

# Workers Compensation Act 1987 No 70

[1987-70]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [WorkCover Legislation Amendment Act 1996 No 120](#), Sch 1.19 [8] (not commenced)
  - [Workers Compensation Legislation Amendment Act 2000 No 87](#), Sch 9 (amended by [Workers Compensation Legislation Amendment Act 2001 No 61](#)) (not commenced)
  - [Workers Compensation Legislation Amendment \(Miscellaneous Provisions\) Act 2005 No 113](#), Sch 3.2 [5] (not commenced)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#) (not commenced)
  - [NSW Trustee and Guardian Act 2009 No 49](#) (not commenced)

### Authorisation

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File last modified 26 June 2009

# Workers Compensation Act 1987 No 70



New South Wales

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# Workers Compensation Act 1987 No 70



New South Wales

An Act to provide for the compensation and rehabilitation of workers in respect of work related injuries; to repeal the *Workers' Compensation Act 1926* and certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Workers Compensation Act 1987*.

### 2 Commencement

- (1) Sections 1 and 2 and Parts 19 and 20 of Schedule 6 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 2A Relationship to *Workplace Injury Management and Workers Compensation Act 1998*

- (1) The *Workplace Injury Management and Workers Compensation Act 1998* is referred to in this Act as **the 1998 Act**.
- (2) This Act is to be construed with, and as if it formed part of, the 1998 Act. Accordingly, a reference in this Act to this Act includes a reference to the 1998 Act.
- (3) In the event of an inconsistency between this Act and the 1998 Act, the 1998 Act prevails to the extent of the inconsistency.

### 3 Definitions (cf former s 6 (1), (2), (13))

(1AA) In this Act, words and expressions have the same meanings as they have in the 1998 Act, unless this Act provides otherwise.

- (1) In this Act:

**agency arrangement** means the contract or other arrangement by which a scheme

agent is appointed.

**former Act** means the [Workers' Compensation Act 1926](#).

**former licensed insurer** means a person (not being a licensed insurer) who:

- (a) was previously a licensed insurer under this Act or under section 27 of the former Act, and
- (b) continues to have liabilities under policies of insurance previously issued or renewed by the person.

**group** means the employers who constitute a group under Division 2A of Part 7.

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

**Guarantee Fund** means the Insurers' Guarantee Fund established under section 227.

**injury** is defined by section 4.

**Insurance Fund** means the Workers Compensation Insurance Fund established under section 154D.

**insurance premiums order** means an order in force under section 168.

**licensed insurer** means an insurer who is the holder of a licence granted under Division 3 of Part 7 and in force.

**mine** means a mine within the meaning of the [Coal Mines Regulation Act 1982](#) as in force immediately before its repeal by the [Coal Mine Health and Safety Act 2002](#), but does not include any place that, in accordance with section 8 (3) of the [Coal Mine Health and Safety Act 2002](#), is a place to which that Act does not apply.

**Nominal Insurer** means the Workers Compensation Nominal Insurer referred to in section 154A.

**premium income:**

- (a) in relation to contributions payable under this Act by an insurer (other than a specialised insurer) in respect of a financial year—means the amount the insurer receives during that financial year as premiums in respect of policies of insurance issued or renewed by the insurer (whether the policies are issued or renewed during that financial year or during a previous financial year), or
- (b) in relation to contributions payable under this Act by a specialised insurer in respect of a financial year—means the amount the insurer receives, whether during or after that financial year, as premiums in respect of policies of insurance issued or renewed by the insurer during that financial year,



and, in relation to contributions payable by any insurer, includes any amount comprising or attributable to GST and any amount prescribed by the regulations as included for the purposes of this definition in relation to that financial year, but does not include any amount prescribed by the regulations as excluded for the purposes of this definition in relation to that financial year.

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

**scheme agent** means a person appointed under section 154G to act as agent for the Nominal Insurer in connection with the exercise of any of the functions of the Nominal Insurer.

**self-insurer** means:

- (a) the holder of a licence in force under Division 5 of Part 7, and
- (b) a subsidiary of the licence holder covered for the time being by the licence (as provided by section 211A), and
- (c) any Government employer covered for the time being by the Government's managed fund scheme (as provided by section 211B).

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

- (1A) A reference to a worker who has been injured includes, if the worker is dead, a reference to the worker's legal personal representative or the worker's dependants, or any other person to whom or for whose benefit compensation is payable.
- (2) (Repealed)
- (3) The exercise of the functions of a public or local authority shall, for the purposes of this Act, be treated as its trade or business.
- (4) The operations of a racing or recreation club shall, for the purposes of this Act, be treated as its trade or business.
- (5) The Crown shall, for the purposes of this Act, be treated as the employer of members of the Police Force.
- (6) Notes included in the text of this Act do not form part of this Act.

#### **4 Definition of "injury"** (cf former s 6 (1))

In this Act:

**injury:**

- (a) means personal injury arising out of or in the course of employment,

(b) includes:

- (i) a disease which is contracted by a worker in the course of employment and to which the employment was a contributing factor, and
- (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration, and

(c) does not include (except in the case of a worker employed in or about a mine) a dust disease, as defined by the *Workers' Compensation (Dust Diseases) Act 1942*, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined.

#### **4A Directors of uninsured employer not entitled to compensation**

If an employer that is a corporation had not obtained, or was not maintaining in force, at the relevant time a policy of insurance for the full amount of the employer's liability under this Act in respect of an injured worker and the injured worker was at the relevant time a director of the corporation, the injured worker is not entitled to any compensation under this Act in respect of that liability.

#### **5 (Repealed)**

#### **6 Act binds Crown**

- (1) This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) (Repealed)

#### **7 Certain Acts not affected** (cf former s 5)

Nothing in this Act affects the operation of the following Acts:

*Workers' Compensation (Dust Diseases) Act 1942*,

*Workers' Compensation (Brucellosis) Act 1979*,

*Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

#### **7A Application of Act in respect of coal industry**

- (1) The workers compensation company (within the meaning of the *Coal Industry Act 2001*) is taken to be a licensed insurer that is a specialised insurer under, and for the purposes of, this Act.
- (2) However, the following provisions of this Act do not apply to or in respect of the workers compensation company:

- (a) Division 6 of Part 4,
  - (b) sections 156 and 156B,
  - (c) Divisions 1A, 2-5, 6A and 7 of Part 7.
- (3) For avoidance of doubt:
- (a) an employee of an employer in the coal industry is not eligible to make a claim under Division 6 of Part 4, and
  - (b) a person who is taken, under Schedule 1 to the *Workplace Injury Management and Workers Compensation Act 1998*, to be a worker employed by another person is not entitled to make a claim referred to in paragraph (a) if the other person by whom the person is taken to be employed is engaged in the coal industry.
- (4) The workers compensation company is taken to be the insurer under this Act of all employers in the coal industry (whether or not any such employer maintains a policy of insurance with that company).

## **8 (Repealed)**

## **Part 2 Compensation—liability**

### **9 Liability of employers for injuries received by workers—general** (cf former s 7 (1) (a))

- (1) A worker who has received an injury (and, in the case of the death of the worker, his or her dependants) shall receive compensation from the worker's employer in accordance with this Act.
- (2) Compensation is payable whether the injury was received by the worker at or away from the worker's place of employment.

### **9AA Liability for compensation**

- (1) Compensation under this Act is only payable in respect of employment that is connected with this State.
- (2) The fact that a worker is outside this State when the injury happens does not prevent compensation being payable under this Act in respect of employment that is connected with this State.
- (3) A worker's employment is connected with:
  - (a) the State in which the worker usually works in that employment, or
  - (b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment, or
  - (c) if no State or no one State is identified by paragraph (a) or (b), the State in which

the employer's principal place of business in Australia is located.

- (4) In the case of a worker working on a ship, if no State or no one State is identified by subsection (3), a worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.
- (5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if:
  - (a) the worker is in this State when the injury happens, and
  - (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.
- (6) In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer and the intention of the worker and employer. However, regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.
- (7) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the [Seafarers Rehabilitation and Compensation Act 1992](#) of the Commonwealth applies to the worker's employment.

(8) In this section:

**ship** means any kind of vessel used in navigation by water, however propelled or moved, and includes:

- (a) a barge, lighter, or other floating vessel, and
  - (b) an air-cushion vehicle, or other similar craft,
- used wholly or primarily in navigation by water.

**State** includes Territory and, in a geographical sense, a State's or Territory's relevant adjacent area as described in Schedule 1.

#### **9AB Recognition of determination of State of connection in another State**

- (1) If a designated court makes a determination of the State with which a worker's employment is connected for the purposes of a corresponding law, that State is to be recognised for the purposes of section 9AA as the State with which the worker's employment is connected.
- (2) This section does not prevent or affect the operation of a determination of the State with which a worker's employment is connected for the purposes of section 9AA made by the Commission or a court of this State before the determination is made by a designated court.

(3) This section does not prevent any appeal relating to any such determination of a designated court. If the determination is altered on appeal, the altered determination is to be recognised under subsection (1).

(4) In this section:

**corresponding law** means the provisions of the statutory workers compensation scheme of another State that corresponds with section 9AA.

**designated court** means:

- (a) the Supreme Court of a State in which a corresponding law is in force, or
- (b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is declared by the regulations to be a designated court for the purposes of this section.

**State** includes Territory.

#### **9AC Person not to be compensated twice**

- (1) Compensation under this Act is not payable in respect of any matter to the extent that compensation has been received under the laws of a place other than this State.
- (2) If a person receives compensation under this Act and, for the same matter, subsequently receives compensation under the laws of a place other than this State, the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).
- (3) The amount that is recoverable under subsection (2) is:
  - (a) the amount of compensation paid under this Act, or
  - (b) the amount of compensation received under the laws of a place other than this State,whichever is less.

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

- (1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.
- (2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):
  - (a) the time and place of the injury,

- (b) the nature of the work performed and the particular tasks of that work,
  - (c) the duration of the employment,
  - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she had not been at work or had not worked in that employment,
  - (e) the worker's state of health before the injury and the existence of any hereditary risks,
  - (f) the worker's lifestyle and his or her activities outside the workplace.
- (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following:
- (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
  - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury.
- (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.

**10 Journey claims** (cf former s 7 (1) (b)-(d), (f), (g))

- (1) A personal injury received by a worker on any journey to which this section applies is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.
- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.
- (1B) A personal injury received by a worker is to be taken to be attributable to the serious and wilful misconduct of the worker if the worker was at the time under the influence of alcohol or other drug (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*), unless the alcohol or other drug did not contribute in any way to the injury or was not consumed or taken voluntarily.
- (1C) (Repealed)
- (1D) Subsection (1) does not apply if the personal injury resulted from the medical or other condition of the worker and the journey did not cause or contribute to the injury.
- (2) Subsection (1) does not apply if:

- (a) the injury was received during or after any interruption of, or deviation from, any such journey, and
- (b) the interruption or deviation was made for a reason unconnected with the worker's employment or the purpose of the journey,

unless, in the circumstances of the case, the risk of injury was not materially increased because of the interruption or deviation.

(3) The journeys to which this section applies are as follows:

- (a) the daily or other periodic journeys between the worker's place of abode and place of employment,
- (b) the daily or other periodic journeys between the worker's place of abode, or place of employment, and any educational institution which the worker is required by the terms of the worker's employment, or is expected by the worker's employer, to attend,
- (c) a journey between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of obtaining a medical certificate or receiving medical, surgical or hospital advice, attention or treatment or of receiving payment of compensation in connection with any injury for which the worker is entitled to receive compensation,
- (d) a journey between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of having, undergoing or obtaining any consultation, examination or prescription referred to in section 74 (3),
- (e) a journey between any camp or place:
  - (i) where the worker is required by the terms of the worker's employment, or is expected by the worker's employer, to reside temporarily, or
  - (ii) where it is reasonably necessary or convenient that the worker reside temporarily for any purpose of the worker's employment,and the worker's place of abode when not so residing,
- (f) a journey between the worker's place of abode and the place of pick-up referred to in clause 14 of Schedule 1 to the 1998 Act,
- (g) a journey between the worker's place of abode and place of employment, where the journey is made for the purpose of receiving payment of any wages or other money:
  - (i) due to the worker under the terms of his or her employment, and

- (ii) which, pursuant to the terms of his or her employment or any agreement or arrangement between the worker and his or her employer, are available or are reasonably expected by the worker to be available for collection by the worker at the place of employment.
- (4) For the purposes of this section, a journey from a worker's place of abode commences at, and a journey to a worker's place of abode ends at, the boundary of the land on which the place of abode is situated.
- (5) For the purposes of this section, if the worker is journeying from the worker's place of employment with one employer to the worker's place of employment with another employer, the worker shall be deemed to be journeying from his or her place of abode to his or her place of employment with that other employer.
- (5A) Nothing in this section prevents the payment of compensation for any personal injury which, apart from this section, is an injury within the meaning of this Act.
- (6) In this section:

**educational institution** means:

- (a) a trade, technical or other training school, or
- (b) a university or other college or school providing secondary or tertiary education.

**night**, in the case of a worker employed on shift work, night work or overtime, has a meaning appropriate to the circumstances of the worker's employment.

**place of abode** includes:

- (a) the place where the worker has spent the night preceding a journey and from which the worker is journeying, and
- (b) the place to which the worker is journeying with the intention of there spending the night following a journey.

#### **11 Recess claims** (cf former s 7 (1) (e))

If a worker on any day on which the worker has attended at the worker's place of employment pursuant to the worker's contract of service or training contract:

- (a) is temporarily absent from that place on that day during any ordinary recess or authorised absence,
- (b) does not during that absence voluntarily subject himself or herself to any abnormal risk of injury, and
- (c) receives a personal injury during that absence,



the injury is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

**11A No compensation for psychological injury caused by reasonable actions of employer**

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.
- (3) A **psychological injury** is an injury (as defined in section 4) that is a psychological or psychiatric disorder. The term extends to include the physiological effect of such a disorder on the nervous system.
- (4) This section does not affect any entitlement to compensation under this Act for an injury of a physical nature even if the injury is a physical symptom or effect of a psychological injury, so long as the injury is not merely a physiological effect on the nervous system.
- (5) (Repealed)
- (6) This section does not extend the definition of **injury** in section 4. In particular, this section does not affect the requirement in section 4 that a disease is not an injury unless it is contracted by the worker in the course of employment.

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

- (7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 65 of the 1998 Act) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition".
- (8) If a claim is deficient because subsection (7) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement):
  - (a) the claim is not considered to have been duly made for the purposes of section 93 of the 1998 Act until subsection (7) is complied with, and
  - (b) proceedings before the Commission cannot be commenced in respect of the claim until subsection (7) is complied with.

**12 Claims by trade union representatives** (cf former s 7 (1) (h))

If:

- (a) a worker is an accredited representative of a trade union of employees, or other organisation of employees, of which any person employed by the worker's employer is a member,
- (b) with the consent of or at the request of that employer or pursuant to an industrial award or agreement, the worker is carrying out his or her duties as such a representative (whether at the worker's place of employment or elsewhere) or is on an associated journey, and
- (c) the worker receives a personal injury while carrying out those duties or on that journey,

the injury is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

**13 (Repealed)**

**14 Conduct of worker etc** (cf former s 7 (2), (3))

- (1) Compensation is payable in respect of any injury resulting in the death or serious and permanent disablement of a worker, notwithstanding that the worker was, at the time when the injury was received:
  - (a) acting in contravention of any statutory or other regulation applicable to the worker's employment, or of any orders given by or on behalf of the employer, or
  - (b) acting without instructions from the worker's employer,if the act was done by the worker for the purposes of and in connection with the employer's trade or business.
- (2) If it is proved that an injury to a worker is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that injury, unless the injury results in death or serious and permanent disablement.
- (3) Compensation is not payable in respect of any injury to or death of a worker caused by an intentional self-inflicted injury.

**15 Diseases of gradual process—employer liable, date of injury etc** (cf former ss 7 (4), (4C), (5), 16 (1A))

- (1) If an injury is a disease which is of such a nature as to be contracted by a gradual process:
  - (a) the injury shall, for the purposes of this Act, be deemed to have happened:

- (i) at the time of the worker's death or incapacity, or
  - (ii) if death or incapacity has not resulted from the injury—at the time the worker makes a claim for compensation with respect to the injury, and
- (b) compensation is payable by the employer who last employed the worker in employment to the nature of which the disease was due.
- (2) Any employers who, during the 12 months preceding a worker's death or incapacity or the date of the claim (as the case requires), employed the worker in any employment to the nature of which the disease was due shall be liable to make to the employer by whom compensation is payable such contributions as, in default of agreement, may be determined by the Commission.

(2A) The Commission is to determine the contributions that a particular employer is liable to make on the basis of the following formula, or on such other basis as the Commission considers just and equitable in the special circumstances of the case:

$$C = T \times \frac{A}{B}$$

where:

**C** is the contribution to be calculated for the particular employer concerned.

**T** is the amount of compensation to which the employer is required to contribute.

**A** is the total period of employment of the worker with the employer during the 12 month period concerned, in employment to the nature of which the injury was due.

**B** is the total period of employment of the worker with all employers during the 12 month period concerned, in employment to the nature of which the injury was due.

- (3) Total or partial loss of sight which is of gradual onset shall for the purposes of subsection (1) be deemed to be a disease and to be of such nature as to be contracted by gradual process.
- (4) In this section, a reference to an injury includes a reference to a permanent impairment for which compensation is payable under Division 4 of Part 3.
- (4A) In this section, a reference to employment to the nature of which a disease was due includes a reference to employment the nature of which was a contributing factor to the disease.
- (5) This section does not apply to an injury to which section 17 applies.

**16 Aggravation etc of diseases—employer liable, date of injury etc** (cf former ss 7 (4A), (5),

16 (1A))

- (1) If an injury consists in the aggravation, acceleration, exacerbation or deterioration of a disease:
- (a) the injury shall, for the purposes of this Act, be deemed to have happened:
    - (i) at the time of the worker's death or incapacity, or
    - (ii) if death or incapacity has not resulted from the injury—at the time the worker makes a claim for compensation with respect to the injury, and
  - (b) compensation is payable by the employer who last employed the worker in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration.
- (2) Any employers who, during the 12 months preceding a worker's death or incapacity or the date of the claim (as the case requires), employed the worker in any such employment shall be liable to make to the employer by whom compensation is payable such contributions as, in default of agreement, may be determined by the Commission.
- (2A) The Commission is to determine the contributions that a particular employer is liable to make on the basis of the following formula, or on such other basis as the Commission considers just and equitable in the special circumstances of the case:
- $$C = T \times \frac{A}{B}$$
- where:
- C** is the contribution to be calculated for the particular employer concerned.
  - T** is the amount of compensation to which the employer is required to contribute.
  - A** is the total period of employment of the worker with the employer during the 12 month period concerned, in employment that has been a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration concerned.
  - B** is the total period of employment of the worker with all employers during the 12 month period concerned, in employment that has been a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration concerned.
- (3) In this section, a reference to an injury includes a reference to a permanent impairment for which compensation is payable under Division 4 of Part 3.
- (4) This section does not apply to an injury to which section 17 applies.

**17 Loss of hearing—special provisions** (cf former s 7 (4B), (4BB))

- (1) If an injury is a loss, or further loss, of hearing which is of such a nature as to be caused by a gradual process, the following provisions have effect:
- (a) for the purposes of this Act, the injury shall be deemed to have happened:
    - (i) where the worker was, at the time when he or she gave notice of the injury, employed in an employment to the nature of which the injury was due—at the time when the notice was given, or
    - (ii) where the worker was not so employed at the time when he or she gave notice of the injury—on the last day on which the worker was employed in an employment to the nature of which the injury was due before he or she gave the notice,
  - (b) the provisions of section 61 of the 1998 Act shall apply to or in respect of the injury as if the words “as soon as practicable after the injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury” were omitted therefrom,
  - (c) compensation is payable by:
    - (i) where the worker was employed by an employer in an employment to the nature of which the injury was due at the time he or she gave notice of the injury—that employer, or
    - (ii) where the worker was not so employed—the last employer by whom the worker was employed in an employment to the nature of which the injury was due before he or she gave the notice,
  - (d) an employer (not being an employer referred to in paragraph (c) (i) or (ii)) by whom the worker was employed in an employment to the nature of which the injury was due during the relevant period (as defined in paragraph (e)) shall be liable to make to an employer referred to in paragraph (c) (i) or (ii) a contribution which bears to the amount of compensation payable the same proportion as the period of that employment during the relevant period bears to the total period of employment of that worker in an employment to the nature of which the injury was due during the relevant period,
  - (e) in paragraph (d), the **relevant period** means:
    - (i) where the worker has not had a prior injury (being a loss of hearing or a further loss of hearing)—in relation to an injury, the period of 5 years immediately preceding the date when a notice is given in respect of the injury,
    - (ii) where the worker has had one or more prior injuries (being losses of hearing or further losses of hearing) which or all of which, as the case may be, are

deemed under this Act to have happened at a time more than 5 years before the date when a notice is given in respect of a further injury—in relation to the further injury, the period of 5 years immediately preceding the date when that notice was given, and

- (iii) where the worker has had not more than one, or more than one, prior injury (being a loss of hearing or a further loss of hearing) which or the last of which, as the case may be, is deemed under this Act to have happened at a time during the 5 years immediately preceding the date when a notice is given in respect of a further injury—in relation to the further injury, the period between the time when that prior injury is deemed to have happened and the date when that notice was given,
  - (f) where the Commission is satisfied that a contribution required to be made under paragraph (d) cannot be recovered by an employer referred to in paragraph (c), the Commission may direct the Nominal Insurer to pay to that employer out of the Insurance Fund such amount, not exceeding the amount of the contribution, as the Commission considers appropriate and the Nominal Insurer is to pay out that amount accordingly as if it were a payment made in respect of a claim under Division 6 of Part 4,
  - (g) where there is a dispute as to the amount of a contribution required to be made under paragraph (d), that dispute shall be deemed to be a matter or question arising under this Act.
- (2) Without limiting the generality of subsection (1), the condition known as “boilermaker’s deafness” and any deafness of a similar origin shall, for the purposes of that subsection, be deemed to be losses of hearing which are of such a nature as to be caused by a gradual process.
- (3) Compensation is payable by an employer as referred to in subsection (1) (c) in respect of the injury to which the notice given to the employer relates even if the worker, before claiming or receiving that compensation, commences employment (to the nature of which that kind of injury can be due) with another employer.

**18 Special insurance provisions relating to occupational diseases** (cf former s 18 (6A)–(6C))

- (1) If an employer has become liable under section 15 (1) (b) or 16 (1) (b) to pay compensation to a worker in respect of an injury and the time at which the injury is deemed to have happened is after the worker ceased to be employed by the employer, the liability of the employer is, despite sections 15 and 16, taken to have arisen immediately before the worker ceased to be employed by the employer. This subsection operates only for the purpose of determining whether any insurer or which of 2 or more insurers is liable under a policy of insurance in respect of that compensation.

(2) Where:

- (a) an employer (in this subsection referred to as **the contributor**) has become liable under this Act to make a contribution to another employer towards compensation payable by that other employer in respect of an injury to a worker (being an injury referred to in section 15, 16 or 17), and
- (b) on the last day of the period in respect of which the contributor was liable to make the contribution, the contributor was maintaining in force a policy of insurance, the insurer under that policy is:
  - (c) directly liable, with the contributor, to pay the contribution to the employer who is liable to pay the compensation, and
  - (d) liable to indemnify the contributor to the extent that the contributor pays the contribution.

(3) In a case to which section 15, 16 or 17 applies, if each of the employers who is liable to pay the compensation or to make a contribution under the section concerned is insured in respect of that liability by an insurer who is an insurer within the meaning of Division 4 of Part 7 and the entitlement of the worker (or other claimant) to receive compensation is not disputed:

- (a) a contribution that would otherwise be payable by an employer under section 15, 16 or 17 in respect of the claim is not payable, and
- (b) for the purposes of calculating an insurance premium payable by any of those employers, their claims histories are to be determined on the assumption that any contribution that would have been payable but for paragraph (a) was payable.

**19 Diseases deemed work related** (cf former s 7 (4D), (4E))

(1) If a worker, during a time when the worker is engaged in employment of a kind prescribed by the regulations as an employment to which this subsection applies, contracts a disease prescribed by the regulations as a disease that is related to employment of that kind, then for the purposes of this Act, unless the contrary is established:

- (a) the disease shall be deemed to have been contracted by the worker in the course of the employment in which the worker was so engaged, and
- (b) that employment shall be deemed to have been a substantial contributing factor to the disease.

(2) For the purposes of this Act, the disease brucellosis, Q fever or leptospirosis shall be deemed to have been contracted by a worker if the result of any medical test:

- (a) which complies with such requirements as are prescribed by the regulations in

relation to that disease, and

(b) which was carried out for the purpose of determining whether that worker has contracted that disease,

is a result prescribed by the regulations in respect of that disease.

**20 Principal liable to pay compensation to workers employed by contractors in certain cases** (cf former s 6 (3))

- (1) If any person (in this section referred to as ***the principal***) in the course of or for the purposes of the person's trade or business, contracts with any other person (in this section referred to as ***the contractor***) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal is, if the contractor does not have a policy of insurance or is not a self-insurer at the time a worker employed in the execution of the work receives an injury, liable to pay any compensation under this Act which the principal would have been liable to pay if that worker had been immediately employed by the principal.
- (2) If compensation is claimed from or proceedings are taken against the principal in respect of any such injury, then, in the application of this Act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed.
- (3) Notwithstanding subsection (1), where the contract relates to threshing, chaff-cutting, ploughing or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purposes of that work, the contractor (and no other person) shall be liable under this Act to pay compensation to any worker employed by the contractor on that work.
- (4) If the principal is liable to pay compensation under this section, the principal is entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be determined by the Commission.
- (5) Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal.
- (6) This section does not apply in any case where the injury occurred elsewhere than on, in or about premises on which the principal has undertaken to execute the work or which otherwise are under the principal's control or management, but nothing in the foregoing affects the liability of the contractor under any other provision of this Act.
- (7) This section does not render the owner of a farm liable to pay compensation as principal in respect of any worker employed by a share farmer.



(8) If:

- (a) a principal under a contract referred to in subsection (1) is, at the time of an injury to a worker employed in the execution of the work under the contract, insured under a policy of insurance in respect of workers other than the workers employed in the execution of the work under the contract,
- (b) compensation payable by the principal under subsection (1) in respect of the injury is paid by the principal's insurer, and
- (c) the principal has not, in respect of the policy, paid to the insurer a premium in respect of the principal's liability under subsection (1),

the principal is liable to pay the insurer, in addition to the premium payable or paid in respect of the policy, a premium calculated having regard to:

- (d) the insurance premiums order in force as at the commencement of the policy, and
  - (e) the wages paid to the workers employed in the execution of the work under the contract during the term of the policy.
- (9) A principal under a contract referred to in subsection (1) is not, under subsection (8), liable to pay in respect of a policy of insurance more than one additional premium in respect of the workers employed in the execution of the work under the contract.
- (10) In the event of a disagreement between a principal and insurer as to whether or not an additional premium is payable under subsection (8) or as to the amount of an additional premium payable under that subsection, the Authority may, on the request of either party, determine the matter.
- (11) A determination by the Authority under subsection (10) shall have effect according to its tenor and shall not be subject to review or appeal.

## **21 (Repealed)**

## **22 Compensation to be apportioned where more than one injury**

(1) If:

- (a) the death or incapacity of a worker, or
- (b) a permanent impairment suffered by a worker as referred to in Division 4 of Part 3,  
or
- (c) a liability under Division 3 of Part 3 to a worker,

results from more than one injury to the worker, liability to pay compensation under this Act is to be apportioned in such manner as the Commission determines.

- (1A) Death, incapacity, loss or liability that results partly from one injury and partly from one or more other injuries is taken to have resulted from more than one injury.
- (2) Liability to pay compensation under this Act includes:
- (a) the liability of an employer (including an employer who is a self-insurer), and
  - (b) the liability of an insurer under a policy of insurance in respect of the payment of that compensation (including a direct liability to the worker), and
  - (c) a liability in respect of a claim under Division 6 of Part 4, and
  - (d) in the case of a worker who is partially incapacitated for work, a liability that arises because the worker is entitled to be compensated under this Act as if totally incapacitated.
- (3) Liability to pay compensation under this Act is not to be apportioned by the Commission if the parties to whom the liability relates have agreed on the apportionment.
- (4) Liability to pay compensation under this Act may be apportioned by the Commission even though it is the liability of a single insurer in respect of different periods of insurance, but only if the employer or the Authority applies for such an apportionment.
- (5) The Commission may, on the application of any insurer or employer concerned or of the Authority, determine a dispute as to whether:
- (a) liability to pay compensation under this Act should be apportioned under this section, or
  - (b) any such liability should be apportioned under this section in respect of different injuries.
- The determination of the Commission has effect despite any agreement on apportionment if the application for determination was made by an employer (in the employer's own right) or the Authority.
- (6) (Repealed)
- (7) A person who is liable to pay compensation under this Act is not entitled in any proceedings under this Act to a reduction in that liability by apportionment on account of the existence of any other person who is also liable to pay any part of that compensation unless that other person is a party to the proceedings.
- (8) This section applies to any liability arising before or after the commencement of this Act.

## **22A Further provisions concerning apportionment of liability under section 22**

- (1) The apportionment of liability under section 22 is:
  - (a) in the case of the apportionment of liability between employers—to be on the basis of the relative length of the worker’s employment with each employer concerned (not including any period of employment after the last relevant injury was received), or on such other basis as the Commission considers just and equitable in the special circumstances of the case, and
  - (b) in the case of the apportionment of liability between insurers of the same employer—to be on the basis of the relative length of the employer’s period of insurance with each insurer concerned during which the worker concerned was employed by the employer (not including any period of insurance after the last relevant injury was received), or on such other basis as the Commission considers just and equitable in the special circumstances of the case.
- (2) If a worker’s partial incapacity for work results from more than one injury to the worker and consequently more than one person would be liable to pay compensation in respect of that incapacity were the worker not entitled to compensation under section 38 of this Act or section 11 (2) of the former Act (as applied by Schedule 6 to this Act), those persons are nevertheless liable for the compensation so payable and accordingly that liability may be apportioned under section 22.
- (3) Liability may be apportioned under section 22 even if the liability has been discharged.
- (4) When liability to pay compensation is apportioned under section 22 between 2 or more persons, the Commission may order that the compensation is payable to the worker by one of those persons and that the other persons are to pay (by way of contribution) their apportioned share of that compensation to that person.
- (5) The person ordered under subsection (4) to pay compensation to the worker is to be:
  - (a) in the case of apportionment between employers—the employer who most recently employed the worker, or such other of the employers as the Commission considers reasonable in the special circumstances of the case, and
  - (b) in the case of apportionment between insurers—the insurer of the employer at the time of the last injury, or such other of the insurers as the Commission considers reasonable in the special circumstances of the case.
- (6) An order is not to be made under subsection (4) if the parties concerned have agreed as to the payment by one of them of the compensation concerned.
- (7) In this section a reference to an insurer includes a reference to a self-insurer and a reference to a period of insurance includes a reference to a period of self-insurance. A

liability in respect of a claim under Division 6 of Part 4 is for the purposes of this section taken to be a liability of the insurer of the employer concerned during the period that is relevant to that liability.

- (8) In a case to which section 22 applies, if all of the insurers concerned (being either insurers of the same employer or of the different employers concerned) are insurers within the meaning of Division 4 of Part 7 and the entitlement of the worker (or other claimant) to receive compensation is not disputed:
  - (a) the compensation is (despite subsection (5)) payable by the last insurer or the last employer (as relevant to the case), with no apportionment of liability under section 22, and
  - (b) for the purposes of calculating an insurance premium payable by any of those employers, their claims histories are to be determined on the assumption that liability had been apportioned under section 22 (without the need for a determination of, or agreement as to, that apportionment).
- (9) The operation of section 22 is not to be limited because of the fact that it provides for liability to be apportioned rather than providing for payment of contributions.

**22B Determination as to which injury gave rise to compensation liability**

- (1) The Commission may, on the application of an employer (in the employer's own right) or of the Authority, determine a dispute as to which injury, from among 2 or more alleged injuries, has given rise to a liability to pay compensation under this Act.
- (2) Such a determination may be made irrespective of any agreement and irrespective of whether the payment of any contribution is ordered under section 15 or 16 or any apportionment of liability is ordered under section 22.

**22C Certain injuries not to be dealt with under sections 15 and 16**

- (1) This section applies to an injury that is of a kind, or that occurs in circumstances, prescribed by the regulations for the purposes of this section.
- (2) The regulations may provide that either or both of sections 15 and 16 is or are not to apply to an injury to which this section applies and that instead section 22 is to apply to the injury.
- (3) The regulations may provide that section 15 (1) (a) or 16 (1) (a) is, for the purposes of all or specified provisions of this Act, to apply in respect of an injury to which this section applies.
- (4) A regulation made for the purposes of this section extends to apply to an injury that happened before the commencement of the regulation, but only if:
  - (a) death, incapacity, loss or liability as referred to in section 22 results from that

injury and one or more other injuries, and

(b) at least one of those other injuries happened after the commencement of the regulation.

(5) A regulation made for the purposes of this section does not (despite subsection (4)) affect any liability of an employer or insurer to pay compensation or a contribution, or any liability of an insurer to indemnify an employer, that arose before the commencement of the regulation, unless the Commission otherwise orders.

**23 Age or residence not relevant to liability** (cf former ss 53D, 72)

Compensation under this Act is payable to a person, and proceedings for the recovery of compensation under this Act may be instituted by a person, even though:

(a) the person is under the age of 18 years, or

(b) the person resides, or at any time resided, outside New South Wales.

**24 Illegal employment** (cf former s 53I)

If, in any proceedings for the recovery of compensation under this Act, it appears that the contract of service or training contract under which the injured person was engaged at the time when the injury happened was illegal, the matter may be dealt with as if the injured person had at that time been a worker under a valid contract of service or training contract.

## **Part 3 Compensation—benefits**

### **Division 1 Compensation payable on death**

**25 Death of worker leaving dependants** (cf former s 8 (1))

(1) If death results from an injury, the amount of compensation payable by the employer under this Act shall be:

(a) the amount of \$425,000 (the ***lump sum death benefit***), which is to be apportioned among any dependants who are wholly or partly dependent for support on the worker or (if there are no such dependants) paid to the worker's legal personal representative, and

(b) in addition, an amount of \$66.60 per week in respect of:

(i) each dependent child of the worker under the age of 16 years, and

(ii) each dependent child of the worker being a student over the age of 16 years but under the age of 21 years.

(2) Payments in respect of a dependent child under subsection (1) (b) shall continue:

- (a) except as provided by paragraph (b)—until the child dies or reaches the age of 16 years, whichever first occurs, or
  - (b) in the case of a dependent child who is a student at the time of the worker's death or after reaching the age of 16 years—until the child dies, reaches the age of 21 years or ceases to be a student, whichever first occurs.
- (3) The amount of any weekly payments, or other compensation payable under this Act, shall not be deducted from the amounts referred to in subsection (1) (a) or (b).
- (4) If an amount mentioned in subsection (1) (a) at any time after the commencement of this Act:
- (a) is adjusted by the operation of Division 6, or
  - (b) is adjusted by an amendment of this section,
- the compensation payable under subsection (1) (a) is to be calculated by reference to the amount in force at the date of death.
- (4A) If the death of a worker results both from an injury received before the adjustment of an amount mentioned in subsection (1) (a) and an injury received after that adjustment, the worker shall, for the purposes of subsection (1) (a), be treated as having died as a result of the injury received after that adjustment.
- (5) In this section:
- child of the worker** means a child or stepchild of the worker and includes a person to whom the worker stood in the place of a parent.
- dependent child of the worker** means a child of the worker who was wholly or partly dependent for support on the worker.
- student** means a person receiving full-time education at a school, college or university.

## 26 Funeral expenses

If compensation is payable under this Division for a death resulting from an injury, the employer must pay additional compensation equal to reasonable funeral expenses not exceeding \$9,000 or such other amount as may be prescribed by the regulations.

## 27, 27A (Repealed)

## 28 Expenses of transporting body (cf former s 8 (4A))

If compensation is payable under this Division and the usual place of residence of the worker was, at the time of the worker's death, in Australia, the employer shall pay additional compensation equal to the reasonable cost of transporting the body of the

worker to:

- (a) what would, in the circumstances, be an appropriate place for its preparation for burial or cremation, or
  - (b) that usual place of residence,
- whichever is the lesser cost.

**29 Apportionment of payments between dependants** (cf former s 59)

- (1) The compensation payable under this Division to each dependant of a deceased worker may be apportioned by the Commission or by the Public Trustee.
- (1A) The lump sum death benefit payable under this Division is not to be apportioned if a deceased worker leaves only one dependant (whether wholly or partly dependent on the worker for support) and the whole of the lump sum death benefit is to be paid to that one dependant.
- (1B) In apportioning the lump sum death benefit payable under this Division between 2 or more dependants, the whole lump sum death benefit is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full lump sum death benefit).
- (2) Application for apportionment may be made by or on behalf of a person entitled to the compensation:
  - (a) to the Public Trustee, or
  - (b) to the Commission (whether or not an application has been made to the Public Trustee or the Public Trustee has made a decision).
- (3) The Public Trustee may decline to deal with an application for apportionment and advise the parties to apply to the Commission.
- (4) The Public Trustee is not to deal with an application for apportionment of compensation if an application for apportionment of the same compensation is before the Commission.
- (5) A decision by the Public Trustee to apportion compensation under this Division is subject to any decision made by the Commission with respect to the matter.
- (6) If there are both total and partial dependants of a deceased worker, the compensation may be apportioned partly to the total and partly to the partial dependants.
- (7) If a dependant dies:
  - (a) before a claim under this Division is made, or

(b) if a claim has been made, before an agreement or award has been arrived at or made,

the legal personal representative of the dependant has no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the worker.

(8) The regulations may make provision for or with respect to the publication of applications for apportionment and any other matter connected with apportionment.

### **30 Review of apportionment among dependants**

- (1) The Commission or the Public Trustee may, on account of the variation of the circumstances of the various dependants or for any other sufficient cause, vary any previous apportionment among the dependants of a deceased worker of compensation under this Division.
- (2) Application for a variation may be made by or on behalf of the person entitled to compensation to the Commission or the Public Trustee.
- (3) The Public Trustee may apply to the Commission for any such variation of a previous apportionment made by the Public Trustee or by the Commission.
- (4) The Public Trustee is not to deal with an application for variation of any previous apportionment if an application for variation of the same previous apportionment is before the Commission.
- (5) The Public Trustee is not to vary an apportionment made by the Commission.

### **31 Payment in respect of dependent children** (cf former s 8 (1A))

- (1) Compensation payable under section 25 (1) (b) in respect of a dependent child of a deceased worker shall, unless the Commission otherwise orders:
  - (a) be paid to the surviving parent of the child concerned, if there is one, or
  - (b) be paid to the Public Trustee for the benefit of the child or to any person (approved by the Public Trustee) having the care or custody of the dependent child, if no such parent survives.
- (2) If the Commission makes an order under subsection (1), the compensation is payable in accordance with the order.

### **32 Payment where no dependants** (cf former s 57 (4))

If a deceased worker leaves no dependants, compensation payable under this Division shall be paid to the worker's legal personal representative or, if there is no such representative, to the person to whom the payment of the expenses for which the compensation is payable is due.



## **Division 2 Weekly compensation by way of income support**

### **33 Weekly compensation during total or partial incapacity for work** (cf former s 9 (1))

If total or partial incapacity for work results from an injury, the compensation payable by the employer under this Act to the injured worker shall include a weekly payment during the incapacity.

**Note—**

Chapter 3 of the 1998 Act (Workplace injury management) provides that, if a worker fails unreasonably to comply with a requirement of that Chapter after being requested to do so by an insurer, the worker has no entitlement to weekly payments of compensation for the period that the failure continues.

### **34 Definition of first 26 weeks of incapacity**

- (1) For the purposes of this Division, the first 26 weeks of incapacity, in relation to a worker, is the period of incapacity for work (whether total or partial, or both) not exceeding 26 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity.
- (2) A reference in subsection (1) to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.
- (3) For the avoidance of doubt, the first 26 weeks of incapacity does not include any period during which there is no weekly compensation payable in accordance with this Division, whether because of the operation of section 40 or otherwise.

### **35 Maximum weekly payment**

- (1) The maximum weekly payment of compensation to an injured worker in respect of any period of total or partial incapacity for work shall not in any case exceed \$1,000.
- (2) If the amount mentioned in subsection (1):
  - (a) is adjusted by the operation of Division 6, or
  - (b) is adjusted by an amendment of this section,the maximum weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of incapacity for work occurring on and after that date, to be determined by reference to that amount as so adjusted.
- (3) Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted.

**36 Weekly payment during total incapacity—first 26 weeks** (cf former s 9 (1) (a))

- (1) The weekly payment of compensation to an injured worker in respect of any period of total incapacity for work during the first 26 weeks of incapacity shall be the amount of the worker's current weekly wage rate.
- (2) In this section:  
**current weekly wage rate**, in relation to a worker, means the worker's current weekly wage rate determined from time to time in accordance with section 42.

**37 Weekly payment during total incapacity—after first 26 weeks** (cf former s 9 (1), (4))

- (1) The weekly payment of compensation to an injured worker in respect of any period of total incapacity for work (not being a period during the first 26 weeks of incapacity) shall be:
  - (a) 90 per cent of the worker's average weekly earnings, except that:
    - (i) the payment shall not exceed \$235.20 per week,
    - (ii) in the case of a worker who is over 21 years of age at the time of payment—the payment shall not be less than \$187.10 per week, and
    - (iii) in the case of a worker whose average weekly earnings do not exceed \$170 per week—the payment shall be 100 per cent of those earnings or \$153, whichever is the lesser amount,
  - (b) in addition, \$62 per week in respect of:
    - (i) a dependent wife or dependent husband of the worker, or
    - (ii) if there is no dependent wife or dependent husband at any time during which weekly payments are payable—any one dependent de facto spouse or other family member of the worker, and
  - (c) in addition:
    - (i) in respect of the dependent children of the worker, the following amounts per week:

<b>No of dependent children</b>	<b>Additional amount per week</b>
1 dependent child	\$44.30
2 dependent children	\$99.10
3 dependent children	\$164.16
4 dependent children	\$230.90

5 or more dependent children	\$230.90 plus \$66.60 for each child in excess of 4
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- (ii) if there are no dependent children at any time during which weekly payments are payable—in respect of the dependent brothers and sisters of the worker, the same amounts per week as are payable under subparagraph (i) in respect of dependent children of the worker.

- (1A) Despite subsection (1), for a maximum of 26 weeks the weekly payment of compensation to an injured worker in respect of any period of total incapacity for work (whether the period is during or after, or partly during and partly after, the first 26 weeks of incapacity) is the amount specified in section 36. This subsection applies even if the injury concerned resulted in any period of partial incapacity for work in respect of which the worker received or receives weekly payments of compensation.
- (2) The total weekly payment under subsection (1) shall not exceed the worker's current weekly wage rate determined from time to time in accordance with section 42.
- (3) A weekly payment made under this section in respect of a dependent wife, husband, de facto spouse or other family member, child, brother or sister is payable only during the period of dependency.
- (4) For the purposes of this section, a person is a dependent wife, husband, de facto spouse or other family member, child, brother or sister in relation to a worker if the person is totally or mainly dependent for support on the worker at the date compensation becomes payable to the worker or (whether married to the worker or born before or after that date) becomes so dependent after that date.
- (5) A person is not precluded from being totally or mainly dependent for support on a worker merely because:
- (a) in the case of a child—a payment is made in respect of the child under the [Social Security Act 1991](#) of the Commonwealth, or
  - (b) in the case of a de facto spouse or other family member—the worker pays wages to the person for the performance of domestic services for the worker.
- (6) A husband, wife or de facto spouse or other family member of the worker who, at the time of the injury to the worker:
- (a) was employed, and
  - (b) was not totally or mainly dependent for support on the worker merely because of earnings from that employment,

shall be regarded as being so dependent at the time of the injury if the Commission is satisfied that the person left that employment for the purpose of caring for the worker.

(6A) If an amount mentioned in subsection (1):

- (a) is adjusted by the operation of Division 6, or
- (b) is adjusted by an amendment of this section,

the weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of total incapacity for work occurring on and after that date (not being a period during the first 26 weeks of incapacity), to be determined by reference to that amount as so adjusted.

(6B) Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted.

(7) In this section:

**appropriate period**, for the purposes of the calculation of “average weekly earnings” in relation to a worker, means the period of 12 months or, if the worker has been employed with the employer concerned for less than 12 months at the time of the injury, that lesser period.

**average weekly earnings**, in relation to a worker, means the average weekly earnings of the worker determined in accordance with section 43 during the appropriate period before whichever of the following times produces the higher average weekly earnings:

- (a) the time of the injury concerned,
- (b) the time at which the relevant weekly payment of compensation is due,

with the determination under paragraph (b) made on the assumption that the worker had been earning the wage or salary which the worker would probably have been earning if the worker had remained uninjured and continued to be employed in the same or some comparable employment.

**brother or sister**, in relation to a worker, means a brother or sister of the worker who is:

- (a) under the age of 16 years, or
- (b) a student,

but does not include a person in respect of whom a weekly payment is being made under subsection (1) (b) (ii).

**child**, in relation to a worker, means:

- (a) child or stepchild of the worker who is under the age of 16 years,

(b) a person under the age of 16 years to whom the worker stands in the place of a parent, or

(c) a student who is a child or stepchild of the worker or is a person to whom the worker stands in the place of a parent.

**de facto spouse or other family member**, in relation to a worker, means a person who:

(a) in relation to:

(i) an injury received before the commencement of Schedule 5 [2] to the *Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998*—although not legally married to the worker, lives with the worker as the worker's husband or wife on a permanent and genuine domestic basis, or

(ii) an injury received after that commencement—is the other party to a de facto relationship with the worker, or

(b) is the worker's father, mother, grandfather, grandmother, stepfather, stepmother, grandson, grand-daughter, brother, sister, half-brother or half-sister and is over the age of 16 years, or

(c) is over the age of 21 years and is caring for any child of the worker.

**student** means a person of or over the age of 16 years but under the age of 21 years who is receiving full-time education at a school, college or university.

### **38 Partially incapacitated workers not suitably employed—special initial payments while seeking employment**

(1) **Entitlement** If:

(a) a worker is partially incapacitated for work as a result of an injury, and

(b) the worker is not suitably employed during any period of that partial incapacity for work,

the worker is to be compensated in accordance with this section during each such period as if the worker's incapacity for work were total.

(2) **Maximum period of entitlement** The maximum total period for which the worker may be so compensated is 52 weeks.

(3) **Rate of compensation** When a worker is so compensated, the compensation is payable at the relevant rate prescribed by this Act for the period of incapacity concerned. However, after the first 26 weeks of incapacity, the rate is the greater of the following rates:

- (a) 80% of the worker's current weekly wage rate (that is, 80% of the rate prescribed by this Act for the first 26 weeks of incapacity),
  - (b) the statutory indexed rate (that is, the rate prescribed by this Act for a period of incapacity after the first 26 weeks).
- (4) **Worker to seek suitable employment** Compensation is not payable to a worker in accordance with this section during any period unless the worker is seeking suitable employment during that period (as determined in accordance with section 38A).

### **38A Determination of whether worker seeking suitable employment**

- (1) **Application** This section provides for the determination of whether a worker is seeking suitable employment for the purposes of section 38 and section 52A (Discontinuation of weekly payments after 2 years).
- (2) **General requirements** The worker is not to be regarded as seeking suitable employment unless:
- (a) the worker is ready, willing and able to accept an offer of suitable employment from the employer, and
  - (b) the worker has supplied the employer (or the insurer who is liable to indemnify the employer) with a medical certificate with respect to the worker's partial incapacity for work, being a medical certificate that is in or to the effect of a form approved by the Authority, or that is in any other form and contains information that is reasonably sufficient in the circumstances to assist in determining what is suitable employment for the worker, and
  - (c) the worker has requested the employer (or such an insurer) to provide suitable employment or it is apparent from the circumstances that the worker is ready, willing and able to accept an offer of suitable employment from the employer, and
  - (d) the worker is taking reasonable steps to obtain suitable employment from some other person.

Taking reasonable steps to obtain suitable employment includes seeking or receiving rehabilitation training that is reasonably necessary to improve the worker's employment prospects.

- (3) **Notice of requirement relating to obtaining suitable employment from other person** The requirement under subsection (2) (d) does not apply unless the worker has been notified of the requirement in accordance with this subsection.

Such a notice:

- (a) must be given in writing by the insurer or self-insurer concerned, and

- (b) must state that the worker is required to take reasonable steps to obtain suitable employment from some other person in order to remain entitled to compensation under section 38, and
- (c) may set out particular reasonable steps that can be taken by the worker in order to satisfy that general requirement, and
- (d) is subject to, and must comply with, any regulations and (subject to the regulations) any claims procedures notified by the Authority to insurers and self-insurers, and
- (e) does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

The requirement under subsection (2) (d) does not apply, and a notice is not to be given under this subsection, while action is being taken by or on behalf of the employer to arrange or explore the possibility of suitable employment with the employer.

- (4) **Notice not applicable when proceedings pending etc** If proceedings relating to the payment of compensation under section 38 or to the discontinuation of weekly payments under section 52A are before the Commission or the insurer or self-insurer has denied liability to pay any such compensation:
  - (a) a notice is not to be given under subsection (3), and the requirement under subsection (2) (d) applies without any such notice being given, and
  - (b) particular steps to satisfy that requirement that are set out in a notice previously given do not restrict the determination of the matter by the Commission.
- (5) **Workers treated as not seeking suitable employment** A worker is not to be regarded as seeking suitable employment if the worker has unreasonably refused an offer from any person of suitable employment or necessary rehabilitation training. A worker is also not to be regarded as seeking suitable employment if the worker:
  - (a) unreasonably refuses to have an assessment made of the worker's employment prospects, or
  - (b) unreasonably refuses to co-operate in procedures connected with the provision or arrangement of suitable employment or rehabilitation training under the employer's return-to-work program.
- (6) **Court orders** An order of the Commission relating to the weekly payment of compensation:
  - (a) may be subject to conditions relating to the worker taking reasonable steps to obtain suitable employment during any weekly payments under section 38, and

- (b) may include directions relating to the adjustment of the amount of weekly payments under section 38 for any future period of payments under section 40 when the worker obtains employment or when the period for payments under section 38 comes to an end.

(7) **Definitions** In this section:

**employer** of a worker who is partially incapacitated for work means the employer liable to pay compensation to the worker in respect of the incapacity or, if there are 2 or more such employers, the employer so liable who last employed the worker.

**refusal** of an offer or to do a thing includes a failure to accept the offer or to do the thing.

**rehabilitation training** means training of a vocationally useful kind, and includes vocational re-education, work-trials, occupational rehabilitation services or treatment provided by way of rehabilitation.

**suitable employment** means suitable employment within the meaning of section 43A.

**39 Incapacity treated as total—“odd-lot” rule** (cf former s 12)

(1) If:

- (a) a worker is fit for employment of a kind not commonly available for a person in the worker’s circumstances, and
- (b) but for this section, the worker would be entitled to be compensated under this Division as totally incapacitated for work,

the worker is not entitled to be so compensated unless:

- (c) the worker proves to the satisfaction of the Commission that the worker has taken all reasonable steps to obtain (but has failed to obtain) employment for which the worker is fit, and
- (d) payment is made in accordance with the Commission’s order.

(2) An order of the Commission under this section may be limited to such period, and be subject to such conditions, as may be specified in the order.

(3) The Commission may, in determining whether a worker has taken all reasonable steps to obtain employment for the purposes of this section, have regard to:

- (a) whether the worker was made aware of the worker’s obligation to take those steps, and
- (b) circumstances of the kind referred to in section 38A (5).



- (4) The “odd-lot” rule and any similar rule for determining whether a worker is totally or partially incapacitated for work is subject to the provisions of this section.
- (5) This section does not affect the operation of section 38 or 55.
- (6) The Registrar may make any order that the Commission may make under this section if the matter must be determined for the purposes of any interim payment direction by the Registrar.

**40 Weekly payments during partial incapacity—general** (cf former ss 9, 11)

- (1) **Entitlement** The weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work is to be an amount not exceeding the reduction in the worker’s weekly earnings, but is to bear such relation to the amount of that reduction as may appear proper in the circumstances of the case.
- (2) **Calculation of reduction in earnings of worker—general** The reduction in the worker’s weekly earnings is (except as provided by this section) the difference between:
  - (a) the weekly amount which the worker would probably have been earning as a worker but for the injury and had the worker continued to be employed in the same or some comparable employment (but not exceeding \$1,000), and
  - (b) the average weekly amount that the worker is earning, or would be able to earn in some suitable employment, from time to time after the injury (but not exceeding \$1,000).
- (2A) **Calculation of reduction in earnings of worker—workers rejecting suitable employment** If the worker has unreasonably rejected suitable employment, the reduction in the worker’s weekly earnings is the difference between:
  - (a) the current weekly wage rate for the worker’s pre-injury employment (but not exceeding \$1,000), and
  - (b) the current weekly wage rate for some suitable employment for the worker from time to time after the injury (but not exceeding \$1,000).
- (2B) For the purposes of subsection (2A), a worker unreasonably rejects suitable employment if:
  - (a) a period of 28 days has elapsed since the worker was offered suitable employment by any person and the worker has unreasonably refused or not accepted the offer (whether or not the offer was available during the whole of that period), or
  - (b) the worker obtains suitable employment with any person but subsequently unreasonably discontinues that employment.

- (3) **Ability to earn in suitable employment** The determination of the amount that an injured worker would be able to earn in some suitable employment is subject to the following:
- (a) the determination is to be based on the worker's ability to earn in the general labour market reasonably accessible to the worker,
  - (b) the determination is to be made having regard to suitable employment for the worker within the meaning of section 43A.
- (4) **Rehabilitation—unemployed (or not fully employed) workers** An injured worker who duly undertakes rehabilitation training under section 38 is not to be disadvantaged under this section by any increase in the amount that the worker would be able to earn merely because of that training, unless the worker unreasonably refuses an offer of suitable employment for which the worker has been trained. The Commission may determine any dispute about the operation of this subsection.
- (5) **Maximum rate of compensation** The weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work is not to exceed the weekly payment that would be payable to the worker if it were a period of total incapacity for work.
- (6) **Adjustment of compensation—indexation** If it appears proper in the circumstances of the case, the weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work may (subject to subsection (5)) be adjusted to take account of any adjustment because of the operation of Division 6 in the weekly payment that would be payable to the worker if it were a period of total incapacity for work.
- (7) **Adjustment of maximum amounts—application** If an amount mentioned in subsection (2):
- (a) is adjusted by the operation of Division 6, or
  - (b) is adjusted by an amendment of this section,
- the weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of partial incapacity for work occurring on and after that date, to be determined by reference to that amount as so adjusted. Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted.
- (8) **Exemption** This section does not apply to any period of partial incapacity for work during which the worker is compensated under this Act as if the worker's incapacity for work were total.

#### **40A Assessment of incapacitated worker's ability to earn**

- (1) An injured worker who is partially incapacitated for work may be required by the

employer to undergo an assessment of the worker's ability to earn in some suitable employment.

- (2) An injured worker is not required to undergo such an assessment unless the worker has been informed about the possible entitlements of the worker under section 38 and the requirements for the worker to obtain those entitlements, and about the possible effects of section 52A on the worker. The giving of that information does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
- (3) The Authority may, by notice to insurers and self-insurers, require any such information to be given in the form approved by the Authority.
- (4) Any such assessment is at the cost of the person who requires it.
- (5) If an injured worker fails, without reasonable excuse, to undergo any such assessment, the right to weekly compensation for partial incapacity for work is suspended while the failure continues.

**41 Incapacity for period less than 1 week** (cf former s 9 (1) (a))

A weekly payment of compensation for total or partial incapacity for work in respect of a period of less than 1 week shall be reduced by the same proportion as normal working time during that part of the week bears to the worker's full normal working week.

**42 Current weekly wage rate** (cf former s 9 (8)-(13))

- (1) Subject to this section, a reference in this Division to the current weekly wage rate of a worker, being a worker who is incapacitated for work and who, immediately before being incapacitated:
  - (a) was remunerated under an award fixing or providing for the fixing of a rate for a weekly or longer period (not being a worker who belongs to a class of workers prescribed by the regulations for the purposes of paragraph (c))—is, at any time during the incapacity, a reference to the rate of remuneration under that award at that time for 1 week in respect of the work being performed by the worker immediately before being incapacitated,
  - (b) was an employee of the Crown or of an employer constituted by an Act and was remunerated, pursuant to a determination made by the Crown or made under the [Public Service Act 1979](#) or under the provisions of any other Act, being a determination fixing or providing for the fixing of a rate for a weekly or longer period—is, at any time during that incapacity, a reference to the rate of remuneration under that determination at that time for 1 week in respect of the work being performed by the worker immediately before being incapacitated,
  - (c) belonged to a class of workers prescribed by the regulations for the purposes of

this paragraph—is a reference to a rate calculated in accordance with a formula (or calculated in any other manner) prescribed by the regulations in respect of that class of workers for the purposes of this paragraph, or

(d) was not a worker or employee to whom paragraph (a), (b) or (c) applies—is a reference to the prescribed proportion of the worker's average weekly earnings in respect of work being performed by the worker immediately before becoming incapacitated or, if a specific rate is prescribed by the regulations for the purposes of this paragraph, is a reference to that rate.

(2) If a regulation made for the purposes of subsection (1) (c) or (5) (b) contains a reference to an award or a provision of an award and the award or provision, in so far as it relates to a particular worker, is subsequently varied or replaced, the reference shall, on and from the date of the variation or replacement, be deemed, in relation to that worker, to be a reference to:

(a) the award or provision as so varied, or

(b) the award or provision which replaced that award or provision,

as the case may be.

(3) For the purposes of subsection (1) (a), if a worker is not remunerated in respect of the work performed by the worker under an award fixing or providing for the fixing of a rate for a weekly or longer period but:

(a) there is such an award under which the worker would be entitled to be remunerated if the worker performed that work under a contract of service—the worker shall be deemed to be remunerated in respect of that work under that lastmentioned award, or

(b) although paragraph (a) does not apply, there is an award fixing or providing for the fixing of a rate for a weekly or longer period which, having regard to the nature of that work, it would be fair and reasonable to apply to and in respect of that work—the worker shall be deemed to be remunerated in respect of that work under that lastmentioned award.

(4) Subject to subsections (6) and (7), if the amount of a part-time worker's current weekly wage rate, as determined under subsection (1), exceeds the worker's average weekly earnings, a reference in this Division to that worker's current weekly wage rate is a reference to those average weekly earnings.

(5) In subsection (4), the reference to a part-time worker:

(a) includes a reference to a worker belonging to a class of workers prescribed by the regulations for the purposes of this paragraph, and

(b) does not include a reference to a worker belonging to a class of workers

prescribed by the regulations for the purposes of this paragraph.

- (6) In determining a worker's current weekly wage rate in accordance with subsection (1) (a) or (b) or (4), any amount paid or payable to the worker:
- (a) in respect of shift work, overtime or other penalty rates,
  - (b) under the terms of the worker's employment in excess of the ordinary rate fixed by any award for the work performed by the worker, or
  - (c) to cover special expenses incurred by the worker because of the nature of the worker's employment,

is, except in so far as the regulations otherwise provide, to be disregarded.

- (7) A reference in this Division to the current weekly wage rate of a worker, being a worker who:

(a) at the time of the worker's injury, was employed under 2 or more contracts of service under which the worker worked at one time for one employer and at another time for another employer, and

(b) is incapacitated from performing work under any 2 or more of those contracts,

is a reference:

(c) except as provided in paragraph (d)—to the sum of the current weekly wage rates applicable to the worker under subsection (1) or (4) as a worker employed by each of the employers by whom the worker was employed under the contracts referred to in paragraph (b), or

(d) where the total of the worker's ordinary weekly hours of work under the contracts referred to in paragraph (b) exceeded 40—to an amount that bears to the sum referred to in paragraph (c) the same proportion as 40 bears to that total,

and the current weekly wage rate of such a worker, as determined under this section, shall be deemed to be the worker's current weekly wage rate as a worker in the employment of the employer for whom the worker was working at the time of the worker's injury to the exclusion of any other employers.

- (7A) If the application of subsection (7) to an injured worker results in the current weekly wage rate of the worker being less than the rate that would be determined under this section if regard was only had to employment with the employer for whom the worker was working at the time of the worker's injury, a reference to the current weekly wage rate of the worker is, despite that subsection, a reference to that higher rate.

- (8) In this section:

***appropriate period***, for the purposes of the calculation of "average weekly

earnings” in relation to a worker, means the period of 12 months or, if the worker has been employed with the employer concerned for less than 12 months at the time of the injury, that lesser period.

**average weekly earnings**, in relation to a worker, means the average weekly earnings of the worker determined in accordance with section 43 during the appropriate period before whichever of the following times produces the higher average weekly earnings:

- (a) the time of the injury concerned,
- (b) the time at which the relevant weekly payment of compensation is due,

with the determination under paragraph (b) made on the assumption that the worker had been earning the wage or salary which the worker would probably have been earning if the worker had remained uninjured and continued to be employed in the same or some comparable employment.

**award** means:

- (a) an award in force under the *Industrial Arbitration Act 1940* or an award or industrial agreement, within the meaning of the *Conciliation and Arbitration Act 1904* of the Commonwealth, that is in force,
- (b) an industrial agreement or enterprise agreement in force under the *Industrial Arbitration Act 1940* or the *Industrial Relations Act 1991*,
- (c) an agreement made under the *Public Service Act 1979* or an agreement with respect to wages or salaries entered into under the provisions of any other Act by an employer constituted by that other Act with any association or organisation representing any group or class of employees, or
- (d) an award made by the Coal Industry Tribunal under the *Coal Industry Act 1946*,
- (e) (without limiting the above) includes a State industrial instrument,

and includes any such award, industrial agreement or other agreement or instrument as from time to time amended.

**prescribed proportion** means 80 per cent or, if the regulations prescribe some other percentage for the purposes of this section, that other percentage.

#### **43 Computation of average weekly earnings** (cf former s 14)

- (1) For the purposes of the provisions of this Act relating to “earnings” and “average weekly earnings” of a worker, the following rules shall be observed:
  - (a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated, except that

if, because of the shortness of the time during which the worker has been in the employment of the employer or the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average weekly amount which, during the 12 months previous to the injury, was being earned:

- (i) by a person in the same grade, employed at the same work, by the same employer, or
  - (ii) if there is no person so employed, by a person in the same grade employed in the same class of employment, and in the same district.
- (b) If the worker has entered into concurrent contracts of service with 2 or more employers under which he or she worked at one time for one such employer, and at another time for another such employer, the worker's average weekly earnings shall be computed as if the worker's earnings under all such contracts were earnings in the employment of the employer for whom the worker was working at the time of the injury.
- (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury, uninterrupted by absence from work due to illness, strikes, lockouts, bad weather or any other unavoidable cause.
- (d) If the employer has been accustomed to pay to the worker a sum to cover any special expenses incurred by the worker because of the nature of the employment, the sum so paid shall not be reckoned as part of the earnings.
- (e) The average weekly earnings of a casual worker, that is to say a worker whose contracts of service are mainly contracts for separate periods each of which is of not more than 5 working days in the same industry, shall be computed as if the worker's earnings under all his or her contracts of service, for a period of 12 months preceding the injury or any shorter period during which the worker may have been engaged in the industry, were earnings in the employment of the employer for whom the worker was working at the time of the injury.
- (f) If a worker is a worker to whom paragraph (e) applies or has been absent from work by reason of illness, strikes, lockouts, bad weather, intermittency of employment, slackness of trade or any other reasonable cause, the average weekly earnings of the worker shall, notwithstanding the foregoing provisions of this section:
- (i) in the case of a worker who is 21 years of age or over, be deemed to be not less than the full wage for a full normal working week of that worker or the basic wage, whichever is the greater, and

(ii) in the case of any other worker, be deemed to be not less than the full wage for a full normal working week of that worker.

(1A) Any relevant rules provided by this section are also to be observed in determining the average weekly amount that a worker would be able to earn in suitable employment for the purposes of section 40. If there is an ordinary weekly rate of pay generally applicable to employment of that kind under industrial law, the average weekly amount is to be determined by reference to that rate of pay together with any other likely weekly payments which it would be proper to include in the circumstances of the case (such as overtime or other amounts payable under common industry or other practice).

(2) An employer shall, within 28 days, or such other period as may be prescribed, after a request from the employer's injured worker, supply to the worker, in writing and in accordance with any requirements of the regulations:

- (a) such details of the relevant award ("award" having the same meaning as in section 42) and such classification details as will enable the worker to determine his or her current weekly wage rate for the purposes of this Act,
- (b) such details of the earnings of the worker as will enable the worker to determine his or her weekly earnings for the purposes of this Act, or
- (c) such details of the earnings of at least 2 persons employed by the employer at the same or a comparable grade and work as the worker as will enable the worker to determine, for the purposes of section 36, 37, 40 or 55, the amount which the worker would probably have been earning if the worker had remained uninjured and continued to be employed in the same or some comparable employment.

(2A) An employer who fails without reasonable excuse to comply with subsection (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

(2B) The regulations may make provision for or with respect to:

- (a) the manner and form in which the details required to be provided by subsection (2) are to be provided, and
- (b) requiring an employer to certify as to the completeness and accuracy of details provided by the employer for the purposes of subsection (2).

(3) In this section, **basic wage** means the basic wage in force under clause 15 of Schedule 4 to the *Industrial Relations Act 1996*, at the time of the computation.

#### **43A Suitable employment**

(1) For the purposes of sections 38, 38A and 40:



***suitable employment***, in relation to a worker, means employment in work for which the worker is suited, having regard to the following:

- (a) the nature of the worker's incapacity and pre-injury employment,
- (b) the worker's age, education, skills and work experience,
- (c) the worker's place of residence,
- (d) the details given in the medical certificate supplied by the worker,
- (e) the provisions of any injury management plan for the worker,
- (f) any suitable employment for which the worker has received rehabilitation training,
- (g) the length of time the worker has been seeking suitable employment,
- (h) any other relevant circumstances.

(2) In the case of employment provided by the worker's employer, suitable employment includes:

(a) employment in respect of which:

- (i) the number of hours each day or week that the worker performs work, or
- (ii) the range of duties the worker performs,

is suitably increased in stages (in accordance with a rehabilitation plan or return-to-work plan or otherwise), and

(b) if the employer does not provide employment involving the performance of work duties—suitable training of a vocationally useful kind provided:

- (i) by the employer at the workplace or elsewhere, or
- (ii) by any other person or body under arrangements made with the employer,

but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends the training concerned.

(3) However, in any such case, suitable employment does not include:

- (a) employment that is merely of a token nature and does not involve useful work having regard to the employer's trade or business, or
- (b) employment that is demeaning in nature, having regard to subsection (1) (a) and (b) and to the worker's other employment prospects.

(4) A worker is to be regarded as suitably employed if:

- (a) the worker's employer provides the worker with, or the worker obtains, suitable employment, or
- (b) the worker has been reinstated to the worker's former employment under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

**44 Incapacitated worker reaching 21 years of age—special provision** (cf former s 9 (4A))

If:

- (a) a worker in receipt of weekly payments of compensation was under 21 years of age at the date of the injury,
- (b) the worker reaches the age of 21 years, and
- (c) the worker's average weekly earnings are less than the weekly sum which the worker would probably have been earning on reaching 21 years of age if the worker had remained uninjured,

the weekly payment of compensation shall be increased to such amount as would have been payable if the average weekly earnings had been equivalent to that weekly sum.

**45 Reduction of weekly payments to qualify for other benefits**

- (1) The Commission may, on the determination of an application for any weekly payment of compensation or on a review under this Act of any weekly payment of compensation, order that the weekly payment:

- (a) is not payable, or
- (b) is reduced to a specified amount or in a specified manner,

if the worker, or any spouse or other person related to the worker, would as a result be qualified to receive any pension, allowance or other benefit under the *Social Security Act 1991* of the Commonwealth or under any other Act or law.

- (2) Any such order has effect according to its tenor.
- (3) Any such order does not have effect for the purposes of determining (if applicable) the lump sum payable on the commutation of a weekly payment under this Act or the redemption of a weekly payment under section 15 of the former Act (as applied by Schedule 6 to this Act).

**46 Reduction of weekly payments to prevent dual benefits** (cf former s 13)

- (1) The Commission may, on the determination of an application for any weekly payment of compensation or on a review under this Act of any weekly payment of compensation, order that the weekly payment be reduced to prevent dual benefits of the same kind being payable by the employer during and in respect of the incapacity

for work.

(2) Any such order shall have effect according to its tenor.

(3) This section does not affect the operation of section 49 or 50.

**47 Incapacity deemed to exist in certain cases** (cf former s 12A)

A worker who, as a result of injury, is unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment shall be deemed to be incapacitated for employment of that kind.

**48 Compensation payable despite existing incapacity** (cf former s 7 (2A))

(1) Compensation is payable under this Division in respect of an injury which, but for existing incapacity, would have resulted in total or partial incapacity for work of the worker.

(2) Any such compensation is payable as if total or partial incapacity for work had in fact resulted from the injury.

(3) In this section:

**existing incapacity** means total incapacity for work by disease or other cause:

(a) not entitling the worker to compensation under this Act, and

(b) existing at the time when the total or partial incapacity for work would otherwise have resulted from the injury.

**49 Weekly compensation payable despite holiday pay etc** (cf former s 7 (2B))

(1) Compensation is payable under this Division to a worker in respect of any period of incapacity for work even though the worker has received or is entitled to receive in respect of the period any payment, allowance or benefit for holidays, annual holidays or long service leave under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment.

(2) The amount of compensation so payable is the amount which would have been payable to the worker had the worker not received or been entitled to receive in respect of the period any such payment, allowance or benefit.

**50 Weekly compensation and sick leave** (cf former s 7 (2C))

(1) Compensation is payable to a worker in respect of a period of incapacity for work even though the worker has received or is entitled to receive in respect of that period any wages for sick leave under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment.

- (2) If a worker is paid compensation by the employer in respect of any period of incapacity for work in respect of which the employer is, or but for this section would be, liable under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment to pay to the worker any wages for sick leave:
- (a) that liability shall, to the extent of the compensation so paid, be deemed to have been satisfied by that payment notwithstanding the terms of that Act, award, agreement or contract, and
  - (b) the amount of that compensation shall, for the purposes of subsections (4) and (5), be deemed to have been paid as compensation and not as wages.
- (3) If a worker, in respect of any period of incapacity for work in respect of which the employer is liable to pay compensation to the worker, is paid wages for sick leave by the employer and either an award is made afterwards for the payment of compensation to the worker in respect of that period or the employer agrees afterwards that compensation be paid to the worker in respect of that period:
- (a) the employer's liability to pay compensation in respect of that period shall, to the extent of the wages paid, be deemed to have been satisfied by that payment, and
  - (b) the wages shall, to the extent of the compensation, be deemed for the purposes of subsections (4) and (5) to have been paid as compensation and not as wages.
- (4) If a worker is paid any compensation in respect of a period of incapacity for work, the worker shall, in respect of any entitlement to sick leave, or wages for sick leave, accruing after the expiration of that period:
- (a) if the worker has not also been paid wages for sick leave in respect of that period—be deemed not to have been entitled to or granted, or to have received, any sick leave or wages for sick leave in respect of that period, or
  - (b) if the worker has also been paid wages for sick leave in respect of that period—be deemed not to have been entitled to or granted, or not to have received, sick leave or wages for sick leave in respect of the whole of that period, but only in respect of a lesser period calculated as provided by subsection (5).
- (5) The lesser period referred to in subsection (4) is a period which bears to the period of incapacity of the worker the same proportion as the wages paid to the worker in respect of the period of incapacity bear to the total amount of the wages and compensation paid to the worker in respect of the period of incapacity.

(6) In this section:

**compensation** means weekly payments of compensation under this Division.

**wages** means wages, salary, allowance or other payment.

**51 (Repealed)**

**52 Termination of weekly payments on retiring age** (cf former s 60A)

(1) In this section:

**retiring age**, in relation to a person, means the age at which the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1991* of the Commonwealth.

(2) If a person:

- (a) receives an injury before reaching the retiring age—a weekly payment of compensation shall not be made in respect of any resulting period of incapacity for work occurring after the first anniversary of the date on which that person reaches the retiring age, or
- (b) receives an injury on or after reaching the retiring age—a weekly payment of compensation shall not be made in respect of any resulting period of incapacity for work occurring more than 12 months after the first occasion of incapacity for work resulting from the injury.

(3) This section has effect notwithstanding anything to the contrary in this Division.

(4) This section does not apply to injuries received before 30 June 1985.

**52A Discontinuation of weekly payments for partial incapacity after 2 years**

(1) Weekly payments of compensation in respect of partial incapacity for work are not payable for any period beyond the first 104 weeks of partial incapacity for work (whether or not any part of that period is compensated as if the incapacity for work was total) but only if one or more of the following paragraphs (referred to in this section as **grounds for discontinuation**) applies to the worker at the **relevant time**:

- (a) the worker is not suitably employed (within the meaning of section 43A) and is not seeking suitable employment (as determined in accordance with section 38A),
- (b) the worker is not suitably employed (within the meaning of section 43A) and has previously unreasonably rejected suitable employment (within the meaning of section 40 (2B)),
- (c) the worker has sought suitable employment but has failed to obtain suitable employment primarily because of the state of the labour market (rather than because of the effects of the worker's injury).

(2) The **relevant time** for the purposes of this section is the time at which the notice under section 54 of intention to discontinue payment of compensation pursuant to this section is given. The discontinuation of payments under this section has effect even if,

after the relevant time, none of the grounds for discontinuation applies to the worker.

- (3) A worker is not entitled to a resumption of payment of weekly compensation for partial incapacity for work once payment is discontinued because of this section.
- (4) The notice under section 54 of intention to discontinue payment of compensation pursuant to this section must be given. The notice can be given up to 6 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that.
- (5) The fact that the worker becomes totally incapacitated for work after the relevant time does not affect the operation of this section in respect of partial incapacity for work.
- (6) This section does not affect any entitlement to compensation under this Act in respect of any period of total incapacity for work.
- (7) A period of partial incapacity for work does not count as part of the 104 weeks referred to in subsection (1) unless the worker received or was entitled to receive compensation for that period. Separate periods during which the worker received or was entitled to receive those payments are to be aggregated.
- (8) If:
  - (a) a claim for weekly payments of compensation is made by a worker after the earliest time at which a notice under section 54 to discontinue payment of compensation can be given under this section, or
  - (b) proceedings before the Commission involve a claim for weekly payments of compensation in respect of any period of incapacity for work that includes any period beyond the end of the 104 week period,the notice under section 54 may (but need not) be given before payments are discontinued. If the notice is not given, the relevant time for the purposes of this section is the time at which payments are discontinued.
- (9) This section does not apply to compensation for an injury received by a person as a worker employed in or about a mine.

**52B (Repealed)**

**53 Weekly payments—residence outside the Commonwealth** (cf former s 54)

- (1) If a worker receiving, or entitled to receive, a weekly payment of compensation under an award ceases to reside in Australia, the worker shall thereupon cease to be entitled to receive any weekly payment, unless an approved medical specialist certifies, or the Commission determines, that the incapacity for work resulting from the injury is likely to be of a permanent nature.

- (2) If the incapacity is so certified or determined to be of a permanent nature, the worker is entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as the worker establishes, in such manner and at such intervals as the Authority may require, the worker's identity and the continuance of the incapacity in respect of which the weekly payment is payable.

**54 Notice required before termination or reduction of payment of weekly compensation** (cf former s 54A)

- (1) If a worker:

- (a) has received weekly payments of compensation for a continuous period of at least 12 weeks, and
- (b) has provided the worker's employer, or the employer's insurer, with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity,

the person paying the compensation shall not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified without giving the worker the prescribed period of notice of intention to discontinue payment of the compensation or to reduce the amount of the compensation.

Maximum penalty: 50 penalty units.

- (2) If the payment of compensation to a worker is discontinued, or the amount of compensation is reduced, by a person in circumstances involving the commission by that person of an offence under subsection (1), the worker may, whether or not that person has been prosecuted for the offence, recover from the person an amount of compensation that:
- (a) if no period of notice has been given—is equal to the amount of compensation, or additional compensation, that would have been payable during the prescribed period of notice if payment of the compensation had not been discontinued or if the amount of compensation had not been reduced, or
- (b) if less than the prescribed period of notice has been given—is equal to the amount of compensation that would have been payable during the balance of the prescribed period of notice if payment of the compensation had not been discontinued or if the amount of the compensation had not been reduced.
- (3) The prescribed period of notice referred to in this section is:
- (a) if the worker has been receiving weekly payments of compensation for a continuous period of at least 12 weeks but less than 1 year—2 weeks, or
- (b) if the worker has been receiving weekly payments of compensation for a continuous period of 1 year or more—6 weeks.

- (4) The notice referred to in this section shall:
- (a) be given to the worker personally or by post, and
  - (b) if the regulations so require, be in such form (or contain such information) as may be prescribed by the regulations.
- (5) This section is subject to section 58.
- (6) This section does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise).
- (7) The notice referred to in this section is to include information about the possible entitlements of the injured worker under section 38 and the requirements for the worker to obtain those entitlements if:
- (a) the notice relates to a reduction in the amount of the worker's weekly compensation as a result of the application of section 40, and
  - (b) the injured worker is not in receipt of earnings, and
  - (c) the information has not been supplied to the worker under section 40A.
- The giving of that information does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
- (8) Before giving a notice under this section, an insurer must carry out an internal review of the decision to give the notice.

**55 Review of weekly payments** (cf former s 60)

- (1) Any weekly payment of compensation may, because of a change of circumstances, be reviewed by the Commission at the request of the employer or the worker or of the Authority.
- (2) On any such review:
- (a) the weekly payment may be ended, reduced or increased (but subject to the provisions of this Division relating to the amount of the weekly payment), and
  - (b) the amount of the weekly payment (if any) shall, in default of agreement, be determined by the Commission.
- (2A) If on any such review a weekly payment of compensation is ended or reduced with effect from a day that is earlier than the date of the Commission's order on the review, the Commission may order the worker to refund the amount of any payments made to the worker to which the worker is not entitled as a result of the order on the review.



- (3) On any such review, the amount of any weekly payment payable in respect of an injury may be increased to such an amount as would have been awarded if the worker had, at the time of the injury, been earning the wage or salary which the worker would probably have been earning, at the date of the review, if the worker had remained uninjured and continued to be employed in the same or some comparable employment.
- (4) A review under this section shall be given such priority as is reasonably practicable, and any necessary directions may be given to expedite the hearing of the matter.
- (5) (Repealed)

**55A Award of compensation may be for fixed period**

The Commission may, under an award for weekly payments of compensation, direct that the payments are to be made for a specified period even though the period of incapacity is indefinite.

**56 Award of compensation may be subject to supply of medical certificates etc**

- (1) The Commission may, as a condition of any award for weekly payments of compensation, require the worker to supply to the employer or other specified person from time to time medical certificates relating to the incapacity for work to which the award relates.
- (2) Subject to any further order of the Commission, if any such certificate is not supplied in accordance with the terms of the award, weekly payments of compensation under the award may be suspended until the certificate is supplied.
- (3) This section applies to an interim payment direction by the Registrar for weekly payments of compensation in the same way as it applies to an award by the Commission for any such payments.

**57 Worker to notify return to work etc with other employer**

- (1) A worker who is in receipt of weekly payments of compensation shall forthwith notify the person making those payments of:
  - (a) the worker's commencing employment with some other person or in the worker's own business, or
  - (b) any change in that employment that affects the worker's earnings.

Maximum penalty: 40 penalty units.

- (2) A worker is not guilty of an offence under this section if the worker satisfies the court that the person to whom the matter was to be notified failed to inform the worker of the obligation to notify that matter.

- (3) This section applies even though the weekly payments of compensation are payable under an interim payment direction by the Registrar.

**58 Refund of weekly payments paid after return to work etc**

- (1) If, because of a worker's return to employment or a change in employment that affects the worker's earnings:
- (a) the worker is not entitled under this Act to any weekly payments of compensation that have been paid to the worker, or
  - (b) the amount of any weekly payments of compensation that have been paid to the worker exceed the amount to which the worker is entitled under this Act (including under the former Act),

the Commission may order the worker to refund to the person who made the payments any amount to which the worker is not entitled in respect of payments during any period not exceeding 2 years (or such shorter or longer period as the Commission considers to be appropriate) from the date of payment.

- (2) Any such refund may, in accordance with the terms of the Commission's order, be deducted from future weekly payments of compensation to the worker or be recovered as a debt in a court of competent jurisdiction.
- (3) This section applies even though the weekly payments of compensation are payable under an interim payment direction by the Registrar.
- (4) Without limiting this section, the Commission may make such orders as the Commission thinks fit for the adjustment of weekly payments of compensation to a worker to take account of any overpayments made to the worker (whether or not in the circumstances referred to in subsection (1)) in respect of any previous period.
- (5) In this section:
- (a) a reference to the worker's return to employment includes a reference to the worker's commencing employment, and
  - (b) a reference to employment includes a reference to employment in the worker's own business.
- (6) A court before which proceedings for an offence under section 57 are taken against a person may, on the application of the Authority (whether or not the person is convicted of the offence), make any order that it is satisfied the Commission could make under this section as a result of the return to employment or change in employment to which the alleged offence relates. The standard of proof that applies in connection with an application under this subsection is proof on the balance of probabilities.

- (7) The power conferred on a court by subsection (6) is subject to the following limitations:
- (a) it does not authorise the making of an order providing for the refund to be deducted from any future weekly payments of compensation to the extent that they are payable under an award of the Commission,
  - (b) it does not authorise the making of an order of the kind described in subsection (4).
- (8) An order under subsection (6) is enforceable as a civil debt and may be recovered as such in any court of competent jurisdiction by the person to whom the order requires payment to be made.
- (9) A Local Court cannot order the payment of an amount under subsection (6) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.
- (10) This section does not limit any other right of recovery that a person may have against another person in respect of any overpayment of compensation to that other person.

### **Division 3 Compensation for medical, hospital and rehabilitation expenses etc**

#### **59 Definitions** (cf former s 10 (2))

In this Division:

**ambulance service** includes any conveyance of an injured worker to or from a medical practitioner or hospital.

**dental prosthetist** has the same meaning it has in the [Dental Technicians Registration Act 1975](#).

**hospital treatment** means treatment (including treatment by way of rehabilitation) at any hospital or at any rehabilitation centre conducted by a hospital and includes:

- (a) the maintenance of the worker as a patient at the hospital or rehabilitation centre,
- (b) the provision or supply by the hospital, at the hospital or rehabilitation centre, of nursing attendance, medicines, medical or surgical supplies, or other curative apparatus, and
- (c) any other ancillary service,

but does not include ambulance service.

**medical or related treatment** includes:

- (a) treatment by a medical practitioner, a registered dentist, a dental prosthetist, a registered physiotherapist, a registered chiropractor or osteopath, a masseur, a remedial medical gymnast or a speech therapist,
- (b) therapeutic treatment given by direction of a medical practitioner,
- (c) (Repealed)
- (d) the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles,
- (e) any nursing, medicines, medical or surgical supplies or curative apparatus, supplied or provided for the worker otherwise than as hospital treatment,
- (f) care (other than nursing care) of a worker in the worker's home directed by a medical practitioner having regard to the nature of the worker's incapacity,
- (f1) domestic assistance services,
- (g) the modification of a worker's home or vehicle directed by a medical practitioner having regard to the nature of the worker's incapacity, and
- (h) treatment or other thing prescribed by the regulations as medical or related treatment,

but does not include ambulance service, hospital treatment or occupational rehabilitation service.

**medical practitioner** means a duly registered medical practitioner under the [Medical Practitioners Act 1938](#) or under any law of another State or a Territory of the Commonwealth.

**occupational rehabilitation service** means any of the following services provided by or on behalf of a provider accredited under section 52 of the 1998 Act or by a person, or a person of a class, prescribed by the regulations:

- (a) initial rehabilitation assessment,
- (b) functional assessment,
- (c) workplace assessment,
- (d) job analysis,
- (e) advice concerning job modification,
- (f) rehabilitation counselling,
- (g) vocational assessment,

- (h) advice or assistance concerning job-seeking,
  - (i) advice or assistance in arranging vocational re-education or training,
  - (j) preparation of a rehabilitation plan,
  - (k) any other service prescribed by the regulations,
- but does not include hospital treatment.

**public hospital** means:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown,
- (b) a statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*,
- (c) (Repealed)
- (d) a hospital or other institution (whether in this State or in another State or a Territory of the Commonwealth) that:
  - (i) is prescribed by the regulations, or
  - (ii) belongs to a class of hospitals or institutions prescribed by the regulations, for the purposes of this definition.

#### **60 Compensation for cost of medical or hospital treatment and rehabilitation etc**

- (1) If, as a result of an injury received by a worker, it is reasonably necessary that:
- (a) any medical or related treatment (other than domestic assistance) be given, or
  - (b) any hospital treatment be given, or
  - (c) any ambulance service be provided, or
  - (d) any occupational rehabilitation service be provided,
- the worker's employer is liable to pay, in addition to any other compensation under this Act, the cost of that treatment or service and the related travel expenses specified in subsection (2).

**Note—**

Compensation for domestic assistance is provided for by section 60AA.

- (2) If it is necessary for a worker to travel in order to receive any such treatment or service (except any treatment or service excluded from this subsection by the regulations), the related travel expenses the employer is liable to pay are:

- (a) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred by the worker in obtaining the treatment or being provided with the service, and
  - (b) if the worker is not reasonably able to travel unescorted—the amount of the fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort provided to enable the worker to be given the treatment or provided with the service.
- (3) Payments under this section are to be made as the costs are incurred, but only if properly verified.
- (4) The fact that a worker is a contributor to a medical, hospital or other benefit fund, and is therefore entitled to any treatment or service either at some special rate or free or entitled to a refund, does not affect the liability of an employer under this section.

**60AA Compensation for domestic assistance**

- (1) If, as a result of an injury received by a worker, it is reasonably necessary that any domestic assistance is provided for an injured worker, the worker's employer is liable to pay, in addition to any other compensation under this Act, the cost of that assistance if:
- (a) a medical practitioner has certified, on the basis of a functional assessment of the worker, that it is reasonably necessary that the assistance be provided and that the necessity for the assistance to be provided arises as a direct result of the injury, and
  - (b) the assistance would not be provided for the worker but for the injury (because the worker provided the domestic assistance before the injury), and
  - (c) the injury to the worker has resulted in a degree of permanent impairment of the worker of at least 15% or the assistance is to be provided on a temporary basis as provided by subsection (2), and
  - (d) the assistance is provided in accordance with a care plan established by the insurer in accordance with the WorkCover Guidelines.
- (2) Assistance is provided on a temporary basis if it is provided in accordance with each of the following requirements:
- (a) it is provided for not more than 6 hours per week,
  - (b) it is provided during a period that is not longer than, or during periods that together are not longer than, 3 months,
  - (c) it is provided pursuant to the requirements of the relevant injury management plan.

- (3) Compensation is not payable under this section for gratuitous domestic assistance unless the person who provides the assistance has lost income or forgone employment as a result of providing the assistance.
- (4) Compensation payable under this section for gratuitous domestic assistance is payable as if the cost of that assistance were such sum as may be applicable under section 61 (2) in respect of the assistance concerned.
- (5) The following requirements apply in respect of payments under this section:
  - (a) payments are to be made as the costs are incurred or, in the case of gratuitous domestic assistance, as the services are provided,
  - (b) payments are only to be made if those costs and the provision of the assistance is properly verified (and the WorkCover Guidelines may make provision for how the performance of those services is to be verified),
  - (c) payments for gratuitous domestic assistance are to be made to the provider of the assistance.
- (6) In this section:

***gratuitous domestic assistance*** means domestic assistance provided to an injured worker for which the injured worker has not paid and is not liable to pay.

**60A Worker not liable for medical, hospital and rehabilitation charges above applicable rates**

A worker is not liable to pay, and a person is not entitled to recover from a worker, any amount in respect of medical or related treatment, hospital treatment at a hospital or an occupational rehabilitation service, given or provided to the worker as a result of an injury, to the extent that the amount exceeds any applicable maximum, as follows:

- (a) in the case of a medical or related treatment for which a sum is fixed under section 61 (2), the applicable maximum is that fixed sum,
- (b) in the case of hospital treatment at a hospital, the applicable maximum is the amount calculated as fixed under section 62 (1) as the cost to the hospital of the treatment,
- (c) in the case of an occupational rehabilitation service for which a sum is fixed under section 63A (2), the applicable maximum is that fixed sum.

**61 Rates applicable for medical or related treatment** (cf former s 10 (4), (5A))

- (1) The amount for which an employer is liable in respect of the medical or related treatment of a worker is such amount as is reasonably appropriate to the treatment given, having regard to the reasonable necessity for the treatment and the customary charge made in the community for the treatment to persons other than workers.

- (2) The maximum amount for which an employer is liable for any particular medical or related treatment shall not exceed such sum (if any) as may be fixed by the Authority in respect of that treatment by order published in the Gazette.
- (3) The maximum amount for which an employer is liable for medical or related treatment given to a worker in respect of the same injury (whether the treatment is given at different stages of the injury or not) is:
  - (a) \$50,000, or
  - (b) where some greater amount has been fixed by the Authority by order published in the Gazette—that greater amount.
- (4) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that fixed by subsection (3).
- (4A) If proceedings relating to the worker's claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, the provision of medical or related treatment for the worker, such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.
- (5) The amount for which an employer is liable for the care of a worker as referred to in paragraph (f) of the definition of **medical or related treatment** in section 59 is (subject to any maximum amount under this section) the reasonable cost of providing that care having regard to the extent to which care might be expected to be provided by the worker's spouse or other person residing with the worker.
- (6) The amount for which an employer is liable for the modification of a worker's home or vehicle as referred to in paragraph (g) of the definition of **medical or related treatment** in section 59 is the reasonable cost of carrying out those modifications.
- (7) Except as otherwise provided by the regulations, the maximum amount under subsection (3) does not apply to any liability of an employer referred to in subsection (6).
- (8) Any amount for which an employer is liable under this Division in respect of medical or related treatment may be recovered from the employer by the person who gave the treatment.
- (9) If the maximum amount referred to in subsection (3) is, on or after the commencement of this subsection, amended either by an Act or an order of the Authority, the amount for which an employer is liable in respect of the medical or related treatment of a worker under this section is to be calculated by reference to the maximum amount applicable to the worker at the time when the worker became injured.



**Editorial note—**

For Orders under this section and section 62, see the Historical notes at the end of this Act.

**62 Rates applicable for hospital treatment** (cf former s 10 (2A), (3))

- (1) The amount for which an employer is liable in respect of hospital treatment of a worker at a hospital is the cost to the hospital of the hospital treatment, calculated as determined by the Authority by order published in the Gazette.
- (2)-(4) (Repealed)
- (5) The maximum amount for which an employer is liable for hospital treatment given to a worker in respect of the same injury (whether the treatment is afforded at different stages of the injury or not) is:
  - (a) \$50,000, or
  - (b) where some greater amount has been fixed by the Authority by order published in the Gazette—that greater amount.
- (6) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that fixed by subsection (5).
- (6A) If proceedings relating to the worker's claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, the provision of hospital treatment for the worker, such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.
- (7) A hospital, or a duly authorised officer of the hospital, may recover from the employer any amount for which the employer is liable under this Division in respect of hospital treatment given by that hospital.
- (8) A determination under subsection (1) shall not be made without the concurrence of the Minister for Health.
- (9) If the maximum amount referred to in subsection (5) is, on or after the commencement of this subsection, amended either by an Act or an order of the Authority, the amount for which an employer is liable in respect of the hospital treatment of a worker under this section is to be calculated by reference to the maximum amount applicable to the worker at the time when the worker became injured.

**Editorial note—**

For Orders under this section and section 61, see the Historical notes at the end of this Act.

**63 Rates applicable for ambulance service** (cf former s 10 (5))

- (1) The maximum amount for which an employer is liable for any ambulance service provided to a worker is:
  - (a) \$10,000, or
  - (b) where some greater amount has been fixed by the Authority by order published in the Gazette—that greater amount.
- (2) An amount additional to that fixed by subsection (1) may be allowed on account of the distance travelled in any particular case.
- (2A) If proceedings relating to the worker's claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, the provision of ambulance services for the worker, such an allowance may be awarded by the Commission. If no such proceedings are before the Commission, such an allowance may be awarded by the Authority on application made in respect of the worker from time to time.
- (2B) If the maximum amount referred to in subsection (1) is, on or after the commencement of this subsection, amended either by an Act or an order of the Authority, the amount for which an employer is liable in respect of ambulance services provided to a worker under this section is to be calculated by reference to the maximum amount applicable to the worker at the time when the worker became injured.
- (3) Any amount for which an employer is liable under this Division in respect of any ambulance service may be recovered from the employer by the person providing the ambulance service.

**63A Rates applicable for occupational rehabilitation services**

- (1) The amount for which an employer is liable for any occupational rehabilitation service provided to or for the benefit of a worker is such amount as is reasonably appropriate to the service provided, having regard to the reasonable necessity for the service and any guidelines determined by the Authority by order published in the Gazette.
- (2) The maximum amount for which an employer is liable for any particular occupational rehabilitation service is such sum (if any) as may be fixed by the Authority in respect of that service by order published in the Gazette.
- (3) The maximum amount for which an employer is liable for any occupational rehabilitation services provided to or for the benefit of a worker in respect of the same injury (whether the same or different kinds of services, but not services excluded from this subsection by the regulations) is:
  - (a) \$1,200, or

(b) where some greater amount has been prescribed by the regulations—that greater amount.

- (4) On application made from time to time by or on behalf of the worker concerned or of the provider of the services concerned, the Authority or other prescribed person may, subject to the regulations and any order of the Commission, direct that the employer is liable for a further amount to that prescribed by subsection (3).
- (5) The regulations may exempt an employer from liability under this Division for occupational rehabilitation services unless the services are approved in the manner, or provided in the circumstances, specified in the regulations.
- (6) Any amount for which an employer is liable under this Division in respect of occupational rehabilitation services may be recovered from the employer by the person who provided the service.

**64 Rates applicable for car travel associated with treatment** (cf former s 10 (1B))

If the cost referred to in section 60 (2) (a) or the amount referred to in section 60 (2) (b) includes the cost of, or an amount for, travel by private motor vehicle, that cost or amount shall be calculated at:

- (a) the rate of 28 cents per kilometre, or
- (b) where some other rate has been fixed by the Authority by order published in the Gazette—that other rate.

**Editorial note—**

For Orders under this section, see the Historical notes at the end of this Act.

**64A Compensation for cost of interpreter services**

- (1) If it is reasonably necessary for a worker to obtain the assistance of an interpreter in connection with a claim for compensation under this Act, the worker's employer is liable to pay, in addition to any other compensation under this Act, the reasonable costs of any such assistance.
- (2) The Authority may by order published in the Gazette:
  - (a) establish guidelines for determining the amount payable under this section, and
  - (b) fix the maximum amount payable under this section.
- (3) Payments under this section are to be made as the costs are incurred, but only if properly verified.
- (4) The Authority may pay any such costs (whether or not liability to pay those costs has been determined) and recover the amount from any employer liable to pay them.

- (5) This section applies only to the costs of assistance provided in respect of a claim made after the commencement of this section.

## **Division 4 Compensation for non-economic loss**

### **65 Determination of degree of permanent impairment**

- (1) For the purposes of this Division, the degree of permanent impairment that results from an injury is to be assessed as provided by this section and Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.
- (2) If a worker receives more than one injury arising out of the same incident, those injuries are together to be treated as one injury for the purposes of this Division.

**Note—**

The injuries are to be compensated together, not as separate injuries. Section 322 of the 1998 Act requires the impairments that result from those injuries to be assessed together. Physical injuries and psychological/psychiatric injuries are not assessed together. See section 65A.

- (3) If there is a dispute about the degree of permanent impairment of an injured worker, the Commission may not award permanent impairment compensation or pain and suffering compensation unless the degree of permanent impairment has been assessed by an approved medical specialist.
- (4) (Repealed)

### **65A Special provisions for psychological and psychiatric injury**

- (1) No compensation is payable under this Division (either as permanent impairment compensation or pain and suffering compensation) in respect of permanent impairment that results from a secondary psychological injury.

**Note—**

This does not prevent a secondary psychological injury from being compensated under section 67 as pain and suffering resulting from permanent impairment (but only if that permanent impairment results from a physical injury or a primary psychological injury).

- (2) In assessing the degree of permanent impairment that results from a physical injury or primary psychological injury, no regard is to be had to any impairment or symptoms resulting from a secondary psychological injury.
- (3) No compensation is payable under this Division (either as permanent impairment compensation or pain and suffering compensation) in respect of permanent impairment that results from a primary psychological injury unless the degree of permanent impairment resulting from the primary psychological injury is at least 15%.

**Note—**

If more than one psychological injury arises out of the same incident, section 322 of the 1998 Act requires the injuries to be assessed together as one injury to determine the degree of permanent impairment.

- (4) If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation under this Division in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply:
- (a) the degree of permanent impairment that results from the primary psychological injury is to be assessed separately from the degree of permanent impairment that results from the physical injury (despite section 65 (2)),
  - (b) the worker is entitled to receive compensation under this Division for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker under this Division (and is not entitled to receive compensation under this Division for impairment resulting from the other injury),
  - (c) the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission.

**Note—**

If there is more than one physical injury those injuries will still be assessed together as one injury under section 322 of the 1998 Act, but separately from any psychological injury. Similarly, if there is more than one psychological injury those psychological injuries will be assessed together as one injury, but separately from any physical injury.

- (5) In this section:

**primary psychological injury** means a psychological injury that is not a secondary psychological injury.

**psychological injury** includes psychiatric injury.

**secondary psychological injury** means a psychological injury to the extent that it arises as a consequence of, or secondary to, a physical injury.

## **66 Entitlement to compensation for permanent impairment**

- (1) A worker who receives an injury that results in permanent impairment is entitled to receive from the worker's employer compensation for that permanent impairment as provided by this section. Permanent impairment compensation is in addition to any other compensation under this Act.
- (2) The amount of permanent impairment compensation is to be calculated as follows:
- (a) if the degree of permanent impairment is not greater than 10%, the amount of permanent impairment compensation is to be calculated as follows:  
$$D \times \$1,375$$
  - (b) if the degree of permanent impairment is greater than 10% but not greater than

20%, the amount of permanent impairment compensation is to be calculated as follows:

$$\$13,750 + [(D - 10) \times \$1,650]$$

(c) if the degree of permanent impairment is greater than 20% but not greater than 40%, the amount of permanent impairment compensation is to be calculated as follows:

$$\$30,250 + [(D - 20) \times \$2,750]$$

(d) if the degree of permanent impairment is greater than 40% but not greater than 75%, the amount of permanent impairment compensation is to be calculated as follows:

$$\$85,250 + [(D - 40) \times \$3,850]$$

(e) if the degree of permanent impairment is greater than 75%, the amount of permanent impairment compensation is \$220,000,

where **D** is the number derived by expressing the degree of permanent impairment as D%.

(2A) To the extent to which the injury results in permanent impairment of the back, the amount of permanent impairment compensation calculated in accordance with subsection (2) is to be increased by 5%.

**Example 1—**

A person suffers 10% permanent impairment. Under subsection (2), the amount of permanent impairment compensation to which he or she is entitled is \$13,750 (10 × \$1,375). If the whole of the impairment is to the back, the compensation payable in relation to the back will be the whole \$13,750. Under this subsection, that \$13,750 will be increased by 5%, yielding \$14,437.50.

**Example 2—**

A person suffers 50% permanent impairment. Under subsection (2), the amount of permanent impairment compensation to which he or she is entitled is \$123,750 (\$85,250 + (10 × \$3,850)). If two-thirds of the impairment is to the back, the compensation payable in relation to the back will be two-thirds of \$123,750, or \$82,500. Under this subsection, that \$82,500 will be increased by 5%, yielding \$86,625. The total compensation payable for the impairment will therefore be \$127,875.

(3) The amount of permanent impairment compensation is to be calculated under this section as it was in force at the date the injury was received.

**66A Agreements for compensation**

(1) In this section, **complying agreement** means a written agreement:

- (a) under which a worker who has received an injury, and an employer or insurer, agree as to either or both of the following:
    - (i) the degree of permanent impairment that has resulted from the injury,
    - (ii) the amount of pain and suffering compensation to which the worker is entitled in respect of the injury, and
  - (b) in which there is a provision in which the employer or insurer certifies that it is satisfied that the worker has obtained independent legal advice before entering into the agreement.
- (2) If a worker enters into a complying agreement in relation to an injury:
- (a) the permanent impairment compensation to which the worker is entitled in respect of the injury is the compensation payable in respect of the degree of impairment so agreed, and
  - (b) the pain and suffering compensation to which the worker is entitled in respect of the injury is the amount so agreed.
- (3) The Commission may award compensation additional to the compensation payable under subsection (2) by virtue of a complying agreement if it is established that:
- (a) the agreed degree of permanent impairment or the amount of pain and suffering compensation is manifestly too low, or
  - (b) the worker has been induced to enter into the agreement as a result of fraud or misrepresentation, or
  - (c) since the agreement was entered into, there has been an increase in the degree of permanent impairment beyond that so agreed.
- (4) Complying agreements, and the payments made under them, are to be recorded in accordance with the WorkCover Guidelines.
- (5) Subsection (2) has effect despite section 234 (No contracting out) of the 1998 Act.
- (6) Nothing in this section prevents a complying agreement from containing provision as to the payment of costs.

**66B No proceedings to enter up award on agreement for compensation**

- (1) When a worker agrees to receive an amount of permanent impairment compensation or pain and suffering compensation, the Commission is not to entertain proceedings for entry of an award to give effect to the agreement unless the proceedings also relate to some dispute in connection with the worker's claim for compensation under this Act.

- (2) The regulations may prescribe exceptions to this section.
- (3) The regulations may make provision for or with respect to:
  - (a) requiring an application referring a matter to the Commission to be accompanied by evidence (in the form of a certificate or other information provided for by the regulations) that the proceedings are not prevented by this section from being entertained by the Commission, and
  - (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.

### **67 Compensation for pain and suffering**

- (1) A worker who receives an injury that results in a degree of permanent impairment of 10% or more is entitled to receive from the worker's employer as compensation for pain and suffering resulting from the permanent impairment an amount not exceeding \$50,000. Pain and suffering compensation is in addition to any other compensation under this Act.

**Note—**

Section 65A provides that pain and suffering compensation for permanent impairment arising from psychological injury is not payable unless the injury is a primary psychological injury (as defined in that section) and the degree of permanent impairment arising from the injury is 15% or more.

- (1A) (Repealed)
- (2) Because there is a distinction between injury and impairment resulting from an injury (and compensation is payable under this section only for pain and suffering resulting from impairment), the pain and suffering for which compensation is payable does not include pain and suffering that results from the injury but not from the impairment.
- (3) The maximum amount of compensation under this section is payable only in a most extreme case and the amount payable in any other case shall be reasonably proportionate to that maximum amount having regard to the degree and duration of pain and suffering and the severity of the permanent impairment.
- (3A) (Repealed)
- (4) The amount of compensation payable under this section in any particular case shall, in default of agreement, be determined by the Commission.
- (4A) (Repealed)
- (5) Compensation under this section is not payable after the death of the worker concerned.
- (6) If an amount mentioned in this section at any time after the commencement of this Act:



(a) is adjusted by the operation of Division 6, or

(b) is adjusted by an amendment of this section,

the compensation payable under this section is to be calculated by reference to the amount in force at the date of injury.

(7) In this section:

***pain and suffering*** means:

(a) actual pain, or

(b) distress or anxiety,

suffered or likely to be suffered by the injured worker, whether resulting from the permanent impairment concerned or from any necessary treatment.

#### **67A Special provisions for HIV/AIDS**

- (1) For the purposes of the determination of the amount of pain and suffering compensation payable, HIV infection and AIDS are each considered to be a most extreme case, so that the maximum amount of pain and suffering compensation is payable.
- (1A) For the purposes of the determination of the amount of permanent impairment compensation payable, HIV infection and AIDS are each considered to result in a degree of permanent impairment of 100%.
- (2) Section 68 does not apply to a loss that is HIV infection or AIDS.
- (3) The regulations may make provision for methods for determining for the purposes of this Act whether a person is HIV infected or is suffering from AIDS. Regulations need not be made under this subsection and in the absence of regulations the determination of whether a person is HIV infected or suffering from AIDS is to be on the basis of medical opinion.
- (4) Permanent impairment compensation and pain and suffering compensation are not payable in respect of permanent impairment that is HIV infection or AIDS if the impairment resulted from voluntary sexual activity or illicit drug use. This subsection does not limit the operation of section 14 (Conduct of worker etc).
- (5) In this section ***HIV infection*** means infection by the Human Immunodeficiency Virus, and ***AIDS*** means Acquired Immune Deficiency Syndrome.

#### **68, 68A (Repealed)**

#### **68B Deductions for previous injuries and pre-existing conditions—operation of sections**

**15, 16, 17 and 22**

- (1) When determining the compensation payable in respect of permanent impairment for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 323 of the 1998 Act for any proportion of the impairment that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the impairment that is due to any other injury or that is due to any pre-existing condition or abnormality).
- (2) When determining the compensation payable by an employer in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process), section 323 of the 1998 Act applies to that compensation subject to the following:
  - (a) there is to be no deduction under section 323 of the 1998 Act for any proportion of the permanent impairment that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division (as in force at any time) or section 16 of the former Act has been paid or is payable,
  - (b) for the purposes of paragraph (a), **previous relevant employment** is employment to the nature of which the disease was due by a previous employer who is liable under section 15 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),
  - (c) in the case of permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.
- (3) When determining the compensation payable by an employer in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease), section 323 of the 1998 Act applies to that compensation subject to the following:
  - (a) there is to be no deduction under section 323 of the 1998 Act for any proportion of the impairment that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division (as in force at any time) or section 16 of the former Act has been paid or is payable,
  - (b) for the purposes of paragraph (a), **previous relevant employment** is employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration by a previous employer who is liable under section 16 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),

- (c) in the case of permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.
- (4) When determining the compensation payable by an employer in a case in which section 17 applies (loss or further loss of hearing), section 323 of the 1998 Act applies to that compensation subject to the following:
  - (a) there is to be no deduction under section 323 of the 1998 Act for any proportion of the impairment that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division (as in force at any time) or section 16 of the former Act has been paid or is payable,
  - (b) for the purposes of paragraph (a), **previous relevant employment** is employment to the nature of which the disease was due by a previous employer who is liable under section 17 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period).

## **69 (Repealed)**

### **69A No compensation for less than 6% hearing loss**

- (1) In assessing, for the purpose of the determination of permanent impairment compensation, the degree of permanent impairment resulting from loss of hearing (the **present loss**) due to boiler-makers deafness regard must not be had to any hearing loss due to boiler-makers deafness unless the worker's total hearing loss due to boiler-makers deafness is at least 6%.
- (2) The worker's **total hearing loss** is the aggregate of the present loss and all previous losses of hearing due to boiler-makers deafness.
- (3) The fact that compensation is not payable in respect of a loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss, and does not affect the operation of section 17 in respect of that loss (if and when the worker's total hearing loss reaches 6%).
- (4) An example of the operation of this section is as follows (assume that all hearing losses mentioned are due to boiler-makers deafness and that no other injury is involved):
  - (a) A worker suffers a hearing loss of 4% (the first hearing loss that the worker has suffered). No permanent impairment compensation is payable in respect of the loss because it is less than 6% and cannot be taken into account to assess the degree of permanent impairment, though notice of injury can be given or a claim can be made for the hearing loss.

- (b) The worker suffers a further hearing loss of 4%, bringing the total loss to 8%. The total loss has now passed the 6% threshold and compensation is payable on the basis of the full 8%. Compensation in respect of the initial 4% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for that initial hearing loss.
  - (c) The worker suffers a further hearing loss of 5%. The worker is entitled in the usual way to compensation in respect of the 5% further loss because the 6% threshold has already been passed (the total loss is now 13%).
- (5) For the purposes of determining the percentage of loss of hearing due to boilermakers deafness, that loss of hearing is to be determined as a proportionate loss of hearing of both ears, even if the loss is in one ear only. The regulations may prescribe a method for calculating the proportionate loss of hearing of both ears.
  - (6) A legal practitioner or agent who acts for a worker on a claim for compensation for loss of hearing due to boilermakers deafness is not entitled to recover any costs from the worker or the employer in connection with acting on the claim if no compensation is payable on the claim because the worker's total hearing loss due to boilermakers deafness is less than 6% (even if compensation subsequently becomes payable because the worker's loss of hearing reaches 6% as a result of further hearing loss).
  - (7) A worker who refuses or fails to submit himself or herself for, or who obstructs, an examination required under section 119 or 122 of the 1998 Act in connection with a claim for which no permanent impairment compensation is payable because of this section is (for the purposes of that claim) presumed in the absence of evidence to the contrary to have no hearing loss due to boilermakers deafness.
  - (8) A reference in this section and in section 69B to boilermakers deafness includes a reference to any deafness of similar origin.
  - (9) For the purposes of the operation of section 68B in relation to compensation for loss of hearing, a reference in that section to compensation that is payable under this Division includes a reference to compensation that would be payable were it not for the operation of this section.

**69B Employer's responsibility to pay for hearing loss tests**

- (1) An employer who would, but for the operation of section 69A, be liable to pay permanent impairment compensation in respect of a loss of hearing suffered by a worker, is not liable under Division 3 to pay the cost of a hearing test for that loss, except any of the following tests:
  - (a) the test that is the first such test for that loss after the commencement of this section,
  - (b) any test carried out not less than 3 years, or such other period as may be

prescribed, after any previous test that the employer has paid the cost of obtaining,

- (c) any test that finds that the worker has suffered a total hearing loss due to boilermakers deafness of 6% or more,
- (d) (Repealed)
- (e) any test carried out after the worker has left the worker's employment with the employer,
- (f) any test carried out in such circumstances as may be prescribed by the regulations.

(2) The cost of a hearing test is the cost of obtaining a medical certificate, and any examination required for the certificate, as to the extent of the hearing loss concerned.

(3) This section does not operate to require payment by an employer for the cost of obtaining any hearing test that the employer would not otherwise be liable to pay for under Division 3.

#### **70-72A (Repealed)**

#### **73 Reimbursement for costs of medical certificate and examination**

(1) The obtaining of a permanent impairment medical certificate and any examination required for the certificate are taken to be a medical or related treatment for the purposes of Division 3 if:

- (a) the medical practitioner has completed such training as the Authority may require in respect of the assessment of the degree of permanent impairment as provided by this Act, and
- (b) the worker has given the employer a copy of the certificate.

(2) In this section:

***permanent impairment medical certificate*** means a report or certificate of a medical practitioner that certifies:

- (a) that a worker has received an injury resulting in permanent impairment, and
- (b) the degree of permanent impairment (assessed as provided by this Act) resulting from the injury.

## **Division 5 Compensation for property damage**

### **74 Damage to artificial limbs etc** (cf former s 10A (1), (2), (3))

(1) A worker:

(a) who has met with an accident arising out of or in the course of the worker's employment, and

(b) whose crutches, artificial members, eyes or teeth, other artificial aids, or spectacles, are damaged as a result of the accident,

is entitled to receive, by way of compensation from the worker's employer, the reasonable cost of repairing or, if necessary, replacing the articles so damaged.

(2) Nothing in this section:

(a) affects the liability of an employer under Division 3, or

(b) entitles a worker to payments under this section as well as under Division 3 in respect of the same damage.

(3) For the purposes of this section, the cost of repairing or replacing any article includes:

(a) any fees and charges paid by the worker to medical practitioners, dentists or other qualified persons for such services by way of consultations, examinations or prescriptions as are reasonably rendered in connection with the repairing or replacing of the article, and

(b) the amount of any wages lost by the worker by reason of the worker's attendance at any place for the purpose of having, undergoing or obtaining any such consultation, examination or prescription.

### **75 Damage to clothing** (cf former s 10B (1))

A worker:

(a) who has met with an accident arising out of or in the course of the worker's employment, and

(b) whose clothing has, as a result of the accident, been damaged,

is entitled to receive, by way of compensation from the worker's employer, the reasonable cost of repairing or, if necessary, replacing the articles of clothing so damaged.

### **76 Maximum rate for damage to artificial limbs, spectacles** (cf former s 10A (1))

(1) The maximum amount for which an employer is liable under section 74 in respect of damage resulting from an accident is:

- (a) \$2,000, or
  - (b) where some greater amount has been prescribed by the regulations—that greater amount.
- (2) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that prescribed by subsection (1).
- (3) If proceedings relating to the worker's claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, damage to an item referred to in section 74 (1) (b), such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.
- (4) If the maximum amount referred to in subsection (1) is, on or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable under section 74 in respect of damage resulting from an accident to a worker is to be calculated by reference to the maximum amount applicable to the worker at the time of the accident.

**77 Maximum rate for damage to clothing** (cf former s 10B (1))

- (1) The maximum amount for which an employer is liable under section 75 in respect of damage resulting from an accident is:
- (a) \$600, or
  - (b) where some greater amount has been prescribed by the regulations—that greater amount.
- (2) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that prescribed by subsection (1).
- (3) If proceedings relating to the worker's claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, damage to the worker's clothing, such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.
- (4) If the maximum amount referred to in subsection (1) is, on or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable under section 75 in respect of damage resulting from an accident to a worker is to be calculated by reference to the maximum amount applicable to the worker at the time of the accident.

**78 Miscellaneous provisions** (cf former ss 10A (1A), (1B), 10B (2), (3))

- (1) If it is proved that any damage for which compensation would otherwise be payable to a worker under this Division is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that damage.
- (2) Compensation is not payable under this Division in respect of any damage caused intentionally by the worker concerned.
- (3) The provisions of Part 5 (Common law remedies) apply to damage to which this Division applies in the same way as they apply to injuries.
- (4) For the purposes of this Division, an accident arises out of or in the course of employment if:
  - (a) the accident occurred on a journey to which section 10 applies, and
  - (b) the worker received an injury in that accident for which compensation is, because of that section, payable or, if the worker had been injured in that accident, compensation would have been so payable.

**Division 6 Indexation of amounts of benefits**

**79 Definitions** (cf former s 9A (1))

In this Division:

**adjustable amount** means:

- (a) each of the amounts specified in sections 25, 35, 37 and 40, without regard to any adjustment under this Division, and
- (b) such of the amounts specified in section 66 or 67 as may be declared by the regulations to be an adjustable amount for the purposes of this Division, without regard to any adjustment under this Division.

**adjustment date** means 1 April or 1 October in each year.

**base index number** means:

- (a) in respect of an adjustable amount that is the amount specified in section 25 (1)
  - (a)—the number 212.1, and
- (b) in respect of any adjustable amount that is an amount specified in section 66 or 67—the number declared by the regulations to be the base index number for that adjustable amount, and
- (c) in respect of any other adjustable amount—the number 130.8.

**latest index number**, in relation to an adjustment date, means:



(a) where:

- (i) the adjustment date is 1 April in any year—the index number, relating to adult males in New South Wales, for the preceding month of December, or
- (ii) the adjustment date is 1 October in any year—the index number, relating to adult males in New South Wales, for the preceding month of June,

shown in the first preliminary table in the award rates of pay indexes, Australia, being the table entitled “Wage and salary earners: indexes of weekly award rates of pay States and Territories”, published by the Australian Statistician, or

(b) where there is, under paragraph (a), no latest index number in relation to an adjustment date—such number as may be prescribed by the regulations in respect of that date.

**80 Adjustment of amounts of benefits according to award rate of pay index** (cf former s 9A (2), (4))

(1) On and from each adjustment date and until immediately before the next following adjustment date, a reference in this Act to an adjustable amount shall be construed as a reference to an amount calculated as follows:

$$\text{Adjustable amount} \times \frac{\text{latest index number}}{\text{base index number}}$$

(2) The amount so calculated is (if for any reason it would be less than the amount calculated in respect of the previous adjustment date) to be the same as the amount calculated in respect of the previous adjustment date.

**81 Rounding off** (cf former s 9A (2A), (3))

(1) If a reference to an adjustable amount (being an amount specified in section 25 (1) (a), 66 or 67) as construed in accordance with section 80 would, but for this section:

- (a) be expressed as including an amount in cents—that amount in cents shall be disregarded, or
- (b) be expressed as including a whole number of dollars that is not divisible by 50 without remainder—that number of dollars shall be reckoned as the next higher whole number of dollars that is divisible by 50 without remainder.

(2) If a reference to any other adjustable amount as construed in accordance with section 80 would, but for this section, be expressed as including an amount in cents that is not a whole number of cents divisible by 10 without remainder, that amount:

- (a) shall be disregarded if it is less than 5 cents,

- (b) shall, if it is a whole number of cents divisible by 5 without remainder, be reckoned as the next higher whole number of cents that is divisible by 10 without remainder, or
- (c) shall, if it is not referred to in paragraph (a) or (b), be reckoned as the nearest whole number of cents that is divisible by 10 without remainder.

**82 Publication of adjusted amounts** (cf former s 9A (4))

- (1) On or before each adjustment date, the Authority shall, by notice published in the Gazette, declare the amount at which each adjustable amount is to be construed in accordance with this Division on and from that adjustment date until immediately before the next following adjustment date.
- (2) However, an adjustment under section 80 is not affected by any failure (including a failure that occurred before the commencement of this subsection) to publish the notice referred to in subsection (1).

**Editorial note—**

For declarations under this section see the Historical notes at the end of this Act.

**Division 7 Payment of benefits**

**83 Manner of payment of compensation** (cf former ss 17, 56 (1))

- (1) Compensation payable under this Act to a worker shall be paid:
  - (a) in cash,
  - (b) by cheque, or
  - (c) by means of direct credit to an account maintained with a financial institution by the worker (either alone or jointly or in common with another person).
- (2) Payment in cash shall be made by delivery to the worker at the employer's usual place of payment of wages or at any other place agreed on between the employer and the worker.
- (3) Payment by cheque shall be made:
  - (a) by delivery to the worker at any such place, or
  - (b) by means of a letter containing the cheque sent by post to the worker's address.
- (4) A payment of compensation by post shall be deemed to have been made when the letter is posted, but the liability to make the payment is not satisfied until the worker receives the payment.
- (5) Payment made by means of direct credit to an account shall be made only if the

worker agrees to payment being made in that manner.

- (6) The Commission may authorise the payment of compensation in a particular case in such other manner as the Commission thinks fit.
- (7) This section does not apply to compensation paid to the Authority or the Public Trustee under this Act.

(8) In this section:

**account** includes a deposit account and a withdrawable share account.

**financial institution** means:

- (a) a bank,
- (b) a building society, or
- (c) a credit union.

**worker** includes any person to whom compensation is payable under this Act.

#### **84 Times for payment of weekly compensation**

(1) A weekly payment of compensation is payable:

- (a) at the employer's usual times of payment of wages to the worker,
- (b) at fortnightly or other shorter intervals, or
- (c) at such other intervals as are agreed on between the employer and the worker.

(2) In this section:

**weekly payment of compensation** includes compensation payable under section 25 (1) (b) in respect of a dependent child of a deceased worker.

#### **85 Payments to Public Trustee for benefit of beneficiary** (cf former ss 15 (3), 57, 58, 61)

(1) The following compensation shall be paid to the Public Trustee in trust for the benefit of the persons entitled to the compensation:

- (a) compensation payable in respect of the death of a worker (unless paid to a worker's legal personal representative or a particular person in accordance with this Act or an award),
- (b) compensation payable to a person who is mentally ill (unless the Commission otherwise orders),
- (c) compensation payable to a worker under the age of 18 years if the worker agrees or the Commission directs that the compensation be paid to the Public Trustee,

- (d) a lump sum commutation payment which the worker agrees or the Commission orders to be paid to the Public Trustee.
- (2) Any money so paid to the Public Trustee may be invested, applied, paid out or otherwise dealt with by the Public Trustee in such manner as the Public Trustee thinks fit for the benefit of the persons entitled to the money.
- (3) If a widow or widower (over 18 years of age and not mentally ill) is the only person entitled to compensation paid to the Public Trustee in respect of the death of a worker, the compensation shall be paid out to the widow or widower in one or more lump sums determined by the Public Trustee.
- (4) A reference in subsection (3) to the widow or widower of a deceased worker includes a reference to a dependant of the worker who is the other party to a de facto relationship with the worker.
- (5) In the case of a lump sum commutation payment, the Public Trustee shall exercise its powers under this section in accordance with the agreement or order under which it was paid to the Public Trustee.
- (6) The Commission may, for any sufficient cause, vary the manner in which the Public Trustee invests, applies, pays out or otherwise deals with money under this section.
- (7) The Public Trustee may apply for any such variation.
- (8) The receipt of the Public Trustee is sufficient discharge in respect of any money paid to the Public Trustee under this section.

#### **85A Payment of benefits to beneficiaries**

- (1) Despite section 85, the Commission may authorise the payment of compensation referred to in section 85 (1):
  - (a) to the person who is entitled to the compensation, or
  - (b) to such other person, for the benefit of the person entitled to the compensation, as the Commission thinks fit.
- (2) Any such payment is to be made in the manner authorised by the Commission.

#### **86 Public Trustee's powers of investment**

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.
- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in

trust by the Public Trustee.

**87 Unclaimed money** (cf former s 62B)

(1) If:

- (a) any money paid at any time to the Public Trustee has been invested by the Public Trustee for the benefit of a person entitled to the money under this Act or the former Act, and
- (b) the whereabouts of the beneficiary has not been known to the Public Trustee during any succeeding period of 10 years,

the Public Trustee may pay the money, together with accrued income from the investment of the money, to the credit of the WorkCover Authority Fund.

(2) Money so credited to the WorkCover Authority Fund, together with accrued interest, shall:

- (a) be paid out on the application of any person who would have been entitled to have it paid out if it had not been credited to that Fund, and
- (b) at the request of the person for whose benefit it was invested before being credited to that Fund, or the legal personal representative of that person—again be so invested.

**Division 8 Reduction of benefits where additional or alternative compensation payable**

**87A Additional or alternative compensation to which Division applies**

(1) This Division applies to additional or alternative compensation prescribed by the regulations.

(2) The regulations may prescribe any of the following as additional or alternative compensation:

- (a) payments to workers or their dependants in respect of injuries or deaths under any specified or class of contract of employment, industrial agreement, award or other arrangement (including payments as a supplement or an alternative to the periodic or lump sum payments of compensation under this Act),
- (b) damages for breaches of section 52, 53B or 55A of the *Trade Practices Act 1974* of the Commonwealth,
- (c) any other payments in respect of injuries or deaths for which compensation is payable under this Act.

(3) The regulations may prescribe additional or alternative compensation even though

the arrangements under which it is paid were made before the commencement of this Division.

- (4) For the purposes of this Division, compensation is paid to a worker or other person if it is paid for the benefit or at the direction of the worker or other person.

#### **87B Reduction of compensation under this Act**

- (1) If a person who is entitled to compensation under this Act has been paid additional or alternative compensation to which this Division applies, the amount of compensation payable under this Act is to be reduced by the amount of the additional or alternative compensation.
- (2) If any such additional or alternative compensation is paid after compensation has been paid under this Act, the relevant amount of compensation paid under this Act is to be refunded.
- (3) Any such refund may be deducted from any future payments of compensation under this Act or be recovered as a debt in a court of competent jurisdiction.
- (4) A reduction, refund or deduction under this section is to be made in accordance with the regulations and is not to be made in any case excluded by the regulations.
- (5) This section applies even though the compensation under this Act is payable under an award of the Commission.

#### **87C Employer etc to notify claim or payment of additional or alternative compensation**

- (1) An employer (not being a self-insurer) or top-up insurer on whom a claim is made for additional or alternative compensation to which this Division applies (or who pays any such compensation) must, within 7 days after receipt of the claim or making the payment, notify the relevant workers compensation insurer of the details of the claim or payment.
- (2) For the purposes of this section:
  - (a) the relevant workers compensation insurer is the insurer who the employer believes is liable to indemnify the employer in respect of a claim under this Act for compensation for the injury to the worker concerned, and
  - (b) a top-up insurer is a person who indemnifies an employer against liability for additional or alternative compensation.
- (3) A person who contravenes this section is guilty of an offence.

Maximum penalty: 20 penalty units.

### **Division 9 Commutation of compensation**

### **87D Definition**

In this Division:

**commutation agreement** means an agreement to commute a liability to a lump sum, as provided by section 87F.

### **87E Compensation that may be commuted**

- (1) A liability in respect of any of the following kinds of compensation under this Act or the former Act may be commuted to a lump sum as provided by this Division (and not otherwise):
  - (a) weekly payments of compensation,
  - (b) compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of this Act or section 10 of the former Act.
- (2) Such a liability cannot be commuted to a lump sum by an order or award of the Commission (but this subsection does not affect the operation of section 87G).

### **87EA Preconditions to commutation**

- (1) A liability in respect of an injury may not be commuted to a lump sum under this Division unless the Authority is satisfied that, and certifies that it is satisfied that:
  - (a) the injury has resulted in a degree of permanent impairment of the injured worker that is at least 15% (assessed as provided by Part 7 of Chapter 7 of the 1998 Act), and
  - (b) permanent impairment compensation and pain and suffering compensation to which the injured worker is entitled in respect of the injury has been paid, and
  - (c) a period of at least 2 years has elapsed since the worker's first claim for weekly payments of compensation in respect of the injury was made, and
  - (d) all opportunities for injury management and return to work for the injured worker have been fully exhausted, and
  - (e) the worker has received weekly payments of compensation in respect of the injury regularly and periodically throughout the preceding 6 months, and
  - (f) the worker has an existing and continuing entitlement to weekly payments of compensation in respect of the injury (whether the incapacity concerned is partial or total), and
  - (g) the injured worker has not had weekly payments of compensation discontinued under section 52A or reduced under section 38A.
- (2) The Authority may give directions as to the circumstances in which it will be

considered that all opportunities for injury management and return to work for an injured worker have or have not been fully exhausted.

- (3) For the purposes of determining the degree of permanent impairment of an injured worker, the Authority may refer the matter for assessment under Part 7 of Chapter 7 of the 1998 Act. That Part applies in respect of such an assessment as if the matter referred for assessment were a dispute.
- (4) The Authority may delegate to an insurer any of the Authority's functions under this section in respect of an injury that is an injury for which the insurer is liable to pay compensation.
- (5) This section does not apply to the commutation of a liability in respect of compensation under the former Act.

### **87F Commutation by agreement**

- (1) A liability may be commuted to a lump sum with the agreement of the worker.
- (2) A commutation agreement must not be entered into unless (before the agreement is entered into):
  - (a) a legal practitioner instructed independently of the insurer and the employer has certified in writing that the legal practitioner has advised the worker:
    - (i) on the full legal implications of the agreement, including implications with respect to any entitlement of the worker to compensation under this Act or to benefits under any other law (including a law of the Commonwealth), and
    - (ii) on the desirability of the worker obtaining independent financial advice, before the worker enters into the agreement, as to the financial consequences of the agreement, and
  - (b) the worker has confirmed in writing that the worker has been given and understands the advice referred to in paragraph (a).
- (3) A commutation agreement (including an agreement purporting to be a commutation agreement) is not subject to review or challenge in proceedings before the Commission or a court.
- (4) The worker has 14 days after entering into a commutation agreement in which to withdraw from the agreement by giving notice in writing to the insurer. Withdrawal from the agreement by the worker makes the agreement a nullity.
- (5) A liability cannot be commuted under this section if the worker is legally incapacitated because of the worker's age or mental capacity.

#### **Note—**

Section 87G provides for the commutation of a liability when the worker is legally incapacitated.



- (6) A commutation agreement is of no effect unless and until it is registered as provided by this Part. Registration of the agreement removes the liability to which the agreement relates.
- (7) The amount payable under an agreement is payable within 7 days after the agreement is registered or within such longer period as the agreement may provide. Interest calculated at the rate prescribed by the regulations is payable on any amount due and unpaid. The amount payable under a commutation agreement and any interest payable on that amount is recoverable as a debt in a court of competent jurisdiction.
- (8) As part of a commutation agreement, a worker may agree that payment of a lump sum removes any liability to make a payment under Division 4 of Part 3 (or section 16 of the former Act) in respect of the injury concerned. This Division applies to the agreement for payment of that lump sum as if it were an agreement to commute the liability to pay that compensation to a lump sum. Payment of the lump sum removes any liability to which the agreement of the worker relates.

#### **87G Commutation when worker legally incapacitated**

- (1) If a worker is legally incapacitated because of the worker's age or mental capacity, a liability in respect of compensation may be commuted to a lump sum by determination by the Commission made having regard to:
  - (a) any dispute as to liability to pay compensation under this Act, and
  - (b) the injury, the age of the worker, the general health of the worker, and the occupation of the worker at the time of the occurrence of the injury, and
  - (c) the worker's diminished ability to compete in an open labour market, and
  - (d) other benefits that the worker may be entitled to from any other source.
- (2) The Commission is not to determine a lump sum for the purposes of this section unless satisfied that the termination of liability concerned is in the best interests of the worker.
- (3) Payment of the lump sum to which a liability has been commuted under this section removes the liability.
- (4) A determination under this section may include a determination as to the payment of a lump sum to remove any liability to make a payment under Division 4 of Part 3 in respect of the injury concerned. Payment of that lump sum removes any liability to which the determination relates.

#### **87H Registration of commutation agreements**

- (1) A party to a commutation agreement may apply to the Registrar for registration of the

agreement by the Registrar.

**Note—**

Section 87F (6) provides that a commutation agreement is of no effect unless and until it is registered.

- (2) The Registrar must refuse to register a commutation agreement unless satisfied that the requirements of section 87F (2) have been complied with in respect of the agreement.
- (3) Before registering a commutation agreement, the Registrar may (on the application of a party to the agreement or of the Registrar's own motion) refer the agreement for review by the Commission. The Registrar is not to register the agreement if the Commission recommends that the agreement not be registered.
- (4) The Commission reviewing a commutation agreement may recommend to the Registrar that the agreement not be registered if the Commission considers that the agreement is inaccurate or that the lump sum to which a liability has been commuted by the agreement is inadequate.
- (5) In reviewing a commutation agreement, the Commission may have regard to the following matters:
  - (a) any dispute as to liability to pay compensation under the Workers Compensation Acts,
  - (b) the injury, the age of the worker, the general health of the worker, and the occupation of the worker at the time of the occurrence of the injury,
  - (c) the worker's diminished ability to compete in an open labour market,
  - (d) other benefits that the worker may be entitled to from any other source.
- (6) The registration of a commutation agreement may not be cancelled except within such period after the agreement is registered, and in such manner, as may be authorised by the regulations.
- (7) This section has effect despite section 234 of the 1998 Act (No contracting out).
- (8) This section does not prevent a commutation agreement containing provision as to the payment of costs.

**87I Payment**

- (1) If a liability in respect of compensation is only partially commuted under this Division, the balance of the compensation continues to be payable under and subject to this Act.
- (2) (Repealed)

- (3) The annual report of the Authority is to include a statement as to trends in the commutation of liabilities under this Act.

#### **87J Other commutation agreements invalid**

- (1) Neither agreement as to the commutation of a payment to a lump sum nor payment of the sum payable under the agreement exempts the person by whom the payment is payable from any liability under this Act, except as provided by this Division.
- (2) This section does not affect the operation of section 51 in respect of a liability commuted under that section before the commencement of this section.
- (3) This section does not affect the operation of section 66A.

#### **87K Commutation payment taken to be payment of compensation**

Payment of a lump sum to which liability in respect of any weekly payment of compensation has been wholly or partially commuted under this Division or section 51, or redeemed under section 15 of the former Act (as applied by Schedule 6 to this Act), is taken for the purposes of this Act, the 1998 Act and the former Act (as applied by this Act) to be payment of the compensation concerned in pursuance of the liability to pay the compensation concerned.

### **Part 4 Uninsured liabilities**

#### **Editorial note—**

See now [Workplace Injury Management and Workers Compensation Act 1998 No 86](#).

### **Divisions 1A-5**

#### **87D-137 (Repealed)**

### **Division 6 Uninsured liabilities**

#### **138 Definitions** (cf former s 18C (35))

In this Division:

**employer**, in relation to a worker, includes a principal within the meaning of section 20 who is liable to pay compensation to the worker.

**the relevant time**, in relation to an injured worker, means the time of the happening of that worker's injury.

#### **139 (Repealed)**

#### **140 Persons eligible to make claims** (cf former s 18C (2)-(6))

- (1) A claim under this Division may be made against the Nominal Insurer by any person

who considers he or she has a claim against an employer for compensation under this Act or work injury damages in respect of an injury to a worker, if:

- (a) the employer is uninsured, or
  - (b) the person claiming the compensation has been unable, after due search and inquiry, to identify the relevant employer.
- (2) An employer is considered to be **uninsured** if the employer:
- (a) had not obtained, or was not maintaining in force, a policy of insurance for the full amount of the employer's liability under this Act in respect of the injured worker at the relevant time, or
  - (b) having been a self-insurer at the relevant time, has ceased to undertake liability to pay compensation to the employer's own workers (but only if the claim cannot be paid under section 216 from any money deposited with the Authority or under any arrangement relating to the refund of any such deposit).
- (2A) A claim may not be made under this Division in respect of a claim for work injury damages against a person who is an employer as a result of being a principal within the meaning of section 20 who is liable to pay compensation to the worker.
- (2B) The regulations may prescribe the searches and inquiries necessary to constitute due search and inquiry to identify an employer for the purposes of this section.
- (3) If a payment is made by the Nominal Insurer in respect of a claim under this Division and the employer is subsequently identified, the Nominal Insurer may recover the amount paid from the employer or the employer's insurer in the manner provided by this Division.
- (4) A claim shall not be made under this Division if the person claiming the compensation is entitled under section 20 to claim compensation against a principal within the meaning of section 20.
- (5) If a person is entitled to claim compensation against a principal within the meaning of section 20 and the principal was not maintaining in force a policy of insurance for the full amount of the principal's liability under this Act at the relevant time:
- (a) the person may make to the Authority a claim for compensation under this Division, and
  - (b) the Authority may deal with any such claim as it thinks fit.

**141 Making of claims** (cf former s 18C (7)-(9))

- (1) Claims under this Division shall be made in the form and manner for the time being determined by the Nominal Insurer.

(2) The Nominal Insurer may, by notice, require an employer to furnish to the Authority within the period (being not less than 7 days) specified in the notice any information described in the notice which:

(a) is available to the employer, and

(b) is required by the Nominal Insurer in order for it to deal with a claim under this Division.

(3) An employer shall comply with a notice given under subsection (2).

Maximum penalty: 20 penalty units.

(4) In this section:

**employer** includes any person whom the Nominal Insurer has reason to suspect is an employer.

**141A (Repealed)**

**142 Publication of claims etc** (cf former s 18C (10)-(13))

(1) The Nominal Insurer may, before considering a claim under this Division, publish a notice of the claim in such manner as the Nominal Insurer considers appropriate.

(2) If notice of a claim is so published, any person who, without reasonable cause, fails to notify the Nominal Insurer within the time specified in the notice that the person is the insurer of the liability in respect of the claim of any person who is an employer within the meaning of this Division in respect of the claimant, or who fails to supply the Nominal Insurer with any information it has which may be material to the matter:

(a) is liable to reimburse the Insurance Fund such amount as the Nominal Insurer has paid out in respect of the claim and any costs incurred in connection with the claim, and

(b) is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

(3) If, in respect of a claim under this Division, a licensed insurer with whom the Nominal Insurer considers the injured worker's employer had a relevant policy of insurance at the relevant time is located, the following provisions apply:

(a) the Nominal Insurer shall supply the insurer with all relevant details of the claim,

(b) the insurer shall, within 14 days of being advised of the claim, either accept or deny liability to indemnify the employer,

(c) if the insurer accepts liability to indemnify the employer, the Nominal Insurer shall:

(i) inform the claimant of the existence of the insurance, and

(ii) transfer the claim documents to the insurer,

(d) if the insurer denies liability to indemnify the employer, or does not either accept or deny liability to indemnify the employer within 14 days of being advised of the claim, the Nominal Insurer shall deal with the claim in the manner provided by this Division.

(4) For the purposes of subsection (3), **licensed insurer** means a specialised insurer or self-insurer.

**142A Nominal Insurer becomes insurer for claims**

- (1) Subject to this section and the regulations, the provisions of this Act and the 1998 Act apply to and in respect of a claim under this Division as if the Nominal Insurer were the insurer under this Act of the relevant employer at the relevant time.
- (2) The regulations may prescribe modifications to the provisions of this Act and the 1998 Act for the purposes of their application under this section to and in respect of a claim under this Division.
- (3) A claim under this Division for work injury damages cannot be made until a claim under this Division for lump sum compensation in respect of the injury has been made and determined.

**142B Proceedings before Commission on claim for compensation**

- (1) On an application to the Commission for a determination of a claim for compensation under this Division, or on the commencement of proceedings in a court in respect of a claim for work injury damages under this Division:
  - (a) the applicant must name the employer by whom the applicant alleges compensation is payable and the Nominal Insurer as respondents to, or defendants in, the proceedings, and
  - (b) the Nominal Insurer may, by service of a notice on any person who, in the opinion of the Nominal Insurer, may be liable to pay to the applicant compensation under this Act (or may have insured that liability), join that person as a party to the proceedings.
- (2) The Commission may make orders providing for the reimbursement of the Insurance Fund under section 145.

**143-144A (Repealed)**

**145 Employer or insurer to reimburse Insurance Fund** (cf former s 18C (21)-(26))

- (1) The Nominal Insurer may serve on a person who, in the opinion of the Nominal Insurer, was:

- (a) in respect of an injured worker to or in respect of whom a payment has been made by the Nominal Insurer in respect of a claim under this Division, an employer at the relevant time, or
  - (b) an insurer under this Act of such an employer,
- a notice requiring that person, within a period specified in the notice, to reimburse the Insurance Fund an amount (not being an amount exceeding the amount of the payment made) specified in the notice.
- (2) The Nominal Insurer may, by instrument in writing, waive the liability of an employer under subsection (1) to reimburse the Insurance Fund an amount, if the Nominal Insurer, in respect of the amount, is satisfied that:
    - (a) the amount is beyond the capacity of the employer to pay,
    - (b) the employer could not reasonably have been expected to regard himself or herself as an employer at the relevant time,
    - (c) the employer, not being a corporation, is bankrupt and the liability under this section is not provable in the bankruptcy,
    - (d) the employer, being a corporation, is being wound up and the liability under this section is not provable in the winding up,
    - (e) the employer, being a corporation, has been dissolved, or
    - (f) it would not be commercially feasible for the Nominal Insurer to attempt to recover the amount.
  - (3) A person on whom a notice has been served under subsection (1) in respect of an injured worker may, within the period specified in the notice, apply to the Commission for a determination as to the person's liability in respect of the payment concerned.
  - (4) The Commission may hear any such application and may:
    - (a) make such determination in relation to the application, and
    - (b) make such awards or orders as to the payment of compensation under this Act to or in respect of the injured worker concerned,as the Commission thinks fit.
  - (5) In any proceedings under subsection (4), a certificate executed by the Nominal Insurer and certifying that:
    - (a) the payments specified in the certificate were paid to or in respect of an injured worker named in the certificate, and

(b) a person named in the certificate was, in the opinion of the Nominal Insurer, liable at the relevant time to pay to or in respect of the injured worker compensation under this Act or work injury damages,

is (without proof of its execution by the Nominal Insurer) admissible in evidence in any proceedings and is evidence of the matters stated in the certificate.

- (6) The Nominal Insurer may recover an amount specified in a notice served under subsection (1) (being a notice in respect of which an application has not been made under subsection (3)) from the person to whom the notice was given as a debt in a court of competent jurisdiction.
- (7) An order by the Commission that the Nominal Insurer is to be reimbursed by a person named in the determination concerned may be enforced under section 362 of the 1998 Act.

#### **145A Recovery from directors of corporations liable to reimburse Insurance Fund**

- (1) If a corporation is liable to reimburse the Insurance Fund an amount for a payment made in respect of a claim under this Division and the amount is not recoverable from the corporation, the Nominal Insurer is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.
- (2) A corporation is considered to be liable to reimburse the Nominal Insurer an amount for such a payment if the Nominal Insurer is entitled to recover the amount either under section 145 or under an order of the Commission made on application under that section, even if the corporation has ceased to exist.
- (3) An amount is considered to be not recoverable from a corporation if the Nominal Insurer certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.
- (4) A person is a culpable director of a corporation at the relevant time if:
- (a) the corporation contravened section 155 (Compulsory insurance for employers) in respect of a policy of insurance that would have covered the corporation for the liability to which the payment made in respect of the claim under this Division related (whether or not the corporation has been proceeded against or convicted of an offence for the contravention), and
  - (b) at the time of the contravention the person was a director of the corporation.
- (5) A person is not a culpable director of a corporation if the person establishes that:
- (a) the corporation contravened section 155 without the person's knowledge, or
  - (b) the person was not in a position to influence the conduct of the corporation in



relation to that contravention, or

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

- (6) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.
- (7) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

#### **146 Commutation of weekly payments**

- (1) (Repealed)
- (2) A liability in respect of a claim under this Division may not be commuted to a lump sum with the agreement of the worker unless the Nominal Insurer:
- (a) has given the employer notice of the proposed agreement and has given the employer a reasonable opportunity to make submissions to the Nominal Insurer with respect to the matter, and
  - (b) has taken into account any submissions so made to the Nominal Insurer.
- (3) Subsection (2) does not apply if the worker has been unable, after due search and inquiry, to identify the relevant employer.
- (4) In the case of commutation by determination of the Commission under section 87G (Commutation when worker legally incapacitated), the Commission may on the application of the employer, if the Commission thinks fit, refuse to make such a determination in respect of a liability that is the subject of a claim under this Division.
- (5) The making of such an application by the employer in no way fetters the discretion of the Commission to make the determination, and a commutation made in consequence of the determination is binding on the employer whether or not the employer has made such an application.
- (6) The Nominal Insurer may apply for registration of a commutation agreement under section 87H as a party to the agreement.

#### **147 Miscellaneous provisions** (cf former ss 18C (30)-(34), 18D)

- (1) If an award of compensation or work injury damages is made that is the subject of a claim under this Division, the Nominal Insurer may cause to be made such inquiries as it thinks fit to determine the genuineness of the grounds on which the award is sought or was based if:
- (a) the employer did not appear and defend the proceedings for the award of

compensation or work injury damages, or

- (b) the award of compensation or work injury damages was made before the making of the claim under this Division and was obtained in default of appearance by the employer, or by consent of the worker and the employer, or
  - (c) the Nominal Insurer thinks that any such inquiries should be made for any reason it thinks fit.
- (2) The Commission or a court before which the proceedings are taken may adjourn proceedings referred to in subsection (1) or, if an award has been made, may reopen the proceedings and order some fit person to take and defend the proceedings in substitution for the employer, and for those purposes all the rights of the employer are subrogated to that person.
- (3) A lump sum payable to a claimant in respect of a claim under this Division may by agreement with the Nominal Insurer, or by order of the Commission or a court, be paid to the Nominal Insurer to be invested, applied, paid out or otherwise dealt with as agreed upon or ordered or, subject to any such agreement or order, as provided by section 85.
- (4) In any proceedings before the Commission or a court under this Division, the Nominal Insurer or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Commission or court and exercise in respect of any matters and questions arising out of the application the same powers, rights and authorities as an employer may exercise in respect of a claim between a worker and an employer under this Act.
- (5) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 471B and 500 (2) of that Act:
- (a) an application by a person for an award of compensation or work injury damages,
  - (b) a person proceeding with such an application.

**Note—**

In the absence of this subsection, sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth would require the leave of a Court to make or proceed with an application for compensation or work injury damages against certain companies that are being externally administered. This section ensures that section 5F of that Act will operate to ensure that those sections will not require the leave of the Court directing the external administration before an application can be made or proceeded with.

- (6) Any award of compensation or work injury damages made pursuant to an application authorised by this section has effect only for the purposes of this Division and not otherwise.

#### **148 Application of other provisions of Act**

- (1) For the purposes of section 13 (3), the Nominal Insurer is to have the same entitlement to recover payments it has made to a worker in respect of a claim under this Division as an employer has in respect of payments the employer has made to a worker under section 13.
- (2) If a worker has received payments in respect of a claim under this Division, the payments are to be treated as compensation or work injury damages (as appropriate) recovered by the worker for the purposes of:
  - (a) section 64 of the former Act as continued in operation by clause 1 (2) of Part 14 of Schedule 6 to this Act, and
  - (b) section 151Z of this Act.
- (3) The regulations may provide for the application (with such modifications as may be prescribed) of other provisions of this Act with respect to any matter arising under this Division.

#### **148A Nominal Insurer's right of subrogation**

If the Nominal Insurer has paid or is liable to pay an amount as compensation for which an employer is liable under this Act or the former Act or an amount of work injury damages for which an employer is liable, the Nominal Insurer is subrogated to any right of the employer and any insurer of the employer to recover any amount from any other person in respect of that payment (had the payment been made by the employer or insurer), whether the right arises by way of a liability for contribution, apportionment of liability or otherwise.

### **Division 7**

#### **148B-148L (Repealed)**

### **Part 5 Common law remedies**

#### **Division 1 Preliminary**

##### **149 Definitions**

- (1) In this Part:

**damages** includes:

- (a) any form of monetary compensation, and
- (b) without limiting paragraph (a), any amount paid under a compromise or settlement of a claim for damages (whether or not legal proceedings have been instituted),

but does not include:

- (c) compensation under this Act, or
  - (d) additional or alternative compensation to which Division 8 of Part 3 applies, or
  - (e) an award of compensation or direction for compensation under Part 2 or Part 4 of the *Victims Compensation Act 1996*, or
  - (f) a sum required or authorised to be paid under a State industrial instrument, or
  - (g) any sum payable under a superannuation scheme or any life or other insurance policy, or
  - (h) any amount paid in respect of costs incurred in connection with legal proceedings, or
  - (i) damages of a class which is excluded by the regulations from this definition.
- (2) A reference in this Part to compensation payable under this Act includes a reference to compensation that would be payable under this Act if a claim for that compensation were duly made.

#### **150 Reference to worker's employer includes fellow workers etc**

A reference in this Part to a worker's employer includes a reference to:

- (a) a person who is vicariously liable for the acts of the employer, and
- (b) a person for whose acts the employer is vicariously liable.

### **Division 1A Choice of law**

#### **150A The applicable substantive law for work injury claims**

- (1) If compensation is payable (whether or not it has been paid) under the statutory workers compensation scheme of a State in respect of an injury to a worker, the substantive law of that State is the substantive law that governs:
  - (a) whether or not a claim for damages in respect of the injury can be made, and
  - (b) if it can be made, the determination of the claim.
- (2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.
- (3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it:

- (a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision, or
  - (b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.
- (4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.
- (5) In this Division:
- State** includes Territory.

**150B Claims to which Division applies**

- (1) This Division applies only to a claim for damages against a worker's employer in respect of an injury that was caused by:
- (a) the negligence or other tort (including breach of statutory duty) of the worker's employer, or
  - (b) a breach of contract by the worker's employer.
- (2) Subsection (1) (a) applies even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.
- (3) A reference in this Division to a worker's employer includes a reference to:
- (a) a person who is vicariously liable for the acts of the employer, and
  - (b) a person for whose acts the employer is vicariously liable.

**150C What constitutes injury and employment and who is employer**

For the purposes of this Division:

- (a) **injury** and **employer** include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State, and
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

**150D Claim in respect of death included**

For the purposes of this Division, a claim for damages in respect of death resulting from

an injury is to be considered as a claim for damages in respect of the injury.

**150E Meaning of “substantive law”**

In this Division:

**a State’s legislation about damages for a work related injury** means:

- (a) for this State—Part 5 of this Act and Chapter 7 of the 1998 Act, and any other provision of this Act or the 1998 Act providing for the interpretation of anything in that Part or Chapter, and
- (b) for any other State—any provisions of a law of the State that is declared by the regulations to be the State’s legislation about damages for a work related injury.

**substantive law** includes:

- (a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action, and
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time), and
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit, and
- (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered, and
- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered, and
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights, and
- (g) a provision of a State’s legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature,

but does not include a law prescribing rules for choice of law.

**150F Availability of action in another State not relevant**

- (1) It makes no difference for the purposes of this Division that, under the substantive law of another State:
  - (a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State, or
  - (b) the circumstances on which the claim is based do not give rise to a cause of

action.

(2) In this section:

**another State** means a State other than the State with which the injury is connected.

## **Division 2 Common law and other remedies generally**

### **151 Common law and other liability preserved**

This Act does not affect any liability in respect of an injury to a worker that exists independently of this Act, except to the extent that this Act otherwise expressly provides.

### **151A Effect of recovery of damages on compensation**

- (1) If a person recovers damages in respect of an injury from the employer liable to pay compensation under this Act then (except to the extent that subsection (2), (3) or (4) covers the case):
  - (a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid), and
  - (b) the amount of any weekly payments of compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the person who paid the compensation, and
  - (c) the person ceases to be entitled to participate in any injury management program provided for under this Act or the 1998 Act.
- (2) If damages in respect of an injury are recovered from the employer liable to pay compensation under this Act, pursuant to a cause of action that survives for the benefit of the estate of a deceased worker under the [Law Reform \(Miscellaneous Provisions\) Act 1944](#), the following amounts of compensation are to be repaid out of the estate of the deceased worker to the person who paid the compensation:
  - (a) the amount of any weekly payments of compensation already paid in respect of the injury concerned,
  - (b) the amount of any permanent impairment compensation and pain and suffering compensation already paid in respect of the injury concerned.
- (3) If damages are recovered in an action under the [Compensation to Relatives Act 1897](#) in respect of the death of a worker from the employer liable to pay compensation under this Act in respect of the death:
  - (a) the amount of any compensation under Division 1 of Part 3 paid in respect of the death is to be deducted from the damages (awarded or otherwise paid as a lump

sum) and is to be paid to the person who paid the compensation, and

(b) a person recovering those damages ceases to be entitled to any further compensation under this Act in respect of the death of the worker.

(4) If a person recovers motor accident damages in respect of an injury from the employer liable to pay compensation under this Act:

(a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid), and

(b) the amount of any compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the person who paid the compensation.

**151B (Repealed)**

**151C 6-months delay before commencement of court proceedings against employer for damages**

(1) A person to whom compensation is payable under this Act is not entitled to commence court proceedings for damages in respect of the injury concerned against the employer liable to pay that compensation until 6 months have elapsed since notice of the injury was given to the employer.

(2) Despite subsection (1), the person is entitled to commence court proceedings against the employer if either of the following occurs:

(a) the employer wholly denies liability in respect of the injury,

(b) the employer admits partial liability in respect of the injury but the person is dissatisfied with the extent to which liability is admitted.

(3) This section does not limit or otherwise affect the operation of Part 6 of Chapter 7 of the 1998 Act.

**Note—**

Part 6 of Chapter 7 of the 1998 Act imposes restrictions on the commencement of court proceedings for damages.

**151D Time limit for commencement of court proceedings against employer for damages**

(1) (Repealed)

(2) A person to whom compensation is payable under this Act is not entitled to commence court proceedings for damages in respect of the injury concerned against the employer liable to pay that compensation more than 3 years after the date on which the injury was received, except with the leave of the court in which the



proceedings are to be taken.

- (3) The *Limitation Act 1969* does not apply to or in respect of court proceedings to which this section applies.
- (4) This section does not apply to the commencement of court proceedings in respect of a claim within the meaning of Part 5 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999*.

#### **151DA Time not to run for commencement of proceedings in certain cases**

- (1) Time does not run for the purposes of section 151D:

- (a1) while the determination of the claim concerned is delayed as permitted by section 281 of the 1998 Act, but not including delay beyond 2 months after the claimant has provided all relevant particulars about the claim as required by section 281 (2) (b) of that Act, or

**Note—**

Delay in determining a claim beyond 2 months is only permitted on the basis that degree of permanent impairment is not fully ascertainable and the insurer has notified the claimant of this. In such a case, paragraph (a) of this subsection can apply (if a dispute about whether degree of permanent impairment is fully ascertainable is the subject of medical assessment) to further prevent time running for the purposes of section 151D.

- (a) while a medical dispute as to whether the degree of permanent impairment of the injured worker is at least 15%, or whether the degree of permanent impairment of the injured worker is fully ascertainable, is the subject of a referral for determination by the Commission or a referral for assessment under Part 7 of Chapter 7 of the 1998 Act (including any further assessment under section 329 of that Act), or
    - (a2) during the period of 1 month after an offer of settlement is made to the claimant pursuant to the determination of the claim as and when required by the 1998 Act, or
    - (a3) while an assessment under Part 7 of Chapter 7 of the 1998 Act in respect of a medical dispute referred to in paragraph (a) is the subject of a pending appeal under section 327 of the 1998 Act, or
    - (b) while a pre-filing statement served in accordance with section 315 of the 1998 Act in respect of the claim concerned remains current.
- (2) A pre-filing statement remains current from the time it is served until it is struck out under this section on the application of the person (***the defendant***) on whom it was served or it is withdrawn by the person who served it, whichever happens first.
- (3) The defendant may apply to the President to have the pre-filing statement struck out by order of the President. Such an application may not be made until at least 6

months have elapsed after the defendant served on the claimant a defence to the claim in accordance with section 316 of the 1998 Act.

- (4) The President may order that a pre-filing statement be struck out but must not do so if satisfied that the degree of permanent impairment of the injured worker is not yet fully ascertainable and the matter is the subject of a referral under Part 7 of Chapter 7 of the 1998 Act for assessment of the degree of permanent impairment of the injured worker.
- (5) A medical dispute is considered to be the subject of a referral for assessment under Part 7 of Chapter 7 of the 1998 Act even if the approved medical specialist has declined to make an assessment of the degree of permanent impairment of the injured worker until satisfied that the degree of permanent impairment is fully ascertainable.
- (6) The President may delegate to a Deputy President any function of the President under this section (except this power of delegation), but only if the President is satisfied that the delegation is necessary to avoid a conflict of interest or the appearance of bias.

### **Division 3 Modified common law damages**

#### **151E Application—modified common law damages**

- (1) This Division applies to an award of damages in respect of:
  - (a) an injury to a worker, or
  - (b) the death of a worker resulting from or caused by an injury,being an injury caused by the negligence or other tort of the worker's employer.
- (2) This Division does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

**Note—**

However, this Division will generally apply in the case of an injury to a coal miner if the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (see section 3D of the *Motor Accidents Act 1988* and section 3B of the *Motor Accidents Compensation Act 1999*).

- (3) This Division applies to an award of damages in respect of an injury caused by the negligence or other tort of the worker's employer even though the damages are recovered in an action for breach of contract or in any other action.
- (4) Subsection (3) is enacted for the avoidance of doubt and has effect in respect of actions brought before as well as after the commencement of that subsection.

**151F General regulation of court awards**

A court may not award damages to a person contrary to this Division.

**151G Only damages for past and future loss of earnings may be awarded**

- (1) The only damages that may be awarded are:
  - (a) damages for past economic loss due to loss of earnings, and
  - (b) damages for future economic loss due to the deprivation or impairment of earning capacity.
- (2) This section does not apply to an award of damages in an action under the [Compensation to Relatives Act 1897](#).

**151H No damages unless permanent impairment of at least 15%**

- (1) No damages may be awarded unless the injury results in the death of the worker or in a degree of permanent impairment of the injured worker that is at least 15%.

**Note—**

Section 322 of the 1998 Act provides that the assessment of the degree of permanent impairment is to be made in accordance with WorkCover Guidelines. That section also provides that impairments that result from the same injury are to be assessed together.

- (2) In assessing whether the 15% threshold has been met (that is, whether the degree of permanent impairment resulting from an injury is at least 15%):
  - (a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychological injury, and
  - (b) in assessing impairment resulting from psychological injury, no regard is to be had to impairment that results from a secondary psychological injury, and
  - (c) the 15% threshold is not met unless the degree of permanent impairment resulting from physical injury is at least 15% or the degree of permanent impairment resulting from psychological injury is at least 15%.

**Note—**

This does not prevent an award of damages in respect of both psychological and physical injuries together once the 15% threshold has been met for one or the other.

- (3) In assessing the degree of permanent impairment that results from a physical injury, no regard is to be had to any impairment or symptoms resulting from a psychological injury.
- (4) The degree of permanent impairment that results from an injury is to be assessed as provided by this section and Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.

(5) In this section:

**psychological injury** includes psychiatric injury.

**secondary psychological injury** means a psychological injury to the extent that it arises as a consequence of, or secondary to, a physical injury.

#### **151I Calculation of past and future loss of earnings**

- (1) In awarding damages, the court is to disregard the amount (if any) by which the injured or deceased worker's net weekly earnings would (but for the injury or death) have exceeded the amount that is the maximum amount of weekly payments of compensation under section 35 (even though that maximum amount under section 35 is a maximum gross earnings amount).
- (2) The maximum amount of weekly payments of compensation under section 35 for a future period is to be the amount that the court considers is likely to be the amount for that period having regard to the operation of Division 6 of Part 3 (Indexation of amounts of benefits).
- (3) This section applies even though weekly payments of compensation to the worker concerned are not subject to the maximum amount prescribed under section 35.

#### **151IA Retirement age**

In awarding damages for future economic loss due to deprivation or impairment of earning capacity or (in the case of an award of damages under the [Compensation to Relatives Act 1897](#)) loss of expectation of financial support, the court is to disregard any earning capacity of the injured worker after age 65.

#### **151J Damages for future economic loss—discount rate**

- (1) For the purposes of an award of damages, the present value of future economic loss is to be qualified by adopting the prescribed discount rate.
- (2) The prescribed discount rate is:
  - (a) a discount rate of the percentage prescribed by the regulations, or
  - (b) if no percentage is so prescribed, a discount rate of 5 per cent.
- (3) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

#### **151K, 151KA (Repealed)**

#### **151L Mitigation of damages**

- (1) In assessing damages, the court must consider the steps that have been taken, and that could reasonably have been or be taken by the injured worker to mitigate those

damages.

- (2) In particular, the court must consider the following matters:
  - (a) whether the injured worker has undergone appropriate medical treatment,
  - (b) whether the injured worker has promptly sought suitable employment from the employer or, if necessary, suitable alternative employment,
  - (c) whether the injured worker has duly complied with the worker's obligations under Chapter 3 of the 1998 Act (Workplace injury management),
  - (d) whether the injured worker has sought appropriate rehabilitation training.
- (3) In any proceedings for damages, the person claiming damages has the onus of proving that all reasonable steps to mitigate damages have been taken by the injured worker. However, the person claiming damages does not have the onus of establishing that the steps referred to in paragraphs (b)–(d) of subsection (2) have been taken, and the court assessing damages does not have to take the matters referred to in those paragraphs into account, unless it is established that before those steps could reasonably be expected to have been taken the worker was made aware by the employer or insurer that the worker was required to take those steps.
- (4) In any proceedings for damages, a written report by a person who provided medical or rehabilitation services to the injured worker is admissible as evidence of any such steps taken by that worker.

#### **151M Payment of interest**

- (1) **Limited statutory entitlement** A plaintiff has only such right to interest on damages as is conferred by this section.
- (2), (3) (Repealed)
- (4)
  - (a) Interest is not payable (and a court cannot order the payment of interest) on damages unless:
    - (i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or
    - (ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the

plaintiff's full entitlement to all damages of any kind but has not made such an offer, or

(iii) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

(b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind.

(c) For the purposes of this subsection, an offer of settlement must be in writing.

(5) **Calculation of interest** If a court is satisfied that interest is payable under subsection (4) on damages:

(a) the amount of interest is to be calculated for the period from the date of the death of or injury to the worker until the date on which the court determines the damages, and

(b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) **Rate of interest** The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 101 of the *Civil Procedure Act 2005* for the period concerned.

(7) **Judgment debts** Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

### **151N Contributory negligence—generally**

(1) The common law and enacted law as to contributory negligence apply to awards of damages, except as provided by this section.

(2) Damages for deprivation or impairment of earning capacity are not to be reduced because of contributory negligence below the amount that the court estimates would have been payable by way of a commutation of weekly payments of compensation under Division 9 of Part 3 if the person concerned were eligible to be paid a lump sum under that Division.

(3) In an action for the award of damages founded on a breach of a statutory duty imposed on a defendant, contributory negligence on the part of the injured worker is not a complete defence, but the damages recoverable are to be reduced by such percentage as the court thinks just and equitable having regard to the person's share

in the responsibility for the damages.

- (4) Part 3 of the *Law Reform (Miscellaneous Provisions) Act 1965* applies to an action for damages referred to in subsection (3).
- (5) In an action for the award of damages under the *Compensation to Relatives Act 1897*, section 13 of the *Law Reform (Miscellaneous Provisions) Act 1965* does not apply so as to prevent the reduction of damages by the contributory negligence of the deceased person.

#### **151O Defence of voluntary assumption of risk**

The defence of *volenti non fit injuria* is not available in an action for the award of damages but, where that defence would otherwise have been available, the amount of any damages is to be reduced to such extent as is just and equitable on the presumption that the injured or deceased person was negligent in failing to take sufficient care for his or her own safety.

#### **151P Damages for psychological or psychiatric injury**

No damages for psychological or psychiatric injury are to be awarded in respect of an injury except in favour of:

- (a) the injured worker, or
- (b) a parent, spouse, brother, sister or child of the injured or deceased person who, as a consequence of the injury to the injured person or the death of the deceased person, has suffered a demonstrable psychological or psychiatric illness and not merely a normal emotional or cultural grief reaction.

#### **151Q Structured settlements**

- (1) This section applies to an award of damages if the plaintiff requests that it apply. In making an order under this section the court is to give preference to the views of the injured worker.
- (2) If this section applies to an award of damages, the court:
  - (a) may separately determine the amount of damages for future economic loss and the amount of damages for past economic loss, and
  - (b) may order that any damages determined by the court for future economic loss are to be paid in accordance with such arrangements as the court determines or approves.
- (3) In making an order under this section, the court is required to have regard to the following matters:
  - (a) the ability of the plaintiff to manage and invest any lump sum award of damages,

(b), (c) (Repealed)

(d) the views of the defendant in relation to the proposed order,

(e) such other matters as the court considers appropriate.

(4) In making an order under this section relating to damages for impairment of earning capacity, the court may order the damages to be used to purchase an annuity for the plaintiff on such terms as the court considers appropriate.

(5) (Repealed)

(6) Arrangements determined or approved under this section may include provision that payments of damages for impairment of earning capacity are to be made at intervals of not more than 12 months.

(7) A party to any arrangements determined or approved under this section may apply to the court at any time for an order varying or terminating the arrangements.

(8) The court may, on an application under subsection (7), make such order as it considers appropriate, having regard to the provisions of this section.

(9) The regulations may make provision for or with respect to any matter dealt with in this section and, in particular, may impose conditions or limitations on the orders that may be made under this section or otherwise regulate the making of those orders.

#### **151R Exemplary or punitive damages**

A court may not award exemplary or punitive damages to a person in an award of damages.

#### **151S Court to apportion damages etc**

(1) If a judgment is obtained for payment of damages to which this Division applies as well as for other damages, the court is required, as part of the judgment, to declare what portion of the sum awarded by the judgment is damages to which this Division applies.

(2) In any such case the court is required to apportion any costs awarded.

#### **151T Costs**

(1) Subject to the rules of court, if a court awards costs to a plaintiff by reference to the amount recovered by the plaintiff, that amount is to be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with this Division.

(2) (Repealed)



## **Division 4 Retrospective restoration of modified common law**

### **151U Modified common law to apply from 30 June 1987**

- (1) This Part applies to a cause of action in respect of:
  - (a) an injury received by a worker at or after 4 pm on 30 June 1987, or
  - (b) the death of a worker resulting from or caused by such an injury.
- (2) This Part has effect as if sections 149 and 150, as originally enacted, had never been enacted.

### **151V Election provisions not to apply**

- (1) Section 151A (Election—damages or “Table of Disabilities” compensation) does not apply:
  - (a) in respect of an injury received before 4 pm on 30 June 1989, or
  - (b) in respect of an injury received at or after that time and before the commencement of section 151A (but that section does apply in respect of any such injury if the person concerned accepts payment of permanent loss compensation after the commencement of that section).
- (2) If a person commences proceedings to recover damages, or accepts payment of damages, in respect of an injury to which section 151A does not so apply:
  - (a) the person is not entitled to any permanent loss compensation claimed but not yet received, and
  - (b) the amount of any such compensation previously paid is to be deducted from those damages.
- (3) (Repealed)

### **151W Time limit for commencement of court proceedings extended**

In the application of section 151D to an injury received before the date of assent to the [Workers Compensation \(Amendment\) Act 1991](#), the injury is to be taken to have been received on that date.

### **151X Insurance policies to cover retrospective claims**

- (1) A policy of insurance issued or renewed under this Act before the commencement of this section extends (and is to be taken to have always extended) to the employer’s liability independently of this Act for which the employer is required to obtain a policy of insurance under section 155.
- (2) Any liability to which a policy of insurance extends because of this section is also a

liability to which any corresponding policy of re-insurance extends.

**151Y Funding of self-insurers, government employers etc for retrospective claims**

- (1) This section applies to the following employers:
  - (a) self-insurers,
  - (b) employers who obtained a policy of insurance from a specialised insurer,
  - (c) Government employers insured under a policy of insurance from the Government Insurance Office,
  - (d) employers who obtained a policy of insurance under the former Act for a period that extended beyond 4 pm on 30 June 1987 (not being a policy assigned to a licensed insurer under clause 10 of Part 15 of Schedule 6).
- (2) The Authority may establish a special account within the Authority's Fund for the purposes of this section.
- (3) The Authority may require licensed insurers and former licensed insurers to pay into the special account such amounts as the Authority may direct by notice served on the insurers concerned.
- (3A) Amounts paid into the special account may be refunded for the purposes of making necessary adjustments.
- (4) The Authority may recover as a debt in a court of competent jurisdiction any payment which an insurer does not pay in accordance with a direction under this section.
- (5) The Authority may from the special account pay such amounts as it considers appropriate to fund the liability of employers for the relevant part of retrospective claims (being employers who, at the time of the injury giving rise to the claim, were employers to whom this section applies).
- (6) For the purposes of this section:
  - (a) retrospective claims are claims for damages to which those employers have become liable because of the enactment of the *Workers Compensation (Benefits) Amendment Act 1989* in respect of injuries received by workers after 4 pm on 30 June 1987 and before 4 pm on 30 June 1989, and
  - (b) the relevant part of a retrospective claim is that part that the Authority estimates represents the amount of damages (and associated expenses) in excess of the amount of workers compensation which was or would have been payable in respect of the injury concerned.
- (7) The Authority is not obliged to fund a liability of an employer under this section and may impose conditions on the making of payments under this section.

- (8) The Authority is not to fund an employer in respect of any liability for which the employer is already indemnified under a policy of insurance (or re-insurance) to which this Act does not apply.
- (9) This section does not limit the liability of a specialised insurer, the Self Insurance Corporation or any other insurer under a policy of insurance to which section 151X applies.

## **Division 5 Miscellaneous provisions**

### **151Z Recovery against both employer and stranger**

- (1) If the injury for which compensation is payable under this Act was caused under circumstances creating a liability in some person other than the worker's employer to pay damages in respect of the injury, the following provisions have effect:
  - (a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for payment of that compensation, but is not entitled to retain both damages and compensation,
  - (b) if the worker recovers firstly compensation and secondly those damages, the worker is liable to repay out of those damages the amount of compensation which a person has paid in respect of the worker's injury under this Act, and the worker is not entitled to any further compensation,
  - (c) if the worker firstly recovers those damages the worker is not entitled to recover compensation under this Act,
  - (d) if the worker has recovered compensation under this Act, the person by whom the compensation was paid is entitled to be indemnified by the person so liable to pay those damages (being an indemnity limited to the amount of those damages),
  - (e) if any payment is made under the indemnity and, at the time of the payment, the worker has not obtained judgment for damages against the person paying under the indemnity, the payment is, to the extent of its amount, a defence to proceedings by the worker against that person for damages,
  - (e1) if any payment is made under the indemnity and, at the time of the payment, the worker has obtained judgment for damages against the person paying under the indemnity (but judgment has not been satisfied), the payment, to the extent of its amount, satisfies the judgment,
  - (f) all questions relating to matters arising under this section are, in default of agreement, to be settled by action or, with the consent of the parties, by the Commission.
- (2) If, in respect of an injury to a worker for which compensation is payable under this

Act:

- (a) the worker takes or is entitled to take proceedings independently of this Act to recover damages from a person other than the worker's employer, and
- (b) the worker also takes or is entitled to take proceedings independently of this Act to recover damages from that employer,

the following provisions have effect:

- (c) the damages that may be recovered from the person by the worker in proceedings referred to in paragraph (a) are to be reduced by the amount by which the contribution which the person would (but for this Part) be entitled to recover from the employer as a joint tortfeasor or otherwise exceeds the amount of the contribution recoverable,
  - (d) the amount of the contribution that the person is entitled to recover from the employer as a joint tortfeasor or otherwise is to be determined as if the whole of the damages were assessed in accordance with provisions of Division 3 as to the award of damages,
  - (e) if the worker does not take proceedings against that employer or does not accept satisfaction of the judgment against that employer, subsection (1) applies as if the worker had not been entitled to recover damages from that employer, except that:
    - (i) if the compensation paid by that employer exceeds the amount of the contribution that could be recovered from that employer as a joint tortfeasor or otherwise—the indemnity referred to in subsection (1) (d) is for the amount of the excess only, and
    - (ii) if the compensation paid by that employer does not exceed the amount of that contribution—subsection (1) (d) does not apply and the employer has, to the extent of the compensation so paid, a defence to an action for such a contribution.
- (3) This section applies to proceedings taken independently of this Act by a person to whom compensation is payable under this Act in respect of the death of a worker as a result of an injury.
- (4) If a worker is liable under subsection (1) (b) to repay any money out of damages recovered by the worker, the worker is not liable to repay the money out of any damages payable after the date of recovery by way of periodic or other payments for loss of future earnings or earning capacity or for future expenses.
- (5) For the avoidance of doubt, this section applies and is taken always to have applied to the recovery of compensation or damages, whether or not the compensation or damages were paid under an award or judgment. For example, compensation or

damages may be paid under an agreement.

**151AA Abolition of doctrine of common employment**

- (1) It is not a defence to an employer who is sued in respect of any personal injury caused by the negligence of a person employed by the employer that the person so employed was, at the time the personal injury was caused, in common employment with the person injured.
- (2) This section applies to every case in which the relation of employer and employee exists, whether the contract of employment is made before or after the commencement of this section, and whether or not the employment is one to which the other provisions of this Act apply.

- (3) In this section:

**employer** includes the Crown but does not include any person who by any provision of this Act is deemed to be an employer.

**personal injury** includes:

- (a) death, and
- (b) any disease, and
- (c) any impairment of the physical or mental condition of a person.

**151AAA Special provision for common law liabilities under pre-1995 policies**

- (1) A policy of insurance issued before 1 September 1995 (including a policy issued under the former Act) operates in respect of a liability of the employer for an injury to a worker that arises independently of this Act or the former Act as if the liability arose at the time of injury.

**Note—**

1 September 1995 was the commencement date of the [Workers Compensation \(General\) Regulation 1995](#) which adopted a new form of workers compensation insurance policy that made it clear that the policy covered a common law liability of the employer for an injury to a worker received during the term of the policy even if liability in respect of the injury arose after the period for which the policy was in force.

- (2) This section does not apply to a liability in respect of an occupational disease within the meaning of section 151AB.

**151AB Special insurance provisions relating to occupational diseases**

- (1) If an employer is liable independently of this Act for damages for an occupational disease contracted by a worker, the following provisions have effect for the purposes of any policy of insurance obtained by the employer:
  - (a) the liability is taken to have arisen when the worker was last employed by the

employer in employment to the nature of which the disease was due, subject to paragraph (b),

(b) if the worker was employed by the employer in employment to the nature of which the disease was due both before and after the relevant commencement, the liability is taken to have arisen both when the worker was last employed by the employer in employment to the nature of which the disease was due before the relevant commencement and when the worker was last employed by the employer in employment to the nature of which the disease was due after the relevant commencement.

(2) In a case in which subsection (1) (b) applies, 2 insurers will be liable under policies of insurance to indemnify the employer (or pay damages to the worker) and the following provisions apply with respect to those insurers (referred to in this subsection as the **responsible insurers**):

(a) Of the responsible insurers, the one that is the insurer in respect of the employer's liability that arose after the relevant commencement is to be the insurer **primarily responsible** for the claim.

(b) The responsible insurers can however agree as to which of them is to be primarily responsible for the claim or the court can order that one of them is to be the insurer primarily responsible, and any such agreement or order overrides paragraph (a).

(c) The insurer who is primarily responsible for the claim is to act for both the responsible insurers in respect of any claim for the damages and has sole liability for the claim (that is, it is to indemnify the employer for the full amount of the damages or is to pay the full amount of damages to the worker, without any right to a contribution from any other insurer, except as provided by paragraph (d)).

(d) The insurer who is primarily responsible is entitled to recover from the other responsible insurer half of the amount paid as damages to the worker, half of the amount paid in respect of the worker's legal costs and half of such reasonable amount as the insurer primarily responsible may have incurred in respect of its own legal expenses in the matter.

(3) If 2 or more employers are jointly or severally liable for damages referred to in this section, the provisions of this section apply separately to each employer.

(4) This section does not affect the amount of damages recoverable by a worker.

(5) This section applies to any liability arising before or after the commencement of this Act and to any policy of insurance issued before or after that commencement.

(6) In sections 151AB and 151AC:

**occupational disease** means a disease of such a nature as to be contracted by a gradual process, and includes:

- (a) a dust disease as defined by the *Workers' Compensation (Dust Diseases) Act 1942*, and
- (b) total or partial loss of sight which is of gradual onset, and
- (c) the condition known as "boilermaker's deafness" or any deafness of similar origin.

**relevant commencement** means:

- (a) except as provided by paragraph (b)—4 pm on 30 June 1987, or
- (b) in the case of an employer who was insured under a policy of insurance that was assigned as referred to in clause 10 of Part 15 of Schedule 6 to this Act—the commencement of the period of insurance of the policy so assigned.

#### **151AC Further special insurance provisions relating to dust diseases**

- (1) **Application of this section** This section applies in relation to an employer who is liable independently of this Act for damages for a dust disease as defined by the *Workers' Compensation (Dust Diseases) Act 1942* contracted by a worker, where there is a dispute as to which of 2 or more insurers in a category of insurers is liable to indemnify the employer under any of the provisions of section 151AB.
- (2) **Designated insurer to be responsible pending resolution of dispute** For the purposes of section 151AB, and pending resolution of the dispute, the insurer who is the designated insurer in the relevant category under this section is to be treated as being the insurer who is so liable to indemnify the employer. Section 151AB has effect, and is to be construed, accordingly.
- (3) **Identification of designated insurer** The following provisions have effect for the purpose of determining which insurer among the following categories of insurers is the designated insurer for the purposes of this section:
  - (a) If, in the case of a liability that arose before the relevant commencement, there is a dispute as to which of 2 or more insurers is liable to indemnify the employer under section 151AB, the insurer who was the last of those insurers to be the employer's insurer while the worker was employed before that commencement by that employer is the designated insurer.
  - (b) If, in the case of a liability that arose after the relevant commencement, there is a dispute as to which of 2 or more insurers is liable to indemnify the employer under section 151AB, the insurer who was the last of those insurers to be the employer's insurer while the worker was employed after that commencement by that employer is the designated insurer.

- (c) If, in the case of a liability that arose partly before and partly after the relevant commencement, there is a dispute as to which of 2 or more insurers is liable to indemnify the employer under section 151AB in respect of any liability that arose before that commencement, the insurer who was the last of those insurers to be the employer's insurer while the worker was employed before that commencement by that employer is the designated insurer.
  - (d) If, in the case of a liability that arose partly before and partly after the relevant commencement, there is a dispute as to which of 2 or more insurers is liable to indemnify the employer under section 151AB in respect of any liability that arose after that commencement, the insurer who was the last of those insurers to be the employer's insurer while the worker was employed after that commencement by that employer is the designated insurer.
- (4) However, the insurers in a category may agree as to which of them is to be the designated insurer or the Dust Diseases Tribunal can order that any one of them is to be the designated insurer, and any such agreement or order overrides subsection (3).
- (5) **Designated insurer to act for other insurers** In addition to the provisions of section 151AB:
- (a) where subsection (3) (a) or (b) applies—the designated insurer who is the insurer liable under section 151AB (1) is to act for all the insurers in the relevant category in the carriage of the insurance aspects of the claim, and
  - (b) where subsection (3) (c) or (d) applies—the designated insurer who is the insurer who is primarily responsible under section 151AB (2) is to act for all the insurers in the 2 relevant categories in the carriage of the insurance aspects of the claim.
- (6) **Other insurers can make submissions as to damages** Despite subsection (5), if the damages payable to or in respect of the worker have not been assessed, any of the other insurers in dispute may, with the leave of the Dust Diseases Tribunal, make submissions to the Tribunal relating to the amount of damages payable.
- (7) **Methods of resolving dispute** The dispute may be resolved by such processes as the parties to the dispute agree or as are otherwise available.
- (8) **Arbitration under special provisions** However, if the dispute has not been resolved by the relevant time, it is to be resolved by arbitration under section 38 of the *Dust Diseases Tribunal Act 1989*, unless the Dust Diseases Tribunal otherwise orders (whether before or after the arbitration commences). The **relevant time** is:
- (a) subject to paragraph (b), the time when the total amount of damages is assessed and payable, or
  - (b) if the designated insurer pays the total amount of damages assessed, together with all costs payable, to or in respect of the worker, such later time as one of the



parties to the dispute notifies to the other party or parties to the dispute.

- (9) **Nature of resolution of dispute** For the purposes of this section, the dispute is not resolved until it has been determined which of the insurers in dispute was the insurer when the worker was last employed at the relevant time by the employer in an employment to the nature of which the disease was due. That insurer is referred to in the following provisions of this section as an ***insurer who is liable***.
- (10) **Adjustment after resolution of dispute** If, on resolution of the dispute, it is determined that a designated insurer is not an insurer who is liable, then (in addition to any other liabilities) the insurer who is liable:
- (a) is liable to reimburse or indemnify the designated insurer for any amounts already paid by the designated insurer in that capacity (including any amounts paid on an interim basis), and
  - (b) is liable to reimburse or indemnify the employer for any costs of the worker already ordered by the Dust Diseases Tribunal, and
  - (c) is (subject to any order of the Dust Diseases Tribunal) liable to pay the reasonable costs of any of the insurers in dispute incurred in earlier proceedings before the Tribunal because the insurer who is liable disputed liability (thereby giving rise wholly or in part to the dispute), and
  - (d) without affecting the generality of paragraph (c), is (subject to any order of the Dust Diseases Tribunal) liable to pay the reasonable costs of any of the insurers in dispute (other than the designated insurer) incurred in any such earlier proceedings in making submissions to the Tribunal relating to the amount of damages payable to or in respect of the worker.
- (11) If, on resolution of the dispute, it is determined that a designated insurer is an insurer who is liable, then (in addition to any other liabilities) the insurer who is liable:
- (a) is liable to reimburse or indemnify the employer for any costs of the worker already ordered by the Dust Diseases Tribunal, and
  - (b) is (subject to any order of the Dust Diseases Tribunal) liable to pay the reasonable costs of any of the insurers in dispute incurred in earlier proceedings before the Tribunal because the insurer who is liable disputed liability (thereby giving rise wholly or in part to the dispute), and
  - (c) without affecting the generality of paragraph (b), is (subject to any order of the Dust Diseases Tribunal) liable to pay the reasonable costs of any of the insurers in dispute incurred in any such earlier proceedings in making submissions to the Tribunal relating to the amount of damages payable to or in respect of the worker.
- (12) **Parties to dispute** An insurer may be or become a party to the dispute even though

the insurer was not a party to or represented in the original proceedings before the Dust Diseases Tribunal. Without limiting the foregoing, an insurer becomes a party to the dispute on being joined as a party to an arbitration under section 38 of the *Dust Diseases Tribunal Act 1989*.

(13) **Rules** This section has effect subject to orders of the Dust Diseases Tribunal under rules referred to in section 33 (4) (n) of the *Dust Diseases Tribunal Act 1989*.

(14) **Transitional** This section applies to causes of action arising before or after the commencement of this section, and extends to proceedings instituted before that commencement but only if no hearing in the proceedings has started before that commencement.

(15) **Definition** In this section:

**category** of insurers means the category consisting of the insurers in dispute as referred to in a paragraph of subsection (3).

## **Part 6**

**152-154 (Repealed)**

## **Part 7 Insurance**

### **Division 1A Provisions relating to Nominal Insurer, Insurance Fund and scheme agents**

#### **Subdivision 1 Nominal Insurer**

##### **154A Establishment of Nominal Insurer**

- (1) There is established by this Act a Workers Compensation Nominal Insurer.
- (2) The Nominal Insurer:
  - (a) is a legal entity, and
  - (b) may take proceedings and be proceeded against in the name of the Workers Compensation Nominal Insurer, and
  - (c) may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and
  - (d) may do and suffer all other things that persons may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions.
- (3) The Nominal Insurer is not and does not represent the State or any authority of the State.

### **154B Functions of Nominal Insurer**

- (1) The Nominal Insurer is taken to be a licensed insurer as if it were the holder of a licence in force under Division 3 of Part 7 and as if that licence were not subject to any conditions.
- (2) The Nominal Insurer has such functions as may be necessary or convenient for enabling the Nominal Insurer to function and operate to the fullest extent as a licensed insurer.
- (3) Without limiting subsection (2), the Nominal Insurer may issue directions to any employer with respect to the insurance arrangements of the employer.
- (4) The Nominal Insurer has such other functions as may be conferred or imposed on the Nominal Insurer by or under this or any other Act or law or by the regulations.
- (5) The liabilities of the Nominal Insurer as insurer under a policy of insurance can only be satisfied from the Insurance Fund and are not liabilities of the State, the Authority or any authority of the State.

### **154C Authority to act for Nominal Insurer**

- (1) The Authority acts for the Nominal Insurer and anything done or omitted to be done by the Authority on behalf of or in the name of the Nominal Insurer is taken to have been done or omitted by the Nominal Insurer.
- (2) In acting for the Nominal Insurer, the Authority has and may exercise all the functions of the Authority under this Act, the 1998 Act or any other Act or law.
- (3) A liability incurred by the Authority when acting for the Nominal Insurer is a liability of the Nominal Insurer and not a liability of the Authority or the State.
- (4) To remove doubt, it is declared that the provisions of Division 2A of Part 3 of the [Public Finance and Audit Act 1983](#) extend to authorise a performance audit by the Auditor-General under that Division in respect of any activities of the Authority when acting for the Nominal Insurer.

## **Subdivision 2 Insurance Fund**

### **154D Establishment and operation of Insurance Fund**

- (1) There is established a fund to be known as the “Workers Compensation Insurance Fund”.
- (2) The assets of the Insurance Fund are subject to a statutory trust to be held on trust for the purposes to which assets of the Insurance Fund are authorised or required to be applied by or under this Act and for the benefit of workers and employers as provided by this Act.

- (3) The Nominal Insurer is responsible for managing the operation of the Insurance Fund, including the investment of the assets of the Insurance Fund. The assets of the Insurance Fund may be invested in such manner as the Nominal Insurer thinks fit, subject to the investment policies determined by the Investment Board.
- (4) Employers are entitled to participate in the distribution of any surplus in the Insurance Fund, and are responsible for meeting any deficit in the Insurance Fund, by means of the fixing of premiums, levies and contributions as provided by this Act.
- (5) The assets of the Insurance Fund cannot be applied for the purpose of enabling any payment as a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or the 1998 Act or pursuant to a requirement under section 59B of the *Public Finance and Audit Act 1983*, or otherwise.
- (6) For the purposes of this Act and any other Act or law, each of the State, the Nominal Insurer, the Authority and any authority of the State:
  - (a) has no beneficial interest in or entitlement to the assets of the Insurance Fund, and
  - (b) has no liability to meet any deficit in the Insurance Fund and no entitlement to any surplus in the Insurance Fund, and
  - (c) is not trustee of the Insurance Fund.
- (7) The regulations may make provision for or with respect to the manner in which the financial statements of, or relating to, the Insurance Fund are to be prepared.

**154E Assets of Insurance Fund**

- (1) The following amounts are to be paid to, and become the assets of, the Insurance Fund:
  - (a) premiums received by the Nominal Insurer for policies of insurance issued under this Act,
  - (b) other amounts paid to the Nominal Insurer in connection with any such policy of insurance, including:
    - (i) any amount paid by the Authority under section 175, and
    - (ii) any late payment fee paid by an employer for the late payment of a premium, and
    - (iii) any amount repaid by an employer pursuant to section 160, and
    - (iv) any money recovered under section 151Z (or under section 64 of the former Act), and

- (v) any money recovered under a re-insurance contract or arrangement,
  - (c) income (including realised and unrealised capital gains) arising from the investment of the assets of the Insurance Fund,
  - (d) any other money authorised to be paid into the Insurance Fund by or under this Act or the regulations.
- (2) The assets of the Insurance Fund may be applied for the following purposes only:
- (a) meeting claims under policies of insurance issued (or taken to have been issued) by the Nominal Insurer,
  - (b) the payment of direct expenses associated with any such claims (not being expenses of a class excluded by the regulations from this paragraph),
  - (c) the payment to the Authority or to persons employed by or acting for the Authority of management expenses relating to the Insurance Fund (not exceeding such amount as the Minister may from time to time determine),
  - (d) the provision of rebates or refunds (including interest) to employers by the Nominal Insurer for overpayment of premiums for policies of insurance issued (or taken to have been issued) by the Nominal Insurer or for any other reason that the Nominal Insurer considers appropriate,
  - (e) the payments required for any contract or arrangement for re-insurance in respect of liabilities under policies of insurance issued (or taken to have been issued) by the Nominal Insurer,
  - (f) meeting the costs of any actuarial investigation of the Insurance Fund,
  - (g) meeting the costs of any management, consultancy or auditing fees incurred in connection with the exercise of the functions of the Nominal Insurer,
  - (h) the payment by the Nominal Insurer of contributions under this Act to the Guarantee Fund or the Terrorism Re-insurance Fund as referred to in section 239AE,
  - (h1) the payment to the WorkCover Authority Fund of amounts approved by the Minister under section 35 of the 1998 Act,
  - (i) the payments authorised or required to be made by the Nominal Insurer to scheme agents under their agency arrangements,
  - (j) exercising any other functions of the Nominal Insurer,
  - (k) making any other payment authorised by or under this Act or the regulations.

### **154F Auditing of Insurance Fund**

- (1) The Auditor-General is to inspect and audit the accounts and records of financial transactions of or relating to the Insurance Fund at least once during each financial year.
- (2) The Auditor-General is to report to the Minister as to the result of any such inspection and audit and as to such irregularities or other matters as in the judgment of the Auditor-General call for special notice.
- (3) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1) of the [Public Finance and Audit Act 1983](#) or in any special report that the Auditor-General may at any time think fit to make under section 52 (3) of that Act.
- (4) The Nominal Insurer must pay to the Auditor-General out of the Insurance Fund such amounts, at such times, as the Minister decides towards defraying the costs and expenses of any inspection and audit under this section.

**Note—**

The Auditor-General has powers under section 36 of the [Public Finance and Audit Act 1983](#) in respect of an inspection and audit under this section.

### **Subdivision 3 Scheme agents**

#### **154G Agents of Nominal Insurer**

- (1) The Nominal Insurer may enter into arrangements (**agency arrangements**) by contract or otherwise for the appointment of persons to act as agent (**a scheme agent**) for the Nominal Insurer in connection with the exercise of any functions of the Nominal Insurer.
- (2) A scheme agent is, in the exercise of functions under an agency arrangement, subject to the direction and control of the Nominal Insurer as provided by the terms of the agency arrangement.
- (3) A person incurs no personal liability for or in connection with a liability incurred by the person as agent for the Nominal Insurer in the exercise of functions in good faith with due care and skill and within the scope of the agent's actual authority to act.
- (4) This section does not limit the power of the Authority to act for the Nominal Insurer.

#### **154H Authority's functions not limited by agency arrangement**

Nothing in an agency arrangement limits or otherwise affects the exercise by the Authority of any function of the Authority with respect to licensed insurers or scheme agents.

**154I Authority's functions extended to scheme agents**

Subject to this Act, any function conferred on the Authority with respect to licensed insurers (or insurers generally) by or under a provision of this Act, the 1998 Act or the regulations under either Act may be exercised in relation to scheme agents, and for that purpose:

- (a) a reference to a licensed insurer or insurer in a provision conferring such a function is to be read as including a reference to a scheme agent, and
- (b) a reference to the conditions of a licence of a licensed insurer is to be read as including a reference to the conditions of a scheme agent's agency arrangement with the Nominal Insurer.

**154J Refusal of insurance by scheme agents**

- (1) A scheme agent who is authorised to issue policies of insurance on behalf of the Nominal Insurer must not refuse to issue a policy of insurance to any employer or to renew a policy of insurance issued to an employer, except with the consent of the Nominal Insurer or as required or permitted by an express provision of the agency arrangement.

Maximum penalty: 1,000 penalty units.

- (2) The WorkCover Guidelines under the 1998 Act may provide for the circumstances in which the consent of the Nominal Insurer as referred to in subsection (1) may be given.

**154K Ownership of records**

- (1) Subject to the regulations, all records and other documents made and kept, or received and kept, by a scheme agent in the exercise of functions on behalf of the Nominal Insurer are the property of the Nominal Insurer.
- (2) The Nominal Insurer may give directions to a scheme agent with respect to possession, custody and control of, and the granting of access to, those records and other documents.
- (3) A scheme agent must comply with any such directions given by the Nominal Insurer to the scheme agent.

Maximum penalty: 1,000 penalty units.

- (4) A reference in this section to a scheme agent includes a reference to a person who was formerly (but is no longer) a scheme agent.

**154L Remuneration of scheme agents**

- (1) A scheme agent is entitled to payment by the Nominal Insurer of remuneration

(whether as fees, commission or otherwise) as provided by or under the relevant agency arrangement.

- (2) The remuneration of scheme agents is payable by the Nominal Insurer out of the Insurance Fund.

#### **154M Certain provisions extended to scheme agents**

- (1) A reference in section 163, 164 or 169 to a licensed insurer or insurer includes, in the application of the section to any matter concerning the Nominal Insurer, a reference to a scheme agent acting on behalf of the Nominal Insurer in connection with that matter.
- (2) Except as may otherwise be provided by the regulations, a reference in any of the following provisions of the 1998 Act to a licensed insurer or insurer includes, in the application of the provision to any matter concerning the Nominal Insurer, a reference to a scheme agent acting on behalf of the Nominal Insurer in connection with that matter:

Sections 43, 45, 47, 50, 52, 56-59, 65, 66, 69, 71-75, 76, 107, 108, 113, 117, 118, 126, 136, 141, 232, 235A, 235B, 238, 260, 261, 264, 266-272, 274-276, 279, 280, 281, 282, 284, 287, 291, 295, 301, 308, 330, 337, 345 and 356.

#### **154N Regulations**

- (1) The regulations may make provision for or with respect to the following:
  - (a) requiring the making and keeping of records by scheme agents and the giving of access to those records by scheme agents,
  - (b) the obligations of scheme agents with respect to confidentiality and disclosure of information (including personal information),
  - (c) the ownership, custody and control of records and other documents made and kept, or received and kept, by scheme agents.
- (2) The regulations may create offences, punishable by a penalty not exceeding 200 penalty units, for a contravention by a person of an obligation imposed on the person by or under an agency arrangement.
- (3) A reference in this section to a scheme agent includes a reference to a person who was formerly (but is no longer) a scheme agent.

### **Division 1 Insurance policies**

#### **155 Compulsory insurance for employers** (cf former s 18 (1), (5), (6))

- (1) An employer (other than a self-insurer) shall obtain from a licensed insurer, and maintain in force, a policy of insurance that complies with this Division for the full



amount of the employer's liability under this Act in respect of all workers employed by the employer and for an unlimited amount in respect of the employer's liability independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury to any such worker.

Maximum penalty: 500 penalty units or imprisonment for 6 months, or both.

(1AA) An employer must not at any one time maintain in force more than one policy of insurance for the purposes of subsection (1) (ignoring any policy of insurance effected by the employer for the purposes of compliance with section 31 of the *Coal Industry Act 2001*).

Maximum penalty: 500 penalty units.

(1A) In subsection (1), ***injury*** includes a dust disease as defined in the *Workers' Compensation (Dust Diseases) Act 1942* and the aggravation, acceleration, exacerbation or deterioration of a dust disease as so defined.

(1B) A policy of insurance (whether issued before, on or after the commencement of this subsection) does not, subject to the regulations, insure an employer's liability for GST payable on the settlement of a claim and the employer's uninsured liability for GST in these circumstances is not a liability to which subsection (1) applies.

A regulation made for the purposes of this subsection may apply to a policy of insurance whether issued before, on or after the commencement of this subsection, as the regulation may provide.

In this subsection, ***employer***, in relation to a worker, includes a principal within the meaning of section 20 who is liable to pay compensation to the worker.

**Note—**

An employer may incur liability for GST on the settlement of a claim if the employer has failed to notify the insurer of the employer's entitlement to an input tax credit for a premium paid by the employer for the policy of insurance issued by the insurer.

- (2) Where several persons may become liable in respect of an injury to the same worker:
- (a) it shall be sufficient to obtain a joint policy of insurance in respect of that liability, and
  - (b) the premium chargeable in respect of the policy shall not exceed the current rates for insurance of an employer's liability in respect of workers engaged in the same industry, trade or business.
- (3) In any proceedings for an offence against subsection (1), proof:

(a) that an employer, not being a self-insurer, who has been served pursuant to section 161 (1) with a notice requiring the employer to produce for inspection (or to supply particulars, specified in the notice, of) a policy of insurance obtained by the employer and in force at a specified date or between specified dates has not so produced (or so supplied specified particulars of) any such policy so in force, and

(b) that the time for compliance with the notice has expired,

shall be sufficient evidence, unless the contrary is proved, that at that date or between those dates the employer had failed to comply with subsection (1).

(3A) It is a defence to a prosecution for an offence under this section concerning an employer's liability in respect of a worker if the court is satisfied that at the time of the alleged offence:

(a) the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because under section 9AA the worker's employment was not connected with this State, and

(b) the employer had workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the employer believed on reasonable grounds the worker's employment was connected under section 9AA.

(3B) In subsection (3A), **workers compensation cover** means insurance or registration required under the law of a State or Territory in respect of liability for statutory workers compensation under that law.

(4) The Authority may undertake not to prosecute a person for an offence under this section in respect of a failure by the person to obtain or maintain in force a policy of insurance on condition that the person pays to the Authority the amount that the Authority is entitled to recover under section 156 in respect of the failure or such lesser amount as the Authority may determine to accept. If the person pays the amount in compliance with any terms and conditions of the undertaking, the person is not liable to be proceeded against or convicted for an offence under this section in respect of the failure concerned.

(5) The regulations may make provision for or with respect to an amnesty for contraventions of this section, such that a person who satisfies the conditions of the amnesty is not liable to be prosecuted for an offence under this section in respect of such a contravention and is not liable to recovery under section 156 in respect of such a contravention.

#### **155AA Exempt employers not required to obtain policy of insurance**

(1) An employer is an **exempt employer** during a financial year while the employer has

reasonable grounds for believing that the total amount of wages that will be payable by the employer during the financial year to workers employed by the employer will be not more than the exemption limit for that financial year.

- (2) An employer is not an exempt employer whenever the employer:
- (a) is a member of a group constituted under Division 2A, or
  - (b) employs a person under a training contract (within the meaning of the *Apprenticeship and Traineeship Act 2001*).

**Note—**

A **training contract** is a contract entered into for the purpose of establishing an apprenticeship or traineeship.

- (3) An employer who is an exempt employer for the whole or any part of a financial year is deemed to have obtained from the Nominal Insurer (and the Nominal Insurer is deemed to have issued) a policy of insurance in compliance with section 155 (an **exempt employer policy**) for any period for which the employer is an exempt employer during the financial year. No premium is payable for an exempt employer policy.
- (4) An exempt employer policy covers the employer for any period for which the employer is an exempt employer but does not cover the employer for any period for which the employer has actually obtained a policy of insurance under section 155.
- (5) An administration fee of an amount prescribed by the regulations is payable to the Nominal Insurer by an employer in respect of each claim made against the employer in respect of an injury to a worker received during any period for which an exempt employer policy covers the employer.
- (6) The regulations may make provision for or with respect to the payment of an administration fee, including provision for or with respect to any of the following:
- (a) the period within which an administration fee must be paid,
  - (b) the payment of a late payment fee if an administration fee is not paid within the required period,
  - (c) the full or partial waiver or refund of an administration fee or late payment fee.
- (7) The Nominal Insurer is entitled to recover as a debt in a court of competent jurisdiction an administration fee payable by an employer together with any late payment fee payable.
- (8) In this section:
- exemption limit** for a financial year means \$7,500 or such other amount as may be fixed by an insurance premiums order as the exemption limit for that financial year.

**financial year** means a period of 12 months commencing on 1 July in any year.

**wages** means wages as defined in section 174 and includes any distribution to a worker as a beneficiary under a trust that would (under section 174AA) constitute wages for the purposes of section 174.

#### **155A Policies to be for 12 month periods**

A policy of insurance issued after the commencement of this section must be issued for a period of 12 months, unless the Authority otherwise approves in a particular case or class of cases.

#### **156 Recovery of double premiums for contravention of insurance requirements**

- (1) If an employer fails to obtain or maintain in force a policy of insurance as required by section 155 (1) in respect of any period, the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice the amount of the premium that would have been payable for the issue of a policy of insurance to the employer in respect of that period or such lesser amount as the Authority may agree to accept in any particular case.
- (1A) If an employer maintains in force at any one time more than one policy of insurance for the purposes of section 155 (1) (in contravention of section 155 (1AA)), the Authority may:
  - (a) determine an amount as the amount of premium that the employer has avoided by maintaining more than one policy of insurance, and
  - (b) recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice the amount determined under paragraph (a) or such lesser amount as the Authority may agree to accept in any particular case.
- (2) The Authority may recover a sum from an employer under this section whether or not the employer has been proceeded against or been convicted for any relevant offence against section 155 (1) or (1AA).
- (3) Any such sum recovered by the Authority shall be paid into the WorkCover Authority Fund.
- (4) A certificate executed by the Authority and certifying that a sum specified in the certificate is the sum equal to twice the amount of premium that would have been payable for the issue of a policy of insurance to an employer so specified in respect of a period so specified is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the matters specified in the certificate.
- (4A) A certificate executed by the Authority and certifying that a sum specified in the certificate is the sum equal to twice the amount of premium that an employer has avoided by maintaining more than one policy of insurance in contravention of section

155 (1AA) is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the matters specified in the certificate.

- (5) In the absence of information that would enable the Authority to accurately determine the premium that would have been payable for the issue of a particular policy of insurance, the following provisions have effect:
- (a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority),
  - (b) the Authority's estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made,
  - (c) if the Authority's estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.
- (6) A court that convicts an employer of an offence under section 155 may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the failure to which the offence relates. Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) or (1A) and is to be dealt with accordingly.
- (6A) For the purposes of subsection (6), a court that makes a finding that an employer is guilty of an offence under section 155 without proceeding to a conviction is taken to have convicted the employer of the offence.
- (7) A Local Court cannot order the payment of an amount under subsection (6) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.
- (8) Despite any other provision of this section, if the Authority is satisfied that:
- (a) the reason for the employer not being insured against liability to pay compensation to the worker is that the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because under section 9AA the worker's employment was not connected with this State, and
  - (b) the employer had workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the employer believed on reasonable grounds the worker's employment was connected under

section 9AA,

the employer is not liable under this section in respect of that liability.

- (9) In subsection (8), **workers compensation cover** means insurance or registration required under the law of a State or Territory in respect of liability for statutory workers compensation under that law.

**156A Misleading conduct by insurers and insurance intermediaries**

- (1) In this section:

**insurance intermediary** means:

- (a) a person who arranges contracts of insurance in New South Wales:
- (i) for reward, or
  - (ii) as an agent for a person carrying on a business of insurance, or
  - (iii) as an agent for the Nominal Insurer, or
- (b) a financial services licensee (as defined in section 761A of the [Corporations Act 2001](#) of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
- (c) a regulated principal (as defined in section 1430 of the [Corporations Act 2001](#) of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

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

- (2) An insurer or insurance intermediary must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
- (a) the insurance includes the insurance required by this Act or the 1998 Act, or
  - (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or insurance intermediary who contravenes this section is guilty of an offence.

Maximum penalty: 200 penalty units.

- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an

employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or insurance intermediary be joined as a party in the proceedings if the court thinks that the insurer or insurance intermediary may be culpable in the matter.

- (5) An insurer or insurance intermediary is culpable in a matter if it appears that the insurer or insurance intermediary has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or insurance intermediary has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or insurance intermediary is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or insurance intermediary is culpable in the matter, order that the insurer or insurance intermediary is to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.
- (7) (Repealed)

**156B Recovery from directors of corporation—insurance requirements**

- (1) If the Authority is entitled to recover an amount from a corporation under section 156 (even if the corporation has ceased to exist) and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.
- (2) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.
- (3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at any time during the contravention to which the entitlement of the Authority relates (whether or not the corporation has been proceeded against or convicted of an offence in respect of that contravention).
- (4) A person is not a culpable director of a corporation if the person establishes that:
  - (a) the contravention by the corporation occurred without the person's knowledge, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to the contravention, or
  - (c) the person, being in such a position, used all due diligence to prevent the

contravention by the corporation.

- (5) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.
- (6) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.
- (7) This section does not apply to an entitlement of the Authority under section 156 that arises from the failure by a corporation to obtain or maintain insurance in respect of any period before the commencement of this section.

**157 Insurers not to refuse insurance** (cf former s 18 (2))

- (1) A licensed insurer shall not, except with the consent of the Authority, refuse to issue a policy of insurance to any employer or to renew a policy of insurance issued to an employer.
- (2) Without affecting the generality of subsection (1), the Authority may consent to any such refusal in order that the licensed insurer does not contravene any condition of the licence.
- (3) This section does not apply:
  - (a) to a specialised insurer, or
  - (b) in any case where the employer has not complied with any conditions prescribed by this Act or the regulations in respect of the issue or renewal of the policy of insurance.

Maximum penalty: 100 penalty units.

**158 (Repealed)**

**159 Provisions of policies of insurance** (cf former s 18 (3) (a), (a1), (3A), (3B), (3C))

- (1) A policy of insurance shall, in so far as it relates to any liability under this Act, contain only such provisions as are prescribed by the regulations, but (subject to the regulations) may contain such other provisions relating to any liability at common law or under any Act or Commonwealth Act as are appropriate to any particular case.
- (1A) The regulations may prescribe different provisions for different classes of policies. The regulations may also authorise the Authority to approve different provisions for policies of insurance issued by a specialised insurer in respect of domestic or similar workers.
- (2) A policy of insurance shall provide that:



- (a) the insurer as well as the employer is directly liable to any worker insured under the policy and, in the event of the worker's death, to the dependants or other persons to pay the compensation under this Act or other amount independently of this Act for which the employer is liable, and
  - (b) the insurer is bound by and subject to any judgment, order, decision or award given or made against the employer of any such worker in respect of the injury for which the compensation or amount is payable.
- (3) A policy of insurance issued to a person shall, in addition to containing any other provisions required under this section, contain such provisions as are prescribed by the regulations for or in relation to:
- (a) the insurance of the person, in the event of the person being, or becoming, a principal under a contract as referred to in section 20 (1), against a liability arising under section 20,
  - (b) providing that the insurer, as well as the person, shall, while that person is a principal under a contract as referred to in section 20 (1), be directly liable to pay to a worker employed by a contractor under that contract and, in the event of the worker's death, the dependants or other persons, the compensation for which that person is liable under section 20 (1), and
  - (c) providing that the insurer is bound by, and subject to, any judgment, order, decision or award given or made against the person in respect of any liability arising under section 20.
- (4) A policy of insurance obtained by an employer in respect of workers in any trade or business shall, notwithstanding anything contained in that policy, apply to and have effect in respect of all workers employed by the employer in that trade or business.
- (5) A liability, under a policy of insurance, of an insurer to a worker under a provision inserted in the policy under subsection (2) or (3) is enforceable as if the worker were a party to the policy.
- (6) A contravention of subsection (1), (2) or (3) does not annul a policy of insurance or affect the liability of the insurer to the person insured under the policy.
- (7) A licensed insurer shall not issue a policy of insurance in contravention of subsection (1), (2) or (3).

Maximum penalty (subsection (7)): 50 penalty units.

**160 Recovery of excess from employer** (cf former s 18 (3) (a2))

- (1) In this section:

***prescribed excess amount***, in respect of a weekly compensation claim paid under a

policy of insurance, means the prescribed excess amount specified by the relevant insurance premiums order that applies to that policy.

**small business employer**, in relation to a policy of insurance, means an employer who, under the policy, is liable to pay premiums not exceeding such amount as is prescribed by the regulations (the calculation of that liability being determined in the manner so prescribed).

**weekly compensation claim** means a claim for weekly payments of compensation payable to a worker in respect of any period of total or partial incapacity for work.

- (2) An employer is required to repay to the insurer under a policy of insurance that the employer has obtained under section 155:
  - (a) the prescribed excess amount in respect of each weekly compensation claim that the insurer has paid under the policy, or
  - (b) if the amount that the insurer has paid in respect of any such claim is less than the prescribed excess amount—the amount so paid.
- (3) An employer is not required to comply with subsection (2) to the extent that:
  - (a) the employer has paid an amount of money directly to an injured worker in relation to a period that is the subject of a weekly compensation claim made by the worker, and
  - (b) the amount paid by the employer is an amount or is included in an amount for which the employer's insurer is liable under the relevant policy of insurance to indemnify the employer in respect of the claim, and
  - (c) the employer's insurer has offset against the amount payable under that policy in respect of the claim the amount referred to in paragraph (a).
- (4) An employer who, in relation to a period that is the subject of a weekly compensation claim made by an injured worker:
  - (a) has paid no money to the worker, or
  - (b) has paid an amount to the worker that is less than the amount which the employer would, but for this subsection, be required to repay under subsection (2),  
is nevertheless not required to comply with that subsection to the extent that the employer's insurer has debited against any amount standing to the employer's credit in respect of the premiums payable for the relevant policy of insurance:
    - (c) in the case referred to in paragraph (a)—the amount that the employer would otherwise be required to repay under that subsection, or
    - (d) in the case referred to in paragraph (b)—the difference between the amounts

referred to in that paragraph.

- (4A) Subsection (2) applies to a small business employer who has obtained a policy of insurance under section 155 only to the extent that the employer and the insurer have agreed that the employer is required to repay to the insurer the prescribed excess amount (or such smaller amount as is agreed on) in respect of each weekly compensation claim paid by the insurer under the policy.
- (4AA) For the purposes of this section, the amount of a weekly compensation claim paid under a policy of insurance is the total amount of weekly payments made to the claimant in respect of the injury concerned, and that amount does not include any other payments associated with the claim.
- (4B) If liability for a claim is apportioned between 2 or more successive insurers of an employer, the amount repayable by the employer is to be similarly apportioned.
- (5) An amount repayable under this section may be recovered by the insurer as a debt in a court of competent jurisdiction.
- (6) The following policies of insurance are exempt from this section:
- (a) (Repealed)
  - (b) policies of insurance in respect of domestic or similar workers,
  - (c) policies of insurance of any class exempted from this section by the regulations.
- (7) (Repealed)
- (8) This section does not apply to:
- (a) a weekly compensation claim made in respect of a worker who receives an injury on a journey to which section 10 applies, or
  - (b) a weekly compensation claim of any other class prescribed by the regulations for the purposes of this subsection.
- (9) Without limiting the operation of that provision, an insurance premiums order referred to in the definition of **prescribed excess amount** in subsection (1) may specify different amounts (or no amount) according to the period within which the employer gave notice of the injury concerned.

**161 Inspection of policies** (cf former s 18A)

- (1) The Authority or a person authorised by the Authority may, by notice in writing, require an employer to do either or both of the following:
- (a) to produce for inspection (or to supply specified particulars of) the policy of insurance obtained by the employer and in force at a specified date or between

specified dates,

(b) to supply such particulars of matters relating to the policy as the Authority or person may consider necessary.

- (2) A worker who has received an injury, or has met with an accident in circumstances giving rise to a claim for compensation under this Act, or a solicitor for the time being authorised by the worker to act on behalf of the worker in relation to the claim, or a representative of a union to which the worker belongs, may, by notice in writing, require the employer to make available for inspection a policy of insurance in force in respect of the worker at the time (whether before or after the commencement of this section) when the injury was received or the accident happened.
- (3) A person on whom a notice is served under subsection (1) or (2) shall comply with the notice:
- (a) within 21 days after service or such longer period as may be specified, or
- (b) if the Authority otherwise than in the notice allows a further period for compliance—within the further period.

Maximum penalty: 50 penalty units.

- (3A) A person is not liable to be prosecuted both for an offence under section 155 of failing to obtain and maintain in force a policy of insurance and for an offence under this section in respect of a failure to produce that policy of insurance for inspection.
- (4) An employer who obtains a policy of insurance shall retain the policy in his or her possession in good order and condition until:
- (a) there are no longer any workers in respect of whom the policy is in force, or
- (b) the policy is at least 7 years old,
- whichever occurs later.

Maximum penalty: 50 penalty units.

- (5) In this section:

**employer**, in relation to a worker, includes a principal within the meaning of section 20 who is liable to pay compensation to the worker.

**representative** means an officer of an industrial organisation of employees for the time being authorised under Part 7 of Chapter 5 of the *Industrial Relations Act 1996* to exercise powers under that section.

**specified** means specified in the notice concerned.

**union** means an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996*.

**162 Death of employer** (cf former s 49A)

- (1) The Commission may, on application by a worker and if satisfied as to the matter sought to be declared, declare that an employer has entered into a contract with an insurer, named in the declaration, in respect of any liability under this Act to that worker and that the employer:
  - (a) being a natural person, has died, or is permanently resident outside the Commonwealth of Australia and its Territories, or cannot after due inquiry and search be found,
  - (b) being a corporation (other than a company which has commenced to be wound up), has ceased to exist,
  - (c) being a company, corporation, society, association or other body (other than a company which has commenced to be wound up), was at the time when it commenced to employ the worker incorporated outside the Commonwealth of Australia and its Territories and registered as a foreign company under the laws of any State or Territory of the Commonwealth of Australia and is not at the time of the declaration so registered under any such law, or
  - (d) being a company, has commenced to be wound up after entering into the contract with the insurer.
- (2) Where the Commission makes a declaration under subsection (1), the Commission may make an award of compensation for an injury to the worker (being, in the case referred to in subsection (1) (d), an injury that took place before the commencement of the winding up of the employer) and such an award shall, for the purposes of section 159, be deemed to be an award against an employer of the worker with whom the insurer referred to in the declaration entered into a contract with respect to any liability under this Act to that worker.

**163 Register to be kept by insurers** (cf former s 18A (2A)-(2C))

- (1) A licensed insurer shall keep a register of all policies of insurance issued or renewed by the insurer containing the following particulars in respect of each policy:
  - (a) the name and address of the policy holder,
  - (b) the number of the policy,
  - (c) any premium rate classification under an insurance premiums order,
  - (d) the date of issue or renewal of the policy,

(e) such other particulars as may be prescribed by the regulations.

- (2) A person who ceases to be a licensed insurer shall deliver the register to the Nominal Insurer.
- (3) An insurer shall retain in good order and condition for at least 7 years all the insurer's records that relate to the issue, renewal or discontinuance of policies of insurance and the receipt, administration and payment of claims under this Act.
- (4) In subsection (3):

**insurer** means licensed insurer, former licensed insurer or self-insurer.

Maximum penalty: 1,000 penalty units.

### **163A Certificate of currency**

- (1) In this section:

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

- (a) is in the form (if any) approved by the Authority, and
  - (b) states the nature of the business and the number of workers of the employer, and the amount of the wages estimated to be payable by the employer, in respect of which the premium for the policy was determined by the insurer, and
  - (c) states such other matters as the Authority may direct from time to time by notice in writing to insurers.
- (2) An employer who is required to obtain a policy of insurance must, within 5 days of a request to do so by a person authorised under this section to make the request, produce a certificate of currency for inspection by the person that certifies that the employer is insured under the policy at that time.

Maximum penalty: 50 penalty units.

- (3) The following persons are authorised to request an employer to produce the employer's certificate of currency:
  - (a) an authorised officer (within the meaning of section 238 of the 1998 Act) or any other officer of the Authority authorised by the Authority to make such a request,
  - (b) an authorised industrial officer (within the meaning of Part 7 of Chapter 5 of the *Industrial Relations Act 1996*),

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

**Note—**

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

- (4) The insurer under a current policy of insurance must, at the request of the employer insured under the policy, issue to the employer a certificate of currency with respect to the policy free of charge. The insurer may refuse to issue the certificate if the premium (or instalment of premium) for the policy is due and payable pursuant to a written demand for payment and has not been paid, or the employer is otherwise in default under the policy.
- (5) A person who is insured under a policy of insurance at the time a request is made under subsection (2) for the production of a certificate of currency does not commit an offence against that subsection if the person satisfies the court that an attempt to obtain a certificate within 5 days of the request for production was not successful.
- (6) A person who fraudulently alters a certificate of currency issued under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

- (8) The regulations may make provision for or with respect to:
  - (a) requiring the supply by an employer to an insurer of information relevant to the issue of a certificate of currency to the employer (including information relevant to the calculation of premium), and
  - (b) providing that an insurer is not required to issue a certificate of currency to an employer who has failed to supply information to the insurer as required by the regulations.
- (9) A certificate of currency issued under this section is evidence of the matters that it certifies.

**163B Issue of stop work order to uninsured employer**

- (1) The Authority or an authorised officer may issue a stop work order in writing to an employer (other than an employer who is a self-insurer) if the Authority or authorised officer reasonably suspects that the employer does not have a policy of insurance that complies with this Division.
- (2) A stop work order takes effect at the beginning of the fifth working day after the day on which it is given to the employer and may be withdrawn at any time by the Authority or an authorised officer.
- (3) A stop work order is to be withdrawn by the Authority or an authorised officer as soon as practicable after the employer to whom the order has been issued produces a certificate of currency in accordance with section 163A.
- (4) After a stop work order takes effect, the employer to whom it has been issued must (until the order is withdrawn) ensure that no work is performed for the employer by any worker of the employer.

Maximum penalty: 500 penalty units or imprisonment for 6 months, or both.

- (5) In this section:

***authorised officer*** has the same meaning as in section 238 of the 1998 Act.

**164 Employer—offences relating to policies of insurance** (cf former cl 2 of General Regulations)

An employer shall not:

- (a) supply any information to a licensed insurer which the employer knows is false or misleading in a material particular with the object of procuring the issue or renewal of a policy of insurance, or
- (b) wilfully fail to observe any of the terms of a policy of insurance obtained by the employer.

Maximum penalty: 100 penalty units.

**Division 2 Insurance premiums**

**165-167 (Repealed)**

**168 Insurance premiums orders** (cf former s 30AB)

- (1) The Governor may, by an order made on the recommendation of the Authority and published in the Gazette, fix the manner in which the premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance shall be calculated, whether by reference only to annual rates or otherwise.



**Editorial note—**

For orders under this subsection see the Historical notes at the end of this Act.

(2) An insurance premiums order shall:

- (a) take effect on and from the date of its publication in the Gazette or a later date specified in the order, and
- (b) apply to and in respect of policies of insurance which are to be or have been issued or renewed so as to take effect while the order is in force.

(3) An insurance premiums order may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3A) Without limiting the generality of subsection (3), an insurance premiums order may provide for the payment of increased premiums by employers who (under any specified or class of contract of employment, industrial agreement, award or other arrangement) are or may become liable to make payments to workers or their dependants in respect of injuries or deaths (including payments as a supplement or an alternative to the periodic or lump sum payments of compensation under this Act).

(4) The following policies of insurance are exempt from insurance premiums orders:

- (a), (b) (Repealed)
- (c) policies of insurance of any class exempted by the regulations from orders under this section.

(5) (Repealed)

**168A Optional alternative method of calculating premium for large employers**

(1) An insurance premiums order may fix (as an ***optional alternative method***) an alternative method for calculating the premium payable for a policy of insurance by an employer who is classified under the order as a large employer (or a person who proposes to become such an employer).

(2) An optional alternative method for calculating premium applies to an employer only if:

- (a) the employer satisfies any criteria established by the insurance premiums order

for eligibility for the optional alternative method, and

(b) the Nominal Insurer has, on the application of the employer, approved of the optional alternative method applying to the employer for the time being.

(3) The Nominal Insurer may revoke an approval under this section at any time.

(4) If an optional alternative method applies to an employer, that method applies for the purpose of calculating the relevant premium payable by the employer instead of any method that would otherwise apply to the employer under the insurance premiums order.

**169 Premiums to be calculated in accordance with insurance premiums order** (cf former s 30AC)

(1) The premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance to which an insurance premiums order applies shall be calculated in the manner fixed by the order.

(2) An insurer breaches an insurance premiums order if the insurer demands or receives:

(a) for the issue of a policy of insurance to which the order applies, or

(b) for the renewal of any such policy,

an amount which is, or amounts the sum of which is, different from a premium which is payable in accordance with subsection (1) by the employer (or the person who proposes to become an employer) to whom the policy relates.

(3) An insurer who wilfully breaches an insurance premiums order is guilty of an offence and liable to a penalty not exceeding 1,000 penalty units.

**170 Action by employer where premium not in accordance with insurance premiums order** (cf former s 18AA)

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

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

(3) When any such application is made, the Authority:

(a) shall notify the insurer of the making of the application,

- (b) shall consider the application and may have regard to such oral or written evidence or representations as it thinks fit,
- (c) must dismiss the application if the Authority decides that:
  - (i) the policy is not a policy to which a relevant insurance premiums order applies, or
  - (ii) the disputed aspect was determined by the insurer in accordance with the relevant insurance premiums order,or must in any other case determine the disputed aspect in accordance with the relevant insurance premiums order, and
- (d) shall, in such manner as it thinks fit, inform the employer and the insurer of its dismissal of the application or its determination, as the case may require.

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

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

(4) Where:

- (a) the insurer redetermines a premium following the Authority's determination, and
- (b) the employer has already paid to the insurer the premium to which the application relates,

the employer may recover from the insurer, in a court of competent jurisdiction as a debt due to the employer, so much of the premium paid as exceeds the premium as redetermined, together with interest on the amount of premium recoverable calculated at the prescribed rate.

(5) Where:

- (a) the Authority makes a determination,
- (b) the insurer does not within 1 month after the date of the determination of the Authority:
  - (i) in the case of the issue of a policy of insurance—issue to the employer a policy of insurance having effect for such period (not exceeding 1 year) and from such date as the Authority determines, or

(ii) in the case of the renewal of a policy of insurance—effect the renewal of the policy for such period (not exceeding 1 year) as the Authority determines from the date of expiry referred to in subsection (2) (b),

at such premium as would result from a redetermination by the insurer of the premium in accordance with the Authority's determination, and

(c) the employer does not otherwise agree or request,

the insurer shall be deemed to have issued to the employer a policy of insurance at that premium and having effect for the period and from the date referred to in paragraph (b) (i) or (ii).

(6) The insurer shall forthwith supply to the employer a document setting out the provisions of a policy of insurance deemed by subsection (5) to be issued to the employer.

Maximum penalty: 20 penalty units.

(7) In this section, a reference to an employer includes a reference to a person who proposes to become an employer.

(8) In this section:

**prescribed rate** means:

(a) the rate prescribed by the regulations, or

(b) if no rate is prescribed by the regulations—a rate specified by the relevant insurance premiums order in relation to the premium paid by the employer, or

(c) if no rate is prescribed by the regulations or specified in an insurance premiums order—the rate of 1.2% per month compounded monthly.

**relevant insurance premiums order**, in relation to a premium paid by an employer, means the insurance premiums order that applies to the policy of insurance that gave rise to the payment.

(9) (Repealed)

### **171 Payment of premiums by instalments** (cf former s 18 (7B))

If the regulations so provide, an employer may elect to pay the premiums under a policy of insurance by instalments, at such times and of such amounts as may be prescribed by the regulations.

### **172 Recovery of unpaid premiums** (cf former s 18 (7C))

(1) Where:

- (a) an employer has not elected under section 171 to pay a premium by instalments and fails to pay the full amount of the premium within 1 month after service on the employer of a notice that payment of the premium is due,
- (b) an employer who has elected under section 171 to pay a premium by instalments fails to pay an instalment by the due date, or
- (c) an employer has failed to pay an adjustment of premium within 1 month after service on the employer of a notice that payment of the amount of the adjustment is due,

the full amount of the premium (in the case referred to in paragraph (a)), the balance of the premium unpaid or, where no instalment has been paid, the full amount of the premium (in the case referred to in paragraph (b)) or the amount of the adjustment (in the case referred to in paragraph (c)) together with a late payment fee calculated at the prescribed rate may be recovered as a debt in a court of competent jurisdiction.

- (2) The payment of a late payment fee under this section may be waived by the insurer concerned, but only with the approval of the Authority.
- (3) In proceedings under this section for the recovery of any unpaid premium with a late payment fee, the court may, if satisfied that a notice for payment was delayed because of delay of the employer in providing returns to the insurer, for the purpose of assessing the premiums, treat the notice as having been served on an earlier date.
- (4) The making of an application to the Authority under section 170 (determination of premium to be charged) does not affect the entitlement of an insurer under this section to recover the premium (or part of premium) concerned except to the extent that:
  - (a) the Authority otherwise directs in a particular case, or
  - (b) the regulations otherwise provide.

- (5) In this section:

**prescribed rate** means:

- (a) the rate prescribed by the regulations, or
- (b) if no rate is prescribed by the regulations—a rate specified by the relevant insurance premiums order in relation to the amount or balance outstanding, or
- (c) if no rate is prescribed by the regulations or specified in an insurance premiums order—the rate of 1.2% of the relevant amount or balance per month compounded monthly.

**relevant insurance premiums order**, in relation to an amount or balance

outstanding, means the insurance premiums order that applies to the policy of insurance that gave rise to the obligation to pay the outstanding amount or balance.

**172A Security deposit or guarantee for payment of premium—optional alternative premium calculation method**

- (1) The Nominal Insurer may require an employer who is or was insured under a policy of insurance the premium for which was determined by an optional alternative method (as referred to in section 168A) to have on deposit with the Nominal Insurer the employer's required deposit in respect of the policy, and the employer must:
  - (a) deposit with the Nominal Insurer such amount as the Nominal Insurer determines and notifies the employer to be the employer's required deposit in respect of the policy of insurance concerned, and
  - (b) deposit with the Nominal Insurer, at such time or times as the Nominal Insurer may direct by notice to the employer, such additional amount or amounts as the Nominal Insurer determines to be necessary to ensure that the amount the employer has on deposit under this section is the employer's required deposit for the time being.

Maximum penalty: 100 penalty units.

- (2) The Nominal Insurer is to hold money on deposit under this section on trust for the payment and satisfaction of the employer's liability to pay any premium (including any adjustment of premium) payable in respect of the policy of insurance to which the money held on deposit relates.
- (3) An amount of money deposited with the Nominal Insurer under this section is not liable to be attached or levied on or made subject to any debts of or claims against the employer making the deposit, except as provided by subsection (2).
- (4) The Nominal Insurer may at any time refund to an employer who has money on deposit under this section any amount by which the employer's deposit exceeds the employer's required deposit for the time being.
- (5) An employer must comply with any written direction of the Nominal Insurer to provide the Nominal Insurer with specified information (including actuarial information) for the purpose of enabling the Nominal Insurer to determine the employer's required deposit in respect of a policy of insurance from time to time.

Maximum penalty: 50 penalty units.

- (6) Sections 214–215A apply to and in respect of an amount of money deposited with the Nominal Insurer under this section as if:
  - (a) the amount deposited were deposited pursuant to an obligation imposed under Division 5 (Self-insurers) of Part 7, and

- (b) the employer were a self-insurer while the employer holds a policy of insurance in respect of which the amount is held on deposit, and
  - (c) a reference in those provisions to the Authority were a reference to the Nominal Insurer.
- (7) An employer who has deposited an amount of money with the Nominal Insurer under this section is entitled to a refund of the amount so deposited and standing to the employer's credit with the Nominal Insurer:
- (a) on the expiration of 3 months after service on the Nominal Insurer of a written request for the refund, and
  - (b) on satisfying the Nominal Insurer that the employer's liability referred to in subsection (2) has been discharged or adequately provided for.
- (8) In this section:

**employer** includes a former employer.

**required deposit** in respect of a policy of insurance means the amount fixed by or determined in accordance with the relevant insurance premiums order as the required deposit for the policy.

**173 Furnishing information for calculation of premiums** (cf former ss 18 (7), (7A), 66 (1A) (a)-(c))

- (1) The regulations may make provision for or with respect to:
- (a) requiring the supply of information relevant to the calculation of the premiums payable under policies of insurance (whether to be supplied before or after the issue or renewal of any such policy), and
  - (b) requiring any such information to be verified by statutory declaration or be accompanied by a certificate from a registered tax agent, a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth) or any other person.
- (2) Regulations under this section may require information to be supplied to or by employers, licensed insurers or former licensed insurers.

**173A Giving false information for premium calculation**

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

Maximum penalty: 50 penalty units.

**173B Redetermination of premium and payment of interest**

- (1) The regulations may make provision for or with respect to the following:
  - (a) the adjustment of the premium (***the original premium***) payable for the issue or renewal of a policy of insurance, on the basis of a change in relevant wage details,
  - (b) requiring the provision of updated information by employers for the purpose of effecting any such adjustment,
  - (c) requiring the payment of any amount that becomes due as a result of any such adjustment of premium,
  - (d) requiring the payment of interest on any such amount (including providing for interest to be payable from the time of payment of the original premium or an instalment of the original premium).
- (2) In this section, ***relevant wage details*** means the information as to wages payable or paid to workers on the basis of which the amount of the premium payable for the issue or renewal of a policy of insurance is determined.

**Note—**

A change in relevant wage details occurs when:

- (a) an employer changes the employer's estimate of the wages that will be payable to workers during a period, or
- (b) the wages actually paid to workers during a period is different to the amount of wages estimated to be payable during that period.

**174 Records relating to wages, contracts etc to be kept and supplied** (cf former ss 18 (8)

(a)–(c), 44 (5))

- (1) An employer shall keep correct records of:
  - (a) all wages paid to workers employed by the employer,
  - (b) the trade, occupation or calling of each such worker, and
  - (c) such other matters relating to those wages (or otherwise relevant to the calculation of premiums payable under policies of insurance) as may be prescribed by the regulations.
- (2) An employer shall retain any such record in good order and condition for at least 5 years after the last entry was made in the record.
- (3) If the regulations so provide, any such record shall be kept in such manner as may be specified in the regulations.



- (4) Any such record may be combined with any record of wages required to be kept by an employer by or under any other Act. However, it is not to be combined in such a manner as would prevent its disclosure under any law.
- (5) The Authority may order an employer to do either or both of the following:
- (a) to supply to the Authority, within the time specified in the order, a full and correct statement of the information required to be recorded by the employer under subsection (1) during a period so specified (being a period during which the record is required to be kept under this section), or
  - (b) to make available, at such time and at such place as is specified in the order, for inspection by a specified person authorised by the Authority, the records required to be kept by the employer under this section during a period so specified (being a period during which the record is required to be kept under this section), or
  - (c) to make available, at such time and at such place as is specified in the order, for inspection by a specified person authorised by the Authority, records of a specified kind in the possession of the employer that are relevant to the calculation of premiums payable under policies of insurance or to the determination of whether the employer or another employer is required to obtain a policy of insurance or has paid the correct premium for a policy of insurance.
- (5A) The Authority may provide information supplied to the Authority by an employer under subsection (5) (a) to any insurer for the purpose of assisting the insurer to determine whether the correct premium has been paid under a policy of insurance issued by the insurer.
- (6) The Authority may, by an order under subsection (5), require information to be supplied to, or made available for inspection by, an insurer who has issued a policy of insurance to the employer and who requests the Authority to make the order for the purpose of determining whether the correct premium has been paid under the policy.
- (6A) The Authority may order that a person make available, at a time and place specified in the order, for inspection by a person authorised by the Authority or (at the request of the insurer) by an insurer, any records in the person's possession relating to any contract (however described) under which the person has made payments to any other person (whether or not an individual) for the performance of work by that other person during such period (subject to subsection (6AA), not exceeding 3 years after the work was performed) as is specified in the order. The order need not name or otherwise identify the person to whom those payments have been made.
- (6AA) However, if the Authority is of the opinion that there has been a serious failure to comply with the requirements of this Act by the person to whom the order is to be given, the period specified in the order (or a further order) may be a period not exceeding 5 years after the work concerned was performed.

- (6B) An order under subsection (6A) may be made only for the purpose of establishing whether a person is required to obtain a policy of insurance under this Act or for the purpose of determining whether the correct premium has been paid under a policy of insurance.
- (7) A person authorised under subsection (5) (b), (5) (c), (6) or (6A) may inspect the records in accordance with the terms of the order and make copies of, or take extracts from, those records.
- (8) A person on whom an order is served under this section:
- (a) must comply with the order, and
  - (b) must not wilfully obstruct or delay an authorised person when exercising any power under subsection (7).
- (9) In this section:

**insurer** means a licensed insurer or a former licensed insurer.

**wages**, in relation to a worker:

- (a) includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors (including payments as directors' fees), payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money's worth given to the worker under a contract of service or a training contract,
- (b) includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to the 1998 Act to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by the Authority, and
- (b1) includes payments for long service leave (including a lump sum payment instead of long service leave and any payment under the *Building and Construction Industry Long Service Payments Act 1986*), and
- (b2) includes a payment made in consequence of the retirement from, or termination of, any office or employment of a worker, being:
  - (i) a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave, or
  - (ii) an amount paid in respect of unused long service leave, or

- (iii) an amount paid in respect of unused sick leave, and
- (b3) includes the amount that is the employer's fringe benefits taxable amount (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) in respect of fringe benefits payable to the worker, and
- (b4) includes a superannuation benefit, being money paid or payable by the employer in respect of the worker:
  - (i) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
  - (ii) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, or
  - (iii) to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme, and
- (b5) includes a distribution to a worker as beneficiary under a trust that is required to be included as wages by section 174AA, and
- (c) does not include:
  - (i)-(iii) (Repealed)
  - (iv) directors' fees (except to the extent that those fees are payable to working directors and included as wages under paragraph (a)), or
  - (v) compensation under this Act, or
  - (vi) (Repealed)
  - (vii) any GST component in a payment to a worker.

Maximum penalty: 500 penalty units.

#### **174AA Inclusion of trust distributions as wages**

- (1) A distribution to a worker as beneficiary under a trust constitutes **wages** for the purposes of section 174 to the extent that the distribution is in lieu of wages for work done for the trust by the worker.
- (2) Work that constitutes the provision of services to the trustee of a trust or for the purposes of a business conducted by the trustee of a trust is **work done for the trust**.
- (3) This section applies in respect of distribution to a worker only if:
  - (a) there is a wages shortfall in respect of work done for the trust by the worker, and

- (b) the distribution is made in the financial year in which the work is done or in the following financial year.
- (4) There is a **wages shortfall** in respect of work done for the trust by the worker if the total wages (if any) paid or payable to the worker during the financial year in which the work is done is less than the wages that would be payable to the worker for that work if wages were payable at the market rate for that work (with the difference constituting the **wages shortfall** for the purposes of subsection (5)).
- (5) If the distribution does not exceed the wages shortfall in respect of the work, the whole of the distribution is in lieu of wages for work done for the trust by the worker. Alternatively, if the distribution exceeds the wages shortfall in respect of the work, the distribution is in lieu of wages to the extent of the shortfall.
- (6) For the purpose of determining whether a particular distribution is in lieu of wages for work done for the trust, the total wages (if any) paid or payable to the worker during a financial year for the work is taken to include any previous distribution (whether made during that financial year or the following financial year) that, by application of this section, is a distribution in lieu of wages for the same work.
- (7) The **market rate** for work is the minimum wage rate applicable in respect of the work (or work that is comparable to the work):
- (a) pursuant to an industrial instrument in force under a law of the State, or
  - (b) if paragraph (a) does not apply, pursuant to an industrial instrument in force under a law of the Commonwealth, or
  - (c) if neither paragraph (a) nor (b) applies, as provided by the WorkCover Guidelines or as determined and notified by the Authority in the particular case.

**174A Recovery of inspection costs of Authority or insurer**

- (1) When an inspection by an insurer or a person authorised by the Authority reveals a significant understatement of wages by an employer or that an employer has failed to obtain or maintain in force a policy of insurance as required by section 155 (1), the insurer or Authority is entitled to recover from the employer the costs incurred by the Authority or insurer in connection with that inspection.
- (2) An inspection is considered to reveal a significant understatement of wages by an employer if the inspection reveals that the employer has, in connection with the calculation of the premium or balance of premium payable for the issue or renewal of a policy of insurance, understated by 25% or more the wages paid to workers employed by the employer.
- (3) The amount that the Authority or insurer is entitled to recover is recoverable in a court of competent jurisdiction as a debt due to the Authority or insurer.

- (4) A certificate issued by the Authority certifying as to the costs incurred by the Authority or an insurer in connection with such an inspection is evidence of the matters certified.
- (5) This section does not apply in respect of inspections carried out made before the commencement of this section.
- (6) In this section:

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

**175 Employers evading payment of correct premiums** (cf former s 18 (8) (d)-(h))

- (1) If the Authority finds, having regard to information obtained under section 174 or otherwise, an amount to be due and payable by an employer to an insurer as a premium or balance of premium in respect of the issue or renewal of a policy of insurance (whether or not the policy is still in force), the Authority may order the employer to pay that amount to the insurer.
- (2) A late payment fee at the rate for the time being in force under section 172 is payable in respect of an amount ordered to be paid under subsection (1) as from the date determined by the Authority as the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer.
- (3) An amount ordered to be paid under subsection (1), together with any late payment fee payable under subsection (2), may be recovered as a debt in a court of competent jurisdiction by the insurer in whose favour the order was made.
- (4) If the Authority finds that:
  - (a) an employer has provided an insurer with information which was false or misleading in a material particular, and
  - (b) the insurer, relying on that information, has calculated a premium for the issue or renewal of a policy of insurance which is less by a certain amount than the premium would otherwise have been,

the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority, a sum equal to twice that amount plus the late payment fee provided for by subsection (4A), half of which sum shall be paid by the Authority to the insurer and the other half into the WorkCover Authority Fund.

(4AA) If the Authority finds that:

- (a) an employer has contravened section 175G (Members of group to have policies with same scheme agent and common renewal date) as a result of the issue or renewal of a policy of insurance, and

(b) the total premium payable for those policies is less by a certain amount than the total premium that would have been payable had that section been complied with,

the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice that amount plus the late payment fee provided for by subsection (4A). Half of that sum is to be paid by the Authority to the insurer and the other half into the WorkCover Authority Fund.

(4AB) For the purposes of the application of the *Limitation Act 1969* to an action on a cause of action to recover an amount under subsection (4) or (4AA), the cause of action first accrues to the Authority when the Authority makes the finding referred to in those subsections.

(4A) The late payment fee at the rate for the time being in force under section 172 is payable:

- (a) under subsection (4) as from the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer, or
- (b) under subsection (4AA) as from the date the premium for the issue or renewal of the policy referred to in subsection (4AA) (a) first became due and payable to the insurer.

(4B) The Authority may waive or reduce a late payment fee payable under this section.

(5) A certificate executed by the Authority and certifying that an amount specified in the certificate is payable under subsection (1), (2) or (4) by a person so specified is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the matters specified in the certificate.

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

- (a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority),
- (b) the Authority's estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made,
- (c) if the Authority's estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.

- (7) A court that convicts an employer of an offence under section 173A (Giving false information for premium calculation) may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the matter to which the offence relates. For the purposes of this subsection, a court that makes a finding that an employer is guilty of an offence under section 173A without proceeding to a conviction is taken to have convicted the employer of the offence.
- (7A) Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) and is to be dealt with accordingly.
- (7B) A Local Court cannot order the payment of an amount under subsection (7) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.
- (8) In this section:

***insurer*** means a licensed insurer or a former licensed insurer.

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

- (1) If the Authority is entitled to recover an amount from a corporation under section 175 (4) or (4AA) (even if the corporation has ceased to exist) and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.
- (2) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.
- (3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at the time that the false or misleading information to which the entitlement of the Authority relates was provided to the insurer concerned (whether or not the corporation has been proceeded against or convicted of an offence in respect of the provision of that information).
- (4) A person is not a culpable director of a corporation if the person establishes that:
- (a) the person did not know that the information provided by the corporation was false or misleading in a material particular, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to the provision of false or misleading information, or
  - (c) the person, being in such a position, used all due diligence to prevent the provision by the corporation of false or misleading information.

- (5) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.
- (6) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.
- (7) This section does not apply to an entitlement of the Authority that arises from the provision of false or misleading information by a corporation before the commencement of this section.

**175B Liability of principal contractor for unpaid premiums payable by subcontractor**

- (1) This section applies where:
  - (a) a person (***the principal contractor***) has entered into a contract for the carrying out of work by another person (***the subcontractor***), and
  - (b) employees of that subcontractor are engaged in carrying out the work (***the relevant employees***), and
  - (c) the work is carried out in connection with a business undertaking of the principal contractor and is work that is an aspect of the work of that business undertaking.
- (2) The principal contractor is liable for the payment of any workers compensation insurance premiums payable by the subcontractor in respect of the work done in connection with the contract during any period of the contract unless the principal contractor has a written statement given by the subcontractor under this section for that period of the contract.
- (3) In this section:

***workers compensation insurance premiums*** means:

  - (a) if the subcontractor has failed to obtain or maintain in force a policy of insurance as required by section 155 (1) in respect of the work done in connection with the contract during any period of the contract—the amount recoverable under section 156 (1) (Recovery of double premiums from employer not obtaining policy of insurance) in connection with that failure, or
  - (b) if an amount is due and payable by the subcontractor to an insurer as a premium or balance of premium for the issue or renewal of a policy of insurance in respect of the work done in connection with the contract during any period of the contract—that amount, together with any late payment fee payable in respect of that amount under section 175 (2).
- (4) The written statement is a statement comprising the following:



- (a) a statement by the subcontractor that all workers compensation insurance premiums payable by the subcontractor in respect of the work done in connection with the contract during any period of the contract have been paid, accompanied by a copy of any relevant certificate of currency in respect of that insurance,
  - (b) a statement by the subcontractor as to whether the subcontractor is also a principal contractor in connection with that work,
  - (c) if the subcontractor is also a principal contractor in connection with that work, a statement by the subcontractor as to whether the subcontractor has been given a written statement under this section in the capacity of principal contractor in connection with that work.
- (5) The regulations may make provision for or with respect to the form of the written statement.
- (6) The principal contractor must keep a copy of any written statement under this section for at least 7 years after it was given.
- (7) The principal contractor may withhold any payment due to the subcontractor under the contract until the subcontractor gives a written statement under this section for any period up to the date of the statement. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection.
- (8) The written statement is not effective to relieve the principal contractor of liability under this section if the principal contractor had, when given the statement, reason to believe it was false.
- (9) A subcontractor who gives the principal contractor a written statement knowing it to be false is guilty of an offence.
- Maximum penalty: 100 penalty units.
- (10) Any amount payable by a principal contractor under this section is recoverable as a debt in a court of competent jurisdiction by the person to whom the amount would, as workers compensation insurance premiums, be payable by the subcontractor.
- (11) The principal contractor is entitled to recover from the subcontractor as a debt in a court of competent jurisdiction any payment made by the principal contractor under this section.
- (12) This section does not apply in relation to a contract if the subcontractor is in receivership or in the course of being wound up or, in the case of an individual, is bankrupt and if payments made under the contract are made to the receiver, liquidator or trustee in bankruptcy.
- (13) This section does not apply in respect of a contract entered into by the principal

contractor for the carrying out of work at the principal place of residence of the principal contractor.

- (14) The regulations may exempt from the operation of this section any contract, work, principal contractor or subcontractor of a class or description specified in the regulations.

**175C Authority may make private rulings regarding workers at the request of employers**

- (1) The Authority may, on application, make a private ruling, based on information submitted to it by the applicant, as to whether any particular person is a worker, or any particular class of persons are workers, employed by the applicant for workers compensation insurance premiums purposes.
- (2) A private ruling is to be used in the calculation of a relevant insurance premium by the insurer concerned, unless:
- (a) there has been a material change in the information submitted to the Authority relating to the ruling, or
  - (b) the ruling has been withdrawn.
- (3) A private ruling may be used by the person on whose application it was made as evidence as to whether any person is a worker, or any class of persons are workers, employed by the applicant, but only if there is no material change in the information submitted to the Authority relating to the application.
- (4) Other than in proceedings under section 155 or other proceedings relating to payment of insurance premiums required by this Act, a private ruling is inadmissible in proceedings in which the status of a person as a worker is at issue.
- (5) A private ruling has no effect on any determination by any person or body as to whether a person is a worker entitled to compensation under this Act.
- (6) The regulations may make provision for or with respect to private rulings.
- (7) Without limiting subsection (6), the regulations may deal with:
- (a) applications for private rulings (including the information to be provided with applications), and
  - (b) making of private rulings, and
  - (c) objections, reviews and appeals against private rulings, and
  - (d) amendment or withdrawal of private rulings by the Authority.

**Division 2A Grouping of employers for insurance purposes**

### **175D Grouping of employers**

(1) In this Division:

**group** means a group constituted under Division 2B, but does not include any member of the group in respect of whom a determination under section 175E is in force.

(2) This Division does not apply to the following:

(a) an employer who is a self-insurer,

(b) the persons, groups of persons and bodies constituted as a primary group by virtue of section 175Q (being government departments),

(c) the members of a group where the total wages payable to workers employed by the members of the group do not exceed:

(i) \$600,000 per year, or

(ii) if some other amount is prescribed by the regulations—that other amount.

(3) The regulations may make provision for or with respect to excluding, or authorising the Authority to exclude, any class or classes of employers from the operation of this Division or specified provisions of this Division.

### **175E Exclusion of employers from groups**

(1) The Authority may, by order in writing, determine that an employer who would, but for the determination, be a member of a group is not a member of the group.

**Note—**

Section 175F sets out the circumstances in which a determination may be made under this section.

(2) The Authority must give notice in writing of a determination to the employer in respect of whom the determination is made and to each member of the group.

(3) A determination takes effect:

(a) on the date on which notice under subsection (2) is given to the employer excluded from the group, or

(b) if another date of effect (including an earlier date) is specified in the notice—on that other date.

(4) A determination continues in force until it is revoked.

(5) The Authority may revoke a determination only if satisfied that the employer to which it relates no longer is an employer to which section 175F applies.

(6) Notice of the revocation of a determination must be given by the Authority:

- (a) to the employer in respect of whom the determination was made, and
  - (b) to each other member of the group of which the employer is a member as a result of the revocation.
- (7) A revocation of a determination takes effect on the date on which notice under subsection (6) (a) is given to the employer in respect of whom the determination was made.
- (8) If an employer in respect of whom a determination under this section was made becomes aware that the employer no longer is one to which section 175F applies, the employer must, within 14 days, notify the Authority of that fact.

Maximum penalty (subsection (8)): 500 penalty units.

**175F Grounds for excluding employers from group**

- (1) A determination may be made by the Authority under section 175E in respect of the following employers only:
- (a) an employer who would, but for the determination, be a member of a group arising under section 175N (Primary groups arising from the use of common employees),
  - (b) an employer that carries on a business as trustee of a trust and would, but for the determination, be a member of a group arising under section 175O (Primary groups of commonly controlled businesses),
  - (c) an employer that is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, but only if the employer's business is not in direct competition with any for-profit organisation.
- (2) In the case of an employer referred to in subsection (1) (b), the determination may be made only if the Authority is satisfied that the employer would, but for the determination, be a member of a group with a person who carries on another business because of the application of one (but not more than one) of the following grouping principles:
- (a) the exclusive ownership grouping principle (section 175O (2) (a) and (b)),
  - (b) the corporate grouping principle (section 175O (2) (c) and (d) and (3)),
  - (c) the common beneficiary grouping principle (section 175O (2) (e) and (f) and (5)–(8)).
- (3) The Authority must not make a determination under section 175E in respect of an employer referred to in subsection (1) (a) or (b) unless satisfied that the employer that is the subject of the determination has continuously carried on the business

concerned, and will continue to carry on that business, substantially independently of the other member or members of the group.

- (4) In determining whether an employer carries on business substantially independently of the other member or members of a group, the Authority is to have regard to the nature and degree of ownership or control of the business of each member of the group, the nature of each of those businesses and any other matter that the Authority considers relevant.

**175G Members of group to have policies with same scheme agent and common renewal date**

- (1) The policy of insurance that an employer who is a member of a group obtains and maintains in force for the purposes of compliance with section 155 (a **workers compensation insurance policy**) must:
- (a) be obtained from or through the same scheme agent that provides workers compensation insurance policies to the other members of the group, and
  - (b) have the same renewal date as those other policies.
- (2) An employer who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: 500 penalty units.
- (3) If an employer who is a member of a group does not obtain or maintain in force a policy of insurance in compliance with this section, the Authority may by notice in writing to a scheme agent:
- (a) direct the transfer of any policy of insurance obtained or maintained in contravention of this section to a specified scheme agent (being the scheme agent from or through whom workers compensation insurance is provided to other members of the group concerned), and
  - (b) direct the alteration of the policy of insurance so that the policy renews on the same date as the policies of other members of the group.
- (4) A scheme agent must give effect to a direction given to it under this section.

**175H Joint and several liability of group members**

- (1) If an employer who is a member of a group fails to pay an amount that the employer is required to pay under this Part (including any premium payable for a policy of insurance required under this Part and any sum recoverable by the Authority under this Part from the employer), every member of the group is liable jointly and severally to pay the amount.
- (2) If 2 or more persons are jointly or severally liable to pay an amount as referred to in this section, the person entitled to payment may recover the whole of the amount

from them, or any of them, or any one of them.

- (3) A person who pays an amount in accordance with the liability imposed by this section has such rights of contribution or indemnity from the other person or persons as are just.

#### **175I Registration**

- (1) The Authority is to keep a register of employers who are members of a group.
- (2) An employer must notify the Authority if the employer becomes a member of a group to which this Division applies.
- (3) The notification is to be made within 14 days of the employer becoming aware, or of the date the employer ought reasonably to have become aware through the exercise of due diligence, that the employer is a member of a group to which this Division applies.
- (4) The notification is to be made to the Authority in a form and manner approved by the Authority.
- (5) The Authority may remove an employer from the register if it is satisfied that the employer has ceased to be an employer that is a member of a group to which this Division applies.
- (6) If a change occurs in the information provided to the Authority in a notification, the employer must, within 14 days, notify the Authority of that change.

Maximum penalty: 500 penalty units.

#### **175J Inspection of records of employers**

- (1) The Authority may direct an employer in writing to make available, at the time and place specified in the direction, for inspection by a specified person authorised by the Authority, records of a specified kind in the possession of the employer that are relevant to any of the following:
  - (a) the determination of whether the employer is a member of a group,
  - (b) the identity of other members of a group of which the employer is a member.
- (2) A person authorised under subsection (1) may inspect records in accordance with the terms of the direction and make copies of, or take extracts from, those records.
- (3) An employer given a direction under this section:
  - (a) must comply with the direction, and
  - (b) must not wilfully obstruct or delay an authorised person when exercising any

power under subsection (2).

Maximum penalty: 100 penalty units.

- (4) If an inspection under this section reveals that an employer has contravened a provision of this Division, the Authority is entitled to recover in a court of competent jurisdiction, as a debt due to the Authority from the employer, the costs incurred by the Authority in connection with that inspection.
- (5) A certificate issued by the Authority certifying as to the costs incurred by the Authority in connection with such an inspection is evidence of the matters certified.

## **Division 2B Constitution of employer groups**

### **175K Definitions**

In this Division:

**business** means:

- (a) a profession or trade, or
- (b) any other activity carried on for fee or reward, or
- (c) the activity of employing persons to perform duties in connection with another business, or
- (d) the carrying on of a trust,

whether carried on by 1 person or 2 or more persons together.

**primary group** means a primary group constituted under section 175M, 175N, 175O, 175P, 175Q or 175R.

### **175L Membership of groups**

A **group** is constituted by all the persons or bodies forming a primary group that is not a part of any larger primary group.

### **175M Primary groups of corporations**

- (1) Corporations constitute a primary group if they are related corporations within the meaning of the [Corporations Act 2001](#) of the Commonwealth.
- (2) For the purpose of assessing whether corporations are related under that Act, they are taken to carry on a business and not to be trustee companies.

### **175N Primary groups arising from the use of common employees**

- (1) If 2 persons have an agreement under which an employee of 1 of them works solely

or mainly in connection with a business carried on by:

- (a) the other, or
- (b) both of them,

then the 2 persons constitute a primary group.

(2) In this section:

**agreement** means an agreement, arrangement or undertaking, whether formal or informal, whether express or implied, and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services.

**person** includes a set of persons.

**Note—**

Section 175E allows the Authority to exclude persons from a group constituted under this section in certain circumstances.

**1750 Primary groups of commonly controlled businesses**

(1) If a person or set of persons has a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a primary group.

**Note—**

Section 175E allows the Authority to exclude persons from a group constituted under this section in certain circumstances.

(2) For the purposes of this section, a person or set of persons has a controlling interest in a business if:

(a) in the case of 1 person—the person is the sole owner (whether or not as trustee) of the business, or

(b) in the case of a set of persons—the persons are together the exclusive owners (whether or not as trustees) of the business, or

(c) in the case of a business carried on by a corporation:

(i) the person or each of the set of persons is a director of the corporation and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation, or

(ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person or set of persons, or

(d) in the case of a business carried on by a corporation that has a share capital—that



person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares issued by the corporation, or

- (e) in the case of a business carried on by a partnership—that person or set of persons:
  - (i) own (whether beneficially or not) more than 50% of the capital of the partnership, or
  - (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership, or
- (f) in the case of a business carried on under a trust—the person or set of persons (whether or not as a trustee or trustees of another trust) is the beneficiary in respect of more than 50% of the value of the interests in the first-mentioned trust.

(3) If:

- (a) 2 corporations are related to each other within the meaning of the *Corporations Act 2001* of the Commonwealth, and
- (b) 1 of the corporations has a controlling interest in a business, the other corporation has a controlling interest in the business.

(4) If:

- (a) a person or set of persons has a controlling interest in a business, and
  - (b) a person or set of persons who carry on the business has a controlling interest in another business,
- the person or set of persons referred to in paragraph (a) has a controlling interest in that other business.

(5) If:

- (a) a person or set of persons is the beneficiary of a trust in respect of more than 50% of the value of the interests in the trust, and
  - (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in a business of the trust,
- the person or set of persons has a controlling interest in the business.

- (6) A person who may benefit from a discretionary trust as a result of the trustee or another person, or the trustee and another person, exercising or failing to exercise a power or discretion, is taken, for the purposes of subsection (5), to be a beneficiary in

respect of more than 50% of the value of the interests in the trust.

(7) If:

- (a) a person or set of persons has a controlling interest in the business of a trust, and
- (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a corporation,

the person or set of persons is taken to have a controlling interest in the business of the corporation.

(8) If:

- (a) a person or set of persons has a controlling interest in the business of a trust, and
- (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a partnership,

the person or set of persons is taken to have a controlling interest in the business of the partnership.

(9) Subsection (1) does not apply in relation to a person or set of persons that has a controlling interest in 2 businesses if:

- (a) in the case of 1 person—the businesses are wholly owned by the person, whether as trustee or otherwise, or
- (b) in the case of a set of persons—the businesses are wholly owned by the persons as trustees.

(10) A statutory State owned corporation (within the meaning of the [State Owned Corporations Act 1989](#)) is not a member of the same group as another statutory State owned corporation because of this section.

#### **175P Primary groups arising from tracing of interests in corporations**

- (1) An entity and a corporation form part of a primary group if the entity has a controlling interest in the corporation.
- (2) For the purposes of this section, an entity has a **controlling interest** in a corporation if the corporation has share capital and:
  - (a) the entity has a direct interest in the corporation and the value of that direct interest exceeds 50%, or
  - (b) the entity has an indirect interest in the corporation and the value of that indirect interest exceeds 50%, or
  - (c) the entity has an aggregate interest in the corporation and the value of the

aggregate interest exceeds 50%.

(3) Schedule 2 has effect.

**Note—**

Schedule 2 sets out the manner for determining whether an entity has a direct interest, indirect interest or aggregate interest in a corporation, and the value of such an interest.

(4) In this section:

**associated person** has the meaning given by the *Duties Act 1997*.

**entity** means:

- (a) a person, or
- (b) a group of associated persons.

**175Q Grouping of government departments**

The persons, groups of persons and bodies specified for the time being in Column 1 of Schedule 3 to the *Public Finance and Audit Act 1983* together constitute a primary group.

**175R Smaller primary groups subsumed by larger groups**

If a person is a member of 2 or more primary groups, the members of all the groups together constitute a primary group.

**175S Grouping provisions to operate independently**

The fact that a person is not a member of a primary group constituted under a provision of this Division does not prevent that person from being a member of a primary group constituted under another provision of this Division.

## **Division 3 Licensing of insurers**

**176 Licences to be re-granted only to existing licence holders**

- (1) A licence may be granted under this Division only if the licence:
  - (a) is endorsed with a specialised insurer endorsement, and
  - (b) is granted to an existing licence holder on the expiry of a licence granted to the existing licence holder under this Division.
- (2) In this section, an **existing licence holder** means a corporation or body corporate that held a licence that was granted under this Division, and in force or suspended, immediately before the commencement of this section.
- (3) This section extends to an application for a licence that was made, but not determined, before the commencement of this section.

- (4) Any licence granted under this Division after the date that the Bill for the *Workers Compensation Amendment Act 2008* was introduced into the Legislative Assembly that could not have been granted had this section been in force has no effect.

**177 Applications for licences** (cf former ss 27 (1), 30C (3))

- (1) An application for a licence under this Division may be made to the Authority by:
- (a) any corporation incorporated in New South Wales, or
  - (b) any body corporate (subject to the regulations) if the application is conditional on the licence being endorsed with a specialised insurer endorsement.
- (2) An application shall be in such form and accompanied by such documents:
- (a) as may be prescribed by the regulations, and
  - (b) subject to any such regulations, as may be determined by the Authority.
- (3) Without affecting the generality of subsection (2), the form of application may require particulars of:
- (a) the places at which the business of the applicant is to be carried on, and
  - (b) in the case of an applicant that is a company—the shareholders, directors and secretary of the company.
- (4) The Authority may, before determining an application for a licence, require the applicant to advertise or give other notice of the application.
- (5) An application is to be accompanied by such fee (if any) as is prescribed by the regulations or (subject to the regulations) as is determined by the Authority. Any such fee is to be paid into the WorkCover Authority Fund.

**177A Special provisions for specialised insurers**

- (1) An application for a licence under this Division may be made conditional on the licence being endorsed with a specialised insurer endorsement.
- (2) The Authority may endorse the licence with a specialised insurer endorsement but only if the Authority is satisfied that the insurance business to be carried on pursuant to the licence will be limited to a particular industry or class of business or employer, and that:
- (a) the applicant is eligible for such an endorsement (as provided by this section), or
  - (b) the applicant will issue policies only in respect of domestic or similar workers.
- (3) An applicant for a licence under this Division is eligible for a specialised insurer endorsement if the Authority is satisfied:

- (a) that the insurance business to be carried on pursuant to the licence will not have an adverse effect on the efficiency of the workers compensation scheme under this Act generally, and
  - (b) that the application is supported by relevant professional, business and other industry bodies involved in the particular industry or class of business or employer concerned, and
  - (c) that an authority has been granted to the applicant under section 23 (Authority to commence carrying on insurance business) of the *Insurance Act 1973* of the Commonwealth and is in force, and
  - (d) as to such other matters as the Authority considers relevant.
- (4) The Authority may by notice in writing to a licensed insurer withdraw a specialised insurer endorsement that the licence is endorsed with if the Authority is of the opinion that the Authority would not be authorised (on an application for a licence by the insurer) to endorse the licence with a specialised insurer endorsement.
- (5) The withdrawal of a specialised insurer endorsement is grounds for the suspension or cancellation of the relevant licence under this Division.

**178 Determination of application for licence** (cf former s 27 (1))

- (1) The Authority shall consider each application for a licence under this Division and may, in its discretion:
- (a) grant a licence to the applicant, or
  - (b) refuse the application.
- (2) The Authority may, in determining an application for a licence, take into consideration:
- (a) the suitability of the applicant,
  - (b) in the case of a corporation:
    - (i) the paid up share capital of the applicant, and
    - (ii) the memorandum and articles of association of the applicant,
  - (c) the orderly run-off of claims for compensation under the former Act,
  - (d) the efficiency of the workers compensation system generally, and
  - (e) such other matters as the Authority thinks fit.
- (3) For the purposes of subsection (2) (b), the Authority may approve of a model memorandum and articles of association for corporations applying for a licence.

- (4) Without affecting the generality of subsection (1), the Authority may refuse an application for a licence from a corporation that is authorised by its memorandum and articles of association to carry on any business other than workers compensation business in New South Wales.
- (5) Without affecting the generality of subsection (1), the Authority may refuse an application for a licence from a corporation that is related to other corporations (within the meaning of the *Corporations Act 2001* of the Commonwealth):
  - (a) where any of those other corporations was previously licensed under section 27 of the former Act—if the directors of the applicant corporation do not include the directors of that other corporation, or
  - (b) where none of those other corporations was previously so licensed—if the directors of the applicant corporation do not include the directors of a related corporation that controls the composition of the board of directors of the applicant corporation.

**179 Offence—unlicensed insurers** (cf former ss 30D, 30E)

- (1) A person (other than a licensed insurer) shall not issue or renew policies of insurance.  
Maximum penalty: 100 penalty units.
- (2) A contravention of subsection (1), or of a condition to which a licence is subject under this Division, does not annul a policy of insurance issued or renewed by an insurer or affect the liability of the insurer to the person insured under the policy.

**180 Duration of licences** (cf former s 27 (1))

- (1) A licence granted under this Division continues in force until:
  - (a) the expiration of the period (if any) specified in the licence during which it is to be in force, or
  - (b) the licence is, pursuant to this Division, cancelled,whichever first occurs.
- (2) A licence is not in force while it is suspended pursuant to this Division.

**181 Conditions of licences** (cf former ss 27 (1) and 29C)

- (1) A licence granted to an insurer under this Division is subject to:
  - (a) such conditions as may be prescribed by this Act or the regulations, and
  - (b) such conditions (not inconsistent with this Act or the regulations) as may be imposed by the Authority:

- (i) on the granting of the licence, or
  - (ii) at any time during the currency of the licence.
- (2) The Authority may, by notice served on a licensed insurer, impose conditions (or further conditions) to which the licence is to be subject or vary any conditions imposed on the licence by the Authority.
- (3) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.
- (4) A licensed insurer shall comply with any condition to which the licence is subject.  
Maximum penalty: 100 penalty units.
- (5) (Repealed)

**182 Matters that may be regulated by conditions of licences**

- (1) Without limiting the generality of section 181, the conditions to which a licence granted under this Division may be subject include conditions for or with respect to:
- (a) requiring the licensed insurer to undertake a specified amount of workers compensation insurance or of workers compensation insurance of a specified kind,
  - (b) preventing an insurer from undertaking more than a specified amount of workers compensation insurance or of workers compensation insurance of a specified kind, or
  - (c) requiring a charge or other security to be taken by the Authority in respect of the assets of an insurer for the purpose of securing the payment of the insurer's liabilities (including contingent liabilities) for the payment of compensation under this Act.
- (2) Conditions may be imposed on a licence:
- (a) for the purpose of promoting an equitable distribution of high risk insurance business among licensed insurers,
  - (b) for the purpose of ensuring compliance with the obligations of the licensed insurer,
  - (c) for the purpose of preserving premiums paid for policies of insurance,
  - (d) for the purpose of the efficiency of the workers compensation system generally, or
  - (e) for any other purpose of the same or of a different kind or nature that is not inconsistent with this Act.
- (3) An amount of workers compensation insurance may be prescribed in a condition of a

licence by specifying a level of premium income or in any other manner.

**183 Cancellation or suspension of licences** (cf former ss 29-29C)

- (1) The Authority may cancel or suspend a licence granted under this Division by notice served on the licensed insurer.
- (2) The Authority may cancel or suspend a licence for any reason it thinks fit and is not required to give the reasons for its decision.
- (3) Without affecting the generality of subsection (2), the Authority may cancel or suspend a licence for reasons that relate to the workers compensation system generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer.
- (4) The Authority shall, as far as practicable, give a licensed insurer whose licence it proposes to cancel or suspend an opportunity to make representations on the matter.
- (5) (Repealed)
- (6) A licence surrendered by a licensed insurer is cancelled if and when the Authority approves of the surrender.

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

- (1) If the Board of Directors of the Authority is satisfied that a person who is or was a licensed insurer or self-insurer has contravened its licence or this Act or the regulations, the Board may:
  - (a) impose a civil penalty on the person not exceeding \$50,000, or
  - (b) issue a letter of censure to the person.
- (2) Before imposing a civil penalty, the Board is required to give the person concerned an opportunity to make written submissions with respect to the alleged contravention, but is not required to conduct a hearing into the matter.
- (3) A civil penalty that has been imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Crown.
- (4) (Repealed)
- (5) The Board may cause a letter of censure issued by it under this section to be published.
- (6) A civil penalty that is paid or recovered is payable into the WorkCover Authority Fund.
- (7) The powers of the Board under this section do not limit any powers of the Authority under this Act or the Regulations.



**184 Cancellation of policies following cancellation or suspension of insurer's licence** (cf former s 30F)

(1) In this section:

**insurer** means a former licensed insurer.

**period** means, in relation to a policy of insurance:

(a) the period in respect of which the insurer has by the terms of the policy, or

(b) if the policy has been renewed, the further period in respect of which the insurer has, by the terms of the renewal,

accepted liability to indemnify, in respect of any matters, the employer who obtained the policy.

**prescribed day** means the day on which the licence of the insurer ceases to be in force.

(2) This section applies where the licence of an insurer ceases to be in force.

(3) In any case where this section applies, the employer who obtained a policy of insurance may, by notice in writing given on or after the prescribed day to the insurer from whom the employer obtained the policy, cancel the policy as from a date and time specified in the notice.

(4) In any case where this section applies, the insurer who issued a policy of insurance shall, within 14 days after the prescribed day, post to the employer who obtained the policy, at the address of the employer last known to the insurer, a notice of cancellation of the policy.

Maximum penalty: 20 penalty units.

(5) Such a notice of cancellation by the insurer must state that the cancellation of the policy of insurance will take effect at 4 pm on a date specified in the notice (being a date that is the twenty-eighth day after the day on which the notice is posted), and the effect of the notice is to cancel the policy accordingly.

(6) The Authority may, by notice to an insurer, or by order, and in relation to all the policies or any policies or classes of policies issued by the insurer, shorten or extend the time prescribed by subsection (4) or advance or defer the date to be stated in a notice pursuant to subsection (5), or both.

(7) The power conferred by subsection (6) to extend a time prescribed by subsection (4) may be exercised before or after that time has expired.

(8) In any case where this section applies, the Authority may, by notice to the insurer and employer, cancel a policy of insurance as from a date and time specified in the notice.

- (9) The premium for the issue or renewal of a policy of insurance cancelled under this section shall, notwithstanding any agreement to the contrary, be reduced in the proportion which so much of the period of the policy as is after the day on which the cancellation has effect bears to the whole period of the policy.
- (10) If an employer has paid to an insurer by way of premium for the issue or renewal of a policy of insurance a greater amount than the reduced premium referred to in subsection (9), the insurer shall forthwith repay the excess amount to the employer.

Maximum penalty: 20 penalty units.

- (11) An employer may recover in a court of competent jurisdiction as a debt any amount which is required by subsection (10) to be repaid to the employer.
- (12) An insurer shall, if so required in writing by the Authority, supply to the Authority in writing and within a time specified by the Authority such particulars as the Authority may require in respect of:
- (a) policies of insurance issued by the insurer, the periods of which were current at the time that the insurer's licence ceased to be in force, and
  - (b) the employers to whom the policies were issued.

Maximum penalty: 20 penalty units.

- (13) The effect of the cancellation of a policy of insurance under this section is to terminate the period of the policy but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.
- (14) This section does not apply to any policies of insurance assigned to another insurer under section 185.

### **185 Assignment of policies of former insurers etc**

- (1) In this section:

**former insurer** means a former licensed insurer whose licence has ceased to be in force by cancellation, suspension or the expiry of the term of the licence.

- (2) The Authority may assign all or any class of policies of insurance of a former insurer to a licensed insurer nominated by the Authority.
- (3) Policies of insurance may be assigned under this section by notice served by the Authority on the former insurer concerned.
- (4)-(6) (Repealed)
- (7) An assignment of an insurance policy under this section:

- (a) transfers the rights, obligations and liabilities under the policy of the former insurer to the licensed insurer to which the policy is assigned, and
  - (b) does not otherwise affect the rights, obligations or liabilities acquired, accrued or incurred under the policy.
- (8) For the purposes of this Act, any such assigned policy is to be taken to have been issued or renewed by the licensed insurer to which it is assigned.
- (9) If an insurance policy is assigned under this section, the former insurer concerned must, subject to any directions of the Authority, provide the licensed insurer to which the policy is assigned with:
- (a) copies of all documents relating to the policy or to claims under it, and
  - (b) (Repealed)

Maximum penalty: 20 penalty units.

**186 Records and evidence relating to licences** (cf former s 30C (1), (2))

- (1) The Authority shall keep records in relation to all licences granted by the Authority under this Division, including particulars of:
- (a) the granting, refusal, duration, conditions, cancellation and suspension of licences, and
  - (b) such other matters relating to licences as the Authority thinks fit.
- (2) A certificate executed by the Authority and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without proof of its execution by the Authority and without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

**187 Liabilities on Commonwealth insurers—special condition**

- (1) In this section:

**Commonwealth insurer** means a company authorised to carry on insurance business under the *Insurance Act 1973* of the Commonwealth or a company registered under the *Life Insurance Act 1945* of the Commonwealth.

**licensed insurer** includes an insurer formerly licensed under this Division.

- (2) It is a condition of a licence granted under this Division that the licensed insurer will not, without the approval of the Authority and the concurrence of the Treasurer of the Commonwealth, enter into a contract or arrangement whereby a Commonwealth

insurer is or may become liable to pay any money to or on behalf of the licensed insurer.

- (3) A contract or an arrangement is not invalid merely because it has been entered into in contravention of subsection (2).
- (4) The Supreme Court may, on the application of the Authority or the Treasurer of the Commonwealth, declare invalid a contract or arrangement entered into in contravention of subsection (2) if satisfied that the declaration will not prejudice the rights arising out of the contract or arrangement of any person who entered into the contract or arrangement in good faith and without knowledge of the contravention.
- (5) (Repealed)

### **188 Re-insurance—special condition**

- (1) It is a condition of a licence granted under this Division that the licensed insurer will not, without the approval of the Authority, enter into a contract or an arrangement for re-insurance in respect of liabilities under policies of insurance issued or renewed by the licensed insurer.
- (2) The Authority may give any such approval subject to conditions, including a condition requiring a joint contract or arrangement for re-insurance with other licensed insurers.
- (3) A contract or an arrangement for re-insurance is not invalid merely because it has been entered into in contravention of subsection (1).
- (4) Subsection (1) does not apply to a specialised licensed insurer.

### **189 Information and records as to business etc to be supplied to Authority by insurers** (cf former ss 28, 30B)

- (1) In this section:

***insurer*** means a licensed insurer, a former licensed insurer, a self-insurer or a former self-insurer, and includes a scheme agent.

- (2) The Authority may require an insurer:
  - (a) to disclose to the Authority specified information relating to the business and financial position of the insurer or of any corporation which is a related corporation, or
  - (b) to forward to the Authority, or make available for inspection, specified records, or copies or extracts from specified records, kept by the insurer or by any corporation which is a related corporation.
- (3) A requirement under this section:

- (a) shall be made in writing and served on the insurer, and
  - (b) shall specify the manner in which and the time within which the requirement is to be complied with.
- (4) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by a registered tax agent, a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth) or an actuary approved by the Authority as to the correctness of any specified information or specified records (or copies of or extracts from specified records).
- (5) Unless the insurer satisfies the court that it is not within its power to comply with the requirement, an insurer who fails to comply with the requirement is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

**190 Notification to Authority of certain defaults in relation to insurers** (cf former s 28 (1) (b))

- (1) In this section:

***insurer*** means a licensed insurer, a former licensed insurer, a self-insurer or a scheme agent.

- (2) An insurer (being a corporation) shall notify the Authority in writing of any of the following events or things within 21 days after the event or thing happens (whether within or outside the State):
- (a) any default by the licensee or a related corporation in the payment of principal or interest under any debenture issued by the licensee or corporation,
  - (b) the appointment of a liquidator, receiver or manager of the property of the licensee or a related corporation,
  - (c) that the licensee or a related corporation has resolved by special resolution that it be wound up voluntarily or by a court,
  - (d) that a person claiming to be a creditor by assignment or otherwise of the licensee or a related corporation for a sum exceeding \$1,000 then due has served on the licensee or corporation by leaving at its registered office a demand requiring the licensee or corporation to pay the sum so claimed to be due, and the licensee or corporation has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor,
  - (e) the return unsatisfied in whole or part of execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the licensee or a related corporation,
  - (f) the receipt by the licensee or a related corporation or the giving, or causing to be given, by the licensee or corporation, of any bidder's statement or target's

statement within the meaning of the *Corporations Act 2001* of the Commonwealth,

- (g) the making of an order by any court for the winding-up of the licensee or a related corporation,
- (h) the receipt by the licensee or a related corporation of any notice of an application for an order by any court for the winding-up of the licensee or corporation.

Maximum penalty: 100 penalty units.

**191 Power of Supreme Court to deal with insurers or former insurers unable to meet liabilities etc**

- (1) The Supreme Court may, on the application of the Authority, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of:
  - (a) the holders of policies of insurance issued or renewed by a licensed insurer or a former licensed insurer (whether before or after the commencement of this section), and
  - (b) the workers to whom those policies apply.
- (2) The Supreme Court may make such an order if it is satisfied that the licensed insurer or former licensed insurer:
  - (a) is not able to meet the insurer's liabilities under the policies of insurance or may not be able to do so, or
  - (b) has acted or may act in a manner that is prejudicial to the interests of the holders of the policies of insurance or the workers to whom those policies apply.
- (3) Without limiting the generality of subsection (1), the Supreme Court may make the following orders:
  - (a) an order regulating the administration and payment of claims under the policies of insurance,
  - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer or former licensed insurer,
  - (c) if the licensed insurer or former licensed insurer is a corporation—an order requiring it to discharge its liabilities under the policies of insurance out of the assets of the corporation and the assets of any related corporation,
  - (d) if the licensed insurer or former licensed insurer is a corporation—an order appointing a receiver or receiver and manager, having such powers as the Supreme Court orders, of the property or of part of the property of the corporation or of any related corporation.

- (4) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court shall not require the Authority or any other person, as a condition of granting an interim order, to give any undertaking as to damages.
- (6) If the Supreme Court has made an order under this section, the Supreme Court may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the firstmentioned order.
- (7) A person shall not contravene, whether by act or omission, an order made by the Supreme Court under this section that is applicable to the person.  
Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.
- (8) The Supreme Court shall not exercise its powers under this section in respect of a corporation which is in the course of being wound up.
- (9) The powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.
- (10) (Repealed)

**192 Exclusion of insurance brokers, agents or intermediaries** (cf former s 18 (9A))

- (1A) A reference:
  - (a) in this section to a licensed insurer includes a reference to a scheme agent, and
  - (b) in subsections (1)-(3) to an agent does not include a reference to a scheme agent.
- (1) A licensed insurer shall not pay any amount by way of commission or other remuneration to an insurance broker, agent or intermediary in relation to the issue or renewal of a policy of insurance.
- (2) A licensed insurer shall send any cover note, policy of insurance or renewal notice (or any notice under any policy of insurance) direct to the employer concerned and not to an insurance broker, agent or intermediary.
- (3) An employer shall pay any premium under a policy of insurance direct to the licensed insurer and not to an insurance broker, agent or intermediary.
- (4) This section does not apply in any case specified in the regulations or approved by the Authority.
- (5) This section does not apply to a specialised insurer.

Maximum penalty: 200 penalty units.

**192A Claims administration manual** (cf former s 93B)

- (1) The Authority may prepare and publish a claims manual for use by licensed insurers under this Division.
- (2) In preparing the claims manual, the Authority is required to promote, as far as practicable:
  - (a) the prompt processing of claims and payment of amounts duly claimed, and
  - (b) the giving of information about workers' entitlements and about procedures for the making of claims and the resolution of disputes, and
  - (c) the minimisation of the effect of injuries to workers by the making of prompt arrangements for rehabilitation, and
  - (d) the proper investigation of liability for claims, and
  - (e) the recovery of proper contributions in connection with claims from other insurers or persons.
- (3) The claims manual may make provision (not inconsistent with this Act, the 1998 Act or the regulations under those Acts) in connection with all matters relating to the administration of claims, including:
  - (a) liaison between insurers and employers concerning rehabilitation assessment of injured workers, and
  - (b) the provision or arrangement of suitable employment or rehabilitation training for partially incapacitated workers, and
  - (c) the monitoring of employment-seeking activities or rehabilitation training by partially incapacitated workers, and
  - (d) arrangements for the settlement of claims for damages, and
  - (e) procedures to be followed before a claim is made, such as procedures in connection with early notification of injury and provisional acceptance of liability.
- (3A) The WorkCover Guidelines under the 1998 Act can make provision in connection with any matter in connection with which the claims manual can make provision.
- (4) The Authority may give an insurer directions as to the procedure to be followed in the administration of any claim or class of claims in order to comply with the claims manual, the WorkCover Guidelines, the 1998 Act and this Act.
- (4A) An insurer who fails to comply with a direction under subsection (4) is guilty of an



offence.

Maximum penalty: 50 penalty units.

- (5) It is a condition of the licence of an insurer under this Division that the insurer comply with any direction given to the insurer under this section.
- (6) Any claims manual in force under section 93B, immediately before its repeal, is taken to have been prepared and published under this section.

## **Division 4 Regulation of insurers and miscellaneous provisions**

### **193 Definitions**

In this Division:

**accounting records** includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

**insurer** means a licensed insurer or self-insurer.

### **194 Directions to insurers with respect to claims procedures**

- (1) The Authority may give insurers (or any particular insurer or class of insurers) directions for or with respect to requiring the adoption and use by them of specified processes, procedures, strategies, policies and methods in the handling and administration of claims for compensation or work injury damages, either generally or in respect of a specified class or classes of cases.
- (2) It is a condition of an insurer's licence under this Act that the insurer must comply with a direction under this section.

### **195-200 (Repealed)**

### **201 Accounts and returns**

- (1) An insurer shall keep such accounting and other records in relation to the business or financial position of the insurer:
  - (a) as may be prescribed by the regulations, or
  - (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.
- (2) The regulations or directions of the Authority may prescribe the manner in which financial transactions are to be accounted for in any such records.
- (3) An insurer shall lodge with the Authority returns in relation to the business or financial

position of the insurer in such form, containing such particulars and accompanied by such documents:

- (a) as may be prescribed by the regulations, or
- (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.

(4) Returns shall be lodged:

- (a) within 6 weeks after each 31 March, 30 June, 30 September and 31 December or at such other times as are prescribed by the regulations, and
- (b) at such other times as the Authority, by notice served on the insurer, directs.

(5) The regulations or directions of the Authority may require returns, and documents accompanying returns, to be certified by an auditor.

(6) (Repealed)

## **202 Audit of accounting records of insurers**

(1AA) A reference in this section to an insurer does not include a reference to a specialised insurer or a self-insurer.

(1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records relating to the business or financial position of an insurer.

(1A) (Repealed)

(2) A person so appointed by the Authority is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the insurer.

(3) An insurer shall provide all reasonable assistance for the exercise of those functions.

(4) A person shall not wilfully obstruct or delay a person exercising a function under this section.

Maximum penalty: 1,000 penalty units.

(5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.

(6) (Repealed)

## **202A Performance audits by Authority**

(1) The Authority may conduct an audit of all or any particular workers compensation

activities of an insurer to determine whether the insurer is carrying out those activities effectively, economically and efficiently and in compliance with the workers compensation legislation and any relevant agency arrangement.

- (2) A single audit under this section may relate to the activities of more than one insurer.
- (3) An officer of the Authority appointed by the Authority for the purposes of this section is, for the purposes of the exercise of the Authority's functions under this section, entitled to inspect the accounting and other records of an insurer.
- (4) A person must not wilfully obstruct or delay a person exercising a function under this section.

Maximum penalty: 1,000 penalty units.

- (5) An insurer must provide all reasonable assistance to the Authority for the purpose of facilitating the exercise of functions by the Authority under this section.
- (6) The Authority may publish such reports and other information concerning an audit under this section as the Authority thinks fit.

### **203-207 (Repealed)**

### **208 Contributions by specialised insurers to Insurance Fund**

- (1) Each specialised insurer shall pay the contributions prescribed by this section to the Authority for payment into the Insurance Fund.
- (2) The contribution to be paid by a specialised insurer in respect of each financial year for which the regulations require a contribution to be made is an amount equal to the percentage (prescribed by the regulations) of the premium income of the specialised insurer in respect of that financial year.
- (3) A contribution is payable at such times and in respect of premium income received during such periods as may be prescribed by the regulations.
- (4) If a contribution payable by a specialised insurer has not been paid within the time prescribed by or under this section, the amount of the contribution together with a late payment fee calculated at the rate of 15 per cent of that amount per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (5) A certificate executed by the Authority certifying that an amount specified in the certificate was the premium income received by a specialised insurer so specified in respect of a financial year so specified is (without proof of its execution by the Authority) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.

- (6) More than one percentage may be prescribed for different portions of a financial year for the purposes of subsection (2).

### **208AA Contributions by exiting employers**

- (1) In this section:

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

- (a) a self-insurer under this Act or the 1998 Act, or
- (b) insured for the purposes of this Act by a specialised insurer under this Act or the 1998 Act, or
- (c) licensed under Part VIIIIB of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth (pursuant to a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority).

**insured liabilities** of an exiting employer means the following outstanding liabilities of the exiting employer:

- (a) any liabilities of the exiting employer under this Act in respect of workers employed by the exiting employer while insured under a policy of insurance issued by an insurer licensed or previously licensed under Division 3 of Part 7 (other than a specialised insurer),
- (b) any liabilities of the exiting employer independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State or Territory or the Commonwealth or a liability arising under the law of another country) for injuries received by workers employed by the person while insured under a policy of insurance referred to in paragraph (a).

**responsible insurer** for an exiting employer means:

- (a) the exiting employer, except in a case in which paragraph (b) or (c) applies, or
- (b) in the case of an exiting employer that is covered by a licence under section 211A—the exiting employer and the licence holder (jointly and severally), or
- (c) in the case of an exiting employer that is insured by a specialised insurer—the specialised insurer that insures the exiting employer.

- (2) The object of this section is to provide for the protection of the Insurance Fund against deficiencies that may result from the insured liabilities of exiting employers.

- (3) The Authority may by order published in the Gazette require the responsible insurer for an exiting employer to pay contributions for the purposes of this section. The order is to provide for the amount of the required contributions or for the manner in which they are to be calculated and may require different contributions to be paid by different responsible insurers or in respect of different exiting employers.
- (4) The following provisions apply in respect of the contributions required to be paid by such an order:
  - (a) the responsible insurer for an exiting employer must pay the required contributions to the Authority for payment into the Insurance Fund,
  - (b) the required contributions must be paid at such times and in such manner as the order requires,
  - (c) if the responsible insurer has not paid a contribution within the required time, the amount of the contribution together with a late payment fee calculated at the rate of 15% of that amount per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction,
  - (d) a certificate executed by the Authority certifying that an amount specified in the certificate is the amount recoverable by the Authority under paragraph (c) is (without proof of its execution by the Authority) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.
- (5) The Authority may for the purposes of this section enter into an agreement with the responsible insurer for an exiting employer under which the responsible insurer agrees to assume the exiting employer's insured liabilities.
- (6) When the Authority enters into such an agreement the following provisions have effect (whether or not there is any breach of the agreement):
  - (a) the responsible insurer is not liable to pay any contribution that would otherwise be payable by the responsible insurer under this section,
  - (b) a licensed insurer is not liable under any policy of insurance (despite the terms of the policy) in respect of any liability that the responsible insurer has agreed to assume under the agreement with the Authority,
  - (c) a licensed insurer who would otherwise be liable under a policy of insurance in respect of any such liability must comply with any direction of the Authority to provide information to the responsible insurer with respect to such a liability and any related claim,
  - (d) a licensed insurer must pay to the responsible insurer such amount as the

Authority determines to be fair and reasonable,

- (e) the Authority may from time to time direct that the provisions of the agreement (and the provisions of this section) do not apply in respect of a specified claim or class of claims,
- (f) an exiting employer who is a self-insurer is taken to be a self-insurer in respect of any liability that the exiting employer has (as responsible insurer) agreed to assume under the agreement with the Authority.

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

**208A, 208B (Repealed)**

**209 Offences for contravention of this Division**

An insurer who contravenes, whether by act or omission, any requirement imposed on the insurer by or under this Division is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

**Division 5 Self-insurers**

**210 Applications for licences** (cf former s 18 (1A))

- (1) An application for a licence under this Division may be made to the Authority by any employer.
- (1A) An application may be made by a company that is not an employer if the licence is to cover subsidiaries of the company that are employers.
- (2) An application shall be in such form and accompanied by such documents:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to any such regulations, as may be determined by the Authority.
- (3) The Authority may, before determining an application for a licence, require the applicant to advertise or give other notice of the application.
- (4) An application is to be accompanied by such fee (if any) as is prescribed by the regulations or (subject to the regulations) as is determined by the Authority. Any such fee is to be paid into the WorkCover Authority Fund.

**211 Determination of application for licence** (cf former s 18 (1A))

- (1) The Authority shall consider each application for a licence under this Division and may, in its discretion:
  - (a) grant a licence to the applicant, or

- (b) refuse the application.
- (2) The Authority may, in determining an application for a licence, take into consideration:
  - (a) the suitability of the applicant,
  - (b) the financial ability of the applicant to undertake the liabilities under this Act,
  - (c) the efficiency of the workers compensation system generally, and
  - (d) such other matters as the Authority thinks fit.
- (3) The Authority may take the matters under subsection (2) into consideration in respect of both the applicant for the licence and any subsidiary to be covered by the licence.
- (4) The Authority may issue guidelines relating to the matters that the Authority takes into consideration under subsection (2) in determining an application for a licence.

#### **211A Endorsement of subsidiaries on self-insurer's licence**

- (1) The Authority may endorse on a licence granted under this Division the name of one or more wholly owned subsidiaries of the licence holder. While the name of a company is endorsed on an employer's licence, the company is taken to be covered by the licence.
- (2) The Authority may at any time amend such an endorsement by adding, altering or deleting the name of a company. An amendment is made by the Authority giving notice of it to the licence holder and takes effect on the day notice is given or on a later day specified in the notice.
- (3) A company which holds a licence under this Division and any subsidiary covered by the licence are jointly and severally liable for any contribution required to be made to any fund under this Act by the subsidiary.
- (4) The licence of a company under this Division:
  - (a) may be subject to conditions under this Act relating to the obligations of a subsidiary covered by the licence, and
  - (b) may be cancelled or suspended under this Act because of the acts or omissions of the subsidiary.
- (5) The meaning of **wholly owned subsidiary** is the same as in the *Corporations Act 2001* of the Commonwealth.

#### **211B Government employers covered by Government managed fund scheme to be self-**

### **insurers**

- (1) Any Government employer covered for the time being by the Government's managed fund scheme is taken to be a self-insurer for the purposes of this Act.
- (2) The Government's managed fund scheme is any arrangement under which the self-insurer liabilities (within the meaning of section 216) of particular Government employers covered by the arrangement are paid by the Government of the State or by the Self Insurance Corporation on its behalf.
- (3) The Self Insurance Corporation may enter into an arrangement with the Authority under which the Corporation acts on behalf of Government employers for the purpose of paying contributions under this Act and for other purposes of this Act.
- (4) The other provisions of this Division do not apply to self-insurers referred to in this section. However, the Authority may, with the approval of the Treasurer, impose conditions on the authority conferred by this section on such self-insurers (being conditions of a kind that the authority could impose on the licence of a self-insurer under this Division).
- (5) This section does not apply to any Government employers who are separately licensed under this Division as self-insurers.

### **212 Provisions relating to licences** (cf former s 18 (1A)-(1C))

The following provisions of Division 3 (Licensing of insurers) apply to and in respect of licences granted under this Division in the same way as they apply to licences granted under Division 3:

- (a) section 180 (Duration of licences),
- (b) section 181 (Conditions of licences),
- (c) section 182 (Matters that may be regulated by conditions of licences),
- (d) section 183 (Cancellation or suspension of licences),
- (e) section 186 (Records and evidence relating to licences).

### **213 Deposit required for self-insurers and former self-insurers**

- (1) A self-insurer who is granted a licence under this Division must on the grant of the licence deposit with the Authority an amount of money determined by the Authority in respect of the self-insurer.

Maximum penalty: 100 penalty units.

- (2) A person who is or was a self-insurer must deposit with the Authority, at such time or times as the Authority may direct by notice to the person, such additional amount or



amounts as the Authority determines to be necessary to ensure that the amount the person has on deposit under this Division is the person's required deposit amount for the time being.

Maximum penalty: 100 penalty units.

- (3) A person who has ceased to be a self-insurer can be required to deposit money with the Authority under this section even if the amount of any previous deposit of the person has been refunded to the person under section 216.
- (4) The Authority may at any time refund to a person who has money on deposit with the Authority under this section any amount by which the person's deposit exceeds the person's required deposit amount for the time being.
- (5) A person who is or was a self-insurer must comply with any written direction of the Authority to provide the Authority with specified information (including actuarial information) for the purpose of enabling the Authority to determine the person's required deposit amount from time to time.

Maximum penalty: 50 penalty units.

- (6) No deposit is payable under this Division by:
  - (a) a Government employer, or
  - (b) any other employer approved by the Authority.
- (7) In this section:

**required deposit amount** of a person means the amount that the Authority determines to be the amount required to adequately provide for all the accrued, continuing, future and contingent self-insurer liabilities of the person and of the person's subsidiaries.

**self-insurer liabilities** of a person means:

- (a) any liabilities of the person under this Act in respect of workers employed by the person while a self-insurer, or
- (b) any liabilities of the person independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for injuries received by workers employed by the person while a self-insurer (including any injury that is a dust disease as defined in the *Workers' Compensation (Dust Diseases) Act 1942* and the aggravation, acceleration, exacerbation or deterioration of a dust disease as so defined).

**214 Investments of deposits** (cf former s 21)

- (1) Every amount of money deposited with the Authority by a person under this Division shall be invested and re-invested from time to time as occasion requires in any manner for the time being authorised for the investment of trust funds.
- (2) The interest on any such investment shall be paid to the person depositing the sum of money.
- (3) The investment and redemption shall be at par.
- (4) If a person to whom interest would otherwise be payable under this section is in breach of any obligation arising under this Division to deposit an additional amount of money with the Authority, the Authority may, instead of paying the interest to the person, apply the interest in full or partial satisfaction of the person's obligation to make the additional deposit. Any amount of interest so applied by the Authority is taken to have been deposited with the Authority by the person concerned.

**215 Alternative method of giving security** (cf former s 22)

- (1) The obligation imposed by this Division on a person to deposit with the Authority any specified amount of money may be satisfied in whole or in part by the deposit by the person of securities of equal value issued or guaranteed by the State or the Commonwealth.
- (2) The value of any such securities shall, for the purposes of this section, be deemed to be their face value.
- (3) If the market value of any such securities is at any time below par, the Authority may require the person to deposit further securities to such an amount that the total market value of all the securities deposited by the person equals the amount of the deposit required to be made by the person.
- (4) A person must comply with a requirement under subsection (3).  
Maximum penalty: 100 penalty units.
- (5) Every security so deposited with the Authority shall (unless it is negotiable) bear or be accompanied by an assignment in blank executed by the person making the deposit.
- (6) A reference in this Division to the amount of money required to be deposited with the Authority shall be deemed to include a reference to any securities substituted in whole or in part for that amount under the authority of this section.
- (7) The Authority may convert any such securities into money by sale, hypothecation or otherwise for the purpose of paying or satisfying under section 216 any claims, judgments or awards against a person.

### **215A Guarantee as alternative to deposit**

- (1) It is sufficient compliance with a requirement of this Division to deposit an amount of money with the Authority if a guarantee from a bank, building society or credit union guaranteeing payment of the amount is provided on terms acceptable to the Authority.

In the case of a self-insurer that is a State owned corporation, the guarantee may also be provided by the Treasury Corporation on terms acceptable to the Authority.

- (2) If a refund of part of a deposit is authorised under section 213, the authorisation operates as authority for the Authority to give the appropriate partial release from a guarantee provided instead of a deposit.
- (3) Any amount paid to the Authority pursuant to such a guarantee is to be regarded for the purposes of this Division as having been deposited with the Authority by the person concerned and is to be dealt with accordingly.
- (4) In this section:

**guarantee** includes undertaking.

### **216 Application and refund of deposit** (cf former ss 24, 25A)

- (1) The Authority is to hold every amount of money deposited under this Division on trust for the payment and satisfaction of all claims, judgments or awards (not otherwise paid or satisfied):
  - (a) against the person making the deposit in respect of the person's self-insurer liabilities, and
  - (b) against any person that is a subsidiary of the person making the deposit (being a subsidiary that is or was covered for the time being by the self-insurer licence of the person making the deposit) in respect of the subsidiary's self-insurer liabilities.
- (2) An amount of money deposited with the Authority under this Division is not liable to be attached or levied on or made subject to any debts of or claims against the person making the deposit, except as provided by subsection (1).
- (3) A person who has deposited an amount of money with the Authority under this Division is, if the person has ceased to be a self-insurer, entitled to a refund of the amount so deposited and standing to the person's credit with the Authority:
  - (a) on the expiration of 3 months after service on the Authority of a written request for the refund, and
  - (b) on satisfying the Authority that all accrued, continuing, future and contingent self-insurer liabilities of the person or the person's subsidiaries have been discharged or adequately provided for.

- (4) In this section, ***self-insurer liabilities*** of a person has the same meaning as in section 213.

## **Division 6**

### **217-224 (Repealed)**

## **Division 6A Defaulting insurers etc**

### **224A Definitions**

In this Division:

***defaulting insurer*** means an insurer to which an order of the Minister in force under section 224B relates, but does not include an insolvent insurer.

***insolvent insurer*** means an insolvent insurer within the meaning of Division 7.

### **224B Declaration of defaulting insurers**

- (1) If the Minister is satisfied that a licensed insurer or former licensed insurer is unable to meet claims and other liabilities under policies of insurance issued or renewed by it, the Minister may, by order in writing, declare that the insurer is a defaulting insurer for the purposes of this Division.
- (2) An insolvent insurer may not be declared to be a defaulting insurer and the declaration of a defaulting insurer ceases to have effect if the insurer is or becomes an insolvent insurer.
- (3) (Repealed)

### **224C Insurance Fund may be applied to meet claims etc of defaulting insurers**

- (1) Amounts standing to the credit of the Insurance Fund may be applied by the Nominal Insurer for the purposes of:
  - (a) satisfying, on behalf of the defaulting insurer, claims, judgments or awards arising from or relating to policies of insurance issued or renewed by the defaulting insurer (whether before or after the commencement of this section), and
  - (b) meeting the management expenses incurred in respect of satisfying those claims, judgments or awards.
- (2) Amounts applied by the Nominal Insurer under this section are to be applied in accordance with such priorities among claims, judgments or awards as the Nominal Insurer determines.
- (3) The Nominal Insurer may recover from the defaulting insurer as a debt in any court of competent jurisdiction the payments made on its behalf by the Nominal Insurer under

this section and not repaid to the Nominal Insurer by the defaulting insurer.

- (4) Any amounts repaid by or recovered from a defaulting insurer are to be credited to the Insurance Fund.
- (5) The obligation of a defaulting insurer to repay any amounts paid on its behalf under this section does not cease because the insurer becomes an insolvent insurer.

#### **224D-224F (Repealed)**

### **Division 7 Insurers' Guarantee Fund**

#### **225 Definitions** (cf former s 300)

- (1) In this Division:

**financial year** in relation to an insurer other than a self-insurer:

- (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.

**insolvent insurer** means an insurer to which an order of the Minister in force under section 226 relates.

**insurer** means a licensed insurer, a former licensed insurer or a self-insurer, but does not include an insolvent insurer.

**policy of insurance issued by an insolvent insurer** means:

- (a) a policy of insurance issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer, or
  - (b) a policy of insurance, issued by a person other than an insolvent insurer, in respect of which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement whereby the insolvent insurer is (or would but for its dissolution be) liable to indemnify the person against liability of the person under the policy.
- (2) In this Division, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.
  - (3) So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer shall have and may exercise outside New South Wales the functions conferred or imposed on the liquidator by this Division, in addition to having and exercising those functions within New South Wales.

**226 Insolvent insurers** (cf former s 30P)

- (1) If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Division.
- (2) (Repealed)

**227 Insurers' Guarantee Fund** (cf former s 30Q)

- (1) There is established a fund to be known as the "Insurers' Guarantee Fund".
- (2) There shall be paid into the Guarantee Fund:
  - (a) the contributions required by section 228 or the regulations to be paid by insurers,
    - (a1) any amount directed to be paid into the Guarantee Fund out of the Insurance Fund under section 228,
    - (b) all income accruing from the investment or re-investment of money in the Guarantee Fund or otherwise accruing to the Guarantee Fund,
    - (c) any amounts received by the Authority in the exercise of the rights, or the discharge of the obligations, referred to in section 231 (2) or (3),
    - (d) (Repealed)
    - (e) any amounts payable to the Authority pursuant to section 235, and
    - (f) any amounts authorised by the regulations to be paid into the Guarantee Fund from the funds of the Authority.
- (3) There shall be paid out of the Guarantee Fund such amounts as may be authorised by this Division, any other Act or the regulations to be paid out of that Fund.
- (4) The Guarantee Fund shall, subject to this Act, be under the direction, control and management of the Authority.
- (5) Subject to such directions, if any, as may be given from time to time by the Treasurer, the Authority may invest and re-invest or otherwise use or employ the Guarantee Fund in such investments as may be determined from time to time by the Authority, and any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by the Authority.

**228 Contributions to Guarantee Fund** (cf former s 30R)

- (1) The Authority may, in respect of any financial year prescribed by the regulations, determine the amount to be contributed to the Guarantee Fund in respect of that

year, being an amount which the Authority considers is necessary:

- (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insurers that were, before the commencement of Schedule 3 (3) to the *Workers Compensation (Benefits) Amendment Act 1991*, declared under section 226 to be insolvent insurers, and
- (b) to provide for the payment of any other amounts to be paid under this Division from the Guarantee Fund during that financial year which directly or indirectly relate to insurers that were, before that commencement, declared under that section to be insolvent.

- (2) Where the Authority determines an amount under subsection (1) in respect of a financial year prescribed for the purposes of that subsection, each insurer (other than a former licensed insurer) shall pay to the Authority for payment into the Guarantee Fund an appropriate contribution calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

**A** is the amount which the insurer is required by or under this Act to contribute to the WorkCover Authority Fund in respect of that financial year,

**B** is the total amount required by or under this Act to be contributed by all insurers (other than former licensed insurers) to the WorkCover Authority Fund in respect of that financial year, and

**C** is the amount determined pursuant to subsection (1) in respect of that financial year.

- (2A) The Authority may, in respect of any financial year specified by the regulations, determine the amount to be contributed to the Guarantee Fund in respect of that year, being an amount which the Authority considers is necessary:

- (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insurers that were, after the commencement of Schedule 3 (3) to the *Workers Compensation (Benefits) Amendment Act 1991*, declared under section 226 to be insolvent insurers, and
- (b) to provide for the payment of any other amounts to be paid under this Division from the Guarantee Fund during that financial year (not being amounts which directly or indirectly relate to insurers that were, before that commencement, declared under that section to be insolvent insurers).

- (2B) Where the Authority determines an amount under subsection (2A) in respect of a financial year prescribed for the purposes of that subsection, each insurer (other than

a self-insurer or a former licensed insurer) shall pay to the Authority for payment into the Guarantee Fund an appropriate contribution calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

**A** is the amount which the insurer is required by or under this Act to contribute to the WorkCover Authority Fund in respect of that financial year,

**B** is the total amount required by or under this Act to be contributed by all insurers (other than self-insurers and former licensed insurers) to the WorkCover Authority Fund in respect of that financial year,

**C** is the amount determined pursuant to subsection (2A) in respect of that financial year.

- (2C) Where the Authority so directs, the amount determined by the Authority under subsection (1) or (2A) is to be paid into the Guarantee Fund out of the Insurance Fund, instead of being paid by insurers under subsection (2) or (2B).
- (3) A contribution is payable at such times and in respect of such periods as may be prescribed.
- (4) If a contribution is not paid within the time specified by the Authority in a notice to an insurer requiring the insurer to pay the contribution:
- (a) the insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
  - (b) the contribution, together with a late payment fee calculated at the rate of 15 per cent of the contribution per annum compounded quarterly (or, where another rate is prescribed, that other rate), may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (5) In any proceedings under this section, a certificate executed by the Authority as to the amount of the appropriate contribution payable, under this section, by the insurer, and as to the time within which the contribution was required to be paid, is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the facts stated in the certificate.

## **229 Liquidator to notify Authority of claims** (cf former s 30S)

The liquidator of an insolvent insurer shall, on receiving any claim relating to any policy of insurance issued by the insolvent insurer, forward the claim to the Authority.

Maximum penalty: 20 penalty units.



**230 Delivery of documents etc to Authority** (cf former s 30T)

The liquidator of an insolvent insurer shall, whenever requested to do so by the Authority:

- (a) deliver to the Authority all documents relating to policies of insurance issued by the insolvent insurer and all claims, judgments or awards made in respect of any such policies in the liquidator's possession, and
- (b) supply to the Authority all information in the liquidator's possession relating to any such policies or any such claims, judgments or awards.

Maximum penalty: 20 penalty units.

**231 Appointment of Authority as agent and attorney of employer and worker** (cf former s 30U)

- (1) The Authority is by this section appointed the agent and attorney of an employer and a worker insured under a policy of insurance issued by an insolvent insurer.
- (2) As agent and attorney of such an employer, the Authority may exercise the rights and discharge the obligations of the employer:
  - (a) for the purpose of dealing with and finalising any claim against which the employer is indemnified under the policy of insurance,
  - (b) for the purpose of satisfying any such claim or any judgment or award against which the employer is indemnified under the policy of insurance, and
  - (c) for any other purpose prescribed by the regulations.
- (3) As agent and attorney of such an employer or a worker, the Authority may exercise the rights of the employer or worker in connection with the policy of insurance:
  - (a) for the purpose of proving in the winding up of the insolvent insurer and receiving any dividends or other money payable to the employer or worker in the winding up,
  - (b) for the purpose of recovering any money which the employer or worker is entitled to recover under section 151Z of this Act or section 64 of the former Act,
  - (c) for the purpose of recovering any money which the employer or worker is entitled under the policy of insurance to recover from the person who issued the policy, being a policy referred to in paragraph (b) of the definition of ***policy of insurance issued by an insolvent insurer*** in section 225, and
  - (d) for any other purpose prescribed by the regulations.
- (4) The Authority may exercise rights and discharge obligations as agent in the name of the employer or worker concerned, or in its own name.

- (5) All rights vested in an insurer or insolvent insurer and all obligations imposed on an insurer or insolvent insurer, being rights or obligations:
- (a) arising from or relating to a policy of insurance issued by an insolvent insurer to an employer, and
  - (b) which may or shall be exercised or discharged for the purpose of:
    - (i) dealing with and finalising any claim against which the employer is indemnified under the policy, or
    - (ii) satisfying any claim, judgment or award, against which the employer is indemnified under the policy,
- are vested in or imposed on the employer.
- (6) Subsection (5) shall not be construed so as to vest in or impose on an employer, or to affect in any other way:
- (a) a right of an insurer or insolvent insurer to be indemnified by a reinsurer or an obligation of an insurer or insolvent insurer to indemnify an employer, or
  - (b) any other prescribed right or obligation.
- (7) If the Authority is, under this section, empowered to exercise any rights, or to discharge any obligations, of an employer or a worker as agent and attorney, the employer or worker is not entitled, without the consent of the Authority, to exercise those rights or discharge those obligations.
- (8) The appointment effected by this section may be revoked only by an Act.

**232 Payments to employer or liquidator** (cf former s 30V)

- (1) Where an employer insured under a policy of insurance issued by an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Division or before or after the commencement of this Division) any claim, judgment or award in respect of which the employer has not been indemnified under that policy, the Authority, as manager of the Guarantee Fund, may pay from the Guarantee Fund to the employer an amount equal to the whole or any part of the amount paid by the employer in satisfaction of the claim, judgment or award.
- (2) Where the liquidator of an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Division or before or after the commencement of this Division) any claim, judgment or award in respect of which an employer is entitled to be indemnified under a policy of insurance issued by the insolvent insurer, the Authority, as manager of the Guarantee Fund, may pay from the Guarantee Fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim, judgment or award.

(3) Where:

- (a) a payment is made under subsection (1) to an employer in respect of a claim, judgment or award, the Authority shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer, or
- (b) a payment is made under subsection (2) to the liquidator of an insolvent insurer in respect of a claim by or on behalf of any person or a judgment or award for the benefit of any person, the Authority shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer of the person in respect of whom the payment is made.

- (4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Authority and neither those subsections operate nor the exercise of any of those powers operates so as to confer, directly or indirectly, any right on any person to whom a payment is or may be made under those subsections or on any other person.

**233 (Repealed)**

**234 Application of Guarantee Fund** (cf former s 30X)

- (1) Out of the Guarantee Fund, the Authority as manager of that Fund:

- (a) shall pay the amount of any claim, judgment or award arising from or relating to any policy of insurance issued by an insolvent insurer, being a claim, judgment or award that it proposes to satisfy as agent and attorney of an employer, and any other amounts required by this Division to be paid from that Fund, and

- (b) is entitled:

- (i) to be paid the costs of administration of the Guarantee Fund (including any legal or other costs connected with the declaration of an insurer as an insolvent insurer), and
- (ii) to be indemnified against all payments made by it and all costs and expenses that it may incur in or in connection with the exercise of its functions under this Division.

- (2) Where a payment is made by the Authority as agent and attorney of an employer, being a payment authorised by this Division, the Authority shall not be entitled to recover the amount of that payment from the employer.

**235 Recovery of amounts under contracts or arrangements for reinsurance** (cf former s 30Y)

To the extent that any amounts are paid out of the Guarantee Fund in respect of a claim, judgment or award pursuant to section 234 (including the costs of the Authority), the

Authority shall, where an insolvent insurer (if it had provided indemnity to that extent under a policy of insurance) would have been entitled to recover any sum under a contract or arrangement for reinsurance, be entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Authority to recover from the reinsurer and pay into the Guarantee Fund the amount due under that contract or arrangement.

**236 Payments of workers compensation when insolvent insurer dissolved** (cf former s 30Z)

- (1) When an insolvent insurer has been dissolved, the payments of compensation under judgments or awards relating to policies of insurance issued by the insolvent insurer which would, but for the dissolution taking place, be payable by the insolvent insurer shall continue and be paid out of the Guarantee Fund by the Authority.
- (2) When an insolvent insurer has been dissolved, a person who would have had, but for the dissolution of the insolvent insurer, an entitlement to payment of any amount arising from or relating to any policy of insurance issued by the insolvent insurer (being a policy in respect of which the insolvent insurer is the insurer) shall be entitled to payment of that amount out of the Guarantee Fund.
- (3) A person referred to in subsection (2) may make a claim against the Authority, as manager of the Guarantee Fund, in respect of an entitlement to payment of an amount under that subsection.
- (4) The Authority, as manager of the Guarantee Fund, is entitled to deal with and finalise a claim made under subsection (3) in relation to a policy of insurance issued by an insolvent insurer to the same extent as it would have been entitled to do so if the insolvent insurer had not been dissolved.

**237 Inspection of documents etc by person authorised by Minister** (cf former s 30ZA)

The liquidator of an insolvent insurer shall, whenever requested to do so by a person authorised by the Minister, make any documents relating to policies of insurance issued by the insolvent insurer and any claims, judgments or awards made in respect of any such policies in the liquidator's possession available for inspection by that person.

Maximum penalty: 20 penalty units.

**238 Authority may take certain legal proceedings** (cf former s 30ZB)

- (1) If:
  - (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding up,
  - (b) the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Division or not, is challenged, reviewed or called into question in proceedings before any court, or

(c) any other matter that concerns or may affect the operation of this Division is raised in proceedings before any court,

the Authority may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

- (2) In any case in which the Attorney General might take proceedings on the relation or on behalf or for the benefit of a person who is (or who would but for the dissolution of the insolvent insurer be) entitled, under a policy of insurance issued by an insolvent insurer, to be indemnified against a claim, judgment or award arising from or relating to the policy, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Division, any Act or any rule of law, the Authority shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.
- (3) The Authority is entitled to be paid, out of the Guarantee Fund, all the costs and expenses incurred by the Authority in exercising the powers conferred by this section.

### **239 Regulations** (cf former s 30ZC)

The regulations may make provision for or with respect to:

- (a) requiring insurers (including former licensed insurers) to make contributions or further contributions to the Guarantee Fund,
- (b) the manner and method of determining any such contributions or further contributions,
- (c) varying in specified circumstances the periods with respect to which contributions are to be determined, or the method by which contributions are to be calculated, under section 228,
- (d) the payment, and proceedings for the recovery, of contributions, and
- (e) the circumstances and the manner in which contributions of insurers and other amounts standing to the credit of the Guarantee Fund may be repaid and otherwise distributed to insurers and the liquidators of insolvent insurers.

## **Division 8 Terrorism Re-insurance Fund**

### **239AA Definitions**

In this Division:

***act of terrorism***—see section 239AB.

**insurer** includes a licensed insurer, a self-insurer and a specialised insurer.

**threshold amount**—see section 239AC.

**TRF** means the Terrorism Re-insurance Fund (if any) established under section 239AE.

**239AB Meaning of “act of terrorism”**

- (1) An **act of terrorism** is an act that, having regard to the nature of the act and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (2) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this Act. An act may be so characterised only if it:
  - (a) causes or threatens to cause death, personal injury or damage to property, and
  - (b) is designed to influence a government or to intimidate the public or a section of the public, and
  - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

**239AC Meaning and application of “threshold amount”**

- (1) The threshold amount is the amount of \$1 million.
- (2) The threshold amount applies to the total amount of claims referred to in this Division in respect of an act of terrorism specified in a declaration under section 239AD, and not to the amount of claims in respect of that act that are made against each individual insurer.
- (3) The threshold amount is to be apportioned among the insurers who have a liability in respect of a claim referred to in this Division.

**Note—**

See section 239AH (6) for the **insurer's proportion of the threshold amount**.

**239AD Minister may make declaration as to significant terrorism-related liabilities**

- (1) The Minister may, by order published in the Gazette, declare that an act of terrorism specified in the declaration has given rise to significant terrorism-related liabilities.
- (2) The Minister may not make such a declaration unless:
  - (a) an insurer has requested the Minister to do so, and
  - (b) the Minister is satisfied that:
    - (i) an act of terrorism occurred after 4pm on 30 June 2002 or at any time on any day after that date, and

- (ii) the act of terrorism has given rise to liabilities (whether liabilities of one or more self-insurers, or liabilities under policies of insurance issued or renewed by one or more insurers that are not self-insurers, or both) for payment of amounts that, in total, exceed the threshold amount.

**239AE Terrorism Re-insurance Fund**

- (1) On the first occasion (if any) that a declaration is made under section 239AD, there is to be established a fund to be known as the "Terrorism Re-insurance Fund" (or **TRF**).
- (2) The following are to be paid into the TRF:
  - (a) all contributions required under this Division or the regulations to be paid by insurers,
  - (b) income from the investment of money in the TRF,
  - (c) any amounts authorised by the regulations to be paid into the TRF from the funds of the Authority,
  - (d) all money recovered by the Authority pursuant to section 239AJ,
  - (e) any other amounts that may lawfully be paid into the TRF.
- (3) The following are to be paid out of the TRF:
  - (a) the costs of administration of the TRF,
  - (b) such other payments as may be authorised or required by this Division or the regulations to be so paid.
- (4) The TRF is, subject to this Act, under the direction, control and management of the Authority.
- (5) The Authority may invest and re-invest money in the TRF in such investments as may be determined from time to time by the Authority. Any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by the Authority.

**239AF Insurers to provide Authority with information**

- (1) If an insurer requests the Minister to make a declaration under section 239AD, the Authority may from time to time, by notice in writing to any insurer (specifying the act in respect of which the declaration is sought), require the insurer to provide the Authority with information in relation to that act in accordance with this section.
- (2) The information is to be provided, in writing, no later than 21 days after the notice is served on the insurer.

- (3) The following information is to be provided:
- (a) a statement as to whether the insurer has, as an insurer, incurred any liability for payment as a result of the act specified in the notice,
  - (b) if the insurer has incurred such a liability:
    - (i) details of any claims received by the insurer in respect of the liability,
    - (ii) details of any amount paid in respect of those claims,
    - (iii) an estimate (calculated in accordance with the method specified in the notice) of any further amount that the insurer will be required to pay (in respect of both claims already received by the insurer and anticipated claims),
    - (iv) details of any contracts or arrangements for re-insurance that are in force to the benefit of the insurer in connection with any such liability,
  - (c) such other information as may be prescribed by the regulations.
- (4) If the insurer subsequently has reason to revise any information provided under this section, the insurer is required to furnish the Authority with the revised information in accordance with the WorkCover Guidelines (which may make provision with respect to the furnishing of that information).
- (5) An insurer who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

### **239AG Contributions to Terrorism Re-insurance Fund**

- (1) On each occasion that a declaration is made under section 239AD, the Authority is to determine, in accordance with this section:
- (a) the total amount to be paid to the TRF, and
  - (b) the amount to be contributed by each insurer.
- (2) The total amount to be paid to the TRF is the amount that the Authority estimates will be necessary to satisfy all claims (both against self-insurers and under policies of insurance issued or renewed by insurers that are not self-insurers) in respect of the act of terrorism specified in the declaration, less the greater of the following amounts:
- (a) the total of the maximum amounts payable to insurers under contracts or arrangements for re-insurance in respect of liability for claims arising from the act of terrorism,
  - (b) the threshold amount.



- (3) The Authority is to determine the amount to be paid to the TRF by an insurer in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

**A** is the amount of wages (within the meaning of the insurance premiums order relating to the financial year in which the act of terrorism occurred) by reference to which the insurer's premium (or, if the insurer is a self-insurer, the insurer's deemed premium income) for that financial year was calculated.

**B** is the total amount of wages (as referred to in **A** above) of all insurers.

**C** is the amount determined under subsection (1) (a).

- (4) The Authority is to give each insurer written notice of the amount determined under this section in respect of the insurer. The notice must specify the date or dates (the date being (or, if more than one date is specified, the first date being) a date not less than 15 days after the notice is given) by which the insurer must pay the amount or specified instalments of the amount (or, if the notice requires payment of a lesser amount in accordance with subsection (5), that lesser amount or specified instalments of that lesser amount) to the Authority.
- (5) The notice may (but need not) offset in accordance with section 239AI the amount (if any) to be reimbursed to the insurer under section 239AH and reduce the amount to be paid by the insurer under this section accordingly.
- (6) If the Authority considers it necessary to do so (because, for example, of the discovery of additional liabilities of insurers arising from the act of terrorism concerned or because the amount estimated to be necessary to satisfy all claims was insufficient to do so), the Authority may make further determinations, in accordance with this section, in respect of the same act of terrorism. Subsections (4) and (5) apply in relation to any such further determination under subsection (3) in the same way as they apply in relation to the original determination under that subsection.
- (7) If an amount is not paid in accordance with a notice under this section (regardless of whether the insurer concerned is to receive any reimbursement under section 239AH):
- (a) the Authority may recover the amount (together with interest at the prescribed rate) as a debt in a court of competent jurisdiction, and
  - (b) the insurer concerned is guilty of an offence.

Maximum penalty: 100 penalty units.

**239AH Partial reimbursement of insurers from Terrorism Re-insurance Fund**

- (1) If a declaration has been made under section 239AD, an insurer may apply to the Authority for reimbursement of part of the amount paid by the insurer in respect of claims arising from the act of terrorism specified in the declaration.
- (2) The Authority may, in accordance with this section, reimburse an insurer who makes an application under subsection (1).
- (3) Any such reimbursement is to be made out of the TRF.
- (4) The Authority may reimburse an insurer only if it is satisfied that:
  - (a) the insurer has made the payments specified in the insurer's application for reimbursement, and
  - (b) the payments were made in respect of claims (whether because the insurer is a self-insurer or under policies of insurance issued or renewed by the insurer) arising from the act of terrorism specified in the declaration under section 239AD, and
  - (c) the amount to be reimbursed is no more than the total amount paid by the insurer in respect of those claims less the amount of the insurer's excess.
- (5) The Authority may:
  - (a) make an interim calculation of an insurer's proportion of the threshold amount, and
  - (b) make an interim reimbursement (or reimbursements) to an insurer,on the basis of initial information provided by the insurer to the Authority under section 239AF, and may make further calculations or reimbursements (or both) on the basis of any further or revised information provided under that section.
- (6) In this section:

***insurer's excess*** means the greater of the following:

  - (a) the insurer's proportion of the threshold amount,
  - (b) the maximum amount that is payable to the insurer under any contract or arrangement for re-insurance in respect of its liability for claims arising from the act of terrorism.

***insurer's proportion of the threshold amount*** means the amount calculated in accordance with the following formula:

$$\frac{X}{Y} \times Z$$

where:

**X** is the amount of the insurer's liability in respect of claims arising from the act of terrorism.

**Y** is the total amount of liability of all insurers in respect of those claims.

**Z** is the threshold amount.

### **239AI Authority may offset**

- (1) The Authority may apply all or part of the amount to be reimbursed to an insurer under section 239AH so as to reduce the amount of any money due from and unpaid by the insurer under section 239AG (including money by way of interest calculated on the amount originally demanded under that section).
- (2) The Authority is to make any necessary adjustments consequent on the application of a reimbursement (or part of a reimbursement) under this section and is to give the insurer written notice of:
  - (a) the way in which the reimbursement (or part of the reimbursement) has been applied, and
  - (b) any adjustments that have been made, and
  - (c) the amount (if any) that remains due from the insurer under section 239AG after the application of the reimbursement (or part of the reimbursement).

### **239AJ Subrogation**

- (1) On reimbursing an insurer under section 239AH in relation to a claim paid by the insurer, the Authority is subrogated, to the extent of the amount of the reimbursement, to all the rights and remedies of that insurer against any other person in respect of recovery of the money paid by the insurer in relation to the claim.
- (2) A certificate given by the General Manager certifying that a specified amount has been reimbursed, under section 239AH, to a specified insurer in relation to specified payments made by the insurer is evidence of the matter certified.
- (3) The Authority may exercise the rights and remedies to which the Authority is subrogated under this section in the name of the Authority or in the name of the insurer concerned.

### **239AK Regulations**

- (1) The regulations may make provision for or with respect to the TRF.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) requiring insurers to make contributions and further contributions to the TRF,

- (b) the manner and method of determining any such contributions and further contributions,
  - (c) the payment, and proceedings for the recovery, of contributions and further contributions to the TRF,
  - (d) the making of applications for reimbursement from the TRF, including the information to be provided to the Authority in connection with any such application,
  - (e) the circumstances and the manner in which contributions of insurers, and other amounts standing to the credit of the TRF, may be distributed to insurers otherwise than by way of reimbursement under section 239AH.
- (3) The regulations may exempt from the operation of all or any of the provisions of this Division any specified insurer or class of insurers in such circumstances (if any), and subject to such conditions (if any), as may be specified in the regulations.

#### **239AL Review**

- (1) The Minister is to conduct a review of this Division to determine whether the policy objectives of the Division remain valid and whether the provisions of the Division remain appropriate for securing those objectives.
- (2) The review is to be conducted as soon as possible after 30 June 2004, and a report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the completion of the review.

### **Part 7A**

#### **239A-239F (Repealed)**

### **Part 8 Protection of injured workers from dismissal**

#### **240 Definitions** (cf IR Act, s 91)

- (1) In this Part:

**Commonwealth industrial instrument** means any award, workplace agreement or other agreement made under (or taken to have been made, or to have effect, under) the [Workplace Relations Act 1996](#) of the Commonwealth.

**industrial organisation of employees** has the same meaning as it has in the [Industrial Relations Act 1996](#).

**reinstatement** includes re-employment.

**State industrial instrument** has the same meaning as **industrial instrument** has in the [Industrial Relations Act 1996](#).

- (2) For the purposes of this Part, an ***injured worker*** is a worker who receives an injury for which the worker is entitled to receive compensation under this Act or the *Workers' Compensation (Dust Diseases) Act 1942*.
- (3) For the purposes of this Part, a person is the ***employer*** of an injured worker only if the injury arose (either wholly or partly) out of or in the course of employment with that person.

**Note—**

For the purposes of comparison, a number of provisions of this Part contain bracketed notes in headings drawing attention ("cf IR Act") to equivalent or comparable (though not necessarily identical) provisions of the *Industrial Relations Act 1996* (as in force immediately before the commencement of this Part).

**241 Application to employer for reinstatement of dismissed injured worker** (cf IR Act, s 92)

- (1) If an injured worker is dismissed because he or she is not fit for employment as a result of the injury received, the worker may apply to the employer for reinstatement to employment of a kind specified in the application.
- (2) The kind of employment for which the worker applies for reinstatement cannot be more advantageous to the worker than that in which the worker was engaged when he or she first became unfit for employment because of the injury.
- (3) The worker must produce to the employer a certificate given by a medical practitioner to the effect that the worker is fit for employment of the kind for which the worker applies for reinstatement.

**242 Application to Industrial Relations Commission for reinstatement order if employer does not reinstate** (cf IR Act, s 93)

- (1) If an employer does not reinstate the worker immediately to employment of the kind for which the worker has so applied for reinstatement (or to any other kind of employment that is no less advantageous to the worker), the worker may apply to the Industrial Relations Commission for a reinstatement order.
- (2) An industrial organisation of employees may make the application on behalf of the worker.
- (3) The Industrial Relations Commission may not make a reinstatement order, except in special circumstances, if the application to the employer for reinstatement was made more than 2 years after the injured worker was dismissed.

**243 Order by Industrial Relations Commission for reinstatement** (cf IR Act, s 94)

- (1) The Industrial Relations Commission may, on such an application, order the employer to reinstate the worker in accordance with the terms of the order.
- (2) The Industrial Relations Commission may order the worker to be reinstated to

employment of the kind for which the worker has so applied for reinstatement (or to any other kind of employment that is no less advantageous to the worker), but only if the Commission is satisfied that the worker is fit for that kind of employment.

- (3) If the employer does not have employment of that kind available, the Industrial Relations Commission may order the worker to be reinstated to employment of any other kind for which the worker is fit, being:
  - (a) employment of a kind that is available but that is less advantageous to the worker, or
  - (b) employment of a kind that the Commission considers that the employer can reasonably make available for the worker (including part-time employment or employment in which the worker may undergo rehabilitation).
- (4) If the Industrial Relations Commission orders the worker to be reinstated, it may order the employer to pay to the worker an amount stated in the order that does not exceed the remuneration the worker would, but for being dismissed, have received after making the application to the employer for reinstatement and before being reinstated in accordance with the order of the Commission.

**244 Presumption as to reason for dismissal** (cf IR Act, s 95)

- (1) In proceedings for a reinstatement order under this Part it is to be presumed that the injured worker was dismissed because he or she was not fit for employment as a result of the injury received.
- (2) That presumption is rebutted if the employer satisfies the Industrial Relations Commission that the injury was not a substantial and operative cause of the dismissal of the worker.

**245 Disputes as to fitness—medical assessment** (cf IR Act, s 96)

- (1) The Industrial Relations Commission may refer to an approved medical specialist any dispute as to the worker's condition or fitness for employment to be assessed as provided by Part 7 of Chapter 7 of the 1998 Act.
- (2) The approved medical specialist is to submit a report to the Industrial Relations Commission in accordance with the terms of the reference.

**246 Continuity of service of reinstated worker** (cf IR Act, s 97)

- (1) If a worker is reinstated under this Part, the Industrial Relations Commission may order that the period of employment of the worker with the employer is taken not to have been broken by the dismissal.
- (2) However if the Industrial Relations Commission does so, the period between dismissal and the date of the application by the worker to the employer for reinstatement is not

to be taken into account in calculating for any purpose the period of service of the worker with the employer.

**247 Duty to inform replacement worker** (cf IR Act, s 98)

An employer who, within 2 years after dismissing an injured worker, employs a person to replace the dismissed worker is guilty of an offence unless the employer first informs the person that the dismissed worker may be entitled under this Part to be reinstated to carry out the work for which the person is to be employed.

Maximum penalty: 50 penalty units.

**248 Dismissal within 6 months of injury an offence** (cf IR Act, s 99)

- (1) An employer of an injured worker who dismisses the worker is guilty of an offence if:
- (a) the worker is dismissed because the worker is not fit for employment as a result of the injury, and
  - (b) the worker is dismissed during the relevant period after the worker first became unfit for employment.

Maximum penalty: 100 penalty units.

- (2) For the purposes of subsection (1), the **relevant period** is:
- (a) the period of 6 months after the worker first became unfit for employment, except as provided by paragraphs (b), (c) and (d), or
  - (b) if the worker is entitled under a State industrial instrument to accident pay as a result of the injury for a period exceeding that period of 6 months—the period during which the worker is entitled to accident pay, or
  - (c) if the worker was entitled under a State industrial instrument to accident pay as a result of the injury for a period exceeding that period of 6 months but that instrument ceased to have effect as such in relation to the worker because of the commencement of Schedule 8 to the *Workplace Relations Act 1996* of the Commonwealth—the period during which the worker would have been entitled to accident pay under the instrument if it had not ceased to have effect, or
  - (d) if the worker (other than a worker referred to in paragraph (c)) is entitled under a Commonwealth industrial instrument (or was entitled under a Commonwealth industrial instrument as in force immediately before the commencement of Schedule 7 to the *Workplace Relations Act 1996* of the Commonwealth) to accident pay as a result of the injury for a period exceeding that period of 6 months—the period during which the worker is (or the period during which the worker was) entitled to accident pay, whichever is the greater period.

**Accident pay** is an entitlement of the worker to payment by the employer, while the worker is unfit for employment, that is described as accident pay in the relevant industrial instrument.

**Note—**

Both Schedules 7 and 8 to the *Workplace Relations Act 1996* of the Commonwealth (which were inserted by the *Workplace Relations Amendment (Work Choices) Act 2005* of the Commonwealth) commenced on 27 March 2006.

- (3) It is a defence to a prosecution for an offence under this section if the employer satisfies the court that:
  - (a) at the time of dismissal, the worker would not undergo a medical examination reasonably required to determine fitness for employment, or
  - (b) at the time of dismissal, the employer believed on reasonable grounds that the worker was not an injured worker within the meaning of this Part.
- (4) The prosecution may establish that an injured worker was dismissed because the worker was not fit for employment as a result of the injury if the prosecution establishes that the injury was a substantial and operative cause of the dismissal.
- (5) This section applies even if the worker became unfit for employment before the commencement of this section.

**249 Other rights not affected** (cf IR Act, s 100)

This Part does not affect any other rights of a dismissed worker under this or any other Act or under any State industrial instrument or contract of employment.

**250 Enforcement**

- (1) The following provisions of the *Industrial Relations Act 1996* and the regulations made under that Act apply to and for the purposes of this Part (**the applied provisions**):
  - (a) Part 7 of Chapter 5 (Entry and inspection by officers of industrial organisations),
  - (b) Part 4 of Chapter 7 (Inspectors and their powers),
  - (c) Part 5 of Chapter 7 (Evidentiary provisions),
  - (d) Part 6 of Chapter 7 (Criminal and other legal proceedings),
  - (e) any other provision prescribed by the regulations.
- (2) Accordingly, the applied provisions have effect as if they formed part of this Act.
- (3) For the purposes of the application of the applied provisions (but without limiting subsection (4) (a)), a reference in the applied provisions:



- (a) to this Act (that is, the *Industrial Relations Act 1996*) is to be read as a reference to this Part, and
  - (b) to the regulations is to be read as a reference to the regulations under this Act, and
  - (c) to the industrial relations legislation includes a reference to this Part, and
  - (d) to employment is to be read as a reference to employment of an injured worker, and
  - (e) to an employer is to be read as a reference to an employer within the meaning of this Part, and
  - (f) to employees is to be read as a reference to injured workers, as the case requires.
- (4) The applied provisions have effect:
- (a) subject to such modifications as are prescribed by this Part or the regulations, and
  - (b) despite any other provisions of this Act that make provision for matters for which the applied provisions make provision.
- (5) In this section:
- modification** includes addition, exception, omission or substitution.

## **Part 9**

### **251-268 (Repealed)**

## **Part 10 Miscellaneous**

### **269-279 (Repealed)**

### **280 Regulations and orders** (cf former s 66)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (3) A provision of a regulation or order under this Act or the 1998 Act may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,

- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

- (4) A regulation or order under this Act or the 1998 Act prescribing a maximum amount in respect of any compensation payable under this Act for any service or thing may provide that the maximum amount applies to a service or thing after the date the regulation or order takes effect in respect of an injury received or accident occurring before that date as well as to a service or thing in respect of an injury received or accident happening after that date.

## 281 Repeals

Each Act specified in Schedule 5 is, to the extent indicated, repealed.

## 282 Savings, transitional and other provisions

Schedule 6 has effect.

# Schedule 1 Adjacent areas

(Section 9AA)

## 1 Definitions

In this Schedule:

**continental shelf** has the same meaning as in the *Seas and Submerged Lands Act 1973* of the Commonwealth.

**Joint Petroleum Development Area** has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003* of the Commonwealth.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973* of the Commonwealth.

## 2 Adjacent areas

- (1) The **adjacent area** for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in Schedule 1 to the *Offshore Petroleum Act 2006* of the Commonwealth in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.
- (2) The **adjacent area** for Queensland is:
  - (a) so much of the area described in Schedule 1 to the *Offshore Petroleum Act 2006* of the Commonwealth in relation to Queensland as is within the outer limits of the

continental shelf, and

- (b) the Coral Sea area (within the meaning of section 7 (2) of the *Offshore Petroleum Act 2006* of the Commonwealth) other than the territorial sea within the Coral Sea area, and
- (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under section 7 of the *Seas and Submerged Lands Act 1973* of the Commonwealth, and
- (d) the space above and below the areas described in paragraphs (a), (b) and (c).

(3) The **adjacent area** for Western Australia is so much of the area described in Schedule 1 to the *Offshore Petroleum Act 2006* of the Commonwealth in relation to Western Australia as:

- (a) is within the outer limits of the continental shelf, and
- (b) is not within the Joint Petroleum Development Area, and includes the space above and below that area.

(4) The **adjacent area** for the Northern Territory is:

- (a) so much of the area described in Schedule 1 to the *Offshore Petroleum Act 2006* of the Commonwealth in relation to the Northern Territory as:
  - (i) is within the outer limits of the continental shelf, and
  - (ii) is not within the Joint Petroleum Development Area, and
- (b) the offshore area for the Territory of Ashmore and Cartier Islands (within the meaning of section 7 (1) of the *Offshore Petroleum Act 2006* of the Commonwealth) other than the territorial sea within that area, and
- (c) the space above and below the areas described in paragraphs (a) and (b).

(5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

(6) A reference in this clause to the area described in Schedule 1 to the *Offshore Petroleum Act 2006* of the Commonwealth in relation to a State or Territory is a reference to the scheduled area for that State or Territory within the meaning given by that Schedule.

## Schedule 2 Employer groups—tracing of interests in corporations

(Section 175P)

### 1 Application

This Schedule applies for the purposes of section 175P.

### 2 Direct interest

- (1) An entity has a **direct interest** in a corporation if:
  - (a) in the case of an entity that is a person—the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation, or
  - (b) in the case of an entity that is a group of associated persons—each of the associated persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation.
- (2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that:
  - (a) in the case of an entity that is a person—the person can directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as referred to in subclause (1), or
  - (b) in the case of an entity that is a group of associated persons—the associated persons can, if acting together, directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as referred to in subclause (1).

### 3 Indirect interest

- (1) An entity has an **indirect interest** in a corporation if the corporation is linked to another corporation (the **directly controlled corporation**) in which the entity has a direct interest.
- (2) A corporation is linked to a directly controlled corporation if the corporation is part of a chain of corporations:
  - (a) that starts with the directly controlled corporation, and
  - (b) in which a link in the chain is formed if a corporation has a direct interest in the next corporation in the chain.
- (3) The following are examples of how subclauses (1) and (2) work (the examples are cumulative):

(a) **Example 1**

Corporation A (a directly controlled corporation) has a direct interest in corporation B. Corporations A and B form part of a chain of corporations, and corporation B is linked to corporation A. Accordingly, an entity that has a direct interest in corporation A also has an indirect interest in corporation B.

(b) **Example 2**

Corporation B also has a direct interest in corporation C. In this case, corporations A, B and C form part of a chain of corporations. Both corporations B and C are linked to corporation A. The entity that has a direct interest in corporation A has an indirect interest in both corporations B and C.

(c) **Example 3**

Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, one consisting of A, B and C, and one consisting of A, B and D. Corporations B, C and D are all linked to corporation A and an entity that has a direct interest in corporation A would have an indirect interest in corporations B, C and D. An entity that has a direct interest in corporation B would have an indirect interest in corporations C and D. However, an entity that has a direct interest in corporation C only would not have an indirect interest in corporation D, as corporation D is not linked to corporation C.

(4) The value of the indirect interest of an entity in a corporation (an ***indirectly controlled corporation***) that is linked to a directly controlled corporation is calculated by multiplying together the following:

- (a) the value of the direct interest of the entity in the directly controlled corporation,
- (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.

(5) The following are examples of how subclause (4) works (the examples are cumulative):

(a) **Example 1**

An entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the indirect interest of the entity in corporation B is  $80\% \times 70\%$  (that is, 56%). Accordingly, in this example the entity has a controlling interest (within the meaning of section 175P) in corporation B.

(b) **Example 2**

Corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the indirect interest of the entity in corporation C is  $80\% \times 70\% \times 40\%$  (that is, 22.4%). Accordingly, in this example the entity does not have a controlling interest in corporation C.

- (6) It is possible for an entity to have more than one indirect interest in a corporation. This may occur if the corporation is linked to more than one corporation in which the entity has a direct interest, or if the corporation is linked to only one corporation in which the entity has a direct interest but is linked through more than one chain of corporations. In that case, the entity has an aggregate interest in the corporation (see clause 4).

#### 4 Aggregation of interests

- (1) An entity has an **aggregate interest** in a corporation if:
- (a) the entity has a direct interest and one or more indirect interests in the corporation, or
  - (b) the entity has more than one indirect interest in the corporation.
- (2) The value of the aggregate interest of an entity in a corporation is the sum of the following:
- (a) the value of the direct interest (if any) of the entity in the corporation,
  - (b) the value of each indirect interest of the entity in the corporation.
- (3) For example:

An entity has a direct interest (with a value of 40%) in corporation B.

The entity also has a direct interest (with a value of 25%) in corporation A, which in turn has a direct interest (with a value of 60%) in corporation B. Accordingly, the entity also has an indirect interest in corporation B with a value of 15% (that is,  $25\% \times 60\%$ ).

The value of the entity's aggregate interest in corporation B is the sum of the direct interest (40%) and the indirect interest (15%), which is 55%.

Accordingly, in this example, the entity has a controlling interest in corporation B (within the meaning of section 175P).

### Schedules 3, 4 (Repealed)

### Schedule 5 Repeals

(Section 281)

[Workmen's Compensation Act 1916 No 71](#)—the whole Act

[Workmen's Compensation \(Amendment\) Act 1920 No 45](#)—the whole Act  
[Workers' Compensation Act 1926 No 15](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1929 No 36](#)—the whole Act  
[Workers' Compensation Act and Workmen's Compensation \(Broken Hill\) Act \(Amendment\) Act 1942 No 13](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1945 No 20](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1948 No 40](#)—the whole Act  
[Bush Fires Act 1949 No 31](#)—section 58 (2)  
[Workers' Compensation \(Amendment\) Act 1951 No 20](#)—the whole Act  
[Workers' Compensation \(Further Amendment\) Act 1951 No 25](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1953 No 21](#)—the whole Act  
[Judges' Pensions Act 1953 No 41](#)—section 13 (4)  
[Workers' Compensation \(Amendment\) Act 1957 No 22](#)—the whole Act  
[Workers' Compensation \(Further Amendment\) Act 1960 No 58](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1964 No 66](#)—the whole Act  
[Industrial Arbitration \(Basic Wage\) Amendment Act 1967 No 86](#)—section 5 (4)  
[Workers' Compensation \(Amendment\) Act 1967 No 97](#)—the whole Act  
[Workers' Compensation \(Dust Diseases\) Amendment Act 1967 No 98](#)—the whole Act  
[Bush Fires \(Amendment\) Act 1970 No 25](#)—section 4 (3)  
[Supreme Court Act 1970 No 52](#)—so much of the First Schedule as amends Act No 66, 1964 and so much of the Second Schedule as amends Act No 15, 1926  
[Minors \(Property and Contracts\) Act 1970 No 60](#)—so much of the First Schedule as amends Act No 15, 1926  
[Workers' Compensation \(Amendment\) Act 1970 No 67](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1971 No 77](#)—the whole Act  
[Workers' Compensation \(Insurance\) Act 1973 No 18](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1975 No 44](#)—the whole Act  
[Workers' Compensation \(Further Amendment\) Act 1975 No 104](#)—the whole Act  
[Statutory and Other Offices Remuneration Act 1975 \(1976 No 4\)](#)—so much of Schedule 5 as amends Act No 15, 1926  
[Ambulance Services Act 1976 No 72](#)—so much of Schedule 2 as amends Act No 15, 1926  
[Children \(Equality of Status\) Act 1976 No 97](#)—so much of Schedule 1 as amends Act No 15, 1926  
[Workers' Compensation \(Further Amendment\) Act 1977 No 37](#)—the whole Act  
[Workers' Compensation \(Rates\) Amendment Act 1977 No 124](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1978 No 27](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1980 No 79](#)—the whole Act  
[Workers' Compensation \(Rates\) Amendment Act 1980 No 188](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1981 No 73](#)—the whole Act  
[Miscellaneous Acts \(Coal Mines Regulation\) Repeal and Amendment Act 1982 No 69](#)—so much of Schedule 2 as amends Act No 15, 1926  
[Miscellaneous Acts \(Public Finance and Audit\) Repeal and Amendment Act 1983 No 153](#)—so much of Schedule 1 as amends Act No 15, 1926  
[Workers' Compensation \(Senior Police\) Amendment Act 1984 No 84](#)—the whole Act  
[Workers' Compensation \(Amendment\) Act 1984 No 90](#)—the whole Act  
[Statute Law \(Miscellaneous Amendments\) Act 1984 No 153](#)—so much of Schedule 16 as amends Act No 86, 1967 and Act No 60, 1970  
[Workers' Compensation \(Amendment\) Act 1985 No 91](#)—the whole Act  
[Statute Law \(Miscellaneous Provisions\) Act 1986 No 16](#)—Schedule 22 and so much of Schedule 23 as

amends Act No 15, 1926

*Miscellaneous Acts (Area Health Services) Amendment Act 1986 No 53*—so much of Schedule 1 as

amends Act No 15, 1926

*Workers' Compensation (Amendment) Act 1986 No 75*—the whole Act

*Workers' Compensation (Further Amendment) Act 1986 No 176*—the whole Act

*Miscellaneous Acts (Water Administration) Amendment Act 1986 No 205*—so much of Schedule 2 as

amends Act No 15, 1926

*Statute Law (Miscellaneous Provisions) Act (No 2) 1986 No 218*—Schedule 45 and so much of Schedule 47 as amends Act No 16, 1986

## Schedule 6 Savings, transitional and other provisions

(Section 282)

### Part 1 Preliminary

#### 1 Definition

In this Schedule:

**cognate Acts** means the *Coal Mines Regulation (Workers Compensation) Amendment Act 1987*; *Compensation Court (Amendment) Act 1987*; *Construction Safety (Workers Compensation) Amendment Act 1987*; *Dangerous Goods (Workers Compensation) Amendment Act 1987*; *Defamation (Workers Compensation) Amendment Act 1987*; *Factories, Shops and Industries (Workers Compensation) Amendment Act 1987*; *Industrial Arbitration (Workers Compensation) Amendment Act 1987*; *Mines Inspection (Workers Compensation) Amendment Act 1987*; *Miscellaneous Acts (Workers Compensation) Amendment Act 1987*; *Occupational Health and Safety (Workers Compensation) Amendment Act 1987*; *Police Regulation (Superannuation) (Workers Compensation) Amendment Act 1987*; *Public Health (Workers Compensation) Amendment Act 1987*; *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*; *Workers' Compensation (Dust Diseases) Amendment Act 1987*.

#### 2 Extended definition of worker (sec 3 (1A))

Section 3 (1A), which was inserted by the *WorkCover Legislation Amendment Act 1995*, was inserted to avoid doubt and accordingly the section is taken to apply in respect of any injured worker, including a worker who was injured or died before the commencement of that section, but not so as to affect any decision of a court made before the commencement of that section.

### Part 2 Provisions relating to liability for compensation

#### 1 Application of Act irrespective of date of injury

Subject to this Schedule, Part 2 of this Act applies whether the injury was received before or after the commencement of that Part.



## **2 Journey claims—changes not to apply to existing injuries**

- (1) In the case of a personal injury received by a worker before the commencement of section 10 of this Act on a journey to which that section applied before the commencement of the amendments made to that section by Schedule 1 to the [Workers Compensation \(Amendment\) Act 1989](#), liability for the payment of compensation shall be determined in accordance with the provisions of section 7 (1) of the former Act instead of that section.
- (2) In the case of a personal injury received by a worker after the commencement of section 10 of this Act and before the commencement of Schedule 1 to the [Workers Compensation \(Amendment\) Act 1989](#) on a journey to which that section applied before the commencement of that Schedule, liability is to be determined in accordance with the provisions of section 10 as in force before the commencement of that Schedule.
- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the [WorkCover Legislation Amendment Act 1996](#) as if those amendments had not been made.

## **3 Diseases of gradual process etc—“previous” employers’ liability to contribute to compensation under sec 67 of this Act**

- (1) An employer who is liable under section 15 (2) or 16 (2) of this Act to make contributions to the employer by whom compensation is payable under those sections is not liable to contribute to any compensation payable under section 67 of this Act (Compensation for pain and suffering) in respect of any part of the period of 12 months that occurred before the commencement of that section.
- (2) Despite section 17 (1) (d) of this Act, an employer to whom that paragraph applies is not liable to contribute to compensation payable under section 67 of this Act in respect of such part of the relevant period (as defined in section 17 (1) (e) of this Act) as occurred before the commencement of section 67 of this Act.
- (3) This clause does not affect any court proceedings which have been determined or commenced before the date of assent to the [Workers Compensation Legislation \(Miscellaneous Amendments\) Act 1994](#).

## **5 Transitional—amendments to secs 15 and 16**

The amendments made by Schedule 4 (1), (3) and (4) to the [Workers Compensation Legislation Amendment Act 1995](#) are made for the purpose of avoiding doubt and accordingly those amendments are taken to extend to injuries that happened before the commencement of those amendments, but not so as to affect any decision of a court made before the commencement of those amendments.

## **6 Transitional—apportionment and contribution**

- (1) Section 22A and the amendments made to section 22 by Schedule 4 to the *Workers Compensation Legislation Amendment Act 1995* extend to a situation where one or more of the injuries concerned was received before the commencement of the Act and one or more of those injuries was received after that commencement, but not to a situation where all the injuries concerned were received before that commencement and not so as to affect any decision of a court made before the commencement of section 22A.
- (2) Section 22B extends to injuries received by a worker before the commencement of that section (even before the commencement of this Act), but not so as to affect any decision of a court made before the commencement of that section.
- (3) Section 22A (9) (as inserted by the *WorkCover Legislation Amendment Act 1995*) was inserted for the purpose of avoiding doubt and accordingly is taken to have applied from the commencement of section 22A.

## **7 Restrictions on psychological injury claims**

Section 11A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to injuries received before the commencement of that section.

## **8 Deemed employment of workers**

- (1) The amendments to clause 2 of Schedule 1 made by the *WorkCover Legislation Amendment Act 1995* are made for the purpose of avoiding doubt, and accordingly that clause is taken to have been so amended from its own commencement.
- (2) However, those amendments do not affect any determination of a court made before the commencement of the amendments.

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

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

in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor).

## **11 Workers Compensation Legislation Amendment Act 2002**

- (1) The amendments made by Schedule 1 to the *Workers Compensation Legislation Amendment Act 2002* (referred to in this clause as the **Schedule 1 amendments**) do not apply in respect of an injury received before the commencement of those amendments, and this Act applies in respect of such an injury as if those amendments had not been made.
- (2) If the death of a worker results from both an injury received before the commencement of the Schedule 1 amendments and an injury received after that commencement, the worker is, for the purposes of the application of the Schedule 1 amendments to and in respect of the death of the worker, to be treated as having died as a result of the injury received after that commencement.
- (3) If a period of incapacity for work resulted both from injury received before the commencement of the Schedule 1 amendments and an injury received after that commencement, the incapacity is, for the purposes of the application of the Schedule 1 amendments to and in respect of that incapacity for work, to be treated as having resulted from the injury received after that commencement.
- (4) The Schedule 1 amendments and subclauses (2) and (3) do not affect the following:
  - (a) the liability of an employer or insurer in respect of an injury received before the commencement of those amendments, including a liability to make a contribution under section 15, 16 or 17 in respect of compensation payable for an injury received after that commencement,
  - (b) the apportionment of liability under section 22 in a case where one or more of the injuries concerned were received or suffered before, and one or more received or suffered after, that commencement.
- (5) A policy of insurance that an employer has against liability under this Act and that is in force on the commencement of the Schedule 1 amendments covers the employer, for as long as the policy remains in force, for the employer's liability under this Act as amended by the Schedule 1 amendments.

## **Part 2A**

### **1 (Repealed)**

## **Part 3 Provisions relating to compensation payable on death**

### **1 Application of Act irrespective of date of death**

Subject to this Schedule, Division 1 of Part 3 of this Act applies whether the death occurred before or after the commencement of that Division.

### **2 Amount of compensation—former Act applies in the case of deaths resulting from injuries received before commencement of Act**

- (1) The amount of compensation payable under Division 1 of Part 3 of this Act shall, if the death results from an injury received before the commencement of that Division, be the amount (if any) payable under the former Act.
- (2) If the worker dies after the commencement of Division 1 of Part 3 of this Act as a result of such an injury, the amount payable under section 8 (1) (a) of the former Act shall be \$76,700.
- (3) A weekly payment of compensation in respect of a dependent child of a worker who dies as a result of such an injury shall, if it is payable after the commencement of Division 1 of Part 3 of this Act:
  - (a) be payable under that Division, and
  - (b) be determined as if the amount payable in respect of a dependent child who is wholly dependent for support on the worker is \$38.30 per week.
- (4) Division 6 of Part 3 of this Act (Indexation of amounts of benefits) applies as if the amounts of \$76,700 and \$38.30 were adjustable amounts.
- (5) An agreement or determination under section 8 (2) of the former Act with respect to any such weekly payment applies for the purpose of section 26 of this Act (Death of worker leaving partial dependants).
- (6) If the death of a worker results from both an injury received before the commencement of Division 1 of Part 3 of this Act and an injury received after that commencement, the worker shall, for the purposes of determining the amount of compensation payable in accordance with this clause, be treated as having died as a result of the injury received after that commencement.

### **3 Apportionment between dependants**

Sections 29 and 30 of this Act apply to compensation payable under section 8 of the former Act and to any previous apportionment under section 59 of the former Act.

## **Part 4 Provisions relating to weekly payments of compensation**

### **1 Application of Act irrespective of date of injury**

Subject to this Schedule, Division 2 of Part 3 of this Act applies whether the injury was received before or after the commencement of that Division.

### **2 Definition of “first 26 weeks of incapacity”**

For the purposes of section 34 of this Act, a period of incapacity for work shall be taken into account in determining the first 26 weeks of incapacity of a worker even though it occurred before the commencement of that section.

### **3 Previous incapacity—former Act to apply**

The amount of the weekly payment of compensation in respect of any period of total or partial incapacity for work which occurred before the commencement of Division 2 of Part 3 of this Act shall be the amount (if any) payable under the former Act.

### **4 Former Act applies to weekly payments continuing after commencement in respect of existing injuries**

- (1) A weekly payment of compensation payable under Division 2 of Part 3 of this Act in respect of any period of incapacity for work occurring after the commencement of that Division shall, if it resulted from an injury received before that commencement, be determined as follows:
  - (a) section 35 (Maximum weekly payment) does not apply,
  - (b) section 37 (Weekly payment during total incapacity—after first 26 weeks) applies as if:
    - (i) the amount of \$44.80 per week were payable in respect of a dependent wife or husband or dependent de facto spouse or other family member of the worker under section 37 (1) (b), and
    - (ii) the amount of \$22.50 per week were payable in respect of each dependent child or dependent brother or sister of the worker under section 37 (1) (c),
  - (c) section 11 (1) of the former Act applies instead of section 40 of this Act (but the maximum weekly payment for partial incapacity for work shall not exceed the amount payable under this clause for total incapacity for work),
  - (d) section 12 of the former Act applies instead of section 39 of this Act,
  - (e) section 13 of the former Act applies instead of section 46 of this Act.
- (2) Division 6 of Part 3 of this Act (Indexation of amounts of benefits) applies as if the amounts of \$44.80 and \$22.50 were adjustable amounts.

- (3) If a period of incapacity for work resulted both from injury received before the commencement of Division 2 of Part 3 of this Act and an injury received after that commencement, the incapacity shall, for the purposes of determining the amount of compensation payable in accordance with this clause and for the purposes of clause 6, be treated as having resulted from the injury received after that commencement.

**4A Post-26 week payments covered by the former Act not affected by the [Workers Compensation \(Benefits\) Amendment Act 1991](#)**

- (1) This clause applies to a period of incapacity for work occurring after the date of commencement of the [Workers Compensation \(Benefits\) Amendment Act 1991](#):
- (a) if the incapacity results from an injury received before the commencement of Division 2 of Part 3 of this Act, or
  - (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act.
- (2) For the purpose of determining the weekly payment of compensation in respect of a period of incapacity to which this clause applies (whether clause 4 or 5 of Part 4 of this Schedule applies to the case), section 37 of this Act applies:
- (a) as if the amount of \$235.20 in section 37 (1) (a) (i) were \$196.00, and
  - (b) as if the amount of \$187.10 in section 37 (1) (a) (ii) were \$155.90, and
  - (c) as if the amount of \$170.00 in section 37 (1) (a) (iii) were \$141.60 and the amount of \$153.00 in that subparagraph were \$127.50.
- (3) Division 6 of Part 3 of this Act applies as if the amounts of:
- (a) \$196.00, and
  - (b) \$155.90, and
  - (c) \$141.60 and \$127.50,
- were adjustable amounts.
- (4) The *Workers Compensation (Savings and Transitional) Regulation 1992* is repealed.

**5 Continuation of operation of sec 11 (2) of former Act**

Section 11 (2) of the former Act applies (instead of section 38 of this Act) for the purpose of determining the weekly payment of compensation in respect of any period of incapacity for work occurring after the commencement of Division 2 of Part 3 of this Act and resulting from an injury received before that commencement.

**5A Continued operation of 1987 version of sec 38 (1)-(5) for injuries before 30 June 1989**

**and incapacity before 1993 amending Act**

(1) In this clause:

**the 1989 amending Act** means the *Workers Compensation (Benefits) Amendment Act 1989*.

**the 1994 amending Act** means the *Workers Compensation Legislation (Amendment) Act 1994*.

(2) This clause applies to a period of incapacity for work (whether occurring before or after 4.00 pm on 30 June 1989), if the incapacity results from an injury received before that time.

(3) However, this clause does not apply to:

- (a) a period of incapacity for work to which clause 5 applies (that is, incapacity from an injury received before the commencement of this Act), or
- (b) a period of incapacity for work occurring after the commencement of the amendments to section 38 of this Act by the 1994 amending Act (except in respect of the continued application under this clause of the maximum total period for which a worker may be compensated in accordance with section 38).

(4) For the purpose of determining the weekly payment of compensation in respect of a period of incapacity for work to which this clause applies:

- (a) section 38 (1)–(7) of this Act (as in force immediately before the commencement of Schedule 2 (2) to the 1989 amending Act) continues to apply, and
- (b) for the purposes of paragraph (a), section 38 (as so in force) applies as if:
  - (i) the word “immediately” in section 38 (2) (a) and (c) were omitted, and
  - (ii) the words “wholly or mainly because of the injury” in section 38 (4) were omitted, and
  - (iii) section 38 (4) (b)–(d) were omitted, and
  - (iv) the words in section 38 (7) (b) after “separate periods” were omitted.

(5) If a period of incapacity for work results both from an injury received before 4.00 pm on 30 June 1989 and an injury received at or after that time, the incapacity is, for the purpose of determining the amount of the weekly payment of compensation (if any) payable under section 38 of this Act, to be treated as having resulted from the injury received at or after that time.

(6) The *Workers Compensation (Savings and Transitional) Regulation 1989* is repealed.

**5B Operation of 1994 amending Act (secs 38, 38A, 40, 40A, 43, 43A)—injuries before 1994**

**amending Act**

- (1) In this clause, **the 1994 amending Act** means the *Workers Compensation Legislation (Amendment) Act 1994*.
- (2) The amendments made by the 1994 amending Act to sections 38, 38A, 40, 40A, 43 and 43A of this Act apply to any period of incapacity for work occurring after (but not before) the commencement of those amendments (whether the incapacity results from an injury received before or after that commencement), except as provided by this clause.
- (3) In the case of a period of incapacity for work resulting from an injury received before the commencement of those amendments:
  - (a) when determining the different rates of compensation payable under section 38 of this Act (as amended by the 1994 amending Act) on the expiration of particular periods of incapacity, any period of incapacity occurring before the commencement of those amendments is not to be disregarded and, accordingly, is to be taken into account in determining the rate of compensation payable for the balance of any such period of incapacity occurring after that commencement, and
  - (b) the maximum total period for which a worker may be compensated in accordance with section 38 of this Act is to be 52 weeks instead of 104 weeks but only if the injury was received before 1 February 1992, and
  - (c) if the rate of compensation for a period of incapacity to which section 38 applies would be higher if the 1994 amending Act had not been enacted, the rate is to be determined as if the amending Act had not been enacted.
- (4) Sections 38, 38A, 40 and 43 of this Act (as in force immediately before the commencement of the amendments to those sections by the 1994 amending Act) continue to apply to periods of incapacity for work occurring before the commencement of those amendments if the incapacity results from an injury received at or after 4.00 pm on 30 June 1989, except as provided by this clause.
- (5) Section 38 of this Act continues to apply, as referred to in subclause (4), as if section 38 (7A) and (7B) were omitted.
- (6) If a period of incapacity for work results both from an injury received before a relevant date and an injury received on or after that date, the incapacity is, for the purpose of determining the amount of the weekly payment of compensation (if any) payable under section 38 or 40 of this Act, to be treated as having resulted from the injury received on or after that date. The relevant date for the purposes of subclause (3) (b) is 1 February 1992 and for any other purpose is the date of commencement of the amendment concerned.
- (7) This clause does not apply to a period of incapacity to which clause 5 or 5A applies.



### 5C Operation of regulation relating to form of medical certificates under sec 38

- (1) Clause 10 (2) of the *Workers Compensation (General) Regulation 1987* (as inserted by the Regulation published in the Gazette of 1 May 1992) extends to medical certificates supplied by a worker before 1 May 1992.
- (2) A medical certificate that is in or to the effect of a form that was prescribed under the *Workers Compensation (General) Regulation 1987* for the purposes of section 38A (2) (b) is taken to be in a form approved by the Authority for the purposes of that subsection.

### 5D Operation of 1998 amending Act

- (1) **Definition** In this clause, **the 1998 amending Act** means the *Workers Compensation Legislation Amendment Act 1998*.
- (2) The amendments made to section 38 of this Act by the *Workers Compensation Legislation Amendment Act 1998* do not apply to a worker in respect of any period of incapacity after the commencement of those amendments that results from an injury before that commencement if the worker was in receipt of compensation in accordance with that section before that commencement for any period of incapacity resulting from that injury.
- (3) **Reducing s 40 benefit where suitable employment refused** Subsections (2A) and (2B) of section 40, as inserted by the 1998 amending Act, apply to any period of incapacity for work (and to any unreasonable rejection of suitable employment) occurring after (but not before) the commencement of those subsections (whether the incapacity results from an injury received before or after that commencement).

### 6 Redemptions under former Act for existing injuries

- (1) Section 15 of the former Act continues to apply to a liability in respect of a weekly payment of compensation for a period of incapacity for work resulting from an injury received before the commencement of Division 2 of Part 3 of this Act.
- (2) (Repealed)
- (3) Section 15 (1A) of the former Act also applies to a liability under Division 3 or 4 of Part 3 of this Act.
- (4) Section 18C (27)–(29) of the former Act continues to apply to a liability referred to in subclause (1).

### 6A Commutations under section 51 for injuries received before 1998 amending Act

- (1) In this clause, **the 1998 amending Act** means the *Workers Compensation Legislation Amendment Act 1998*.

- (2) Section 51, as amended by the 1998 amending Act, applies to the commutation of a liability arising in respect of an injury received before or after the commencement of those amendments.
- (3) However, the regulations may limit the circumstances in which a liability arising in respect of an injury received before the private insurance start time may be commuted and may make other modifications to the operation of that section in respect of the commutation of any such liability.

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

- (1) In this clause, **the section 51 amendment** means the amendment made to section 51 (9) of this Act by the *Workers Compensation Legislation Amendment Act 1998*.
- (2) The section 51 amendment does not affect established procedure (in accordance with relevant decisions of courts of competent jurisdiction) with respect to the operation of section 51 of this Act, namely, that the commutation of a liability to pay weekly compensation by the payment of a lump sum determined by the Compensation Court is not a payment of compensation to which a worker is entitled but a payment that the employer may make with the consent of the worker in order to commute that liability.
- (3) This clause applies whether the liability that is to be commuted arose before or after the commencement of this clause.
- (4) Section 51 is taken to be amended to the extent (if any) as is necessary for the purposes of giving effect to this clause.

**7 Current weekly wage rate applicable to certain workers incapacitated for work**

- (1) This clause applies to a worker who became entitled to receive weekly payments in respect of incapacity for work before the commencement of Schedule 1 (5) to the *Workers Compensation (Benefits) Amendment Act 1991* and who, immediately before becoming so entitled, was not a worker to whom section 42 (1) (a), (b) or (c) of this Act applied.
- (2) A reference in Division 2 of Part 3 of this Act to the current weekly wage rate of a worker to whom this clause applies is a reference to:
  - (a) the rate of \$341.30 per week, or
  - (b) if some other rate is prescribed by the regulations for the purposes of this paragraph—that other rate.
- (3) This clause is to be read subject to section 42 of this Act.
- (4) Division 6 of Part 3 of this Act (Indexation of amounts of benefits) applies as if the amount of \$341.30 were an adjustable amount.

## **8 Refund and other adjustments of weekly payments—amendments to sec 58 of this Act**

- (1) The amendments to section 58 of this Act (Refund of weekly payments paid after return to work etc) made by Schedule 2 (2) to the *Workers Compensation Legislation (Miscellaneous Amendments) Act 1994* extend to weekly payments of compensation made before the date of assent to that Act. However, those amendments do not apply to enable an order under that section (as so amended) to be made in respect of any case in which a court has, before that date, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that date.
- (2) The amendments to section 58 of this Act by Schedule 12 (17) and (18) to the *Workers Compensation Legislation Amendment Act 1995* extend to weekly payments of compensation made before the commencement of those amendments. However, those amendments do not apply to enable an order under that section (as so amended) to be made in respect of any case in which a court has, before that commencement, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that commencement.
- (3) Section 58 (6) of this Act (as inserted by the *WorkCover Legislation Amendment Act 1997*) extends to weekly payments of compensation made before the commencement of that subsection and to a conviction for an offence committed before the commencement of that subsection. However, that subsection does not apply to enable an order under that section to be made in respect of a conviction for an offence in proceedings commenced before the commencement of that subsection.

## **9 Apportionment, contribution and recoveries—commuted compensation**

Section 51 (9) (as inserted by the *Workers Compensation Legislation Amendment Act 1995*) extends to apply to a payment of a lump sum made before the commencement of that subsection, but not so as to affect any decision made by a court before that commencement.

## **10 Indexation of average weekly earnings**

The amendments made by Schedule 8 (3), (4) and (5) to the *Workers Compensation Legislation Amendment Act 1995* apply for the purposes of weekly payments of compensation in respect of any period of incapacity for work occurring after the commencement of that Schedule even if the incapacity resulted from an injury received before that commencement.

## **11 Transitional—sec 37 (1A)**

Section 37 (1A), as inserted by Schedule 8 (2) to the *Workers Compensation Legislation Amendment Act 1995*, does not apply in respect of injuries received before the commencement of that subsection.

## 12 Information to be provided at request of workers

An amendment made to section 43 by the *WorkCover Legislation Amendment Act 1995* does not apply to a request made by a worker under that section before the commencement of the amendment.

## 13 Refund of weekly payments—amendments to sec 55 of this Act

The amendment to section 55 (Review of weekly payments) of this Act made by the *WorkCover Legislation Amendment Act 1995* extends to weekly payments of compensation made before the commencement of the amendment. However, the amendment does not apply to enable an order under that section (as so amended) to be made in respect of any case in which a court has, before that commencement, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that commencement.

## 14 Discontinuation of weekly payments after 2 years

- (1) Section 52A (as inserted by the *WorkCover Legislation Amendment Act 1996*) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause.
- (2) Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following:
  - (a) A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a **preliminary notice**) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker.
  - (b) The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks).
  - (c) The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers.
  - (d) The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is:
    - (i) after a period in respect of which the worker has received or is entitled to

receive at least 40 weeks of weekly payments since the preliminary notice was given, and

- (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b),

even if this would result in the worker receiving the payments for more than 104 weeks.

- (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded.
- (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows:

- (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either:

- (i) the worker's employer has not failed to provide suitable employment, or
    - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training,

- as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6.

(3) Section 52A does not apply in any of the following cases:

- (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
- (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,
- (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that

commencement.

- (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
- (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.

#### **15 Discontinuation of weekly payments after 2 years—application of 1998 amendments**

- (1) The amendments to section 52A made by the *Workers Compensation Legislation Amendment Act 1998* apply to the discontinuation of payments of weekly compensation after the commencement of those amendments, whether the incapacity results from an injury received before or after that commencement and whether all or any part of the 104 weeks of incapacity for work referred to in that section occurred before that commencement.
- (2) This clause is subject to the regulations under Part 20 of this Schedule and the regulations under the 1998 Act.

### **Part 5 Provisions relating to compensation for medical, hospital and rehabilitation expenses**

#### **1 Application of Act irrespective of date of treatment or service**

Subject to this Schedule, Division 3 of Part 3 of this Act applies whether the medical or related treatment or the hospital treatment was given, or the ambulance service was provided, before or after the commencement of that Division.

#### **2 Maximum amounts for previous treatment and service**

Notwithstanding clause 1, the maximum amount prescribed in respect of any compensation payable under Division 3 of Part 3 of this Act shall, if the treatment was given or the service provided before the commencement of that Division, be the relevant maximum amount in force under the former Act.

#### **3 New items of treatment or service**

Any treatment which was given or service provided before the commencement of Division 3 of Part 3 of this Act and for which compensation was not payable under the former Act does not (because of clause 1) become a treatment or service for which compensation is payable under this Act.

#### **4 Associated travel expenses**

A reference in clauses 1–3 to any treatment or service includes a reference to travel expenses referred to in section 60 (2) of this Act that are associated with any such treatment or service.

## **5 Approvals under sec 10 of former Act continued**

An approval under section 10 of the former Act and in force immediately before the repeal of that section shall be deemed to be an approval under Division 3 of Part 3 of this Act.

## **6 (Repealed)**

## **7 Public hospital rates of treatment**

- (1) Until the regulations otherwise provide, the amount for which an employer is liable in respect of hospital treatment of a worker at a public hospital is (after the commencement of the 1989 Amending Act) the amount prescribed under section 62 (2)–(4) as in force immediately before that commencement.
- (2) A reference in this clause to the commencement of the 1989 Amending Act is a reference to the commencement of Schedule 8 (4) to the *Workers Compensation (Benefits) Amendment Act 1989*.

## **8 Occupational rehabilitation services**

The amendments made to Division 3 of Part 3 of this Act by Schedule 4 (4)–(7) to the *Workers Compensation (Benefits) Amendment Act 1989*:

- (a) do not apply to occupational rehabilitation services provided before the commencement of Schedule 4 (4)–(7) to that Act, and
- (b) do not affect compensation payable for medical or related treatment, or hospital treatment, given before that commencement.

## **9 Worker's liability for expenses above applicable rates**

Section 60A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) and the amendment made to section 63A by that Act do not apply to medical or related treatment, hospital treatment or occupational rehabilitation services given or provided before the commencement of section 60A.

## **10 New procedure for fixing rates etc—1998 amending Act**

The regulations in force under sections 60A–64A, immediately before the commencement of the amendments made to those sections by the *Workers Compensation Legislation Amendment Act 1998*, continue in force until the commencement of the relevant orders made by the Authority that fix or determine the matters for which those regulations were made.

# **Part 6 Provisions relating to compensation for non-economic loss**

## **1 Act applies irrespective of date of injury**

Subject to this Schedule, Division 4 of Part 3 of this Act applies whether the injury was

received before or after the commencement of that Division.

## **2 Pain and suffering—does not apply to existing injuries**

- (1) Clause 1 does not apply to section 67 of this Act (Compensation for pain and suffering) and that section applies only to pain and suffering in respect of injuries received after the commencement of Division 4 of Part 3 of this Act.
- (2) To avoid doubt, section 67 of this Act applies to pain and suffering resulting from injuries to which section 15, 16 or 17 of this Act applies to the extent only to which any such injury is deemed under those provisions to have happened after the commencement of Division 4 of Part 3 of this Act. However, this subclause does not affect any court proceedings which have been determined or commenced before the date of assent to the [Workers Compensation Legislation \(Miscellaneous Amendments\) Act 1994](#).
- (3) To avoid doubt, if a loss mentioned in the Table to Division 4 of Part 3 of this Act results both from an injury received before the commencement of that Division and an injury received after that commencement, the part of the loss resulting from the injury received before that commencement is not to be taken into account for the purposes of determining under section 67 (2) of this Act whether section 67 applies to the loss (whether or not compensation has been paid or is payable under section 16 of the former Act for that part of the loss).

## **2A (Repealed)**

## **3 Compensation for loss not payable if awarded or paid under former Act—occupational diseases**

Compensation is not payable to a worker who has suffered a loss of a thing mentioned in the Table to Division 4 of Part 3 of this Act (being an occupational disease within the meaning of section 71 of this Act) if compensation for the loss was awarded to the worker, or the worker received or agreed to receive compensation for the loss, in accordance with section 16 of the former Act.

## **3A Determination of amount of compensation for existing occupational diseases not compensated before commencement of Act**

- (1) This clause applies to a loss of a thing as the result of an injury received before the commencement of Division 4 of Part 3 of this Act, being:
  - (a) a loss which is an occupational disease within the meaning of section 71 of this Act, and
  - (b) a loss for which the worker concerned had not, before that commencement, been awarded, or received or agreed to receive, compensation in accordance with section 16 of the former Act.



- (2) If any such loss is taken (by section 15, 16, 17 or any other provision of this Act) to have happened before the commencement of Division 4 of Part 3 of this Act, the amount of compensation payable for the loss under that Division is to be determined as if the relevant maximum amount under section 66 (1) of this Act were the maximum amount applicable on the commencement of that Division (namely, \$80,000).
- (3) This clause is enacted to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act.

### **3AA Compensation for further losses—occupational diseases**

- (1) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing (being an occupational disease within the meaning of section 71 of this Act), section 71 applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3.
- (2) This clause is enacted to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act.

### **4 Compensation for loss (except occupational diseases) payable under former Act for existing injury**

The amount of compensation payable to a worker who has suffered a loss of a thing mentioned in the Table to Division 4 of Part 3 of this Act (not being an occupational disease within the meaning of section 71 of this Act) shall be determined in accordance with section 16 of the former Act instead of Division 4 of Part 3 of this Act if the loss resulted from an injury received before the commencement of that Division.

### **5 Compensation not payable in respect of new item if it resulted from existing injury**

Compensation is not payable to a worker who has suffered a loss or impairment of a thing mentioned in the Table to Division 4 of Part 3 of this Act if:

- (a) it resulted from an injury received before the commencement of that Division, and
- (b) it is not a loss or impairment for which compensation was payable under section 16 of the former Act.

### **5A Compensation for further loss of hearing—special provision**

- (1) For the purposes of clause 5 (b), partial loss of hearing of both ears is to be treated as a loss or impairment for which compensation was payable under section 16 of the former Act (even though that section provided compensation only for partial loss of hearing of one ear).

- (2) A loss of hearing (resulting from an injury received before the commencement of Division 4 of Part 3 of this Act) is, if it involved a partial loss of hearing of both ears, to be treated as a proportionate loss of hearing of both ears for the purposes of:
  - (a) calculating the compensation payable for the loss of hearing (if the worker has not been awarded, and has not received or agreed to receive, compensation for the loss), or
  - (b) calculating the compensation payable for a further loss of hearing (if the worker has been awarded, or has received or agreed to receive, compensation for the previous loss of hearing).
- (3) If a worker, before the commencement of this clause, has suffered a further loss of hearing (being a partial loss of hearing of both ears) and has been awarded or has received or agreed to receive compensation for that further loss that was (for the purposes of calculating the compensation payable) treated as a loss of hearing of one ear under the Table to Division 4 of Part 3 of this Act, nothing in this clause entitles the worker to additional compensation for that further loss.

**6 Loss resulting both from existing injury and from injury received after commencement of this Act**

- (1) If a loss mentioned in the Table to Division 4 of Part 3 of this Act resulted both from an injury received before the commencement of that Division and an injury received after that commencement, the loss shall, for the purposes of determining the amount of compensation payable in accordance with this Part and this Schedule, be treated as having resulted from the injury received after that commencement.
- (2) However, no compensation is payable in accordance with this Part and this Schedule for the part of the loss resulting from the injury received before that commencement whether or not compensation has been paid or is payable under section 16 of the former Act for that part of the loss.
- (2A) The amendment made to subclause (2) by the *WorkCover Legislation Amendment Act 1995* is made to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. The amendment extends to court proceedings commenced but not finally determined before the commencement of the amendment but does not affect any award of compensation made before that commencement or any compensation that a worker has received or agreed to receive before that commencement.
- (3) Subclause (2) is enacted to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. However, subclause (2) does not affect any court proceedings determined or commenced before the date of assent to the *Workers Compensation Legislation Amendment Act 1995*.

## **7 Interpretation of “Table of Disabilities”**

- (1) The amendments to Division 4 of Part 3 of this Act made by Schedule 2 (3)–(5) to the *Workers Compensation Legislation (Miscellaneous Amendments) Act 1994* and Schedule 7 (1) and (2) to the *Workers Compensation Legislation Amendment Act 1995* are made for the purpose of avoiding doubt, and accordingly that Division is taken to have been so amended from the commencement of this Act.
- (2) However, an amendment made by Schedule 2 (5) (d) to the *Workers Compensation Legislation (Miscellaneous Amendments) Act 1994* or Schedule 7 (1) to the *Workers Compensation Legislation Amendment Act 1995* does not affect:
  - (a) any award of compensation made before the date of commencement of the amendment, or
  - (b) any compensation that a worker has received or agreed to receive before that date, or
  - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or
  - (d) any court proceedings commenced by a worker for damages from the worker’s employer (or other person referred to in section 150 of this Act) before that date.

## **8 Apportionment, contribution and prior injuries**

- (1) (Repealed)
- (2) The amendment made to section 17 by Schedule 4 (6) to the *Workers Compensation Legislation Amendment Act 1995* is made for the purpose of avoiding doubt, and accordingly section 17 is taken to have been so amended from the commencement of this Act (but not so as to affect any decision made by a court before commencement of the amendment).

## **9 No compensation for less than 6% hearing loss**

- (1) Section 69A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to apply to any claim for compensation for loss of hearing made on or after 10 November 1995 even if the injury concerned was received before that date, but does not apply to:
  - (a) a claim for compensation made before that date, or
  - (b) court proceedings commenced before that date.
- (2) In determining the extent of a worker’s hearing loss for the purposes of section 69A, hearing loss suffered before the commencement of that section is to be taken into account.

(3) Section 69A does not affect:

- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of this clause, or
- (b) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of this clause.

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

#### **10 Compensation for pain and suffering resulting from loss rather than injury**

Section 67 (1A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the purpose of avoiding doubt and accordingly that subsection is taken to have been so inserted from the commencement of this Act, but not so as to affect any decision of a court made before the commencement of the subsection or any compensation that a worker has received or agreed to receive before that commencement.

#### **11 HIV, AIDS and bowel injuries**

The amendments made to Division 3 of Part 4 by the *WorkCover Legislation Amendment Act 1995* with respect to HIV infection, AIDS, and permanent loss of bowel function do not apply to injuries received before the commencement of the amendments.

#### **12 Limit on costs recovery after offer of settlement**

- (1) Section 119 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to an offer of settlement, or request for particulars, as referred to in that section made before the commencement of that section.
- (2) Section 119 extends to an offer of settlement, or request for particulars, as referred to in that section made after the commencement of that section even if the offer or request relates to a claim for compensation made before the commencement of that section.

#### **13 Cessation of indexation of amounts under secs 66 and 67**

Sections 66 and 67 continue to apply in respect of an injury received before the commencement of this clause (as inserted by the *WorkCover Legislation Amendment Act 1995*) as if the amendments made by that Act to the dollar amounts specified in those sections, and to sections 79 and 81, had not been made.

#### **14 Lump sum compensation agreements**

The amendments made to section 66A by the *WorkCover Legislation Amendment Act 1995* extend to agreements with respect to compensation made before the commencement of the amendments.

#### **15 Proceedings for award of agreed compensation**

Section 66B (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to agreements with respect to compensation made before the commencement of the amendments, but not so as to affect court proceedings pending at the commencement of that section.

#### **16 Agreements as to proportion of compensation under sec 67 payable**

Section 67 (4A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act.

#### **17 Special provisions for back, neck and pelvis impairment**

Section 68A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act, but not so as to affect:

- (a) any award of compensation made before the date of commencement of the section, or
- (b) any compensation that a worker has received or agreed to receive before that date, or
- (c) any award of, or compromise or settlement of a claim for, damages made before the commencement of the section, or
- (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of the section.

#### **18 Reduction in lump sum compensation amounts—1996 amendments**

- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act.
- (2) If proceedings are pending before the Compensation Court on a claim for

compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if:

- (a) no claim for that compensation was duly made before the commencement of those amendments, or
  - (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed.
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

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

- (1) The amendments made by the [WorkCover Legislation Amendment Act 1996](#) that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect:
- (a) any award of compensation made before the date of commencement of the amendments, or
  - (b) any compensation that a worker has received or agreed to receive before that date, or
  - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or
  - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3.

#### **20 Section 68B—2000 amending Act**

- (1) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, section 68B (3) is, in its application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in it to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor).

- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68B applies in respect of the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3.
- (3) This clause and the amendments made by the *Workers Compensation Legislation Amendment Act 2000* to substitute section 68B (2)–(4) are for the avoidance of doubt and accordingly are taken to have had effect from the commencement of section 68B, but not so as to affect:
- (a) any award of compensation made before the commencement of this clause, or
  - (b) any compensation that a worker has received or agreed to receive before the commencement of this clause, or
  - (c) any award of, or compromise or settlement of a claim for, damages made before the commencement of this clause, or
  - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of this clause.

## **21 2006 amendments to section 66 relating to permanent impairment benefits**

Section 66, as amended by the *Workers Compensation Amendment (Permanent Impairment Benefits) Act 2006*:

- (a) applies to a worker who receives an injury on or after the date of commencement of that Act (being 1 January 2007), and
- (b) does not apply to a worker who received an injury before that date.

## **Part 7 Provisions relating to compensation for property damage**

### **1 Application of Act irrespective of date of accident**

Subject to this Schedule, Division 5 of Part 3 of this Act applies for the purposes of determining the amount of compensation payable in respect of an accident whether the accident happened before or after the commencement of that Division.

### **2 Maximum amount for previous damage**

Notwithstanding clause 1, the maximum amount prescribed in respect of any compensation payable under Division 5 of Part 3 of this Act shall, if the accident happened before the commencement of that Division, be the relevant maximum amount in force under the former Act.

## **Part 8 Provisions relating to payment of benefits**

### **1 Application of Act irrespective of date compensation first became payable etc**

Subject to this Schedule, Division 7 of Part 3 of this Act applies whether the compensation first became payable before or after the commencement of that Division.

### **2 Accounts in common fund**

The Income Suspense Account and the Investment Guarantee Account established under section 62 of the former Act shall be maintained by the Authority for the purposes of section 86 of this Act.

## **Part 9 Provisions relating to notice of injury and claims for compensation**

### **1 Act to apply irrespective of date of injury etc**

Subject to this Schedule, Division 1 of Part 4 of this Act applies whether the injury was received or the accident happened before or after the commencement of that Division.

### **2 Saving of existing notices and claims**

(1) A notice of injury, incapacity, damage to property or otherwise duly given under a provision of the former Act shall, after the commencement of Division 1 of Part 4 of this Act, be deemed to have been duly given under the corresponding provision of this Act.

(2) A claim for compensation duly made under the former Act shall, after that commencement, be deemed to have been duly made under this Act.

### **3 Register of injuries**

A register of injuries kept under section 53 (4) of the former Act shall, after the commencement of Division 1 of Part 4, be deemed to have been kept under section 90 of this Act.

### **4 Claims forwarded to insurers**

A claim for compensation (or other documentation) forwarded by an employer to an insurer under section 18BA of the former Act shall, after the commencement of Division 1 of Part 4 of this Act, be deemed to have been forwarded under section 93 of this Act.

### **5 Time for making claim for compensation**

Section 92 (4A) (as inserted by the [WorkCover Legislation Amendment Act 1995](#)) applies in respect of an injury, or death resulting from an injury, received before the substitution of that subsection (but not before 4 pm on 30 June 1987), as if paragraph (a) of that subsection read as follows:



- (a) the claim is made within 3 years after the commencement of this subsection (as inserted by the [WorkCover Legislation Amendment Act 1995](#)), or

## **6 Legal and medico-legal costs**

- (1) Division 7 of Part 4 (which was inserted by the [WorkCover Legislation Amendment Act 1995](#)) does not apply to fees and costs incurred before the commencement of that Division.
- (2) The amendment made by the [WorkCover Legislation Amendment Act 1996](#) to insert section 148B (1A) is made for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of that section as inserted by the [WorkCover Legislation Amendment Act 1995](#).

## **7 Solicitor/client costs**

The amendment made to section 122 by the [WorkCover Legislation Amendment Act 1995](#) (except the insertion of section 122 (5)) are made for the purpose of avoiding doubt and accordingly:

- (a) the amendments apply to costs incurred before or after the commencement of the amendments, and
- (b) section 122 (6) applies to amounts paid before or after the commencement of that subsection.

## **8 Refund of overpayments—false claims**

Section 92C (as inserted by the [WorkCover Legislation Amendment Act 1997](#)) extends to payments of compensation made before the commencement of that section and to a conviction for an offence committed before the commencement of that subsection. However, that section does not apply to enable an order under that section to be made in respect of a conviction for an offence in proceedings commenced before the commencement of that section.

## **9 Claims not requiring medical certificate about substantial contributing factor**

The amendment made to section 92 (1C) by the [WorkCover Legislation Amendment Act 1997](#) operates as from the commencement of that subsection.

## **10 Serving claims on insurer**

- (1) The amendments made to section 66 of the 1998 Act by the [Workers Compensation Legislation Amendment Act 2000](#) do not apply to a claim made before the commencement of those amendments.
- (2) However, those amendments extend to a claim made after the commencement of

those amendments where the initial claim referred to in the amendments was made before the commencement of those amendments.

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

- (1) A reference in section 65 (13) or (14) of the 1998 Act to the period of 3 years after the injury or accident happened is to be construed, in the case of a claim for compensation made in respect of an injury or accident that happened more than 2 years before the commencement of this clause, as a reference to the period ending 1 year after that commencement.
- (2) The provisions of section 92 of this Act relating to the time within which a claim for compensation may be made continue to apply to a claim:
  - (a) that is made before the commencement of this clause or within the period of 1 year after that commencement, and
  - (b) that relates to an injury or accident that happened before the commencement of the 1998 Act.

**Part 10 Provisions relating to conciliation officers and weekly payments of compensation**

**1 Existing disputes may be assigned to conciliation officer**

A dispute may be assigned to a conciliation officer even though it relates to a matter arising before the commencement of Division 2 of Part 4 of this Act.

**2 Conciliation officer may direct payment in respect of existing disputes**

Sections 104–106B of this Act apply even though the dispute concerned relates to a matter arising before the commencement of those sections.

**3 Provisions relating to commencement of weekly payments not to apply to existing claims**

Sections 102 and 103 of this Act do not apply to any claim for weekly payments made before the commencement of those sections.

**4 [Workers Compensation \(Compensation Court\) Amendment Act 1989](#)**

After the commencement of Schedule 1 (11) to the [Workers Compensation \(Compensation Court\) Amendment Act 1989](#) the following provisions apply:

- (a) a reference of dispute to a review officer pending on that commencement is to be taken as a reference to a conciliation officer,
- (b) a direction given by a review officer before that commencement is to be taken to be a

direction given by a conciliation officer.

## **5 New conciliation arrangements—[WorkCover Legislation Amendment Act 1996](#)**

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

## **6 2000 amending Act—providing copies of evidence before conciliation**

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

# **Part 11 Provisions relating to proceedings before commissioners and the Compensation Court**

## **1 Interest before order for payment**

Section 113 (2) (as inserted by the [WorkCover Legislation Amendment Act 1995](#)) does not apply to the ordering of interest on compensation for injuries received before the commencement of that provision, but the following provisions do apply to the ordering of that interest:

- (a) interest must not be ordered on any compensation payable under this Act for any period before a claim for the compensation was duly made or (where no such claim was duly made before the commencement of the proceedings in the Court) for any period before the worker gave the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of compensation claimed,
- (b) the provisions of paragraph (a) extend to proceedings pending at that commencement but do not affect any order for interest made before that commencement.

## **2 Interest before commencement of sec 19 of [Compensation Court Act 1984](#)**

- (1) Section 113 of this Act extends to authorise the ordering of interest for any period before the commencement of that section but not before 3 December 1984 (being the date of commencement of section 19 of the [Compensation Court Act 1984](#)).
- (2) To remove doubt it is declared that section 19 of the [Compensation Court Act 1984](#) did not authorise the ordering of interest for any period before the commencement of that section (3 December 1984), despite any provision of Schedule 6 to this Act.
- (3) Subclause (2) is taken to have had effect on and from the commencement of section 19 of that Act (including for the purposes of any proceedings pending at the commencement of this clause) but not so as to affect any order for interest made before the commencement of this clause.

### **3 Restrictions on commencement of proceedings**

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

### **4 Restrictions on commencement of proceedings—1998 Act**

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

## **Part 12 Provisions relating to medical examinations and disputes**

### **1 (Repealed)**

### **2 Directions for medical examinations**

A direction to a worker to submit himself or herself for examination under section 51 of the former Act shall, if the examination has not taken place on the commencement of Division 5 of Part 4 of this Act, be deemed to be a direction under the corresponding provision of that Division.

### **3 Referral to medical referee or medical panel**

A referral of any matter to a medical referee or medical panel under a provision of the former Act shall, if a report on the matter has not been made before the commencement of Division 5 of Part 4 of this Act, be deemed to be a referral under the corresponding provision of this Act.

### **4 Existing certificate**

A certificate or report given by a medical referee or medical panel before the commencement of Division 5 of Part 4 of this Act shall, after that commencement, be deemed to have been given under the corresponding provision of this Act.

### **5 Compensation for costs of medical examination etc**

Section 133 of this Act applies to medical examinations required under section 51 of the former Act.

### **6 Application of secs 134 and 135 (medical reports)**

Sections 134 and 135 of this Act apply to medical reports made before as well as to medical reports made after the commencement of those sections.

### **7 Medical disputes**

(1) The amendments made by Schedule 11 (1) and (3), (4) and (6) to the [Workers](#)

*Compensation Legislation Amendment Act 1995* extend to apply in respect of an injury received before, a dispute arising before (including one referred to a medical panel or a medical referee before) and court proceedings commenced before the commencement of those amendments, but not so as to affect any decision of a court made before that commencement.

- (2) A certificate given or purportedly given under section 131 (4) (or under section 51 (5) of the former Act) before the commencement of the amendment made by Schedule 11 (3) to the *Workers Compensation Legislation Amendment Act 1995* is taken to have been validly given if it would have been validly given had the procedures applicable to the reference of disputes to medical panels or medical referees after that commencement been in force when the certificate was given or purportedly given. However, this subclause does not affect any decision of a court made before the commencement of this subclause.
- (3) Section 72A (Restrictions on commencing proceedings concerning hearing loss claims) extends to apply in respect of an injury received before the commencement of that section, but does not apply in respect of court proceedings pending or determined as at that commencement.
- (4) The amendment to section 131 (4) made by Schedule 11 (5) to the *Workers Compensation Legislation Amendment Act 1995* is taken to have commenced on the commencement of that subsection as originally enacted. Accordingly, the validity of a certificate given or purportedly given under section 131 (4) before the commencement of that amendment is not affected merely because the certificate was not given in accordance with any rules of the Compensation Court made for the purposes of section 131 or because there were no such rules at the time the certificate was given. However, that amendment does not affect any decision of a court made before the commencement of this clause.

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

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

## **Part 13 Provisions relating to uninsured liability and indemnity scheme**

### **1 Definition**

In this Part, ***Scheme*** means the Uninsured Liability and Indemnity Scheme.

## **2 Pending claims under former Act**

A claim under the Scheme under section 18C of the former Act and pending on the commencement of Division 6 of Part 4 of this Act shall be dealt with under this Act.

## **3 Claims allowed under former Act**

The Authority shall pay (or continue to pay) out of the WorkCover Authority Fund any claim under the Scheme that the Authority is liable to pay under section 18C of the former Act.

## **4 Reimbursement of Authority for former claims**

The liability of a person to reimburse the fund established under section 41 of the former Act in respect of a claim under the Scheme under section 18C of the former Act shall be deemed to be a liability to reimburse the WorkCover Authority Fund under Division 6 of Part 4 of this Act.

## **5 Section 148—date of operation of substitution of section**

Section 148 of this Act, as substituted by the [Workers Compensation Legislation \(Amendment\) Act 1994](#), applies to payments made under the Scheme before as well as after the substitution of that section.

## **6 Authority's right of subrogation for apportionment and contribution**

Section 148A extends to apply to a payment made by the Authority as referred to in that section before the commencement of that section.

## **7 Claims by directors against uninsured corporations**

Section 4A (as inserted by the [WorkCover Legislation Amendment Act 1995](#)) does not apply in respect of an injury received before the commencement of that section.

## **8 Recovery from directors of corporations liable to reimburse Authority**

Section 145A (which was inserted by the [WorkCover Legislation Amendment Act 1995](#)) does not apply in respect of a contravention of section 155 that occurred before the commencement of section 145A.

# **Part 14 Provisions relating to common law remedies**

## **1 Abolition of common law actions not to apply to existing injuries**

(1) Part 5 of the Act (except section 151AA) does not apply to a cause of action in respect of:

- (a) an injury received by a worker before 4 pm on 30 June 1987, or
- (b) the death of a worker resulting from or caused by such an injury.

- (2) In the case of any such cause of action, the provisions of sections 63, 64 and 64A of the former Act continue to apply.
- (3) In the application of those provisions of the former Act, a reference in those provisions to compensation or proceedings under the former Act includes a reference to compensation or proceedings under this Act.
- (4) For the avoidance of doubt, those provisions of the former Act apply and are taken always to have applied to the recovery of compensation or damages, whether or not the compensation or damages were paid under an award or judgment. For example, compensation or damages may be paid under an agreement.
- (5) If any payment is made under the indemnity referred to in section 64 (1) (b) of the former Act and, at the time of payment, the worker has obtained judgment for damages against the person paying under the indemnity (but judgment has not been satisfied), the payment, to the extent of its amount, satisfies the judgment.
- (6) Subclauses (4) and (5) do not apply to the matter that was the subject of the decision of the District Court on 14 December 1990 in *Nsair v GIO*.

**2 Damages for economic loss in relation to injuries occurring before the commencement of Schedule 2 (2) to the [Workers Compensation \(Benefits\) Amendment Act 1991](#)**

Nothing in subsection (2) of section 151H of this Act (as in force after the commencement of Schedule 2 (2) to the [Workers Compensation \(Benefits\) Amendment Act 1991](#)) affects the operation of subsection (6) of that section as regards any amount (including an adjusted amount) that was mentioned in subsection (2) (b) of that section at any time before that commencement.

**3 Amendments relating to “verbal threshold”, home care services and respite care**

The amendments to Division 3 of Part 5 of this Act made by Schedule 1 to the [Workers Compensation Legislation \(Miscellaneous Amendments\) Act 1994](#) apply to injuries whether received before or after the date of assent to that Act and to court proceedings whether or not commenced before that date. However, those amendments do not apply to any such injury for which an award of damages has been made by a court before that date.

**5 Compensation for non-economic loss—prevention of forfeiture**

- (1) The amendment made by Schedule 7 (2) to the [Workers Compensation Legislation Amendment Act 1995](#) extends to an injury received before the commencement of the amendment.
- (2) However, that amendment does not affect any award of, or compromise or settlement of a claim for, damages made before commencement of the amendment.

## **6 Loss of future earnings—gross weekly earnings**

- (1) The amendment to section 151I made by Schedule 10 (1) to the *Workers Compensation Legislation Amendment Act 1995* is made for the purpose of avoiding doubt, and accordingly section 151I is taken to have been so amended from the commencement of this Act.
- (2) However, that amendment does not affect any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendment.

## **7 Payment of interest**

Section 151M, as substituted by the *WorkCover Legislation Amendment Act 1995*, applies to any claim for damages that:

- (a) is a claim in respect of an injury received by a worker at or after 4 pm on 30 June 1987 or the death of a worker resulting from or caused by such an injury, and
- (b) was not settled or finally determined as at the date on which that section was so substituted.

## **8 Effect of recovery of damages from employer on payment of compensation**

- (1) The amendment to section 151B made by the *WorkCover Legislation Amendment Act 1995* to insert section 151B (4) is made for the purpose of avoiding doubt, and accordingly section 151B is taken to have been so amended from the commencement of that section.
- (2) However, that amendment does not affect any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendment.

## **9 Recovery against both employer and stranger**

- (1) The amendment made to section 151Z by the *WorkCover Legislation Amendment Act 1995* is made for the purpose of avoiding doubt, and accordingly section 151Z is taken to have been so amended from the commencement of that section.
- (2) However, those amendments do not affect:
  - (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or
  - (b) any decision of a court with respect to an action on an indemnity provided for by section 151Z (1) (d) made before that commencement.

## **10 Amendment of sec 151AB**

The amendments made to section 151AB by the *WorkCover Legislation Amendment Act 1995* do not affect:



- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or
- (b) any court proceedings commenced by a worker for damages from the workers' employer (or other person referred to in section 150) before that commencement.

#### **11 Amendment of sec 151A—1998 amending Act**

The amendments made to section 151A by the *Workers Compensation Legislation Amendment Act 1998* apply in respect of injuries received before or after the commencement of those amendments, but do not apply in respect of awards of compensation made by the Compensation Court before that commencement or awards of compensation made by that Court in connection with proceedings instituted before that commencement.

#### **12 Election to claim compensation—2000 amending Act**

- (1) The amendments made to section 151A by the *Workers Compensation Legislation Amendment Act 2000* apply in respect of injuries received before or after the commencement of those amendments, but do not apply in respect of the commencement of proceedings in the Compensation Court before that commencement.
- (2) In a case in which proceedings in the Compensation Court are commenced before the commencement of those amendments:
  - (a) section 151A (3) (b) continues to apply as it was in force when the proceedings were commenced, and
  - (b) section 151A (3) (b) is taken to have been amended by replacing the words “or by the Compensation Court making an award in respect of that permanent loss compensation” with the words “or by the Compensation Court awarding that permanent loss compensation (whether by award, interim award or order)”.
- (3) A reference in this clause to the commencement of proceedings has the extended meaning given to that expression in section 151A (3) (b) by section 151A (3A).

### **Part 15 Provisions relating to insurance**

#### **1 Form of policies of insurance under former regulations**

Until the regulations under section 159 of this Act otherwise provide, the only provisions which a policy of insurance may contain are the provisions contained in the form of policy prescribed, immediately before the commencement of section 159 of this Act, by the regulations under the former Act.

## **2 Definition of small employer for purposes of \$500 excess recoverable from employer**

- (1) Until the regulations otherwise provide, a small business employer, for the purposes of section 160 of this Act, is an employer who is liable under all relevant policies of insurance to pay premiums which in total do not exceed \$2,000.
- (2) For the purposes of subclause (1), a relevant policy of insurance is:
  - (a) the policy under which the claim is made, and
  - (b) any other policy that is issued for the same period or for a part of the period to which the policy referred to in paragraph (a) applies.

## **3 Exemptions from \$500 excess to operate from 30 June 1985**

The following policies of insurance shall be deemed always to have been exempt from section 18 (3) (a2) of the former Act:

- (a) policies of insurance issued or renewed by the Government Insurance Office in respect of Government workers,
- (b) policies of insurance in respect of domestic or similar workers.

## **4 Register of policies kept by insurers**

The register kept by an insurer under section 18A (2A) of the former Act shall, after the commencement of section 163 of this Act, be deemed to be part of the register required to be kept by the insurer under section 163 of this Act.

## **5 (Repealed)**

## **6 Insurance premiums order**

An order under section 30AB of the former Act shall, after the commencement of section 168 of this Act, be deemed to be an insurance premiums order for the purposes of this Act.

### **6A Determination of premium disputes**

- (1) Sections 18AA and 30AB of the former Act (as in force immediately before 30 June 1985) continue to apply to a premium demanded for:
  - (a) a policy of insurance, or
  - (b) a renewal of any such policy,if the premium is demanded for the assumption of risk by an insurer for a period that commenced before 30 June 1985.
- (2) For the purposes of this clause, a reference in section 18AA of the former Act to the

Insurance Premiums Committee is to be read as a reference to the WorkCover Authority.

## **6B Premium calculation disputes**

(1) In this clause:

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

(2) After the commencement of this clause:

- (a) no further premium dispute applications can be made, and
- (b) any matter that could before the commencement of this clause have been the subject of a premium dispute application can instead be the subject of an application for determination by the Authority under section 170 (as amended by the *Workers Compensation Legislation Amendment Act 2000*), and
- (c) any premium dispute application made but not determined before the commencement of this clause is to be dealt with as an application under section 170 (as amended by the *Workers Compensation Legislation Amendment Act 2000*) for determination by the Authority of the relevant aspect of the insurer's determination.

(3) Any premium dispute application dealt with before the commencement of this clause as an application under section 170 for a determination as to the premium to be charged for the issue or renewal of the policy concerned is taken to have been validly dealt with, and any determination of the premium payable is taken to have been validly made, as if the premium dispute application had been a valid application under that section.

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

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

(6) The amendment made to section 170 (4) of this Act by the *Workers Compensation Legislation Amendment Act 2000* relating to the payment of interest extends to

premiums paid before the commencement of the amendment, but so that interest is payable only in respect of periods after that commencement.

## **7 Payment of premiums by instalments**

Until the regulations under section 171 of this Act otherwise provide, premiums under a policy of insurance may be paid by instalments in accordance with the provisions of section 18 (7B) of the former Act.

### **7A Interest on unpaid premiums**

Section 18 (7C) of the former Act applies in respect of the calculation of the interest payable on:

- (a) the full amount of a premium, or
- (b) an instalment of a premium payable by instalments, or
- (c) the adjustment of a premium,

payable in respect of a policy of insurance issued or renewed so as to take effect before the commencement of section 172 of this Act.

## **8 Employers' wages records etc**

The records kept by an employer under section 18 (8) of the former Act shall, after the commencement of section 174 of this Act, be deemed to be part of the records required to be kept by the employer under section 174 of this Act.

## **9 Employers evading correct premiums**

Section 175 applies to policies of insurance issued under section 18 of the former Act.

## **10 Policies issued or renewed since 31 December 1986 to be assigned to new licensed insurers**

(1) This clause applies to policies of insurance:

- (a) issued or renewed by insurers licensed under section 27 of the former Act at or after 4 pm on 31 December 1986, and
- (b) the subject of a re-insurance agreement with the Government Insurance Office.

(2) On the commencement of Division 3 of Part 7 of this Act, policies of insurance to which this clause applies shall be assigned in accordance with the relevant re-insurance agreement to such licensed insurer under Division 3 of Part 7 of this Act as is determined by the Authority.

(3) If a former licensed insurer has a subsidiary licensed under Division 3 of Part 7 of this Act on the commencement of that Division, the policies of insurance issued or

renewed by the former licensed insurer shall be assigned to that subsidiary.

- (4) Any money payable under the re-insurance agreement by a former licensed insurer to an insurer to whom its policies of insurance are assigned or to the Authority may be recovered as a debt in a court of competent jurisdiction.
- (5) An assignment of an insurance policy under this clause:
  - (a) transfers the rights, obligations and liabilities under the policy of the former licensed insurer to the licensed insurer to which the policy is assigned, and
  - (b) does not otherwise affect the rights, obligations or liabilities acquired, accrued or incurred under the policy.
- (6) For the purposes of this Act, any such assigned policies shall be deemed to have been issued or renewed by the licensed insurer to which they are assigned.

### **11 Continuation of licences of self-insurers**

A licence granted, or deemed to be granted, under section 18 (1A) of the former Act and in force immediately before the commencement of Division 5 of Part 7 of this Act, shall be deemed, on and from that commencement, to have been granted under Division 5 of Part 7 of this Act.

### **12 Deposits of self-insurers**

Any amount deposited by an employer with the Treasurer under section 20 of the former Act shall, on and from the commencement of section 213 of this Act, be deemed to have been deposited under section 213 of this Act.

### **13 Insurers' Contribution Fund continued**

- (1) On the commencement of Division 6 of Part 7 of this Act, the Insurers' Contribution Fund established under section 30H of the former Act shall become the Insurers' Contribution Fund established under section 218 of this Act.
- (2) Nothing in this Act or the cognate Acts affects any contribution required to be made to that Fund under Part 3A of the former Act and that Part continues to apply in respect of any such contribution.
- (3) The first contribution required to be paid into that Fund after the commencement of Division 6 of Part 7 shall be the contribution in respect of the financial year commencing on 1 July 1987.
- (4) An injury received by a worker after the commencement of that Division, but for which an employer is indemnified under a policy issued before 30 June 1987, shall be deemed to have been received before that commencement for the purposes of section 221 (4).

**14 Contributions to Insurers' Contribution Fund—premiums received after 30 June 1985 on policies issued before that date**

If:

- (a) an insurer receives premiums after 30 June 1985 in respect of policies of insurance issued before that date, and
- (b) the amount of contribution previously paid by the insurer under section 30J of the former Act (as in force before the commencement of Schedule 2 (2) to the *Workers' Compensation (Further Amendment) Act 1986*) was calculated without taking those premiums into account,

the insurer is liable to pay the additional amount of contribution that would have been payable under that section (as so in force) had those premiums been taken into account, except that in respect of those premiums:

- (c) the additional contribution shall be deemed to be payable at the rate of 7 per cent of the deemed premium income of the insurer (as defined by section 30G of the former Act as so in force),
- (d) that deemed premium income shall be deemed to be calculated at the rates fixed under the former Act as at 29 June 1985, and
- (e) the additional contribution shall be deemed to be payable at such times as the Authority may determine.

**15 Policies issued or renewed before 4 pm on 30 June 1987**

- (1) This clause applies to policies of insurance issued or renewed before 4 pm on 30 June 1987 by insurers licensed under section 27 of the former Act.
- (2) A policy of insurance to which this clause applies extends (and is to be taken to have always extended) to any liability under this Act including liability for injuries received before, at or after 4 pm on 30 June 1987.
- (3) This clause applies despite the fact that the policy of insurance refers to liability under the *Workers' Compensation Act 1926*.

**16 Government workers insurance**

- (1) In this clause, a reference to a relevant provision is a reference to section 160 (6), 168 (4), 193 (definition of **policy of insurance**) or 217 (definition of **premium income**).
- (2) On the commencement of Schedule 8 (10) to the *Workers Compensation (Benefits) Amendment Act 1989*, the Minister is to be taken to have served an order on the Government Insurance Office under the relevant provisions declaring all Government workers (except workers whose employer is the Forestry Commission) to be central Government workers.

**17 Savings provision—transfer of administration of Guarantee Fund from GIO to WorkCover Authority**

Any thing done by the Government Insurance Office under Division 7 of Part 7 of this Act before the commencement of Schedule 3 (8) to the *Workers Compensation (Amendment) Act 1991* that could have been done by the WorkCover Authority if Schedule 3 (8) had been in force is to be taken to have been done by the WorkCover Authority.

**18 Employer liable to pay first \$500 under policy of insurance**

- (1) Section 160 of this Act (as amended by Schedule 3 (1) to the *Workers Compensation (Benefits) Amendment Act 1991*) applies to claims for compensation in respect of injuries to workers that occurred after the commencement of Schedule 3 (1) to that Act.
- (2) Section 160 of this Act (as in force immediately before the commencement of Schedule 3 (1) to the *Workers Compensation (Benefits) Amendment Act 1991*) continues to apply to claims for compensation in respect of injuries to workers that occurred before that commencement.
- (3) A policy of insurance obtained under section 155 of this Act that relates to a period beginning before and ending after the commencement of Schedule 3 (1) to the *Workers Compensation (Benefits) Amendment Act 1991* is to be construed as if, as regards claims under the policy relating to injuries to workers occurring after that commencement, a reference to the employer's agreeing to pay the first \$500 of each claim under the policy, or a lesser amount, were a reference to the employer's agreeing to pay an excess amount of \$500, or a lesser amount, in respect of each weekly compensation claim within the meaning of section 160 of this Act (as in force after that commencement).

**19 Workers compensation policies to cover the liability arising out of certain motor accidents**

- (1) A policy of insurance obtained by an employer under section 155 of this Act is taken to have covered the employer's liability for damages in respect of the death of or an injury to a worker of the employer where:
  - (a) that liability arose during the period that began with 1 February 1990 and ended with 30 September 1991 and was attributable to a motor accident within the meaning of the *Motor Accidents Act 1988*, and
  - (b) the liability of the owner of the motor vehicle involved in the accident was not covered by a third-party policy issued under that Act, and
  - (c) no damages were recoverable from the Nominal Defendant under that Act in respect of the death or injury.

- (2) Subclause (1) has effect irrespective of any regulation under this Act that was in force during the period referred to in that subclause.
- (3) On and from the commencement of this subclause, the provisions of subclause (1) (b) and (c) do not have effect in relation to a liability referred to in subclause (1) unless the liability was the subject of legal proceedings that have been determined by a court before that commencement.

**19A Extent of cover provided by workers compensation policies issued before 1.2.90**

- (1) A policy of insurance obtained during the period between 4 pm on 30 June 1987 and the end of 31 January 1990 by an employer under section 155 of this Act is taken to have covered the employer:
  - (a) for the full amount of the employer's liability under this Act in respect of all workers employed by the employer, and
  - (b) for an unlimited amount in respect of the employer's liability independently of this Act (being a liability under a law of New South Wales), and
  - (c) for the full amount of the indemnity provided by the policy as in force when it was obtained,for any injury to any worker employed by the employer during that period.
- (2) Subclause (1) has effect irrespective of any regulation under this Act that was in force during the period referred to in that subclause.
- (3) However, subclause (1) does not have effect in relation to a liability that was the subject of legal proceedings that have been determined by a court before the commencement of this clause.
- (4) In this clause, ***injury*** includes a dust disease (as defined in the *Workers' Compensation (Dust Diseases) Act 1942*) and the aggravation, acceleration, exacerbation or deterioration of a dust disease (as so defined).

**20 Contributions by insurers—merger of statutory funds under *Workers Compensation Legislation (Amendment) Act 1994***

- (1) In this clause, ***the amending Act*** means the *Workers Compensation Legislation (Amendment) Act 1994*.
- (2) Any contribution payable by an insurer (other than a specialised insurer) under this Act, as in force immediately before the commencement of Schedule 2 to the amending Act, in relation to premium income for a financial year before that commencement is not so payable if it is received by the insurer after that commencement.



- (3) However, this clause does not affect any contribution payable by the insurer under this Act (as amended by that Schedule) in relation to any such premium income.
- (4) If Schedule 2 to the amending Act commences during a financial year, the regulations may modify the application of this clause in respect of that financial year.

## **21 Coverage of policy—liabilities arising independently of the Act**

- (1) The amendments made by Schedule 1 (1), (5) and (10) to the *Workers Compensation Legislation Amendment Act 1995* do not apply so as to affect the validity of a policy of insurance issued or renewed or deemed to have been held before the commencement of those amendments.
- (2) However, a policy of insurance issued or renewed or deemed to have been held under this Act before the commencement of those amendments is taken to cover (and always to have covered) the employer for an unlimited amount in respect of the employer's liability independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury received at or after 4 pm on 30 June 1993 by a worker or trainee employed by the employer.
- (3) Without limiting subsection (1B) of section 155, such a policy of insurance that is in force immediately before the commencement of that subsection does not cover a liability that is not covered by that subsection.

## **23 Ownership of assets of insurer-managed statutory funds**

Section 196 (2), as inserted by the *WorkCover Legislation Amendment Act 1995*, is inserted for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of this Act.

## **24 Time limit for proceedings for failure to insure**

Section 279 (3), as inserted by the *WorkCover Legislation Amendment Act 1995*, does not apply to proceedings for an offence alleged to have been committed before the commencement of that subsection.

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

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

## **26 Specialised insurers—2000 amendments**

- (1) In this clause:

***existing specialised insurer*** means an insurer who is a specialised insurer

immediately before the commencement of this clause.

- (2) On the commencement of section 177A (Special provisions for specialised insurers) of this Act, the licence under this Act of an existing specialised insurer is taken to have been endorsed with a specialised insurer endorsement under that section.
- (3) The licence under the 1998 Act of an existing specialised insurer is taken to have been endorsed at the private insurance start time with a specialised insurer endorsement under section 175A of the 1998 Act.
- (4) An existing specialised insurer is taken to be eligible for a specialised insurer endorsement for the purposes of section 177A of this Act and 175A of the 1998 Act, until the regulations otherwise provide or the Authority otherwise directs in a particular case by notice in writing to the specialised insurer.
- (5) The Authority may by order declare a body corporate to be a body corporate that the Authority is satisfied has acquired the business undertaking of an existing specialised insurer, and the effect of such an order is as follows:
  - (a) the body corporate is taken to be the holder of the licence held by that existing specialised insurer as a licensed insurer under this Act or the 1998 Act, as appropriate, and
  - (b) the body corporate is taken to be an existing specialised insurer within the meaning of this clause.

## **Part 16**

### **1-3 (Repealed)**

## **Part 17**

### **1-6 (Repealed)**

## **Part 18 Special provision relating to coal miners**

### **1 Continuation of weekly compensation payments under former Act**

- (1) In the case of a worker employed in or about a mine, the provisions of clauses 4 and 5 of Part 4 of this Schedule apply as if any period of incapacity for work of the worker occurred as the result of an injury received before the commencement of Division 2 of Part 3 of this Act.
- (2) In the case of a worker employed in or about a mine, the provisions of clause 6 of Part 4 of this Schedule apply as if any liability in respect of weekly payments of compensation resulted from an injury received before the commencement of Division 2 of Part 3 of this Act.

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
  - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and
  - (b) occurs after the commencement of this subclause (as inserted by the [WorkCover Legislation Amendment Act 1996](#)), and
  - (c) occurs during the first 104 weeks of incapacity but after the first 78 weeks of incapacity.
  - (d) (Repealed)
- (4) For the purposes of subclause (3), the first 78 weeks of incapacity and the first 104 weeks of incapacity are the periods of incapacity for work (whether total or partial, or both) of 78 and 104 weeks, respectively, after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.
- (5) The amendments made to subclauses (3) and (4) by the [WorkCover Legislation Amendment Act 1997](#) are taken to have had effect from the commencement of those subclauses (as inserted by the [WorkCover Legislation Amendment Act 1996](#)).

## **2 Regulations to modify or disapply 1996 amendments in relation to coal miners**

- (1) In this clause:

**the 1996 amendments** means the amendments made to this Act by the [WorkCover Legislation Amendment Act 1996](#) except the amendments made by Schedule 1.3 (Journey claims) to that Act.
- (2) The regulations may make provision for or with respect to either or both of the following:
  - (a) modifying any of the 1996 amendments in their application to or in respect of workers employed in or about a mine,
  - (b) exempting any such workers from the operation of any of the 1996 amendments.
- (3) A provision referred to in subclause (2) may, if the regulations so provide, take effect as from the date of assent to the [WorkCover Legislation Amendment Act 1996](#) or a later day.

## **3 2001 amendments not applicable to coal miners**

- (1) Subject to this clause, the 2001 amendments do not apply to or in respect of coal

miners and this Act and the 1998 Act (and the regulations under those Acts) apply to and in respect of coal miners as if the 2001 amendments had not been enacted.

- (2) Subclause (1) does not apply in respect of the amendments made by Schedule 2.2 [2] and [3] to the *Workers Compensation Legislation Amendment Act 2001*.
- (3) The regulations may make provision for or with respect to the following matters in connection with a claim for compensation in respect of an injury received by a coal miner:
  - (a) requiring or providing for the conciliation, mediation or other review of a claim, or any dispute in connection with a claim, before or after the commencement of court proceedings in connection with the claim or dispute,
  - (b) any matter for or in respect of which provision is made by Divisions 3-5 of Part 2 of Chapter 4 of the 1998 Act (whether or not provision so made is inconsistent with any provision of those Divisions),
  - (c) disapplying or modifying the application of any provision or provisions of Divisions 3-5 of Part 2 of Chapter 4 of the 1998 Act,
  - (d) providing for the exercise by officers of the Compensation Court of functions in connection with the conciliation, mediation or other review of a claim or any dispute in connection with a claim,
  - (e) providing for the employment under the *Public Sector Management Act 1988* of officers of the Compensation Court to exercise the functions conferred or imposed on officers of the court pursuant to regulations under this clause.

- (4) In this clause:

**coal miners** means workers employed in or about a mine.

**the 2001 amendments** means the amendments made by the *Workers Compensation Legislation Amendment Act 2001* and Schedules 1, 2, 3 and 8 to the *Workers Compensation Legislation Further Amendment Act 2001*.

## **Part 18AA Provisions consequent on enactment of *Miscellaneous Acts (Workers' Compensation) Amendment Act 1984***

### **1 Repeal of Act does not affect operation of savings, transitional and other provisions**

- (1) Despite the repeal of the *Miscellaneous Acts (Workers' Compensation) Amendment Act 1984*, clauses 1-6 and 8-10 of Schedule 2 to that Act continue to have effect and are taken to have been transferred to this Act.
- (2) Clauses 1-6 and 8-10 of Schedule 2 to the *Miscellaneous Acts (Workers' Compensation) Amendment Act 1984* are transferred provisions to which section 30A

of the *Interpretation Act 1987* applies.

## **Part 18A Additional provisions consequent on enactment of 1998 Act and 1998 amending Act**

### **1 Definition**

In this Part:

**1998 amending Act** means the *Workers Compensation Legislation Amendment Act 1998*.

### **2 Saving of notices of injury, claims for compensation, conciliation etc under repealed provisions of Part 4 of this Act**

- (1) The repeal of Part 4 of this Act by the 1998 amending Act does not affect:
  - (a) any notice of injury, or of incapacity, treatment or damage, under that Part, or
  - (b) any claim for compensation under that Part, or
  - (c) the referral of any dispute to conciliation, any certificate of conciliation or any agreement arising from conciliation under that Part, or
  - (d) any directions under that Part with respect to weekly payments, or
  - (e) any proceedings before the Compensation Court, or any award, order or other decision of the Court, under that Part, or
  - (f) any medical examination, any reference of a medical dispute to a medical referee or panel or any certificate of a medical referee or panel under that Part, or
  - (g) any claim under the Uninsured Liability and Indemnity Scheme, or
  - (h) any order, notice, direction, requirement or other thing given, made or done under that Part.
- (2) Any such thing is, for the purposes of the provisions of the 1998 Act corresponding to Part 4 of this Act, taken to have been given, made or done under those provisions of the 1998 Act.
- (3) The provisions of Part 4 of this Act relating to existing claims referred to in section 87D (as in force immediately before their repeal by the 1998 amending Act) continue to apply to any such claim that has not been finalised before that repeal. For that purpose, any officer of the WorkCover Authority who is a conciliation officer for the purposes of that claim may continue to exercise the functions of a conciliation officer for the purposes of finalising that claim.
- (4) Section 131A (as in force immediately before its repeal) continues to have effect with

respect to references made to a medical practitioner before that repeal and certificates issued with respect to those referrals.

- (5) This clause has effect subject to the regulations under Part 20 of this Schedule and the regulations under the 1998 Act.

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

- (1) The provisions of the 1998 Act that correspond to the repealed provisions of Part 4 of this Act apply to a thing referred to in clause 2 (1) given, made or done after the repeal of Part 4 even if the thing relates to an injury or other relevant matter received or occurring before that repeal.
- (2) The clause does not affect the operation of clause 11 of Part 9 or any decision made by a court before the commencement of the clause.

## **3 Saving of appointment of existing conciliation officers and Principal Conciliator**

- (1) A person holding office as a conciliation officer under a provision of Part 4 of this Act immediately before its repeal by the 1998 amending Act (other than an officer of the WorkCover Authority) is taken to have been appointed as a conciliator under the corresponding provision of Chapter 4 of the 1998 Act.
- (2) The person holding office as the Principal Conciliator under section 87F of this Act immediately before its repeal by the 1998 amending Act is taken to have been appointed as the Principal Conciliator under section 77 of the 1998 Act.

## **4 Saving of regulations under repealed provisions of this Act**

A regulation (or any separate provision of a regulation) made under a provision of this Act that is repealed by the 1998 amending Act is, to the extent that it could be made under a corresponding provision of the 1998 Act, taken to be a regulation made under the 1998 Act.

## **5 References to this Act**

A reference to this Act in any other Act (other than the 1998 Act), in any instrument made under any Act or in any document is to be read as including a reference to the 1998 Act, unless the regulations or the context otherwise requires.

## **6 Abolition of former bodies**

- (1) In this clause:

**former body** means the Workers Compensation Advisory Council established by the Minister before the commencement of the 1998 amending Act, the Board of Directors of the WorkCover Authority of New South Wales constituted under the [WorkCover Administration Act 1989](#) or the Occupational Health, Safety and Rehabilitation Council

of New South Wales constituted under that Act.

- (2) The former bodies are abolished.
- (3) A person who held office as a member of a former body immediately before its abolition ceases to hold office and is not entitled to any remuneration, or compensation, for loss of that office. However, any such person is eligible (if otherwise qualified) to be appointed to a body constituted under the 1998 Act.

## **7 Continuation of WorkCover Authority**

The WorkCover Authority of New South Wales constituted under the 1998 Act is a continuation of, and the same legal entity as, the WorkCover Authority of New South Wales constituted under the [WorkCover Administration Act 1989](#).

## **8 Continuation of WorkCover Authority Fund**

The WorkCover Authority Fund established under the [WorkCover Administration Act 1989](#) is taken to have been established under the 1998 Act.

## **9 Insurers**

- (1) The holder of a licence (an **existing licence**) under Division 5 (Self-insurers) of Part 7 of this Act immediately before the private insurance start time is taken to have been granted a licence (a **new licence**) as a self-insurer under the 1998 Act on the same terms and conditions and subject to the same endorsements as the licence under this Act.
- (2) The new licence is taken to specify as the period during which it is to be in force the period on and from the private insurance start time to the end of the period for which the existing licence was granted under this Act.
- (3) An application for a licence under Division 5 of Part 7 of this Act pending under this Act immediately before the private insurance start time is to be dealt with as an application under the 1998 Act.
- (4) An amount of money deposited by a self-insurer under Division 5 of Part 7 of this Act is taken, for the purposes of the 1998 Act, to be money deposited by the self-insurer under the 1998 Act.

## **Part 18B Additional provisions consequent on enactment of [Workers Compensation Legislation Amendment Act 2000](#)**

### **1 Abolition of Advisory Council and OHS Council**

- (1) In this clause:

**former body** means the Workers Compensation Advisory Council of New South Wales

or the Occupational Health and Safety Council of New South Wales, constituted under the 1998 Act.

- (2) The former bodies are abolished.
- (3) A person who held office as a member of a former body immediately before its abolition ceases to hold office and is not entitled to any remuneration or compensation for loss of that office.
- (4) Any such person is eligible (if otherwise qualified) to be appointed to the Council.

## 2 Membership of Rating Bureau

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

## 3 Industry Reference Groups

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

## 4 Approved medical specialists

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

# Part 18C Provisions consequent on enactment of 2001 amending Acts

## 1 Definitions

In this Part:

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

**lump sum compensation amendments** means the amendments made by Schedule 3 to the [Workers Compensation Legislation Amendment Act 2001](#) and Schedule 2 to the [Workers Compensation Legislation Further Amendment Act 2001](#).

## 2 Operation of amendments generally

- (1) The Workers Compensation Acts apply to and in respect of an existing claim as if the [Workers Compensation Legislation Amendment Act 2001](#) and the [Workers Compensation Legislation Further Amendment Act 2001](#) had not been enacted.



(2) This clause is subject to this Part and to any regulations under this Schedule.

### 3 Lump sum compensation amendments

(1) The lump sum compensation amendments do not apply in respect of an injury received before the commencement of the amendments (even if the injury is the subject of a claim made after the commencement of the amendments) except as follows:

(a) the amendments to section 66A apply in respect of an injury received before the commencement of the amendments (even if the injury is the subject of a claim made after the commencement of the amendments) and so apply:

(i) subject to such modifications to that section as may be prescribed by the regulations, and

(ii) as if an agreement registered before that commencement by the Authority were registered by the Commission,

(b) the repeal of section 72 applies in respect of an injury received before the commencement of the amendments, but only to the extent that the injury is the subject of a new claim.

(2) There is to be a reduction in the compensation payable under Division 4 of Part 3 (as amended by the lump sum compensation amendments) for any proportion of the permanent impairment concerned that is a previously non-compensable impairment. This subclause does not limit the operation of section 323 of the 1998 Act or section 68B of the 1987 Act.

(3) A **previously non-compensable impairment** is loss or impairment that is due to something that occurred before the commencement of the amendments to Division 4 of Part 3 made by the lump sum compensation amendments, being loss or impairment that is of a kind for which no compensation was payable under that Division before that commencement.

(4) No contribution or payment of apportioned share in respect of compensation under Division 4 of Part 3 (as amended by the lump sum compensation amendments) is required under section 15, 16, 17 or 22 to the extent that the employment or injury in respect of which contribution or payment would otherwise be required relates to a previously non-compensable impairment.

### 4 Disputes concerning lump sum compensation claims

(1) In the case of a new claim in respect of an injury received before the commencement of the lump sum compensation amendments, compensation under Division 4 of Part 3 (as in force before the commencement of those amendments) may not be awarded by the Commission if there is an impairment dispute unless the dispute has been

assessed by an approved medical specialist under Part 7 of Chapter 7 of the 1998 Act.

- (2) An assessment certified in a medical assessment certificate pursuant to the medical assessment of an impairment dispute is conclusively presumed to be correct as to the matters in dispute in any proceedings in respect of the claim for compensation concerned.
- (3) For the purposes of this clause, Part 7 of Chapter 7 of the 1998 Act extends (with such modifications as may be prescribed by the regulations) to the assessment of an impairment dispute as if it were a medical dispute under that Part.
- (4) In this clause, ***impairment dispute*** means a dispute about whether a loss or impairment exists and, if so, the nature and extent of the loss or impairment.

#### **5 Regulations to transfer existing claims to new procedures**

- (1) The regulations may make provision for or with respect to requiring a class or classes of existing claims to be treated as new claims for the purposes of the Workers Compensation Acts or specified provisions of those Acts.
- (2) Those claims (***transferred claims***) then cease to be existing claims and become new claims for the purposes of the Workers Compensation Acts or those specified provisions, subject to this Part and the regulations.
- (3) Regulations under this clause may include provisions of a savings or transitional nature consequent on the operation of any such regulations.
- (4) The power to make regulations under subclause (3) extends to authorise the making of regulations whereby provisions of the Workers Compensation Acts are taken to be amended in the manner set forth in the regulations.
- (5) This clause extends to claims in respect of which proceedings are pending in the Compensation Court.

**Note—**

This clause does not apply to coal miner claims. See clause 3 of Part 18.

#### **6 Special provisions for transferred claims**

The provisions of the Workers Compensation Acts apply to and in respect of a transferred claim as a new claim subject to the following modifications:

- (a) an order or award of the Compensation Court in respect of the claim is taken to be an order or award of the Commission,
- (b) such other modifications as may be prescribed by the regulations.

## **6A Transfer of claims pending in Compensation Court**

- (1) If proceedings on a claim for compensation are proceedings in the Compensation Court and the claim becomes a new claim pursuant to regulations under clause 5, the following provisions have effect when the claim becomes a new claim:
  - (a) the Compensation Court ceases to have jurisdiction in respect of the claim,
  - (b) proceedings on the claim in the Compensation Court are transferred to the Commission and become proceedings instituted on the claim in the Commission.
- (2) The regulations may make provisions of a savings and transitional nature consequent on the operation of this clause.
- (3) The power to make regulations under subclause (2) extends to authorise the making of regulations whereby provisions of the Workers Compensation Acts are taken to be amended in the manner set forth in the regulations.

### **Note—**

This clause does not apply to coal miner claims as those claims are not subject to the transfer provisions of clause 5.

## **7 False claims and recovery of overpayments**

Sections 67 and 68 of the 1998 Act continue to apply as in force before their repeal to and in respect of a statement made by a person before their repeal.

## **8 New procedures for making a claim**

- (1) Division 2 of Part 2 (sections 259–264) and Divisions 2–5 of Part 3 (sections 274–286), except section 284, of Chapter 7 of the 1998 Act extend (subject to any modifications prescribed by the regulations for the purposes of this clause) to the making of a claim after the commencement of those sections even if the claim is an existing claim.
- (2) This clause has effect despite section 251 of the 1998 Act.

## **9 Amendments relating to common law damages**

- (1) An amendment made by Schedule 1 to the *Workers Compensation Legislation Further Amendment Act 2001* applies in respect of the recovery of damages after the commencement of the amendment (and so applies even if the injury concerned was received before the commencement of the amendment) but does not apply in respect of the recovery of damages if proceedings for their recovery were commenced in a court before the commencement of the amendment.
- (2) The following transitional arrangements apply in respect of proceedings for the recovery of damages commenced in a court after the commencement of Schedule 1.1, and before the commencement of Schedule 1.2, to the *Workers Compensation*

*Legislation Further Amendment Act 2001:*

- (a) the proceedings are to be adjourned until after the commencement of Schedule 1.2 to that Act, and
  - (b) after the commencement of Schedule 1.2 to that Act, Division 2 of Part 6 of Chapter 7 of the 1998 Act applies to the proceedings but so applies as if a reference to the commencement of proceedings were a reference to the continuation of proceedings.
- (3) An amendment made by Schedule 1.1 to the *Workers Compensation Legislation Further Amendment Act 2001* does not apply in a case where a person has elected to claim permanent loss compensation under section 151A before the commencement of the amendment.

**Note—**

This will enable such an election to be revoked in the circumstances provided by section 151A and common law damages recovered on the basis of the law as in force at the time of the original election.

- (4) In this clause:

**damages** has the same meaning as in Part 5 of this Act.

**Note—**

Schedule 1.1 to the *Workers Compensation Legislation Further Amendment Act 2001* is taken to have commenced at 9.00 am on the day the Bill for that Act was introduced into Parliament.

## **10 Compensation for domestic assistance**

The amendments made by Schedule 3 (Amendments relating to compensation for domestic assistance) to the *Workers Compensation Legislation Further Amendment Act 2001* extend to domestic assistance provided after the commencement of the amendments (whenever the injury concerned was received) but do not so extend in a case where damages (within the meaning of Part 5 of this Act) have been recovered from the employer liable to pay compensation under this Act in respect of the injury.

## **11 Commutations**

- (1) Section 51 (Exit payments by commutation of weekly payments) is taken to have been repealed on the commencement of this clause.
- (2) Section 51 continues to apply, as if it had not been repealed, to the commutation of a liability if:
  - (a) an application for a determination under that section in respect of the liability is pending immediately before the commencement of this clause, but only so as to authorise the determination of such an application before 31 March 2002, or
  - (b) an application for determination of a dispute in respect of the liability is pending

before the Compensation Court immediately before the commencement of this clause, but only so as to authorise the commutation of a liability before 31 March 2002.

- (3) Except as provided by subclause (2), Division 9 (Commutation of compensation) of Part 3 applies to the commutation of a liability arising in respect of an injury received before or after the commencement of that Division.
- (4) A liability may be commuted under Division 9 of Part 3 even if the Compensation Court refused, before the repeal of section 51, to make a determination under that section or under section 15 of the former Act.
- (5) Clauses 6–6B of Part 4 of this Schedule do not apply in respect of the commutation or redemption of a liability after the commencement of this clause (except for the purposes of the continued operation of section 51 pursuant to subclause (2)).

## **12 (Repealed)**

## **13 Operation of conciliation provisions—existing claims**

The regulations may make provision for or with respect to disapplying or modifying the application or operation of any of the provisions of Divisions 3–5 of Part 2 of Chapter 4 of the 1998 Act in respect of existing claims or any class of existing claims.

## **14 Disclosure of information to Commission**

- (1) The Authority or an authorised officer may disclose to the Commission or to a member or member of staff of the Commission information obtained in connection with the administration or execution of this Act or the 1998 Act that is reasonably necessary to enable the Commission to carry out its functions.
- (2) A disclosure of information pursuant to this clause is not prevented by section 243 (Disclosure of information) of the 1998 Act.
- (3) The Authority or an authorised officer is authorised to not comply with a provision of the *Privacy and Personal Information Protection Act 1998* to the extent necessary to enable the disclosure of information pursuant to this clause.
- (4) In this clause:

**authorised officer** means an officer of the Authority, the Department of Industrial Relations or the Compensation Court authorised by the Commission for the purposes of this clause.

## **15 Expiration of current insurer licences**

- (1) A licence granted under Division 3 of Part 7 of the 1987 Act and in force immediately before the commencement of this clause remains in force as if the period specified in

the licence as the period during which it is to be in force were an indefinite period that ends on the expiration date for the licence notified under this clause.

- (2) The Authority may by notice in writing to the holder of such a licence notify the expiration date for the licence.
- (3) This clause continues to have effect despite the enactment of section 176 by the *Workers Compensation Amendment Act 2008*.

## **Part 18D Provisions consequent on enactment of [Compensation Court Repeal Act 2002](#)**

### **1 Definitions**

In this Part:

**coal miner matter** is defined in the 1998 Act.

**District Court conciliator** means a person appointed and employed under the *Public Sector Management Act 1988* as a conciliator in the District Court for the purposes of the conciliation of claims concerning coal miner matters.

### **2 Conciliation in coal miner matters**

- (1) A District Court conciliator has and may exercise all the powers, authorities, duties and functions conferred on a District Court conciliator as a result of the operation of this Part.
- (2) The Chief Judge of the District Court may issue guidelines for or with respect to the referral of disputes for conciliation and the conduct of conciliations by District Court conciliators.
- (3) On and from the repeal of the *Compensation Court Act 1984*, Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act apply to and in respect of coal miner matters subject to the following modifications:
  - (a) a reference in those provisions to a conciliator is to be read as a reference to a District Court conciliator,
  - (b) a reference in those provisions to the Principal Conciliator is to be read as a reference to the Chief Judge of the District Court,
  - (c) sections 77 and 78 (1) do not apply,
  - (d) section 78 (2) is to be read as requiring the District Court to refer a dispute in respect of which proceedings have been commenced in the Court to a District Court conciliator for conciliation,
  - (e) sections 79A and 81A do not apply,

- (f) section 84 (2) is to be read as requiring a District Court conciliator to issue a conciliation certificate at the conclusion of the conciliation (including conclusion by way of cessation pursuant to section 90 as modified by paragraph (j)),
- (g) section 84 (5) is to be read as if the words “A conciliation certificate is a certificate as to such of the following matters as the Principal Conciliator directs” were omitted and the words “A conciliation certificate is a certificate as to the following matters” were inserted instead,
- (h) section 87 (1) and (5) do not apply and section 87 (4) is to be read as providing that District Court conciliators are subject to Rules of the District Court as well as to guidelines issued by the Chief Judge,
- (i) section 88 does not apply,
- (j) section 90 is to be read as providing (in addition to the matters provided for in that section) that:
  - (i) conciliation must cease 35 days after the District Court conciliator notifies the parties that the dispute has been referred to conciliation if, before the expiry of that period, the conciliator has not issued a certificate certifying that the conciliation was successful, unless the parties to the conciliation agree to continue the conciliation for a specified period of time (which period may be extended by further agreement), and
  - (ii) the District Court may not proceed to hear or determine a dispute that has been referred to conciliation until conciliation of the dispute has concluded (whether or not by way of cessation pursuant to section 90, as modified by this paragraph).

### **3 Medical referees and panels—coal miner and existing claim matters**

- (1) The Registrar of the District Court may appoint approved medical specialists to be medical referees for the purposes of coal miner matters and existing claim matters.
- (2) A medical panel is to be constituted for the purposes of a coal miner matter or existing claim matter by 2 or more medical referees nominated by (or in accordance with arrangements made by) the Registrar.
- (3) If an approved medical specialist has been employed as a medical practitioner in connection with any case by or on behalf of an employer or worker, or by an insurer interested in that case, the approved medical specialist is not qualified to act as a medical referee or on a medical panel in that case.

### **4 Matters pending before medical referees and medical panels**

- (1) If a medical dispute or matter referred to a medical referee or medical panel is pending immediately before the repeal of the [Compensation Court Act 1984](#), the

medical referee continues in office and the medical panel continues to be constituted (as if that Act had not been repealed) for the purposes of enabling the medical referee or medical panel to give a certificate or report on the medical dispute or matter concerned.

- (2) A function can be exercised under section 129 (Power to correct mistakes in medical reports or certificates) of the 1998 Act by a medical referee or medical panel after the repeal of the [Compensation Court Act 1984](#) as if that Act had not been repealed and the medical referee or medical panel still held office or were still constituted under that Act.
- (3) This clause applies despite section 10 of the [Compensation Court Repeal Act 2002](#) (which provides for medical referees to cease to hold office on the repeal of the [Compensation Court Act 1984](#)).

## **Part 18E Provisions consequent on enactment of 2002 compliance amendments**

### **1 Definition**

In this Part:

**2002 compliance amendments** means the amendments made by Schedule 2 to the [Workers Compensation Legislation Amendment Act 2002](#).

### **2 Definition of wages**

- (1) An amendment made by the 2002 compliance amendments to the definition of **wages** in section 174 (9):
  - (a) does not apply to wages paid before the commencement of the amendment, and
  - (b) does not apply in respect of a policy of insurance issued or renewed before the commencement of the amendment.
- (2) Paragraphs (b1) and (b2) of the definition of **wages** in section 174 (9) extend to payments that relate to leave that accrued before the commencement of those paragraphs.

### **3 (Repealed)**

### **4 Liability of principal contractors**

- (1) Section 175B extends to a contract entered into before the commencement of that section.
- (2) However, section 175B does not apply in respect of workers compensation insurance premiums payable in respect of work done before the commencement of that section.



## **Part 18F Provisions consequent on enactment of 2003 amending Act**

### **1 Definition**

In this Part:

**2003 amending Act** means the *Workers Compensation Legislation Amendment Act 2003*.

### **2 Requirement to produce records**

A requirement imposed under section 238 (2) (h) of the 1998 Act before the repeal of that paragraph by the 2003 amending Act continues to have effect as if that paragraph had not been repealed.

### **3 Reinstatement of costs provision in regulations**

The amendments made to the *Workers Compensation (General) Regulation 1995* by the *Workers Compensation (General) Further Amendment (Costs in Compensation Matters) Regulation 2003* are taken to have had effect on and from 28 February 2003.

### **4 General operation of amendments**

Except as provided by this Part or the regulations, an amendment made to this Act or the 1998 Act by the 2003 amending Act does not apply in respect of:

- (a) proceedings commenced in the Commission before the commencement of the amendment, or
- (b) a claim for compensation made before the commencement of the amendment, or
- (c) an injury received before the commencement of the amendment.

## **Part 18G Provisions consequent on enactment of 2003 trainee amendments**

### **1 Definitions**

In this Part:

**the 2003 amending Act** means the *Workers Compensation Legislation Amendment (Trainees) Act 2003*.

**trainee** means a trainee within the meaning of section 158 of this Act as in force immediately before its repeal by the 2003 amending Act.

### **2 Insurance for trainees**

- (1) Section 158 (2) of this Act (as in force immediately before its repeal by the 2003 amending Act) continues to have effect in relation to any person employed as a

trainee immediately before that repeal until 31 December 2004, or the end of the traineeship, whichever first occurs (the **end of the continued insurance period**).

- (2) Section 158 of this Act (as in force immediately before its repeal by the 2003 amending Act) continues to apply to and in respect of a policy of insurance deemed by that section to be held by an employer in respect of a trainee referred to in subclause (1) until the end of the continued insurance period.
- (3) The repeal of section 158 by the 2003 amending Act does not affect the validity of a policy of insurance referred to in subclause (2) to the extent that it relates to any liability of the employer with respect to that trainee referred to in section 158 (3) before its repeal that arises before the end of the continued insurance period.
- (4) Clause 50 (2) of the [Workers Compensation Regulation 2003](#) (as in force immediately before its repeal by the 2003 amending Act) continues to have effect in relation to the wages of a trainee referred to in subclause (1) until the end of the continued insurance period.

## **Part 18H Provisions consequent on enactment of 2004 amending Act**

### **1 Definition**

In this Part:

**2004 amending Act** means the [Workers Compensation Legislation Amendment Act 2004](#).

### **2 Appeals**

The amendment made by the 2004 amending Act to section 352 of the 1998 Act extends to an appeal made under that section before the commencement of the amendment.

### **3 Compensation for domestic assistance**

An amendment made by the 2004 amending Act to section 60AA does not apply to domestic assistance provided before the commencement of the amendment but otherwise extends to apply in respect of an injury received before the commencement of the amendment.

### **4 Pre-1995 insurance cover and occupational diseases**

- (1) The amendments made by the 2004 amending Act that insert section 151AAA and amend section 151AB are for the removal of doubt and accordingly extend to liabilities arising before the commencement of the amendments, but not so as to affect any decision of a court, or any compromise or settlement, made before the commencement of the amendments, subject to subclause (2).
- (2) For the purposes of the making and determination of any appeal (including providing

grounds for appeal) against a decision of a court made before the commencement of the amendments referred to in subclause (1), being an appeal pending on or made after that commencement, those amendments extend to liabilities that are the subject of any such decision.

## **Part 18I Provisions consequent on enactment of [Workers Compensation and Other Legislation Amendment Act 2004](#)**

### **1 Payment of funeral expenses**

- (1) Section 27 (a), as substituted by the [Workers Compensation and Other Legislation Amendment Act 2004](#), extends to the death of a worker occurring on or after the date that the Bill for that Act was first introduced into Parliament but before the commencement of the substitution.
- (2) Section 27A, as inserted by the [Workers Compensation and Other Legislation Amendment Act 2004](#), extends to the death of a worker occurring on or after the date that the Bill for that Act was first introduced into Parliament but before the commencement of that section.

### **2 Appointment of approved medical specialists**

The appointment of an approved medical specialist under section 320 of the 1998 Act made before the commencement of section 320 (1A), as inserted by the [Workers Compensation and Other Legislation Amendment Act 2004](#), cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal on the ground that the appointment was made in consultation with, or on the recommendation of, the Council or a committee of the Council.

### **3 Qualifications to assess permanent impairment**

Section 376 (1) (a1) of the 1998 Act, as inserted by the [Workers Compensation and Other Legislation Amendment Act 2004](#), extends to guidelines issued before the commencement of that paragraph.

## **Part 18J Provisions consequent on enactment of [Workers Compensation Legislation Amendment \(Miscellaneous Provisions\) Act 2005](#)**

### **1 Definition**

In this Part:

**the amending Act** means the [Workers Compensation Legislation Amendment \(Miscellaneous Provisions\) Act 2005](#).

## 2 Application of claim review provisions

(1) In this clause:

**claim review provisions** means sections 287A and 289A of the 1998 Act, as inserted by the amending Act.

(2) The claim review provisions apply in respect of a claim for compensation made before the commencement of section 287A as follows:

- (a) the provisions apply to a claim for which a notice under section 54 of this Act, or section 74 of the 1998 Act, is given after that commencement,
- (b) the provisions apply to any other claim referred to the Registrar for determination by the Commission after the end of the period of 6 months after that commencement.

## 3 Expedited assessment procedures

Division 2A of Part 5 of Chapter 7 of the 1998 Act, as inserted by the amending Act, applies to a dispute arising before the commencement of that Division but does not apply to a matter referred to the Commission before that commencement.

## 4 Medical disputes

(1) In this clause:

**medical assessment provisions** means section 321 (3) and (4) of the 1998 Act, as inserted by the amending Act.

**medical reconsideration provisions** means sections 327 (6) and 329 (1A) of the 1998 Act, as inserted by the amending Act.

(2) The medical assessment provisions apply in respect of an injury that occurred before the commencement of the provisions but do not apply to a matter referred to the Commission before that commencement.

(3) The medical reconsideration provisions apply in respect of a medical assessment made under Part 7 of Chapter 7 of the 1998 Act before the commencement of the provisions.

## 5 Appeals from decisions of Arbitrators

The amendments made to section 352 of the 1998 Act by the amending Act apply in respect of a claim for workers compensation made before the commencement of the amendments.

## 6 Reconsideration of decisions

Part 11 of Chapter 7 of the 1998 Act, as inserted by the amending Act, applies in respect

of decisions made before the commencement of that Part.

## **7 Clarification of deeming provisions relating to employment of workers**

The amendments to Schedule 1 to the 1998 Act, which were made by Schedule 2.1 (other than Schedule 2.1 [4]) to the amending Act, were inserted to avoid doubt and accordingly the Schedule is taken to apply in respect of any injured worker, including a worker who was injured or died before the commencement of those amendments, but not so as to affect any decision of a court made before the commencement of those amendments.

## **8 Contractors under labour hire services arrangements**

- (1) Clause 2A of Schedule 1 to the 1998 Act, which was inserted by Schedule 2.1 [4] to the amending Act, applies:
  - (a) in relation to a labour hire agency (as referred to in that clause) that has obtained and maintains a policy of insurance as at the commencement of the clause—only on and from the renewal of that policy or the issue of the agency's next policy of insurance, and
  - (b) in relation to a labour hire agency (as referred to in that clause) that does not have a policy of insurance as at the commencement of the clause—on and from that commencement.
- (2) This clause does not limit any requirement or liability that a labour hire agency or any other person has under the 1998 Act otherwise than by operation of clause 2A of Schedule 1 to the 1998 Act.

## **9 Increased compensation for permanent back injuries under section 66**

Section 66 (2A), as inserted by the amending Act, does not apply to permanent impairment that results from an injury that occurred before 1 January 2006.

## **10 Agreements relating to compensation for permanent impairment**

- (1) Section 66A, as in force immediately before its repeal by the amending Act, continues to apply to and in respect of any agreement registered in accordance with that section prior to its repeal.
- (2) Section 66A, as inserted by the amending Act, extends to injuries that occurred before the commencement of that section.

## **11 Amendments as to costs made by the amending Act**

- (1) The amendments made by the amending Act to sections 340 and 342 of the 1998 Act extend to proceedings commenced before the commencement of those amendments.
- (2) The amendments made by the amending Act to sections 345 and 352 of the 1998 Act do not apply to appeals commenced before the commencement of those

amendments.

## **Part 19 Miscellaneous provisions**

### **1 Repeal of former Acts on different dates**

Different days may be appointed for the commencement of section 281 of this Act (Repeals) in its application to Schedule 5 for the purpose of repealing different Acts (or different provisions of the same Act) on different days.

### **2 Commencement of certain licensing provisions on date of assent**

Division 3 of Part 7 of this Act, except section 179 (Offence—unlicensed insurers), has effect as if it had commenced on the date of assent to this Act for the purposes of the making and determination of any application for a licence under that Division.

### **3 Savings for amending Acts etc**

The repeal by this Act of any enactment does not affect any amendment or validation made by the enactment.

### **4 Transitional arrangements for allocation of work between Judges and commissioners**

Until the repeal of section 109 of the *Workers Compensation Act 1987*:

- (a) the Chief Judge of the Compensation Court may exercise any of the powers of the Senior Workers Compensation Commissioner under that section to transfer any matter or proceedings to the Compensation Court, and
- (b) the Senior Workers Compensation Commissioner may only exercise those powers in accordance with the directions of the Chief Judge.

### **5 Repeal of Regulations relating to commissioners and review officers**

The following Regulations are repealed:

*Workers Compensation (Fees and Costs) Regulation 1988*

*Workers Compensation (Review Officers) Regulation 1987.*

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

- (1) In this clause:

**the Public Trustee amendments** means the amendments made by Schedule 1.9 to the *WorkCover Legislation Amendment Act 1996*.

- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made.

- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*.
- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee.
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee.

## **Part 19A Provisions consequent on enactment of *Workers Compensation Amendment (Insurance Reform) Act 2003***

### **1 Definitions**

In this Part:

**amending Act** means the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

**managed fund insurer** means an insurer who is a licensed insurer (other than a specialised insurer) immediately before the commencement of this Part.

**relevant date**, in relation to a managed fund insurer, means the date appointed by the Authority by order published in the Gazette as the relevant date for the insurer for the purposes of this Part.

**statutory fund** means a statutory fund maintained by a managed fund insurer immediately before the relevant date for the insurer.

### **2 Licensing of insurers**

On and from the commencement of this Part, a licence may only be granted under Division 3 of Part 7 of this Act if it is endorsed with a specialised insurer endorsement.

#### **Note—**

Section 176 provides that a licence may be granted under Division 3 of Part 7 of this Act only if the licence is endorsed with a specialised insurer endorsement and granted to an existing licence holder on the expiry of a

licence granted to the existing licence holder under that Division.

### **3 General transitional arrangements in relation to managed fund insurers**

- (1) On and from the relevant date for a managed fund insurer, the following provisions have effect:
  - (a) the managed fund insurer cannot issue a policy of insurance for the purposes of this Act,
  - (b) the Nominal Insurer becomes the insurer under every policy of insurance issued by the managed fund insurer before that date as if the Nominal Insurer had issued the policy instead of the licensed insurer,
  - (c) anything done or omitted to be done by the managed fund insurer before that date in respect of such a policy of insurance or any claim or liability under the policy is taken to have been done by the managed fund insurer as agent for the Nominal Insurer,
  - (d) a reference to a managed fund insurer in any contract that is of a class prescribed by regulations is, to the extent necessary to give effect to the other provisions of this subclause and subject to the regulations, taken to be a reference to the Nominal Insurer,
  - (e) any liability of a managed fund insurer as insurer under such a policy of insurance existing immediately before that date is taken to be a liability of the Nominal Insurer as insurer under that policy,
  - (f) any claim or proceeding against the managed fund insurer in respect of such a policy of insurance or any claim or liability under the policy is taken to be a claim or proceeding against the Nominal Insurer,
  - (g) the managed fund insurer may (except as otherwise provided by the regulations or as directed by the Nominal Insurer) continue to act as agent for the Nominal Insurer.
- (2) The regulations may make provision for the arrangements that are to apply in relation to a managed fund insurer who acts as agent for the Nominal Insurer under subclause (1) (g).
- (3) Nothing in subclause (1) or (2) gives rise to any entitlement on the part of a managed fund insurer to be appointed as a scheme agent.
- (4) Nothing in subclause (1) affects the liability of a managed fund insurer (or of a director of a company that is a managed fund insurer) for any breach of duty as a trustee arising under this Act or any other Act or law whether before or after the commencement of this Part.



#### **4 Closure of statutory funds**

- (1) On the relevant date for a managed fund insurer, the statutory fund of the managed fund insurer is closed and the assets and liabilities of that fund are transferred to, and become the assets and liabilities of, the Insurance Fund.
- (2) Any amount payable to the statutory fund of a managed fund insurer before the relevant date for the insurer that is unpaid on that date becomes payable on that date to the Insurance Fund.

#### **5 Certain repealed provisions continue to have effect until relevant date**

The provisions repealed by Schedule 2 [47] to the amending Act continue to have effect, despite their repeal, in relation to a managed fund insurer until the relevant date for the insurer.

#### **6 Cancellation of licence of managed fund insurer**

- (1) On the relevant date for a managed fund insurer, the licence of the managed fund insurer under Division 3 of Part 7 of this Act is cancelled.
- (2) No compensation (including compensation for loss of business or any goodwill associated with a business) is payable in respect of the cancellation of such a licence.
- (3) The cancellation of the licence of a managed fund insurer does not in itself give rise to any right of action against the managed fund insurer, the Authority, the Nominal Insurer or a scheme agent.
- (4) A managed fund insurer has no entitlement to appointment as a scheme agent and is not entitled to any compensation as a result of not being appointed as a scheme agent.

#### **7 Insurance records of managed fund insurers**

- (1) On the relevant date for a managed fund insurer, all insurance records of the managed fund insurer become the property of the Nominal Insurer.
- (2) If an insurance record is in such a form that information can only be produced or made available from it by means of the use of particular equipment or information technology (such as computer software), the managed fund insurer must, after the relevant date, take such action as may be necessary to ensure that the information remains able to be produced or made available to the Nominal Insurer.
- (3) The regulations may:
  - (a) make provision for or with respect to the requirements of managed fund insurers in relation to the insurance records of the insurer, and
  - (b) create offences punishable by a penalty not exceeding 200 penalty units for

contravention of any such requirement.

(4) In this clause:

***insurance records*** of a managed fund insurer means all records that are the property of the insurer and that relate to policies of insurance issued by the insurer or to any claim, judgment or award made in respect of any such policies.

## **8 Existing agreements under section 208AA**

An agreement entered into under section 208AA and in force immediately before the commencement of Schedule 2 [58] to the amending Act is taken to be an agreement entered into under that section as amended by the amending Act.

## **9 Premiums Adjustment Fund**

On the repeal of section 203 by Schedule 2 [47] to the amending Act, the assets and liabilities of the Premiums Adjustment Fund become assets and liabilities of the Insurance Fund.

## **10 Insurers' Contribution Fund**

(1) On the repeal of section 218 by Schedule 2 [66] to the amending Act, the assets and liabilities of the Insurers' Contribution Fund become assets and liabilities of the Insurance Fund.

(2) Any entitlement to payment from the Insurers' Contribution Fund immediately before the repeal of section 218 becomes an entitlement to payment from the Insurance Fund.

## **11 Pending claims etc under ULIS**

Without limiting clause 1 of Part 20 of this Schedule, the regulations may make provision for or with respect to the following:

- (a) the manner in which claims made under Division 6 of Part 4 and pending on the commencement of Schedule 2 [8] to the amending Act are to be dealt with,
- (b) the transfer to the Nominal Insurer and the Insurance Fund of the assets, rights and liabilities of the Authority and the WorkCover Authority Fund in relation to claims made under Division 6 of Part 4 before that commencement,
- (c) any other matter that is consequential on the amendments made to Division 6 of Part 4 by the amending Act.

## **Part 19B Provisions consequent on enactment of [Workers](#)**

## Compensation Legislation Amendment Act 2006

### 1 Bringing about common renewal date for group member's policies: section 175G

- (1) Section 175G of this Act (Members of group to have policies with same scheme agent and common renewal date) does not apply to an employer that is a member of a group existing at the commencement of that section until one of the following events occurs:
  - (a) one employer who is a member of the group obtains a policy of insurance for the first time,
  - (b) one employer who is a member of the group renews a policy of insurance.
- (2) At the time that an employer who is a member of a group obtains a policy of insurance for the first time, or renews a policy of insurance, as referred to in subclause (1), all other members of the group who have obtained and maintained policies of insurance must arrange for those policies to be altered, or transferred to another scheme agent, or both, so that all those members comply with section 175G of this Act.

## Part 19C Provisions consequent on enactment of Industrial Relations Further Amendment Act 2006

### 1 Application of Part 8

- (1) Part 8 (as inserted by the *Industrial Relations Further Amendment Act 2006*) applies in relation to injured workers who are dismissed on or after the commencement of the Part.
- (2) The provisions of Part 7 of Chapter 2 of the *Industrial Relations Act 1996* (as in force immediately before their repeal by the *Industrial Relations Further Amendment Act 2006*) continue to apply in relation to injured employees within the meaning of that Part who were dismissed before the day on which that Part was repealed as if the provisions had not been repealed.

## Part 19D Provisions consequent on enactment of Workers Compensation Amendment Act 2008

### 1 Single policy of insurance

Section 155 (1AA) does not apply in respect of a policy of insurance in force immediately before the date of commencement of that subsection during the period that is the current period of insurance for the policy on that date of commencement.

## 2 Exemption from obtaining insurance

- (1) Section 155AA does not apply in respect of a financial year before the financial year commencing on 1 July 2008.
- (2) For the purposes of this clause and section 155AA, the period after 4 pm on 30 June 2008 forms part of the financial year commencing on 1 July 2008.

## Part 19E Provisions consequent on enactment of [Workers Compensation Legislation Amendment \(Financial Provisions\) Act 2008](#)

### 1 Payment of contribution on premium income of Nominal Insurer

- (1) There is payable from the Insurance Fund to the WorkCover Authority Fund an amount equal to the relevant percentage of premium income of the Nominal Insurer that is due but unpaid at the end of June 2008 less a provision for any premiums that the Nominal Insurer determines are unlikely to be paid. The **relevant percentage** is the percentage rate of contribution payable under section 39 (2) of the 1998 Act.
- (2) Any liability of the Nominal Insurer to pay a contribution under section 39 of the 1998 Act in respect of premium income of the Nominal Insurer received before 1 July 2008 continues despite the amendment of that section by the [Workers Compensation Legislation Amendment \(Financial Provisions\) Act 2008](#).
- (3) A payment required by this clause is to be made as soon as practicable after 30 June 2008.

## Part 19F Provisions consequent on enactment of [Workers Compensation Legislation Amendment \(Benefits\) Act 2008](#)

### 1 Definition

In this Part:

**2008 amending Act** means the [Workers Compensation Legislation Amendment \(Benefits\) Act 2008](#).

### 2 Changes to death benefit

- (1) The amendments made by the 2008 amending Act with respect to compensation payable under Division 1 (Compensation payable on death) of Part 3 (a **death benefit**) extend to deaths that occur on or after 24 October 2007 (whenever the injury occurred), but not to a death resulting from an injury received before 30 June 1987.
- (2) In the case of a death benefit that is payable to a worker's legal personal

representative in respect of death occurring before the commencement of this clause, the regulations may make provision for payment of the death benefit to any beneficiary or creditor of the deceased worker's estate (instead of to the legal personal representative) where administration of the deceased's estate is finalised before or within 6 months after the commencement of this clause.

- (3) Regulations under subclause (2) may extend to compensation payable under section 10 (a) or 26 (a) of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

## **Part 20 Savings and transitional regulations**

### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of the following Acts:

this Act and the cognate Acts

the *Workers Compensation (Amendment) Act 1988*

the *Workers Compensation (Benefits) Amendment Act 1989*

the *Workers Compensation (Amendment) Act 1991*

the *Workers Compensation (Benefits) Amendment Act 1991*

the *Workers Compensation Legislation (Miscellaneous Amendments) Act 1994*

the *Workers Compensation Legislation (Amendment) Act 1994*

*Workers Compensation Legislation Amendment Act 1995*

*WorkCover Legislation Amendment Act 1995*

*WorkCover Legislation Amendment Act 1996*

*Workers Compensation Legislation Amendment Act 1998*

*Workplace Injury Management and Workers Compensation Act 1998*

*Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998*

*Workers Compensation Legislation Amendment Act 1999*

*Intergovernmental Agreement Implementation (GST) Act 2000*

*Workplace Injury Management and Workers Compensation Amendment (Private Insurance) Act 2000*

*Workers Compensation Legislation Amendment Act 2000*

*Workers Compensation Legislation Amendment Act 2001*

*Workers Compensation Legislation Further Amendment Act 2001*

*Workers Compensation Legislation Amendment Act 2002*

*Workers Compensation Legislation Amendment Act 2003*

*Workers Compensation Amendment (Insurance Reform) Act 2003*

*Workers Compensation Legislation Amendment (Trainees) Act 2003*

*Workers Compensation Legislation Amendment Act 2004*

*Workers Compensation and Other Legislation Amendment Act 2004*

*Statute Law (Miscellaneous Provisions) Act 2005*—to the extent that it amends the *Coal Industry Act 2001*, the *Sporting Injuries Insurance Act 1978*, the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, the *Workers' Compensation (Dust Diseases) Act 1942* and the *Workplace Injury Management and Workers Compensation Act 1998*

*Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005*

*Workers Compensation Legislation Amendment Act 2006*

*Industrial Relations Further Amendment Act 2006*—to the extent that it amends this Act and repeals Part 7 of Chapter 2 of the *Industrial Relations Act 1996*

*Workers Compensation Amendment (Permanent Impairment Benefits) Act 2006*

*Workers Compensation Amendment Act 2008*

*Workers Compensation Legislation Amendment (Financial Provisions) Act 2008*

*Workers Compensation Legislation Amendment (Benefits) Act 2008*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication in the Gazette.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

(5) Subject to subclause (6), the power to make regulations under subclause (1) extends to authorise the making of regulations whereby the provisions of this Act, the cognate Acts or the Acts amended by the cognate Acts, or any of them, are deemed to be amended in the manner set forth in the regulations.

(6) Regulations made pursuant to subclause (5):

(a) may only be made for or with respect to matters for or with respect to which this Act and the cognate Acts make provision,

(b) shall have no effect in so far as they would, but for this paragraph, have the effect of amending (directly or indirectly) this subclause, and

(c) shall, unless sooner revoked or otherwise ceasing to have effect, be deemed to be revoked on 31 December 1999,

and no such regulation may be made or published after that date.

## **2 Effect of GST**

(1) Without limiting clause 1 of this Part, the regulations may contain provisions of a savings or transitional nature that may be necessary or convenient as a consequence of the enactment of the Acts of the Commonwealth that impose, or relate to the imposition of, goods and services tax.

(2) A provision referred to in subclause (1) shall, if the regulations so provide, have effect despite any other provision of this Act.

(3) A regulation made pursuant to this clause, unless sooner revoked or otherwise ceasing to have effect, ceases to have effect on 1 July 2003.

(4) A regulation made pursuant to this clause may not be made or published after 1 July 2003.