

# Sporting Injuries Insurance Act 1978 No 141

[1978-141]



New South Wales

## Status Information

### Currency of version

Historical version for 9 July 2004 to 30 June 2005 (accessed 17 July 2024 at 22:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2005](#)

### Authorisation

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File last modified 8 June 2005

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# Sporting Injuries Insurance Act 1978 No 141



New South Wales

An Act to establish a scheme for the payment of benefits in respect of deaths and certain injuries suffered by persons participating in certain sporting or recreational activities; to constitute a Sporting Injuries Committee and to confer on it powers, authorities, duties and functions with respect to the administration of the scheme; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Sporting Injuries Insurance Act 1978*.

### 2 Commencement

- (1) Section 1, Part 2, Part 6 (other than section 36), Schedule 2 and this section shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**authorised activity**, in relation to a prescribed organisation, means an activity of a kind that is:

- (a) specified in relation to the organisation in the rules, or
- (b) pursuant to the rules, deemed to be an authorised activity in relation to the organisation.

**Chairperson** means the chairperson of the Committee.

**Committee** means the Sporting Injuries Committee constituted under section 7.

**compensable injury** means an injury in respect of which an amount of money is prescribed in Schedule 1.

**Court** means the District Court of New South Wales established under the [District Court Act 1973](#).

**enrolled participant**, in relation to the Department, means a person who, in accordance with the rules or a determination made under the rules, is to be treated as an enrolled participant of the Department for the purposes of this Act.

**enrolled student participant**, in relation to a school, means a person who, in accordance with the rules or a determination made under the rules, is to be treated as an enrolled student participant of the school for the purposes of this Act.

**function** includes power, authority and duty.

**Fund** means the Sporting Injuries Fund established under section 11 (1).

**injury** means personal injury arising out of or in the course of an authorised activity of a prescribed organisation, and includes a disease:

- (a) contracted in the course of any such activity, and
- (b) to which the activity was a contributing factor,

but does not include the aggravation, acceleration, exacerbation of, or deterioration resulting from, a disease.

**medical panel** means a medical panel appointed under section 6 (4).

**perform**, in relation to a function that is a power or an authority, means exercise the power or authority and, in relation to a duty, means discharge the duty.

**prescribed organisation** means a sporting organisation, a school or the Department.

**referee** means a person who is a referee under section 6 (1) or (2).

**registered participant**, in relation to a sporting organisation, means a person who, in accordance with the rules or a determination made under the rules, is to be treated as a registered participant of the organisation for the purposes of this Act.

**regulations** means regulations made under this Act.

**rules** means rules made under this Act.

**school** means a government school or a registered non-government school under the [Education Reform Act 1990](#).

**sexual organs** means genitals and, in the case of a woman, includes breasts.

**sporting organisation** means an individual, a body corporate or an unincorporated association declared under section 5 (1) to be a sporting organisation for the purposes of this Act.

**Supplementary Fund** means the Supplementary Sporting Injuries Fund established under section 11A (1).

**the Department** means the Department of Sport and Recreation.

(1A) A reference in this Act to an authorised activity:

- (a) in relation to a sporting organisation, does not include a reference to an activity of a kind that is not, or is not carried on in connection with, or is not related to, a sporting or athletic activity in respect of which the organisation is for the time being declared under section 5, and
- (b) in relation to the Department, does not include a reference to an activity for the participation in which no fee is payable to the Department.

(1B) Where an authorised activity of a sporting organisation is also an authorised activity of a school or of the Department, a person:

- (a) who is participating in the activity as a registered participant of the organisation, and
- (b) who, if this subsection had not been enacted, would also be participating in the activity as an enrolled student participant of the school, as an enrolled participant of the Department, or as both,

shall, for the purposes of this Act, be deemed not to be an enrolled student participant of the school or an enrolled participant of the Department while participating in the activity.

(2) A reference in this Act to the due day for payment of a premium is a reference to the day specified under section 17 (1) (a) (v) in a notice served under section 17 (1) on a sporting organisation and requiring payment of the premium.

(3) Where a sporting organisation changes its name, any reference in:

- (a) an order made under section 5 (1),
- (b) a rule, or
- (c) a notice served on the organisation in accordance with section 34,

to the former name of the organisation shall be read and construed as a reference to the name as changed by the organisation, but nothing in this subsection affects an

entitlement to a benefit under this Act that would have arisen if this subsection had not been enacted.

## 5 Declaration of sporting organisations

- (1) An individual, a body corporate or an unincorporated association, who or which is concerned, directly or indirectly, in the regulation and conduct of any sporting or athletic activity or activities, may be declared, by an order made:
  - (a) by the Minister, or
  - (b) with the consent of the Minister, by the Chairperson of the Committee,to be a sporting organisation in respect of that activity or those activities.
- (2) Orders made under subsection (1) may declare more than one individual, body corporate or unincorporated association, or any 2 or more of any of them, to be sporting organisations in respect of the same sporting or athletic activity.
- (3) An order made under subsection (1) has effect when it is made and shall be published in the Gazette not later than 30 days after it has been made.

## 5A Insurance exemption for sporting organisations

- (1) The Committee may grant a sporting organisation an **insurance exemption** if satisfied that the organisation will have adequate private insurance for the period for which the exemption will be in force.
- (2) An insurance exemption operates as follows:
  - (a) a premium is not payable under Part 4 by the sporting organisation in respect of the period for which the exemption is in force,
  - (b) no benefits are payable under this Act in respect of an injury suffered by a registered participant of the sporting organisation, or in respect of the death of a person as a consequence of an injury suffered by the person as such a registered participant, during the period for which the exemption is in force,
  - (c) the exemption does not affect the operation of paragraph (d) of the definition of **worker** in section 4 of the [Workplace Injury Management and Workers Compensation Act 1998](#) in respect of a registered participant of the organisation.
- (3) A sporting organisation has **adequate private insurance** for the period for which an insurance exemption will be in force if:
  - (a) a policy of insurance provides for payment of benefits, or indemnification of the sporting organisation in connection with a liability to pay benefits, in respect of an injury suffered by a registered participant of the sporting organisation, or in respect of the death of a person as a consequence of an injury suffered by the



person as such a registered participant, during the period for which the exemption will be in force, and

(b) those benefits are of no lesser amount than the benefits that would be payable under this Act in respect of the injury or death, and

(c) the insurer under the policy of insurance is a body corporate that is authorised to carry on insurance business under the *Insurance Act 1973* of the Commonwealth.

- (4) An insurance exemption may be granted for a period of up to 12 months and may be granted by way of renewal or further renewal for a further period or further periods of up to 12 months.
- (5) On each occasion of the grant or renewal of an insurance exemption, there is payable by the sporting organisation a levy of 10% of the amount that the Committee determines to be the amount that would otherwise be determined for and payable by the organisation as premium under Part 4 in respect of the period for which the insurance exemption will be in force.
- (6) The levy is due and payable as required by a notice sent to the sporting organisation by the Committee. If the levy is not paid as required by the notice, the insurance exemption is of no effect while the levy remains unpaid.
- (7) A levy payable under this section is payable to the Committee for payment into the Fund.
- (8) The Committee must cancel an insurance exemption by notice in writing to the sporting organisation if the Committee is satisfied that the organisation does not or will not have adequate private insurance for any period for which the exemption is in force.
- (9) The Committee may cancel an insurance exemption by notice in writing to the sporting organisation for any other reason that the Committee considers sufficient. The Committee must first give the sporting organisation a reasonable opportunity to make written submissions to the Committee on the matter.

## **6 Appointment of referees and medical panels**

- (1) An approved medical specialist under the *Workplace Injury Management and Workers Compensation Act 1998* is taken to be a referee for the purposes of this Act and for that purpose has and may exercise all the functions of an approved medical specialist under that Act.
- (2) The Minister may appoint as referees for the purposes of this Act persons who the Minister considers are qualified to assess a person's loss of mental capacity.
- (3) A person may be appointed under subsection (2) whether or not the person is a

legally qualified medical practitioner.

- (4) The Chairperson may appoint 2 or more referees as a medical panel for the purposes of this Act.
- (5) Referees shall be entitled to such remuneration from the Fund as the Minister considers fit in respect of anything done pursuant to this Act by them.

## **Part 2 Sporting Injuries Committee**

### **7 Constitution of Sporting Injuries Committee**

- (1) There is hereby constituted a corporation under the name of the "Sporting Injuries Committee".
- (2) Schedule 2 has effect with respect to the constitution and procedure of the Committee.

### **8 Committee's functions**

The Committee shall:

- (a) compile and maintain such statistics with respect to the incidence of injuries resulting from sporting or athletic activities as the Committee considers would assist it in the performance of the functions given to it by or under this or any other Act,
- (b) co-operate with organisations concerned in the regulation and conduct of sporting or athletic activities, the Department and the Department of Education for the purpose of initiating, developing, encouraging and implementing such policies as are likely to eliminate or reduce the incidence of injuries resulting from sporting or athletic activities,
- (c) when requested by the Minister to do so, examine and report to the Minister on the desirability of extending the scheme provided by this Act, and
- (d) perform such other functions as are given to it by or under this or any other Act.

### **9 Administrative assistance**

For the purpose of carrying out the functions given to it by or under this or any other Act, the Committee may, with the approval of the Minister of the department concerned, make use of the services of any of the officers and employees of the Public Service.

### **10 Delegation**

- (1) The Committee may, by instrument in writing:
  - (a) delegate to any member of the Committee or any person whose services are made use of under section 9 the performance of such of the functions of the

Committee (other than this power of delegation) as are specified in the instrument, and

- (b) wholly or partly revoke any such delegation.
- (2) A delegation under this section may be made subject to such conditions or limitations as to the performance of any function delegated, or as to time or circumstances, as are specified in the instrument of delegation.
- (3) A function the performance of which has been delegated under this section may, while the delegation remains unrevoked, be performed from time to time in accordance with the terms of the delegation.
- (4) Notwithstanding any delegation under this section, the Committee may continue to perform any function delegated.
- (5) Anything done or suffered or omitted to be done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered or omitted to be done or suffered by the Committee and shall be deemed to have been done or suffered or omitted to be done or suffered by the Committee.
- (6) An instrument purporting to have been signed by a person in the person's capacity as a delegate of the Committee shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Committee and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Committee.

### **Part 3 Financial provisions**

#### **11 Establishment of Sporting Injuries Fund**

- (1) The Committee shall establish, administer and control a fund, to be called the "Sporting Injuries Fund".
- (2) The Fund shall be comprised of:
  - (a) all money paid to the Committee under Part 4 or section 5A or to the Fund under section 11A (6), and
  - (b) all other assets of the Committee (other than the Supplementary Fund), including:
    - (i) gifts made to it otherwise than for the purposes of the Supplementary Fund, and
    - (ii) investments made by it under section 12 with respect to money forming part of the Fund.

(3) There shall be paid from the Fund:

- (a) the costs of administering this Act in so far as those costs relate to registered participants and sporting organisations, including the cost of meeting any claims made by or with respect to registered participants for benefits under this Act,
- (b) any money required to repay any borrowing by the Committee under this Act for the purposes of the Fund,
- (c) such grants for clinical and research work and other activities associated with the prevention and treatment of injuries that result from sporting or athletic activities as the Committee, with the approval of the Minister, may make, and
- (d) any money transferred to the Supplementary Fund pursuant to section 11A (5).

**11A Establishment of Supplementary Sporting Injuries Fund**

(1) The Committee shall establish, administer and control a fund, to be called the "Supplementary Sporting Injuries Fund".

(2) The Supplementary Fund shall be comprised of:

- (a) all money transferred to the Supplementary Fund pursuant to subsection (5),
- (b) all money paid to the Committee from the Treasury pursuant to notices served under section 11B (2),
- (c) all money recovered by the Committee pursuant to section 35A,
- (d) gifts made to the Committee for the purposes of the Supplementary Fund, and
- (e) investments made by the Committee under section 12 with respect to money forming part of the Supplementary Fund.

(3) There shall be paid from the Supplementary Fund:

- (a) the costs of administering this Act in so far as those costs relate to enrolled student participants of schools and enrolled participants of the Department, including the cost of meeting any claims made by or with respect to enrolled student participants and enrolled participants for benefits under this Act, and
- (b) the money required to repay or pay, as the case may be, under subsection (6) any money transferred to the Supplementary Fund pursuant to subsection (5) and any interest payable thereon.

(4) The Committee shall ensure that the money in the Supplementary Fund is sufficient to meet the liabilities that are or may be required to be met from time to time by the Supplementary Fund, but nothing in this subsection requires the Committee to transfer amounts under subsection (5) from the Fund to the Supplementary Fund

except in such circumstances as the Committee thinks fit.

- (5) In the discharge of its duty under subsection (4), the Committee may transfer from the Fund to the Supplementary Fund from time to time such amounts as it considers appropriate.
- (6) Subject to subsection (4), the Committee shall, at such times as it thinks fit:
  - (a) repay from the Supplementary Fund to the Fund money transferred to the Supplementary Fund pursuant to subsection (5), and
  - (b) pay to the Fund from the Supplementary Fund interest thereon, calculated at the rate prescribed by the regulations, in relation to the period for which the money so transferred comprised part of the Supplementary Fund.

### **11B Recoument to Supplementary Fund**

- (1) In this section, **quarter** means any of the following successive periods of 3 months:
  - (a) January, February and March,
  - (b) April, May and June,
  - (c) July, August and September,
  - (d) October, November and December.
- (2) Forthwith after the conclusion of each quarter, the Committee shall serve on the Secretary and Comptroller of Accounts, the Treasury, a notice requiring payment to the Committee of the amount, if any, required to be specified in the notice in relation to the quarter by subsection (3).
- (3) The amount required to be specified in a notice served under subsection (2) in relation to a quarter is the sum of:
  - (a) the total of the amounts of all benefits paid by the Committee out of the Supplementary Fund during the quarter, other than any such amount included in a notice served under subsection (2) in relation to a preceding quarter,
  - (b) the total of the amounts of all benefits determined by the Committee in the quarter to which the notice relates to be payable by the Committee after the expiration of the quarter to which the notice relates, and
  - (c) the costs, estimated by the Committee, of administering this Act during the quarter to which the notice relates in so far as those costs relate to enrolled student participants of schools and enrolled participants of the Department, including any interest paid to the Fund under section 11A (6) during that quarter,reduced by the amounts, if any, recovered by the Committee pursuant to section 35A

during the quarter to which the notice relates.

## **12 Investment**

The Committee may invest any money in the Fund or the Supplementary Fund in any manner for the time being authorised by the *Trustee Act 1925*.

## **13 Financial year of the Committee**

The financial year of the Committee shall be:

- (a) where no period is prescribed as referred to in paragraph (b)—the year commencing on 1 July, or
- (b) the period prescribed for the purposes of this section.

## **14 Borrowing powers of Committee**

- (1) The Treasurer may, on the application of the Committee and on such terms and conditions as the Treasurer thinks fit, lend money to the Committee.
- (2) The Committee may, for the purpose of obtaining temporary financial accommodation, borrow by way of overdraft from any bank, building society or credit union to such extent as may be approved by the Governor on the recommendation of the Treasurer.

## **15 (Repealed)**

# **Part 4 Premiums**

## **16 Determination of premiums**

- (1) The Committee shall, from time to time, determine premiums for each sporting organisation.
- (2) The Committee shall, under subsection (1), determine premiums for a sporting organisation which to it seem equitable, taking into account:
  - (a) the nature of the organisation's authorised activities or authorised activity in relation to which each of the premiums is being determined,
  - (b) the period with respect to which each of the premiums will be required to be paid,
  - (c) any adjustment which it considers should be made by reason of:
    - (i) the amounts of the previous premiums, if any, paid by the organisation, and
    - (ii) any amount that has been paid pursuant to, or that is, or in the opinion of the Committee will be, required to be paid by, an adjustment notice served on the organisation under section 18A (2), and

(d) such other criteria as the Committee considers appropriate.

(3) The Committee may determine a uniform amount to be paid in respect of every person it estimates will participate as a registered participant in the authorised activities of a sporting organisation during a particular period and determine the premium for the sporting organisation in respect of that period as the total of the amounts to be paid by all of those persons or calculate the premium in any other manner it considers appropriate.

(4) Notwithstanding subsections (2) and (3), the Committee shall, when discharging its duty under subsection (1), so determine premiums that those premiums and the income of the Fund are sufficient to meet the liabilities that are or may be required to be met from time to time by the Fund.

### **17 Notice to pay premium**

(1) Where the Committee has determined a premium for a sporting organisation, it shall serve on the organisation a notice:

(a) setting forth:

(i) the name of the sporting organisation,

(ii) the amount of the premium and particulars of the calculation pursuant to which the premium was determined,

(iii) the authorised activity or authorised activities of the organisation to which the premium relates,

(iv) the period with respect to which the premium is payable, and

(v) the day on or before which the premium should be paid, being a day occurring not less than 21 days after the date on which the notice is served and occurring before the expiration of the period specified in the notice pursuant to subparagraph (iv), and

(b) requiring the organisation to pay the premium to the Committee on or before the due day for payment of the premium at the place specified in the notice.

(2) Where, after the Committee has served a notice on a sporting organisation under subsection (1) specifying the due day for payment of a premium determined for the organisation, the Committee considers that the premium should be reduced for any reason, the Committee may, before that due day, serve on the organisation a notice under this subsection specifying that the premium required to be paid by the former notice shall be the reduced premium specified in the notice served under this subsection, instead of the premium specified in the former notice.

(3) A notice served under subsection (2) on a sporting organisation shall have effect

according to its tenor.

### **18 Failure of organisation to pay premiums**

- (1) Where any premium required by a notice served on a sporting organisation under section 17 (1) to be paid to the Committee on or before the due day for payment of the premium has not been paid to the Committee on or before 30 June next following that due day, then, while it is unpaid, paragraph (d) of the definition of **worker** in section 4 (1) of the *Workplace Injury Management and Workers Compensation Act 1998*, as in force for the time being, does not apply and shall be deemed not to have applied to or in respect of any person who, but for that paragraph, would be a worker within the meaning of that Act while he or she is, or was at any time during the year commencing with 1 July immediately preceding that 30 June and ending with that 30 June, participating in any authorised activity of the organisation or doing anything that, although not such an authorised activity, is or was done in connection with, or related to, such an authorised activity, and the organisation shall be deemed to be, or to have been, his or her employer at that time, as the case may require.
- (2) Where any premium required by a notice served on a sporting organisation under section 17 (1) to be paid to the Committee on or before the due day for payment of the premium is unpaid, a person who suffers an injury while participating in an authorised activity of the organisation during the period specified in the notice as the period with respect to which the premium is payable is not, for the purposes of section 19 (1) or (2) or 27 (1), a registered participant of the organisation until the premium is paid but, if the premium is paid before the end of that period, whether before, on or after that due day, any person who would, if this subsection had not been enacted, have been a registered participant of the organisation at a time occurring during that period but before payment of the amount shall, for the purposes of sections 19 (1) and (2) and 27 (1), be treated as if he or she had been a registered participant of the organisation at that time.

### **18A Adjustment of certain premiums**

- (1) In this section:

**adjustment notice** means a notice served on a sporting organisation under subsection (2).

**prescribed variable** means:

- (a) the number of:
  - (i) registered participants,
  - (ii) teams or crews of registered participants,
  - (iii) vehicles ridden or driven by registered participants, or



- (iv) vessels driven or sailed by registered participants,  
who or which will participate in authorised activities of sporting organisations, or
  - (b) any other variable prescribed by the regulations for the purposes of this definition.
- (2) If, after the due day for payment of a premium specified in a notice served on a sporting organisation under section 17 (1), the Committee has reasonable grounds to believe that the premium is less than it would have been if an estimate of the quantity of a prescribed variable:
  - (a) used in the calculation pursuant to which the premium was determined, and
  - (b) specified in that notice pursuant to section 17 (1) (a) (ii),had been accurate, the Committee may serve on the organisation a notice requiring it to pay the difference to the Committee.
- (3) An adjustment notice shall set forth:
  - (a) particulars of the notice served under section 17 (1) specifying the premium to which the adjustment notice relates,
  - (b) particulars of the manner in which the amount required to be paid by the adjustment notice is calculated, and
  - (c) the day on or before which that amount is payable, being a day occurring not less than 10 days after the date on which the notice is served.
- (4) If the amount required to be paid by an adjustment notice is not paid on or before the day specified in the notice under subsection (3) (c) or within such further period as the Committee, by instrument in writing, may allow, the amount required by that notice to be paid by the sporting organisation thereupon becomes a debt recoverable, in any court of competent jurisdiction, by the Committee from the organisation or, where the organisation is:
  - (a) a body corporate—from any person who was, when that notice was served on the body corporate, a director, within the meaning of the *Corporations Act 2001* of the Commonwealth, of the body corporate, or
  - (b) an unincorporated association—from any person who was, when that notice was served on the unincorporated association, a member of the governing body of that association.
- (5) Where, as a consequence of proceedings brought by the Committee under subsection (4) in respect of an unincorporated association, judgment for an amount is given by a court against a member of the governing body of the association, the court may make such orders as it thinks fit for recovery of the amount, or any part thereof, out of any

money held by the member or by any person on behalf of, or in trust for, the association or its members or for the sale of any such property and for the recovery of the amount, or any part thereof, out of the proceeds of the sale.

- (6) Where a debt referred to in subsection (4) is recovered:
- (a) wholly or partly from the sporting organisation or under subsection (5), the liability imposed on any person under subsection (4) (a) or (b) is correspondingly reduced, or
  - (b) from a person referred to in subsection (4) (a) or (b), that person is entitled to recover in any court of competent jurisdiction, as contribution from each of the other directors of the body corporate or members of the governing body of the unincorporated association, as the case may be, an amount equal to the dividend obtained by dividing the amount recovered by the number, at the time the adjustment notice was served, of directors of that body corporate or of members of the governing body of that association, as the case may be.

### **18B Repayments in certain cases**

Where an individual, a body corporate or an unincorporated association (in this section referred to as **the former organisation**) ceases to be a sporting organisation for the purposes of this Act:

- (a) during a period specified under section 17 (1) (a) (iv) in a notice served on the former organisation under section 17 (1) or after the expiration of the period so specified in the last notice so served, and
- (b) after payment to the Committee of the premium required to be paid by the notice or the last notice, as the case may be,

the Committee may, if it considers it would be equitable to do so, repay from the Fund to the former organisation, if the former organisation continues to exist, an amount not exceeding the premium specified in that notice or that last notice.

## **Part 5 Benefits**

### **19 Applicants for benefits**

- (1) A person who:
- (a) when the person is a registered participant of a sporting organisation, suffers a compensable injury, whether within or outside New South Wales, while participating in an authorised activity of the organisation,
  - (b) when the person is an enrolled student participant of a school, suffers a compensable injury, whether within or outside New South Wales, while participating in an authorised activity of the school, or

(c) when the person is an enrolled participant of the Department, suffers a compensable injury, whether within or outside New South Wales, while participating in an authorised activity of the Department,

may apply to the Committee for a benefit under this Act.

(2) Where a person dies as a consequence of an injury suffered by the person, whether within or outside New South Wales:

(a) while participating in an authorised activity of a sporting organisation as a registered participant of the organisation,

(b) while participating in an authorised activity of a school as an enrolled student participant of the school, or

(c) while participating in an authorised activity of the Department as an enrolled participant of the Department,

the legal personal representative of that person may apply to the Committee for a benefit under this Act.

(3) This section has effect subject to sections 18 (2) and 20.

## **20 Certain applications prohibited**

(1) An application may not be made under section 19 unless:

(a) before the application is made, notice of the injury to which it relates was given in accordance with the rules, or

(b) the Committee considers that notice of the injury was not so given as a consequence of ignorance, mistake, absence from New South Wales, the nature of the injury to which the application relates or other reasonable excuse.

(2) Where an authorised activity of a school is also an authorised activity of the Department, an application may not be made under section 19 in relation to an injury suffered by a person while participating in the activity:

(a) as an enrolled participant of the Department, if an application has been duly made under that section in relation to the same injury suffered by the person while participating in the activity as an enrolled student participant of the school, or

(b) as an enrolled student participant of the school, if an application has been duly made under that section in relation to the same injury suffered by the person while participating in the activity as an enrolled participant of the Department.

## **21 Applications for benefits**

(1) An application under section 19 shall:

- (a) be made in or to the effect of a form prescribed by the rules,
  - (b) contain the particulars that are required to be inserted in it by the rules,
  - (c) be accompanied by such certificates, reports and other information as are required by the rules, and
  - (d) within 12 months after the injury or death to which it relates was suffered, be lodged at the place prescribed by the rules.
- (2) Notwithstanding subsection (1) (d), an application under section 19 may be lodged more than 12 months after the injury or death to which it relates was suffered if the Committee considers that:
- (a) failure to lodge the application within that period of 12 months was occasioned by ignorance, mistake, absence from New South Wales, the nature of the injury, the circumstances of the death or other reasonable excuse, and
  - (b) in the circumstances of the case, the application was lodged within a reasonable time after that period of 12 months.

## **22 Further information**

- (1) The Committee may, by notice served on a person by whom an application is made under section 19, require the person to furnish to it, by a date specified in the notice, information with respect to such further matters, relating to the person's entitlement to be an applicant for a benefit under this Act, as may be specified in the notice.
- (2) If a person fails to comply with the requirements of a notice served on the person under subsection (1) or, in purported compliance with a notice so served, furnishes information that the Committee decides is inadequate, the Committee may refuse to give further consideration to the person's application and, if it does so, shall cause a notice of its refusal to be served on the person.

## **23 Refusal of certain applications**

If the Committee finds that a person who made an application under section 19 was not entitled to make the application, it shall refuse the application and shall cause a notice of its refusal to be served on the person.

## **24 Assessment of injuries**

- (1) Where the Committee receives an application under section 19, the Committee may refer the application and any notice of injury to which it relates to a medical panel or a referee:
  - (a) in any case—for a report in respect of the injury or death to which the application relates, and

- (b) in the case of an application under section 19 (1)—for an assessment under subsection (4).
- (2) The Committee may, by notice served on an applicant for a benefit under section 25, require the applicant to attend before a medical panel or referee, at a time and place specified in the notice, for the purpose of an examination by the medical panel or referee.
- (3) An applicant who:
- (a) without reasonable excuse, fails to comply with the requirements of a notice served on the applicant under subsection (2), or
- (b) in the course of being examined by a medical panel or referee, obstructs the medical panel or any of its members or the referee, as the case may be,
- shall, for the purposes of subsection (4), be deemed not to have made himself or herself available for examination by a medical panel or referee and to have withdrawn his or her application.
- (4) When an applicant for a benefit under this Act makes himself or herself available for examination by a medical panel or referee to which or whom his or her application has been referred under subsection (1), the medical panel or referee shall:
- (a) make an assessment that specifies:
- (i) the nature of the injury in respect of which the application was made, and
- (ii) where the injury is described in Table A of Schedule 1 by reference to a prescribed percentage or is described in Part 1 of Table B of that Schedule—the degree, having regard to subsection (5), of the permanent loss, expressed in terms of a percentage, of any use or other capacity, referred to in that Schedule, suffered by the applicant as a consequence of the injury, and
- (b) forward the assessment to the Committee.
- (5) In making an assessment under subsection (4), the medical panel or referee shall:
- (a) assess any loss of use or other capacity suffered by the applicant as a percentage of the relevant use or other capacity enjoyed by the applicant immediately before the injury was suffered, whether or not the applicant then was, or might have been, subject to any disability, and
- (b) report in the assessment upon any relevant disability to which, in the opinion of the medical panel or referee, as the case may be, the person was, or may have been, subject immediately before the injury was suffered.
- (5A) If the applicant has refused medical treatment that the medical panel or referee

considers would be likely to result in an improvement in the applicant's condition, the assessment under subsection (4) may be made on the assumption that the improvement likely to result from the refused treatment has in fact occurred, but only if the medical panel or referee is satisfied that the applicant's refusal of the treatment is unreasonable.

(6) An applicant who attends before a medical panel or referee in compliance with a notice served on the applicant under subsection (2) is entitled to be paid by the Committee:

- (a) the amount of any wages lost by the applicant, and
- (b) the cost to the applicant of any fares, travelling expenses and maintenance necessarily and reasonably incurred by the applicant,

by reason of attending before the medical panel or referee, as the case may be.

(7) For the purposes of this Act, an assessment under subsection (4) by a medical panel of the degree of an injury in respect of which an amount of money is prescribed in Table A of Schedule 1 shall be conclusive.

## **25 Payment of benefits for injuries**

(1) Subject to this section, where the Committee:

- (a) receives an assessment made by a medical panel or referee under section 24 (4) of a compensable injury, or
- (b) is otherwise satisfied that an applicant for a benefit under this section has suffered a compensable injury,

in respect of which an application under section 19 (1) has been duly made, the Committee shall:

- (c) if the injury is described in Table A of Schedule 1, pay to the applicant:
  - (i) where the injury is described in that Table by reference to a prescribed percentage—a proportion of the amount specified in that Table opposite the description of the injury, being either the proportion equivalent to the degree of the applicant's injury that is set forth in the assessment, if any, or, where an assessment of the injury has not been made under section 24 (4) by a medical panel, that has been otherwise established to the satisfaction of the Committee, and
  - (ii) where the injury is otherwise described in that Table—the amount specified in that Table opposite the description of the injury, and
- (d) if the injury is described in Table B of Schedule 1, pay to the applicant such

amount (not exceeding the amount specified in that Table opposite the description of the injury) as the Committee thinks fit, having regard to the terms of the assessment, if any, or the degree of injury otherwise established to the satisfaction of the Committee.

- (2) Subject to subsections (3), (4) and (5), where a person is entitled to a benefit under this section in respect of:
  - (a) a compensable injury consisting of the permanent loss of not less than the prescribed percentage of the use of both of his or her legs as a consequence of quadriplegia or paraplegia, the Committee shall pay the person \$27,530 in addition to any other amount payable to the person under this section, or
  - (b) a compensable injury consisting of the permanent and total loss of sight of one eye and also suffers permanent and serious diminution of sight of his or her other eye, as a consequence of a single incident, the Committee shall pay the person not less than \$39,500.
- (3) Not more than \$70,680 may be paid under this section in respect of compensable injuries suffered by an applicant for a benefit under this Act as a consequence of a single incident until 3 months have expired after the day on which the incident occurred.
- (4) If a person suffers a single injury that comprises more than one compensable injury (being compensable injuries that overlap), the person is entitled to a benefit under this section only in respect of the compensable injury that results in the largest benefit. For example, if a person suffers an injury to a foot, a benefit is not payable for the compensable injury of loss of a foot and for a percentage loss of the lower part of the leg and for a percentage loss of the leg—in such a case the largest of the 3 amounts is payable.
- (5) Notwithstanding any other provision of this section, the maximum amount payable under this section to an applicant for a benefit under this Act in respect of all injuries suffered by the applicant as a consequence of a single incident is \$171,000.

## 26 Payment of benefits for death

- (1) In this section:

**child**, in relation to a deceased person, means a person:

- (a) who is a child or stepchild of the deceased person, or
- (b) to whom the deceased person stood in loco parentis immediately before death,

and who is under the age of 16 years or who is of or above that age but under the age of 21 years and is a person receiving full time education at a school, college or university.

**dependant**, in relation to a deceased person, means a child or spouse of the deceased person.

**spouse** of a deceased person includes a person with whom the deceased had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) at the time of his or her death.

- (2) Subject to subsection (4), where an application under section 19 (2) has been duly made with respect to the death of a person while participating in an authorised activity of a sporting organisation as a registered participant of the organisation, the Committee, if the person was, at the time of the person's death:
- (a) of or above the age of 18 years, shall pay \$70,680 and an additional \$2,850 in respect of each child, if any, of the deceased person who was, in the opinion of the Committee, wholly or partly dependent for support upon the deceased person immediately before the person's death, or
  - (b) under the age of 18 years and had at least 1 dependant who was, in the opinion of the Committee, wholly or partly dependent for support upon the deceased person immediately before the person's death, may pay an amount not exceeding the amount that would be payable under paragraph (a) if the deceased person had died after attaining the age of 18 years.
- (2A) Subject to subsection (4), where:
- (a) an application under section 19 (2) has been duly made with respect to the death of a person:
    - (i) while participating in an authorised activity of a school as an enrolled student participant of the school, or
    - (ii) while participating in an authorised activity of the Department as an enrolled participant of the Department, and
  - (b) the person had at least 1 dependant who was, in the opinion of the Committee, wholly or partly dependent for support upon the deceased person immediately before the death occurred,
- the Committee may pay an amount not exceeding the total of \$70,680 and an additional \$2,850 in respect of each child, if any, of the deceased person who was, in the opinion of the Committee, wholly or partly dependent for support upon the deceased person immediately before the death occurred.
- (3) Any amount paid under subsection (2) (a) or (b) or (2A) shall be paid to the legal personal representative of the deceased person in respect of whom it is paid and shall form part of the deceased person's estate.
- (4) Notwithstanding any other provision of this section or section 25, the maximum



amount payable under this section and section 25 in respect of all injuries suffered by a person as a consequence of a single incident and the death of the person as a consequence of those injuries is:

- (a) if the person was a registered participant of a sporting organisation when the incident occurred and died when, or within 3 months after, the incident occurred:
  - (i) the amount payable under subsection (2) (a) in respect of the death of the person, or
  - (ii) the maximum amount payable under subsection (2) (b) in respect of the death of the person,as the case may be,
- (b) if the person was an enrolled student participant of a school or an enrolled participant of the Department when the incident occurred and died when, or within 3 months after, the incident occurred—the maximum amount payable under subsection (2A) in respect of the death of the person, or
- (c) in any other case—\$171,000.

## **27 Certain funeral expenses payable**

- (1) Where a person dies as a consequence of an injury suffered in prescribed circumstances by the person, whether within or outside New South Wales, the Committee shall, on application made to it by:
  - (a) where the funeral expenses payable out of the deceased person's estate have been paid, the person who paid those expenses, or
  - (b) where those expenses have not been paid, an applicant approved by the Committee, being:
    - (i) a parent of the deceased person,
    - (ii) a person who, in the opinion of the Committee, had a relationship to the deceased person, immediately before the death, substantially similar to that of a parent, or
    - (iii) the legal personal representative of the deceased person,

pay to the applicant the prescribed amount or those expenses, whichever is the lesser, if those expenses have been paid or, if those expenses have not been paid, pay to the applicant the prescribed amount.

- (1A) An injury is suffered by a person in prescribed circumstances, within the meaning of subsection (1), if the injury is suffered by the person:

- (a) while the person is participating in an authorised activity of a sporting organisation as a registered participant of the organisation,
  - (b) while the person is participating in an authorised activity of a school as an enrolled student participant of the school, or
  - (c) while the person is participating in an authorised activity of the Department as an enrolled participant of the Department.
- (2) No amount is payable under subsection (1) in respect of the death of a person if any amount has previously been paid or is payable under section 26 to the legal personal representative of the person in respect of the death.
- (3) In subsection (1), **prescribed amount** means \$850 or, where another amount is prescribed by the regulations for the purposes of this subsection, that other amount.

## **28 Administration of amounts payable to minors**

- (1) Any amount that is to be paid under section 25 by the committee to an applicant under the age of 18 years shall be paid to the Public Trustee to be held by the Public Trustee in trust for the applicant until the applicant attains the age of 18 years.
- (2) Where the Public Trustee has been paid an amount pursuant to subsection (1) and the applicant who would be entitled to the amount, or the residue thereof, when he or she attains the age of 18 years, dies before he or she attains that age, the Public Trustee shall pay the amount, or the residue thereof, and any accretions thereto, to:
- (a) a parent of the deceased applicant,
  - (b) a person who, in the opinion of the Public Trustee, had a relationship to the deceased applicant, immediately before the death, substantially similar to that of a parent, or
  - (c) the legal personal representative of the deceased applicant,
- as the Public Trustee thinks fit.

## **28A Special provision with respect to payment of benefits to mentally incapacitated persons**

- (1) If a benefit is payable under this Act to a person who is mentally incapacitated as a result of the compensable injury, the Committee may postpone payment of the benefit pending a determination by the relevant court or tribunal as to whether the estate of the person should be subject to management because the person is incapable of managing his or her own affairs.
- (2) Pending the payment of the benefit, the Committee is required to pay the money into a trust fund established by the Committee for the mentally incapacitated person.

- (3) However, if a trust fund for the mentally incapacitated person already exists, the Committee may pay the benefit into that trust fund if it considers that it is in the best interests of the person to do so.

## **29 Determinations by Court**

- (1) An applicant for a benefit under this Act, other than Schedule 3, who is aggrieved by any decision made under this Part by the Committee, other than a decision under section 26 (2) (b) or 27, may apply to the Court for a determination in relation to that decision.
- (2) Not less than 21 days' notice of an application under this section shall be given by the applicant to the Court and the Committee.
- (3) The Committee is entitled to be represented at the hearing of an application under this section.
- (4) The Court, after considering an application under this section, may make a determination that the decision of the Committee in respect of which the application was made:
  - (a) be confirmed, or
  - (b) subject to section 24 (7), be set aside and replaced by a different decision made by the Court.
- (5) Where the Court makes a decision referred to in subsection (4) (b), that decision shall, for the purposes of this Part, be deemed to have been made by the Committee and shall be carried into effect.
- (6) Subject to section 127 (Right of appeal to Supreme Court) of the *District Court Act 1973*, the Court has exclusive jurisdiction to examine, hear and determine applications under this section.
- (7) The Court, after hearing an application under this section, may assess the costs of the successful party to the application (including costs of representation and witness expenses, if any) and order that the costs so assessed or any part of them be paid to the successful party by any other party within a time specified in the order.
- (8) Where costs assessed under subsection (7) are not paid within the time specified in the order made under that subsection in respect of them, the person in whose favour the order was made may recover the costs in a court of competent jurisdiction as a debt due to the person by the person against whom the order was made.
- (9) (Repealed)

## Part 6 Miscellaneous

### 30 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by regulations or that is necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.
- (2) A regulation making a prescription for the purpose of any provision of Table A of Schedule 1 may prescribe different percentages for the purpose of that provision with respect to injuries which arise out of or in the course of sporting or athletic activities which take place during different periods of time.
- (3) Notwithstanding section 39 (1) (b) of the *Interpretation Act 1987*, a regulation prescribing a percentage for the purpose of any provision of Table A of Schedule 1, being a percentage which is smaller than that prescribed for the purpose of that provision with respect to injuries which arise out of or in the course of sporting or athletic activities which take place immediately before the regulation takes effect, may be made so as to have effect on and from a date specified in the regulation which is an earlier date than that on which the regulation is published in the Gazette.

### 31 Rules

- (1) The Committee may make rules, not inconsistent with this Act or the regulations, for or with respect to any matter that by this Act is required or permitted to be prescribed by rules or that is necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act and, in particular, for or with respect to:
  - (a) specifying, or providing for the determination of, the authorised activities of prescribed organisations,
  - (b) describing, or providing for the determination of, the persons who are to be treated as registered participants of sporting organisations, enrolled student participants of schools or enrolled participants of the Department,
  - (c) the keeping of registers of persons participating in any sporting or athletic activities, or recreational activities conducted or promoted by the Department, and the furnishing to the Committee or to any other person or association of copies:
    - (i) of any such register, and
    - (ii) of estimates of the numbers of persons who will participate in those activities,
  - (d) the giving of notice of injuries suffered in the course of sporting or athletic activities, or recreational activities conducted or promoted by the Department,

and the keeping of records of any such injuries,

(e) the furnishing to the Committee of:

- (i) returns and other information relating to any sporting or athletic activities, or recreational activities conducted or promoted by the Department, and injuries suffered in, or in connection with, any such activities, and
- (ii) particulars of any actual or intended change in the composition or name of a sporting organisation, and

(f) the making of applications for benefits under this Act and the reimbursement (or non-reimbursement) by the Committee of any specific costs incurred in connection with the due making of those applications.

(1A) A rule may be made under section 31 (1) (f) for or with respect to the reimbursement by the Committee of any costs incurred in connection with an application duly made before the commencement of this subsection and not finally determined on that commencement.

(2) A provision of a rule may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or
- (d) authorise the Committee to determine:
  - (i) that an activity of a kind described by the Committee shall, for the purposes of this Act, be deemed to be an authorised activity of a prescribed organisation specified by the Committee for a period so specified, which period may have wholly or partly occurred before the date of the determination, or
  - (ii) that a person who was not a registered participant of a sporting organisation, an enrolled student participant of a school or an enrolled participant of the Department at a time or during a period before the determination is made shall be treated as a registered participant of the sporting organisation, an enrolled student participant of the school or an enrolled participant of the Department, as the case may require, at that time or during that period,

or may do any combination of those things.

(2A) Forthwith after the Committee makes a determination under a rule made pursuant to subsection (2) (d), it shall forward a notice setting out particulars of the determination

to the prescribed organisation to which the determination relates.

- (3) The rules may impose a penalty not exceeding 2 penalty units for the breach of any of them.
- (4) A rule has no effect unless it has been approved by the Governor.

### **32 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the rules shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Any such proceedings may be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

### **33 False or misleading applications etc**

A person shall not, in or in connection with an application under this Act or a return under the rules:

- (a) make a statement, or
- (b) furnish information,

that the person knows, or has reasonable cause to suspect, is false or misleading in a material particular.

Maximum penalty: 5 penalty units.

### **34 Service of notices**

A notice under this Act may be served on:

- (a) an individual, by:
  - (i) leaving it with him or her or with some person apparently of or above the age of 18 years, at his or her place of residence or business last known to the Committee, or
  - (ii) posting it to him or her by certified mail addressed to him or her at either of those places,
- (b) a body corporate, by leaving it at or by posting it by certified mail addressed to its registered office in New South Wales or its principal place of business, or
- (c) an unincorporated association, by serving it in any manner specified in paragraph (a) on any member of the governing body of the association.

### **35 Application of Stamp Duties Act 1920**

An instrument made out for the purpose only of acknowledging the receipt, deposit or payment of any amount paid or to be paid to the Committee under Part 4 is not a policy of

insurance for the purposes of the *Stamp Duties Act 1920* and section 88 of that Act does not apply to the Committee or any other person in respect of the Committee or the person receiving or taking credit for any such amount.

### **35A Certain claims against the Committee and others**

- (1) In this section, **damages** includes:
  - (a) a benefit payable pursuant to a system of compensation under the legislation of another State or a Territory of the Commonwealth or of any country other than Australia,
  - (b) an amount payable under a contract of insurance or assurance,
  - (c) an amount payable by way of damages under a law of New South Wales, of another State or a Territory of the Commonwealth or of any country other than Australia, and
  - (d) an amount payable in circumstances prescribed by the regulations.
- (2) Where a death or an injury in relation to or for which a benefit is payable under this Act in respect of or to an enrolled student participant of a school or an enrolled participant of the Department was caused under circumstances creating a legal liability in some person (in this section referred to as the **liable person**) to pay damages in respect thereof, the person entitled to a benefit payable under this Act in relation to the death or injury (in this section referred to as the **entitled person**) may take proceedings both against the liable person to recover damages and against the Committee to recover the benefit but, subject to this section, shall not be entitled to retain both damages and the benefit.
- (3) If the entitled person recovers firstly the benefit and secondly damages, the entitled person shall be liable to repay to the Committee out of the damages the amount of the benefit (or, where the amount of the damages is less than the amount of the benefit, the amount of the damages), and the entitled person shall not be entitled to the payment of any further benefit under this Act in respect of the incident as a consequence of which the death or injury occurred, except where (and to the extent, if any, that) the regulations otherwise provide.
- (4) If the entitled person firstly recovers damages, the entitled person shall not be entitled to recover a benefit under this Act in respect of the incident, except where (and to the extent, if any, that) the regulations otherwise provide.
- (5) If the entitled person has recovered a benefit under this Act, the Committee shall be entitled to be indemnified by the liable person to the extent of the amount of the benefit.
- (6) Where any payment is made under the indemnity referred to in subsection (5) and, at

the time of the payment, the entitled person has not obtained judgment for damages against the liable person, the payment shall, to the extent of its amount, be a defence to proceedings by the entitled person against the liable person for damages.

- (7) All questions relating to matters arising under this section or regulations made for the purposes of this section shall, in default of agreement:
- (a) be settled by proceedings brought in a court of competent jurisdiction, or
  - (b) with the consent of the parties, be settled by the Court.

### **35B Liability of concurrent tortfeasors**

- (1) In this section, **damages, entitled person** and **liable person** have the meanings respectively ascribed thereto in section 35A.
- (2) Where an entitled person is entitled to recover damages independently of this Act both from the Crown and from another liable person and:
- (a) the entitled person recovers damages from the other liable person but does not seek to recover damages from, or does not proceed to judgment against, the Crown, or
  - (b) judgment in an action by the entitled person is given against both the Crown and the other liable person but the entitled person refuses to accept satisfaction of the judgment against the Crown,

section 35A applies to the case as if the entitled person had not been entitled to recover the damages from the Crown, and the Crown has, to the extent of the amount, if any, of the benefit paid by the Committee, a defence to an action by the other liable person against the Crown for a contribution as a concurrent tortfeasor.

### **36 Payment of benefits subject to discretion**

Schedules 3 and 4 have effect.

### **37 Savings and transitional provisions**

Schedule 5 has effect.

## **Schedule 1 Benefit tables**

(Sections 4 (1), 25)

### **Table A**

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#### **Part 1 Injuries related to arms**

Permanent loss of not less than the percentage, prescribed by the regulations, of the use of:



(a) either arm or the greater part of an arm	43,265
(b) lower part of either arm	37,050
(c) either hand or 4 fingers and thumb of either hand	37,050
(d) thumb	16,075
(e) index finger	10,715
(f) middle, ring or little finger	5,645

### **Part 2 Injuries related to legs**

Permanent loss of not less than the percentage, prescribed by the regulations, of the use of:

(a) either leg or the greater part of a leg	39,500
(b) lower part of either leg	33,970
(c) foot	32,945
(d) great toe	10,715

### **Part 3 Injuries related to sight**

#### **1**

Permanent and total loss of sight of both eyes (or of one eye, if it was the only sighted eye) 55,575

#### **2**

Permanent loss of not less than the percentage, prescribed by the regulations, of the use of:

(a) one eye, if it was the only sighted eye	39,500
(b) one eye, if it was not the only sighted eye	23,030

### **Part 4 Miscellaneous injuries**

#### **1**

Permanent loss of not less than the percentage, prescribed by the regulations, of:

(a) hearing in both ears	33,970
(a) power of speech	33,970

<b>2</b>		
	Permanent loss of sighted eye	12,310

<b>3</b>	Permanent and total loss of the use of:	
	(a) both kidneys (or of one kidney, if it was the only functioning kidney)	58,710
	(b) one kidney, if it was not the only functioning kidney	7,070
	(c) spleen	7,070

**Table B** \$

### **Part 1 Injuries related to cognition**

Permanent loss of:	
(a) mental capacity	171,000
(b) sense of smell	9,290
(c) sense of taste	9,290

### **Part 2 Physical injuries**

Permanent loss of:	
(a) all sexual organs or part of them	27,530
(b) sightless eye	12,310

## **Schedule 2 Constitution and procedure of Sporting Injuries Committee**

(Section 7 (2))

### **1 Definitions**

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

***appointed member*** means a member appointed under clause 2 (3).

***Authority*** means the WorkCover Authority constituted under the [WorkCover Administration Act 1989](#).

***member*** means a member of the Committee.

## **2 Composition of the Committee**

- (1) The Committee shall consist of 7 members.
- (2) One of the members shall be the General Manager of the Authority.
- (3) The remaining 6 members shall be appointed by the Governor and of them:
  - (a) 2 shall be persons appointed on the nomination of the Minister for Sport and Recreation, with one being nominated to represent the interests of disabled persons engaged in sporting or athletic activities,
  - (a1) 1 shall be a person appointed on the nomination of the Minister for Education, and
  - (b) 3 shall be persons appointed on the nomination of the Minister to represent persons engaged in sporting or athletic activities.
- (4) The provisions of the *Public Service Act 1902* do not apply to or in respect of the appointment of a member under subclause (3) of this clause and an appointed member is not in his or her capacity as a member subject to the provisions of that Act during his or her term of office.

## **3 (Repealed)**

## **4 Terms of office of appointed members**

An appointed member shall, subject to this Act, hold office for a term of 3 years, or such shorter term as may be specified in the instrument of appointment of the member, and is not ineligible for re-appointment by reason only of having previously been a member.

## **5 Chairperson**

- (1) The member referred to in clause 2 (2) or, in respect of any period during which there is a vacancy in the office of General Manager of the Authority, an officer of the Public Service appointed as Chairperson for that period by the Minister, shall be the Chairperson of the Committee.
- (2) An officer of the Public Service appointed under subclause (1) of this clause shall be deemed to be a member for the period for which the officer is so appointed.

## **6 Provisions relating to appointed members**

- (1) Where, by or under any Act, a provision is made requiring the holder of an office specified therein to devote the whole of his or her time to the duties of office, the provision does not operate to disqualify him or her from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to an appointed member under clause 7.

- (2) The office of an appointed member shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.
- (3) The member referred to in clause 2 (3) (a1) may not take part in proceedings conducted at a meeting of the Committee unless those proceedings relate to enrolled student participants of schools, schools, authorised activities of schools or the Supplementary Fund and shall, for the purposes of clause 9 (1) (c), be deemed to have been excused by the Committee for absence from any meeting of the Committee the proceedings conducted at which do not relate to any of those matters.

## **7 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **8 Appointment of substitutes**

- (1) Subject to subclause (2) of this clause, the Minister may appoint any person, other than a member, to act in the office of a member while the member is absent from office on leave or through illness or any other cause, and the person so appointed, while so acting, shall have and may perform the functions of, and shall be deemed to be, a member and, if the person is appointed to act in the office of the member who is the Chairperson, shall have and may perform the functions of, and shall be deemed to be, the Chairperson.
- (2) A person shall not be appointed under subclause (1) of this clause to act in the office of:
  - (a) the Chairperson, unless the person is an officer of the Public Service,
  - (b) the member referred to in clause 2 (3) (a), unless the person is nominated for appointment by the Minister for Sport and Recreation, or
  - (c) the member referred to in clause 2 (3) (a1), unless the person is nominated for appointment by the Minister for Education.
- (3) A member shall, for the purposes of subclause (1) of this clause, be deemed to be absent from office if there is a vacancy in that office which has not been filled in accordance with clause 10.
- (4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of the Chairperson or any other member, and all things done or omitted to be done by that person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted to be done by the Chairperson or that other member, as the case may be.

## **9 Vacation of office**

- (1) An appointed member shall be deemed to have vacated office:
  - (a) if the member dies,
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her remuneration for their benefit,
  - (c) if the member is absent from 3 consecutive meetings of the Committee of which notice has been given to the member personally or in the ordinary course of post and is not before the expiration of 6 weeks after the latest of those meetings excused by the Committee for his or her absence from those meetings,
  - (d) if the member becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,
  - (e) if he or she is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
  - (f) if the member resigns his or her office by writing under his or her hand addressed to the Governor, or
  - (g) if the member is removed from office by the Governor under subclause (2).
  - (h) (Repealed)
- (2) The Governor may for any cause which to the Governor seems sufficient remove an appointed member from office.

## **10 Filling of casual vacancies**

On the occurrence of a vacancy in the office of an appointed member, the Governor may appoint a person to the vacant office for the balance of his or her predecessor's term of office.

## **11 Quorum**

A quorum at any meeting of the Committee shall consist of the Chairperson and 3 other members.

## **12 Meetings**

- (1) A duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

- (2) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.
- (3) The Chairperson shall preside at all meetings of the Committee.
- (4) The Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

### **13 Minutes**

The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings.

### **14 General procedure**

- (1) Subject to subclause (2) of this clause, the procedure for the calling of and for the conduct of business at, meetings of the Committee shall, subject to any procedure that is specified in this Act or prescribed by the regulations, be as determined by the Committee.
- (2) The Minister shall call the first meeting of the Committee in such manner as the Minister thinks fit.

### **15 Protection from liability**

No matter or thing done, and no contract entered into, by the Committee, and no matter or thing done by a member, shall, if the matter or thing was done, or the contract was entered into, in good faith for the purposes of executing this Act or the regulations or rules, subject a member personally to any action, liability, claim or demand.

### **16 Presumptions**

In any proceedings by or against the Committee, no proof shall be required (until evidence is given to the contrary) of:

- (a) the constitution of the Committee,
- (b) the passing of any resolution by the Committee,
- (c) the appointment of any member, or
- (d) the presence of a quorum at any meeting of the Committee.

## **Schedule 3 Payment of benefits from the Fund subject to discretion in certain cases**

(Section 36)

## 1 Definitions

(1) In this Schedule:

**appointed day** means the date of assent to the *Sporting Injuries Insurance (Amendment) Act 1981*.

**injury** means personal injury arising out of or in the course of a sporting or athletic activity, and includes a disease:

(a) contracted in the course of any such activity, and

(b) to which the activity was a contributing factor,

but does not include the aggravation, acceleration, exacerbation of, or deterioration resulting from, a disease.

(2) A reference in this Schedule to a person who is seriously disabled is a reference to a person who is a paraplegic or a quadriplegic.

## 2 Power to make payments

(1) Subject to clause 4, where:

(a) a person suffered an injury, whether within or outside New South Wales, on or after 22 February 1977, but on or before 15 August 1979, in the course of an activity of a kind that the Committee considers to be similar to an activity that is or has been, at any time before the period of 2 months commencing with the appointed day expires, an authorised activity of a sporting organisation,

(b) the Committee is satisfied that the injury resulted in the person's death or in the person's having been permanently seriously disabled, and

(c) the Committee considers that:

(i) where the person died—the person's death caused substantial and continuing financial hardship to the person's dependants, within the meaning of section 26, or

(ii) where the person has been permanently seriously disabled—the person's disability is causing the person substantial and continuing financial hardship,

the Committee may, on application made to it and with the approval of the Minister, pay from the Fund an amount not exceeding the amount that, on 16 February 1979, would or might have been payable under section 25 or 26, as the case may be, if the injury had been suffered by a registered participant of a sporting organisation in the course of an authorised activity for that organisation.

(2) Subject to clause 4, where:

(a) a person suffered an injury in the circumstances specified in subclause (1) (a), and

(b) the Committee is satisfied:

(i) that the injury resulted in the person's death, and

(ii) that an amount may not be paid under subclause (1) in respect of that death,

the Committee may, on application made to it and with the approval of the Minister, pay from the Fund an amount not exceeding the amount that, on 16 February 1979, would or might have been payable under section 27 if the injury had been suffered in the course of an authorised activity for a sporting organisation by a registered participant of that organisation who was under the age of 18 years.

### **3 Designation of recipients etc**

Any amount paid under this Schedule shall be paid:

(a) to such person or persons and, if to more than one person, in such proportions, and

(b) where the amount is not paid under clause 2 (2) and the Committee considers it appropriate to pay the amount by instalments, by such annual or other periodic instalments of such amounts,

as the Committee, with the approval of the Minister, determines.

### **4 Restriction on applications**

An application may not be made:

(a) for payment of an amount under this Schedule, later than 3 months after the appointed day, or

(b) for payment of an amount under this Schedule and under Part 5, in respect of any one death or injury.

### **5 Application of section 28**

Section 28:

(a) applies to and in respect of an amount paid under this Schedule and the person who receives any such amount in the same way as it applies to and in respect of an amount paid under section 25 and the person who receives any such amount, and

(b) so applies as if the reference in section 28 (1) to section 25 were a reference to this Schedule.

## **Schedule 4 Payment of benefits from the Supplementary Fund subject**



## to discretion in certain cases

(Section 36)

### 1 Definitions

(1) In this Schedule:

**appointed day** means the day on which this Schedule commences.

**injury** has the meaning ascribed thereto in Schedule 3.

(2) A reference in this Schedule to a person who is seriously disabled is a reference to a person who is a paraplegic or a quadriplegic.

### 2 Power to make payments

Subject to clause 4, where:

- (a) a person suffered an injury, whether within or outside New South Wales, on or after 22 February 1977, but on or before the appointed day,
- (b) the injury was suffered in the course of an activity that in the opinion of the Committee, would or might have been an authorised activity of a school or of the Department if the activity had been carried on on or after the appointed day,
- (c) the person, in the opinion of the Committee, would or might have been an enrolled student participant of a school or an enrolled participant of the Department at the time of the injury if the injury was suffered on or after the appointed day, and
- (d) the Committee is satisfied that the injury resulted in the death of the person or in the person's having been permanently seriously disabled,

the Committee may, on application made to it and with the approval of the Minister, pay from the Supplementary Fund an amount not exceeding the maximum amount that, immediately before 1 June 1983, would or might have been payable under section 25, 26 or 27, as the case may be, if the injury had been suffered in the course of an authorised activity for a sporting organisation by a registered participant of that organisation.

### 3 Designation of recipients etc

Subject to clause 5, any amount paid under this Schedule shall be paid to such person or persons and, if to more than one person, in such proportions as the Committee, with the approval of the Minister, determines.

### 4 Restriction on applications

An application may not be made for payment of an amount under this Schedule:

- (a) except as provided in paragraph (b)—later than 12 months after the appointed day,

- (b) where the application is made in respect of a death—later than 12 months after the appointed day or the date of the death, whichever occurs later,
- (c) in respect of an injury or a death arising out of or suffered in the course of an authorised activity of a sporting organisation, or
- (d) if an amount has already been paid under Part 5 or Schedule 3 in respect of the death or injury to which the application would relate.

## **5 Application of sections 28, 35A and 35B**

### (1) Section 28:

- (a) applies to and in respect of an amount paid under this Schedule and the person who receives any such amount in the same way as it applies to and in respect of an amount paid under section 25 and the person who receives any such amount, and
- (b) so applies as if the reference in section 28 (1) to section 25 were a reference to this Schedule.

- (2) Sections 35A and 35B apply to and in respect of an amount paid or payable under this Schedule in the same way as they apply to and in respect of benefits paid or payable under section 25, 26 or 27 to or in respect of enrolled student participants of schools and enrolled participants of the Department.

## **Schedule 5 Savings and transitional provisions**

(Section 37)

### **Part 1 Preliminary**

#### **1 Regulations**

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

*WorkCover Legislation Amendment Act 1997*

*Miscellaneous Acts Amendment (Relationships) Act 2002* to the extent that it amends this Act

*Workers Compensation Legislation Amendment Act 2004* to the extent that it amends this Act

- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision of a regulation authorised by this clause takes

effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

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

### **1A Effect of GST**

- (1) Without limiting clause 1, the regulations may contain provisions of a savings or transitional nature that may be necessary or convenient as a consequence of the enactment of the Acts of the Commonwealth that impose, or relate to the imposition of, goods and services tax.
- (2) If the regulations so provide, a provision referred to in subclause (1) has effect despite any other provision of this Act.
- (3) A regulation made pursuant to this clause, unless sooner revoked or otherwise ceasing to have effect, ceases to have effect on 1 July 2003.
- (4) A regulation made pursuant to this clause may not be made or published after 1 July 2003.

## **Part 2 WorkCover Legislation Amendment Act 1997**

### **2 References to superseded terms**

In any other Act, in any instrument made under another Act, in any instrument made under this Act and in force on the commencement of this clause, and in an instrument of any other kind:

- (a) a reference to a registered player under this Act is to be read as a reference to a registered participant under this Act, and
- (b) a reference to an enrolled player under this Act is to be read as a reference to an enrolled student participant under this Act.

### **3 Increase in benefits**

An amendment made by Schedule 2 [2]-[8] or [10] of the [WorkCover Legislation Amendment Act 1997](#) does not apply to or in respect of an injury arising out of an authorised activity, or any death as a consequence of such an injury, if the activity took place before the commencement of the amendment.

### **Part 3 Provisions consequent on the enactment of [Miscellaneous Acts Amendment \(Relationships\) Act 2002](#)**

#### **4 Operation of amendments**

An amendment made to this Act by the [Miscellaneous Acts Amendment \(Relationships\) Act 2002](#) does not apply in respect of the death of a person that occurred before the commencement of the amendment.

### **Part 4 Provisions consequent on enactment of [Workers Compensation Legislation Amendment Act 2004](#)**

#### **5 Assessment of permanent loss**

Section 24 (5A) extends to an injury received before the commencement of that subsection, but not so as to affect any assessment of permanent loss for the purposes of section 24 made before the commencement of that subsection.