claimant obtains an order or judgment on a claim that is no less favourable to the claimant than the terms of the claimant's final offer of settlement in mediation under this Act as certified by the mediator under section 318B of the 1998 Act, the court is to order the insurer to pay the claimant's costs on the claim assessed on a party and party basis.

113 Costs where claimant less successful than insurer's final offer or insurer found not liable

- (1) If a claimant obtains an order or judgment on a claim that is less favourable to the claimant than the terms of the insurer's final offer of settlement in mediation under this Act as certified by the mediator under section 318B of the 1998 Act, the court is to order the claimant to pay the insurer's costs on the claim assessed on a party and party basis.

- (2) If a claimant does not obtain an order or judgment on a claim (that is, if the court finds the insurer has no liability for the claim), the court is to order the claimant to pay the insurer's costs on the claim assessed on a party and party basis.

114 Costs in other cases

Except as provided by this Subdivision, the parties to court proceedings for work injury damages are to bear their own costs.

115 Deemed offer where insurer denies liability and no mediation

If:

- (a) the insurer wholly denies liability, and
- (b) the matter is not referred to mediation, and
- (c) the claimant obtains an order or judgment on the claim,

costs are to be awarded in accordance with this Subdivision as if:

- (d) the insurer had made a final offer of settlement at mediation of \$0, and
- (e) the claimant had made a final offer of settlement at mediation of the amount of damages specified in the pre-filing statement served under section 315 of the 1998 Act.

116 Subdivision does not apply to ancillary proceedings

This Subdivision does not apply to costs payable in or in relation to proceedings that are ancillary to proceedings on a claim for work injury damages, and a court is to award costs in such ancillary proceedings in accordance with the rules of the court.

117 Multiple parties

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the claimant and rights of contribution or indemnity appear to exist between the defendants, this Subdivision does not apply to an offer of settlement unless:

- (a) in the case of an offer made by the claimant—the offer is made to all the defendants and is an offer to settle the claim against all of them, and
- (b) in the case of an offer made to the claimant:
 - (i) the offer is to settle the claim against all the defendants concerned, and
 - (ii) where the offer is made by 2 or more defendants—by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the claimant for the whole amount of the offer.

Division 4 Assessment of costs

Subdivision 1 Preliminary

118 Definitions

In this Division:

agent bill of costs means a bill of costs for providing agent services within the meaning of section 250 of the 1998 Act.

bill of costs means a legal bill of costs or an agent bill of costs

client of a legal practitioner or agent means a person to whom the practitioner or agent has provided legal services or agent services in respect of any workers compensation matter or work injury damages matter.

legal bill of costs means a bill of costs for providing legal services within the meaning of Part 11 of the [Legal Profession Act 1987](#).

119 Applications by clients

- (1) A client who is given a bill of costs may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) An application relating to a bill of costs may be made even if the costs have been wholly or partly paid.
- (3) If any costs have been paid without a bill of costs, the client may nevertheless apply for an assessment. For that purpose the request for payment by the legal practitioner or agent is taken to be the bill of costs.

Note—

Section 343 (1) of the 1998 Act provides that the legal representative or agent of a person in respect of a claim for compensation made or to be made by the person is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission.

120 Applications by instructing practitioners or agents for assessment of costs in bills

- (1) A legal practitioner or agent who retains another legal practitioner or agent to act on behalf of a client may apply to the Registrar for an assessment of the whole of, or any part of, a bill of costs given in accordance with this Part by the other legal practitioner or agent in relation to the matter.
- (2) An application may not be made if there is a costs agreement between the client and the other legal practitioner or agent.
- (3) An application is to be made within 30 days after the bill of costs is given and may be made even if the costs have been wholly or partly paid.

121 Application for assessment of costs by legal practitioner or agent giving bill

- (1) A legal practitioner or agent who has given a bill of costs may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) An application may not be made unless:
 - (a) the bill of costs includes the following particulars:
 - (i) a description of the legal services or agent services provided,
 - (ii) an identification of each activity, event or stage specified in Schedule 6 or 7, by reference to the item number of the activity, event or stage, that was carried out,
 - (iii) the amount sought, and
 - (b) at least 30 days have passed since the bill of costs was given or an application has been made under this Division by another person in respect of the bill of costs.

122 Application for assessment of party/party costs

- (1) A person who has paid or is liable to pay, or who is entitled to receive or who has received, costs as a result of an order for the payment of an unspecified amount of costs made by a court or the Commission may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) A court or the Commission may direct the Registrar to assess costs payable as a result of an order made by the court or the Commission. Any such direction is taken to be an application for assessment duly made under this Division.

123 How is an application to be made?

- (1) An application for assessment is to be made in the form approved by the Commission and is, subject to subclause (4), to be accompanied by the fee determined by the Commission from time to time.
- (2) The application must authorise the Registrar to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any legal practitioner or agent concerned, in respect of the matter to which the application relates.
- (3) The Registrar may waive or postpone payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (4) The Registrar may refund the fee paid under this clause either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

124 Persons to be notified of application

The Registrar is to cause a copy of an application for assessment to be given to any legal practitioner, agent or client concerned or any other person whom the Registrar thinks it appropriate to notify.

125 Registrar may require documents or further particulars

- (1) The Registrar may, by notice in writing, require a person (including the applicant, the legal practitioner or agent concerned, or any other legal practitioner, agent or client) to produce any relevant documents of or held by the person in respect of the matter.
- (2) The Registrar may, by any such notice, require further particulars to be furnished by the applicant, legal practitioner, agent, client or other person as to instructions given to, or work done by, the legal practitioner or agent or any other legal practitioner or agent in respect of the matter and as to the basis on which costs were ascertained.
- (3) The Registrar may require any such particulars to be verified by statutory declaration.
- (4) A notice under this clause is to specify the period within which the notice is to be complied with.
- (5) If a person fails, without reasonable excuse, to comply with a notice under this clause, the Registrar may decline to deal with the application or may continue to deal with the application on the basis of the information provided.
- (6) A legal practitioner who fails, without reasonable excuse, to comply with a notice under this clause is guilty of professional misconduct.

126 Consideration of applications

- (1) The Registrar must not determine an application for assessment unless the Registrar:
 - (a) has given both the applicant and any legal practitioner, agent, client or other person concerned a reasonable opportunity to make written submissions to the Registrar in relation to the application, and
 - (b) has given due consideration to any submissions so made.
- (2) In considering an application, the Registrar is not bound by rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.
- (3) In the case of a legal practitioner, for the purposes of determining whether an application for assessment may be or is required to be made, or for the purpose of exercising any other function, the Registrar may determine any of the following:
 - (a) whether or not disclosure has been made in accordance with Division 2 of Part 11 of the *Legal Profession Act 1987* and whether or not it was reasonably practicable to disclose any matter required to be disclosed under that Division,

(b) whether a costs agreement exists, and its terms.

127 Assessment to give effect to maximum costs, 1998 Act and orders and rules of the Commission or court

An assessment of costs is to be made in accordance with, and so as to give effect to, orders of the Commission or a court, the Rules of the Commission or rules of court, Part 8 of Chapter 8 of the 1998 Act, this Part, and Schedules 6 and 7.

Subdivision 2 Assessment of bills of costs between practitioner or agent and client

128 Assessment of bills generally

- (1) When considering an application relating to a bill of costs, the Registrar must consider:
 - (a) whether or not it was reasonable to carry out the work to which the costs relate, and
 - (b) whether or not the work was carried out in a reasonable manner, and
 - (c) the fairness and reasonableness of the amount of the costs in relation to that work.
- (2) The Registrar is to determine the application by confirming the bill of costs or, if the Registrar is satisfied that the disputed costs are unfair or unreasonable, by substituting for the amount of the costs an amount that, in his or her opinion, is a fair and reasonable amount.
- (3) Any amount substituted for the amount of the costs may include an allowance for any fee paid or payable for the application by the applicant.
- (4) If a legal practitioner is liable under section 182 (3) of the [Legal Profession Act 1987](#) to pay the costs of the costs assessment (including the costs of the Registrar), the Registrar is to determine the amount of those costs. The costs incurred by the client are to be deducted from the amount payable under the bill of costs and the costs of the Registrar are to be paid to the Commission.
- (5) The Registrar may not determine that any part of a bill of costs that is not the subject of an application is unfair or unreasonable.

Note—

Clause 127 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

Section 337 (3) and (4) of the 1998 Act provide that a legal practitioner or an agent is not entitled to be paid or recover for a legal service or agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 337.

Section 343 (1) of the 1998 Act provides that the legal representative or agent of a person in respect of a claim for compensation made or to be made by the person is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission.

129 Additional matters to be considered in assessing bills of costs

In assessing what is a fair and reasonable amount of costs, the Registrar may have regard to any or all of the following matters:

- (a) whether the legal practitioner or agent complied with any relevant regulation, barristers rule, solicitors rule or joint rule,
- (b) in the case of a legal practitioner—whether the legal practitioner disclosed the basis of the costs or an estimate of the costs under Division 2 of Part 11 of the *Legal Profession Act 1987* and any disclosures made,
- (c) any relevant costs agreement (subject to clause 130),
- (d) the skill, labour and responsibility displayed on the part of the legal practitioner or agent responsible for the matter,
- (e) the instructions and whether the work done was within the scope of the instructions,
- (f) the complexity, novelty or difficulty of the matter,
- (g) the quality of the work done,
- (h) the place where and circumstances in which the legal services were provided,
- (i) the time within which the work was required to be done.

130 Costs agreements not subject to assessment

- (1) The Registrar is to decline to assess a bill of costs if:
 - (a) the disputed costs are subject to a costs agreement that complies with Division 3 of Part 11 of the *Legal Profession Act 1987*, and
 - (b) the costs agreement specifies the amount of the costs or the dispute relates only to the rate specified in the agreement for calculating the costs.
- (2) If the dispute relates to any other matter, costs are to be assessed on the basis of that specified rate despite clause 128. The Registrar is bound by a provision for the payment of a premium that is not determined to be unjust under clause 131.
- (3) This clause does not apply to any provision of a costs agreement that the Registrar determines to be unjust under clause 133.
- (4) This clause does not apply to a costs agreement applicable to the costs of legal services if a legal practitioner failed to make a disclosure in accordance with Division 2

of Part 11 of the *Legal Profession Act 198* of the matters required to be disclosed by section 175 or 176 of that Act in relation to those costs.

131 Unjust costs agreements

- (1) The Registrar may determine whether a term of a particular costs agreement entered into by a legal practitioner and a client is unjust in the circumstances relating to it at the time it was made.
- (2) For that purpose, the Registrar is to have regard to the public interest and to all the circumstances of the case and may have regard to the matters specified in section 208D (2) (a)–(j) of the *Legal Profession Act 1987*.
- (3) For the purposes of this clause, a person is taken to have represented another person if the person represented the other person, or assisted the other person to a significant degree, in the negotiations process up to, or at, the time the agreement was made.
- (4) In determining whether a provision of the agreement is unjust, the Registrar is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the agreement was made.

132 Interest on amount outstanding

- (1) The Registrar may, in an assessment, determine that interest is not payable on the amount of costs assessed or on any part of that amount and determine the rate of interest (not exceeding the rate referred to in section 190 (4) of the *Legal Profession Act 1987*).
- (2) This clause applies despite any costs agreement or section 190 of the *Legal Profession Act 1987*.
- (3) This clause does not authorise the giving of interest on interest.
- (4) This clause does not apply to or in respect of the assessment of costs referred to in Subdivision 3 (party/party costs).

Subdivision 3 Assessment of party/party costs

133 Assessment of costs—costs ordered by court or Commission

- (1) When dealing with an application relating to costs payable as a result of an order made by a court or the Commission, the Registrar must consider:
 - (a) whether or not it was reasonable to carry out the work to which the costs relate, and
 - (b) what is a fair and reasonable amount of costs for the work concerned.

- (2) The Registrar is to determine the costs payable as a result of the order by assessing the amount of the costs that, in his or her opinion, is a fair and reasonable amount.
- (3) If a court or the Commission has ordered that costs are to be assessed on an indemnity basis, the Registrar must assess the costs on that basis, having regard to any relevant rules of the court or Commission.
- (4) The costs assessed are to include the costs of the assessment (including the costs of the parties to the assessment, and the Registrar). The Registrar may determine by whom and to what extent the costs of the assessment are to be paid.
- (5) The costs of the Registrar are to be paid to the Commission.

Note—

Subdivision 2 of Division 3 of this Part limits the circumstances in which costs may be awarded on a party/party basis in relation to a claim for work injury damages.

Clause 127 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

134 Additional matters to be considered by Registrars in assessing costs ordered by court or Commission

In assessing what is a fair and reasonable amount of costs, the Registrar may have regard to any or all of the following matters:

- (a) the skill, labour and responsibility displayed on the part of the legal practitioner or agent responsible for the matter,
- (b) the complexity, novelty or difficulty of the matter,
- (c) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done,
- (d) the place where and circumstances in which the legal services were provided,
- (e) the time within which the work was required to be done,
- (f) the outcome of the matter.

135 Effect of costs agreements in assessments of party/party costs

- (1) The Registrar may obtain a copy of, and may have regard to, a costs agreement.
- (2) However, the Registrar must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or the Commission.

136 Court or Commission may specify amount etc

This Division does not limit any power of a court or the Commission to determine in any particular case the amount of costs payable or that the amount of the costs is to be determined on an indemnity basis.

Subdivision 4 Enforcement of assessment

137 Certificate as to determination

- (1) On making a determination, the Registrar is to issue to each party a certificate that sets out the determination.
- (2) The Registrar may issue more than one certificate in relation to an application for costs assessment. Such certificates may be issued at the same time or at different stages of the assessment process.
- (3) In the case of an amount of costs that has been paid, the amount (if any) by which the amount paid exceeds the amount specified in any such certificate may be recovered as a debt in a court of competent jurisdiction.
- (4) In the case of an amount of costs that has not been paid, the certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs, and the rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed.
- (5) For this purpose, the amount of unpaid costs does not include the costs incurred by the Registrar in the course of a costs assessment.
- (6) To avoid any doubt, this clause applies to or in respect of both the assessment of costs referred to in Subdivision 2 of this Division (practitioner/client costs) and the assessment of costs referred to in Subdivision 3 of this Division (party/party costs).
- (7) If the costs of the Registrar are payable by a party to the assessment (as referred to in clause 139), the Registrar may refuse to issue a certificate relating to his or her determination under this clause until the costs of the Registrar have been paid.
- (8) Subclause (7) does not apply in respect of a certificate issued before the completion of the assessment process under subclause (2).

138 Reasons for determination

The Registrar must ensure that a certificate issued under clause 137 that sets out his or her determination is accompanied by:

- (a) a statement of the reasons for the Registrar's determination, and

- (b) the amount of costs the Registrar determines is fair and reasonable, and
- (c) if the Registrar declines to assess a bill of costs under clause 130—the basis for doing so, and
- (d) if the Registrar determines that a term of a costs agreement is unjust—the basis for doing so, and
- (e) a statement of any determination under clause 132 that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.

139 Recovery of costs of costs assessment

- (1) This clause applies when the costs of the Registrar are payable by a party to the assessment (under section 182 (3) of the *Legal Profession Act 1987* or clause 128 or 133 (5)).
- (2) On making a determination, the Registrar may issue to each party a certificate that sets out the costs incurred by the Registrar in the course of the costs assessment.
- (3) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs.
- (4) The Registrar may take action to recover the costs of the Registrar.

140 Correction of error in determination

- (1) At any time after making a determination, the Registrar may, for the purpose of correcting an inadvertent error in the determination:
 - (a) make a new determination in substitution for the previous determination, and
 - (b) issue a certificate under clause 137 that sets out the new determination.
- (2) Such a certificate replaces any certificate setting out the previous determination of the Registrar that has already been issued by the Registrar, and any judgment that is taken to have been effected by the filing of that previously issued certificate is varied accordingly.

141 Determination to be final

The Registrar's determination of an application is binding on all parties to the application and no appeal or other review lies in respect of the determination, except as provided by this Division.

Subdivision 5 Appeals

142 Appeal against decision of Registrar as to matter of law

- (1) A party to an application who is dissatisfied with a decision of the Registrar as to a matter of law arising in the proceedings to determine the application may, in accordance with the Rules of the Commission, appeal to the Commission constituted by a Presidential member against the decision.
- (2) The appeal is to be in the form approved by the Commission and be accompanied by the fee approved by the Commission from time to time.
- (3) After deciding the question the subject of the appeal, the Commission constituted by a Presidential member may, unless it affirms the Registrar's decision:
 - (a) make such determination in relation to the application as, in its opinion, should have been made by the Registrar, or
 - (b) remit its decision on the question to the Registrar and order the Registrar to re-determine the application.
- (4) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

143 Effect of appeal on application

- (1) If a party to an application has appealed against a determination or decision of the Registrar, either the Registrar or the Commission constituted by a Presidential Member may suspend, until the appeal is determined, the operation of the determination or decision.
- (2) The Registrar or the Commission may end a suspension made by the Registrar. The court or the Commission may end a suspension made by the court or Commission.

Subdivision 6 Miscellaneous

144 Liability of legal practitioner or agent for costs in certain cases

- (1) The Registrar may act as set out in subclause (2) if it appears to the Registrar that costs have been incurred improperly or without reasonable cause, or have been wasted by undue delay or by any other misconduct or default.
- (2) The Registrar may in the determination:
 - (a) disallow the costs as between the legal practitioner or agent and the practitioner's or agent's client, and
 - (b) direct the legal practitioner or agent to repay to the client costs that the client has been ordered by a court or the Commission to pay to any other party, and

(c) direct the legal practitioner or agent to indemnify any party other than the client against costs payable by the party indemnified.

- (3) Before taking action under this clause, the Registrar must give notice of the proposed action to the legal practitioner or agent and the client and give them a reasonable opportunity to make written submissions in relation to the proposed action.
- (4) The Registrar must give due consideration to any submissions so made.

145 Referral of misconduct to Legal Services Commissioner

- (1) If the Registrar considers that any conduct of a legal practitioner or agent involves the deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations as to costs, the Registrar must refer the matter to the Legal Services Commissioner appointed under the *Legal Profession Act 1987*.
- (2) For the purposes of the *Legal Profession Act 1987*, the deliberate charging of grossly excessive amounts of costs and deliberate misrepresentations as to costs are each declared to be professional misconduct.
- (3) The Registrar may refer any failure by a legal practitioner to comply with a notice issued under clause 125, or with any other provision of this Division, to the Legal Services Commissioner

Division 5 Goods and services tax

146 GST may be added to costs

- (1) Despite the other provisions of this Part, a cost fixed by Division 3 (Costs recoverable in work injury damages matters) may be increased by the amount of any GST payable in respect of the service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Part.
- (2) This clause does not permit a legal practitioner or agent to charge or recover, in respect of GST payable in respect of a service, an amount that is greater than:
- (a) 10% of the maximum amount payable under this Part to the legal practitioner or agent in respect of the service apart from this clause, or
- (b) the amount permitted under the New Tax System Price Exploitation law, whichever is the lesser.
- (3) In this clause:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

New Tax System Price Exploitation law means:

- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

Division 6 Miscellaneous

147 Modifications to *Legal Profession Act 1987* relating to assessment of costs

A reference in section 175 (Obligation to disclose to clients basis of costs) or 182 (Effect of non-disclosure of matters related to basis of costs) to assessment of costs under Division 6 of Part 11 of the *Legal Profession Act 1987* is to be read as including, as an alternative to assessment under that Division, assessment of costs under Division 4 of Part 8 of Chapter 7 of the 1998 Act.

148 Transitional provisions

- (1) In relation to claims for compensation, this Part:
 - (a) applies to new claims, and
 - (b) extends to proceedings with respect to existing claims that are treated as new claims under clause 93 but only if those proceedings had not commenced before clause 93 commenced.
- (2) In relation to claims for work injury damages, this Part applies to claims made after 1 January 2002.
- (3) In this clause, **existing claim** and **new claim** have the same meaning as in Chapter 7 of the 1998 Act.

149 Special provision for matters involving coal miners

This Part does not apply to legal services or agent services provided in any workers compensation matter involving a claim for compensation or work injury damages by a coal miner, and regulations made under Division 5 (Costs fixed by regulation) of Part 11 of the *Legal Profession Act 1987* continue to apply to legal services provided in such a matter.

Schedule 1 Forms

(Clause 4)

Form 1

(Clause 38)

Workers Compensation Act 1987

Industrial deafness—Notice of injury

- 1 Name and address of worker:
- 2 Age and occupation of worker:
- 3 Name and address of employer to whom notice of injury is given:
- 4 If not employed by the above employer at the date that this notice of injury is given, date of last day of employment with the employer:
- 5 Has the worker been paid any compensation for loss of hearing in Australia or elsewhere? YES/NO
If YES, give details:
- 6 Using the following list, give the worker's complete work history in any noisy work in Australia or elsewhere, including work as an employee, in any business carried on by the worker (either alone or with anyone else), in military service or otherwise. Include work in the list even if unsure about how noisy the work was.

Type of occupation	State whether employee/ own business/ other (specify)	Name & address of employer, business or other	Period of work
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.....(Signature of worker)

.....
(Date)

Form 2

(Repealed)

Form 3

(Clause 42)

Workers Compensation Act 1987

Register of Injuries

Particulars:
Name of injured worker:
Address:
Age:Occupation:
Industry in which worker was engaged:
Operation in which worker was engaged at time of injury:
Date (or deemed date) of injury: ../../.. Hour: .. am/pm
Nature of injury:
Cause of injury:
Remarks:

(Signed)

(Address)

(Date)

[Entries in this book should, if practicable, be made in ink.]

Note—

The employer's full name and address, together with the name of the employer's insurer and the insurer's address, should be written up in ink on the inside of the cover of the book.

Form 4

(Clause 52)

[Workers Compensation Act 1987](#)

New South Wales

Employer's Insurance Policy

Part 1 Preliminary

1 Definitions

In this Policy:

Employer means the person insured under this Policy, being the person named as the Employer in the Schedule of Employer Particulars.

Insurer means the insurer of the Employer under this Policy, being the person named as the Insurer in the Schedule of Employer Particulars.

period of insurance means the period specified in the Schedule of Employer Particulars as the period during which this Policy is in force, and any subsequent period in respect of which this Policy is duly renewed.

the Act means the [Workers Compensation Act 1987](#) and includes the [Workplace Injury Management and Workers Compensation Act 1998](#).

the Proposal means the proposal for insurance in respect of which this Policy is issued (made by the Employer to the Insurer).

Schedule of Employer Particulars means the Schedule most recently issued by the Insurer to the Employer as the Schedule of Employer Particulars in respect of this Policy.

worker has the same meaning as in the Act (including the extended meaning it has because of Schedule 1 (Deemed employment of workers) to the Act).

2 Proposal and Schedule form part of Policy

The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer Particulars are considered to form part of this Policy.

Part 2 Cover provided by Policy

3 What the Insurer is liable for

The Insurer will indemnify the Employer against all of the following sums for which the Employer becomes liable during or in respect of the period of insurance:

(a) compensation that the Employer becomes liable to pay under the Act to or in respect of any person who is a worker of the Employer (including any person to whom the Employer is liable under section 20 of the Act),

(b) any other amount that the Employer becomes liable to pay independently of the Act (but not including a

liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury to any such person (not including liability in respect of an injury, suffered by a person other than such a worker, arising out of any rescue or attempted rescue),

- (c) costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceeding in which any such liability is alleged.

The Insurer will not indemnify the Employer for the Employer's liability for GST payable on the settlement of a claim.

4 Businesses and industrial activities to which Policy applies

This Policy applies to a business or industrial activity described in the Schedule of Employer Particulars. The Employer can change the businesses or industrial activities to which this Policy applies by giving notice of the change in writing to the Insurer. The Schedule of Employer Particulars is taken to have been changed to give effect to any such notice given by the Employer. The premium payable for this Policy is to be adjusted in accordance with any change in the businesses or industrial activities to which this Policy applies.

5 Insurer is directly liable to workers

The Insurer (as well as the Employer) is directly liable to any worker and (if the worker dies) to the worker's dependants or other persons to pay the compensation under the Act or other amount independently of the Act for which the Employer is liable and indemnified under this Policy. This means that a claim can be made and action taken directly against the Insurer.

6 Insurer is bound by judgments etc against Employer

The Insurer is bound by and subject to any judgment, order, decision or award given or made against the Employer, in respect of any liability for which the Insurer is liable to indemnify the Employer under this Policy.

7 Premium

The premium for this Policy is calculated in accordance with the relevant Insurance Premiums Order (unless this Policy is exempt from Insurance Premium Orders).

Part 3 Conditions of Policy

8 Employer must give Insurer notice of injury to worker

The Employer must notify the Insurer within 48 hours after becoming aware that a worker has received an injury that seems to be a significant injury (an injury that is likely to result in the worker being totally or partially incapacitated for work for a continuous period of more than 7 days). If the injury does not seem to be a significant injury, the Employer must notify the Insurer within 7 days after becoming aware that the worker has received the injury. If the worker first becomes totally or partially incapacitated for work after the Employer notifies the Insurer of the injury, the Employer must notify the Insurer of the incapacity as soon as possible after becoming aware of it.

9 How notices are to be given

- (1) Notices to be given under this Policy to the Insurer are to be given by being delivered, posted or transmitted electronically to the address of the Insurer last notified to the person giving the notice.
- (2) Notices to be given under this Policy to the Employer are to be given by being delivered,

posted or transmitted electronically to the address of the Employer last known to the Insurer.

- (3) The notification of injury required by clause 8 is to be given to the Insurer in the manner required by subclause (1) or in such other manner as the Insurer indicates to the Employer that the Insurer will accept.

10 Employer not to make admissions etc

The Employer must not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement or admission of liability in respect of any injury to or claim made by any worker.

11 Defence of proceedings

The Insurer can use the name of the Employer in respect of anything indemnified under this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must comply with all reasonable requests by the Insurer for information, assistance and documents to enable the Insurer to settle or resist a claim.

12 Subrogation

The Insurer can use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise. The Insurer has the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by this Policy. The Employer must execute such documents as may be necessary for the purpose of vesting any of those rights in the Insurer, as and when required to do so by the Insurer.

13 Precautions to prevent injury

The Employer must take all reasonable precautions to prevent injury.

14 Alterations and repairs following injury

So far as is reasonably practicable, the Employer must not alter or repair any work, machinery, plant, way or appliance after an injury to a worker occurs in connection with it, until the Insurer has had an opportunity to examine it or has consented to the alteration or repair being made.

15 Insurer's right of inspection

The Insurer is entitled to inspect at any reasonable time any work, machinery, plant, way or appliance used in the Employer's business or industrial activity.

16 Assignment

An assignment of interest under this Policy does not bind the Insurer unless the written consent of the Insurer to the assignment has been obtained.

17 Renewal of Policy

This Policy is renewed on the expiration of the current period of insurance to which it applies, except where:

- (a) the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required, or
- (b) the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy, but the Insurer cannot refuse to

renew this Policy unless the WorkCover Authority has given its prior consent in writing to the refusal.

The period of each renewal is 12 months, or such shorter period as the Insurer and the Employer agree to before renewal.

18 Cancellation of Policy

The Insurer may cancel this Policy at any time if the Insurer has first obtained the written consent of the WorkCover Authority (and cannot cancel this Policy in any circumstances without that consent). The Insurer cancels this Policy by giving notice of cancellation in writing to the Employer. The cancellation takes effect on the cancellation day notified in the notice of cancellation but that day must not be less than 7 days after the notice of cancellation is given to the Employer. Section 184 of the Act applies as if the Policy had been cancelled under that section.

19 No waiver or alteration

A provision of this Policy cannot be waived or altered unless the consent of the Insurer has been previously obtained and signified by endorsement on this Policy.

20 Employer must tell Insurer if unable to give suitable work requested by injured worker

If a worker employed by the Employer is partially incapacitated for work as a result of an injury and requests the Employer to provide suitable employment for him or her and the Employer does not immediately provide suitable employment, the Employer must promptly notify the Insurer of the following:

- (a) the fact of the worker's request and that the Employer has not provided suitable employment,
- (b) any proposal to provide or arrange for suitable employment for the worker, having regard to the medical certificate which the worker supplies and to the Employer's return-to-work program (if any) or otherwise.

21 Employer must advise change of business or industry

The Employer must notify the Insurer, as soon as practicable, of any change in the business or industrial activity carried on by the Employer.

22 Records to be kept of wages

The Employer agrees to allow the Insurer to inspect the records kept by the Employer under section 174 of the Act.

Note—

Section 174 of the Act requires the Employer to keep certain records (such as records of wages paid to workers) and requires the Employer to keep those records for at least 7 years. The section gives the WorkCover Authority certain rights to inspect those records.

23 Cover conditional on Employer complying with Policy, Act and regulations

The indemnity provided by this Policy is conditional on compliance by the Employer with the provisions of this Policy, the Act and the regulations under the Act.

24 Act and regulations form part of Policy

This Policy is subject to the provisions of the Act and the regulations under the Act and those provisions are taken to form part of this Policy.

Notes—

1 Recovery of excess from Employer. Under section 160 of the Act, the Employer is required to repay an excess of the first \$500 (or if another amount is prescribed by regulations under the Act, that other amount) of weekly payments of compensation in respect of each claim paid by the Insurer. An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant worker or makes an appropriate debit against any amount standing to the Employer's credit for premiums. If the basic tariff premium calculated for the policy does not exceed \$3,000, the excess is repayable only if the Employer and Insurer have agreed that it is repayable.

2 Disputes about premium. If the Employer disputes the premium for this Policy calculated by the Insurer under an Insurance Premiums Order, the Act lets the Employer apply to the WorkCover Authority for a determination of the disputed aspect of the calculation. If the Employer wishes to make such an application, it must usually be lodged within 1 month after the Insurer demands the premium. *The Employer should first try to resolve any premium problem by contacting the Insurer.* Even if the Employer lodges such an application with the WorkCover Authority, the premium demanded by the Insurer remains payable (except to the extent that the WorkCover Authority otherwise directs) pending the WorkCover Authority's determination.

3 Domestic etc workers. If this Policy is issued for domestic or similar workers (including when this Policy forms part of a household insurance package) it is to be read as if:

- (a) the reference to the Employer carrying on business were a reference to the Employer employing domestic or similar workers, and
- (b) the provisions in clause 4 for the Employer to notify a change of business or industrial activity were omitted, and the provisions of clauses 17 (Renewal of Policy) and 21 (Employer must advise change of business or industry) were omitted.

4 Workplace injury management. The Employer of an injured worker who has been totally or partially incapacitated for work has certain obligations under Chapter 3 of the [Workplace Injury Management and Workers Compensation Act 1998](#), including an obligation under section 49 to provide suitable employment if the worker is able to return to work. It is a condition of this Policy that the Employer must comply with the requirements of that Chapter, but only if the Insurer has taken appropriate steps to ensure that the Employer is made aware of those obligations.

Schedule 2 Diseases

(Clause 5)

Column 1

Poisoning by lead, its alloys or compounds, and its sequelae.

Poisoning by mercury or its amalgams or compounds, and its sequelae.

Column 2

Handling of ore containing lead including fine shot in zinc factories.

Casting of old zinc and lead in ingots.

Manufacture of articles made of cast lead or of lead alloys.

Employment in the polygraphic industries.

Manufacture of lead compounds.

Manufacture and repair of electric accumulators.

Preparation and use of enamels containing lead.

Polishing by means of lead files or putty powder with a lead content.

All painting operations involving the preparation and manipulation of coating substances, cements or colouring substances containing lead pigments.

Handling of mercury ore.

Manufacture of mercury compounds.

Manufacture of measuring and laboratory apparatus.

Preparation of raw material for the hat-making industry.

Hot gilding.

Use of mercury pumps in the manufacture of incandescent lamps.

Manufacture of fulminate of mercury primers.

Anthrax infection.	<p>Work in connection with animals infected with anthrax. Handling of animal carcasses or parts of such carcasses including hides, hoofs and horns. Loading and unloading or transport of merchandise that has come in contact with animals infected with anthrax or with animal carcasses or parts of such carcasses.</p>
Phosphorus poisoning by phosphorus or its compounds, and its sequelae.	Any process involving the production, liberation or utilisation of phosphorus or its compounds.
Arsenic poisoning by arsenic or its compounds, and its sequelae.	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Poisoning by benzene or its homologues, their nitro- and amido-derivatives, and its sequelae.	Any process involving the production, liberation or utilisation of benzene or its homologues, or their nitro- and amido-derivatives.
Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series.	Any process involving the production, liberation or utilisation of halogen derivatives of hydrocarbons of the aliphatic series.
Pathological manifestations of a kind which are due to or contributed to by:	
(a) radium and other radioactive substances,	Any process involving exposure to the action of radium, radioactive substances or X-rays.
(b) X-rays.	
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances.
Brucellosis, Leptospirosis and Q fever.	<p>Slaughtering of cattle on the slaughter-floor of an abattoir or slaughter-house. Handling or processing of the slaughtered carcasses of cattle in an abattoir or slaughter-house. Penning up or running cattle through a race at an abattoir or slaughter-house. Any activity, incidental or necessary to the carrying out of the above activities, on the slaughter-floor, in any area where the raw by-products of slaughtered cattle are handled or in or about any pen or race of an abattoir or slaughter-house.</p>

Schedule 3 Medical tests and results—brucellosis, Q fever and leptospirosis

(Clause 6)

Column 1

Column 2

Column 3

Brucellosis.	<p>A <i>Brucella abortus</i> agglutination or complement fixation test of 2 blood samples, the second of which was taken not earlier than 10 days and not later than 28 days after the day on which the first sample was taken.</p>	A four-fold or greater increase in antibody titre.
	<p>A <i>Brucella abortus</i> agglutination test of a single blood sample.</p>	An antibody titre of 640 or greater.
	<p>A <i>Brucella abortus</i> complement fixation test of a single blood sample, where the sample was taken from a person with symptoms consistent with chronic brucellosis.</p>	An antibody titre of 640 or greater.
	<p>A laboratory culture of any specimen.</p>	The isolation of <i>Brucella abortus</i> .
Q fever.	<p>A Q fever complement fixation test of 2 blood samples, the second of which was taken not earlier than 10 days and not later than 28 days after the day on which the first sample was taken.</p>	A four-fold or greater increase in antibody titre.
	<p>A fluorescence test of a single blood sample.</p>	The demonstration of Q fever specific IgM antibodies.
	<p>A laboratory culture of any specimen.</p>	The isolation of <i>Coxiella burneti</i> .
Leptospirosis.	<p>The comparison of 2 blood samples (the second of which was taken not earlier than 10 days and not later than 60 days after the day on which the first sample was taken) by any technical method which:</p> <p>(a) is the same as a technical method used by the Leptospiral Reference Laboratory at the Laboratory of Microbiology and Pathology, Department of Health, Brisbane, for the purpose of comparing blood samples to establish whether or not a person has contracted leptospirosis, and</p> <p>(b) involves the use of a panel of leptospiral antigens or serovars which is recommended by the Leptospiral Reference Laboratory for use in making such a comparison.</p>	A four-fold or greater increase in antibody titre.
	<p>The analysis of a single specimen of blood serum by any technical method which:</p>	Agglutination of a leptospiral antigen at a dilution of 1 in 400 or greater.

- (a) is the same as a technical method used by the Leptospiral Reference Laboratory at the Laboratory of Microbiology and Pathology, Department of Health, Brisbane, for the purpose of analysing a single specimen of blood serum to establish whether or not a person has contracted leptospirosis, and
- (b) involves the use of a panel of leptospiral antigens or serovars which is recommended by that Leptospiral Reference Laboratory for use in carrying out such an analysis.

A laboratory culture of a leptospire from blood or urine. The isolation of an invasive leptospire.

Schedule 4

(Clause 63)

Religious body or organisation	Class	Employer
Anglican Church of Australia—Diocese of Canberra and Goulburn	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	Anglican Church of Australia Property Trust Diocese of Canberra and Goulburn
Anglican Church of Australia—Diocese of Grafton	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	The Corporate Trustees of the Diocese of Grafton
Anglican Church of Australia—Diocese of Riverina	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	Riverina Diocesan Trust
Assemblies of God New South Wales	Ministers serving a congregation in New South Wales affiliated with or recognised by the Assemblies of God New South Wales who receive a stipend paid by that congregation	The Assembly of the congregation concerned

The Baptist Union of New South Wales	Ministers serving a congregation in New South Wales affiliated with or recognised by The Baptist Union of New South Wales who receive a stipend paid by that congregation	The Secretary of the congregation concerned
Central Coast Christian Life Centre	Ministers serving a congregation in New South Wales affiliated with or recognised by the Central Coast Christian Life Centre who receive a stipend paid by that congregation	The Central Coast Christian Life Centre Limited
Church of Christ (Non-denominational)—Bankstown	Ministers serving a congregation in New South Wales affiliated with or recognised by the Church of Christ (Non-denominational)—Bankstown who receive a stipend paid by that congregation	The congregation concerned
Classis New South Wales of the Reformed Churches of Australia	(a) Ministers serving a congregation in New South Wales affiliated with or recognised by the Classis New South Wales of the Reformed Churches of Australia who receive a stipend paid by that congregation	(a) The Session of the congregation concerned
	(b) Ministers serving the Classis New South Wales of the Reformed Churches of Australia who receive a stipend paid by the Classis	(b) The Classis New South Wales of the Reformed Churches of Australia
Coptic Orthodox Church, New South Wales, Australia	Clergy authorised by the President of the Church Council in New South Wales to serve a parish in New South Wales	Coptic Orthodox Church (NSW) Property Trust
Fellowship of Congregational Churches	Clergy serving a congregation in New South Wales affiliated with or recognised by the Fellowship of Congregational Churches who receive a stipend paid by that congregation	The Secretary of the congregation concerned

	(a) Pastors who serve, and receive a stipend paid by, a congregation in New South Wales which is:	
	(i) a member of the Lutheran Church of Australia, New South Wales District, or	
Lutheran Church of Australia, New South Wales District	(ii) authorised by the Church Council of the Lutheran Church of Australia, New South Wales District,	The Administrator of the Lutheran Church of Australia, New South Wales District
	(b) Pastors who serve, and receive a stipend paid by, the Lutheran Church of Australia, New South Wales District	
Presbyterian Church of Australia in the State of New South Wales	Presbyterian Ministers	Presbyterian Church in the State of New South Wales
Southside Christian Fellowship	Ministers serving a congregation in New South Wales affiliated with or recognised by the Southside Christian Fellowship who receive a stipend paid by that congregation	The Southside Christian Fellowship Incorporated

Schedule 5 Penalty notice offences

(Clauses 73A, 73B)

Part 1 Provisions of 1987 Act

Column 1	Column 2	Column 3
Provision	Short description	Penalty \$
Section 43 (2A)	Not comply sec 43 (2) (provision of information)	200
Section 155 (1)	Employer fail to insure workers	750
Section 161 (3)	Not comply sec 161 (1) notice within 21 days/time specified/allowed	200
Section 163 (1)	Not keep register of policies with required particulars	200
Section 163 (3)	Not retain policy/claim records in good order/condition for 7 years	200
Section 163A (2)	Fail to produce certificate of currency for inspection	500
Section 163A (6)	Fraudulently alter certificate of currency	500

Section 163A (7)	Fail to notify error in certificate of currency	500
Section 174 (1) (a)	Not keep correct wage records	500
Section 174 (1) (b)	Not keep correct livelihood records	500
Section 174 (1) (c)	Not keep correct prescribed records	500
Section 174 (2)	Not retain wage/livelihood/prescribed records in good order/condition for 7 years	500
Section 174 (3)	Not keep wage/livelihood/prescribed records in prescribed manner	500
Section 174 (8)	Not comply sec 174 (5) (a) order (information to Authority/insurer)	500
Section 174 (8)	Not comply sec 174 (5) (b) order (Authority/insurer inspect records)	500
Section 174 (8)	Not comply sec 174 (6A) order (records to Authority/insurer)	500
Section 174 (8)	Obstruct/delay person exercising sec 174 (7) power (inspect/copy/extract records)	500
Section 192A (4A)	Not comply sec 192A (4) direction (administration of claims)	500

Part 2 Provisions of 1998 Act

Column 1	Column 2	Column 3
Provision	Short description	Penalty \$
Section 63 (5)	Manager mine/quarry contravene sec 63 (1) (register of injuries)	500
Section 63 (5)	Occupier factory/workshop/office/shop contravene sec 63 (1) (register of injuries)	500
Section 69 (1) (a)	Not forward claim/documents to insurer within 7 days	500
Section 69 (1) (b)	Not provide further information to insurer within 7 days	500
Section 69 (1) (c)	Not pay compensation money as soon as practicable	500
Section 74A (3)	Fail to comply with direction under sec 74A (insurer to pay compensation promptly)	500
Section 79A (4)	Fail to exchange information before conciliation	200
Section 80 (5)	Fail to comply with sec 80 direction	200
Section 81A (2)	Fail to provide documents before conciliation conference	200

Section 82 (3)	Fail to comply with conciliation conference summons	200
Section 90 (7)	Make false/misleading statement in connection with conciliation	200
Section 94 (1)	Fail to commence weekly payments	500
Section 94 (2)	Referring non-genuine dispute	500
Section 126 (2)	Employer/insurer not supply medical report within 10 days	200
Section 155A (2)	Fail to produce certificate of currency for inspection	500
Section 155A (6)	Fraudulently alter certificate of currency	500
Section 155A (7)	Fail to notify error in certificate of currency	500
Section 231 (3)	Manager mine/quarry contravene sec 231 (post summary of Act)	200
Section 231 (3)	Occupier factory/workshop/office/shop contravene sec 231 (post summary of Act)	200
Section 232 (2) (a)	Employer/employer's agent fail to supply information to worker	200
Section 232 (2) (b)	Employer/employer's agent supply false/misleading information to worker	200
Section 256 (5)	Manager mine/quarry contravene sec 256 (1) (register of injuries)	500
Section 256 (5)	Occupier site/factory/workshop/office/shop contravene sec 256 (1) (register of injuries)	500
Section 264 (1)	Not forward claim/documents to insurer within 7 days	500
Section 264 (2)	Not furnish insurer with information/documentation in possession/reasonably obtainable within 7 days after request	500
Section 264 (3)	Not pay compensation money as soon as practicable	500
Section 267 (5)	Fail to commence weekly payments	500
Section 268	Fail to give notice of reasonable excuse within 7 days	500
Section 268	Fail to include in notice details of reasonable excuse/ statement of entitlement/details of making claim	500
Section 283 (1)	Fail to determine a claim as and when required	500
Section 285	Referring non-genuine dispute	500
Section 290 (2)	Not comply sec 290 (information exchange between parties)	500
Section 343 (4) (a)	Claim lien without entitlement	500

Section 343 (4) (b)	Deducts costs from sum awarded/ordered/agreed without entitlement	500
Section 357 (3)	Fail to comply with direction under sec 357 (power to require information)	500
Section 358 (3)	Contravene direction under sec 358 (power to provide documents and information)	500
Section 359 (2)	Fail to comply with summons	500

Part 3 Provisions of the **Workers Compensation (General) Regulation 1995**

Column 1	Column 2	Column 3
Provision	Short description	Penalty \$
Clause 40A (2)	Not comply sec 74 (notice when liability disputed)	200
Clause 73F (1)	Not comply with advertising restriction	750

Part 4 Provisions of the **Workers Compensation (Insurance Premiums) Regulation 1995**

Column 1	Column 2	Column 3
Provision	Short description	Penalty \$
Clause 9 (1)	Fail to supply wages estimate/actual wages return (cl 6 (1)/(2))	500
Clause 9 (1)	Fail to supply required declaration (cl 7)	500
Clause 9 (1)	Fail to supply declaration and statement (cl 8)	500

Schedule 6 Maximum costs—compensation matters

(Clause 108)

1 Costs determined by reference to activities or events in connection with the matter

(1) In this Schedule:

the table means the Compensation Costs Table at the end of this Schedule.

(2) The maximum costs for an activity or event described in a Part of the table and carried out in or in relation to a claim made or to be made in respect of a particular injury are as follows:

(a) **Making claim for permanent impairment compensation or pain and suffering compensation**

For an activity or event carried out on behalf of a claimant in making a claim for compensation under section 66 or 67 of the 1987 Act—the cost set out in Column 3 of Part 1 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(b) Certain events or activities on behalf of claimant until dispute referred or order sought

For an activity or event carried out on behalf of a claimant in any of the following circumstances (other than for an activity or event covered by paragraph (d) of this clause and Part 3 of the table):

- (i) the insurer fails to determine a claim as and when required by the 1998 Act,
- (ii) the insurer fails to commence weekly payments of compensation or discontinues or reduces weekly payments,
- (iii) the insurer makes a reasonable offer of settlement (in the case of a claim for compensation under section 66 or 67 of the 1987 Act),
- (iv) the insurer denies liability in respect of the claim by serving a notice under section 74 of the 1998 Act,

—the cost set out in Column 3 of Part 2A of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(c) Certain activities or events on behalf of insurer until dispute referred or order sought

For an activity or event carried out on behalf of an insurer in any of the following circumstances (other than for an activity or event covered by paragraph (d) of this clause and Part 3 of the table):

- (i) the insurer fails to determine a claim as and when required by the 1987 Act,
- (ii) the insurer fails to commence weekly payments of compensation or discontinues or reduces weekly payments of compensation,
- (iii) in the case of a claim for compensation under section 66 or 67 of the 1987 Act, the insurer makes a reasonable offer of settlement on the claim,
- (iv) the insurer denies liability in respect of the claim by serving a notice under section 74 of the 1998 Act,

—the cost set out in Column 3 of Part 2B of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(d) Certain applications for expedited assessment

For an activity or event carried out on behalf of a claimant or insurer in any of the following circumstances:

- (i) the insurer fails to determine a claim for medical expenses involving less than \$5000,
- (ii) the insurer fails to commence weekly payments of compensation where less than 12 weeks' compensation is sought by the claimant and an interim payment order is made by the Registrar (whether or not the interim payment order was sought by a party to the claim),

—the cost set out in Column 3 of Part 3 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(e) Referral of dispute to determination of the dispute

For an activity or event carried out on behalf of a claimant or insurer from the time of referral of a dispute to the Commission to determination of the dispute by the Commission constituted by an Arbitrator—the cost set out in Column 3 of Part 4 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(f) Appeal to a Medical Appeal Panel for dispute about degree of permanent impairment

For an activity or event carried out on behalf of a claimant or insurer in respect of an appeal to a Medical Appeal Panel involving a medical dispute as to the degree of permanent impairment of the injured worker—the cost set out in Column 3 of Part 5 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(g) Referral of a question of law to President

For an activity or event carried out on behalf of a claimant or insurer in respect of the referral of a question of law to the Commission constituted by the President—the cost set out in Column 3 of Part 6 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(h) Registration of agreement under sec 66A of 1987 Act or a commutation agreement

For an activity or event carried out on behalf of a claimant or insurer in respect of the registration of an agreement under section 66A of the 1987 Act or a commutation agreement—the cost set out in Column 3 of Part 7 of the table

opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(i) **Appeals to Presidential member**

For an activity or event carried out on behalf of a claimant or insurer in respect of an appeal to the Commission constituted by a Presidential Member—the cost set out in Column 3 of Part 8 of the table opposite that activity or event up to the maximum total costs for that activity or event set out in Column 4 of the table.

(j) **Any other substantive proceedings before the Commission**

For an activity or event carried out in respect of any other proceedings before the Commission involving the determination of substantive legal issues (including applications for review of existing orders, disputes relating to suitable duties, and disputes relating to apportionment)—the costs set out in Column 3 of Part 9 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(3) This clause is subject to this Schedule.

2 Multiple claims or disputes in respect of an injury to be treated as a single claim or dispute

(1) In the event that more than one claim is made in respect of a particular injury, or more than one dispute arises in respect of a claim, the maximum total costs for a type of activity or event in respect of the injury, regardless of how many times the activity or event is carried out, is the maximum set out in Column 4 of the table in relation to that type of activity or event.

(2) Subclause (1) does not apply if:

- (a) a period of more than 12 months has elapsed between the making of the first claim in respect of the injury and the making of a subsequent claim (and the same applies to each claim subsequent to that claim), or
- (b) a period of more than 12 months has elapsed between the notification of the first dispute in respect of the claim and the notification of a subsequent dispute (and the same applies to each dispute subsequent to that dispute), or
- (c) the Commission or the Registrar orders that the claims or disputes are to be treated as separate claims or disputes for the purposes of the calculation or assessment of costs.

3 Restrictions on costs

(1) Costs specified in a Part of the table (other than Part 2A or 2B) are payable only for an activity or event that is carried out in the period commencing when the first activity or

event specified in that Part is commenced and concluding on either the completion of the last activity or event specified in that Part or finalisation of the matter (whichever occurs first).

- (2) Costs specified in Part 2A or 2B of the table are payable only for an activity or event that is carried out in the period commencing when the first activity or event specified in that Part is commenced and concluding on:
 - (a) the referral of a dispute in respect of the claim to the Commission, or the seeking of an order from the Commission, or
 - (b) the completion of the last activity or event specified in that Part, or
 - (c) finalisation of the matter,whichever occurs first.
- (3) If costs specified in Part 3 of the table are payable in relation to a matter, costs specified in Parts 2A, 2B and 4 of the table are payable only in respect of the matter if the matter is subsequently referred for determination after the conduct of an expedited assessment by the Registrar.

4 Costs where multiple insurers party to claim

If more than one insurer (or any combination of insurers) is a party to a claim or a dispute or other matter in relation to a claim, the maximum costs in respect of the matter are the total of the following:

- (a) the costs for the matter calculated in accordance with the table,
- (b) 50% of that amount per party (other than the party who made the claim),

and payment of the costs is to be shared equally among the insurers who are parties to the matter.

Note—

Clause 105 provides that in Part 23 (Costs) and Schedules 6 and 7, the term **insurer** includes an employer.

5 Calculation of hourly rates

If an hourly rate is specified for an activity or event in the table, the maximum amount of costs set out for that activity or event is to be calculated to the nearest quarter hour.

6 Substantive legal issues

The Commission or the Registrar may determine, for the purposes of clause 1 (2) (j), whether a particular activity or event is in respect of a substantive legal issue.

7 Special provision for medical disputes and disputes about weekly payments of

compensation

Despite any other provision of this Schedule, if a medical dispute or a dispute about weekly payments of compensation is finalised by an agreement for payment of an amount less than \$1,000, or an award for payment of an amount less than \$1,000, the maximum amount of costs for the dispute is \$200.

8 Certain agents not entitled to costs

An agent who is not an agent within the definition of **agent** in section 356 (6) of the 1998 Act is not entitled to be paid or recover any costs.

Compensation Costs Table

Column 1 Item No	Column 2 Activity or event	Column 3 Maximum amount for individual activity/event	Column 4 Maximum total for type of activity/ event
Part 1	Making claim for permanent impairment compensation or pain and suffering compensation		
1.01	Obtaining and reviewing medical reports (not including medical practitioners' fees for the reports)	If the matter is finalised by the payment of compensation to the claimant—\$150 per report If the matter is not finalised by the payment of compensation—nil	\$300
1.02	Lodging claim with insurer if the insurer has not already made an offer of settlement	If the matter is finalised by the payment of compensation to the claimant—\$100 If the matter is not finalised by the payment of compensation—nil	\$100
Part 2A	Certain events or activities on behalf of claimant until dispute referred or order sought		
2.01	Obtaining instructions from client	\$250 per hour	\$250
2.02	Obtaining medical or other reports from insurer or requesting further information	\$20 per request	\$40 (for any party)
2.03	Referring insurer's reports to a medical specialist or the claimant's nominated treating doctor for review	\$20 per referral	\$40
2.04	Referring claimant to medical practitioner for examination, including review (other than where a report has already been obtained under Item 1.01)	\$150 per referral	\$300

2.05	Briefing a factual investigator or other investigator to obtain witness statements or other evidence (not including the investigator's fee)	\$100	\$100
2.06	Requesting a review of the claim from the insurer, prior to referral of the matter to the Commission	\$250 per hour	\$500
2.07	Agreeing terms of settlement with the insurer following a review of the claim by the insurer for a dispute (not being a claim for compensation under section 66 or 67 of the 1987 Act)	\$300	\$300
2.08	Agreeing terms of settlement with the insurer in the case of a claim for compensation under section 66 or 67 of the 1987 Act following a review of the claim by the insurer	\$750	\$750
Part 2B	Certain activities or events on behalf of insurer until dispute referred or order sought		
2.09	Obtaining instructions from client where the claimant seeks a review of the insurer's determination of the claim	\$250 per hour	\$250
2.10	Referring a further report provided by claimant for review	\$20 per referral	\$40
2.11	Referring claimant to a medical practitioner for further examination	\$150 per referral	\$300
2.12	Briefing a factual investigator or other investigator to obtain witness statements, surveillance information or other evidence (not including the investigator's fee)	\$100	\$100
2.13	Providing advice to the insurer in relation to the review of the insurer's determination of the claim sought by the claimant	\$250 per hour	\$500
2.14	Agreeing terms of settlement with the claimant following a review of the insurer's determination of the claim for a dispute (not being a claim for compensation under section 66 or 67 of the 1987 Act)	\$300	\$300

2.15	Agreeing terms of settlement with the claimant in the case of a claim for compensation under section 66 or 67 of the 1987 Act following a review of the insurer's determination of the claim	\$750	\$750
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Part 3 Certain applications for expedited assessment

3.01	Applying for expedited assessment to the Commission	If the application results in the making of an interim payment order—\$200 (claimant's legal practitioner or agent only)	\$200 (claimant's legal practitioner or agent only)
		If the application does not result in the making of an interim payment order—nil	

Part 4 Referral of dispute to determination of the dispute

	Lodging any of the following with the Commission: (a) an application for resolution of a dispute,		
4.01	(b) a response to an application, (c) an application for expedited assessment, (d) an application for joinder of another party	\$300	\$300
4.02	Service of material in relation to Item 4.01 on the other parties to the dispute	\$40 for the first party, then \$20 for each additional party	\$100
4.03	Requesting the Commission to make orders for the production of documents	\$60 for the initial order, then \$40 for each additional order	\$220
4.04	Lodging an objection to a request for an order for the production of documents	\$60 per objection	\$120
4.05	Reviewing documentation produced under an order of the Commission, exchanging information with the other parties and obtaining further instructions from client	\$250 per hour	\$500
4.06	Applying for an order for the attendance of witnesses at proceedings before the Commission	\$60 for the initial order, then \$40 for each additional order	\$140

4.07	Applying to refer a matter to an approved medical specialist, or responding to such an application (including costs associated with agreeing on the approved medical specialist and review of the report by the approved medical specialist).	\$100	\$100
4.08	Preparing for a conference (including providing advice to client)	\$250 per hour	\$500
4.09	Attending and participating in a conference with an Arbitrator (other than an arbitration hearing or where Item 4.10 applies)	\$250 per hour	\$1000
4.10	Attending and participating in a conference with an Arbitrator where the Arbitrator determines that the matter is complex and the matter proceeds directly to arbitration	\$250 per hour	\$1500
4.11	Attending and participating in an arbitration hearing (other than where Item 4.10 applies, and subject in the case of a claim for compensation under section 66 or 67 of the 1987 Act to any Rules of the Commission relating to offers of compromise or settlement)	\$250	\$250
4.12	Reporting to the client on the outcome of a conference or arbitration (including finalising the applicant's matter with the Health Insurance Commission or Centrelink (or both))	\$150	\$150

Part 5 Appeal to a Medical Appeal Panel for dispute about degree of permanent impairment

5.01	Lodgment of appeal and preparation for appeal, or preparation of a response to such an appeal	If the result of the appeal is more favourable to the applicant for appeal—\$100 (applicant's legal practitioner or agent only)	\$100
		If the result of the appeal is not more favourable to the applicant for appeal—nil (applicant's legal practitioner or agent only)	
		For the respondent's legal practitioner or agent—\$100	\$100

5.02	Attendance at a Medical Appeal Panel hearing	If the result of the appeal is more favourable to the applicant for appeal—\$200 per hour (applicant's legal practitioner or agent only)	\$400
		If the result of the appeal is not more favourable to the applicant for appeal—nil (applicant's legal practitioner or agent only)	
		For the respondent's legal practitioner or agent—\$200 per hour	\$400

Part 6 Referral of a question of law to President

6.01	Obtaining advice from counsel and making an application including written submissions, or preparing a response to such an application including written submissions and obtaining advice from counsel (including counsel's fee for advice)	If the President grants leave to appeal—\$600 (applicant's legal practitioner or agent only)	\$600
		If the President does not grant leave to appeal—nil (applicant's legal practitioner or agent only)	
		For the respondent's legal practitioner or agent—\$600	\$600
6.02	Attending at proceedings before the Commission constituted by the President without counsel present	\$250 per hour	\$500
6.03	Attending at proceedings before the Commission constituted by the President with counsel present (including counsel's fee for attendance)	\$125 per hour for legal practitioner (other than counsel) or agent \$300 per hour for counsel	\$250 \$600

Part 7 Registration of agreement under sec 66A of 1987 Act or a commutation agreement

7.01	All work associated with registration of the agreement	\$120	\$120
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Part 8 Appeals to Presidential member

8.01	Lodging application or response to such an application including written submissions	\$320	\$320
8.02	Obtaining the advice of counsel (including counsel's fee for advice)	\$500	\$500

8.03	Attending at proceedings before the Commission constituted by the President or Deputy President without counsel present	\$250 per hour	\$500
8.04	Attending at proceedings before the Commission constituted by the President or Deputy President with counsel present (including counsel's fee for attendance)	\$125 per hour for legal practitioner (other than counsel) or agent \$300 per hour for counsel	\$250 \$600

Part 9 Any other substantive proceedings before the Commission

9.01	Conduct of any other proceedings before the Commission involving the determination of substantive legal issues, including preparatory work	\$250 per hour	\$625
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Schedule 7 Maximum costs for legal services—work injury damages matters

(Clause 110)

1 Costs determined by reference to certain stages in the matter

- (1) The maximum costs for legal services provided for a stage of a claim for work injury damages set out in Column 1 of the Work Injury Costs Table A to this clause are the costs set out in Column 2 opposite that stage.
- (2) However, if a legal practitioner was first retained in the matter after a certificate as to mediation was issued under section 318B of the 1998 Act (or, if the matter is not referred to mediation because the insurer wholly denies liability, or the insurer has failed to respond to the pre-filing statement, after the service of the pre-filing statement of claim), the maximum costs are those set out in the Work Injury Costs Table B to this clause.
- (3) Costs may be charged for more than one stage described in this Schedule.
- (4) Other than stage 1 in the Work Injury Costs Table B to this clause, each stage specifies the maximum costs payable for all legal services provided in the period commencing on the occurrence of one specified event and concluding on either the occurrence of another specified event or settlement of the matter (whichever occurs first).

Work Injury Costs Table A

Column 1	Column 2
Stage	Costs

- | | | |
|---|---|--|
| 1 | From the acceptance of the retainer to the preparation and service of a claim under section 260 of the 1998 Act (including the provision of all relevant particulars under 281 of that Act) | (a) in the case of a legal practitioner acting for a claimant—\$200
(b) in the case of a legal practitioner acting for an insurer—nil |
| 2 | From service of the claim under section 260 of the 1998 Act to the preparation and service of the pre-filing statement of claim under section 315 of that Act | (a) in the case of a legal practitioner acting for a claimant—\$300
(b) in the case of a legal practitioner acting for an insurer—nil |

- In addition to the \$500 specified for stages 1 and 2 (if chargeable):
- (a) if the settlement amount is \$20,000 or less and the insurer wholly admitted liability for the claim—\$500
- (b) if the settlement amount is \$20,000 or less and the insurer wholly or partly denied liability for the claim—10% of the settlement amount
- (c) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer wholly admitted liability for the claim—\$500 plus 12% of the settlement amount over \$20,000
- (d) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer wholly or partly denied liability for the claim—\$2,000 plus 12% of the settlement amount over \$20,000
- (e) if the settlement amount is \$50,001 or more but less than \$100,001 and the insurer wholly admitted liability for the claim—\$4,100 plus 10% of the settlement amount over \$50,000
- (f) if the settlement amount is \$50,001 or more but less than \$100,001 and the insurer wholly or partly denied liability for the claim—\$5,600 plus 10% of the settlement amount over \$50,000
- (g) if the settlement amount is \$100,001 or more and the insurer wholly admitted liability for the claim—\$9,100 plus 2% of the settlement amount over \$100,000
- (h) if the settlement amount is \$100,001 or more and the insurer wholly or partly denied liability for the claim—\$10,600 plus 2% of the settlement amount over \$100,000
- If:
- (a) the matter is referred to mediation and settlement occurs after the service of the pre-filing statement of claim without the issue of a certificate as to mediation under section 318B of the 1998 Act, or
- (b) the matter is not referred to mediation (because the insurer denies liability) and settlement occurs without the commencement of court proceedings, or
- 3 (c) the insurer does not respond to the pre-filing statement of claim and settlement occurs without the commencement of court proceedings
- from service of the pre-filing statement to finalisation of the matter

4	If the matter is referred to mediation and settlement occurs after the issue of a certificate as to the mediation under section 318B of the 1998 Act but without the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter	<p>The total of the following:</p> <ul style="list-style-type: none"> (a) an amount determined, in accordance with stage 3, by reference to the amount of the settlement, (b) 2% of the amount of the settlement
5	If the matter is referred to mediation and is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	<p>The total of the following:</p> <ul style="list-style-type: none"> (a) an amount determined in accordance with stage 4, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 4, (b) 2% of the amount of the settlement or award
6	If the matter is not referred to mediation and the matter is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	<p>The total of the following:</p> <ul style="list-style-type: none"> (a) an amount determined in accordance with stage 3, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 3, (b) 2% of the amount of the settlement or award

Work Injury Costs Table B

Column 1 Stage	Column 2 Costs
1 Advice on the certificate as to mediation (if the matter is referred to mediation)	\$250

- From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter by settlement or award of damages.
- 2
- In addition to the \$250 specified for stage 1 (if chargeable):
- (a) if the settlement amount or award is \$20,000 or less—nil
 - (b) if the settlement amount or award is more than \$20,000 but less than \$50,001—10% of the settlement amount or award over \$20,000
 - (c) if the settlement amount or award is \$50,001 or more but less than \$100,001—\$3,000 plus 8% of the settlement amount or award over \$50,000
 - (d) if the settlement amount or award is \$100,001 or more—\$7,000 plus 2% of the settlement amount or award over \$100,000

2 Other costs for legal services

- (1) Maximum costs for legal services provided in a claim for work injury damages may include (in addition to the costs for legal services referred to in clause 1) the costs set out in the Other Work Injury Costs Table to this clause.
- (2) However, an amount for the fees for senior counsel, or for more than one advocate, are not to be included unless the court so orders.

Other Work Injury Costs Table

Nature of costs	Maximum costs
1 Costs associated with a dispute under Part 6 of Chapter 7 of the 1998 Act as to whether the degree of permanent impairment of an injured worker is sufficient for an award of damages (including costs associated with referring the dispute for assessment by an approved medical specialist under Part 7 of that Chapter)	\$500
2 Costs associated with a dispute under section 317 of the 1998 Act as to whether a pre-filing statement is defective	\$200
3 Cost of representation at a mediation under section 318A of the 1998 Act:	

- (a) flat fee \$400
- (b) additional amount, at the mediator's discretion, if the conference exceeds 2 hours up to \$125 per hour (or part of an hour) in excess of 2 hours

If the matter was referred to mediation and
4 counsel advised before mediation about
settlement:

- (a) counsel's fee for advice about settlement \$500 (separate to the daily rate below)
- (b) cost of representation in court, per day, for advocate other than senior counsel \$1,500
- (c) cost of representation in court, per day, for senior counsel \$2,200

If the matter was not referred to mediation:

- (a) cost of representation in court, per day, for advocate other than senior counsel \$1,500
- (b) cost of representation in court, per day, for senior counsel \$2,200