

# Workers Compensation Regulation 2003

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New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**  
*Mine Health and Safety Act 2004 No 74* (not commenced)

### Authorisation

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# Workers Compensation Regulation 2003



New South Wales

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# Workers Compensation Regulation 2003



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Workers Compensation Regulation 2003*.

### 2 Commencement

This Regulation commences on 1 September 2003.

#### Note—

This Regulation replaces the *Workers Compensation (General) Regulation 1995* and the *Workers Compensation (Insurance Premiums) Regulation 1995* (which are repealed under section 10 (2) of the *Subordinate Legislation Act 1989*) and the *Workers Compensation Transitional Regulation 1997* (which is repealed by this Regulation).

### 3 Definitions

(1) 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*.

(2) Notes included in this Regulation (other than notes included in a form) 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 the case of a funeral held on or after 1 July 2000 but before the date that the Bill for the *Workers Compensation and Other Legislation Amendment Act 2004* was first introduced into Parliament—\$4,400, or

(d) in the case of a funeral held on or after the date that the Bill for the *Workers Compensation and Other Legislation Amendment Act 2004* was first introduced into Parliament in respect of a death that occurred before that date—\$4,400.

**Note—**

Section 27 (a) of, and clause 1 (1) of Part 18I of Schedule 6 to, the Act, as inserted by the *Workers Compensation and Other Legislation Amendment Act 2004*, provide a maximum amount for reasonable funeral expenses of \$9,000 in relation to a death occurring after the date that the Bill for that Act was first introduced into Parliament.

(2) This clause applies regardless of when the injury that 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 *Workplace Relations Act 1996* of the Commonwealth.

**State Act** means the *Industrial Relations Act 1996*.



- (2) A reference in this Part to an amount of money specified in an award or 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 that 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 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) Workers engaged in the meat processing industry whose employment is subject to an industrial instrument that provides for the payment of “overs” or a production loading under a tally, piecework or incentive system in respect of work performed in that industry are prescribed as a class of workers for the purposes of section 42 (1) (c) and (5) (b) of the Act.

(2) In this clause:

**industrial instrument** means a State industrial instrument or an instrument of a similar nature under the law of another State, a Territory or the Commonwealth, and includes any agreement or other arrangement in force under such an instrument.

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

(a) except as provided by paragraphs (b), (c) and (d), 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 whose employment is subject to an industrial instrument that provides for the payment of “overs” to the worker) 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,

(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,

(d) where the formula prescribed by whichever of paragraphs (a), (b) and (c) is appropriate provides a smaller rate for a particular week for the worker than any special rate (as referred to in subclause (4)) applicable to the worker for that week—the special rate applicable to the worker for that week.

(4) A reference in subclause (3) (d) to a **special rate** applicable to a worker for a particular week is a reference to a special weekly wage rate that is applicable to the worker under an industrial instrument for any period for which the worker is absent from work because of sickness or injury.

(5) In the application of the formulae prescribed by subclause (3) 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 the class prescribed by subclause (1):

**A1** equals:

(a) where that period consists of, or includes, Monday of that week and any other

worker who is a co-worker of the injured worker 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 who is a co-worker of the injured worker 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 who is a co-worker of the injured worker 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 who is a co-worker of the injured worker 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 who is a co-worker of the injured worker 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 co-workers of the injured worker worked, or

(b) where there are no such days—0.

**C** equals the weekly rate applicable under any relevant industrial instrument to co-workers of the injured worker.

**weekly rate** (in relation to what **C** equals) is the amount of the rate fixed or set under an industrial instrument in respect of co-workers of the injured worker as the tally rate per 5 days, ordinary rate per 5 days, ordinary weekly rate or minimum weekly rate of

pay.

- (6) For the purposes of subclause (5), a worker is a **co-worker** of an injured worker if the worker is normally employed with the injured worker at a common place of employment and under the same classification as the injured worker.
- (7) A reference in subclause (5) to the prescribed amount payable to a worker for a day on which the worker worked is a reference to the amount of money that the worker is entitled, under the industrial instrument by which the worker is bound, to be paid for that day's work:
- (a) exclusive of any amount that the worker is so entitled to be paid in respect of shift work or overtime or otherwise at penalty rates, and
  - (b) inclusive of any amount that the worker is so entitled to be paid in respect of "overs" or (subject to subclause (8)) in respect of production loading.
- (8) For the purposes only of subclause (7) (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 for whom production loading is calculated by reference to weekly production, any amount in excess of one-fifth of the production loading that 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" that provided each of those workers with pay for that week that 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 for whom production loading is calculated by reference to daily production, any amount in excess of the production loading that 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" that provided each of those workers with pay for that day that 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 subclause (5).

## **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**

<b>Column 1</b>	<b>Column 2</b>
<b>Period</b>	<b>Amount per week</b>
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**

<b>Column 1</b>	<b>Column 2</b>
<b>Adjustment date</b>	<b>Latest index number</b>
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
1 April 2003	172.9
1 October 2003	176.4
1 April 2004	179.6
1 October 2004	182.9
1 April 2005	185.8
1 October 2005	189.6

## **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 coal miner matter, the worker may apply to the District Court for determination of the dispute, or
    - (ii) in the case of a dispute about a claim (other than a coal miner matter) 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 District Court or the Registrar of the Commission, as appropriate.

(2) If:

- (a) the notice referred to in section 54 of the 1987 Act 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 Occupational rehabilitation services

### 16 Definition

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

### 17 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.

### 18 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 subclause (1)) in the same way as it applies in relation to services in respect of injuries received after that commencement.



### **19 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.

### **20 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).

### **21 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.

### **22 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.

### **23 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.

### **24 Review by 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.

**25 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 District 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.

## **26 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.

## **27 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.

## **28 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.

## **29 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.

### **30 Application of Part to proceedings pending in District Court or Commission**

If proceedings are pending in the District Court or the Commission, the Authority may, in relation to an application or a reference for review received by it under this Part that 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.

### **31 Authority not prevented from giving opinion on rehabilitation liability**

Nothing in this Part (for example clause 24 (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 8 Notices and claims procedure**

### **32 Notification of workplace injury**

- (1) For the purposes of section 44 (2) of the 1998 Act, notification to an insurer or the Authority by an employer that a worker has received a workplace injury must be given in any of the following ways:
  - (a) by electronic communication (using a mode of electronic communication approved by the insurer or the Authority) providing the information requested by the insurer or the Authority,
  - (b) in writing by completing a notification form approved for the purpose by the insurer or the Authority and sending the completed form to the insurer or the Authority by post or facsimile transmission at the address or facsimile number indicated on the form, or by completing and lodging the form in person at an office of the insurer or the Authority,
  - (c) by telephone to the insurer or the Authority, giving such information as may be requested of the caller.
- (2) For the purposes of section 44 (3) of the 1998 Act, an insurer who has been given notice by an employer under section 44 (2) of that Act that a worker has received a workplace injury must forward that notice to the Authority using a mode of electronic communication approved by the Authority.
- (3) An employer who gives a notification under section 44 (2) of the 1998 Act must make and keep for at least 5 years after the notification is given:
  - (a) a record of the date, time, place and nature of the injury to which the notification

relates, and

- (b) a record of the date on which and the way in which the notification was given, and
- (c) a record of any acknowledgement (such as a receipt number) given to the employer by the insurer or the Authority as evidence of receipt of the notification.

**Note—**

An entry in the register of injuries kept under section 63 of the 1998 Act is a sufficient record of an injury for the purposes of this clause. The record of an acknowledgement of the notification can also be made and kept as part of the register of injuries.

- (4) An employer must make the records kept under subclause (3) available for inspection by an authorised officer or authorised employee representative in accordance with a request by the authorised officer or authorised employee representative, and in any event no later than 7 days after the date of the request.
- (5) In this clause:

**authorised employee representative** means an officer of an industrial organisation of employees (including any person who is concerned in, or takes part in, the management of that organisation) who is authorised under Part 7 of Chapter 5 of the *Industrial Relations Act 1996*.

**authorised officer** means an authorised officer under section 238 of the 1998 Act.

Maximum penalty: 20 penalty units.

### **33 Notice of injury involving loss of hearing**

- (1) If an injury is a loss, or further loss, of hearing that 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 62 of the 1998 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.

### **34 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 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.

### **35 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.

### **36 Form of register of injuries to be kept at mine etc**

- (1) The register of injuries required to be kept under section 63 of the 1998 Act is to be a book with entries in the form set out in Form 2.
- (2) The particulars to be entered in the register of injuries are the particulars required to complete Form 2.

### **37 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 40 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.

### **38 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 9 Medical examinations and disputes**

### **39 Medical examination of worker at direction of employer**

- (1) A worker must not, under section 119 of the 1998 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 119 of the 1998 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.

### **40 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 37 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.

**41 Application to refer matter to medical referee or panel etc**

- (1) In the application of section 122 of the 1998 Act for the purposes of section 122 (12) of the 1998 Act, section 122 (2) of the 1998 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 the following:
- (a) existing claims, and existing claim matters, within the meaning of Chapter 7 of the 1998 Act,
  - (b) coal miner matters.

**Part 10 Restrictions on obtaining medical reports**

**42 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 District Court.

**43 Restrictions on number of medical reports that can be admitted**

- (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 44) 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.

#### **43A Restriction on disclosure of medical reports to approved medical specialists**

A medical report is not to be disclosed to an approved medical specialist in connection with a claim unless:

- (a) the report was admitted in proceedings on the claim, or
- (b) the report was nominated by the claimant or respondent as the report that the claimant or respondent concerned would introduce in evidence in proceedings on the claim, or
- (c) the report was the sole report in the particular specialty concerned that was lodged in relation to the claim by the claimant or respondent (as the case may be), or
- (d) the approved medical specialist calls under section 324 (1) (b) of the 1998 Act for the production of the report.

#### 44 Permissible updates of medical reports

- (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.

#### 45 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,
  - (b) a medical certificate that accompanies an initial notification of injury,
  - (c) 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,
  - (d) 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.

#### **46 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.

#### **47 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.

#### **48 Transitional**

- (1) This Part applies only in respect of proceedings commenced on or after 23 February 2001. In its application in respect of those proceedings, this Part extends to medical reports obtained before that date (subject to subclause (2)).
- (2) Clause 45 (Restrictions on recovery of cost of medical reports) does not apply in respect of a medical report that was obtained before 23 February 2001, or that was obtained on or after that date as a result of an appointment made before that date.
- (3) Clauses 43 and 44 extend to proceedings on a new claim or new claim matter commenced before 28 February 2003, but:
  - (a) do not affect the use of a report in evidence in proceedings if the report was admitted in the proceedings before that date, and
  - (b) do not prevent the recovery of costs under Schedule 6 for more than one report in a specialty that was obtained before that date, or as a result of an appointment made before that date.
- (4) In this clause, **new claim** has the same meaning as in Chapter 7 of the 1998 Act.

## Part 11 Insurance policies

### 49 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 3, 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.

### 50 (Repealed)

### 51 Prescriptions for purposes of excess recoverable from employer

- (1) For the purposes of section 160 of the Act, the following is prescribed:
  - (a) if the employer concerned notified the relevant insurance scheme agent of the injury that lead to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—\$0,
  - (b) in all other cases—the lesser of the following:
    - (i) the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,
    - (ii) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50.

#### Note—

Under section 160 (2) of the Act, the **prescribed excess amount** is the amount that an employer is required to repay to the insurer under a policy of insurance in respect of each weekly compensation claim that the insurer has paid under the policy. However, if the amount that the insurer has paid in respect of any such claim is less than the prescribed excess amount, the amount the employer must repay is that lesser

paid amount.

- (2) (Repealed)
- (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.

## **52 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.

## **53 Liability for subcontractor premiums—exemption for farming operations**

- (1) Any work carried out before 1 July 2004 under a contract for the carrying out of work on a farm on which a farmer engages in a farming operation is exempt from the operation of section 175B of the 1987 Act if the farmer is the principal contractor and the work is an aspect of the work of the farming operation (and is not an aspect of the work of any other business undertaking of the farmer).

- (2) In this clause:

**farmer** means a person who is engaged in a farming operation and includes a person who owns land cultivated under a share-farming agreement.

**farming operation** means a farming (including dairy farming, poultry farming, bee farming and aquaculture), pastoral, horticultural or grazing operation.

## **Part 12 Insurers' Contribution Fund**

### **54 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.

**55 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).

**56 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**

<b>Column 1</b>	<b>Column 2</b>
<b>Financial Year</b>	<b>Percentage of premium income</b>
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

**57 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 13 WorkCover Authority Fund**

### **58 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.

### **59 Definition of “premium income” for purposes of insurers’ contributions**

For the purposes of the contribution payable by an insurer under section 39 of the 1998 Act for a financial year, premium income (as defined in section 4 (1) of the 1998 Act) does not include any part of such a premium that is attributable to the application of an excess surcharge factor or a dust diseases contribution in the calculation of the premium.

### **60 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 37 of the 1998 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 37 of the 1998 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 61 applies.

### **61 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 37 of the 1998 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 14 Deemed employment**

### **62 Ministers of religion**

For the purposes of clause 17 of Schedule 1 to the 1998 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 15 Premiums Adjustment Fund**

### **63 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.

### **64 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 4 (1) of the 1998 Act) does not include any part of such a premium that 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).

## **65 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**

<b>Column 1</b>	<b>Column 2</b>
<b>Financial year</b>	<b>Percentage of premium income</b>
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.

## **66 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 16 Insurers' Guarantee Fund**

### **67 Definitions**

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

### **68 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.

### **69 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.

## **70 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 that 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.

## **71 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 224D (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 that the Authority determines was used to make the advance.

## **72 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 17 Penalty notice offences

### 73 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 this Regulation specified in Column 1 of Part 3 of Schedule 5, and
- (b) the prescribed penalty for such an offence is the amount specified opposite it in Column 2 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 the *Occupational Health and Safety Act 2000*,
  - (iii) each officer of the Authority authorised by the Authority for the purposes of section 238 of the 1998 Act.

## Part 18 Marketing of work injury legal services and agent services

### Division 1 Preliminary

#### 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).

## 74 Definitions

In this Part:

**advertisement** means any communication of information (whether by means of writing, or any still or moving visual image or message or audible message, or any combination of them) that advertises or otherwise promotes a product or service, whether or not that is its purpose or only purpose and whether or not that is its only effect.

**lawyer** means a legal practitioner and includes the following:

- (a) a partnership of which a legal practitioner is a member (but only if the business of the partnership includes business of a kind ordinarily conducted by a legal practitioner),
- (b) a solicitor corporation,
- (c) an incorporated legal practice.

**publish** means:

- (a) publish in a newspaper, magazine, journal, periodical, directory or other printed publication, or
- (b) disseminate 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) display on an Internet website or otherwise publicly disseminate by means of the Internet, or
- (e) publicly exhibit 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) display on any document (including a business card or letterhead) gratuitously sent or gratuitously delivered to any person or thrown or left on any premises or on any vehicle, or
- (g) display on any document provided to a person as a receipt or record in respect of a transaction or bet.

**work injury** has the same meaning as in the 1998 Act.

## Division 2 Advertising by lawyers and agents

### 75 Restriction on advertising work injury services

A lawyer or agent must not publish or cause or permit to be published an advertisement

that promotes the availability or use of a lawyer or agent to provide legal services or agent services if the advertisement includes any reference to or depiction of any of the following:

- (a) work injury,
- (b) any circumstance in which work injury might occur, or any activity, event or circumstance that suggests or could suggest the possibility of work injury, or any connection to or association with work injury or a cause of work injury,
- (c) a **work injury service** (that is, any service provided by a lawyer or agent that relates to recovery of money, or any entitlement to recover money, in respect of work injury).

Maximum penalty: 200 penalty units.

**Note—**

A contravention of this clause can also be a contravention of Part 14 of the [Legal Profession Regulation 2002](#). A contravention of that Part by a lawyer constitutes professional misconduct.

**75A Exception for advertisements about discrimination—community legal centres**

This Division does not apply to the publication by or on behalf of a community legal centre (within the meaning of section 48H of the [Legal Profession Act 1987](#)) of an advertisement that would constitute a contravention of clause 75 by reason only that it advertises or promotes services provided by the community legal centre in connection with discrimination.

**76 Exception for advertising specialty**

- (1) This Division does not prevent the publication of an advertisement that advertises a lawyer or agent as being a specialist or offering specialist services, but only if the advertisement is published by means of:
  - (a) an entry in a practitioner directory that states only the name and contact details of the lawyer or agent and any area of practice or specialty of the lawyer or agent, or
  - (b) a sign displayed at a place of business of the lawyer or agent that states only the name and contact details of the lawyer or agent and any specialty of the lawyer or agent, or
  - (c) an advertisement on an Internet website operated by the lawyer or agent the publication of which would be prevented under this Division solely because it refers to work injury or work injury services in a statement of specialty of the lawyer or agent.
- (2) In this clause:

**practitioner directory** means a printed publication, directory or database that is published by a person in the ordinary course of the person's business (and not by the lawyer or agent concerned or a partner, employee or member of the practice of the lawyer or agent).

**specialty** of a lawyer is limited to a specialty in which the lawyer is accredited under an accreditation scheme conducted or approved by the Bar Council or Law Society.

## **77 Other exceptions**

This Division does not prevent the publication of any advertisement:

- (a) to any person who is already a client of the lawyer or agent (and to no other person), or
- (b) to any person on the premises of a place of business of the lawyer or agent, but only if the advertisement cannot be seen from outside those premises, or
- (c) in accordance with any order by a court, or
- (d) pursuant to a disclosure made by a lawyer under Division 2 of Part 11 of the [Legal Profession Act 1987](#), or
- (e) to the extent that it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or
- (f) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or
- (g) by an industrial organisation (within the meaning of the [Industrial Relations Act 1996](#)) if the advertisement (or so much of it as would otherwise contravene clause 75) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or
- (h) that is required to be published by or under a written law of the State.

## **78 Responsibility for employees and others**

For the purposes of this Division, evidence that a person who is an employee of a lawyer or agent, or a person otherwise exercising functions in the lawyer's or agent's practice, published or caused to be published an advertisement is evidence (in the absence of evidence to the contrary) that the lawyer or agent caused or permitted the publication of the advertisement.

### **78A Responsibility for advertisements published by others**

- (1) For the purposes of this Division, an advertisement is taken to have been published or



caused to be published by a lawyer or agent if:

- (a) the advertisement advertises or otherwise promotes the availability or use of the lawyer or agent (either by name or by reference to a business name under which the lawyer or agent practises or carries on business) for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or
- (b) the lawyer or agent is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the referral of persons to the lawyer or agent for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or
- (c) the lawyer or agent is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the person to advertise on behalf of the lawyer or agent.

- (2) This clause does not apply to an advertisement if the lawyer or agent proves that the lawyer or agent took all reasonable steps to prevent the advertisement being published.

### **79 Double jeopardy**

A person who has been convicted of an offence under Part 14 of the [Legal Profession Regulation 2002](#) is not, if that offence would constitute an offence under this Division in respect of the publication of an advertisement, liable to be convicted of an offence under this Division in respect of that publication.

### **80 Transitional—finalised publications**

This Division does not prevent the publication of an advertisement in a printed publication the contents of which were finalised (by the publisher of that publication) before the date of publication in the Gazette of the [Workers Compensation \(General\) Amendment \(Work Injury Advertising\) Regulation 2003](#).

## **Division 3 Advertising by persons other than lawyers and agents**

### **80A Application of Division**

This Division does not apply to conduct of a lawyer or agent.

### **80B Definition of “work injury advertisement”**

In this Division:

**work injury advertisement** means an advertisement that includes any reference to or depiction of:

- (a) work injury, or
- (b) any circumstance in which work injury might occur, or any activity, event or circumstance that suggests or could suggest the possibility of work injury, or any connection to or association with work injury or a cause of work injury.

#### **80C Restrictions on work injury advertisements**

- (1) A person must not publish or cause or permit to be published a work injury advertisement if the advertisement:
  - (a) advertises or otherwise promotes the availability or use of a lawyer or agent (whether or not a particular lawyer or agent) to provide legal services or agent services, whether or not that is its purpose or only purpose and whether or not that is its only effect, or
  - (b) includes any reference to or depiction of the recovery of money or a claim for money, or any entitlement to recover money or claim money, in respect of work injury.

Maximum penalty: 200 penalty units.

- (2) A person must not publish or cause or permit to be published a work injury advertisement if the person is engaged in a practice involving, or is a party to an agreement, understanding or other arrangement that provides for, the referral of persons to one or more lawyers or agents for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury.

Maximum penalty: 200 penalty units.

- (3) A person who is a member of a partnership or a director or officer of a body corporate must not expressly, tacitly or impliedly authorise or permit a contravention of subclause (1) or (2) by the partnership or body corporate or by an employee or agent of the partnership or body corporate on behalf of the partnership or body corporate.

Maximum penalty: 200 penalty units.

#### **80D Exception for advertisements about discrimination—community legal centres**

This Division does not apply to the publication by or on behalf of a community legal centre (within the meaning of section 48H of the [Legal Profession Act 1987](#)) of an advertisement that is a work injury advertisement by reason only that it advertises or promotes services provided by the community legal centre in connection with discrimination.

### **80E Exception for advertising specialty**

- (1) This Division does not prevent the publication of an advertisement that advertises a lawyer or agent as being a specialist or offering specialist services, but only if the advertisement is published by means of:
  - (a) an entry in a practitioner directory that states only the name and contact details of the lawyer or agent and any area of practice or specialty of the lawyer or agent, or
  - (b) a sign displayed at a place of business of the lawyer or agent that states only the name and contact details of the lawyer or agent and any specialty of the lawyer or agent, or
  - (c) an advertisement on an Internet website operated on behalf of the lawyer or agent the publication of which would be prevented under this Division solely because it refers to work injury or legal or agent services in a statement of specialty of the lawyer or agent.
- (2) In this clause:

***practitioner directory*** means a printed publication, directory or database that is published by a person in the ordinary course of the person's business (and not by the lawyer or agent concerned or a partner, employee or member of the practice of the lawyer or agent).

***specialty*** of a lawyer is limited to a specialty in which the lawyer is accredited under an accreditation scheme conducted or approved by the Bar Council or Law Society.

### **80F Other exceptions**

This Division does not apply to the publication of an advertisement:

- (a) in accordance with any order by a court, or
- (b) to the extent that it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or
- (c) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or
- (d) by an industrial organisation (within the meaning of the [Industrial Relations Act 1996](#)) if the advertisement (or so much of it as would otherwise contravene clause 80C) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or

(e) by a person in the ordinary course of the person's business as an insurer or insurance agent or broker, to the extent only that it includes a reference to or depiction of the recovery of money under a policy of insurance, or

(f) that is required to be published by or under a written law of the State.

### **80G Protection of publishers**

A contravention of clause 80C by a person who publishes an advertisement in the ordinary course of the person's business as a publisher does not constitute an offence under this Division.

### **80H Double jeopardy**

A person who has been convicted of an offence under Part 14 of the [Legal Profession Regulation 2002](#) is not, if that offence would constitute an offence under this Division in respect of the publication of an advertisement, liable to be convicted of an offence under this Division in respect of that publication.

### **80I Transitional—finalised publications**

This Division does not prevent the publication of an advertisement in a printed publication if the contents of the publication were finalised (by the publisher of that publication) before the date of publication in the Gazette of the [Workers Compensation Amendment \(Advertising\) Regulation 2005](#).

## **Part 19 Costs**

### **Division 1 Preliminary**

#### **81 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 of Part 8 (Costs) 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).

#### **82 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**

#### **83 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

### 84 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 119 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.

### 85 Special provisions for costs where worker elects to transfer claim to Commission

If a claim becomes a new claim as a result of an election by the worker under clause 225, the following provisions apply in respect of the recovery of costs in connection with the claim:

- (a) the recovery of costs in respect of legal services provided up to the time when the claimant makes the election is to be in accordance with provisions made by or under the Workers Compensation Acts or the [Legal Profession Act 1987](#) (as applicable), and
- (b) the recovery of costs in respect of legal services provided on and from the election is to be in accordance with this Part.

## **Division 3 Costs recoverable in work injury damages matters**

### **Subdivision 1 Maximum costs recoverable by legal practitioners in work injury damages matters**

#### **86 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.

#### **87 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 119 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.

### **88 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).

### **89 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 the 1998 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.

### **90 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 the 1998 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.

### **91 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.

### **92 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.

### **93 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.

### **94 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**

#### **95 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](#).

#### **96 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.

#### **97 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.

#### **98 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.

#### **99 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.

#### **100 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.

### **101 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.

### **102 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.

### **103 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.

**104 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 7 of the 1998 Act, this Part, and Schedules 6 and 7.

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

**105 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 104 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.

#### **106 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 107),
- (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.

#### **107 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 105. The Registrar is bound by a provision for the payment of a premium that is not determined to be unjust under clause 108.
- (3) This clause does not apply to any provision of a costs agreement that the Registrar

determines to be unjust under clause 108.

- (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 1987* of the matters required to be disclosed by section 175 or 176 of that Act in relation to those costs.

### **108 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.

### **109 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**

### **110 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 104 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.

**111 Additional matters to be considered by Registrar 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.

**112 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.

### **113 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**

### **114 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 116), 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).

### **115 Reasons for determination**

The Registrar must ensure that a certificate issued under clause 114 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 107—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 109 that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.

#### **116 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 105 or 110 (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.

#### **117 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 114 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.

#### **118 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**

### **119 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.

### **120 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**

### **121 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.

### **122 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 102, or with any other provision of this Division, to the Legal Services Commissioner.

## **Division 5 Goods and services tax**

### **123 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**

### **124 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.

### **125 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 224 but only if those proceedings had not commenced before 21 December 2001, and
  - (c) extends to proceedings with respect to existing claims that are treated as new claims under clause 225.
- (2) In relation to claims for work injury damages, this Part applies to claims made after 1 January 2002.
- (3) An amendment of Schedule 6 applies only to an activity or event carried out or occurring wholly after the commencement of the amendment.
- (4) In this clause, **existing claim** and **new claim** have the same meaning as in Chapter 7 of the 1998 Act.

### **126 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.

## Part 20 Insurance premiums

### Division 1 Preliminary

#### 127 Definitions

In this Part:

**claim** means a claim made by a worker against an employer to which a policy relates.

**cost of claims**, in relation to the calculation of a premium for the issue or renewal of an employer's policy, means:

- (a) except as provided by paragraph (b), the cost of claims for an injury year (within the meaning of Division 4) for the employer, being that cost as at the commencement of the period of insurance to which the premium relates, or
- (b) after that period of insurance has expired, the cost of claims for an injury year (within the meaning of that Division) for the employer, being that cost as at the expiration of that period.

**decreasing adjustment** has the same meaning as in the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth.

**employer** includes a person who proposes to become an employer.

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

**input tax credit entitlement**, in relation to an employer, means the amount of input tax credit that may be claimed by the employer in accordance with the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth in respect of the issue or renewal of a policy of insurance expressed as a percentage of the GST payable by the employer in respect of the issue or renewal of that policy.

**insurer** means a licensed insurer, or a former licensed insurer, within the meaning of the Act.

**period of insurance**, in relation to a policy, means a period for which an insurer assumes risk under the policy, being a period which commences on the first day on which the policy is in force after having been issued or renewed.

**policy** or **policy of insurance** means a policy of insurance within the meaning of the Act.

**wages** means wages as defined in section 174 (9) of the Act.

#### 128 Meaning of "injury year"

In this Part, a reference to an injury year, when made in relation to the calculation of a

premium for the issue or renewal of a policy, is a reference to any of the successive periods of 12 consecutive months occurring before the commencement of the period of insurance for which the premium is or is to be calculated.

### **129 Non wages-based calculation of premium**

If the manner of calculation of the premium payable for a policy of insurance is not based on the wages payable to workers:

- (a) a reference in this Part to wages is to be read as a reference to that other basis of calculation of the premium, and
- (b) the form of any notice or declaration under this Part is to be appropriately modified having regard to the manner of calculation of the premium.

## **Division 2 Declaration of wages**

### **130 Employer to supply insurer with return relating to wages**

(1) An employer must, as soon as practicable (but not later than 2 months) after:

- (a) making an application to an insurer for the issue of a policy, or
- (b) the renewal of a policy,

supply the insurer concerned with a notice in the approved form, duly completed, which contains a reasonable estimate of the wages that will be payable by the employer during the relevant period of insurance to workers employed by the employer.

(2) An employer must, not later than 2 months after the end of the relevant period of insurance relating to a policy, supply the insurer who issued or renewed the policy with a notice in the approved form, duly completed, which contains a full and correct declaration of the wages that were actually paid by the employer during that period of insurance to workers employed by the employer.

### **131 Declaration accompanying return**

When an employer supplies an insurer with a notice under clause 130 (being a notice that relates to a period of insurance that has expired) the employer must also supply the insurer with:

- (a) if no accountant, registered tax agent or registered company auditor was, during that period, engaged as a consultant to or in a similar independent capacity by the employer—a declaration in the approved form, or
- (b) in any other case—a declaration in the approved form, to which is attached a report of a tax agent or registered company auditor as set forth in the attachment to that form.

### **132 Experience premium return**

For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance, an insurer to whom the employer has applied for the issue or renewal of a policy may, by notice in writing served on the employer not later than 1 month after the commencement or end of the period of insurance, require the employer to furnish the insurer, within 28 days of service of the notice:

- (a) with a declaration in the approved form, and
- (b) a statement setting forth (with respect to the last 2 injury years that occurred before the commencement of the period of insurance) the particulars relating to wages required by the attachment to that form to be inserted in it.

### **133 Offence by employer**

An employer who, without reasonable excuse, refuses or fails to comply with clause 130 or 131 or with a requirement made in accordance with clause 132 is guilty of an offence.

Maximum penalty: 20 penalty units.

## **Division 3 Input tax credit entitlements**

### **134 Employer to give insurer notice of input tax credit entitlement**

For the purpose of enabling a premium to be calculated, an employer must, prior to the commencement of the period of insurance for which the premium is to be calculated, notify the insurer concerned in writing of the employer's input tax credit entitlement in relation to the payment of the premium for that policy of insurance.

## **Division 4 Certification of cost of claims**

### **135 Definition**

In this Division:

**cost of claims**, in relation to an injury year or a period of insurance, means the total of the following costs:

- (a) the total of the costs of each individual claim of which the insurer has notice at the time of expiry or renewal (as appropriate) of the policy concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the Act or the former Act to have been received) during the injury year or the period of insurance, whichever is relevant, but not including:
  - (i) in relation to a policy issued or renewed so as to take effect at or after 4 pm on 30 June 1988 (other than a policy to which subparagraph (ii) applies), any claim under section 10 (Journey claims) of the Act, or



(ii) in relation to a policy issued or renewed so as to take effect at or after 4 pm on 30 June 1995, any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act,

(b) the total of the costs of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, under Part 3 of Chapter 7 of the 1998 Act by the insurer, being payments of compensation on the basis of provisional acceptance of liability to a worker employed by a particular employer with respect to an injury received (or that is deemed by the Act to have been received) during the injury year or the period of insurance.

### **136 Prevention of double allowance for provisional compensation payments**

(1) In this clause:

**provisional compensation payment** means provisional weekly payment of compensation or provisional payment of medical expenses compensation, under Part 3 of Chapter 7 of the 1998 Act, on the basis of provisional acceptance of liability to a worker.

(2) If payments are made in respect of a claim pursuant to the Act and provisional compensation payments have been made in respect of the injury concerned:

(a) the provisional compensation payments are, for the purposes of determining the cost of the claim, taken to be payments made by the insurer in respect of the claim pursuant to the Act and are to be included as such under clause 137, and

(b) clause 138 does not apply to those provisional compensation payments, and

(c) the cost of those provisional compensation payments is not to be included in the total of the costs of provisional compensation payments under paragraph (b) of the definition of **cost of claims** in clause 135.

### **137 Cost of an individual claim**

(1) For the purposes of this Part, the cost of an individual claim is (except as provided by subclause (2)) the sum of the following:

(a) the payments, if any, made by the insurer in respect of the claim pursuant to the Act or the former Act,

(b) the payments, if any, of damages at common law and under the [Compensation to Relatives Act 1897](#) made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim,

(c) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the claim,

- (d) legal costs, if any, paid by the insurer in relation to the settlement or investigation of the claim or as a consequence of proceedings at law, including any such costs that were paid to the claimant or incurred by the insurer on the insurer's own account,
- (e) the most accurate estimation for the time being of the insurer's outstanding liability reasonably likely to arise out of the claim,

whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability that will arise) during or after the injury year or period of insurance in which the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received).

(2) However, the cost of an individual claim:

- (a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and
- (b) is to be reduced by the amounts, if any, that have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
- (c) is to be reduced by:
  - (i) in the case where the injured worker's weekly payment of compensation is less than \$500 or is not known (for example, the claim is for payment of medical expenses compensation only)—\$500 or, if the cost of the claim is less than \$500, that lesser cost, or
  - (ii) in any other case—an amount that is the lesser of the following:
    - (A) the amount of one week's weekly payment of compensation to the injured worker,
    - (B) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50, and
- (d) does not include any amount paid or payable under section 64A of the Act (Compensation for cost of interpreter services), and
- (e) does not include any amount which section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer, and
- (f) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of

the payments, fees, expenses or costs included in the cost of the individual claim under subclause (1), pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

- (3) In this clause, references to the insurer’s outstanding liability reasonably likely to arise out of the claim are references to the amount calculated to be sufficient to meet all reasonably likely future payments in respect of the claim, including adjustments (at such rates, if any, as the Authority from time to time determines) to take account of expected future earnings on investments and expected future inflation or deflation on that amount.
- (4) For the purpose of this clause, in the case of a claim in respect of the death of or injury to a person caused by or arising out of a motor accident as defined in the *Motor Accidents Act 1988*:
- (a) the insurer’s liability to indemnify an employer in respect of the employer’s liability to the claimant independently of the Act is taken to be limited to the amount of damages (if any) that would be payable if Division 3 of Part 5 of the *Workers Compensation Act 1987* applied to the award of damages concerned, and
- (b) the insurer is taken not to be liable for legal costs connected with proceedings under the *Motor Accidents Compensation Act 1999* if damages would not have been payable if that Division applied to that award.
- (5) If the cost of an individual claim exceeds the large claim limit that applied when the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received), the cost of the individual claim is the amount of that large claim limit.
- (6) For the purposes of subclause (5), the large claim limit specified in Column 2 of the Table to this clause applies to an injury that was received or is deemed to have been received during a year specified in Column 1 of that Table in relation to that limit.

**Large claim limits**

<b>Column 1</b>	<b>Column 2</b>
<b>Period of 12 months commencing with:</b>	<b>Large claim limit</b>
30 June 1985	\$100,000
30 June 1986	\$200,000
30 June 1987 or 30 June of the years 1988 to 1994	\$100,000
30 June 1995 or 30 June of any subsequent year	\$150,000

### **138 Cost of provisional payments of compensation**

- (1) For the purposes of this Part, the cost of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to a particular injury is (except as provided by subclause (2)) the sum of the following:
  - (a) the sum of the payments of provisional weekly payments of compensation and provisional medical expenses compensation, if any, made by the insurer in respect of the injury pursuant to the 1998 Act,
  - (b) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the injury,
  - (c) legal costs, if any, paid by the insurer in relation to the investigation of the injury, the determination of liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation and otherwise in complying with Divisions 1 and 3 of Part 3 of Chapter 7 of the 1998 Act,
  - (d) the most accurate estimation for the time being of the insurer's outstanding liability to make provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to the injury, whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability that will arise) during or after the injury year or period of insurance in which the injury was received (or is deemed by the Act to have been received).
- (2) However, the cost of provisional weekly payments of compensation and provisional payment of medical expenses compensation with respect to a particular injury:
  - (a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and
  - (b) is to be reduced by the amounts, if any, that have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
  - (c) is to be reduced by:
    - (i) in the case where the injured worker's provisional weekly payment of compensation is less than \$500 or is not known (for example, the claim is for provisional payment of medical expenses compensation only)—\$500 or, if the cost of the payments is less than \$500, that lesser cost, or
    - (ii) in any other case—an amount that is the lesser of the following:

- (A) the amount of one week's provisional weekly payment of compensation to the injured worker,
  - (B) if the payment is under a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50, and
  - (d) does not include any amount paid or payable under section 64A (Compensation for cost of interpreter services) of the 1987 Act, and
  - (e) does not include any amount that section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer, and
  - (f) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of the payments, fees, expenses or costs included in the cost of provisional weekly payments of compensation or provisional payment of medical expenses compensation under subclause (1), pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.
- (3) In this clause, references to the insurer's outstanding liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation with respect to an injury are references to the amount calculated to be sufficient to meet all reasonably likely future provisional payments of weekly compensation or medical expenses compensation in respect of the injury.

### **139 Certificates relating to cost of claims**

- (1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance:
- (a) an employer to whom a policy has been issued by an insurer, or
  - (b) another insurer,
- may, by notice in writing served on the insurer who issued the policy not later than 1 month after the commencement of the period of insurance, require the insurer who issued the policy to furnish the employer or other insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying (with respect to the whole or any part of the 2 last injury years which occurred or will have occurred before the commencement of the period of insurance) the particulars relating to costs of claims required by the form to be inserted in it.
- (2) An insurer who, without reasonable excuse:
- (a) fails to comply with a requirement made in accordance with subclause (1), or
  - (b) in purported compliance with any such requirement, furnishes a certificate

knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **140 Effect of certificate**

- (1) Where an insurer has, in accordance with clause 139, furnished a certificate to an employer or another insurer for the purpose of ascertainment of the premium payable in respect of a period of insurance, the particulars relating to costs of claims specified in the last or only certificate so furnished are binding on the employer and any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance, except as provided by subclauses (2) and (3).
- (2) Those particulars are not binding on the employer to the extent of any inconsistency with a determination of the Authority under section 170 (Action by employer where premium not in accordance with insurance premiums order) of the 1987 Act.
- (3) If an insurer (other than the insurer who furnished the certificate) does not agree with any of those particulars and applies to the Authority for a variation of those particulars (and the application is not withdrawn or, in the opinion of the Authority, abandoned), the particulars relating to costs of claims specified in the certificate as confirmed or varied by the Authority are binding on any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance.

#### **141 Employers who were previously self-insurers**

- (1) If an employer:
  - (a) makes an application to an insurer for the issue or renewal of a policy, and
  - (b) was a self-insurer during any part of the last 2 injury years occurring before the proposed period of insurance,

the cost of claims in relation to the period as a self-insurer is to be calculated (subject to any relevant determination of the Authority) as if the employer had been insured under a policy in respect of that period.
- (2) The provisions of this Division relating to insurers apply (subject to such modifications and exceptions as the Authority may determine) to such an employer in respect of the period as a self-insurer.

## **Division 5 Demand for premium**

### **142 Notice of premium calculation**

- (1) An insurer may not demand a premium for the issue or renewal of a policy to which an insurance premiums order applies unless the insurer has sent or sends at the time to the employer a notice in the approved form, duly completed, relating to the calculation of the premium in respect of that employer.
- (2) The sending by an insurer of a notice referred to in subclause (1) to a broker or an intermediary or an agent of an employer (whether or not the notice is also addressed to the employer) does not constitute sending of the notice to the employer for the purposes of that subclause, but nothing in this subclause prevents the sending of any such notice to an employer by a postal or courier service.

## **Division 6 Procedure before Authority relating to insurance premiums**

### **143 Applications**

An application to the Authority under section 170 of the 1987 Act or clause 140 of this Regulation must, unless the Authority otherwise directs, be made in a form approved by the Authority and lodged at the office of the Authority.

### **144 Answer**

If a respondent who has notice of the application wishes to make representations to the Authority in relation to the application, the respondent must lodge those representations with the Authority in writing (unless the Authority otherwise directs).

### **145 Decision of Authority**

The Authority:

- (a) is to consider the application and may have regard to such representations as it thinks fit, and
- (b) is to determine the matter to which the application relates, and
- (c) is to inform the applicant and the respondent of its decision in such manner as it thinks fit.

### **146 Procedure generally**

The Authority may, in its discretion:

- (a) permit an actuary, auditor, accountant, insurance authority, medical referee or other person to sit with it as an assessor, and
- (b) obtain and consider a report from any insurer, self-insurer or any other person

referred to in paragraph (a), in connection with its dealing with an application referred to in clause 143 or any other matter.

## **Division 7 Policies exempt from insurance premiums orders**

### **147 Further policies exempt from order—unregulated premiums**

- (1) Policies issued or renewed by a specialised insurer are exempted from insurance premiums orders.
- (2) The exemption under subclause (1) is in addition to the exemptions provided by section 168 (4) (b) of the Act.

## **Division 8 Payment of premiums by instalments**

### **Subdivision 1 Payment in three instalments**

#### **148 Policies under which premiums may be paid by three instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance in three instalments (together with any required adjustment of premium) under this Subdivision if:
  - (a) the period of insurance is 12 months, and
  - (b) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds \$3,000, and
  - (c) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.
- (2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.
- (3) For the purposes of this Subdivision, the **required instalments deposit** is, subject to clause 149 (3), an amount equal to one-third of the estimated premium for the policy (as estimated for that payment).
- (4) An employer may not make an election under this Subdivision in relation to a policy of insurance that was issued or renewed on or after 4pm on 30 June 2007.

#### **149 Number, size and times for payment of instalments**

- (1) If an employer elects to pay the premiums under a policy of insurance by three instalments in accordance with this Subdivision and pays the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the



period of insurance, the balance of the premium is payable in the following instalments:

**Instalment No 2**

Payment to be made within 4 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which two-thirds of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as the required instalments deposit.

**Instalment No 3**

Payment to be made within 8 months after the commencement of the period of insurance. The amount of the instalment is to be the balance of the estimated premium for the policy (as estimated for that payment) taking into account the amounts already paid as instalments (including the required instalments deposit).

**Adjustment of Premium**

Payment to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due. The amount of such an adjustment is the amount by which the actual premium payable for a policy exceeds the amounts already paid by way of instalments (including the required instalments deposit).

- (2) A notice in relation to an adjustment of premium as referred to in subclause (1) does not affect the service of a notice under section 172 (1) (c) of the Act.
- (3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit is required to be paid, the amount of the required instalments deposit is to be:
  - (a) one-third of the estimated premium for the employer for the previous period of insurance, or
  - (b) if there was no such previous period of insurance—\$800 or such greater amount as the employer and the insurer may agree.
- (4) Subclause (3) applies only if the estimated premium cannot be determined because the employer has not yet supplied the relevant notice under clause 130 (1) and the insurer cannot estimate the premium by reference to wages for the previous period of insurance in accordance with the relevant insurance premiums order.

## **Subdivision 2 Payment in four instalments**

### **149A Policies under which premiums may be paid in four instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance in four instalments (together with any required adjustment of premium) under this Subdivision if:

- (a) the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments, and
  - (b) the period of insurance is 12 months, and
  - (c) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds \$1,000, and
  - (d) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.
- (2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.
- (3) For the purposes of this Subdivision, the **required instalments deposit** is, subject to clause 149B (3), an amount equal to one-quarter of the estimated premium for the policy (as estimated for that payment).

**149B Number, size and times for payment of instalments**

- (1) If an employer elects to pay the premiums under a policy of insurance by instalments in accordance with this Subdivision and pays the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the premiums are payable in instalments as follows:

**Instalment No 2**

Payment to be made within 4 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which one half of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as the required instalments deposit.

**Instalment No 3**

Payment to be made within 7 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which three-quarters of the estimated premium for the policy (as estimated for that payment) exceeds the amounts already paid as instalments (including the required instalments deposit).

**Instalment No 4**

Payment to be made within 10 months after the commencement of the period of insurance. The amount of the instalment is to be the balance of the estimated premium for the policy (as estimated for that payment) taking into account the amounts already paid as instalments (including the required instalments deposit).

### **Adjustment of Premium**

Payment to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due. The amount of such an adjustment is the amount by which the actual premium payable for a policy exceeds the amounts already paid by way of instalments (including the required instalments deposit).

- (2) A notice in relation to an adjustment of premium as referred to in subclause (1) does not affect the service of a notice under section 172 (1) (c) of the Act.
- (3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit is required to be paid, the amount of the required instalments deposit is to be:
  - (a) one-quarter of the estimated premium for the employer for the previous period of insurance, or
  - (b) if there was no such previous period of insurance—\$300 or such greater amount as the employer and the insurer may agree.
- (4) Subclause (3) applies only if the estimated premium cannot be determined because the employer has not yet supplied the relevant notice under clause 130 (1) and the insurer cannot estimate the premium by reference to wages for the previous period of insurance in accordance with the relevant insurance premiums order.

## **Subdivision 3 Payment in twelve instalments**

### **149C Policies under which premiums may be paid in twelve instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance in twelve instalments (together with any required adjustment of premium) under this Subdivision if:
  - (a) the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments, and
  - (b) the period of insurance is 12 months, and
  - (c) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds \$5,000, and
  - (d) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.
- (2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by

instalments.

- (3) For the purposes of this Subdivision, the **required instalments deposit** is, subject to clause 149D (3), an amount equal to one-twelfth of the estimated premium for the policy (as estimated for that payment).

**149D Number, size and times for payment of instalments**

- (1) If an employer elects to pay the premiums under a policy of insurance by instalments in accordance with this Subdivision and pays the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the premiums are payable in instalments as follows:

**Instalment No 2**

Payment to be made within 2 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which two-twelfths of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as the required instalments deposit.

**Instalment No 3**

Payment to be made within 3 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which three-twelfths of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as instalments (including the required instalments deposit).

**Instalment Nos 4-11**

Payment to be made within 1 month after the date on which the last instalment was due. The amount is to be calculated in the same manner as Instalment Nos 2 and 3 adjusted appropriately according to the number of the instalment to be paid.

**Instalment No 12**

Payment to be made within 12 months after the commencement of the period of insurance. The amount of the instalment is to be the balance of the estimated premium for the policy (as estimated for that payment) taking into account instalments already paid (including the required instalments deposit).

**Adjustment of Premium**

Payment to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due. The amount of such an adjustment is the amount by which the actual premium payable for a policy exceeds the amounts already paid by way of instalments (including the required instalments deposit).

- (2) A notice in relation to an adjustment of premium as referred to in subclause (1) does

not affect the service of a notice under section 172 (1) (c) of the Act.

- (3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit (that is, Instalment No 1) or Instalment Nos 2, 3 or 4 are required to be paid, the amount of the required instalments deposit or other instalment is to be:
  - (a) one-twelfth of the estimated premium for the employer for the previous period of insurance, or
  - (b) if there was no such previous period of insurance—\$300 or such greater amount as the employer and the insurer may agree.
- (4) Subclause (3) applies only if the estimated premium cannot be determined because the employer has not yet supplied the relevant notice under clause 130 (1) and the insurer cannot estimate the premium by reference to wages for the previous period of insurance in accordance with the relevant insurance premiums order.

## **Division 9 Miscellaneous**

### **150 Transitional—operation of amendments**

An amendment to this Part does not apply to or in respect of any policy of insurance that takes effect before the amendment commences, unless the amendment otherwise specifically provides.

#### **150A Rebate of premium where fraud or mistake involved in claims**

- (1) An employer is entitled to a rebate for an overpayment of an insurance premium if:
  - (a) an amount of a claim was included in the costs of claims used in the calculation of the insurance premium, and
  - (b) on or after 1 January 2000:
    - (i) a court in a criminal prosecution determined that the claim or part of the claim was fraudulent (whether or not a person is convicted for the fraud), or
    - (ii) the Compensation Court or the Commission in a final determination determined that the claim was made by a person who was not a worker, or
    - (iii) the Authority:
      - (A) is satisfied that the claim is one to which section 235B of the 1998 Act applies, or
      - (B) has made an order under section 235D of the 1998 Act in relation to the claim.

- (2) An employer is entitled to such a rebate in relation to each period of insurance for which the amount of a claim referred to in subclause (1) was included in the calculation of the insurance premium for that period.
- (3) The amount of the rebate that an employer is entitled to under this clause is to be determined by the Authority.

## **Part 21 Premium Discount Scheme**

### **Division 1 Preliminary**

#### **151 Commencement**

The Scheme commenced at 4 pm on 30 June 2001.

#### **151A Staged closure of Premium Discount Scheme**

- (1) **Premium Discount Scheme is closed to new participants** On and from the commencement of this clause no employer is entitled to commence participation in the Premium Discount Scheme.
- (2) **Premium Discount Scheme (General) closed** The Premium Discount Scheme (General) strand of the Scheme is closed.
- (3) An employer who was a participant in the Premium Discount Scheme (General) strand of the Scheme immediately before the commencement of this clause ceases to be such a participant on that commencement.
- (4) For the avoidance of doubt, the Premium Discount Scheme (General) strand of the Scheme does not apply to any policy of insurance that is to be or has been issued or renewed so as to take effect on or after the commencement of this clause.
- (5) **One further verification permitted** Despite subclause (3), an employer who was a participant in the Premium Discount Scheme (General) strand of the Scheme immediately before the commencement of this clause, who had passed at least one verification before that commencement, may, at any time after the commencement of this clause (but not later than 6 months following the expiration of the employer's policy of insurance in force immediately before that commencement), make one attempt to pass one further verification as if the employer were still a participant.
- (6) If the employer passes a further verification as referred to in subclause (5), that verification may be used to confirm a previous verification that provisionally entitled the employer to a discount on the insurance premium payable with respect to the employer's last year of participation in the Scheme.
- (7) The amount of premium discount to which an employer who passes a further verification as referred to in subclause (5) is entitled to is to be calculated in

accordance with the relevant Insurance Premiums Order. For that purpose and despite any other provision of this Part, the PDA Rating of the PDA who verifies that the employer has passed the further verification is 15%.

## 152 Interpretation

(1) In this Part:

**Code of Conduct for PDAs** means a Code of Conduct for PDAs approved by the Authority under clause 192.

**Code of Conduct for Sponsors** means a Code of Conduct for sponsors approved by the Authority under clause 192.

**cost of claims** has the same meaning as in Division 4 of Part 20.

**enrolled employer**, in relation to a sponsor, means an employer enrolled in a small business premium discount program conducted by the sponsor.

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

**member**, in relation to a PDA, means:

- (a) if the PDA is or includes an individual—that individual or each such individual, and
- (b) if the PDA is or includes a body corporate—each director or person involved in the management of the body corporate (however described), and
- (c) if the PDA is or includes a partnership—each member of the partnership, and
- (d) each employee of the PDA, and
- (e) each person engaged by the PDA for the purpose of carrying out the PDA's functions under the Scheme.

**minimum premium employer** means an employer who pays the minimum premium in respect of a policy of insurance under an insurance premiums order that applies to the policy under section 168 of the Act.

**occupational health and safety legislation** means the [Occupational Health and Safety Act 1983](#) or the [Occupational Health and Safety Act 2000](#).

**Premium Discount Adviser** or **PDA** means a Premium Discount Adviser approved by the Authority under clause 156.

**Premium Discount Guidelines** means guidelines issued by the Authority under clause 190.

**Principal**, in relation to a PDA, means a Principal of the PDA as referred to in clause

160.

**relevant Insurance Premiums Order**, in relation to the calculation of a discount under this Part on a premium with respect to a policy, means an insurance premiums order in force under section 168 of the Act that applies to the policy.

**sponsor** means a sponsor approved by the Authority under clause 166.

**the Scheme** means the Premium Discount Scheme established under clause 153.

- (2) For the purposes of this Part, an employer completes the PDS (General) when a PDA engaged by the employer verifies that the employer has passed the fourth verification (within the meaning of clause 174).

### **153 Premium Discount Scheme**

- (1) There is established a scheme called the “Premium Discount Scheme”, to be administered by the Authority.
- (2) The object of the Scheme is to provide for a discount on workers compensation insurance premiums for employers who implement programs to improve workplace safety and injury management for injured workers.
- (3) There are two strands to the Scheme:
- (a) the Premium Discount Scheme (General) (**the PDS (General)**), and
  - (b) the Premium Discount Scheme Small Business Strategy (**the Small Business Strategy**).
- (4) An employer may participate in either strand of the Scheme, subject to this Part.

### **154 Employers eligible to participate in PDS (General)**

- (1) An employer is eligible to participate in the PDS (General) if the employer has a policy of insurance with a licensed managed fund insurer.
- (2) However, the following classes of employers are not eligible to participate in the PDS (General):
- (a) minimum premium employers,
  - (b) employers who:
    - (i) are participating in the Small Business Strategy, or
    - (ii) have passed the second verification under the Small Business Strategy, or
    - (iii) have completed the PDS (General), or



(iv) are precluded from participating in the PDS (General) by reason of clause 184 (Time limits on participation in Scheme).

(3) Despite subclause (2) (b), if an employer referred to in that paragraph that is a body corporate merges with, acquires or is acquired by another body corporate, or reconstitutes itself into two or more bodies corporate, the body or bodies formed by the merger, acquisition or reconstitution is or are eligible to participate in the PDS (General) (if otherwise eligible).

### **155 Employers entitled to participate in Small Business Strategy**

- (1) An employer is eligible to participate in the Small Business Strategy if the employer:
- (a) has no more than 20 full time equivalent workers, and
  - (b) has a policy of insurance with a licensed managed fund insurer.
- (2) However, the following classes of employers are not eligible to participate in the Small Business Strategy:
- (a) minimum premium employers,
  - (b) employers who:
    - (i) are participating in the PDS (General), or
    - (ii) have completed the PDS (General), or
    - (iii) have passed the fourth verification under the Small Business Strategy, or
    - (iv) who are precluded from participating in the Small Business Strategy by reason of clause 184 (Time limits on participation in Scheme).
- (3) An employer who enrolls in a small business premium discount program under Division 3 remains eligible to participate in the Small Business Strategy even if the number of the employer's workers subsequently increases to more than 20 full time equivalent workers.
- (4) Despite subclause (2) (b), if an employer referred to in that paragraph that is a body corporate merges with, acquires or is acquired by another body corporate, or reconstitutes itself into two or more bodies corporate, the body or bodies formed by the merger, acquisition or reconstitution is or are eligible to participate in the Small Business Strategy (if otherwise eligible).

## Division 2 Premium Discount Scheme (General)

### Subdivision 1 Premium Discount Advisers

#### 156 Approval of Premium Discount Advisers

- (1) The Authority may on application approve any of the following (***the applicant***) as a Premium Discount Adviser in accordance with the Premium Discount Guidelines:
  - (a) an individual,
  - (b) a body corporate,
  - (c) a group consisting of a combination of individuals or bodies corporate or both (including a partnership or other unincorporated association).
- (2) The Authority may not approve an applicant as a PDA unless:
  - (a) the applicant has an Australian Business Number, and
  - (b) the applicant has provided to the Authority such information as the Authority may reasonably require in order to assess the applicant's suitability to be a PDA and the character of the applicant's proposed members, and
  - (c) the Authority is satisfied that:
    - (i) the applicant is suitable to be a PDA, and
    - (ii) the applicant, and each of the applicant's proposed members, is of good character.
- (3) For the purpose of assessing whether an applicant is suitable to be a PDA and the character of the applicant's proposed members, the Authority may make such inquiries and undertake such investigations about the applicant, and each of the applicant's proposed members, as it thinks fit.
- (4) In this clause, ***proposed member***, in relation to an applicant, has the same meaning as ***member*** has in relation to a PDA.

#### 157 Conditions of approval

- (1) An approval as a PDA is subject to the following conditions:
  - (a) the PDA must hold professional indemnity insurance covering the activities of the PDA (including the activities of the PDA's members) in carrying out the functions of a PDA,
  - (b) the PDA must sign a performance agreement containing such terms as the Authority may require, and must comply with that performance agreement,

- (c) the PDA, and each member of the PDA, must comply with the Code of Conduct for PDAs,

**Note—**

Clause 187 (1) provides that it is an offence for a PDA to fail to comply with the Code of Conduct for PDAs.

- (d) the PDA must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 191 (for example, directions as to the use of audit tools),
  - (e) each Principal of the PDA, and each member of the PDA involved in carrying out audits under the Scheme, must satisfactorily complete such course of training as the Authority may direct,
  - (f) the PDA must co-operate with any review of the PDA by the Authority under clause 162, and must allow the Authority access to the PDA's premises and records for that purpose,
  - (g) any conditions of approval set out in the Premium Discount Guidelines.
- (2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

**158 Functions of a PDA**

A PDA has the following functions:

- (a) to audit the performance and systems of employers to assess whether standards, benchmarks or performance criteria set by the Authority have been met,
- (b) to issue certificates verifying whether those employers are entitled to a premium discount under the Scheme,
- (c) such other functions as are set out in the Premium Discount Guidelines.

**159 Relationship with employer**

- (1) An employer may engage a PDA to act as PDA in relation to the employer for the purposes of the Scheme.
- (2) The PDA engaged by an employer may engage any other person or body in order to assist it to carry out its functions in relation to the employer under the Scheme.

**160 Principals of a PDA**

- (1) A PDA must have at least one Principal, and may have more than one Principal.
- (2) A Principal of a PDA is an individual who is:

- (a) a member of the PDA (other than a person engaged by the PDA as referred to in paragraph (e) of the definition of **member** in clause 152), and
  - (b) nominated as a Principal by the PDA.
- (3) An individual may not be a Principal of more than one PDA.
- (4) Subclause (3) does not prevent a member of a PDA from carrying out work for more than one PDA.

### **161 Functions of Principals**

The function of a Principal of a PDA is to ensure that the PDA and each member of the PDA complies with this Part, the Code of Conduct for PDAs, the Premium Discount Guidelines, the performance agreement signed by the PDA and any directions given by the Authority under clause 191.

### **162 Review of PDAs by Authority**

- (1) The Authority may at any time review the performance and operations of a PDA, or of any member of the PDA, in accordance with the Premium Discount Guidelines.
- (2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (3) The Authority may take action at any time under subclause (4) if it determines that:
  - (a) the PDA or a member of the PDA has failed to comply with this Part, the Premium Discount Guidelines, the Code of Conduct for PDAs, the performance agreement signed by the PDA or with any direction given by the Authority under clause 191, or
  - (b) the PDA has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or
  - (c) the PDA has entered into administration (whether voluntary or involuntary) or has been wound up, or
  - (d) the PDA has not been engaged by an employer during the three years preceding the commencement of a review by the Authority, or
  - (e) a Principal of the PDA ceases to be a member of the PDA, being a person who, in the opinion of the Authority, was integral to the performance or operations of the PDA.
- (4) The Authority may take any one or more of the following actions:
  - (a) disallow or adjust the PDA Rating of the PDA by notice in writing,

- (b) disallow or adjust the entitlement to a premium discount of an employer by whom the PDA is engaged by notice in writing,
  - (c) suspend or cancel the approval of a PDA by notice in writing.
- (5) Before taking action under subclause (4), the Authority may give an employer by whom the PDA concerned is engaged an opportunity to make oral or written submissions to the Authority about the matter.
  - (6) An action referred to in subclause (4) takes effect 14 days after notice of the action is given to the PDA.
  - (7) The actions that the Authority may take under subclause (4) are in addition to any other powers of the Authority.

**Note—**

For example, the Authority may also issue directions to a PDA or impose or vary conditions of an approval of a PDA.

## **Subdivision 2 PDA Ratings**

### **163 Initial PDA Ratings**

- (1) In its approval of a PDA, the Authority is to classify it as a Category 1, a Category 2 or a Category 3 PDA.
- (2) A Category 1 PDA has the PDA Rating for a Category 1 PDA specified in the Table to this clause until immediately before 4 pm on 30 June following its approval, unless the Authority reclassifies it as a Category 2 PDA under subclause (3).
- (3) A Category 1 PDA may, in accordance with the Premium Discount Guidelines, request the Authority to reclassify the PDA as a Category 2 PDA. The following provisions apply if such a request is made:
  - (a) the Authority is to determine in accordance with the Premium Discount Guidelines whether to reclassify the PDA as a Category 2 PDA,
  - (b) if the Authority reclassifies the PDA, the PDA has the PDA Rating for a Category 2 PDA specified in the Table to this clause from the date that the Authority notifies it of the reclassification until immediately before 4 pm on 30 June following its approval, and thereafter the PDA Rating of the PDA is as determined by the Authority under clause 164.
- (4) A Category 2 PDA or a Category 3 PDA has the PDA Rating specified in the Table to this clause for that category of PDA until immediately before 4 pm on 30 June following its approval. Thereafter, the PDA Rating of the PDA is as determined by the Authority under clause 164.

**Table**

<b>PDA Category</b>	<b>PDA Rating</b>
Category 1 PDA	5%
Category 2 PDA	10%
Category 3 PDA	15%

**164 Subsequent determination of PDA Rating by Authority**

- (1) Each year the Authority is to:
  - (a) assess the success of each PDA in achieving cost savings for employers engaging the PDA (including reductions in the cost of claims for employers), and
  - (b) on the basis of that assessment, determine a PDA Rating for each PDA of 0% to 15%.
- (2) A PDA Rating determined by the Authority for a PDA has effect (or is taken to have effect) from the time specified by the Authority in the notice of determination (whether or not the notice is given to the PDA before or after the time specified in the notice).
- (3) A PDA Rating has effect until immediately before the time specified by the Authority in the next notice of determination of the PDA Rating for the PDA (including a notice disallowing or adjusting the PDA Rating of the PDA under clause 162).
- (4) The assessment referred to in subclause (1) (a) is to be undertaken in accordance with the Premium Discount Guidelines, and otherwise as the Authority determines.
- (5) For the purpose of undertaking an assessment, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (6) The Authority may publish the PDA Rating of PDAs from time to time in such manner as the Authority determines.

**165 PDA Rating not transferable**

- (1) A member of a PDA who becomes a member of another PDA or carries out work for another PDA does not thereby transfer the PDA Rating of the first-mentioned PDA to that other PDA.
- (2) A PDA that merges with, or acquires or is acquired by, another PDA does not thereby transfer its PDA Rating to the other PDA, or acquire the PDA Rating of that other PDA.

## Division 3 Small Business Strategy

### 166 Approval of sponsors

- (1) The Authority may on application approve any of the following (**the applicant**) as a sponsor in accordance with the Premium Discount Guidelines:
  - (a) a body or organisation,
  - (b) a group consisting of more than one body or organisation.
- (2) The Authority may not approve an applicant as a sponsor unless:
  - (a) the applicant has an Australian Business Number, and
  - (b) the applicant has provided to the Authority such information as the Authority may reasonably require in order to assess the application.
- (3) For the purpose of an assessment under this clause, the Authority may make such inquiries and undertake such investigations about the applicant as it thinks fit.

### 167 Conditions of approval

- (1) An approval as a sponsor is subject to the following conditions:
  - (a) the sponsor must hold professional indemnity insurance covering the activities of the sponsor (including the activities of each person employed or engaged by the sponsor) in carrying out the functions of a sponsor,
  - (b) the sponsor must comply with the Code of Conduct for Sponsors,

**Note—**

Clause 187 (2) provides that it is an offence for a sponsor to fail to comply with the Code of Conduct for Sponsors.

  - (c) the sponsor must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 191,
  - (d) the sponsor must comply with the terms of any funding agreement between the sponsor and the Authority,
  - (e) the sponsor must co-operate with any review of the sponsor by the Authority under clause 173, and must allow the Authority access to the sponsor's premises and records for that purpose,
  - (f) any conditions of approval set out in the Premium Discount Guidelines.
- (2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

### **168 Authority may invite proposals for small business discount programs**

- (1) The Authority may at any time, in such manner as the Authority determines, invite sponsors to submit a proposal to conduct a program to assist employers to improve their occupational health and safety and injury management performance (a ***small business premium discount program***).
- (2) A proposal is to be made in accordance with the Premium Discount Guidelines.
- (3) The Authority may request the sponsor to provide further information or particulars about the proposed small business premium discount program.

### **169 Assessment of proposals**

- (1) The Authority is to assess proposals for small business premium discount programs according to criteria and procedures set out in the Premium Discount Guidelines.
- (2) After such assessment, the Authority may accept or reject the proposal, or accept it subject to specified modifications.

### **170 Funding agreements**

A sponsor whose proposal has been accepted with or without modifications by the Authority may enter into an agreement (a ***funding agreement***) in accordance with the Premium Discount Guidelines with the Authority by which the Authority agrees to provide funds to the sponsor for the proposed small business premium discount program on the terms set out in the funding agreement.

### **171 Relationship with employer**

- (1) An employer may enrol in a small business premium discount program proposed to be conducted by a sponsor at any time after the sponsor is approved up to 6 months after the commencement of a premium year (within the meaning of clause 174) of the employer.
- (2) An employer who enrolled in a small business premium discount program of 2 years duration and who has passed the third verification for that program (within the meaning of clause 174) may enrol in the third year of a small business premium discount program of 3 years duration, but only with the consent of the sponsor conducting that program.

### **172 Functions of a sponsor**

A sponsor has the following functions:

- (a) to implement its small business premium discount program in accordance with the funding agreement, this Part, the Premium Discount Guidelines, the Code of Conduct for Sponsors and any directions given by the Authority under clause 191,



(b) such other functions as are set out in the Premium Discount Guidelines.

**173 Review of sponsors by Authority**

- (1) The Authority may at any time review the performance and operations of a sponsor in accordance with the Premium Discount Guidelines.
- (2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (3) The Authority may take action at any time under subclause (4) if it determines that:
  - (a) a sponsor has failed to comply with the funding agreement, this Part, the Premium Discount Guidelines, the Code of Conduct for Sponsors or with any direction given by the Authority under clause 191, or
  - (b) the sponsor has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or
  - (c) the sponsor has entered into administration (whether voluntary or involuntary) or has been wound up, or
  - (d) the small business premium discount program conducted by the sponsor has ceased to be viable.
- (4) The Authority may take any one or more of the following actions:
  - (a) disallow or adjust the entitlement to a premium discount of an enrolled employer by notice in writing,
  - (b) suspend or cancel the approval of a sponsor by notice in writing,
  - (c) suspend or cancel the sponsor's program by notice in writing.
- (5) The Authority may by notice in writing require a sponsor to repay to the Authority any funds provided to the sponsor by the Authority that:
  - (a) have not been spent by the sponsor, or
  - (b) if spent, were not spent in accordance with the funding agreement.
- (6) Before taking action under subclause (4), the Authority may give an employer enrolled in a program conducted by the sponsor concerned an opportunity to make oral or written submissions to the Authority about the matter.
- (7) An action referred to in subclause (4) or (5) takes effect 14 days after the notice of the action is given to the sponsor.
- (8) The actions that the Authority may take under subclause (4) or (5) are in addition to

any other powers of the Authority.

**Note—**

For example, the Authority may also issue directions to a sponsor or impose or vary conditions of an approval of a sponsor.

- (9) The Authority may recover funds payable to it under subclause (5) as a debt in a court of competent jurisdiction.

## **Division 4 Premium discounts**

### **174 Definitions**

- (1) In this Division:

**first verification** means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the first verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer's sponsor for the first verification.

**first year of participation**, in relation to an employer, means the premium year of the employer in which the employer attempts to pass the first verification and the second verification.

**fourth verification** means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the fourth verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer's sponsor for the fourth verification.

**premium year**, in relation to an employer, means a period of insurance of up to 12 consecutive months commencing on the date of issue or renewal of a policy of insurance by the employer.

**second verification** means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the second verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the

employer has met the objectives set by the employer's sponsor for the second verification.

**second year of participation**, in relation to an employer, means the premium year of the employer in which the employer attempts to pass the third verification.

**third verification** means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the third verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer's sponsor for the third verification.

**third year of participation**, in relation to an employer, means the premium year of the employer in which the employer attempts to pass the fourth verification.

**year of participation** means the first year of participation, the second year of participation or the third year of participation.

(2) For the purposes of this Division:

- (a) an employer passes a verification when the employer's PDA or sponsor issues a certificate verifying that the employer:
  - (i) in the case of an employer participating in the PDS (General)—has met the standards, benchmarks or performance criteria set by the Authority for that verification, or
  - (ii) in the case of an employer participating in the Small Business Strategy—has met the objectives set by the sponsor for that verification, and
- (b) a reference to a PDA Rating, in relation to a PDA verifying that an employer has passed a verification, is a reference to the PDA Rating of the PDA at the time that it so verifies.

### **175 First year of participation**

- (1) An employer is to attempt to pass the first verification within 6 months of the commencement of the employer's first year of participation. The employer may make more than one attempt during that period.
- (2) If the employer's PDA or sponsor verifies that the employer has passed the first verification within that period, the employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's first year of participation.

- (3) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the **PDS level** for the first year of participation is:
  - (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the first verification, or
  - (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 10%.

**Note—**

The relevant Insurance Premiums Order may set a maximum amount of premium discount for a year of participation.

- (4) An employer is to attempt to pass the second verification within 12 months of the commencement of the employer's first year of participation. The employer may make more than one attempt during that period.
- (5) The employer's entitlement to the discount referred to in subclause (2) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the second verification.

**176 Change in PDA Rating—first year of participation**

- (1) This clause applies to an employer who is participating in the PDS (General).
- (2) If the PDA who verifies that the employer has passed the second verification is the same PDA who verified that the employer passed the first verification, but the PDA Rating of that PDA has changed since then, the **PDS level** for the first year of participation is a percentage rate equal to the PDA Rating of the PDA at the time that the PDA verifies that the employer has passed the second verification (even though that may result in a lower PDS level).
- (3) If the PDA who verifies that the employer has passed the second verification is different to the PDA who verified that the employer passed the first verification, the **PDS level** for the first year of participation is a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the second verification (even though that may result in a lower PDS level).

**177 Second year of participation**

- (1) An employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's second year of participation if the employer's PDA or sponsor verifies that the employer has passed the second verification.
- (2) The amount of premium discount to which the employer is provisionally entitled is to

be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the **PDS level** for the employer's second year of participation is:

- (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to two-thirds of the PDA Rating of the PDA who verifies that the employer has passed the second verification, and
- (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 10%.

**Note—**

The relevant Insurance Premiums Order may set a maximum amount of premium discount for a year of participation.

- (3) An employer is to attempt to pass the third verification within 12 months of the commencement of the employer's second year of participation. The employer may make more than one attempt during that period.
- (4) The employer's entitlement to the discount referred to in subclause (1) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the third verification.

**178 Change in PDA Rating—second year of participation**

- (1) This clause applies to an employer who is participating in the PDS (General).
- (2) If the PDA who verifies that the employer has passed the third verification is the same PDA who verified that the employer passed the second verification, but the PDA Rating of that PDA has changed since then, the **PDS level** for the second year of participation is a percentage rate equal to two-thirds of the PDA Rating of the PDA at the time that the PDA verifies that the employer has passed the third verification (even though that may result in a lower PDS level).
- (3) If the PDA who verifies that the employer has passed the third verification is different to the PDA who verified that the employer passed the second verification, the **PDS level** for the second year of participation is a percentage rate equal to two-thirds of the PDA Rating of the PDA who verifies that the employer has passed the third verification (even though that may result in a lower PDS level).

**179 Third year of participation**

- (1) An employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's third year of participation if the employer's PDA or sponsor verifies that the employer has passed the third verification.

**Note—**

An employer who is participating in the Small Business Strategy has a third year of participation only if the employer is enrolled in a small business premium discount program of 3 years duration.

- (2) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the **PDS level** for the third year of participation is:
  - (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the third verification, or
  - (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 5%.

**Note—**

The relevant Insurance Premiums Order may set a maximum amount of premium discount for a year of participation.

- (3) An employer is to attempt to pass the fourth verification within 12 months of the commencement of the employer's third year of participation. The employer may make more than one attempt during that period.
- (4) The employer's entitlement to the discount referred to in subclause (1) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the fourth verification.

**180 Change in PDA Rating—third year of participation**

- (1) This clause applies to an employer who is participating in the PDS (General).
- (2) If the PDA who verifies that the employer has passed the fourth verification is the same PDA who verified that the employer passed the third verification, but the PDA Rating of that PDA has changed since then, the **PDS level** for the third year of participation is a percentage rate equal to one-third of the PDA Rating of the PDA at the time that the PDA verifies that the employer has passed the fourth verification (even though that may result in a lower PDS level).
- (3) If the PDA who verifies that the employer has passed the fourth verification is different to the PDA who verified that the employer passed the third verification, the **PDS level** for the third year of participation is a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the fourth verification (even though that may result in a lower PDS level).

**181 Verifications**

- (1) A PDA verifies whether an employer has passed a verification by carrying out an audit. A PDA must carry out an audit in accordance with the Premium Discount Guidelines and any directions given by the Authority under clause 191.
- (2) A PDA is to verify an employer as having passed a verification if the employer has

achieved the standards, benchmarks or performance criteria set by the Authority for that verification.

- (3) A sponsor must carry out a verification in accordance with the terms of the funding agreement, the Premium Discount Guidelines and any directions given by the Authority under clause 191.
- (4) A sponsor is to verify an employer as having passed a verification if the employer has met the objectives set by the sponsor for that verification.

### **182 Provisional entitlement not confirmed**

An employer who does not pass a verification within the period specified for that verification (and whose provisional entitlement to a discount is therefore not confirmed) must repay to the employer's insurer (in such manner as the insurer specifies) an amount equal to the amount of discount received by the employer as a result of the provisional entitlement.

### **183 Year of participation may be repeated**

- (1) An employer who does not pass a verification specified for a year of participation within the period specified for that year of participation may attempt to pass that verification again in the employer's next premium year, or the premium year following that premium year.
- (2) However, an employer participating in the Small Business Strategy may only attempt to pass a verification again under this clause with the sponsor's consent.
- (3) **First verification and second verification attempted again** Clause 175 (and clause 176, if relevant) apply to the premium year in which the employer attempts to pass the first verification and the second verification again.
- (4) **Second verification only attempted again** If the employer passed the first verification in the employer's first year of participation but did not pass the second verification, the following provisions apply:
  - (a) in the premium year in which the employer attempts to pass the second verification again, the employer is taken to have passed the first verification and is not required to pass that verification again,
  - (b) clause 175 (and clause 176, if relevant) otherwise apply to that premium year.
- (5) **Third verification attempted again** Clause 177 (and clause 178, if relevant) apply to the premium year in which the employer attempts to pass the third verification again.
- (6) **Fourth verification attempted again** Clause 179 (and clause 180, if relevant) apply to the premium year in which the employer attempts to pass the fourth verification again.

#### **184 Time limits on participation in Scheme**

An employer ceases to be eligible to participate in the Scheme after the expiry of a period of 5 years from the commencement of the premium year in which the employer first attempted to pass the first verification.

### **Division 5 Reviews and appeals**

#### **185 Internal review**

- (1) An applicant for approval as a PDA that is aggrieved by a decision of the Authority to refuse to approve the applicant may request the General Manager of the Authority to review the decision.
- (2) A PDA that is aggrieved by a determination of a PDA Rating for the PDA by the Authority may request the General Manager to review the determination.
- (3) A request for a review is to:
  - (a) be in writing, and
  - (b) clearly outline the reasons for the request, and
  - (c) be served on the Authority within 14 days of the day on which the Authority gave the applicant notice of the decision or determination concerned.
- (4) The PDA is to provide any documents or information in support of the request that the Authority requires the PDA by notice in writing to provide.
- (5) The General Manager may delegate the review of a decision or determination under this clause, but only to a person who was not involved with the original decision or determination.

#### **186 Appeal to Administrative Decisions Tribunal**

- (1) A PDA that is aggrieved by a decision of the Authority to cancel or suspend the PDA's approval may appeal to the Administrative Decisions Tribunal (***the Tribunal***) against the decision.
- (2) An appeal must be made within 14 days (or such longer period as the Authority may allow) after notice of the decision is given to the PDA. The appeal is to be lodged with the Tribunal, and notice giving details of the appeal is to be given to the Authority.
- (3) An appeal does not affect any decision with respect to which it is made until the appeal is determined.

### **Division 6 Offences**

**Note—**



The workers compensation legislation sets out other offences that may affect persons participating in or involved in the Scheme, in particular offences dealing with fraud on the workers compensation scheme (see section 173A (Giving false information for premium calculation) of the Act and section 235A (Fraud on workers compensation scheme) of the [Workplace Injury Management and Workers Compensation Act 1998](#)).

### **187 Failure to comply with Code of Conduct**

- (1) A PDA must comply with the Code of Conduct for PDAs.

Maximum penalty: 50 penalty units.

- (2) A sponsor must comply with the Code of Conduct for Sponsors.

Maximum penalty: 50 penalty units.

### **188 Purporting to be a PDA**

- (1) A person who is not a PDA must not indicate that the person is a PDA.

Maximum penalty: 50 penalty units.

- (2) A person who is not a member of a PDA must not indicate that the person is a member of a PDA.

Maximum penalty: 50 penalty units.

- (3) Without limiting subclauses (1) and (2), a person indicates that the person is a PDA or a member of a PDA if the person continues to act as a PDA or a member of a PDA after the approval of the PDA has been suspended or cancelled.

### **189 Failure to notify Authority of changes concerning PDA**

A PDA must notify the Authority in writing if any of the following changes takes place within 14 days after the change takes place:

- (a) a Principal of the PDA ceases to be a Principal, or a member of the PDA,
- (b) the PDA ceases to operate, or merges with or acquires another PDA,
- (c) a change in the composition of the PDA that materially affects the skills or expertise of the PDA in occupational health and safety or injury management.

Maximum penalty: 50 penalty units.

## **Division 7 General**

### **190 Premium Discount Guidelines**

The Authority may from time to time issue guidelines for or with respect to the following matters:

- (a) the criteria to be used by the Authority in determining the suitability of an applicant,

- or a class of applicants, to be a PDA or a sponsor,
- (b) conditions of approval for PDAs and sponsors,
  - (c) the functions of PDAs and sponsors,
  - (d) the engagement of PDAs by employers (including fees payable to PDAs by employers),
  - (e) the enrolment of employers in small business premium discount programs (including fees payable to sponsors by employers),
  - (f) the criteria to be used by the Authority in classifying a PDA as a Category 1 PDA, a Category 2 PDA or a Category 3 PDA,
  - (g) the reclassification of a Category 1 PDA as a Category 2 PDA,
  - (h) the criteria to be used by the Authority in determining PDA Ratings for PDAs,
  - (i) benchmarks, standards or performance criteria to be achieved by employers in order for the employers to be entitled to a premium discount under the PDS (General) or the Small Business Strategy,
  - (j) notification of matters and provision of information to the Authority by PDAs and sponsors,
  - (k) the carrying out of audits and verifications by PDAs and verifications by sponsors,
  - (l) the submission and assessment of proposals for small business premium discount programs,
  - (m) the content and conduct of small business premium discount programs,
  - (n) the nature of funding agreements between the Authority and sponsors,
  - (o) review of PDAs or sponsors by the Authority,
  - (p) other matters in connection with the Scheme.

### **191 Directions by Authority to PDAs or sponsors**

The Authority may at any time give directions to PDAs and sponsors concerning the carrying out of the Scheme. Such directions may be given to all PDAs or sponsors, or to a particular PDA or sponsor, or a particular class of PDAs or sponsors.

### **192 Codes of Conduct**

- (1) The Authority may at any time issue a Code of Conduct for PDAs or a Code of Conduct for Sponsors (or both) and may at any time vary or revoke a Code of Conduct.

- (2) A Code of Conduct may provide for any of the following matters:
- (a) conditions of approval for PDAs or sponsors or particular classes of PDAs or sponsors,
  - (b) standards of behaviour of PDAs and members of PDAs,
  - (c) standards of behaviour of sponsors, and persons employed or engaged by sponsors to carry out the functions of a sponsor under the Scheme,
  - (d) operational requirements for PDAs or sponsors,
  - (e) any other matter in connection with the Scheme.

### **193 Calculation of premium discount**

- (1) Calculation of the amount of a premium discount under this Part is to be made in accordance with the relevant Insurance Premiums Order, including any maximum premium discount amount set in the relevant Insurance Premiums Order.
- (2) An insurer may make provision for any premium discount to which an employer is entitled (and any adjustments arising from changes to an entitlement to the discount) in any manner that the insurer chooses.

**Note—**

For example, an insurer may give a premium discount by decreasing the amount of an instalment payable, or by giving the employer a refund, or a rebate on the next premium payable by the employer. The insurer may require an employer whose entitlement to a discount was not confirmed to repay the discount, or may increase the amount of an instalment payable.

- (3) Clause 149 does not prevent an insurer from adjusting an instalment in accordance with this clause.

### **194 Powers of Authority if PDA or sponsor ceases to operate**

- (1) If a PDA ceases to operate (whether because its approval is suspended or cancelled or for any other reason), the Authority may do such things as it thinks fit to enable the employer to continue to participate in the PDS (General), including arranging another PDA for the employer.
- (2) If a sponsor ceases to operate (whether because its approval is suspended or cancelled or for any other reason), the Authority may do such things as it thinks fit to enable the employer to continue to participate in the Small Business Strategy, including arranging for enrolled employers to participate in a small business premium discount program conducted by another sponsor.

### **195 Statistics**

The Authority may collect and disseminate statistics and other information arising out of the Scheme (including records of individuals) for the following purposes:

- (a) promoting education and knowledge about the Scheme or about occupational health and safety or injury management,
- (b) research into workers compensation, occupational health and safety or injury management,
- (c) statistical analysis.

## **Part 22 Miscellaneous**

### **196 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.

### **197 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 and 84 of the 1987 Act and in sections 71, 119, 122, 125 and 126 of the 1998 Act to an insurer, self-insurer or employer are to be read as references to the Authority,
- (b) references in sections 11A (8) and 38A of the 1987 Act and in sections 58 and 65 (5) of the 1998 Act 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 that 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 District Court or the Commission, 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) of the Act 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) of the Act "This subsection applies whether or not the payments are made under an award or order of the Commission.",
- (g) the reference in section 52A (6) of the Act to the worker's employer or the employer's insurer is to be read as a reference to the Authority.

**198 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).

**199 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.

**200 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 23 Savings, transitional and other provisions**

### **Division 1 General**

#### **201 Repeal**

The *Workers Compensation Transitional Regulation 1997* is repealed.

#### **202 Saving**

Any act, matter or thing that, immediately before the repeal of the *Workers Compensation (General) Regulation 1995*, the *Workers Compensation (Insurance Premiums) Regulation 1995* or the *Workers Compensation Transitional Regulation 1997*, had effect under any of those Regulations continues to have effect under this Regulation.

#### **203 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).

#### **204 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 Chapter, subject to this Part.

#### **205 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 31 July 1998, or
  - (b) court proceedings in respect of that compensation were validly commenced under the 1987 Act before 31 July 1998.
- (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.

#### **206 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.

#### **207 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.

#### **208 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.

#### **209 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).

## **210 Application of amendments to definition of “wages”**

An amendment made to the 1987 Act by Schedule 2 [4], [5], [6] or [7] to the *Workers Compensation Legislation Amendment Act 2002*:

- (a) does not apply to wages paid before 4 pm on 30 June 2003, and
- (b) does not apply in respect of a policy of insurance issued or renewed before 4 pm on 30 June 2003.

## **211 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).

## **Division 2 1996 amending Act**

### **212 Definition**

In this Division:

**the 1996 amending Act** means the *WorkCover Legislation Amendment Act 1996*.

### **213 Coal miners**

- (1) The amendments made to the *Workers Compensation Act 1987* by the following provisions of the 1996 amending Act do not apply in respect of an injury received before 1 July 1997 by a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies:
  - (a) Schedule 1.2 (Employment required to be substantial contributing factor),
  - (b) Schedule 1.4 (Reduction in maximum lump sum compensation amounts),
  - (c) Schedule 1.5 (Discontinuation of weekly payments after 2 years),
  - (d) Schedule 1.6 (Deduction for previous injuries and pre-existing conditions and abnormalities).
- (2) Clause 1 (3) of Part 18 of Schedule 6 to the Act applies in respect of an injury received before 1 January 1998 as if the reference in paragraph (c) of that subclause to the period of 78 weeks after the date of the injury concerned were a reference to the first 78 weeks of incapacity for work (whether total or partial, or both) after the worker becomes (or became) entitled to weekly payments of compensation in respect of the incapacity resulting from the injury. Separate periods of incapacity resulting from the same injury are to be aggregated to determine the period of incapacity for work.



## **214 Medical certificate accompanying weekly compensation claims**

Section 92 (1C) and (1D) of the Act do not apply in respect of a claim for compensation made before 1 April 1997, except a claim for weekly payments of compensation in respect of a psychological injury (within the meaning of section 11A of the Act).

## **215 Discontinuation of weekly payments after 104 weeks—injuries before commencement of section 52A**

- (1) Section 52A of the Act applies without any payment discontinuation notice being given and the worker concerned 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), in the following cases:
  - (a) any case where court proceedings in respect of the weekly payments of compensation concerned are pending as at the commencement of section 52A of the Act (other than a case referred to in clause 14 (3) of Part 4 of Schedule 6 to the Act),
  - (b) any case where court proceedings are commenced after the commencement of section 52A of the Act, being proceedings that involve a claim for weekly payments of compensation in respect of a period of incapacity for work (resulting from an injury received before that commencement) that includes any period of incapacity beyond the first 104 weeks of incapacity referred to in section 52A (1) of the Act (as determined in accordance with clause 14 (2) (e) of Part 4 of Schedule 6 to the Act).
- (2) 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 the Act or independently of the Act.

## **Division 3 2001 amending Acts**

### **Subdivision 1 Preliminary**

#### **216 Definitions**

In this Division:

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

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

## **Subdivision 2 Cessation of conciliation**

### **217 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 218-220).

### **218 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.

### **219 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.

### **220 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.

**221 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).

**222 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.

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

**223 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).

**Subdivision 4 Transfer of existing claims**

**224 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.
- (3) 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.

#### **225 Transfer of existing claims by election of worker**

- (1) If proceedings on a claim for compensation are pending in the Compensation Court immediately before 28 February 2003, the claimant can elect in a form approved by the Commission to transfer the claim to the Commission.
- (2) On receipt by the Commission of the election, the claim 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).
- (3) The consent of the employer or insurer is not required for the making or operation of an election under this clause.
- (4) Neither the Commission nor the Compensation Court has any discretion or power to refuse to accept an election under this clause.
- (5) The Commission is to notify the Compensation Court of an election under this clause and is to make arrangements with the Court for the transfer of court records and other documents relevant to the claim, for the purpose of facilitating the hearing and determination of proceedings on the claim by the Commission.

#### **Note—**

Under clause 6A of Part 18C of Schedule 6 to the 1987 Act, the Compensation Court ceases to have jurisdiction in respect of the claim once the claim becomes a new claim.

#### **226 Transfer of existing claims pending in Compensation Court on abolition of that Court**

- (1) On and from 1 January 2004, each existing claim in respect of which proceedings

instituted in the Compensation Court were pending on 31 December 2003 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) Subclause (1) does not apply to a claim in respect of which the relevant proceedings are exempted from transfer to the Commission by operation of the *Compensation Court Repeal (Transitional) Regulation 2003*.

**Note—**

This clause does not apply in respect of coal miner claims. See clause 3 of Part 18 of Schedule 6 to the *Workers Compensation Act 1987*.

**227 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 Subdivision, 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).
- (2) 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.
- (3) If a certificate is given as referred to in subclause (2):
- (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).

(4) 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).

#### **228 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.

#### **229 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](#)).

### **Subdivision 5 Miscellaneous**

#### **230 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.

#### **231 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.

## **Division 4 Coal miners—2001 amending Acts**

### **232 Definitions**

In this Division:

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

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

### **233, 234 (Repealed)**

### **235 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.

### **236 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.

**237 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.

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

Provisions of this Regulation that correspond to provisions of the [Workers Compensation \(General\) Regulation 1995](#) apply to coal miners in the same way as those corresponding provisions of that Regulation applied to coal miners pursuant to clause 104 of that Regulation.

**Note—**

Clause 104 of the [Workers Compensation \(General\) Regulation 1995](#) was a transitional provision that provided for the application to coal miners of amendments made to that Regulation by the [Workers Compensation \(General\) Amendment \(Savings, Transitional and Other Matters\) Regulation 2001](#).

**Division 5 Insurance Reforms—2003 amending Act**

**239 Interpretation**

(1) In this Division:

**temporary agent** means agent for the Nominal Insurer pursuant to clause 3 (1) (g) of Part 19A of Schedule 6 to the 1987 Act or pursuant to clause 247 of this Division.

(2) Expressions used in this Division have the same meaning as in Part 19A (Provisions consequent on enactment of [Workers Compensation Amendment \(Insurance Reform\) Act 2003](#)) of Schedule 6 to the 1987 Act.

**240 Authority to act as temporary agent**

(1) The authority of a managed fund insurer or GIO General Limited to act as a temporary agent is subject to the requirements of this clause (in addition to the requirements of any directions of the Nominal Insurer under this clause or clause 3 (1) (g) of Part 19A



of Schedule 6 to the 1987 Act).

- (2) A managed fund insurer or GIO General Limited is, in the exercise of functions as a temporary agent, subject to the direction and control of the Nominal Insurer.
- (3) A managed fund insurer is authorised to act as temporary agent only in respect of the following policies of insurance (and in respect of claims and proceedings that relate to those policies):
  - (a) policies issued by or assigned to the insurer before the relevant date for the insurer,
  - (b) policies issued by the insurer as a temporary agent after the relevant date for the insurer,
  - (c) such other policies of insurance as the Nominal Insurer may from time to time authorise the insurer to act as agent for.
- (3A) GIO General Limited is authorised to act as temporary agent only in respect of the following policies of insurance (and in respect of claims and proceedings that relate to those policies):
  - (a) policies issued by or assigned to GIO Workers Compensation (NSW) Limited before 1 July 2005,
  - (b) policies issued by GIO General Limited as a temporary agent on or after 1 July 2005,
  - (c) such other policies of insurance as the Nominal Insurer may from time to time authorise GIO General Limited to act as agent for.
- (4) The Nominal Insurer may direct that a managed fund insurer or GIO General Limited (the **claims agent**) is authorised to act as temporary agent in respect of specified claims and proceedings or classes of claims and proceedings even though the claims concerned relate to a policy or policies of insurance that another managed fund insurer (the **policy agent**) is authorised to act as temporary agent in respect of, in which case:
  - (a) the claims agent is authorised to act as temporary agent in respect of those claims and proceedings, and
  - (b) the policy agent is not authorised to act as temporary agent in respect of those claims and proceedings (but otherwise continues to be authorised to act as temporary agent in respect of the policies concerned).
- (5) A managed fund insurer must exercise the insurer's functions as temporary agent in accordance with any requirements that would have been applicable to the exercise of functions as a licensed insurer under the 1987 Act (including the conditions of the

insurer's licence under the 1987 Act and any guidelines applicable under that Act to the exercise of those functions), except to the extent that any such requirement conflicts with the requirements of any directions of the Nominal Insurer.

- (5A) GIO General Limited must exercise its functions as temporary agent in accordance with any requirements that would have been applicable to the exercise of the functions of GIO Workers Compensation (NSW) Limited as a licensed insurer under the 1987 Act (including the conditions of the licence of GIO Workers Compensation (NSW) Limited under the 1987 Act and any guidelines applicable under that Act to the exercise of those functions), except to the extent that any such requirement conflicts with the requirements of any directions of the Nominal Insurer.
- (6) In the exercise of functions as provided by subclause (3), the insurer is not subject to Division 4 (Statutory funds of licensed insurers) of Part 7 of the 1987 Act, except to the extent that the Nominal Insurer may otherwise direct.

#### **241 Directors under trustee duty**

- (1) A managed fund insurer must comply with the directions of the Nominal Insurer as to the payment of money by the insurer to or from the Insurance Fund in connection with the exercise of the insurer's functions as a temporary agent.
- (1A) GIO General Limited must comply with the directions of the Nominal Insurer as to the payment of money by GIO General Limited to or from the Insurance Fund in connection with the exercise of its functions as a temporary agent.
- (2) A director of a company that is a managed fund insurer or GIO General Limited is under the same liability, in the event of a contravention of such a direction, as the director would be if:
- (a) the director had been a trustee under a trust for the execution of the direction, and
  - (b) the Authority and the appropriate policy holders had been beneficiaries of such a trust.
- (3) This clause does not apply if the director proves that:
- (a) the contravention occurred without the knowledge of the director, or
  - (b) the director was not in a position to influence the conduct of the insurer or GIO General Limited (as the case requires) in relation to the contravention, or
  - (c) the director, being in such a position, used all due diligence to prevent the contravention.
- (4) The Authority may institute proceedings under this clause on behalf of the Authority and the appropriate policy holders.

- (5) In this clause a reference to a director of a company includes any person who, for the purposes of the *Corporations Act 2001* of the Commonwealth, is deemed to be a director of the company.

#### **242 Construction of references**

- (1) Functions exercised as temporary agent need not be exercised in the name of the Nominal Insurer. In particular, any document (such as a policy of insurance or any correspondence) issued by a managed fund insurer or GIO General Limited as a temporary agent need not be issued in the name of the Nominal Insurer.
- (2) A reference to a managed fund insurer in any document issued by the insurer after the relevant date for the insurer is, to the extent that the reference relates to the exercise of any function of the insurer as a temporary agent after that relevant date, to be read as a reference to the insurer as agent for the Nominal Insurer.
- (3) A reference to GIO General Limited in any document issued by GIO General Limited on or after 1 July 2005 is, to the extent that the reference relates to the exercise of any function of GIO General Limited as a temporary agent after that date, to be read as a reference to GIO General Limited as agent for the Nominal Insurer.

#### **243 Contracts—references to Nominal Insurer**

For the purposes of clause 3 (1) (d) of Part 19A of Schedule 6 to the 1987 Act (which provides for a reference to a managed fund insurer in a prescribed contract to be taken to be a reference to the Nominal Insurer) the following contracts are prescribed:

- (a) contracts forming part of any arrangements for the reinsurance of specialised insurers, known collectively as *Workers Compensation Quota Share Re-insurance Agreements*,
- (b) the contract for *Provision of Workers Compensation Wage Audit Services for the WorkCover Authority of NSW* dated 18 February 2005 and designated by the Authority as contract 0300896.

#### **244 Transitional funding arrangements**

The following payments are authorised to be made from the Insurance Fund pursuant to section 154E (2) (k) of the 1987 Act:

- (a) payments required to be made by the Nominal Insurer to temporary agents under arrangements made with temporary agents for their remuneration in respect of functions exercised as temporary agents,
- (b) payments to a bank account operated by a managed fund insurer before the relevant date for the insurer for meeting claims under policies of insurance, being payments authorised by the Nominal Insurer as necessary for the honouring of cheques drawn on the account before that relevant date.

#### **245 Termination of temporary agency arrangements**

- (1) If a managed fund insurer or GIO General Limited is appointed as a scheme agent, the authority of the insurer or GIO General Limited to act as a temporary agent is terminated when the appointment as scheme agent takes effect.
- (2) The authority of a managed fund insurer or GIO General Limited to act as a temporary agent can also be terminated at any time by the Nominal Insurer by giving notice of termination to the insurer or GIO General Limited in writing.
- (3) No compensation is payable for or in respect of the termination of the authority of a managed fund insurer or GIO General Limited to act as a temporary agent.
- (4) On the termination under this clause of a managed fund insurer's authority, or of the authority of GIO General Limited, to act as a temporary agent:
  - (a) the insurance records of the insurer or GIO General Limited (as the case requires) become the property of the Nominal Insurer, and
  - (b) the insurer or GIO General Limited must, in accordance with the directions of the Nominal Insurer, give possession of those insurance records to the Nominal Insurer or to such other person as the Nominal Insurer may direct.

Maximum penalty: 100 penalty units.

- (5) In this clause:

**insurance records** of a managed fund insurer or GIO General Limited means all records that are the property of the insurer or GIO General Limited and that relate to policies of insurance issued by the insurer or GIO General Limited as a temporary agent or in respect of which the insurer or GIO General Limited exercised functions as a temporary agent, or to any claim, judgment or award made in respect of any such policies.

#### **246 Application of 2003 amendments to managed fund insurers**

The amendments made by Schedule 2 [35], [37], [38], [44], [47]-[50], [52]-[54] and [57]-[71] to the *Workers Compensation Amendment (Insurance Reform) Act 2003* do not apply to or in respect of a managed fund insurer unless and until a relevant date has been appointed for the insurer under Part 19A of Schedule 6 to the 1987 Act.

#### **247 GIO General Limited authorised to act as temporary agent of Nominal Insurer**

- (1) GIO General Limited is, subject to this Division and any directions of the Nominal Insurer, authorised to act as agent for the Nominal Insurer.
- (2) Subclause (1) does not give rise to any entitlement on the part of GIO General Limited to be appointed as a scheme agent.

(3) This clause and the other amendments made to this Division by the *Workers Compensation Amendment (Insurance Reform—Further Transitional Provisions) Regulation 2006* have effect despite the provisions of Part 19A of Schedule 6 to the 1987 Act.

## Schedule 1 Forms

(Clause 4)

### Form 1

(Clause 33)

#### *Workplace Injury Management and Workers Compensation Act 1998*

##### **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.

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

.....  
(Date)

### Form 2

(Clause 36)

#### *Workplace Injury Management and Workers Compensation Act 1998*

##### **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 3**

(Clause 49)

**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 Premiums Orders).

## **Part 3 Conditions of Policy**

### **8 Employer must give Insurer or WorkCover notice of injury to worker**

The Employer must notify the Insurer or WorkCover within 48 hours after becoming aware that a worker has received a workplace injury.

### **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 a prescribed excess amount in respect of each claim for weekly compensation paid by the Insurer. Currently, under that section and clause 51 of the Regulation, that prescribed excess amount is:

- (a) if the employer concerned notified the relevant insurance scheme agent of the injury that lead to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—\$0, or
- (b) in all other cases—the lesser of the following:
  - (i) the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,
  - (ii) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50.

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.

**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**

**Column 2**

Poisoning by lead, its alloys or compounds, and its sequelae.	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.
Poisoning by mercury or its amalgams or compounds, and its sequelae.	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.	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.
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 that are due to or contributed to by: (a) radium and other radioactive substances, (b) X-rays.	Any process involving exposure to the action of radium, radioactive substances or 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.

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.

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

(Clause 6)

Column 1	Column 2	Column 3
Brucellosis.	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.	A four-fold or greater increase in antibody titre.
	A <i>Brucella abortus</i> agglutination test of a single blood sample.	An antibody titre of 640 or greater.
	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.	An antibody titre of 640 or greater.
	A laboratory culture of any specimen.	The isolation of <i>Brucella abortus</i> .
Q fever.	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.	A four-fold or greater increase in antibody titre.
	A fluorescence test of a single blood sample.	The demonstration of Q fever specific IgM antibodies.
	A laboratory culture of any specimen.	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 that:</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 that is recommended by the Leptospiral Reference Laboratory for use in making such a comparison.</p>	<p>A four-fold or greater increase in antibody titre.</p>
	<p>The analysis of a single specimen of blood serum by any technical method that:</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 analysing a single specimen of blood serum 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 that is recommended by that Leptospiral Reference Laboratory for use in carrying out such an analysis.</p>	<p>Agglutination of a leptospiral antigen at a dilution of 1 in 400 or greater.</p>
	<p>A laboratory culture of a leptospire from blood or urine.</p>	<p>The isolation of an invasive leptospire.</p>

## Schedule 4

(Clause 62)

<b>Religious body or organisation</b>	<b>Class</b>	<b>Employer</b>
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 that 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

(Clause 73)

### Part 1 Provisions of 1987 Act

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty \$</b>
Section 43 (2A)	200
Section 155 (1)	750
Section 161 (3)	200
Section 163 (1)	200
Section 163 (3)	200
Section 163A (2)	500
Section 163A (6)	500
Section 163A (7)	500
Section 174 (1) (a)	500
Section 174 (1) (b)	500
Section 174 (1) (c)	500

Section 174 (2)	500
Section 174 (3)	500
Section 174 (8)	500
Section 192A (4A)	500

## **Part 2 Provisions of 1998 Act**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty \$</b>
Section 63 (5)	500
Section 69 (1) (a)	500
Section 69 (1) (b)	500
Section 69 (1) (c)	500
Section 74A (3)	500
Section 79A (4)	200
Section 80 (5)	200
Section 81A (2)	200
Section 82 (3)	200
Section 90 (7)	200
Section 94 (1)	500
Section 94 (2)	500
Section 126 (2)	200
Section 155A (2)	500
Section 155A (6)	500
Section 155A (7)	500
Section 231 (3)	200
Section 232 (2) (a)	200
Section 232 (2) (b)	200
Section 256 (5)	500
Section 264 (1)	500
Section 264 (2)	500
Section 264 (3)	500



Section 267 (5)	500
Section 268	500
Section 283 (1)	500
Section 285	500
Section 290 (2)	500
Section 343 (4) (a)	500
Section 343 (4) (b)	500
Section 357 (3)	500
Section 358 (3)	500
Section 359 (2)	500

### Part 3 Provisions of the **Workers Compensation Regulation 2003**

Column 1	Column 2
Provision	Penalty \$
Clause 34 (2)	200
Clause 75	750
Clause 133	500

### Schedule 6 Maximum costs—compensation matters

(Clause 84)

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

(1) In this Schedule:

**teleconference** means a conference conducted by way of long-distance communication.

**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 \$5,000,
- (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) Election by claimant to transfer claim to Commission under clause 224**

For an activity or event carried out on behalf of a claimant in making an election under clause 224 of this Regulation to transfer the claim to the Commission—the cost set out in Column 3 of Part 4A 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) 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.

**(g) 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.

**(h) 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.

**(i) 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.

**(j) 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.

**(k) 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.

**(l) Other costs**

For an activity or event described in Column 2 of Part 10 of the table—the cost set out in Column 3 of Part 10 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) The Registrar may, on application, order that subclause (1) does not apply to costs incurred in respect of a claim or dispute if satisfied that the need for the costs to be incurred could not have been foreseen at the time that costs for the type of activity or event concerned were first incurred in connection with the injury.
- (4) No costs are payable or recoverable in respect of an application for the purpose of subclause (3).

### **3 Restrictions on costs**

- (1) Costs specified in a Part of the table (other than Part 2A, 2B or 10) 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 specified in Item 10.01 in the table are payable no more than once in respect of any claim.
- (5) Costs specified in Item 10.02 or 10.03 in the table may be payable more than once in respect of any claim.

#### **4 Restrictions on travelling and accommodation costs**

- (1) For the purpose of calculating costs for travelling referred to in Item 10.02 of the table:
  - (a) costs payable in respect of travel are to be calculated separately for each separate instance of travel (with each separate journey constituting a separate instance of travel), and
  - (b) travel to a place to attend at proceedings before the Commission constitutes a separate journey to the return journey from that place (whether or not the travel results from any adjournment of proceedings), and
  - (c) no costs are payable for any distance travelled in excess of the distance of the shortest practicable route (depending on the mode of travel used), and
  - (d) if travel is undertaken for the purpose of attending at proceedings in respect of more than one claim, the costs for travelling are to be apportioned equally among the claims in respect of which the travel was undertaken.
- (2) If attendance at proceedings before the Commission is in respect of more than one claim, any costs of accommodation in relation to the proceedings, as referred to in Item 10.03 of the table, are to be apportioned equally among the claims concerned.

#### **5 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 81 provides that in Part 19 (Costs) and Schedules 6 and 7, the term **insurer** includes an employer.

#### **6 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.

#### **7 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.

**8 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.

**9 Certain agents not entitled to costs**

- (1) 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.
- (2) Nothing in this clause prevents an agent who is a legal practitioner from being entitled to be paid or recover any costs.

**10 Recovery of certain charges for certain documents from public authorities**

Nothing in this Schedule prevents the recovery, as a disbursement, of the fee or charge set for any of the following reports, certificates or searches by the agency concerned in a claim in respect of a particular injury:

- (a) a report from a coroner, the NSW Police or the Roads and Traffic Authority relevant to the claim,
- (b) a land title search from Land and Property Information NSW relevant to the claim,
- (c) a certificate from the Registry of Births, Deaths and Marriages relevant to the claim.

**Compensation Costs Table**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item No</b>	<b>Activity or event</b>	<b>Maximum amount for individual activity/event</b>	<b>Maximum total for type of activity/event</b>

**Part 1 Making claim for permanent impairment compensation or pain and suffering compensation**

Obtaining and reviewing medical reports

**Note—**

Part 10 of this Regulation limits the circumstances in which more than 1 medical report in a particular specialty can be admitted in proceedings, and also limits the recovery of the cost of obtaining medical reports that are not admitted in proceedings.

Clause 82 (e) of this Regulation provides that costs covered by Part 19 do not include fees for reports from health service providers.

If the matter is finalised by the payment of compensation to the claimant—\$150 per report for the first 2 medical reports, \$100 per report for subsequent medical reports \$600  
If the matter is not finalised by the payment of compensation—nil

1.01

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 \$100  
If the matter is not finalised by the payment of compensation—nil

1.02

**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

\$500

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



	Obtaining and reviewing medical reports (other than where Item 1.01 applies)		
	<b>Note—</b>		
2.04	Part 10 of this Regulation limits the circumstances in which more than 1 medical report in a particular specialty can be admitted in proceedings, and also limits the recovery of the cost of obtaining medical reports that are not admitted in proceedings.  Clause 82 (e) of this Regulation provides that costs covered by Part 19 do not include fees for reports from health service providers.	\$150 per report for the first 2 medical reports, \$100 per report for subsequent medical reports and \$75 per report for a report supplementing a medical report (up to 2 such supplementary reports)	\$600
2.04A	Where a claim cannot be brought without a witness statement, preparing witness statements	\$100 per hour	\$150
2.05	Briefing a factual investigator or other investigator to obtain evidence other than witness statements (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
<b>Part 2B</b>	<b>Certain activities or events on behalf of insurer until dispute referred or order sought</b>		
2.09	Obtaining instructions from client where the claimant seeks a review of the insurer's determination of the claim	\$250 per hour	\$500
2.10	Referring a further report provided by claimant for review	\$20 per referral	\$40

	Obtaining and reviewing medical reports		
	<b>Note—</b>		
2.11	Part 10 of this Regulation limits the circumstances in which more than 1 medical report in a particular specialty can be admitted in proceedings, and also limits the recovery of the cost of obtaining medical reports that are not admitted in proceedings. Clause 82 (e) of this Regulation provides that costs covered by Part 19 do not include fees for reports from health service providers.	\$150 per report for the first 2 medical reports, \$100 per report for subsequent medical reports and \$75 per report for a report supplementing a medical report (up to 2 such supplementary reports)	\$600
2.11A	Where a claim cannot be defended without a witness statement, preparing witness statements	\$100 per hour	\$150
2.12	Briefing a factual investigator or other investigator to obtain surveillance information or other evidence other than witness statements (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
<b>Part 3</b>	<b>Certain applications for expedited assessment</b>		
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,	\$300	\$300
	(c) an application for expedited assessment,		
	(d) an application for joinder of another party		
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 give directions for the production of documents	\$60 for the initial direction, then \$40 for each additional direction	\$220
4.03A	Serving a direction by the Commission for the production of documents	\$40 per person served, regardless of the number of directions served on the person	\$200
4.03B	Paying conduct money to person served with direction for the production of documents (being money to meet reasonable expenses of compliance with the direction)	\$40 per person served with direction, regardless of the number of directions served on the person	\$200
4.04	Lodging an objection to a request for a direction for the production of documents	\$60 per objection	\$120
4.05	Reviewing documentation produced under a direction 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
4.08A	Preparing for a conference (including providing advice to client) in addition to costs provided for by Item 4.08, but only where the matter is settled and terms of settlement are filed in the Commission at least 2 working days before preliminary teleconference is set down to be held	\$250 per hour	\$250
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	\$1,000
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	\$1,500
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))	\$190	\$190

<b>Part 4A</b>	<b>Election by claimant to transfer claim to Commission under clause 225</b>		
4.13	All work associated with the lodgment of the election	\$500	\$500
<b>Part 5</b>	<b>Appeal to a Medical Appeal Panel for dispute about degree of permanent impairment</b>		
		If the result of the appeal is more favourable to the applicant for appeal—\$100 (applicant's legal practitioner or agent only)	\$100
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 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
		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
5.02	Attendance at a Medical Appeal Panel hearing	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
<b>Part 6</b>	<b>Referral of a question of law to President</b>		
		If the President grants leave to appeal—\$600 (applicant's legal practitioner or agent only)	\$600
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 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
<b>Part 7</b>	<b>Registration of agreement under sec 66A of 1987 Act or a commutation agreement</b>		
7.01	All work associated with registration of an agreement under section 66A of the 1987 Act	\$120	\$120
7.02	All work associated with registration of a commutation agreement	\$250	\$250
<b>Part 8</b>	<b>Appeals to Presidential member</b>		
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
<b>Part 9</b>	<b>Any other substantive proceedings before the Commission</b>		
9.01	Conduct of any other proceedings before the Commission involving the determination of substantive legal issues, including preparatory work	\$250 per hour	\$625
<b>Part 10</b>	<b>Other costs</b>		
10.01	All work associated with instructing an agent to act on the claim or a matter relating to the claim	\$250 per hour	\$187.50

10.02	Travelling for the purpose of attending at proceedings before the Commission for the purpose of an activity or event referred to in Item 4.09, 4.10, 4.11, 5.02, 6.02, 6.03, 8.03, 8.04 or 9.01 (not including attendance at a teleconference)	\$0.59 per km (except the first 50 kms)	No maximum
10.03	Costs of accommodation incurred when attending at proceedings before the Commission for the purpose of an activity or event referred to in Item 4.09, 4.10, 4.11, 5.02, 6.02, 6.03, 8.03, 8.04 or 9.01 (not including attendance at a teleconference) where the place of attendance is more than 50 kms from the practitioner's usual place of practice	\$120 for each night's accommodation	No maximum

## Schedule 7 Maximum costs for legal services—work injury damages matters

(Clause 87)

### 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**

<b>Stage</b>	<b>Costs</b>
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
  - (c) the insurer does not respond to the pre-filing statement of claim and settlement occurs without the commencement of court proceedings
- 3 —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> <p>(a) an amount determined, in accordance with stage 3, by reference to the amount of the settlement,</p> <p>(b) 2% of the amount of the settlement</p>
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> <p>(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,</p> <p>(b) 2% of the amount of the settlement or award</p>
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> <p>(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,</p> <p>(b) 2% of the amount of the settlement or award</p>

**Work Injury Costs Table B**

**Column 1**

**Column 2**

**Stage**

**Costs**

1	Advice on the certificate as to mediation (if the matter is referred to mediation)	\$250
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2	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.	<p>In addition to the \$250 specified for stage 1 (if chargeable):</p> <p>(a) if the settlement amount or award is \$20,000 or less—nil</p> <p>(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</p> <p>(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</p> <p>(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</p>
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**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**

<b>Column 1</b>	<b>Column 2</b>
<b>Nature of costs</b>	<b>Maximum costs</b>
1	<p>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)</p> <p>\$500</p>
2	<p>Costs associated with a dispute under section 317 of the 1998 Act as to whether a pre-filing statement is defective</p> <p>\$200</p>

- 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
- 4 If the matter was referred to mediation and 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