

# Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

[1987-83]



New South Wales

## Status Information

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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**  
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

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# Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83



New South Wales

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# Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83



New South Wales

An Act to continue the special compensation scheme for bush fire fighters, emergency service workers and rescue association workers; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) The day referred to in subsection (2) shall not be earlier than the day appointed for the repeal of Parts 2A and 2B of the *Workers' Compensation Act 1926*.

### 3 Definitions

- (1) In this Act:

**Authority** means the WorkCover Authority constituted under the 1998 Act.

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

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

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

- (2) Expressions used in this Act have the same meanings as they have in the Principal Act unless a contrary intention appears.
- (3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4 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) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

## **Part 2 Bush fire fighters compensation**

### **Division 1 Preliminary and interpretation**

#### **5 Definitions** (cf former s 17B (1))

In this Part:

***associated operation or work*** is defined by section 8.

***bush fire*** means a bush or grass fire or a fire in or at any building or a fire of any kind at which a rural fire brigade or fire fighter operates or is in attendance for the purpose of its control or suppression.

***fighting***, in relation to a bush fire, includes any reasonable act or operation performed by a fire fighter at or about the scene of or in connection with a bush fire which is necessary for, directed towards, or incidental to, the control or suppression of the fire or the prevention of the spread of the fire, or in any other way necessarily associated with the fire.

***fire fighter*** means:

- (a) an official fire fighter, being the captain, deputy captain or any member of a rural fire brigade or the group captain or deputy group captain of any rural fire brigades,
- (b) any person who, without remuneration or reward, voluntarily and without obligation engages in fighting a bush fire:
  - (i) with the consent of or under the authority and supervision of the captain, or deputy captain of a rural fire brigade or the group captain or deputy group captain of any rural fire brigades, or
  - (ii) in conjunction with any civil authority, and
- (c) any person who, without remuneration or reward, voluntarily and without obligation engages in fighting a bush fire and who, in the opinion of the Authority having regard to all the circumstances, should be deemed to be a fire fighter.

***injury*** means an injury to which this Part applies under section 7.

***official fire fighter*** means the captain, deputy captain or any member of a rural fire brigade, or the group captain or deputy group captain of any rural fire brigades.

***personal property damage***, in relation to a fire fighter, means the destruction or loss of or damage to:

- (a) the clothing or personal effects on the fire fighter, or
- (b) the crutches, artificial members, eyes or teeth, or other artificial aids, or spectacles of the fire fighter.

***relevant journey*** is defined by section 9.

***rural fire brigade*** means any rural fire brigade formed under the [Rural Fires Act 1997](#).

## **6 Operation of Part outside the State** (cf former s 17A (2))

This Part applies to and in respect of injury or destruction or loss of or damage to property sustained within the Commonwealth and its Territories but outside New South Wales by:

- (a) any person referred to in paragraph (a) of the definition of ***fire fighter*** in section 5,
- (b) any person referred to in paragraph (b) of that definition, resident in New South Wales, or
- (c) any person referred to in paragraph (c) of that definition, resident in New South Wales, if the bush fire referred to in that paragraph was within or partly within or, in the opinion of the Authority, likely to spread to New South Wales,

as though the injury, destruction, loss or damage had been sustained in New South Wales.

## **7 Injuries to which Part applies** (cf defn of “injury” in former s 17B (1))

- (1) This Part applies to personal injury received by a fire fighter:
  - (a) arising out of or in the course of fighting a bush fire, or
  - (b) arising out of or in the course of a relevant journey by the fire fighter in relation to a bush fire.
- (2) This Part also applies to personal injury received by an official fire fighter (or a person of a prescribed class) arising out of or in the course of:
  - (a) the carrying out of an associated operation or work, or
  - (b) a relevant journey by the official fire fighter (or the person) in relation to an associated operation or work.
- (3) This Part also applies to an injury being a disease which is contracted, aggravated or

exacerbated or which deteriorates in the course of doing anything referred to in subsection (1) or (2) if the doing of that thing was a contributing factor.

**8 Associated operation or work** (cf defn of “injury” in former s 17B (1))

(1) An associated operation or work is:

- (a) a bush fire preventive operation,
- (b) preparatory work,
- (c) work of a prescribed kind (which may, but need not, be related to bush fire fighting, bush fire preventive operations or preparatory work), or
- (d) work which, in the opinion of the Authority having regard to all the circumstances and the advice of the Minister administering the *State Emergency Service Act 1989*, should be deemed to be work of a kind to which this paragraph applies.

(2) A bush fire preventive operation is:

- (a) the burning, ploughing or clearing of firebreaks, or
- (b) any other operation including (but without being limited to) the inspection of fire breaks or other works and the survey of areas for the purpose of detecting fires or ascertaining the need for precautions against outbreak of fire,

carried out by a rural fire brigade for the purpose of preventing the outbreak of bush fires or of restricting the spread of bush fires should they occur.

(3) Preparatory work is:

- (a) the training or instruction of persons, by means of demonstrations, exercises, competitions or otherwise, in the fighting of bush fires, or in the carrying out of bush fire preventive operations, or
- (b) the examination, preparation, maintenance, adjustment or repair of any vehicle, equipment or thing used or intended to be used by a rural fire brigade for the fighting of bush fires or for the carrying out of bush fire preventive operations,

and includes the giving or receiving of such training or instruction or the carrying out of or assisting to carry out such examination, preparation, maintenance, adjustment or repair.

**9 Relevant journeys** (cf para (b) and (i) of defn of “injury” in former s 17B (1))

(1) A journey by a fire fighter is a relevant journey if:

- (a) it is a journey between the place of abode or place of employment of the fire fighter, or place from which the fire fighter was called, and a bush fire, and

(b) it is made exclusively and genuinely for the purpose of engaging in fighting a bush fire.

(2) A journey by an official fire fighter is a relevant journey if it is a journey under subsection (1) or if:

(a) it is a journey between the place of abode or place of employment of the official fire fighter, or place from which the official fire fighter was called, and the place where any associated operation or work was or is to be carried out, and

(b) it is made exclusively and genuinely for the purpose of engaging in the carrying out of the operation or work.

## **Division 2 Entitlement to compensation**

### **10 Compensation payable for injury or death** (cf former s 17C)

A fire fighter who has received an injury (and in the case of the death of the fire fighter, the fire fighter's dependants) shall be entitled to receive compensation as follows:

(a) where death results from the injury—the compensation payments prescribed by paragraphs (a) and (b) of section 25 (1) of the Principal Act,

(b) where total or partial incapacity for work results from the injury—the weekly payments of compensation prescribed by Division 2 of Part 3 of the Principal Act,

(c) where medical or related treatment, hospital treatment, occupational rehabilitation service or ambulance service becomes necessary as a result of the injury—the benefits prescribed by Division 3 of Part 3 of the Principal Act,

(d) where the worker receives an injury mentioned in the Table to Division 4 of Part 3 of the Principal Act—the compensation prescribed by that Division (including compensation for any pain and suffering resulting from that injury).

### **11 Provisions relating to compensation for injury or death**

(1) This section applies to compensation payable under section 10.

(2) If death results from the injury, the compensation prescribed by section 25 (1) (a) of the Principal Act is payable even if the fire fighter left no dependants or left only dependants in part dependent for support on the fire fighter.

(2A) (Repealed)

(3) If the fire fighter left no dependants, the compensation payable under subsection (2) is payable to the legal personal representative of the fire fighter.

(4) The compensation payable under subsection (2) to each dependant of a fire fighter may be apportioned by the Authority.



- (4A) The compensation payable under subsection (2) is not to be apportioned if a fire fighter leaves only one dependant (whether wholly or partly dependent on the fire fighter for support) and the whole of the compensation payable under subsection (2) is to be paid to that one dependant.
- (4B) In apportioning the compensation payable under subsection (2) between 2 or more dependants, the whole of the amount payable is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full amount of the compensation payable under subsection (2)).
- (5) In determining the weekly payments of compensation payable to a fire fighter, the fire fighter's current weekly wage rate (if less than the fire fighter's average weekly earnings) shall be increased by the amount of the difference.
- (6) In determining the weekly payments of compensation payable to a fire fighter:
  - (a) the maximum weekly payment prescribed by section 35 of the Principal Act does not apply, and
  - (b) section 40 of the Principal Act (weekly payment during partial incapacity) shall be construed as if the words "but not exceeding \$1,000" were omitted from that section.
- (7) If a fire fighter was not working under a contract of service at the time the fire fighter received the injury, the fire fighter's "average weekly earnings" or "current weekly wage rate" for the purposes of this Part shall be such amount as the Authority considers is fair and reasonable in the circumstances.
- (8) Compensation payable to a fire fighter or other person under this Part shall be reduced by such amount as the fire fighter or other person is entitled to or has received as compensation in respect of the same injury under Part 3 of this Act or under any provisions of the Principal Act, or under any Act or ordinance relating to workers' compensation of any State or Territory of the Commonwealth.

**12 Compensation for damage etc to personal property, vehicles etc** (cf former s 17D)

- (1) Compensation is payable under this Part in respect of:
  - (a) personal property damage to a fire fighter while fighting a bush fire or in the course of a relevant journey by the fire fighter in relation to a bush fire, and
  - (b) personal property damage to an official fire fighter while carrying out an associated operation or work or in the course of a relevant journey by the official fire fighter in relation to an associated operation or work.
- (2) Compensation is payable under this Part in respect of the destruction of, damage to or loss of:

- (a) any vehicle, equipment or thing used in connection with fire fighting at or near the scene of a bush fire and owned by or in the possession or custody of a fire fighter,
- (b) any vehicle, equipment or thing used in connection with an associated operation or work at or near the place where the operation or work was being carried out and owned by or in the possession or custody of an official fire fighter carrying out the operation or work,
- (c) any vehicle used for the conveyance of a fire fighter on a relevant journey in relation to a bush fire and owned by or in the possession or custody of the fire fighter, or
- (d) any vehicle used for the conveyance of an official fire fighter on a relevant journey in relation to an associated operation or work and owned by or in the possession or custody of the official fire fighter.

**13 Provisions relating to compensation for personal property, vehicles etc** (cf former s 17D)

- (1) The amount of the compensation payable under section 12 shall be such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss.
- (2) The amount payable under section 12 shall not exceed:
  - (a) in respect of all destruction of and damage to and loss of the crutches, artificial members, eyes, teeth, artificial aids, or spectacles of a person, sustained on any one occasion—the amount applicable under section 76 of the Principal Act in respect of damage referred to in that section, or
  - (b) in respect of all destruction of and damage to and loss of clothing or personal effects on a person, sustained on any one occasion—the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section.
- (3) Compensation is not payable under section 12 in respect of any loss:
  - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
  - (b) resulting from reasonable wear and tear.
- (4) Compensation is not payable under section 12 if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source.

**14 Compensation for personal property, vehicles etc—special circumstances** (cf former s 17D)

- (1) Where, but for this section, a person would not be entitled to compensation under section 12 by reason only of the fact that the article destroyed, damaged or lost was

not on the fire fighter at the time of the destruction, damage or loss, the fire fighter shall be entitled to that compensation if, at that time, the article was:

- (a) at or near the scene of the bush fire being fought by, or the associated operation or work being carried out by, that person (whether or not the article was in or on a vehicle), or
- (b) in or on a vehicle in the course of a relevant journey,

and the Authority is of the opinion that it was necessary or reasonable for the article to be where it was at the time of the destruction, damage or loss.

(2) If the Authority is satisfied that:

- (a) a vehicle or other thing has been destroyed or damaged,
- (b) in respect of that destruction or damage, a certain amount would, but for the operation of section 13 (4), have been payable as compensation under section 12,
- (c) that destruction or damage resulted from the act or omission of a fire fighter but was not wilfully or maliciously caused by the fire fighter,
- (d) at the time of the destruction or damage the fire fighter was engaged in fighting a bush fire or in associated operations or work or was in the course of a relevant journey,
- (e) the fire fighter is liable for, or was liable for and has paid, damages for that destruction or damage, and
- (f) the fire fighter is not entitled to indemnity or adequate indemnity in respect of that liability under any policy of insurance or from any other source,

compensation is payable under this Part in respect of that liability or, if the fire fighter has paid damages, to reimburse the fire fighter, such amount not exceeding that referred to in paragraph (b) as the Authority may, having regard to all the circumstances of the case, consider reasonable.

(3) Any compensation payable under subsection (2) is payable:

- (a) to the fire fighter concerned, or
- (b) if the Authority in its discretion so orders, to the person to whom the damages concerned are payable (the payment being to that extent a discharge of the liability to pay those damages).

(4) For the purposes of subsection (2), a fire fighter shall be deemed to have become liable for any damages if the fire fighter has received a demand for those damages and the Authority considers it to be reasonable and prudent for the fire fighter to have paid, or that there be paid, an amount in full or part satisfaction of that demand.

**15 Making of claims** (cf former s 17C (4) (6))

- (1) Claims for compensation under this Part shall be made in the manner prescribed by the Authority.
- (2) The requirements of the 1998 Act as to the giving of notice of injury or damage to property and as to the making of claims for compensation apply (subject to the regulations) to the giving of notice of injury or damage to property and the making of claims for compensation under this Part, except that notices are to be given to, and claims made on, the Authority instead of to or on the employer.

**16 Hearing of claims** (cf former s 17BB)

- (1) Claims for compensation under this Part shall be decided by the Authority.
- (2) If a claim for compensation is for a weekly payment of compensation, the Authority shall, as far as is reasonably practicable, deal with the claim within 31 days after the claimant makes the claim and supplies the Authority with the documentation it requires to decide the claim.
- (3) A dispute between the Authority and a claimant may be assigned under the 1998 Act to a conciliator for conciliation, but the Authority is not bound by any decision of the conciliator.
- (4) A claimant dissatisfied with a decision of the Authority may apply to the District Court for a determination of the claim and the Authority must give effect to the determination of the Court.
- (5) (Repealed)
- (6) At a hearing before the District Court, the Authority or its representative may appear before the District 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 employer under the Principal Act or the 1998 Act.

**Division 3 Miscellaneous**

**17 Persons supplying food or refreshments** (cf former s 17BA)

For the purposes of this Part:

- (a) a person when engaged at or about the scene of a bush fire in supplying food or refreshments to persons fighting the fire shall be deemed to be fighting the fire, and
- (b) any journeying or conveying of a person, if made for the purpose of his or her engaging in supplying food or refreshments to persons fighting a bush fire, shall be deemed to be made for the purpose of his or her engaging in fighting the fire.

**18 Exclusion from Part—fire districts** (cf former s 17A (1))

(1) In this section:

**fire district** means a fire district constituted under the *Fire Brigades Act 1989*.

(2) This section does not operate to exclude injury, damage, loss or destruction from this Part if it relates to a bush fire to or from which a rural fire brigade was proceeding, or at which a rural fire brigade operated or was in attendance, for the purpose of the control or suppression of the bush fire.

(3) This Part does not apply to:

(a) an injury received by a fire fighter arising out of or in the course of fighting a bush fire, or

(b) personal property damage to a fire fighter while fighting a bush fire,

if the place at which the fire fighter was fighting the bush fire was within a fire district.

(4) This Part does not apply to:

(a) an injury received by a fire fighter arising out of or in the course of a relevant journey,

(b) personal property damage to a fire fighter in the course of a relevant journey, or

(c) the destruction or loss of or damage to any vehicle used for conveying a fire fighter on a relevant journey,

if the bush fire to or from which the relevant journey was made was within a fire district.

(5) This Part does not apply to the destruction or loss of or damage to any vehicle, equipment or thing used in connection with fire fighting at or near the scene of a bush fire and owned by or in the possession or custody of a fire fighter if the destruction, loss or damage was sustained within a fire district.

**19 Bush Fire Fighters Compensation Fund** (cf former s 17E)

(1) There shall be established and kept in the Special Deposits Account in the Treasury an account to be called the “Bush Fire Fighters Compensation Fund”.

(2) There shall be paid into the Bush Fire Fighters Compensation Fund:

(a) the amounts required to be transferred to the Fund under section 20, and

(b) such amounts as are appropriated by Parliament for the purposes of the Fund.

(3) There shall be paid from the Bush Fire Fighters Compensation Fund:

(a) compensation payable under this Part,

(a1) to the Minister administering the *District Court Act 1973*, such of the costs of operation of the District Court relating to determinations under section 16 (4), being costs incurred after 30 June 2005, as the Minister administering the *District Court Act 1973* and the Minister administering this Act agree are to be paid from the Fund,

(b) the costs of administration of this Part, and

(c) all expenses incurred by the Authority in the exercise of its functions under this Part.

(4) The Bush Fire Fighters Compensation Fund established under section 17E of the *Workers' Compensation Act 1926* shall, on the commencement of this Act, be deemed to have been established under this section.

**20 Assessment and payment of contributions to Fund** (cf former s 17G)

(1) The Authority shall, as soon as is reasonably practicable in each financial year, determine whether any contribution to the Bush Fire Fighters Compensation Fund will be necessary in order to maintain that Fund on a sound financial basis during the next following financial year.

(2) If the Authority determines that such a contribution will be necessary, the Authority shall assess the amount of the contribution.

(3) The Authority shall cause notice of each such determination and assessment to be given to the Minister administering the *Rural Fires Act 1997*.

(4) On 1 July next following the notification of each such assessment, an amount as so assessed shall be transferred to the Bush Fire Fighters Compensation Fund from the New South Wales Rural Fire Fighting Fund referred to in the *Rural Fires Act 1997*.

(5) Amounts so transferred shall, for the purposes of the *Rural Fires Act 1997*, be deemed to be expenditure from the New South Wales Bush Fire Fighting Fund.

(6) This section has effect notwithstanding anything to the contrary in the *Rural Fires Act 1997*.

**21 Advances by Treasurer** (cf former s 17H)

(1) The Treasurer may at any time pay into the Bush Fire Fighters Compensation Fund sums by way of advance to provide the Authority with temporary finance.

(2) Any such sum shall be refundable by the Authority as soon as practicable with interest:

(a) at the rate of 3 per cent per annum, or

- (b) if some other rate is prescribed by the regulations with the concurrence of the Treasurer—at that other rate.

**22 Prohibition on increased premium under motor vehicle insurance policy for bush fire damage** (cf former s 17D (3))

- (1) In this section:

***bush fire damage*** means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 12 was payable, or would have been so payable but for the operation of section 13 (4).

***insurance policy*** means policy of insurance in respect of damage to or destruction or loss of a vehicle.

***insurer*** means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

- (2) An insurer shall not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for bush fire damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for bush fire damage.

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it.
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

### **Part 3 Emergency and rescue workers compensation**

**23 Definitions** (cf former s 17J)

In this Part:

***authorised activity*** means:

- (a) in relation to an emergency service worker—an activity prescribed by the regulations for the purposes of this paragraph, and
- (b) in relation to a rescue association worker—an activity prescribed by the regulations for the purposes of this paragraph.

**emergency service worker** means:

(a) a person:

(i) who is duly appointed under section 15, 16 or 17 of the [State Emergency Service Act 1989](#), or

(ii) (Repealed)

(other than any such person who may be prescribed by the regulations as not being an emergency service worker for the purposes of this Part),

(b) a person:

(i) who is prescribed by the regulations as being an emergency service worker, or

(ii) who is a member of a class of persons prescribed by the regulations as being emergency service workers,

for the purposes of this Part, or

(c) a person who, in the opinion of the Authority having regard to all the circumstances, should be deemed to be an emergency service worker for the purposes of this Part.

**injury** means an injury to which this Part applies under section 24.

**relevant journey**, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity.

**rescue association worker** means:

(a) a person who is an executive member of the New South Wales Volunteer Rescue Association (other than any such member who may be prescribed by the regulations as not being a rescue association worker for the purposes of this Part),

(a1) a surf life saver,

(b) a person:

(i) who is prescribed by the regulations as being a rescue association worker, or

(ii) who is a member of a class of persons prescribed by the regulations as being rescue association workers,

for the purposes of this Part, or

(c) a person who, in the opinion of the Authority having regard to all the circumstances,



should be deemed to be a rescue association worker for the purposes of this Part.

**surf life saver** means a person who:

- (a) is an elected or appointed officer, or advisor, of the Surf Life Saving Association of Australia—New South Wales State Centre Incorporated, or
- (b) is an elected member of a management committee or of the executive of a branch affiliated with that Association, being a branch specified in the regulations, or
- (c) is a member of a club which is affiliated with a branch referred to in paragraph (b), being a club specified in the regulations, or
- (d) is prescribed by the regulations as being a surf life saver, or
- (e) is a member of a class of persons prescribed by the regulations as being surf life savers, or
- (f) in the opinion of the Authority, having regard to all the circumstances, should be regarded as being a surf life saver.

**24 Injuries to which this Part applies** (cf defn of “injury” in former s 17J)

- (1) This Part applies to personal injury received by an emergency service worker or a rescue association worker:
  - (a) arising out of or in the course of carrying out an authorised activity, or
  - (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.
- (2) This Part also applies to an injury being a disease which is contracted, aggravated, accelerated, exacerbated or which deteriorates in the course of doing anything referred to in subsection (1) if the doing of that thing was a contributing factor.

**25 Operation of Part outside the State** (cf former s 17K)

This Part applies to and in respect of injury sustained within the Commonwealth and its Territories but outside New South Wales by any emergency service worker or rescue association worker, or member of a class of emergency service workers or rescue association workers, prescribed by the regulations for the purposes of this section, in such circumstances (if any) as may be so prescribed.

**26 Compensation payable for injury or death** (cf former s 17O)

An emergency service worker or a rescue association worker who has received an injury (and, in the case of the death of the worker, the worker’s dependants) shall be entitled to receive compensation as follows:

- (a) where death results from the injury—the compensation payments prescribed by

paragraphs (a) and (b) of section 25 (1) of the Principal Act,

- (b) where total or partial incapacity for work results from the injury—the weekly payments of compensation prescribed by Division 2 of Part 3 of the Principal Act,
- (c) where medical or related treatment, hospital treatment, occupational rehabilitation service or ambulance service becomes necessary as a result of the injury—the benefits prescribed by Division 3 of Part 3 of the Principal Act,
- (d) where the worker receives an injury mentioned in the Table to Division 4 of Part 3 of the Principal Act—the compensation prescribed by that Division (including compensation for any pain and suffering resulting from that injury).

**27 Provisions relating to compensation for injury or death** (cf former s 170)

- (1) This section applies to compensation payable under section 26.
- (2) If death results from the injury, the compensation prescribed by section 25 (1) (a) of the Principal Act is payable even if the worker left no dependants or left only dependants in part dependent for support on the worker.
- (2A) (Repealed)
- (3) If the worker left no dependants, the compensation payable under subsection (2) is payable to the legal personal representative of the worker.
- (4) The compensation payable under subsection (2) to each dependant of a worker may be apportioned by the Authority.
- (4A) The compensation payable under subsection (2) is not to be apportioned if a worker leaves only one dependant (whether wholly or partly dependent on the worker for support) and the whole of the compensation payable under subsection (2) is to be paid to that one dependant.
- (4B) In apportioning the compensation payable under subsection (2) between 2 or more dependants, the whole of the amount payable is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full amount of the compensation payable under subsection (2)).
- (5) In determining the weekly payments of compensation payable to an emergency service worker or a rescue association worker, the worker's current weekly wage rate (if less than the worker's average weekly earnings) shall be increased by the amount of the difference.
- (6) In determining the weekly payments of compensation payable to an emergency service worker or a rescue association worker:
  - (a) the maximum weekly payment prescribed by section 35 of the Principal Act does

not apply, and

(b) section 40 of the Principal Act (Weekly payment during partial incapacity) shall be construed as if the words “but not exceeding \$1,000” were omitted from the section.

(7) If an emergency service worker or a rescue association worker was not working under a contract of service at the time the worker received the injury, the worker’s “average weekly earnings” or “current weekly wage rate” for the purposes of this Part shall be such amount as the Authority considers is fair and reasonable in the circumstances.

(8) Compensation payable to an emergency service worker or a rescue association worker, or other person, under this Part shall be reduced by such amount as the worker or other person is entitled to or has received as compensation in respect of the same injury under Part 2 of this Act or under any provision of the Principal Act, or under any Act or ordinance relating to workers’ compensation of any State or Territory of the Commonwealth.

**28 Compensation for damage to clothing, artificial aids etc** (cf former s 170 (3))

(1) Compensation is payable under this Part in respect of damage to the crutches, artificial members, eyes or teeth, other artificial aids, spectacles or clothing of an emergency service worker or a rescue association worker.

(2) For the purposes of this section, the provisions of Division 5 of Part 3 of the Principal Act have effect as if included in this Part (with such modifications as may be necessary or as may be prescribed by the regulations).

**28A Compensation for damage to personal effects, vehicles and other things**

(1) Compensation is payable under this Part in respect of:

(a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and

(b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and

(c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker.

(2) The amount of the compensation payable under this section is such amount as the

Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss.

- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion.
- (4) Compensation is not payable under this section in respect of any loss:
  - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
  - (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source.
- (6) In this section **personal effects** does not include personal effects referred to in section 28.

#### **28B Prohibition on increased premium under motor vehicle insurance policy**

- (1) In this section:

**authorised activity damage** means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5).

**insurance policy** means policy of insurance in respect of damage to or destruction or loss of a vehicle.

**insurer** means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage.

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it.
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

**29 Making of claims** (cf former s 17L)

- (1) Claims for compensation under this Part shall be made in the manner prescribed by the Authority.
- (2) The requirements of the 1998 Act as to the giving of notice of injury or damage to property and as to the making of claims for compensation apply (subject to the regulations) to the giving of notice of injury or damage to property and the making of claims for compensation under this Part, except that notices are to be given to, and claims made on, the Authority instead of to or on the employer.

**30 Hearing of claims** (cf former s 17M)

- (1) Claims for compensation under this Part shall be decided by the Authority.
- (2) If a claim for compensation is for a weekly payment of compensation, the Authority shall, as far as is reasonably practicable, deal with the claim within 31 days after the claimant makes the claim and supplies the Authority with the documentation it requires to decide the claim.
- (3) A dispute between the Authority and a claimant may be assigned under the 1998 Act to a conciliator for conciliation, but the Authority is not bound by any decision of the conciliator.
- (4) A claimant dissatisfied with a decision of the Authority may apply to the District Court for a determination of the claim and the Authority must give effect to the determination of the Court.
- (5) (Repealed)
- (6) At a hearing before the District Court, the Authority or its representative may appear before the District 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 employer under the Principal Act or the 1998 Act.

**31 Emergency and Rescue Workers Compensation Fund** (cf former s 17P)

- (1) There shall be established in the Special Deposits Account in the Treasury an account to be called the "Emergency and Rescue Workers Compensation Fund", which shall be kept jointly in an account with the Bush Fire Fighters Compensation Fund constituted under Part 2.

- (2) There shall be paid into the Emergency and Rescue Workers Compensation Fund such amounts as are appropriated by Parliament for the purposes of the Fund.
- (3) There shall be paid from the Emergency and Rescue Workers Compensation Fund:
  - (a) compensation payable under this Part,
    - (a1) to the Minister administering the *District Court Act 1973*, such of the costs of operation of the District Court relating to determinations under section 30 (4), being costs incurred after 30 June 2005, as the Minister administering the *District Court Act 1973* and the Minister administering this Act agree are to be paid from the Fund,
  - (b) the costs of administration of this Part, and
  - (c) all expenses incurred by the Authority in the exercise of its functions under this Part.
- (4) If at the time compensation becomes payable under this Part there is insufficient money in the Emergency and Rescue Workers Compensation Fund to meet the claim, the balance required to meet the claim shall be transferred from the Consolidated Fund (which is appropriated accordingly).

## **Part 4 Miscellaneous**

### **32 Application of Principal Act and 1998 Act**

- (1) Except as otherwise provided under this Act, the following provisions of the Principal Act have effect as if included in this Act (with such modifications as may be necessary or as may be prescribed by the regulations):
  - (a) section 14,
  - (b) Division 1 of Part 3 (except sections 26–28),
  - (c) Division 2 of Part 3 (except sections 52, 52A and 52B),
  - (d) Division 3 of Part 3,
  - (e) Division 4 of Part 3,
  - (f) Division 6 of Part 3,
  - (g) Division 7 of Part 3,
  - (h) Division 9 of Part 3,
  - (i) sections 151 and 151Z,
  - (j), (k) (Repealed)

(l) Schedule 6,

(m) any other provision prescribed by the regulations.

(1A) Except as otherwise provided under this Act, the following provisions of the 1998 Act have effect as if included in this Act (with such modifications as may be necessary or as may be prescribed by the regulations):

(a) Division 7 of Part 2 of Chapter 4 (Medical examinations and disputes),

(b) section 234,

(c) section 235,

(d) any other provision prescribed by the regulations.

(2) Except as otherwise provided by or under this Act, provisions of the Principal Act and the 1998 Act which apply under or have effect for the purposes of this Act so apply or have effect as if in those provisions:

(a) a reference to a worker were a reference to a fire fighter under Part 2 of this Act, or an emergency service worker or a rescue association worker under Part 3 of this Act, as the case requires, and

(b) a reference to the employer of a worker were a reference to the Authority, and

(c) a reference to the Authority's Fund were a reference to the Bush Fire Fighters Compensation Fund or the Emergency and Rescue Workers Compensation Fund, as the case requires.

### **33 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **34 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

### **35 Transitional and other provisions**

Schedule 1 has effect.

## Schedule 1 Savings and transitional provisions

(Section 35)

### Part 1 General

#### 1A Savings and transitional regulations

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

*WorkCover Legislation Amendment Act 1996*

*Workers Compensation Legislation Amendment Act 2003* to the extent that it amends this Act

*Workers Compensation Legislation Amendment (Benefits) Act 2008* to the extent that it amends this Act

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision 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, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

#### 1 Termination of insurance policies etc

- (1) The following endorsement attached to a workers compensation policy taken out with the Government Insurance Office of New South Wales and the following accident pay policy taken out with that Office are terminated with effect from the date of commencement of this Act:
- (a) Endorsement No 21646RC, which is attached to the Workers' Compensation Policy in the name of the Police Department (Policy No WO13626PO) and which provides benefits to voluntary workers of the State Emergency Services and executive members of the Volunteer Rescue Association of New South Wales or bona fide



members of any affiliated squad,

(b) Accident Pay Policy No EA0003849PO held in the name of the Police Department for and on behalf of the Bush Fire Council, the State Emergency Services and the Volunteer Rescue Association of New South Wales and affiliated squads.

(2) A termination effected by subclause (1) does not affect any right, obligation or liability acquired, accrued or incurred under the endorsement or policy.

## **2 Validation of payments**

(1) In this clause:

***the prescribed period*** means the period commencing on 23 December 1985 and ending on the date of commencement of this Act.

(2) Any payment of a benefit in respect of the death during the prescribed period of a person insured under a policy referred to in clause 1, in circumstances where the insured person did not leave any dependants wholly or partially dependent upon the insured person, is validated.

(3) Any payment of a benefit of \$10,000 in respect of the death during the prescribed period of a person under the accident pay policy referred to in clause 1 (1) (b), being a payment in addition to a benefit provided for in that policy, is validated.

## **Part 3 WorkCover Legislation Amendment Act 1996**

### **3 Operation of amendments**

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section.

## **Part 4 Workers Compensation Legislation Amendment Act 2003**

### **4 Commutations**

Division 9 of Part 3 of the Principal Act is taken to have had effect as provided by section 32 (1) of this Act (and subject to Schedule 6 of the Principal Act in its application to that Division) on and from the commencement of that Division, but not so as to affect any claim determined before the commencement of this clause.

## **Part 5 Workers Compensation Legislation Amendment (Benefits) Act 2008**

### **5 Definition**

In this Part:

**2008 amending Act** means the *Workers Compensation Legislation Amendment (Benefits) Act 2008*.

## **6 Changes to death benefit**

The amendments made by the 2008 amending Act with respect to compensation payable under section 11 (2) or 27 (2) 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.