Workers Compensation Regulation 2003

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New South Wales

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  Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009 No 54 (not commenced — to commence on 1.7.2010)
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Workers Compensation Regulation 2003

New South Wales

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Workers Compensation Regulation 2003

New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Workers Compensation Regulation 2003*.

2 Commencement

This Regulation commences on 1 September 2003.

Note—

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Compensation (General) Regulation 1995* and the *Workers Compensation (Insurance Premiums) Regulation 1995* (which are repealed under section 10 (2) of the *Subordinate Legislation Act 1989*) and the *Workers Compensation Transitional Regulation 1997* (which is repealed by this Regulation).

3 Definitions

(1) In this Regulation:

accreditation means accreditation as a provider of rehabilitation services.

approved means approved by the Authority.

category 1 employer means:

(a) an employer insured under a policy of insurance to which the insurance premiums order for the time being in force applies and whose basic tariff premium (within the meaning of that order) for that policy would exceed $50,000, if the period of insurance to which the premium relates were 12 months, or

(b) an employer insured under more than one policy of insurance to which the insurance premiums order for the time being in force applies and whose combined basic tariff premiums (within the meaning of that order) for those policies would exceed $50,000, if the period of insurance to which each premium relates were 12 months, or

(c) an employer who is self-insured, or

(d) an employer who is insured with a specialised insurer and who employs more than

20 workers.

category 2 employer means an employer who is not a category 1 employer.

guidelines means the guidelines under section 52 (2) (a) of the 1998 Act.

return-to-work program means a return-to-work program established under section 52 of the 1998 Act with respect to policies and procedures (consistent with the injury management plan of the employer's insurer) for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer.

standards for rehabilitation providers means standards relating to the provision of rehabilitation services approved by the Authority.

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

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

(2) Notes included in this Regulation (other than notes included in a form) do not form part of this Regulation.

4 Forms

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

Part 2 Work related diseases

5 Diseases deemed work related

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

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

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

Part 3 Funeral expenses

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

(1) For the purposes of section 27 (b) of the Act, the maximum amount for which an

employer is liable in respect of reasonable funeral expenses, if death results from an injury and the worker leaves no dependants, is:

(a) in the case of a funeral held before 1 February 1992—$2,700, or

(b) in the case of a funeral held on or after 1 February 1992 but before 1 July 2000—$4,000, or

(c) in the case of a funeral held on or after 1 July 2000 but before the date that the Bill for the *Workers Compensation and Other Legislation Amendment Act 2004* was first introduced into Parliament—$4,400, or

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

Note—

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

(2) This clause applies regardless of when the injury that caused the death of the worker concerned was received.

Part 4 Current weekly wage rate

8 Definitions

(1) In this Part:

Federal Act means the *Workplace Relations Act 1996* of the Commonwealth.

State Act means the *Industrial Relations Act 1996*.

(2) A reference in this Part to an amount of money specified in an award or to an amount of a rate per 5 days or week or a minimum weekly rate fixed by an award or a Part or Division of an award is a reference to the amount or minimum weekly rate that is for the time being specified in, or fixed by, the award, Part, Division or industrial agreement, as the case may be, as in force from time to time.

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

(1) The Authority may by order published in the Gazette:

(a) declare a specified class or classes of workers to be a class of workers to which this clause applies, and

(b) specify the manner in which the current weekly wage rate of a worker of each such class is to be calculated for the purposes of section 42 (1) (c) of the Act.

(2) Each class of workers to which this clause applies by virtue of an order of the Authority under this clause is prescribed for the purposes of section 42 (1) (c) and (5) (b) of the Act.

(3) The manner specified in the order as the manner of calculating the current weekly wage rate of a class of workers is prescribed for the purposes of section 42 (1) (c) of the Act in respect of that class of workers.

(4) While an order of the Authority in force under this clause applies to a class of workers, clauses 10 and 11 do not apply to that class of workers.

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

(1) For the purposes of section 42 (1) (c) and (5) (b) of the Act, the following classes of workers are prescribed:

(a) shearers bound by the Pastoral Employees (State) Award under the State Act,

(b) shearers bound by the Pastoral Industry Award 1965 under the Federal Act.

(2) For the purposes of section 42 (1) (c) of the Act, the formula prescribed in respect of each class of workers prescribed by subclause (1) is

$$A \times 5$$

per week, where ***A*** is the amount of money specified in clause 14 (a) (i) of the award referred to in subclause (1) (b).

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

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

(2) In this clause:

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

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

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

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

(b) where the formula prescribed by paragraph (a) provides a greater rate for a particular week for the worker (being a worker whose employment is subject to an industrial instrument that provides for the payment of "overs" to the worker) than the rate of

$C \times 21/16$

per week, the formula is

$C \times 21/16$

per week for that week for that worker,

(c) where the formula prescribed by paragraph (a) provides a smaller rate for a particular week for the worker than the rate of

$C \times 1$

per week, the formula is

$C \times 1$

per week for that week for that worker,

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

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

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

A1 equals:

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

(b) in any other case—0.

A2 equals:

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

(b) in any other case—0.

A3 equals:

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

worker who is a co-worker of the injured worker worked on that Wednesday—the prescribed amount payable to that other worker for that Wednesday, or

(b) in any other case—0.

A4 equals:

(a) where that period consists of, or includes, Thursday of that week and any other worker who is a co-worker of the injured worker worked on that Thursday—the prescribed amount payable to that other worker for that Thursday, or

(b) in any other case—0.

A5 equals:

(a) where that period consists of, or includes, Friday of that week and any other worker who is a co-worker of the injured worker worked on that Friday—the prescribed amount payable to that other worker for that Friday, or

(b) in any other case—0.

B equals:

(a) the total number of days of that period on which other co-workers of the injured worker worked, or

(b) where there are no such days—0.

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

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

(6) For the purposes of subclause (5), a worker is a ***co-worker*** of an injured worker if the worker is normally employed with the injured worker at a common place of employment and under the same classification as the injured worker.

(7) A reference in subclause (5) to the prescribed amount payable to a worker for a day on which the worker worked is a reference to the amount of money that the worker is entitled, under the industrial instrument by which the worker is bound, to be paid for that day's work:

(a) exclusive of any amount that the worker is so entitled to be paid in respect of shift work or overtime or otherwise at penalty rates, and

(b) inclusive of any amount that the worker is so entitled to be paid in respect of

"overs" or (subject to subclause (8)) in respect of production loading.

(8) For the purposes only of subclause (7) (b), an amount a worker is entitled to be paid in respect of production loading for a day's work is taken not to include:

(a) in the case of a worker for whom production loading is calculated by reference to weekly production, any amount in excess of one-fifth of the production loading that would be payable to the worker in respect of the week in which that day occurs if the workers (in relation to whose "overs" that production loading is calculated) completed during that week a number of "overs" that provided each of those workers with pay for that week that is equivalent to the amount of money calculated in accordance with the formula
$C \times 21/16$
, or

(b) in the case of a worker for whom production loading is calculated by reference to daily production, any amount in excess of the production loading that would be payable to the worker in respect of that day if the workers (in relation to whose "overs" that production loading is calculated) completed during that day a number of "overs" that provided each of those workers with pay for that day that is equivalent to the amount of money calculated in accordance with the formula
$C/5 \times 21/16$
,

in each case with ***C*** having the value ascribed to it in subclause (5).

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

(1) For the purposes of section 42 (1) (d) of the Act, and clause 7 (2) (b) of Part 4 of Schedule 6 to the Act, the prescribed rate in respect of a period specified in Column 1 of the Table to this clause is the rate specified in Column 2 of that Table opposite that period.

(2) This clause applies only to workers who, before 1 February 1992, became entitled to receive weekly payments in respect of incapacity for work.

Table

Column 1		**Column 2**
Period		**Amount per week**
1	On and after 1 October 1987 and before 1 April 1988	$284.70
2	On and after 1 April 1988 and before 1 October 1988	$288.60
3	On and after 1 October 1988 and before 1 April 1989	$294.80
4	On and after 1 April 1989 and before 1 October 1989	$302.20

5	On and after 1 October 1989 and before 1 April 1990	$313.20
6	On and after 1 April 1990 and before 1 October 1990	$319.80
7	On and after 1 October 1990 and before 1 April 1991	$334.60
8	On and after 1 April 1991 and before 1 October 1991	$339.00
9	On and after 1 October 1991 and before 1 April 1992	$341.30
10	On and after 1 April 1992 and before 1 October 1992	$351.50
11	On and after 1 October 1992 and before 1 April 1993	$355.90
12	On and after 1 April 1993 and before 1 October 1993	$357.20
13	On and after 1 October 1993 and before 1 April 1994	$359.00
14	On and after 1 April 1994	$360.60

Part 5 Indexation of amounts of benefits

13 Sec 79: definition of “latest index number”

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

Table

Column 1	**Column 2**
Adjustment date	**Latest index number**
1 April 1988	229.3
1 October 1988	234.2
1 April 1989	240.1
1 October 1989	248.8
1 April 1990	254.1
1 April 1998	146.4
1 October 1998	149.0
1 April 1999	151.6
1 October 1999	154.1
1 April 2000	156.6

1 October 2000	158.3
1 April 2001	161.9
1 October 2001	164.7
1 April 2002	167.6
1 October 2002	170.0
1 April 2003	172.9
1 October 2003	176.4
1 April 2004	179.6
1 October 2004	182.9
1 April 2005	185.8
1 October 2005	189.6
1 April 2006	193.5
1 October 2006	197.1
1 April 2007	200.9
1 October 2007	204.5
1 April 2008	208.5
1 October 2008	212.1
1 April 2009	216.4
1 October 2009	220.3
1 April 2010	224.5

Part 6 Weekly compensation

14 Notice of requirement to obtain suitable employment from other person

(1) A notice under section 38A (3) of the Act:

(a) may be based on the model form (if any) set out in the claims procedures referred to in section 38A (3) (d) of the Act, and

(b) may include additional information and explanatory matter to assist in the understanding of the notice, and

(c) may be varied or replaced by a further notice given to the worker in accordance with section 38A (3) of the Act.

(2) Reminder copies of a notice under section 38A (3) of the Act may be given to the worker concerned from time to time.

(3) A notice given to a worker in accordance with section 38A (3) of the Act is sufficient notice for any further period of unemployment in respect of the same injury.

(4) In the case of any worker:

(a) who, before the commencement of Schedule 1 to the *Workers Compensation Legislation (Amendment) Act 1994*, was at the same time both partially incapacitated for work as the result of an injury and unemployed, and

(b) who is, as at or at any time after that commencement, both partially incapacitated for work as the result of that injury and unemployed,

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

14A Computation of average weekly earnings

For the purposes of section 43 (2) of the 1987 Act, the period of 14 days is prescribed in relation to any request made on or after 1 November 2006.

15 Notice of intention to discontinue or reduce weekly payments

(1) The notice referred to in section 54 of the 1987 Act must include the following:

(a) a statement of the reason for the decision to discontinue payment, or reduce the amount, of weekly payments of compensation and of the issues relevant to the decision,

(b) a statement identifying all the reports and documents submitted by the worker in making the claim for weekly payment of compensation,

(c) a statement identifying all the reports of the type to which clause 37 applies that are relevant to the decision, whether or not the reports support the reasons for the decision,

(d) a statement advising that a copy of a report required to be provided by the insurer under clause 37 (3) (except as provided by clause 37 (5) or (6)) accompanies the notice,

(e) a statement to the effect that the worker can request a review of the decision by the insurer,

(f) a statement to the effect that the matters that may be referred to the Commission or District Court are limited to matters specified as disputed in the notice, in a request for a further review of the decision or in a notice after a further review of the decision,

(g) advice as to the procedure for requesting a review of the decision,

(h) unless paragraph (i) applies, a statement to the effect that the worker can refer the dispute about the decision for determination by the Commission (in the case of a dispute about a matter other than a coal miner matter) or the District Court (in the case of a dispute about a coal miner matter),

(i) if the insurer has referred or proposes to refer the disputed discontinuation or reduction for determination by the Commission or District Court, a statement to that effect specifying the date of referral or proposed referral,

(j) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from a lawyer or from the WorkCover Claims Assistance Service,

(k) the street address and email address of the Registrar of the Commission or Registrar of the District Court, as appropriate.

(2) If:

(a) the notice referred to in section 54 of the 1987 Act relates to a reduction in the amount of weekly payments of compensation as a result of the application of section 40 of the 1987 Act, and

(b) the worker is not in receipt of earnings (or the compensation is otherwise calculated on the basis of the worker's ability to earn after the injury, rather than on the worker's actual earnings after the injury),

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

(3) (Repealed)

Part 6A Return-to-work programs

15A Time within which program to be established

(1) A return-to-work program required to be established by a category 1 employer must be established before the expiration of the period of 12 months after the employer becomes a category 1 employer.

(2) A return-to-work program required to be established by a category 2 employer must be established before the expiration of the period of 12 months after the employer becomes a category 2 employer.

(3) The Authority may, in a particular case, extend the period during which a return-to-work program is required to be established.

Note—

Section 52 (2) (b) of the 1998 Act requires a return-to-work program to be developed by an employer in consultation with workers of the employer and any industrial union of employees representing those workers.

15B Offence—failure to establish program

An employer who fails to establish a return-to-work program under section 52 of the 1998 Act within the period required by this Regulation is guilty of an offence.

Maximum penalty:

(a) in the case of a category 2 employer, 5 penalty units,

(b) in the case of a category 1 employer, 20 penalty units.

15C Standard return-to-work programs for category 2 employers

(1) The Authority may prepare (in accordance with the guidelines) standard return-to-work programs for category 2 employers generally or for different kinds of category 2 employers.

(2) A category 2 employer who does not establish a separate return-to-work program in accordance with the 1998 Act may establish a return-to-work program by adopting a relevant standard return-to-work program prepared under this clause.

(3) The Authority may include in a compensation claim form approved by the Authority under section 65 (1) (b) of the 1998 Act a copy of any standard return-to-work program prepared under this clause.

15D Program to comply with guidelines etc

(1) An employer is not to be regarded as having established a return-to-work program unless the program complies with the guidelines and any directions under or requirements of this Regulation.

(2) A category 2 employer who adopts a relevant standard return-to-work program under clause 15C is to be regarded as having duly established a return-to-work program.

15E Guidelines for programs—directions

(1) The Authority may give an employer directions in writing in connection with any return-to-work program established, or to be established, by the employer to ensure that the program complies with the guidelines.

(2) The Authority is to review a direction given by it under this clause if the employer concerned requests a review but need not review any particular direction more than once.

15F Nomination in programs of accredited providers of rehabilitation services

(1) A return-to-work program must, if the guidelines so require, nominate an accredited provider of rehabilitation services (or a list of such accredited providers) for the purposes of the program.

(2) Consultation on the nomination of an accredited provider of rehabilitation services is to be carried out in such circumstances and in such manner as the guidelines may provide.

15G Offence—failure to display or notify program

An employer who fails to display or notify a return-to-work program in accordance with section 52 (2) (c) of the 1998 Act at the places of work under the employer's control is guilty of an offence.

Maximum penalty:

(a) in the case of a category 2 employer, 2 penalty units,

(b) in the case of a category 1 employer, 10 penalty units.

15H Notification etc of program by category 2 employer

A category 2 employer is not required to display or notify a return-to-work program at the places of work under the employer's control:

(a) if the employer provides a copy of the program to any worker who requests a copy or who claims compensation for any injury, or

(b) if the employer makes other appropriate arrangements to ensure that workers have access to a copy of the program.

15I Category 1 employers must have return-to-work co-ordinator

(1) A category 1 employer must:

(a) employ a person to be a return-to-work co-ordinator for injured workers of the employer, being a person who has undergone such training as the guidelines may require, or

(b) engage a person in accordance with such arrangements as the guidelines may from time to time permit to be a return-to-work co-ordinator for injured workers of the employer.

Maximum penalty: 20 penalty units.

(2) The following are examples of the arrangements that the guidelines can permit for the purposes of this clause:

(a) the engagement of a person under an arrangement with a person or organisation that provides return-to-work co-ordinators to employers,

(b) an arrangement under which a person is engaged on a shared basis by 2 or more employers.

(3) The guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1) (b).

(4) The guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be return-to-work co-ordinators under subclause (1) (b).

15J Functions of return-to-work co-ordinators

An employer's return-to-work co-ordinator has such functions as may be specified in the guidelines.

15K Shared return-to-work programs

(1) For the purposes of section 52 (5) of the 1998 Act, a group of 2 or more employers may establish a single return-to-work program for the members of the group if:

(a) those employers have engaged a person to be a return-to-work co-ordinator for injured workers of those employers on a shared basis, and

(b) in the opinion of the Authority:

(i) those employers are engaged in the same business, or

(ii) those employers operate in the same locality, or

(iii) those employers satisfy any requirements of the guidelines imposed for the purposes of this paragraph, and

(c) in the opinion of the Authority, those employers have complied with all of the requirements of the guidelines with respect to the establishment of a single return-to-work program for groups of employers.

(2) The guidelines can require employers to obtain the approval of the Authority for:

(a) the establishment of a single return-to-work program for a group of employers, and

(b) the terms of a single return-to-work program and any revisions or amendments to those terms.

15L Exemptions

The following classes of employers, to the extent indicated, are exempt from the

requirement to establish a return-to-work program under section 52 of the 1998 Act and from clause 15I:

(a) employers (including bodies corporate for strata schemes or strata (leasehold) schemes) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent of the workers concerned),

(b) employers who hold owner-builders' permits under the *Home Building Act 1989* (but only to the extent of workers employed for the purposes of the work to which the permits relate),

(c) employers (being corporations) who only employ workers who are directors of the corporation,

(d) employers who only employ workers who are members of the employer's family,

(e) employers who only employ workers who perform work while outside New South Wales,

(f) employers exempted in writing by the Authority (but only to the extent specified in the exemption).

Part 7 Occupational rehabilitation services

16 Definition

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

17 Occupational rehabilitation service—additional services

For the purposes of the definition of ***occupational rehabilitation service*** in section 59 of the Act, the service of monitoring a return-to-work plan is prescribed.

18 Occupational rehabilitation services—maximum amount for which employer liable

(1) For the purposes of section 63A (3) (b) of the Act, the prescribed amount is $1,500, adjusted in accordance with Division 6 of Part 3 of the Act as if it were an adjustable amount for the purposes of that Division.

(2) The prescribed amount applies in relation to occupational rehabilitation services in respect of injuries received before the commencement of this clause (or before any adjustment of that amount as referred to in subclause (1)) in the same way as it applies in relation to services in respect of injuries received after that commencement.

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

For the purposes of section 63A (4) of the Act, an insurer who is liable to indemnify an employer for any occupational rehabilitation service provided to or for the benefit of a

worker is prescribed (in addition to the Authority) as a person who may direct that the employer is liable for a further amount to that prescribed by section 63A (3) of the Act.

20 Applications under sec 63A—generally

(1) An application under section 63A (4) of the Act:

(a) is to be in the form of a rehabilitation plan or in such other form (if any) as the Authority may approve, and

(b) is to contain such particulars as the Authority may determine.

(2) An accredited provider is required to make an application under section 63A (4) as soon as practicable after the accredited provider becomes aware that the total cost of occupational rehabilitation services provided to or for the benefit of a worker in respect of an injury will, or is likely to, exceed the maximum amount prescribed by section 63A (3).

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

(1) An accredited provider may, for the purpose of determining whether an application under section 63A (4) of the Act is necessary, request the relevant insurer (in writing) to supply details of any costs that have been claimed from the insurer in respect of occupational rehabilitation services previously provided by another provider in respect of the same injury.

(2) If the insurer does not, within 14 days or such longer period as the Authority may determine, supply the accredited provider with those details, the provider need only make an application under section 63A (4) of the Act if the total cost of services provided by that provider to or for the benefit of the worker concerned will, or is likely to, exceed the maximum amount prescribed by section 63A (3) of the Act.

22 Directions by insurers—special provisions

(1) If an application under section 63A (4) of the Act is made to an insurer:

(a) the insurer may request further information from the applicant, and

(b) the insurer is, as far as practicable, to deal with the application within 7 days after receiving it or the further information (whichever is the later).

(2) A direction by an insurer under section 63A (4) of the Act must be in accordance with the approved guidelines (if any) relating to such directions.

(3) Any such direction may, subject to those approved guidelines:

(a) specify that an employer's liability for a further amount to that prescribed by section 63A (3) of the Act is limited by reference to a maximum further amount for which the employer is liable for the proposed services (including, if appropriate,

particular services) or to the nature, number or duration of those services, or both, or

(b) specify that the employer is liable for such amount as is reasonably appropriate, having regard to the reasonable necessity for the provision of the services concerned.

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

(1) If a direction is given under section 63A (4) of the Act and the accredited provider concerned becomes aware that, because of a change of circumstances or otherwise, it is no longer necessary for the occupational rehabilitation service covered by the direction to be provided to or for the benefit of the worker, the provider is to cease providing the service and notify the Authority or the relevant insurer.

(2) The Authority or an insurer may, subject to any approved guidelines, give a direction under section 63A (4) of the Act:

(a) that is subject to such conditions as may be specified in the direction, and

(b) by notice in writing given to the provider concerned, amend or revoke the conditions specified in any such direction or add to those conditions,

and any such amendment, revocation or addition takes effect on and from the time the notice is served on the provider concerned or from a later time specified in the notice.

(3) The Authority or the insurer is to ensure that the employer concerned also receives a copy of the notice as soon as practicable after it takes effect.

24 Review by Authority

(1) If an insurer, after an application under section 63A (4) of the Act has been made to it:

(a) refuses to give a direction under section 63A (4) of the Act, or

(b) gives only part of any such direction applied for by or on behalf of the worker or the accredited provider concerned,

the insurer must refer the matter as soon as practicable to the Authority in such form and in such manner as the Authority may determine.

(2) If an insurer gives a direction under section 63A (4) of the Act, the worker or accredited provider concerned may apply to the Authority for a review of the direction:

(a) if the worker or provider objects to a condition (or an amendment or revocation of a condition) that the insurer has attached or added to the direction, or

(b) if the insurer declines further liability on behalf of the relevant employer for any

occupational rehabilitation service covered by a direction previously given by the insurer.

(3) An application for review is required to be:

(a) made in such form, and

(b) accompanied by such information, and

(c) made in such manner,

as the Authority may determine.

(4) The Authority may, in relation to a matter that has been referred to it or in relation to an application for a review under this clause:

(a) confirm the decision of the insurer, or

(b) confirm the decision with such modification as the Authority considers to be appropriate, or

(c) give a direction under section 63A (4) of the Act that the Authority considers to be appropriate.

(5) The Authority is to notify in writing the relevant insurer, employer, accredited provider and worker of the outcome of its review.

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

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

(2) The Authority may suspend any such direction pending its decision on whether to revoke the direction.

(3) The Authority is to give notice in writing to all parties of any such suspension or revocation (but may, in the case of suspension, give oral notice and confirm the notice later in writing).

(4) If the Authority suspends or revokes a direction under section 63A (4) of the Act, the employer concerned ceases to be liable (subject to any order of the District Court or the Commission) for any occupational rehabilitation services or class of service specified in the notice of suspension or revocation and to which the direction relates.

(5) The suspension or revocation has effect in respect of services provided after the accredited provider concerned receives notice of the suspension or revocation or after such later time as may be specified in the notice.

26 Submissions to Authority

The Authority must, before making a decision on:

(a) an application for a direction under section 63A (4) of the Act or a review of an insurer's decision in respect of such an application, or

(b) whether to amend, revoke or add to the conditions to which any such direction is subject, or

(c) whether to suspend or revoke any such direction,

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

27 Payment under direction by Authority not admission of liability

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

28 Claims relating to uninsured liabilities

In the case of a claim under Division 6 of Part 4 of the Act involving the provision of occupational rehabilitation services to or for the benefit of the worker concerned:

(a) any application for a direction under section 63A (4) of the Act may only be made to the Authority, and

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

29 Application of Part to self-insurers

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

(a) the decision is, for the purposes of this Part, taken to be a direction that the employer concerned is liable for that further amount, or

(b) the refusal is, for the purposes of this Part, taken to be a refusal to give a direction under section 63A (4) of the Act,

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

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

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

(a) give a direction under section 63A (4) of the Act (unless the Court or the Commission otherwise orders), or

(b) decline to deal with the matter.

31 Authority not prevented from giving opinion on rehabilitation liability

Nothing in this Part (for example clause 24 (Review by the Authority)) prevents the Authority from giving its opinion on matters relating to the liability of an employer under the Act for particular occupational rehabilitation services.

Part 7A Accreditation of rehabilitation providers

31A Application for certificate of accreditation

(1) A person may apply to the Authority for a certificate of accreditation.

(2) Two or more persons jointly providing, or intending to jointly provide, rehabilitation services may (but are not required to) apply for a joint certificate of accreditation.

(3) An application must:

(a) be in the form approved by the Authority, and

(b) contain such particulars and be accompanied by such documents as may be required by that form, and

(c) be accompanied by such fee as the Authority may determine.

31B Determination of application

(1) The Authority is to determine an application for a certificate of accreditation:

(a) by granting a certificate to the applicant in the applicant's name, or, if there is more than one applicant, in their joint names, or

(b) by refusing to grant a certificate.

(2) In determining an application for a certificate of accreditation, the Authority is to have regard to:

(a) the application, and

(b) in relation to the applicant or each applicant (if more than one):

(i) if the applicant is a natural person—the desirability of granting individual accreditation to natural persons, and

(ii) the capacity of the applicant to comply with the standards for rehabilitation providers, and

(iii) any information supplied by a trade union or employer organisation relating to the applicant's provision of rehabilitation services, and

(iv) any complaint lodged with the Authority against the applicant by a client of the applicant, and

(v) information procured in the course of any interviews with or examination of premises used by the applicant, and

(vi) verification of any references supplied by the applicant, and

(c) any relevant information relating to workers compensation costs and statistics concerning the return to work of injured workers, and

(d) such other matters as the Authority thinks fit.

(3) The Authority must not grant a certificate unless:

(a) in the case of an application by a natural person or natural persons—the Authority is of the opinion that the applicant or each applicant is a fit and proper person to hold a certificate and is of or above the age of 18 years, and

(b) in the case of an application by a corporation:

(i) the Authority is of the opinion that the corporation is a fit and proper person to hold a certificate, and

(ii) each director of the corporation would, if the application had been made by the director, be a fit and proper person to be granted a certificate.

31C Form of certificate of accreditation

(1) A person may be granted a certificate of accreditation in respect of one or more of the following classes of accreditation:

(a) a provider of services related to return to work with the pre-injury employer,

(b) a provider of services related to return to work with a different employer,

(c) a provider of specialist occupational rehabilitation services.

(2) A certificate is to be in the form approved by the Authority and is to specify:

(a) the name of the person or, in the case of a joint certificate, the names of the

persons to whom the certificate is granted, and

(b) the class or classes of accreditation for which the certificate is granted.

31D Conditions of certificate

(1) It is a condition of every certificate of accreditation that the holder of the certificate must comply with the standards and conditions for rehabilitation providers which are appropriate for the class or classes of accreditation for which the certificate is granted, being standards of which the holder has been notified.

(2) A certificate may be granted subject to such other conditions as may be specified in the certificate.

(3) The Authority may, by notice in writing served on the holder of a certificate, amend or revoke the conditions specified in the certificate or add to those conditions.

(4) Any such amendment, revocation or addition takes effect on and from a date specified in the Authority's notice, being a date at least 7 days after the notice is served on the holder of the certificate.

31E Amendment of certificate

(1) The Authority may amend a certificate:

(a) on the application of a person who does not hold a certificate and proposes to provide a rehabilitation service jointly with the holder of a certificate, by adding the name of the person as a joint holder of the certificate, or

(b) on the application of a joint holder of a certificate who ceases to provide rehabilitation services, by deleting the person's name from the certificate, or

(c) on the application of a holder of a certificate, by amending the specification of the class or classes of accreditation for which the certificate is granted.

(2) An application under this clause must:

(a) be in the form approved by the Authority, and

(b) contain such particulars and be accompanied by such documents as may be specified in that form, and

(c) be accompanied by such fee as the Authority may determine.

(3) The Authority is to determine an application under this clause:

(a) by granting the application and amending the certificate accordingly, or

(b) by refusing the application.

(4) If an application referred to in subclause (1) (a) is granted and the certificate is amended by specifying in the certificate the name of the person concerned, that person is taken to be a person to whom the certificate is granted.

31F Notice of refusal

(1) If the Authority refuses to grant or amend a certificate of accreditation, the Authority must as soon as practicable cause notice of the refusal to be served on the applicant.

(2) In the case of a joint application, it is a sufficient compliance with subclause (1) if the notice of refusal is served on any one of the applicants.

(3) The Authority is taken to have refused to grant or amend a certificate (and is taken to have notified the applicant accordingly) if the Authority does not give a decision on an application within 4 months after the date of lodgment of the application.

31G Duration of certificates

(1) A certificate of accreditation remains in force, unless sooner cancelled or surrendered, for such period as may be determined by the Authority and specified in the certificate.

(2) A certificate may be renewed from time to time by the grant of a further certificate.

31H Surrender of certificates

A holder of a certificate of accreditation may surrender it by delivering it to the Authority with notice in writing that the certificate is surrendered.

31I Duplicate certificates

If the Authority is satisfied that a certificate of accreditation has been lost or destroyed, the Authority may, on payment of such fee as the Authority may determine, issue a duplicate certificate.

31J Register of certificates

(1) The Authority is to cause a register of certificates of accreditation to be kept, in such form as the Authority determines, and is to cause to be recorded in the register in respect of each certificate:

(a) the matters which by this Regulation are required to be specified in the certificate, and

(b) particulars of any amendment of the certificate, and

(c) particulars of any cancellation, suspension or surrender of the certificate, and

(d) such other matters as the Authority thinks fit.

(2) The Authority may cause to be made such alterations of the register as are necessary

to ensure that the register is an accurate record.

(3) The register may be inspected by any person at the office of the Authority during the Authority's usual office hours and copies of all or any part of the register may be taken on payment of such fee as the Authority may determine.

31K False or misleading statements

A person must not, in or in connection with an application for a certificate of accreditation or amendment of such a certificate, make any statement which the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

31L Cancellation or suspension of certificate

(1) The Authority may cancel or suspend a certificate of accreditation if the Authority is satisfied:

(a) that the holder of the certificate has made a statement in or in connection with an application for the certificate or amendment of the certificate that the holder knows to be false or misleading in a material particular, or

(b) that the holder of the certificate has contravened a condition of the certificate, or

(c) that the holder of the certificate has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more, or

(d) that the holder of the certificate, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit, or

(e) that the holder of the certificate, being a corporation:

(i) is in the course of being wound up, or

(ii) is under administration, or

(iii) is a corporation in respect of the property of which a receiver or manager (or other controller within the meaning of the *Corporations Act 2001* of the Commonwealth) has been appointed, or

(iv) has entered into a compromise or arrangement with its creditors, or

(f) that the holder of the certificate has not provided rehabilitation services for a continuous period of 3 months or more, or

(g) that the holder of the certificate is for any other reason not a fit and proper person

to hold a certificate, or

(h) in the case of a holder of a certificate, being a corporation—that any director of the corporation:

(i) has been convicted of an offence referred to in paragraph (c), or

(ii) for any other reason would not be a fit and proper person to hold a certificate, if the certificate were held by the person.

(2) The grounds referred to in subclause (1) (except paragraph (f)) are taken to exist:

(a) in the case of a joint certificate—if those grounds apply to any holder of that certificate, or

(b) in the case of 2 or more certificates held by persons providing rehabilitation services in partnership—if those grounds apply to any holder of any of those certificates.

(3) Before cancelling or suspending a certificate, the Authority must give the holder of the certificate an opportunity to show cause why the certificate should not be cancelled or suspended on such grounds as are notified to the holder.

(4) The cancellation or suspension of a certificate does not take effect until notice in writing of the cancellation or suspension has been served on the holder of the certificate.

31M False claim of accreditation

A person must not falsely hold himself or herself out as being the holder of a certificate of accreditation.

Maximum penalty: 20 penalty units.

Part 8 Notices and claims procedure

32 Notification of workplace injury

(1) For the purposes of section 44 (2) of the 1998 Act, notification to an insurer or the Authority by an employer that a worker has received a workplace injury must be given in any of the following ways:

(a) by electronic communication (using a mode of electronic communication approved by the insurer or the Authority) providing the information requested by the insurer or the Authority,

(b) in writing by completing a notification form approved for the purpose by the insurer or the Authority and sending the completed form to the insurer or the Authority by post or facsimile transmission at the address or facsimile number

indicated on the form, or by completing and lodging the form in person at an office of the insurer or the Authority,

(c) by telephone to the insurer or the Authority, giving such information as may be requested of the caller.

(2) For the purposes of section 44 (3) of the 1998 Act, an insurer who has been given notice by an employer under section 44 (2) of that Act that a worker has received a workplace injury must forward that notice to the Authority using a mode of electronic communication approved by the Authority.

(3) An employer who gives a notification under section 44 (2) of the 1998 Act must make and keep for at least 5 years after the notification is given:

(a) a record of the date, time, place and nature of the injury to which the notification relates, and

(b) a record of the date on which and the way in which the notification was given, and

(c) a record of any acknowledgement (such as a receipt number) given to the employer by the insurer or the Authority as evidence of receipt of the notification.

Note—

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

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

(5) In this clause:

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

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

Maximum penalty: 20 penalty units.

32A Employer must give early notification of significant workplace injury

A person who fails to comply with section 44 (2) of the 1998 Act is guilty of an offence.

Maximum penalty: 20 penalty units.

33 Notice of injury involving loss of hearing

(1) If an injury is a loss, or further loss, of hearing that is of such a nature as to be caused by a gradual process (including boilermaker's deafness and any deafness of a similar origin):

(a) notice of injury is to be given by the worker under section 62 of the 1998 Act:

(i) if the worker is employed by an employer in an employment to the nature of which the injury is due to that employer, or

(ii) if the worker is not so employed to the last employer by whom the employer was employed in an employment to the nature of which the injury is due, and

(b) the notice must be in writing and be:

(i) in the form set out in Form 1, or

(ii) in any other form that contains at least the particulars required by Form 1 (though not necessarily in the same format as that Form).

(2) Any forms issued by insurers and self-insurers for the giving of notice by workers of an injury referred to in subclause (1) must also contain such information (if any) as the Authority may from time to time approve and notify to insurers and self-insurers.

34 Notice of dispute about liability

(1) The notice given to a claimant under section 74 of the 1998 Act must contain the following:

(a) in relation to a coal miner matter:

(i) a statement to the effect that the worker can refer the dispute for determination by the District Court, and

(ii) if the insurer has referred or proposes to refer the dispute for determination by the District Court, a statement to that effect specifying the date of referral or proposed referral, and

(iii) a statement to the effect that the matters that may be referred to the District Court are limited to matters notified in the notice, in a notice after a further review in correspondence prior to any such referral concerning an offer of settlement or in a request for a further review, except with the leave of the District Court,

(b) in relation to a work injury damages dispute:

(i) a statement to the effect that, before a claimant can commence court proceedings, the claimant must firstly serve a pre-filing statement (in accordance with section 315 of the 1998 Act) on the defendant and secondly

refer the claim to the Commission for mediation (in accordance with section 318A of the 1998 Act), and

(ii) a statement to the effect that the claimant is not entitled to raise matters in court proceedings that are materially different from those contained in the pre-filing statement, except with the leave of the court,

(c) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation,

(d) a statement identifying all the reports of the type to which clause 37 applies that are relevant to the decision, whether or not the reports support the reasons for the decision,

(e) a statement advising that a copy of a report required to be provided by the insurer under clause 37 (3) (except as provided by clause 37 (5) or (6)) accompanies the notice,

(f) advice as to the procedure for requesting a review of the decision,

(g) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from a lawyer or from the WorkCover Claims Assistance Service,

(h) the street address and the email address of the Registrar of the Commission or the Registrar of the District Court, as appropriate.

Note—

Section 74 of the 1998 Act requires the notice to also include the following:

(a) a statement of the reason the insurer disputes liability and of the issues relevant to the decision,

(b) a statement to the effect that the worker can request a review of the claim by the insurer,

(c) a statement to the effect that the worker can refer the dispute for determination by the Commission,

(d) if the insurer has referred or proposes to refer the dispute for determination by the Commission, a statement to that effect specifying the date of referral or proposed referral,

(e) a statement to the effect that the matters that may be referred to the Commission are limited to matters notified in the notice, or in a notice after a further review or in correspondence prior to any such referral concerning an offer of settlement or in a request for a further review,

(f) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer.

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

Maximum penalty: 20 penalty units.

(3) It is a defence to a prosecution for an offence of failing to comply with section 74 (2B) of the 1998 Act if it is established that the notice complied with guidelines issued by the Authority as to how the notice concerned was to be expressed.

(4) (Repealed)

35 Form of notice to be posted up at workplace

(1) For the purposes of section 231 (1) of the 1998 Act:

(a) the summary of the requirements of that Act with regard to the giving of notice of injuries and the making of claims is to be in the form of an approved form, and

(b) the other information required to be posted up in accordance with that section is the other information contained in the approved form.

(2) Any form approved for the time being by the Authority is an ***approved form*** for the purposes of this clause.

(3) An approved form that ceases to be an approved form (as a result of the amendment or substitution of a form approved by the Authority) continues to be an approved form for the purposes of a notice posted up under section 231 of the 1998 Act that was in that form immediately before it ceased to be an approved form, but only until the earlier of:

(a) the renewal or replacement of the notice, or

(b) 12 months after the form ceases to be an approved form.

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

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

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

37 Access to certain medical reports and other reports obtained by insurer: sections 73 and 126 of 1998 Act

(1) This clause applies to the following types of reports that an employer or insurer has in the employer's or insurer's possession:

(a) medical reports, including medical reports provided pursuant to section 119 of the 1998 Act (Medical examination of workers at direction of employer),

(b) medical certificates,

(c) clinical notes,

(d) investigators' reports,

(e) occupational rehabilitation providers' reports,

(f) health service providers' reports,

(g) reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act,

(h) reports obtained by or provided to an employer or insurer that contain information relevant to the claim on which a decision to dispute liability is made,

(i) wage details required to be supplied under section 43 (2) of the 1987 Act where a decision has been made to decline payment of, or reduce the amount of, weekly benefits, but only if such details have not already been supplied to the worker.

(2) This clause applies to the following decisions of an employer or insurer relating to an injured worker:

(a) a decision to dispute liability in respect of a claim, or any aspect of a claim (in circumstances requiring the insurer to give the worker a notice and reasons under section 74 of the 1998 Act),

(b) a decision to discontinue payment, or to reduce the amount of weekly benefits (in circumstances requiring the insurer to give the worker a notice of intention under section 54 of the 1987 Act),

(c) a decision on the review under section 287A of the 1998 Act of a decision described in paragraph (a) or (b) that confirms the original decision.

(3) If an employer or insurer makes a decision to which this clause applies, the employer or insurer must provide a copy of any relevant report to which this clause applies to the worker, as an attachment to a notice under section 74 of the 1998 Act, section 54 of the 1987 Act or section 287A of the 1998 Act, as the case may be, except where the report has already been supplied to the worker and that report is identified in a statement under clause 15 (1) (c) or 34 (1) (d).

(4) The obligation in this clause to provide a copy of a report applies to any report that is relevant to the claim or any aspect of the claim to which the decision relates, whether or not the report supports the reasons for the decision.

(5) If the employer or insurer is of the opinion that supplying a worker with a copy of a report would pose a serious threat to the life or health of the worker or any other person, the employer or insurer may instead supply the report:

(a) in the case of a medical report, medical certificate or clinical notes—to a medical practitioner nominated by the worker for that purpose, or

(b) in any other case—to a legal practitioner representing the worker.

(6) If, on the application of an employer or insurer, the Authority is satisfied that supplying the worker with a copy of the report would pose a serious threat to the life or health of the worker or any other person and that supplying the report as provided by this clause would not be appropriate, the Authority may:

(a) direct that the report be supplied to such other persons as the Authority considers appropriate, or

(b) make such other directions as the Authority thinks fit.

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

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

Part 9 Medical examinations and disputes

39, 40 (Repealed)

41 Application to refer matter to medical referee or panel etc

(1) In the application of section 122 of the 1998 Act for the purposes of section 122 (12) of the 1998 Act, section 122 (2) of the 1998 Act is to be construed as requiring any applications to be made jointly by the worker and the employer.

(2) This clause applies only in respect of the following:

(a) existing claims, and existing claim matters, within the meaning of Chapter 7 of the 1998 Act,

(b) coal miner matters.

Part 10 Restrictions on obtaining medical reports

42 Definitions

In this Part:

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

proceedings means proceedings before the Commission or the District Court.

work injury damages threshold dispute means a dispute within the meaning of section 314 of the 1998 Act.

43 Restrictions on number of medical reports that can be admitted

(1) In any proceedings on a claim or a work injury damages threshold dispute in relation to an injured worker, only one forensic medical report may be admitted on behalf of a party to proceedings.

(2) A report referred to in subclause (1) must be from a specialist medical practitioner with qualifications relevant to the treatment of the injured worker's injury.

(3) Where the injury has involved treatment by more than one specialist medical practitioner, with different qualifications, then an additional forensic medical report may be admitted from a medical practitioner with qualifications in that specialty.

(4) In this clause:

forensic medical report:

(a) means a report from a specialist medical practitioner who has not treated the worker and has been obtained for the purpose of proving or disproving an entitlement, or the extent of an entitlement, in respect of a claim or dispute, and

(b) includes a medical report provided by a specialist medical practitioner in respect of an examination of the injured worker pursuant to section 119 of the 1998 Act.

43AA Supplementary reports admissible

(1) Despite clauses 43 and 43A, a medical report other than the original report (***a supplementary report***) may be admitted if:

(a) it has the purpose of clarifying the original report, for example, where it can be shown that there has been some omission in relation to the material originally provided that could lead to an opinion in the original report being expressed on the basis of inaccurate or incomplete information, and

(b) it does not go outside the parameters of the original report, but merely confirms, modifies or retracts an opinion expressed in the original report.

(2) A supplementary report can be provided as an addendum to the original report and in such a case the original report together with that addendum constitute the report referred to in clauses 43 and 43A.

(3) A supplementary report must have been provided by the medical practitioner who provided the original report except when the medical practitioner has ceased (permanently or temporarily) to practise in the specialty concerned, in which case the supplementary report must be provided by another medical practitioner of the same specialty.

43A Restriction on disclosure of forensic medical reports to approved medical specialists

(1) A forensic medical report must be disclosed to an approved medical specialist in connection with a claim or a work injury damages threshold dispute if any of the following occurs:

(a) the report was admitted in proceedings on the claim or dispute,

(b) no decision has been made as to whether or not the report is to be admitted, and:

(i) the report was the report nominated by the claimant or respondent as the report that the claimant or respondent concerned would introduce into evidence in proceedings on the claim, or

(ii) the report was the sole report in the particular specialty concerned that was lodged in relation to the claim by the claimant or respondent, as the case may be,

(c) the approved medical specialist calls for the production of the report under section 324 (1) (b) of the 1998 Act.

(2) A forensic medical report is not to be disclosed to an approved medical specialist in connection with a claim or a work injury damages threshold dispute otherwise than in accordance with this clause.

(3) Nothing in this clause permits more than one forensic medical report of the type referred to in clause 43 to be disclosed to an approved medical specialist on behalf of a party to proceedings.

(4) In this clause:

approved medical specialist has the same meaning as in section 319 of the 1998 Act.

forensic medical report:

(a) means a report from a specialist who has not treated the worker and has been obtained for the purpose of proving or disproving an entitlement, or the extent of an entitlement, in respect of a claim or dispute, and

(b) includes a medical report provided by a medical practitioner in respect of an examination of the injured worker pursuant to section 119 of the 1998 Act.

44 (Repealed)

45 Restrictions on recovery of cost of medical reports

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

(a) the report has been admitted into those proceedings on behalf of the party, or

(b) the report has been disclosed to an approved medical specialist.

(2) A party to a claim where no proceedings have been taken is not entitled to be paid for or recover the cost of a medical report in connection with the claim unless the report has been served on another party, and:

(a) the report would be admissible in proceedings on behalf of the party, or

(b) the report could be disclosed to an approved medical specialist.

(3) In this clause:

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

(b) a reference to proceedings on a claim includes a reference to proceedings in respect of the payment of provisional weekly payments of compensation under the 1998 Act.

(4) In this clause:

approved medical specialist has the same meaning as in section 319 of the 1998 Act.

46 Medical treatment not affected

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

47 Reports of medical panels and referees not affected

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

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

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

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

(2) In this clause:

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

48 Transitional

(1) This Part applies only in respect of proceedings commenced on or after 23 February 2001. In its application in respect of those proceedings, this Part extends to medical reports obtained before that date (subject to subclause (2)).

(2) Clause 45 (Restrictions on recovery of cost of medical reports) does not apply in respect of a medical report that was obtained before 23 February 2001, or that was obtained on or after that date as a result of an appointment made before that date.

(3) Clauses 43 and 44 extend to proceedings on a new claim or new claim matter commenced before 28 February 2003, but:

(a) do not affect the use of a report in evidence in proceedings if the report was admitted in the proceedings before that date, and

(b) do not prevent the recovery of costs under Schedule 6 for more than one report in a specialty that was obtained before that date, or as a result of an appointment made before that date.

(4) In this clause, ***new claim*** has the same meaning as in Chapter 7 of the 1998 Act.

48A Further transitional provision

(1) In this clause:

the amending Regulation means the *Workers Compensation Amendment (Miscellaneous Provisions) Regulation 2006*.

(2) The amendments made to this Part by the amending Regulation do not affect the use of a medical report in evidence in proceedings or as part of disclosure to an approved medical specialist where the report relates to an application lodged with the Registrar prior to 1 November 2006.

(3) The amendments made to this Part by the amending Regulation apply to all claims or work injury damages threshold disputes lodged with the Registrar on and from 1 November 2006.

(4) Despite subclause (3), where the medical examination to which the relevant medical report relates occurred before 1 November 2006, this Part, as in force immediately before 1 November 2006, continues to apply in respect of the report if the report:

(a) formed part of an application lodged with the Registrar prior to 1 December 2006, or

(b) formed part of a reply filed in respect of such an application within 21 days of the application being lodged.

(5) Despite subclause (3), clause 45, as in force immediately before 1 November 2006,

applies in respect of a medical report where the medical examination to which the report relates occurred before 1 November 2006 and either:

(a) the claim to which the report relates was resolved on or after 1 November 2006 without referral to the Registrar for determination by the Commission, or

(b) the application to which the report relates, or referral of the dispute for determination by the Commission to which the report relates, was lodged with the Registrar before 1 December 2006, except where there was a discontinuance of proceedings (without the consent of both parties) on or after 1 November 2006.

Part 11 Insurance policies

48B Administration fees and late payment fees for exempt employers

(1) The amount of $175 is prescribed as the administration fee payable under section 155AA (5) of the Act.

(2) The Nominal Insurer may serve a notice in writing on an employer to whom section 155AA (5) of the Act applies notifying the employer that the administration fee referred to in that subsection is due and payable.

(3) The administration fee referred to in subclause (2) must be paid by the employer within one month of the service of the notice.

(4) A late payment fee calculated at the interest rate referred to in section 22 of the *Taxation Administration Act 1996* is payable if an administration fee is not paid within the one month period referred to in subclause (3).

(5) The Authority may waive payment (either in full or in part) of an administration fee or late payment fee payable under section 155AA of the Act.

(6) The Nominal Insurer is to pay any administration fees and late payment fees it has received under section 155AA of the Act into the Insurance Fund. Administration fees paid into the Insurance Fund are to be treated as premiums payable under policies of insurance.

49 Provisions of policies of insurance

(1) For the purposes of section 159 of the Act, a policy of insurance (except one to which subclause (2) applies):

(a) must contain the provisions specified in Form 3, and

(b) may contain any other provisions, but only if those provisions have been agreed on by the insurer and employer concerned and approved by the Authority.

(2) A policy of insurance issued or renewed so as to take effect before 31 December 1995

must contain the provisions that were specified in Form 7 in the *Workers Compensation (General) Regulation 1987* immediately before its repeal, except that:

(a) the words "independently of this Act (being a liability under a law of New South Wales)" in the third paragraph of the Form are to be deleted and the words "independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country)" are to be inserted instead, and

(b) such a policy may contain other provisions, but only if those provisions have been agreed on by the insurer and employer concerned and approved by the Authority.

50 (Repealed)

51 Excess recoverable from employer: section 160

(1)–(2A) (Repealed)

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

(4) Exempt employer policies (within the meaning of section 155AA of the Act) are exempt from section 160 of the Act.

52 Information to be provided for certificate of currency

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

(2) An insurer may refuse to issue the requested certificate of currency until the employer complies with this clause.

52A Certificate of currency—period of insurance

(1) For the purposes of the definition of ***certificate of currency*** in section 163A (1) of the Act, a period not exceeding 12 months is prescribed.

(2) This clause applies only in relation to a certificate of currency issued on or after the commencement of this clause.

53 Liability for subcontractor premiums—exemption for farming operations

(1) Any work carried out before 1 July 2004 under a contract for the carrying out of work on a farm on which a farmer engages in a farming operation is exempt from the operation of section 175B of the 1987 Act if the farmer is the principal contractor and

the work is an aspect of the work of the farming operation (and is not an aspect of the work of any other business undertaking of the farmer).

(2) In this clause:

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

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

53A Employers excluded from grouping provisions: section 175D (3)

The following employers are excluded from the operation of Division 2A (Grouping of employers for insurance purposes) of Part 7 of the Act:

(a) an employer who is insured with a specialised insurer,

(b) an employer who is insured where the policy of insurance relates only to private household domestic workers.

Part 11A Modification of provisions applying to self-insurers

53AA Interpretation

(1) When one or more subsidiaries of the holder of a licence as a self-insurer under the 1987 Act is endorsed on the licence, each of those endorsed subsidiaries and the licence holder are ***group self-insurers*** for the purposes of this Part.

(2) The holder of a licence as a group self-insurer may for the purposes of this Part, by notice in writing to the Authority from time to time, designate any one or more of the group self-insurers covered by the licence as ***designated insurer*** for some or all of the group self-insurers. The licence holder can designate itself as a designated insurer.

(3) Except where otherwise expressly provided, this Part provides for the modification of provisions of Chapter 3 of the 1998 Act in their application to the following self-insurers:

(a) a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme,

(b) a group self-insurer for whom there is a designated insurer.

53AB References to "insurer"

(1) Sections 43, 44, 45, 47, 52 and 57 of the 1998 Act are to be read as if:

(a) a reference to ***insurer*** were, in the case of a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme,

a reference to the Self Insurance Corporation, and

(b) a reference to ***insurer*** were, in the case of a self-insurer for whom there is a designated insurer, a reference to that designated insurer, and

(c) the Self Insurance Corporation were the insurer of each employer who is a Government employer covered for the time being by the Government's managed fund scheme, and

(d) the designated insurer for a group self-insurer were the insurer of the group self-insurer.

(2) A reference in sections 50 and 58 of the 1998 Act to ***insurer*** is to be read as including a reference:

(a) to the Self Insurance Corporation, when the insurer is a Government employer covered for the time being by the Government's managed fund scheme, and

(b) when the insurer is a group self-insurer for whom there is a designated insurer, to that designated insurer.

53AC Modification of exceptions for self-insurers

The following modifications are to be made to the 1998 Act:

(a) section 43 (3)—omit "This subsection does not apply to a self-insurer.",

(b) section 43 (4)—omit "(except when the insurer is a self-insurer)",

(c) section 43 (5)—omit "This subsection does not apply when the employer is a self-insurer.",

(d) omit section 44 (4),

(e) section 45 (2)—omit "(except when the insurer is a self-insurer)",

(f) section 45 (5)—omit "This subsection does not apply when the insurer is a self-insurer.",

(g) omit section 46 (3).

53AD Preparation of injury management plan

Section 45 (1) of the 1998 Act is replaced with the following subsection:

(1) When it appears that a workplace injury is a significant injury, an injury management plan must be established for the injured worker by:

(a) if the self-insurer who is or may be liable to pay compensation to the injured

worker is a Government employer covered for the time being by the Government's managed fund scheme—the Self Insurance Corporation, or

(b) if the insurer who is or may be liable to pay compensation to the injured worker is a group self-insurer for whom there is a designated insurer—that designated insurer.

53AE Self-insurer's licence

(1) A reference in section 55 of the 1998 Act to ***insurer's licence*** is, in the application of that section to a group self-insurer (whether or not a group self-insurer for whom there is a designated insurer), to be read as a reference to the licence as a self-insurer on which the group self-insurer is endorsed.

(2) It is a condition of a licence as a self-insurer that the holder of the licence must ensure that any subsidiary of the holder endorsed on the licence complies with the subsidiary's obligations under Chapter 3 of the 1998 Act.

Part 12 Insurers' Contribution Fund

54 Definition of "financial year"

(1) In this Part:

financial year means a year commencing 1 July.

(2) For the purposes of this Part, a financial year:

(a) includes the period after 4 pm on the day preceding the first day of the financial year, and

(b) does not include the period after 4 pm on the last day of the financial year.

55 Definition of "premium income"

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

(a) the application of an excess surcharge factor (as defined in the insurance premiums order in force in respect of that financial year), or

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

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

56 Prescribed contribution payable by insurer

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

the percentage specified in Column 2 of that Table opposite that year.

Table

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

57 Time for payment of insurer's contribution

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

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

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

Part 13 WorkCover Authority Fund

58 Definitions

In this Part:

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

59 Definition of "premium income" for purposes of insurers' contributions

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

60 Definition of "deemed premium income" for purposes of self-insurers' contributions

(1) The prescribed circumstances referred to in the definition of ***deemed premium income*** in section 37 of the 1998 Act are the circumstances in which the amount payable as premiums referred to in that definition is calculated in the manner fixed by the insurance premiums order in force in respect of the relevant financial year.

(2) The amount defined as deemed premium income in section 37 of the 1998 Act in relation to the contribution payable by a self-insurer for any period during a financial year does not include:

(a) any amount attributable to the application of any factor other than the basic tariff premium that would have been payable as referred to in that definition in respect of that period, and

(b) any amount attributable to any GST that would have been payable in relation to the premiums on policies of insurance that the self-insurer would otherwise have been required to obtain under the Act had the self-insurer not been a self-insurer.

(3) Subclause (2) does not apply to any financial year to which clause 61 applies.

61 Alternative contribution by self-insurers

(1) This clause applies to any financial year determined by the Authority and notified in the Gazette before the commencement of that financial year as a financial year to which this clause applies.

(2) When this clause applies to a financial year, the amount defined as deemed premium income in section 37 of the 1998 Act in relation to the contribution payable by a self-insurer for any period during that financial year:

(a) does not include any amount attributable to the application of an excess surcharge factor or a dust diseases contribution, and

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

Part 14 Deemed employment

62 Ministers of religion

For the purposes of clause 17 of Schedule 1 to the 1998 Act, it is declared that persons within a class specified in Column 2 of Schedule 4 to this Regulation are ministers of religion of the religious body or organisation specified opposite the class in Column 1 of Schedule 4 and the employer of those persons is the person specified opposite the class in Column 3 of Schedule 4.

Part 15 Premiums Adjustment Fund

63 Definitions of “financial year” and “Fund”

(1) In this Part:

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

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

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

64 Definition of “premium income”

For the purposes of the contributions payable by an insurer into the Fund for a financial year, premium income (as defined in section 4 (1) of the 1998 Act) does not include any part of such a premium that is attributable to:

(a) the application of an excess surcharge factor (as defined in the insurance premiums order in force in respect of that financial year), or

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

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

65 Amount of contribution payable by insurer into Fund

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

Table

Column 1	Column 2
Financial year	**Percentage of premium income**

Financial year commencing 1 July 1989	NIL
Financial year commencing 1 July 1990 and any subsequent financial year	NIL

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

66 Time for payment of contribution by insurer into Fund

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

Part 16 Insurers' Guarantee Fund

67 Definitions

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

68 Financial years for contributions to Insurers' Guarantee Fund

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

69 Time etc for payment of insurer's contribution

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

(a) except as provided by paragraph (b), in quarterly instalments (each being equal to one-fourth of the contribution payable) due on the last day of each quarter of the financial year, or

(b) in such other instalments and within such other time as may be determined by the Authority and specified in a notice to the insurer.

70 Further contributions payable by insurers

(1) If the Authority has determined an amount under section 228 (1) of the Act in respect of a financial year, it may subsequently determine under that provision a further amount to be contributed to the Guarantee Fund in respect of that year, being an amount that it considers is necessary:

(a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insolvent insurers, and

(b) to provide for the payment of any other amounts to be paid under Division 7 of Part 7 of the Act from the Guarantee Fund during that financial year.

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

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

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

(2) However, if the Authority:

(a) under section 224D (4) of the Act dispenses with the repayment of money so advanced, or

(b) determines that it is not to be repaid during that financial year, it may reduce the contributions of eligible insurers to the Guarantee Fund by such proportion as it considers appropriate.

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

72 Determination of contributions and further contributions

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

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

Part 17 Penalty notice offences

73 Penalty notice offences

For the purposes of section 246 of the 1998 Act:

(a) each of the following offences is declared to be a penalty notice offence:

(i) an offence created by a provision of the 1987 Act specified in Column 1 of Part 1 of Schedule 5,

(ii) an offence created by a provision of the 1998 Act specified in Column 1 of Part 2 of Schedule 5,

(iii) an offence created by a provision of this Regulation specified in Column 1 of Part 3 of Schedule 5, and

(b) the prescribed penalty for such an offence is the amount specified opposite it in Column 2 of Schedule 5, and

(c) the following persons are declared to be authorised officers:

(i) each officer of the Authority authorised by the Authority for the purposes of section 246 of the 1998 Act,

(ii) each inspector appointed under the *Occupational Health and Safety Act 2000*,

(iii) each officer of the Authority authorised by the Authority for the purposes of section 238 of the 1998 Act.

Part 18 Marketing of work injury legal services and agent services

Division 1 Preliminary

Note—

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

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

(a) advising the person with respect to the making of a claim,

(b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim,

(c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,

(d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim.

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

74 Definitions

In this Part:

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

lawyer means a legal practitioner and includes the following:

(a) a partnership of which a legal practitioner is a member (but only if the business of the partnership includes business of a kind ordinarily conducted by a legal practitioner),

(b) a solicitor corporation,

(c) an incorporated legal practice.

publish means:

(a) publish in a newspaper, magazine, journal, periodical, directory or other printed publication, or

(b) disseminate by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or

(c) broadcast by radio or television, or

(d) display on an Internet website or otherwise publicly disseminate by means of the Internet, or

(e) publicly exhibit in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or

(f) display on any document (including a business card or letterhead) gratuitously sent or gratuitously delivered to any person or thrown or left on any premises or on any vehicle, or

(g) display on any document provided to a person as a receipt or record in respect of a transaction or bet.

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

Division 2 Advertising by lawyers and agents

75 Restriction on advertising work injury services

A lawyer or agent must not publish or cause or permit to be published an advertisement that promotes the availability or use of a lawyer or agent to provide legal services or agent services if the advertisement includes any reference to or depiction of any of the following:

(a) work injury,

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

(c) a ***work injury service*** (that is, any service provided by a lawyer or agent that relates to recovery of money, or any entitlement to recover money, in respect of work injury).

Maximum penalty: 200 penalty units.

Note—

A contravention of this clause can also be a contravention of Part 14 of the *Legal Profession Regulation 2002*. A contravention of that Part by a lawyer constitutes professional misconduct.

75A Exception for advertisements about discrimination—community legal centres

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

76 Exception for advertising specialty

(1) This Division does not prevent the publication of an advertisement that advertises a lawyer or agent as being a specialist or offering specialist services, but only if the advertisement is published by means of:

(a) an entry in a practitioner directory that states only the name and contact details of the lawyer or agent and any area of practice or specialty of the lawyer or agent, or

(b) a sign displayed at a place of business of the lawyer or agent that states only the name and contact details of the lawyer or agent and any specialty of the lawyer or agent, or

(c) an advertisement on an Internet website operated by the lawyer or agent the publication of which would be prevented under this Division solely because it refers to work injury or work injury services in a statement of specialty of the lawyer or agent.

(2) In this clause:

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

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

77 Other exceptions

This Division does not prevent the publication of any advertisement:

(a) to any person who is already a client of the lawyer or agent (and to no other person), or

(b) to any person on the premises of a place of business of the lawyer or agent, but only if the advertisement cannot be seen from outside those premises, or

(c) in accordance with any order by a court, or

(d) pursuant to a disclosure made by a lawyer under Division 2 of Part 11 of the *Legal Profession Act 1987*, or

(e) to the extent that it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or

(f) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or

(g) by an industrial organisation (within the meaning of the *Industrial Relations Act 1996*) if the advertisement (or so much of it as would otherwise contravene clause 75) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or

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

78 Responsibility for employees and others

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

78A Responsibility for advertisements published by others

(1) For the purposes of this Division, an advertisement is taken to have been published or caused to be published by a lawyer or agent if:

(a) the advertisement advertises or otherwise promotes the availability or use of the lawyer or agent (either by name or by reference to a business name under which the lawyer or agent practises or carries on business) for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or

(b) the lawyer or agent is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the referral of persons to the lawyer or agent for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or

(c) the lawyer or agent is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the person to advertise on behalf of the lawyer or agent.

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

79 Double jeopardy

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

80 Transitional—finalised publications

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

Division 3 Advertising by persons other than lawyers and agents

80A Application of Division

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

80B Definition of “work injury advertisement”

In this Division:

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

(a) work injury, or

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

80C Restrictions on work injury advertisements

(1) A person must not publish or cause or permit to be published a work injury advertisement if the advertisement:

(a) advertises or otherwise promotes the availability or use of a lawyer or agent (whether or not a particular lawyer or agent) to provide legal services or agent services, whether or not that is its purpose or only purpose and whether or not that is its only effect, or

(b) includes any reference to or depiction of the recovery of money or a claim for money, or any entitlement to recover money or claim money, in respect of work injury.

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

80D Exception for advertisements about discrimination—community legal centres

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

80E Exception for advertising specialty

(1) This Division does not prevent the publication of an advertisement that advertises a lawyer or agent as being a specialist or offering specialist services, but only if the advertisement is published by means of:

(a) an entry in a practitioner directory that states only the name and contact details of the lawyer or agent and any area of practice or specialty of the lawyer or agent, or

(b) a sign displayed at a place of business of the lawyer or agent that states only the name and contact details of the lawyer or agent and any specialty of the lawyer or agent, or

(c) an advertisement on an Internet website operated on behalf of the lawyer or agent the publication of which would be prevented under this Division solely because it refers to work injury or legal or agent services in a statement of specialty of the lawyer or agent.

(2) In this clause:

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

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

80F Other exceptions

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

(a) in accordance with any order by a court, or

(b) to the extent that it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or

(c) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or

(d) by an industrial organisation (within the meaning of the *Industrial Relations Act 1996*) if the advertisement (or so much of it as would otherwise contravene clause 80C) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or

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

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

80G Protection of publishers

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

Division.

80H Double jeopardy

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

80I Transitional—finalised publications

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

Part 19 Costs

Division 1 Preliminary

81 Definitions

In this Part, and in Schedules 6 and 7:

health service provider has the same meaning as in the *Health Care Complaints Act 1993*.

insurer includes an employer.

number of an item in a Table in Part B of Schedule 6 includes a letter.

Note—

Section 332 (2) of the 1998 Act provides that expressions used in Division 1 of Part 8 of Chapter 7 of that Act (and consequently expressions used in this Part) have the same meanings as they have in Part 3.2 of the *Legal Profession Act 2004*, except as provided by section 332 (Definitions) of the 1998 Act. Under section 302 of the *Legal Profession Act 2004*, costs includes fees, charges, disbursements and remuneration.

81A Sec 332 of 1998 Act: definition of "costs"

For the purposes of paragraph (f) of the definition of ***costs*** in section 332 (1) of the 1998 Act, the costs of providing clinical notes, records and reports by a health service provider are prescribed as costs within that definition.

82 Costs not regulated by this Part

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

(a) costs for legal services provided for an appeal under section 353 (Appeal against decision of Commission constituted by Presidential member) of the 1998 Act,

(b) fees for investigators' reports or for other material produced or obtained by investigators (such as witness statements or other evidence),

(c) fees for accident reconstruction reports,

(d) fees for accountants' reports,

(e) fees for reports from health service providers (except as provided in item 4 of Part C of Schedule 6),

(f) fees for other professional reports relating to treatment or rehabilitation (for example, architects' reports concerning house modifications),

(g) fees for interpreter or translation services,

(h) fees imposed by a court or the Commission,

(i) travel costs and expenses of the claimant in the matter for attendance at medical examinations, a court or the Commission,

(j) witness expenses at a court or the Commission.

Note—

Costs referred to in clause 82 are recoverable under, and may be regulated by, other legislation (including regulations under the *Legal Profession Act 2004*) or common law principles. Under section 339 of the 1998 Act, the WorkCover Authority may fix maximum fees for the provision of reports, or appearance before the Commission, by health service providers.

Division 2 Costs recoverable in compensation matters

Subdivision 1 Preliminary

83 Application of Division

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

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

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

Note—

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

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

84 Maximum costs recoverable

(1) The costs that are recoverable, and the maximum costs that are recoverable, for:

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

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

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

Note—

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

(2) If there is a change in the legal practitioner or agent retained by a party in or in relation to a claim made or to be made for compensation, the relevant costs are to be apportioned between the legal practitioners or agents concerned.

(3) If there is a dispute as to such an apportionment, either legal practitioner or agent concerned (or the client) may refer the dispute to the Registrar for determination.

(4) A legal practitioner or agent has the same right of appeal against a determination made under subclause (3) as the legal practitioner or agent would have under clause 119 if the determination were a determination made by the Registrar in relation to a bill of costs.

Note—

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

84A Maximum costs involving medical or related treatment or certain fees for health service providers

In workers compensation matters, the costs that are recoverable, and the maximum costs that are recoverable, in respect of costs of a kind referred to in clause 82 or Part C of Schedule 6 are, if section 61 of the 1987 Act or section 339 of the 1998 Act applies in respect of costs of that kind, costs equal to the amount fixed by or by order under the section concerned.

85 Special provisions for costs where claim transferred to Commission

If a claim becomes a new claim as a result of the transfer of the claim to the Commission under clause 225 or 226, the following provisions apply in respect of the recovery of costs

in connection with the claim:

(a) the recovery of costs in respect of legal services provided up to the time of the transfer is to be in accordance with provisions made by or under the Workers Compensation Acts or the *Legal Profession Act 1987* (as applicable), and

(b) the recovery of costs in respect of legal services provided on and from the transfer is to be in accordance with this Part.

85A Costs not recoverable in certain circumstances (workers compensation matters)

(1) This clause applies to workers compensation matters.

(2) No amount is recoverable for costs (including disbursements) that are referred to in neither clause 82 nor Schedule 6.

(3) No amount is recoverable for costs for any service or matter unless the claim or dispute (or the relevant aspect of the claim or dispute) to which the service or matter relates is resolved or otherwise dealt with in accordance with Schedule 6.

(4) Despite subclause (3), if an appeal is lodged in respect of a claim or dispute, no amount is recoverable for costs for any service or matter (or the relevant aspect of the claim or dispute) unless the appeal is determined, is withdrawn or lapses.

Division 3 Costs recoverable in work injury damages matters

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

86 Application of Division

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

(a) costs for legal services or agent services provided in or in relation to a claim for work injury damages, and

(b) costs for matters that are not legal or agent services but are related to a claim for work injury damages.

Note—

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

87 Fixing of maximum costs recoverable by legal practitioners

(1) The maximum costs for:

(a) legal services provided in or in relation to a claim for work injury damages, and

(b) matters that are not legal services but are related to a claim for work injury damages,

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

Note—

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

(2) If there is a change in the legal practitioner retained by a party in or in relation to a claim for work injury damages, the relevant costs are to be apportioned between the legal practitioners concerned.

(3) If there is a dispute as to such an apportionment, either legal practitioner concerned (or the client concerned) may refer the dispute to the Commission for determination.

(4) A legal practitioner has the same right of appeal against a determination made under subclause (3) as the practitioner would have under clause 119 if the determination were a determination made by the Registrar in relation to a bill of costs.

Note—

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

88 Contracting out—practitioner/client costs

(1) This clause applies in respect of costs in or in relation to a claim for work injury damages if a legal practitioner:

(a) makes a disclosure under Division 2 of Part 11 of the *Legal Profession Act 1987* (sections 180 and 181 excepted) to a party to the matter with respect to the costs, and

(b) enters into a costs agreement (other than a conditional costs agreement, within the meaning of that Part, that provides for the payment of a premium of more than 10% of the costs otherwise payable under the agreement on the successful outcome of the matter concerned) with that party as to those costs in accordance with Division 3 of that Part, and

(c) before entering into the costs agreement, advises the party (in a separate written document) that, even if costs are awarded in favour of the party, the party will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the amount that would be payable under the 1998 Act in the absence of a costs agreement.

(2) Schedule 7 does not apply to the costs concerned to the extent that they are payable on a practitioner and client basis.

Subdivision 2 Restriction on awarding of costs

Note—

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

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

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

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

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

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

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

91 Costs in other cases

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

92 Deemed offer where insurer denies liability and no mediation occurs or mediation fails

(1) If:

(a) the insurer wholly denies liability, and

(b) no mediation occurs, and

(c) the claimant obtains an order or judgment on the claim,

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

(d) the insurer had made a final offer of settlement at mediation of $0, and

(e) the claimant had made a final offer of settlement at mediation of:

(i) in the case where the Commission issued a certificate verifying the matters referred to in paragraphs (a) and (b) and the claimant, within one month of the issue of that certificate, made a subsequent offer of settlement to the insurer—the amount of damages specified in that subsequent offer of settlement, or

(ii) in any other case—the amount of damages specified in the pre-filing statement served under section 315 of the 1998 Act.

(2) If:

(a) the insurer wholly denies liability, and

(b) the matter is referred to mediation, but the matter is not resolved by settlement at the mediation, and

(c) the claimant obtains an order or judgment on the claim,

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

(d) the insurer had made a final offer of settlement at mediation of $0, and

(e) the claimant had made a final offer of settlement at mediation of:

(i) in the case where the claimant, within one month of the conclusion of that mediation, made a subsequent offer of settlement to the insurer—the amount of damages specified in that subsequent offer of settlement, or

(ii) in any other case—the amount of the claimant's final offer of settlement in mediation under the 1998 Act as certified by the mediator under section 318B of the 1998 Act.

Note—

Persons claiming work injury damages who wish to be awarded costs on a party and party basis should apply to the Workers Compensation Commission for the mediation of the dispute before the matter goes to court. The availability of costs on a party and party basis is subject to the provisions of clause 89 and this clause.

93 Subdivision does not apply to ancillary proceedings

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

94 Multiple parties

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the

claimant and rights of contribution or indemnity appear to exist between the defendants, this Subdivision does not apply to an offer of settlement unless:

(a) in the case of an offer made by the claimant—the offer is made to all the defendants and is an offer to settle the claim against all of them, and

(b) in the case of an offer made to the claimant:

(i) the offer is to settle the claim against all the defendants concerned, and

(ii) where the offer is made by 2 or more defendants—by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the claimant for the whole amount of the offer.

Division 4 Assessment of costs

Subdivision 1 Preliminary

95 Definitions

In this Division:

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

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

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

legal bill of costs means a bill of costs for providing legal services within the meaning of Part 11 of the *Legal Profession Act 1987*.

96 Application by client for assessment of practitioner/client or agent/client costs

(1) A client who is given a bill of costs may apply to the Registrar for an assessment of the whole of, or any part of, so much of those costs as are payable on a practitioner and client basis or an agent and client basis.

(2) An application relating to a bill of costs may be made even if the costs have been wholly or partly paid.

(3) If any costs have been paid without a bill of costs, the client may nevertheless apply for an assessment. For that purpose the request for payment by the legal practitioner or agent is taken to be the bill of costs.

Note—

Section 343 (1) of the 1998 Act provides that the legal representative or agent of a person in respect of a claim

for compensation made or to be made by the person is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission.

97 Application by instructing practitioner or agent for assessment of practitioner/client or agent/client costs

(1) A legal practitioner or agent who:

(a) retains another legal practitioner or agent to act on behalf of the client, and

(b) is given a bill of costs in accordance with this Part by the other legal practitioner or agent,

may apply to the Registrar for an assessment of the whole, or any part of, so much of those costs as are payable on a practitioner and client basis or an agent and client basis.

(2) An application may not be made if there is a costs agreement between the client and the other legal practitioner or agent.

(3) An application is to be made within 30 days after the bill of costs is given and may be made even if the costs have been wholly or partly paid.

98 Application by billing practitioner or agent for assessment of practitioner/client or agent/client costs

(1) A legal practitioner or agent who has given a bill of costs may apply to the Registrar for an assessment of the whole of, or any part of, so much of those costs as are payable on a practitioner and client basis or an agent and client basis.

(2) An application may not be made unless:

(a) the bill of costs includes the following particulars:

(i) a description of the legal services or agent services provided,

(ii) if relevant, an identification of each general resolution type referred to in Table 2 in Part B of Schedule 6 by reference to the item number and column number in Table 2 of the general resolution type that was attained,

(iii) if relevant, an identification of each special resolution type referred to in Table 3 in Part B of Schedule 6 by reference to the item number and column number in Table 3 of the special resolution type that was attained,

(iv) if relevant, an identification of the phase of each general resolution type referred to in Table 1 in Part B of Schedule 6 by reference to the item number and column number in Table 1 of the general resolution type that was attained,

(v) if relevant, an identification of each additional legal service or other factor referred to in Table 4 in Part B of Schedule 6 by reference to the item number

and (where relevant) column number in Table 4 of the legal service or factor,

(vi) an identification of each disbursement incurred by reference to a paragraph number in clause 82 or an item number in Part C of Schedule 6,

(vii) an identification of each activity, event or stage specified in Schedule 7, by reference to the item number of the activity, event or stage, that was carried out,

(viii) the amount sought, and

(b) at least 30 days have passed since the bill of costs was given or an application has been made under this Division by another person in respect of the bill of costs.

98A Application for assessment of party/party costs—compensation matters

(1) A person who is entitled to receive or who has received costs, in or in connection with a workers compensation matter, as a result of:

(a) an order for the payment of an unspecified amount of costs made by a court or the Commission, or

(b) an agreement, evidenced in writing by the party liable to pay the costs, for the payment of an unspecified amount of costs,

may apply to the Registrar for an assessment of the whole of, or any part of, those costs.

(2) A person who has paid or is liable to pay costs, in or in connection with a workers compensation matter, as a result of an order or agreement referred to in subclause (1) may apply to the Registrar for an assessment of the whole of, or any part of, those costs after the period of 60 days after the making of the order or agreement.

(3) A court or the Commission may direct the Registrar to assess costs payable as a result of an order made by the court or the Commission. Any such direction is taken to be an application for assessment duly made under this Division.

99 Application for assessment of party/party costs—work injury damages matters

(1) A person who has paid or is liable to pay, or who is entitled to receive or who has received, costs, in or in connection with a work injury damages matter, as a result of an order for the payment of an unspecified amount of costs made by a court or the Commission may apply to the Registrar for an assessment of the whole of, or any part of, those costs.

(2) A court or the Commission may direct the Registrar to assess costs payable as a result of an order made by the court or the Commission. Any such direction is taken to be an application for assessment duly made under this Division.

100 How is an application to be made?

(1) An application for assessment is to be made in the form approved by the Commission and is, subject to subclause (4), to be accompanied by the fee determined by the Commission from time to time.

(2) The application must authorise the Registrar to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any legal practitioner or agent concerned, in respect of the matter to which the application relates.

(3) The Registrar may waive or postpone payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.

(4) The Registrar may refund the fee paid under this clause either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

101 Persons to be notified of application

The applicant for assessment is to cause a copy of the application for assessment to be given to:

(a) each other party and each legal practitioner, agent and other client involved, and

(b) any other persons to whom the Registrar requires the applicant to give notice of the application,

within 7 days after the application is accepted by the Registrar for registration.

102 Registrar may require documents or further particulars

(1) The Registrar may, by notice in writing, require a person (including the applicant, the legal practitioner or agent concerned, or any other legal practitioner, agent or client) to produce any relevant documents of or held by the person in respect of the matter.

(2) The Registrar may, by any such notice, require further particulars to be furnished by the applicant, legal practitioner, agent, client or other person as to instructions given to, or work done by, the legal practitioner or agent or any other legal practitioner or agent in respect of the matter and as to the basis on which costs were ascertained.

(3) The Registrar may require any such particulars to be verified by statutory declaration.

(4) A notice under this clause is to specify the period within which the notice is to be complied with.

(5) If a person fails, without reasonable excuse, to comply with a notice under this clause, the Registrar may decline to deal with the application or may continue to deal with the application on the basis of the information provided.

(6) A legal practitioner who fails, without reasonable excuse, to comply with a notice under this clause is guilty of professional misconduct.

103 Consideration of applications

(1) The Registrar must not determine an application for assessment unless the Registrar:

(a) has given both the applicant and any legal practitioner, agent, client or other person concerned a reasonable opportunity to make written submissions to the Registrar in relation to the application, and

(b) has given due consideration to any submissions so made.

(2) In considering an application, the Registrar is not bound by rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.

(3) In the case of a legal practitioner, for the purposes of determining whether an application for assessment may be or is required to be made, or for the purpose of exercising any other function, the Registrar may determine any of the following:

(a) whether or not disclosure has been made in accordance with Division 2 of Part 11 of the *Legal Profession Act 1987* and whether or not it was reasonably practicable to disclose any matter required to be disclosed under that Division,

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

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

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

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

105 Assessment of bills generally

(1) When considering an application relating to a bill of costs, the Registrar must consider:

(a) whether or not it was reasonable to carry out the work to which the costs relate, and

(b) whether or not the work was carried out in a reasonable manner, and

(c) the fairness and reasonableness of the amount of the costs in relation to that work.

(2) The Registrar is to determine the application by confirming the bill of costs or, if the Registrar is satisfied that the disputed costs are unfair or unreasonable, by substituting for the amount of the costs an amount that, in his or her opinion, is a fair and reasonable amount.

(3) Any amount substituted for the amount of the costs may include an allowance for any fee paid or payable for the application by the applicant.

(4) If a legal practitioner is liable under section 182 (3) of the *Legal Profession Act 1987* to pay the costs of the costs assessment (including the costs of the Registrar), the Registrar is to determine the amount of those costs. The costs incurred by the client are to be deducted from the amount payable under the bill of costs and the costs of the Registrar are to be paid to the Commission.

(5) The Registrar may not determine that any part of a bill of costs that is not the subject of an application is unfair or unreasonable.

Note—

Clause 104 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

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

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

106 Additional matters to be considered in assessing bills of costs

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

(a) whether the legal practitioner or agent complied with any relevant regulation, barristers rule, solicitors rule or joint rule,

(b) in the case of a legal practitioner—whether the legal practitioner disclosed the basis of the costs or an estimate of the costs under Division 2 of Part 11 of the *Legal Profession Act 1987* and any disclosures made,

(c) any relevant costs agreement (subject to clause 107),

(d) the skill, labour and responsibility displayed on the part of the legal practitioner or agent responsible for the matter,

(e) the instructions and whether the work done was within the scope of the instructions,

(f) the complexity, novelty or difficulty of the matter,

(g) the quality of the work done,

(h) the place where and circumstances in which the legal services were provided,

(i) the time within which the work was required to be done.

107 Costs agreements not subject to assessment

(1) The Registrar is to decline to assess a bill of costs if:

(a) the disputed costs are subject to a costs agreement that complies with Division 3 of Part 11 of the *Legal Profession Act 1987*, and

(b) the costs agreement specifies the amount of the costs or the dispute relates only to the rate specified in the agreement for calculating the costs.

(2) If the dispute relates to any other matter, costs are to be assessed on the basis of that specified rate despite clause 105. The Registrar is bound by a provision for the payment of a premium that is not determined to be unjust under clause 108.

(3) This clause does not apply to any provision of a costs agreement that the Registrar determines to be unjust under clause 108.

(4) This clause does not apply to a costs agreement applicable to the costs of legal services if a legal practitioner failed to make a disclosure in accordance with Division 2 of Part 11 of the *Legal Profession Act 1987* of the matters required to be disclosed by section 175 or 176 of that Act in relation to those costs.

108 Unjust costs agreements

(1) The Registrar may determine whether a term of a particular costs agreement entered into by a legal practitioner and a client is unjust in the circumstances relating to it at the time it was made.

(2) For that purpose, the Registrar is to have regard to the public interest and to all the circumstances of the case and may have regard to the matters specified in section 208D (2) (a)–(j) of the *Legal Profession Act 1987*.

(3) For the purposes of this clause, a person is taken to have represented another person if the person represented the other person, or assisted the other person to a significant degree, in the negotiations process up to, or at, the time the agreement was made.

(4) In determining whether a provision of the agreement is unjust, the Registrar is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the agreement was made.

109 Interest on amount outstanding

(1) The Registrar may, in an assessment, determine that interest is not payable on the amount of costs assessed or on any part of that amount and determine the rate of interest (not exceeding the rate referred to in section 190 (4) of the *Legal Profession Act 1987*).

(2) This clause applies despite any costs agreement or section 190 of the *Legal Profession Act 1987*.

(3) This clause does not authorise the giving of interest on interest.

(4) This clause does not apply to or in respect of the assessment of costs referred to in Subdivision 3 (party/party costs).

Subdivision 3 Assessment of party/party costs

110 Assessment of costs—costs ordered by court or Commission or subject of agreement

(1) When dealing with an application relating to costs payable as a result of an order made by a court or the Commission or as a result of an agreement referred to in clause 98A (1) (b), the Registrar must consider:

(a) whether or not it was reasonable to carry out the work to which the costs relate, and

(b) what is a fair and reasonable amount of costs for the work concerned.

(2) The Registrar is to determine the costs payable as a result of the order or agreement by assessing the amount of the costs that, in his or her opinion, is a fair and reasonable amount.

(3) If a court or the Commission has ordered that costs are to be assessed on an indemnity basis, the Registrar must assess the costs on that basis, having regard to any relevant rules of the court or Commission.

(4) The costs assessed are to include the costs of the assessment (including the costs of the parties to the assessment, and the Registrar). The Registrar may determine by whom and to what extent the costs of the assessment are to be paid.

(5) The costs of the Registrar are to be paid to the Commission.

Note—

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

Clause 104 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

111 Additional matters to be considered by Registrar in assessing costs ordered by court or Commission

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

(a) the skill, labour and responsibility displayed on the part of the legal practitioner or agent responsible for the matter,

(b) the complexity, novelty or difficulty of the matter,

(c) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done,

(d) the place where and circumstances in which the legal services were provided,

(e) the time within which the work was required to be done,

(f) the outcome of the matter.

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

(1) The Registrar may obtain a copy of, and may have regard to, a costs agreement.

(2) However, the Registrar must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or the Commission.

113 Court or Commission may specify amount etc

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

Subdivision 4 Enforcement of assessment

114 Certificate as to determination

(1) On making a determination, the Registrar is to issue to each party a certificate that sets out the determination.

(2) The Registrar may issue more than one certificate in relation to an application for costs assessment. Such certificates may be issued at the same time or at different stages of the assessment process.

(3) In the case of an amount of costs that has been paid, the amount (if any) by which the amount paid exceeds the amount specified in any such certificate may be recovered as a debt in a court of competent jurisdiction.

(4) In the case of an amount of costs that has not been paid, the certificate is, on the

filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs, and the rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed.

(5) For this purpose, the amount of unpaid costs does not include the costs incurred by the Registrar in the course of a costs assessment.

(6) To avoid any doubt, this clause applies to or in respect of both the assessment of costs referred to in Subdivision 2 of this Division (practitioner/client costs) and the assessment of costs referred to in Subdivision 3 of this Division (party/party costs).

(7) If the costs of the Registrar are payable by a party to the assessment (as referred to in clause 116), the Registrar may refuse to issue a certificate relating to his or her determination under this clause until the costs of the Registrar have been paid.

(8) Subclause (7) does not apply in respect of a certificate issued before the completion of the assessment process under subclause (2).

115 Reasons for determination

The Registrar must ensure that a certificate issued under clause 114 that sets out his or her determination is accompanied by:

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

(b) the amount of costs the Registrar determines is fair and reasonable, and

(c) if the Registrar declines to assess a bill of costs under clause 107—the basis for doing so, and

(d) if the Registrar determines that a term of a costs agreement is unjust—the basis for doing so, and

(e) a statement of any determination under clause 109 that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.

116 Recovery of costs of costs assessment

(1) This clause applies when the costs of the Registrar are payable by a party to the assessment (under section 182 (3) of the *Legal Profession Act 1987* or clause 105 or 110 (5)).

(2) On making a determination, the Registrar may issue to each party a certificate that sets out the costs incurred by the Registrar in the course of the costs assessment.

(3) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further

action, taken to be a judgment of that court for the amount of unpaid costs.

(4) The Registrar may take action to recover the costs of the Registrar.

117 Correction of error in determination

(1) At any time after making a determination, the Registrar may, for the purpose of correcting an inadvertent error in the determination:

(a) make a new determination in substitution for the previous determination, and

(b) issue a certificate under clause 114 that sets out the new determination.

(2) Such a certificate replaces any certificate setting out the previous determination of the Registrar that has already been issued by the Registrar, and any judgment that is taken to have been effected by the filing of that previously issued certificate is varied accordingly.

118 Determination to be final

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

Subdivision 5 Appeals

119 Appeal against decision of Registrar as to matter of law

(1) A party to an application who is dissatisfied with a decision of the Registrar as to a matter of law arising in the proceedings to determine the application may, in accordance with the Rules of the Commission, appeal to the Commission constituted by a Presidential member against the decision.

(2) The appeal is to be in the form approved by the Commission and be accompanied by the fee approved by the Commission from time to time.

(3) After deciding the question the subject of the appeal, the Commission constituted by a Presidential member may, unless it affirms the Registrar's decision:

(a) make such determination in relation to the application as, in its opinion, should have been made by the Registrar, or

(b) remit its decision on the question to the Registrar and order the Registrar to re-determine the application.

(4) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

(5) Subclause (1) does not apply to any decision of the Registrar arising in proceedings on

an application in respect of the assessment of costs under Schedule 6 as in force at any time before, on or after 1 November 2006, unless:

(a) an appeal against the decision has been instituted in accordance with this clause before that date, or

(b) the decision is made in or in connection with the reference of a dispute to the Registrar under clause 84 (3).

120 Effect of appeal on application

(1) If a party to an application has appealed against a determination or decision of the Registrar, either the Registrar or the Commission constituted by a Presidential member may suspend, until the appeal is determined, the operation of the determination or decision.

(2) The Registrar or the Commission may end a suspension made by the Registrar. The court or the Commission may end a suspension made by the court or Commission.

Subdivision 6 Miscellaneous

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

(1) The Registrar may act as set out in subclause (2) if it appears to the Registrar that costs have been incurred improperly or without reasonable cause, or have been wasted by undue delay or by any other misconduct or default.

(2) The Registrar may in the determination:

(a) disallow the costs as between the legal practitioner or agent and the practitioner's or agent's client, and

(b) direct the legal practitioner or agent to repay to the client costs that the client has been ordered by a court or the Commission to pay to any other party, and

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

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

(4) The Registrar must give due consideration to any submissions so made.

122 Referral of misconduct to Legal Services Commissioner

(1) If the Registrar considers that any conduct of a legal practitioner or agent involves the deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations as to costs, the Registrar must refer the matter to the Legal

Services Commissioner appointed under the *Legal Profession Act 1987*.

(2) For the purposes of the *Legal Profession Act 1987*, the deliberate charging of grossly excessive amounts of costs and deliberate misrepresentations as to costs are each declared to be professional misconduct.

(3) The Registrar may refer any failure by a legal practitioner to comply with a notice issued under clause 102, or with any other provision of this Division, to the Legal Services Commissioner.

Division 5 Goods and services tax

123 GST may be added to costs

(1) Despite the other provisions of this Part, a cost fixed by Division 2 (Costs recoverable in compensation matters) or Division 3 (Costs recoverable in work injury damages matters) may be increased by the amount of any GST payable in respect of the service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Part.

(2) This clause does not permit a legal practitioner or agent to charge or recover, in respect of GST payable in respect of a service, an amount that is greater than:

(a) 10% of the maximum amount payable under this Part to the legal practitioner or agent in respect of the service apart from this clause, or

(b) the amount permitted under the New Tax System Price Exploitation law,

whichever is the lesser.

(3) In this clause:

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

New Tax System Price Exploitation law means:

(a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or

(b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

Division 6 Miscellaneous

124 Modifications to Legal Profession Act 1987 relating to assessment of costs

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

to assessment under that Division, assessment of costs under Division 4 of Part 8 of Chapter 7 of the 1998 Act.

125 Transitional provisions

(1) In relation to claims for compensation, this Part:

(a) applies to new claims, and

(b) extends to proceedings with respect to existing claims that are treated as new claims under clause 224 but only if those proceedings had not commenced before 21 December 2001, and

(c) extends to proceedings with respect to existing claims that are treated as new claims under clause 225 or 226.

(2) In relation to claims for work injury damages, this Part applies to claims made after 1 January 2002.

(3) An amendment of Schedule 6 taking effect before 1 November 2006 applies only to an activity or event carried out or occurring wholly after the commencement of the amendment.

(4) In this clause, ***existing claim*** and ***new claim*** have the same meaning as in Chapter 7 of the 1998 Act.

125A Transitional provisions—amendments made by Workers Compensation Amendment (Costs) Regulation 2006

(1) **Costs (other than disbursements)—proceedings commenced in Commission before commencement date** This Part and Schedule 6 as in force before 1 November 2006 continue to apply to and in respect of costs (other than disbursements) where proceedings in the matter were commenced in the Commission before that date.

(2) **Costs (other than disbursements)—proceedings commenced in Commission on or after commencement date** This Part and Schedule 6 as in force on 1 November 2006 apply to and in respect of costs (other than disbursements) where proceedings in the matter are commenced in the Commission on or after that date (subject to any relevant amendments made after that date).

(3) **Costs (other than disbursements)—matters resolved before commencement date without recourse to Commission** This Part and Schedule 6 as in force before 1 November 2006 continue to apply to and in respect of costs (other than disbursements) in matters resolved before that date without recourse to the Commission.

(4) **Costs (other than disbursements)—matters resolved on or after commencement date without recourse to Commission** This Part and Schedule 6 as in force on 1 November 2006 apply to and in respect of costs (other than disbursements) in matters resolved

on or after that date (subject to any relevant amendments made after that date) without recourse to the Commission.

(5) **Disbursements incurred before commencement date** Subject to clauses 45 and 48A, a disbursement incurred before 1 November 2006 is to be reimbursed subject to and in accordance with this Part and Schedule 6 as in force before that date.

(6) **Disbursements incurred on or after commencement date** A disbursement incurred on or after 1 November 2006 is to be reimbursed subject to and in accordance with:

(a) this Part and Schedule 6 as in force before that date, where proceedings in the matter were commenced in the Commission before that date, or

(b) this Part and Schedule 6 as in force on or after that date (subject to any relevant amendments made after that date), where:

(i) proceedings in the matter are commenced in the Commission on or after that date, or

(ii) the matter is resolved on or after that date without recourse to the Commission.

(7) **Costs orders applicable to directions or recommendations given or made before commencement date** The Registrar may, subject to Schedule 6 as in force before 1 November 2006, make a costs order in connection with:

(a) the giving of an interim payment direction under Division 2 of Part 5 of Chapter 7 of the 1998 Act, or

(b) the making of a recommendation under Division 3 of Part 5 of Chapter 7 of the 1998 Act,

where the application was made, the direction was given or the recommendation was made before that date, and may do so by making a global order of a general nature.

(8) **Interpretation** For the purposes of this clause, proceedings were or are commenced in the Commission when the initiating application has been accepted by the Registrar for registration.

(9) For the purposes of this clause, a matter was or is resolved without recourse to the Commission when:

(a) the insurer notifies the claimant, or the legal practitioner or agent representing the claimant, in writing that the claim or an aspect of the claim has been accepted, or

(b) payment has been made to the claimant by the insurer in respect of the claim,

whichever is the sooner.

(10) For the purposes of this clause, a matter relating to the insurer's legal representative's or agent's costs was or is resolved without recourse to the Commission when:

(a) the insurer notifies the claimant, or the legal practitioner or agent representing the claimant, in writing that the insurer disputes liability in respect of the claim or an aspect of the claim, and

(b) the decision of the insurer to do so is not disputed by the claimant.

Nothing in this subclause affects the application of subclause (9) to the insurer's legal representative's or agent's costs.

126 Special provision for matters involving coal miners

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

126A Bill of costs to be in approved form

In workers compensation matters, a bill of costs (as defined by clause 95):

(a) must, if there is a form approved by the Authority for the purposes of this clause, be given in or to the effect of the approved form, and

(b) must include relevant particulars of the kind referred to in clause 98 (2) (a) even if the bill is not one to which clause 98 applies.

126B Costs orders in respect of certain matters

The Registrar may, subject to Schedule 6, make a costs order in connection with any of the following:

(a) an application for or the giving of an interim payment direction under Division 2 (Disputes concerning weekly payments or medical expenses) of Part 5 of Chapter 7 of the 1998 Act,

(b) the determination of a dispute under Division 2A (Disputes concerning past weekly payments) of that Part,

(c) the making of recommendation under Division 3 (Disputes about non-compliance with Chapter 3) of that Part.

Part 20 Insurance premiums

Division 1 Preliminary

127 Definitions

In this Part:

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

cost of claims means:

(a) in relation to the calculation of a premium for the issue or renewal of an employer's policy (other than a retro-paid loss premium policy):

(i) except as provided by paragraph (ii), the cost of claims (within the meaning of Division 4) for an injury year for the employer, being that cost as at the commencement of the period of insurance to which the premium relates, or

(ii) after that period of insurance has expired, the cost of claims (within the meaning of that Division) for an injury year for the employer, being that cost as at the expiration of that period, and

(b) in relation to the calculation of a premium for the issue or renewal of an employer's policy (being a retro-paid loss premium policy), the cost of claims for the employer for the period of insurance concerned.

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

employer includes a person who proposes to become an employer.

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

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

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

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

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

retro-paid loss premium policy means a policy to which the optional alternative method of premium calculation (within the meaning of section 168A of the Act) applies.

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

128 Meaning of "injury year"

In this Part, a reference to an injury year, when made in relation to the calculation of a premium for the issue or renewal of a policy, is a reference to any of the successive periods of 12 consecutive months occurring before the commencement of the period of insurance for which the premium is or is to be calculated.

129 Non wages-based calculation of premium

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

(a) a reference in this Part to wages is to be read as a reference to that other basis of calculation of the premium, and

(b) the form of any notice or declaration under this Part is to be appropriately modified having regard to the manner of calculation of the premium.

Division 2 Declaration of wages

130 Employer to supply insurer with return relating to wages—standard policies

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

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

(b) the renewal of a policy,

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

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

(3) This clause does not apply in relation to a retro-paid loss premium policy.

131 Employer to supply insurer with return relating to wages—retro-paid loss premium

policies

(1) This clause applies in relation to a retro-paid loss premium policy.

(2) An employer must, at least 2 months before the commencement of a period of insurance, supply the insurer concerned with a notice in the approved form, duly completed, which contains a reasonable estimate of the wages that will be payable by the employer during the period of insurance to workers employed by the employer.

(3) An employer must, at the request of an insurer who issued a policy at any time during the period of insurance of the policy, supply the insurer with a notice in the approved form, duly completed, which contains a full and correct declaration by the employer of the wages that have actually been paid by the employer during that period of insurance to workers employed by the employer up to the date specified in the insurer's request.

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

132 Experience premium return

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

(a) with a declaration in the approved form, and

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

133 Offence by employer

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

Maximum penalty: 20 penalty units.

Division 3 Input tax credit entitlements

134 Employer to give insurer notice of input tax credit entitlement

For the purpose of enabling a premium to be calculated, an employer must, prior to the

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

Division 4 Certification of cost of claims

135 Definitions

(1) In this Division, ***cost of claims*** means the total of the following costs:

(a) in relation to an injury year related to, or a period of insurance for, a policy (other than a retro-paid loss premium policy):

(i) the total of the costs of each individual claim of which the insurer has notice at the time of expiry or renewal (as appropriate) of the policy concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the Act or the former Act to have been received) during the injury year or the period of insurance, whichever is relevant, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act,

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

(b) in relation to an injury year related to, or a period of insurance for, a retro-paid loss premium policy:

(i) the total of the costs of each individual claim of which the insurer has notice at the time of each adjustment date concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the Act or the former Act to have been received) during the period of insurance, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act,

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

but, in any case where a single event leads to 3 or more individual claims, the

total costs of all those claims in relation to that event are not to exceed the amount that is twice the relevant large claim limit for the policy (as determined in accordance with clause 137 (5) and (7)).

(2) Despite subclause (1), ***cost of claims***, in relation to a policy issued or renewed so as to take effect before 4 pm on 30 June 1995, has the meaning given to it by this clause before its substitution by the *Workers Compensation Amendment (Retro-Paid Loss Premium Method) Regulation 2009*.

136 Prevention of double allowance for provisional compensation payments

(1) In this clause:

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

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

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

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

(c) the cost of those provisional compensation payments is not to be included in the total of the costs of provisional compensation payments under paragraphs (a) (ii) and (b) (ii) of the definition of ***cost of claims*** in clause 135 (1).

137 Cost of an individual claim

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

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

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

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

(d) legal costs, if any, paid by the insurer in relation to the settlement or investigation of the claim or as a consequence of proceedings at law, including any such costs

that were paid to the claimant or incurred by the insurer on the insurer's own account,

(e) the most accurate estimation for the time being of the insurer's outstanding liability reasonably likely to arise out of the claim,

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

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

(a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and

(b) in relation to a policy (other than a retro-paid loss premium policy)—is to be reduced by the amounts, if any, that have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and

(b1) in relation to a retro-paid loss premium policy—is to be reduced by the amounts, if any, that have been recovered or that, in the opinion of the Nominal Insurer, are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and

(c) is to be reduced by:

(i) in the case where the injured worker's weekly payment of compensation is less than $500 or is not known (for example, the claim is for payment of medical expenses compensation only)—$500 or, if the cost of the claim is less than $500, that lesser cost, or

(ii) in any other case—an amount that is the lesser of the following:

(A) the amount that the injured worker is entitled to receive as one week's weekly payment of compensation,

(B) if the claim is covered by a policy of insurance that was issued or renewed so as to take effect before 4pm on 30 June 2006—$1,449.50,

(C) if the claim is covered by a policy of insurance that was issued or renewed so as to take effect on or after 4pm on 30 June 2006, the amount specified by the relevant insurance premiums order that applies to that policy, and

(d) does not include any amount paid or payable under section 64A of the Act

(Compensation for cost of interpreter services), and

(e) does not include any amount which section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer, and

(f) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of the payments, fees, expenses or costs included in the cost of the individual claim under subclause (1), pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

(3) In this clause, references to the insurer's outstanding liability reasonably likely to arise out of the claim are references to the amount calculated to be sufficient to meet all reasonably likely future payments in respect of the claim, including adjustments (at such rates, if any, as the Authority from time to time determines) to take account of expected future earnings on investments and expected future inflation or deflation on that amount.

(4) For the purpose of this clause, in the case of a claim in respect of the death of or injury to a person caused by or arising out of a motor accident as defined in the *Motor Accidents Act 1988*:

(a) the insurer's liability to indemnify an employer in respect of the employer's liability to the claimant independently of the Act is taken to be limited to the amount of damages (if any) that would be payable if Division 3 of Part 5 of the *Workers Compensation Act 1987* applied to the award of damages concerned, and

(b) the insurer is taken not to be liable for legal costs connected with proceedings under the *Motor Accidents Compensation Act 1999* if damages would not have been payable if that Division applied to that award.

(5) If the cost of an individual claim exceeds the large claim limit that applied when the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received), the cost of the individual claim is the amount of that large claim limit.

(6) For the purposes of subclause (5) in relation to a policy (other than a retro-paid loss premium policy), the large claim limit specified in Column 2 of the Table to this clause applies to an injury that was received or is deemed to have been received during a year specified in Column 1 of that Table in relation to that limit.

(7) For the purposes of subclause (5), in relation to a retro-paid loss premium policy, an employer is, before the commencement of the policy, to elect a large claim limit of one of the following amounts to apply to injuries received or deemed to have been

received during the period of insurance:

(a) $350,000,

(b) $500,000.

Large claim limits

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

138 Cost of provisional payments of compensation

(1) For the purposes of this Part, the cost of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to a particular injury is (except as provided by subclause (2)) the sum of the following:

(a) the sum of the payments of provisional weekly payments of compensation and provisional medical expenses compensation, if any, made by the insurer in respect of the injury pursuant to the 1998 Act,

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

(c) legal costs, if any, paid by the insurer in relation to the investigation of the injury, the determination of liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation and otherwise in complying with Divisions 1 and 3 of Part 3 of Chapter 7 of the 1998 Act,

(d) the most accurate estimation for the time being of the insurer’s outstanding liability to make provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to the injury,

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

(2) However, the cost of provisional weekly payments of compensation and provisional payment of medical expenses compensation with respect to a particular injury:

(a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and

(b) in relation to a policy (other than a retro-paid loss premium policy)—is to be reduced by the amounts, if any, that have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and

(b1) in relation to a retro-paid loss premium policy—is to be reduced by the amounts, if any, that have been recovered or that, in the opinion of the Nominal Insurer, are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and

(c) is to be reduced by:

(i) in the case where the injured worker's provisional weekly payment of compensation is less than $500 or is not known (for example, the claim is for provisional payment of medical expenses compensation only)—$500 or, if the cost of the payments is less than $500, that lesser cost, or

(ii) in any other case—an amount that is the lesser of the following:

(A) the amount that the injured worker is entitled to receive as one week's provisional weekly payment of compensation,

(B) if the payment is under a policy of insurance that was issued or renewed so as to take effect before 4pm on 30 June 2006—$1,449.50,

(C) if the payment is under a policy of insurance that was issued or renewed so as to take effect on or after 4pm on 30 June 2006, the amount specified by the relevant insurance premiums order that applies to that policy, and

(d) does not include any amount paid or payable under section 64A (Compensation for cost of interpreter services) of the 1987 Act, and

(e) does not include any amount that section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer, and

(f) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of the payments, fees, expenses or costs included in the cost of provisional weekly payments of compensation or provisional payment of medical expenses

compensation under subclause (1), pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

(3) In this clause, references to the insurer's outstanding liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation with respect to an injury are references to the amount calculated to be sufficient to meet all reasonably likely future provisional payments of weekly compensation or medical expenses compensation in respect of the injury.

139 Certificates relating to cost of claims

(1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance:

(a) an employer to whom a policy has been issued by an insurer, or

(b) another insurer,

may, by notice in writing served on the insurer who issued the policy not later than 1 month after the commencement of the period of insurance, require the insurer who issued the policy to furnish the employer or other insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying (with respect to the whole or any part of the 2 last injury years which occurred or will have occurred before the commencement of the period of insurance) the particulars relating to costs of claims required by the form to be inserted in it.

(2) An insurer who, without reasonable excuse:

(a) fails to comply with a requirement made in accordance with subclause (1), or

(b) in purported compliance with any such requirement, furnishes a certificate knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

140 Effect of certificate

(1) Where an insurer has, in accordance with clause 139, furnished a certificate to an employer or another insurer for the purpose of ascertainment of the premium payable in respect of a period of insurance, the particulars relating to costs of claims specified in the last or only certificate so furnished are binding on the employer and any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance, except as provided by subclauses (2) and (3).

(2) Those particulars are not binding on the employer to the extent of any inconsistency with a determination of the Authority under section 170 (Action by employer where premium not in accordance with insurance premiums order) of the 1987 Act.

(3) If an insurer (other than the insurer who furnished the certificate) does not agree with any of those particulars and applies to the Authority for a variation of those particulars (and the application is not withdrawn or, in the opinion of the Authority, abandoned), the particulars relating to costs of claims specified in the certificate as confirmed or varied by the Authority are binding on any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance.

140A Certificates by scheme agents relating to cost of claims— retro-paid loss premium policy

(1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance in relation to a retro-paid loss premium policy, the Nominal Insurer may, by notice in writing, require the scheme agent through whom the policy was issued, to furnish the Nominal Insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying the particulars relating to costs of claims requested in the notice.

(2) A scheme agent must not, without reasonable excuse:

(a) fail to comply with a requirement made in accordance with subclause (1), or

(b) in purported compliance with any such requirement, furnish a certificate knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular.

Maximum penalty: 20 penalty units.

141 Employers who were previously self-insurers

(1) If an employer:

(a) makes an application to an insurer for the issue or renewal of a policy, and

(b) was a self-insurer during any part of the last 2 injury years occurring before the proposed period of insurance,

the cost of claims in relation to the period as a self-insurer is to be calculated (subject to any relevant determination of the Authority) as if the employer had been insured under a policy in respect of that period.

(2) The provisions of this Division relating to insurers apply (subject to such modifications and exceptions as the Authority may determine) to such an employer in respect of the period as a self-insurer.

Division 5 Demand for premium

142 Notice of premium calculation

(1) An insurer may not demand a premium for the issue or renewal of a policy to which an insurance premiums order applies unless the insurer has sent or sends at the time to the employer a notice in the approved form, duly completed, relating to the calculation of the premium in respect of that employer.

(2) The sending by an insurer of a notice referred to in subclause (1) to a broker or an intermediary or an agent of an employer (whether or not the notice is also addressed to the employer) does not constitute sending of the notice to the employer for the purposes of that subclause, but nothing in this subclause prevents the sending of any such notice to an employer by a postal or courier service.

Division 6 Procedure before Authority relating to insurance premiums

143 Applications

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

144 Answer

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

145 Decision of Authority

The Authority:

(a) is to consider the application and may have regard to such representations as it thinks fit, and

(b) is to determine the matter to which the application relates, and

(c) is to inform the applicant and the respondent of its decision in such manner as it thinks fit.

146 Procedure generally

The Authority may, in its discretion:

(a) permit an actuary, auditor, accountant, insurance authority, medical referee or other person to sit with it as an assessor, and

(b) obtain and consider a report from any insurer, self-insurer or any other person

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

Division 7 Policies exempt from insurance premiums orders

147 Further policies exempt from order—unregulated premiums

(1) Policies issued or renewed by a specialised insurer are exempted from insurance premiums orders.

(2) Despite subclause (1), policies issued or renewed by a specialised insurer are not exempt from an insurance premiums order to the extent that the order specifies a prescribed excess amount for the purposes of section 160 of the Act.

Division 8 Payment of premiums by instalments

Subdivision 1 Preliminary

148 Application of Division

(1) Subdivisions 2 and 3 apply in relation to policies other than retro-paid loss premium policies.

(2) Subdivisions 4 and 5 apply in relation to retro-paid loss premium policies.

149 Definition

In this Division, ***deposit premium***, in relation to a retro-paid loss premium policy of insurance, means a premium for the policy calculated at the commencement of, or during, the period of insurance using the method for the calculation of a deposit premium set out in the relevant insurance premiums order that applies to that policy.

Subdivision 2 Payment in four instalments

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

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

(a) the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments, and

(b) the period of insurance is 12 months, and

(c) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds $1,000, and

(d) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.

(2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.

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

149B Number, size and times for payment of instalments

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

Instalment No 2

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

Instalment No 3

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

Instalment No 4

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

Adjustment of Premium

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

(2) A notice in relation to an adjustment of premium as referred to in subclause (1) does not affect the service of a notice under section 172 (1) (c) of the Act.

(3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit is required to be paid, the amount of the required instalments deposit is to be:

(a) one-quarter of the estimated premium for the employer for the previous period of insurance, or

(b) if there was no such previous period of insurance—$300 or such greater amount as the employer and the insurer may agree.

(4) Subclause (3) applies only if the estimated premium cannot be determined because the employer has not yet supplied the relevant notice under clause 130 (1) and the insurer cannot estimate the premium by reference to wages for the previous period of insurance in accordance with the relevant insurance premiums order.

Subdivision 3 Payment in twelve instalments

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

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

(a) the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments, and

(b) the period of insurance is 12 months, and

(c) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds $5,000, and

(d) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.

(2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.

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

149D Number, size and times for payment of instalments

(1) If an employer elects to pay the premiums under a policy of insurance by instalments in accordance with this Subdivision and pays the required instalments deposit (that is,

Instalment No 1) within 1 month after the commencement of the period of insurance, the premiums are payable in instalments as follows:

Instalment No 2

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

Instalment No 3

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

Instalment Nos 4–11

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

Instalment No 12

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

Adjustment of Premium

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

(2) A notice in relation to an adjustment of premium as referred to in subclause (1) does not affect the service of a notice under section 172 (1) (c) of the Act.

(3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit (that is, Instalment No 1) or Instalment Nos 2, 3 or 4 are required to be paid, the amount of the required instalments deposit or other instalment is to be:

(a) one-twelfth of the estimated premium for the employer for the previous period of insurance, or

(b) if there was no such previous period of insurance—$300 or such greater amount as the employer and the insurer may agree.

(4) Subclause (3) applies only if the estimated premium cannot be determined because the employer has not yet supplied the relevant notice under clause 130 (1) and the insurer cannot estimate the premium by reference to wages for the previous period of insurance in accordance with the relevant insurance premiums order.

Subdivision 4 Payment in four instalments—retro-paid loss premium policies

149E Policies under which premiums may be paid in four instalments

(1) An employer may elect to pay the deposit premium under a retro-paid loss premium policy in four instalments (together with any required adjustments of premium) under this Subdivision if:

(a) the period of insurance is 12 months, and

(b) the election is made within 1 month after the commencement of the period of insurance to which the deposit premium relates.

(2) Payment of the first instalment (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments under this Subdivision.

(3) For the purposes of this Subdivision, the ***first instalment*** is an amount equal to one-quarter of the deposit premium for the policy.

149F Number, size and times for payment of instalments

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

Instalment No 2

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

Instalment No 3

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

Instalment No 4

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

Note—

Adjustments of the actual premium for a retro-paid loss premium policy are calculated at the relevant adjustment dates in accordance with the relevant insurance premiums order. Payment is to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due: see section 172 (1) (c) of the Act.

Subdivision 5 Payment in twelve instalments—retro-paid loss premium policies

149G Policies under which premiums may be paid in twelve instalments

(1) An employer may elect to pay the deposit premium under a retro-paid loss premium policy in twelve instalments (together with any required adjustment of premium) under this Subdivision if:

(a) the period of insurance is 12 months, and

(b) the election is made within 1 month after the commencement of the period of insurance to which the premium relates.

(2) Payment of the first instalment (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.

(3) For the purposes of this Subdivision, the ***first instalment*** is an amount equal to one-twelfth of the deposit premium for the policy.

149H Number, size and times for payment of instalments

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

Instalment No 2

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

Instalment No 3

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

Instalment Nos 4–11

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

Instalment No 12

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

Note—

Adjustments of the actual premium for a retro-paid loss premium policy are calculated at the relevant adjustment dates in accordance with the relevant insurance premiums order. Payment is to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due: see section 172 (1) (c) of the Act.

Division 9 Miscellaneous

150 Transitional—operation of amendments

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

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

(1) An employer is entitled to a rebate for an overpayment of an insurance premium if:

(a) an amount of a claim was included in the costs of claims used in the calculation of the insurance premium, and

(b) on or after 1 January 2000:

(i) a court in a criminal prosecution determined that the claim or part of the claim was fraudulent (whether or not a person is convicted for the fraud), or

(ii) the Compensation Court or the Commission in a final determination determined that the claim was made by a person who was not a worker, or

(iii) the Authority:

(A) is satisfied that the claim is one to which section 235B of the 1998 Act applies, or

(B) has made an order under section 235D of the 1998 Act in relation to the claim.

(2) An employer is entitled to such a rebate in relation to each period of insurance for which the amount of a claim referred to in subclause (1) was included in the calculation of the insurance premium for that period.

(3) The amount of the rebate that an employer is entitled to under this clause is to be determined by the Authority.

Part 21 Premium Discount Scheme

Division 1 Preliminary

151 Commencement

The Scheme commenced at 4 pm on 30 June 2001.

151A Staged closure of Premium Discount Scheme

(1) **Premium Discount Scheme is closed to new participants** On and from the commencement of this clause no employer is entitled to commence participation in the Premium Discount Scheme.

(2) **Premium Discount Scheme (General) closed** The Premium Discount Scheme (General) strand of the Scheme is closed.

(3) An employer who was a participant in the Premium Discount Scheme (General) strand of the Scheme immediately before the commencement of this clause ceases to be such a participant on that commencement.

(4) For the avoidance of doubt, the Premium Discount Scheme (General) strand of the Scheme does not apply to any policy of insurance that is to be or has been issued or renewed so as to take effect on or after the commencement of this clause.

(5) **One further verification permitted** Despite subclause (3), an employer who was a participant in the Premium Discount Scheme (General) strand of the Scheme immediately before the commencement of this clause, who had passed at least one verification before that commencement, may, at any time after the commencement of this clause (but not later than 6 months following the expiration of the employer's policy of insurance in force immediately before that commencement), make one attempt to pass one further verification as if the employer were still a participant.

(6) If the employer passes a further verification as referred to in subclause (5), that verification may be used to confirm a previous verification that provisionally entitled

the employer to a discount on the insurance premium payable with respect to the employer's last year of participation in the Scheme.

(7) The amount of premium discount to which an employer who passes a further verification as referred to in subclause (5) is entitled to is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose and despite any other provision of this Part, the PDA Rating of the PDA who verifies that the employer has passed the further verification is 15%.

152 Interpretation

(1) In this Part:

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

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

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

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

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

member, in relation to a PDA, means:

(a) if the PDA is or includes an individual—that individual or each such individual, and

(b) if the PDA is or includes a body corporate—each director or person involved in the management of the body corporate (however described), and

(c) if the PDA is or includes a partnership—each member of the partnership, and

(d) each employee of the PDA, and

(e) each person engaged by the PDA for the purpose of carrying out the PDA's functions under the Scheme.

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

occupational health and safety legislation means the *Occupational Health and Safety Act 1983* or the *Occupational Health and Safety Act 2000*.

Premium Discount Adviser or ***PDA*** means a Premium Discount Adviser approved by

the Authority under clause 156.

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

Principal, in relation to a PDA, means a Principal of the PDA as referred to in clause 160.

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

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

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

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

153 Premium Discount Scheme

(1) There is established a scheme called the "Premium Discount Scheme", to be administered by the Authority.

(2) The object of the Scheme is to provide for a discount on workers compensation insurance premiums for employers who implement programs to improve workplace safety and injury management for injured workers.

(3) There are two strands to the Scheme:

(a) the Premium Discount Scheme (General) (***the PDS (General)***), and

(b) the Premium Discount Scheme Small Business Strategy (***the Small Business Strategy***).

(4) An employer may participate in either strand of the Scheme, subject to this Part.

154 Employers eligible to participate in PDS (General)

(1) An employer is eligible to participate in the PDS (General) if the employer has a policy of insurance with a licensed managed fund insurer.

(2) However, the following classes of employers are not eligible to participate in the PDS (General):

(a) minimum premium employers,

(b) employers who:

(i) are participating in the Small Business Strategy, or

(ii) have passed the second verification under the Small Business Strategy, or

(iii) have completed the PDS (General), or

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

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

155 Employers entitled to participate in Small Business Strategy

(1) An employer is eligible to participate in the Small Business Strategy if the employer:

(a) has no more than 20 full time equivalent workers, and

(b) has a policy of insurance with a licensed managed fund insurer.

(2) However, the following classes of employers are not eligible to participate in the Small Business Strategy:

(a) minimum premium employers,

(b) employers who:

(i) are participating in the PDS (General), or

(ii) have completed the PDS (General), or

(iii) have passed the fourth verification under the Small Business Strategy, or

(iv) who are precluded from participating in the Small Business Strategy by reason of clause 184 (Time limits on participation in Scheme).

(3) An employer who enrols in a small business premium discount program under Division 3 remains eligible to participate in the Small Business Strategy even if the number of the employer’s workers subsequently increases to more than 20 full time equivalent workers.

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

Division 2 Premium Discount Scheme (General)

Subdivision 1 Premium Discount Advisers

156 Approval of Premium Discount Advisers

(1) The Authority may on application approve any of the following (***the applicant***) as a Premium Discount Adviser in accordance with the Premium Discount Guidelines:

(a) an individual,

(b) a body corporate,

(c) a group consisting of a combination of individuals or bodies corporate or both (including a partnership or other unincorporated association).

(2) The Authority may not approve an applicant as a PDA unless:

(a) the applicant has an Australian Business Number, and

(b) the applicant has provided to the Authority such information as the Authority may reasonably require in order to assess the applicant's suitability to be a PDA and the character of the applicant's proposed members, and

(c) the Authority is satisfied that:

(i) the applicant is suitable to be a PDA, and

(ii) the applicant, and each of the applicant's proposed members, is of good character.

(3) For the purpose of assessing whether an applicant is suitable to be a PDA and the character of the applicant's proposed members, the Authority may make such inquiries and undertake such investigations about the applicant, and each of the applicant's proposed members, as it thinks fit.

(4) In this clause, ***proposed member***, in relation to an applicant, has the same meaning as ***member*** has in relation to a PDA.

157 Conditions of approval

(1) An approval as a PDA is subject to the following conditions:

(a) the PDA must hold professional indemnity insurance covering the activities of the PDA (including the activities of the PDA's members) in carrying out the functions of a PDA,

(b) the PDA must sign a performance agreement containing such terms as the Authority may require, and must comply with that performance agreement,

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

Note—

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

(d) the PDA must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 191 (for example, directions as to the use of audit tools),

(e) each Principal of the PDA, and each member of the PDA involved in carrying out audits under the Scheme, must satisfactorily complete such course of training as the Authority may direct,

(f) the PDA must co-operate with any review of the PDA by the Authority under clause 162, and must allow the Authority access to the PDA's premises and records for that purpose,

(g) any conditions of approval set out in the Premium Discount Guidelines.

(2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

158 Functions of a PDA

A PDA has the following functions:

(a) to audit the performance and systems of employers to assess whether standards, benchmarks or performance criteria set by the Authority have been met,

(b) to issue certificates verifying whether those employers are entitled to a premium discount under the Scheme,

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

159 Relationship with employer

(1) An employer may engage a PDA to act as PDA in relation to the employer for the purposes of the Scheme.

(2) The PDA engaged by an employer may engage any other person or body in order to assist it to carry out its functions in relation to the employer under the Scheme.

160 Principals of a PDA

(1) A PDA must have at least one Principal, and may have more than one Principal.

(2) A Principal of a PDA is an individual who is:

(a) a member of the PDA (other than a person engaged by the PDA as referred to in paragraph (e) of the definition of ***member*** in clause 152), and

(b) nominated as a Principal by the PDA.

(3) An individual may not be a Principal of more than one PDA.

(4) Subclause (3) does not prevent a member of a PDA from carrying out work for more than one PDA.

161 Functions of Principals

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

162 Review of PDAs by Authority

(1) The Authority may at any time review the performance and operations of a PDA, or of any member of the PDA, in accordance with the Premium Discount Guidelines.

(2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.

(3) The Authority may take action at any time under subclause (4) if it determines that:

(a) the PDA or a member of the PDA has failed to comply with this Part, the Premium Discount Guidelines, the Code of Conduct for PDAs, the performance agreement signed by the PDA or with any direction given by the Authority under clause 191, or

(b) the PDA has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or

(c) the PDA has entered into administration (whether voluntary or involuntary) or has been wound up, or

(d) the PDA has not been engaged by an employer during the three years preceding the commencement of a review by the Authority, or

(e) a Principal of the PDA ceases to be a member of the PDA, being a person who, in the opinion of the Authority, was integral to the performance or operations of the PDA.

(4) The Authority may take any one or more of the following actions:

(a) disallow or adjust the PDA Rating of the PDA by notice in writing,

(b) disallow or adjust the entitlement to a premium discount of an employer by whom the PDA is engaged by notice in writing,

(c) suspend or cancel the approval of a PDA by notice in writing.

(5) Before taking action under subclause (4), the Authority may give an employer by whom the PDA concerned is engaged an opportunity to make oral or written submissions to the Authority about the matter.

(6) An action referred to in subclause (4) takes effect 14 days after notice of the action is given to the PDA.

(7) The actions that the Authority may take under subclause (4) are in addition to any other powers of the Authority.

Note—

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

Subdivision 2 PDA Ratings

163 Initial PDA Ratings

(1) In its approval of a PDA, the Authority is to classify it as a Category 1, a Category 2 or a Category 3 PDA.

(2) A Category 1 PDA has the PDA Rating for a Category 1 PDA specified in the Table to this clause until immediately before 4 pm on 30 June following its approval, unless the Authority reclassifies it as a Category 2 PDA under subclause (3).

(3) A Category 1 PDA may, in accordance with the Premium Discount Guidelines, request the Authority to reclassify the PDA as a Category 2 PDA. The following provisions apply if such a request is made:

(a) the Authority is to determine in accordance with the Premium Discount Guidelines whether to reclassify the PDA as a Category 2 PDA,

(b) if the Authority reclassifies the PDA, the PDA has the PDA Rating for a Category 2 PDA specified in the Table to this clause from the date that the Authority notifies it of the reclassification until immediately before 4 pm on 30 June following its approval, and thereafter the PDA Rating of the PDA is as determined by the Authority under clause 164.

(4) A Category 2 PDA or a Category 3 PDA has the PDA Rating specified in the Table to this clause for that category of PDA until immediately before 4 pm on 30 June following its approval. Thereafter, the PDA Rating of the PDA is as determined by the Authority under clause 164.

Table

PDA Category	PDA Rating
Category 1 PDA	5%
Category 2 PDA	10%
Category 3 PDA	15%

164 Subsequent determination of PDA Rating by Authority

(1) Each year the Authority is to:

(a) assess the success of each PDA in achieving cost savings for employers engaging the PDA (including reductions in the cost of claims for employers), and

(b) on the basis of that assessment, determine a PDA Rating for each PDA of 0% to 15%.

(2) A PDA Rating determined by the Authority for a PDA has effect (or is taken to have effect) from the time specified by the Authority in the notice of determination (whether or not the notice is given to the PDA before or after the time specified in the notice).

(3) A PDA Rating has effect until immediately before the time specified by the Authority in the next notice of determination of the PDA Rating for the PDA (including a notice disallowing or adjusting the PDA Rating of the PDA under clause 162).

(4) The assessment referred to in subclause (1) (a) is to be undertaken in accordance with the Premium Discount Guidelines, and otherwise as the Authority determines.

(5) For the purpose of undertaking an assessment, the Authority may make such inquiries and undertake such investigations as it thinks fit.

(6) The Authority may publish the PDA Rating of PDAs from time to time in such manner as the Authority determines.

165 PDA Rating not transferable

(1) A member of a PDA who becomes a member of another PDA or carries out work for another PDA does not thereby transfer the PDA Rating of the first-mentioned PDA to that other PDA.

(2) A PDA that merges with, or acquires or is acquired by, another PDA does not thereby transfer its PDA Rating to the other PDA, or acquire the PDA Rating of that other PDA.

Division 3 Small Business Strategy

166 Approval of sponsors

(1) The Authority may on application approve any of the following (***the applicant***) as a sponsor in accordance with the Premium Discount Guidelines:

(a) a body or organisation,

(b) a group consisting of more than one body or organisation.

(2) The Authority may not approve an applicant as a sponsor unless:

(a) the applicant has an Australian Business Number, and

(b) the applicant has provided to the Authority such information as the Authority may reasonably require in order to assess the application.

(3) For the purpose of an assessment under this clause, the Authority may make such inquiries and undertake such investigations about the applicant as it thinks fit.

167 Conditions of approval

(1) An approval as a sponsor is subject to the following conditions:

(a) the sponsor must hold professional indemnity insurance covering the activities of the sponsor (including the activities of each person employed or engaged by the sponsor) in carrying out the functions of a sponsor,

(b) the sponsor must comply with the Code of Conduct for Sponsors,

Note—

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

(c) the sponsor must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 191,

(d) the sponsor must comply with the terms of any funding agreement between the sponsor and the Authority,

(e) the sponsor must co-operate with any review of the sponsor by the Authority under clause 173, and must allow the Authority access to the sponsor’s premises and records for that purpose,

(f) any conditions of approval set out in the Premium Discount Guidelines.

(2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

168 Authority may invite proposals for small business discount programs

(1) The Authority may at any time, in such manner as the Authority determines, invite sponsors to submit a proposal to conduct a program to assist employers to improve their occupational health and safety and injury management performance (a ***small business premium discount program***).

(2) A proposal is to be made in accordance with the Premium Discount Guidelines.

(3) The Authority may request the sponsor to provide further information or particulars about the proposed small business premium discount program.

169 Assessment of proposals

(1) The Authority is to assess proposals for small business premium discount programs according to criteria and procedures set out in the Premium Discount Guidelines.

(2) After such assessment, the Authority may accept or reject the proposal, or accept it subject to specified modifications.

170 Funding agreements

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

171 Relationship with employer

(1) An employer may enrol in a small business premium discount program proposed to be conducted by a sponsor at any time after the sponsor is approved up to 6 months after the commencement of a premium year (within the meaning of clause 174) of the employer.

(2) An employer who enrolled in a small business premium discount program of 2 years duration and who has passed the third verification for that program (within the meaning of clause 174) may enrol in the third year of a small business premium discount program of 3 years duration, but only with the consent of the sponsor conducting that program.

172 Functions of a sponsor

A sponsor has the following functions:

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

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

173 Review of sponsors by Authority

(1) The Authority may at any time review the performance and operations of a sponsor in accordance with the Premium Discount Guidelines.

(2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.

(3) The Authority may take action at any time under subclause (4) if it determines that:

(a) a sponsor has failed to comply with the funding agreement, this Part, the Premium Discount Guidelines, the Code of Conduct for Sponsors or with any direction given by the Authority under clause 191, or

(b) the sponsor has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or

(c) the sponsor has entered into administration (whether voluntary or involuntary) or has been wound up, or

(d) the small business premium discount program conducted by the sponsor has ceased to be viable.

(4) The Authority may take any one or more of the following actions:

(a) disallow or adjust the entitlement to a premium discount of an enrolled employer by notice in writing,

(b) suspend or cancel the approval of a sponsor by notice in writing,

(c) suspend or cancel the sponsor’s program by notice in writing.

(5) The Authority may by notice in writing require a sponsor to repay to the Authority any funds provided to the sponsor by the Authority that:

(a) have not been spent by the sponsor, or

(b) if spent, were not spent in accordance with the funding agreement.

(6) Before taking action under subclause (4), the Authority may give an employer enrolled in a program conducted by the sponsor concerned an opportunity to make oral or written submissions to the Authority about the matter.

(7) An action referred to in subclause (4) or (5) takes effect 14 days after the notice of the action is given to the sponsor.

(8) The actions that the Authority may take under subclause (4) or (5) are in addition to

any other powers of the Authority.

Note—

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

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

Division 4 Premium discounts

174 Definitions

(1) In this Division:

first verification means a verification to assess whether:

(a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the first verification, or

(b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer's sponsor for the first verification.

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

fourth verification means a verification to assess whether:

(a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the fourth verification, or

(b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer's sponsor for the fourth verification.

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

second verification means a verification to assess whether:

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

(b) in the case of an employer participating in the Small Business Strategy—the

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

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

third verification means a verification to assess whether:

(a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the third verification, or

(b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer's sponsor for the third verification.

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

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

(2) For the purposes of this Division:

(a) an employer passes a verification when the employer's PDA or sponsor issues a certificate verifying that the employer:

(i) in the case of an employer participating in the PDS (General)—has met the standards, benchmarks or performance criteria set by the Authority for that verification, or

(ii) in the case of an employer participating in the Small Business Strategy—has met the objectives set by the sponsor for that verification, and

(b) a reference to a PDA Rating, in relation to a PDA verifying that an employer has passed a verification, is a reference to the PDA Rating of the PDA at the time that it so verifies.

175 First year of participation

(1) An employer is to attempt to pass the first verification within 6 months of the commencement of the employer's first year of participation. The employer may make more than one attempt during that period.

(2) If the employer's PDA or sponsor verifies that the employer has passed the first verification within that period, the employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's first year of participation.

(3) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the ***PDS level*** for the first year of participation is:

(a) in the case of an employer participating in the PDS (General)—a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the first verification, or

(b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 10%.

Note—

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

(4) An employer is to attempt to pass the second verification within 12 months of the commencement of the employer's first year of participation. The employer may make more than one attempt during that period.

(5) The employer's entitlement to the discount referred to in subclause (2) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the second verification.

176 Change in PDA Rating—first year of participation

(1) This clause applies to an employer who is participating in the PDS (General).

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

(3) If the PDA who verifies that the employer has passed the second verification is different to the PDA who verified that the employer passed the first verification, the ***PDS level*** for the first year of participation is a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the second verification (even though that may result in a lower PDS level).

177 Second year of participation

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

(2) The amount of premium discount to which the employer is provisionally entitled is to

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

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

(b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 10%.

Note—

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

(3) An employer is to attempt to pass the third verification within 12 months of the commencement of the employer's second year of participation. The employer may make more than one attempt during that period.

(4) The employer's entitlement to the discount referred to in subclause (1) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the third verification.

178 Change in PDA Rating—second year of participation

(1) This clause applies to an employer who is participating in the PDS (General).

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

(3) If the PDA who verifies that the employer has passed the third verification is different to the PDA who verified that the employer passed the second verification, the ***PDS level*** for the second year of participation is a percentage rate equal to two-thirds of the PDA Rating of the PDA who verifies that the employer has passed the third verification (even though that may result in a lower PDS level).

179 Third year of participation

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

Note—

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

(2) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the ***PDS level*** for the third year of participation is:

(a) in the case of an employer participating in the PDS (General)—a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the third verification, or

(b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 5%.

Note—

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

(3) An employer is to attempt to pass the fourth verification within 12 months of the commencement of the employer's third year of participation. The employer may make more than one attempt during that period.

(4) The employer's entitlement to the discount referred to in subclause (1) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the fourth verification.

180 Change in PDA Rating—third year of participation

(1) This clause applies to an employer who is participating in the PDS (General).

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

(3) If the PDA who verifies that the employer has passed the fourth verification is different to the PDA who verified that the employer passed the third verification, the ***PDS level*** for the third year of participation is a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the fourth verification (even though that may result in a lower PDS level).

181 Verifications

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

(2) A PDA is to verify an employer as having passed a verification if the employer has

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

(3) A sponsor must carry out a verification in accordance with the terms of the funding agreement, the Premium Discount Guidelines and any directions given by the Authority under clause 191.

(4) A sponsor is to verify an employer as having passed a verification if the employer has met the objectives set by the sponsor for that verification.

182 Provisional entitlement not confirmed

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

183 Year of participation may be repeated

(1) An employer who does not pass a verification specified for a year of participation within the period specified for that year of participation may attempt to pass that verification again in the employer's next premium year, or the premium year following that premium year.

(2) However, an employer participating in the Small Business Strategy may only attempt to pass a verification again under this clause with the sponsor's consent.

(3) **First verification and second verification attempted again** Clause 175 (and clause 176, if relevant) apply to the premium year in which the employer attempts to pass the first verification and the second verification again.

(4) **Second verification only attempted again** If the employer passed the first verification in the employer's first year of participation but did not pass the second verification, the following provisions apply:

(a) in the premium year in which the employer attempts to pass the second verification again, the employer is taken to have passed the first verification and is not required to pass that verification again,

(b) clause 175 (and clause 176, if relevant) otherwise apply to that premium year.

(5) **Third verification attempted again** Clause 177 (and clause 178, if relevant) apply to the premium year in which the employer attempts to pass the third verification again.

(6) **Fourth verification attempted again** Clause 179 (and clause 180, if relevant) apply to the premium year in which the employer attempts to pass the fourth verification again.

184 Time limits on participation in Scheme

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

Division 5 Reviews and appeals

185 Internal review

(1) An applicant for approval as a PDA that is aggrieved by a decision of the Authority to refuse to approve the applicant may request the General Manager of the Authority to review the decision.

(2) A PDA that is aggrieved by a determination of a PDA Rating for the PDA by the Authority may request the General Manager to review the determination.

(3) A request for a review is to:

(a) be in writing, and

(b) clearly outline the reasons for the request, and

(c) be served on the Authority within 14 days of the day on which the Authority gave the applicant notice of the decision or determination concerned.

(4) The PDA is to provide any documents or information in support of the request that the Authority requires the PDA by notice in writing to provide.

(5) The General Manager may delegate the review of a decision or determination under this clause, but only to a person who was not involved with the original decision or determination.

186 Appeal to Administrative Decisions Tribunal

(1) A PDA that is aggrieved by a decision of the Authority to cancel or suspend the PDA's approval may appeal to the Administrative Decisions Tribunal (***the Tribunal***) against the decision.

(2) An appeal must be made within 14 days (or such longer period as the Authority may allow) after notice of the decision is given to the PDA. The appeal is to be lodged with the Tribunal, and notice giving details of the appeal is to be given to the Authority.

(3) An appeal does not affect any decision with respect to which it is made until the appeal is determined.

Division 6 Offences

Note—

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

187 Failure to comply with Code of Conduct

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

188 Purporting to be a PDA

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

189 Failure to notify Authority of changes concerning PDA

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

(a) a Principal of the PDA ceases to be a Principal, or a member of the PDA,

(b) the PDA ceases to operate, or merges with or acquires another PDA,

(c) a change in the composition of the PDA that materially affects the skills or expertise of the PDA in occupational health and safety or injury management.

Maximum penalty: 50 penalty units.

Division 7 General

190 Premium Discount Guidelines

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

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

or a class of applicants, to be a PDA or a sponsor,

(b) conditions of approval for PDAs and sponsors,

(c) the functions of PDAs and sponsors,

(d) the engagement of PDAs by employers (including fees payable to PDAs by employers),

(e) the enrolment of employers in small business premium discount programs (including fees payable to sponsors by employers),

(f) the criteria to be used by the Authority in classifying a PDA as a Category 1 PDA, a Category 2 PDA or a Category 3 PDA,

(g) the reclassification of a Category 1 PDA as a Category 2 PDA,

(h) the criteria to be used by the Authority in determining PDA Ratings for PDAs,

(i) benchmarks, standards or performance criteria to be achieved by employers in order for the employers to be entitled to a premium discount under the PDS (General) or the Small Business Strategy,

(j) notification of matters and provision of information to the Authority by PDAs and sponsors,

(k) the carrying out of audits and verifications by PDAs and verifications by sponsors,

(l) the submission and assessment of proposals for small business premium discount programs,

(m) the content and conduct of small business premium discount programs,

(n) the nature of funding agreements between the Authority and sponsors,

(o) review of PDAs or sponsors by the Authority,

(p) other matters in connection with the Scheme.

191 Directions by Authority to PDAs or sponsors

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

192 Codes of Conduct

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

(2) A Code of Conduct may provide for any of the following matters:

(a) conditions of approval for PDAs or sponsors or particular classes of PDAs or sponsors,

(b) standards of behaviour of PDAs and members of PDAs,

(c) standards of behaviour of sponsors, and persons employed or engaged by sponsors to carry out the functions of a sponsor under the Scheme,

(d) operational requirements for PDAs or sponsors,

(e) any other matter in connection with the Scheme.

193 Calculation of premium discount

(1) Calculation of the amount of a premium discount under this Part is to be made in accordance with the relevant Insurance Premiums Order, including any maximum premium discount amount set in the relevant Insurance Premiums Order.

(2) An insurer may make provision for any premium discount to which an employer is entitled (and any adjustments arising from changes to an entitlement to the discount) in any manner that the insurer chooses.

Note—

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

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

194 Powers of Authority if PDA or sponsor ceases to operate

(1) If a PDA ceases to operate (whether because its approval is suspended or cancelled or for any other reason), the Authority may do such things as it thinks fit to enable the employer to continue to participate in the PDS (General), including arranging another PDA for the employer.

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

195 Statistics

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

(a) promoting education and knowledge about the Scheme or about occupational health and safety or injury management,

(b) research into workers compensation, occupational health and safety or injury management,

(c) statistical analysis.

Part 22 Miscellaneous

195A Disclosure of information for complaint about health practitioners (s 243 (2) (d) of the 1998 Act)

(1) The Authority may disclose any information obtained in connection with the administration or execution of the workers compensation legislation concerning a health practitioner or any person to whom a health service has been provided by a health practitioner if the disclosure is made to the Commission or to the registration authority under a relevant health registration Act.

(2) Disclosure under this clause is allowed only for the purpose of:

(a) the making of a complaint by the Authority about the health practitioner under the relevant health registration Act or the *Health Care Complaints Act 1993*, or

(b) assisting with any subsequent investigation, hearing or other action under the relevant health registration Act or the *Health Care Complaints Act 1993* in connection with the complaint.

(3) In this clause:

Authority includes the Nominal Insurer.

Commission, ***health practitioner***, ***health registration Act***, ***health service*** and ***registration authority*** have the same meanings as in the *Health Care Complaints Act 1993*.

relevant health registration Act means the health registration Act under which the health practitioner concerned is or was registered.

the workers compensation legislation means the 1998 Act, the 1987 Act and the former 1926 Act.

196 Additional records to be kept by employers

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

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

wrestlers and the number of games for football players,

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

(c) in the case of a worker engaged as an apprentice—records sufficient to establish the existence of the apprenticeship, including:

(i) any documents required to be kept under the *Apprenticeship and Traineeship Act 2001* in relation to the apprentice, and

(ii) any apprenticeship contracts approved by the Department of Education and Training in relation to the apprentice.

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

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

(a) references in sections 40A, 54, 83 and 84 of the 1987 Act and in sections 71, 119, 122, 125 and 126 of the 1998 Act to an insurer, self-insurer or employer are to be read as references to the Authority,

(b) references in sections 11A (8) and 38A of the 1987 Act and in sections 58 and 65 (5) of the 1998 Act to an insurer or self-insurer are to be read as references to the Authority,

(c) in a case where the employer named as a respondent as referred to in section 144 (2) (a) of the Act is a corporation that has ceased to exist or a deceased person whose estate has been distributed—section 144 (2) is to be read as if it also provided that (in such a case) the application is not, subject to any rules of the District Court or the Commission, required to serve a copy of the application on that person,

(d) section 174 (6A) of the Act is to be read as if:

(i) the words “, at the request of an insurer who has issued a policy of insurance to an employer,” were omitted, and

(ii) the reference to the insurer were a reference to the Authority or a person authorised by the Authority, and

(iii) section 174 (6B) were omitted,

(e) in section 52A (2) of the Act the reference to the person liable to make the payments is to be read as reference to the Authority, and the reference to the person’s intention is to be read as reference to the Authority’s intention,

(f) there is to be inserted at the end of section 52A (2) of the Act "This subsection applies whether or not the payments are made under an award or order of the Commission.",

(g) the reference in section 52A (6) of the Act to the worker's employer or the employer's insurer is to be read as a reference to the Authority.

197A Delegation of Authority's functions: sec 21 of 1998 Act

The class of persons consisting of part-time members of the Board of Directors is prescribed for the purposes of the definition of ***authorised person*** in section 21 (3) of the 1998 Act, but only in respect of the delegation of any functions of the Authority relating to scheme agents (including the appointment of scheme agents).

198 Costs of medical assessment: sec 330 of 1998 Act

(1) An employer or insurer is not required to pay any costs of medical assessment in connection with:

(a) a medical assessment under Part 7 of Chapter 7 of the 1998 Act, if the worker failed without reasonable excuse to submit himself or herself to a medical examination conducted for the assessment, or

(b) any further examination conducted for a medical assessment referred to in paragraph (a), or

(c) an appeal against such a medical assessment, if the worker failed without reasonable excuse to attend a hearing on the appeal, or

(d) any further hearing held on an appeal referred to in paragraph (c).

(2) The worker is required to pay any costs of assessment referred to in subclause (1) (a)–(d).

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

(1) The President determines which Presidential member will hear an appeal against a decision of an Arbitrator or an application for leave to appeal.

(2) The Registrar determines which Arbitrator will hear any other matter before the Commission.

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

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

200A Mine Safety Fund amounts payable under Insurance Premiums Order (July–December) 2005 and Insurance Premiums Order (January–June) 2006

Despite any other provision of this Regulation, any amount of a premium payable by an employer to an insurer under clause 6 of the *Insurance Premiums Order (July–December) 2005* or clause 6 of the *Insurance Premiums Order (January–June) 2006* is not to be paid by instalments.

Note—

Section 172 of the Act sets out when payments must be made if no election is made to pay by instalments. As the above clause prevents payment of certain specified amounts by instalments, payment of those amounts are due as follows:

(a) in the case where a premium is calculated for the first time after the commencement of this clause—within 1 month after service on the employer of a notice that payment of the amount of the premium is due,

(b) in the case where a premium was calculated before the commencement of this clause and the amount has been determined by an adjustment of the premium—within 1 month after service on the employer of a notice that payment of the amount of the adjustment is due.

200B New claims procedures—appeal against decision of Commission constituted by Arbitrator

For the purposes of section 352 (8) of the 1998 Act, all preliminary or interim orders, determinations, rulings and directions of an interlocutory nature are prescribed.

Part 23 Savings, transitional and other provisions

Division 1 General

201 Repeal

The *Workers Compensation Transitional Regulation 1997* is repealed.

202 Saving

Any act, matter or thing that, immediately before the repeal of the *Workers Compensation (General) Regulation 1995*, the *Workers Compensation (Insurance Premiums) Regulation 1995*, the *Workers Compensation Transitional Regulation 1997* or the *Workplace Injury Management and Workers Compensation Regulation 2002*, had effect under any of those Regulations continues to have effect under this Regulation.

203 Exemptions for coal miners—1996 amendments

A worker employed in or about a mine is exempt from the operation of the amendments made by the following provisions of the *WorkCover Legislation Amendment Act 1996*, with effect from the date of assent to that Act:

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

(b) Schedule 1.4 (Reduction in maximum lump sum compensation amounts),

(c) Schedule 1.6 (Deduction for previous injuries and pre-existing conditions and abnormalities).

204 Application of Chapter 4 of 1998 Act

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

205 Restrictions on commencing court proceedings

(1) Division 5 (Restrictions on commencing court proceedings) of Part 2 of Chapter 4 of the 1998 Act does not apply to the commencement of court proceedings in respect of compensation if:

(a) a dispute about that compensation was referred for conciliation under Division 2 of Part 4 of the 1987 Act before 31 July 1998, or

(b) court proceedings in respect of that compensation were validly commenced under the 1987 Act before 31 July 1998.

(2) The provisions of Divisions 3A and 3B of Part 4 of the 1987 Act continue to apply (as if they had not been repealed) to and in respect of the commencement of the court proceedings referred to in those provisions except court proceedings in respect of which Division 5 of Part 2 of Chapter 4 of the 1998 Act applies.

206 Time for making claim

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

(a) the claim is made within whichever of the following periods ends later:

(i) the period of 3 years commencing when the injury or accident happened or, in the case of death, on the date of death,

(ii) the period of 1 year that commences when this section commences,

(b) the claim is not made within that period but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.

207 Contributions to WorkCover Authority Fund

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

208 Reduction of maximum section 38 benefits period

(1) The amendments made to section 38 of the 1987 Act by the *Workers Compensation*

Legislation Amendment Act 1998 do not apply to a worker in respect of any period of incapacity after the commencement of those amendments that results from an injury before that commencement if the worker was in receipt of compensation in accordance with that section before that commencement for any period of incapacity resulting from that injury.

(2) Clause 5D (2) of Part 4 of Schedule 6 to the 1987 Act is subject to this clause.

208A Effect of repeal of section 152

A workplace rehabilitation program established under section 152 of the 1987 Act and in force immediately before the repeal of that section by Schedule 1 [67] to the *Workers Compensation Legislation Amendment Act 1998* is taken to be a return-to-work program established under section 52 of the 1998 Act. However, any such program does not have effect to the extent that it is inconsistent with the injury management program of the employer's insurer.

209 Application of amendment to section 52 of the 1987 Act

(1) In this clause, ***the 2001 amendment*** means the amendment to section 52 (2) (b) of the *Workers Compensation Act 1987* made by the *Workers Compensation Legislation Amendment Act 2001*.

(2) Section 52 (2) (b) of the 1987 Act, as amended by the 2001 amendment, applies to an injury received before or after the commencement of that amendment.

(3) However, this clause does not revive or create any entitlement to weekly payments of compensation for a person who, before the commencement of the 2001 amendment, had ceased to receive a weekly payment of compensation by virtue of the operation of section 52 (2) (b) before its amendment by the 2001 amendment (being an entitlement that the person would not have apart from this clause).

210 Application of amendments to definition of "wages"

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

(a) does not apply to wages paid before 4 pm on 30 June 2003, and

(b) does not apply in respect of a policy of insurance issued or renewed so as to take effect before 4 pm on 30 June 2003.

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

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

211A Declarations by employers under clause 131

Clause 131 (as in force immediately before its repeal by the *Workers Compensation Amendment (Miscellaneous) Regulation 2006*) continues to apply, despite that repeal, in relation to a notice supplied under clause 130 before the commencement of that Regulation.

211B Amendment relating to records kept about apprentices

The amendment to clause 196 made by the *Workers Compensation Amendment (Miscellaneous) Regulation 2006* applies only in relation to a policy of insurance that was issued or renewed so as to take effect on or after 4pm on 31 December 2006.

Division 2 1996 amending Act

212 Definition

In this Division:

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

213 Coal miners

(1) The amendments made to the *Workers Compensation Act 1987* by the following provisions of the 1996 amending Act do not apply in respect of an injury received before 1 July 1997 by a worker employed in or about a mine:

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

(b) Schedule 1.4 (Reduction in maximum lump sum compensation amounts),

(c) Schedule 1.5 (Discontinuation of weekly payments after 2 years),

(d) Schedule 1.6 (Deduction for previous injuries and pre-existing conditions and abnormalities).

(2) Clause 1 (3) of Part 18 of Schedule 6 to the Act applies in respect of an injury received before 1 January 1998 as if the reference in paragraph (c) of that subclause to the period of 78 weeks after the date of the injury concerned were a reference to the first 78 weeks of incapacity for work (whether total or partial, or both) after the worker becomes (or became) entitled to weekly payments of compensation in respect of the incapacity resulting from the injury. Separate periods of incapacity resulting from the same injury are to be aggregated to determine the period of incapacity for work.

214 Medical certificate accompanying weekly compensation claims

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

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

(1) Section 52A of the Act applies without any payment discontinuation notice being given and the worker concerned may apply to the Compensation Court under section 52B (1) of the Act for a determination of any dispute about the operation of section 52A of the Act (even though no such notice has been given), in the following cases:

(a) any case where court proceedings in respect of the weekly payments of compensation concerned are pending as at the commencement of section 52A of the Act (other than a case referred to in clause 14 (3) of Part 4 of Schedule 6 to the Act),

(b) any case where court proceedings are commenced after the commencement of section 52A of the Act, being proceedings that involve a claim for weekly payments of compensation in respect of a period of incapacity for work (resulting from an injury received before that commencement) that includes any period of incapacity beyond the first 104 weeks of incapacity referred to in section 52A (1) of the Act (as determined in accordance with clause 14 (2) (e) of Part 4 of Schedule 6 to the Act).

(2) This clause does not prevent the person on whom the claim has been made from giving the worker a notice informing the worker about the existence and effect of section 52A of the Act and alerting the worker to the application, or possible application, of that section to the worker. The giving of such a notice does not constitute an admission of liability by an employer or insurer under the Act or independently of the Act.

Division 3 2001 amending Acts

Subdivision 1 Preliminary

216 Definitions

In this Division:

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

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

Subdivision 2 Cessation of conciliation

217 Cessation of conciliation

(1) On and from 1 January 2002:

(a) Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act cease to apply to all existing claims and there is to be no further conciliation of disputes in respect of existing claims on and from that date, and

(b) a provision of the 1987 Act or the 1998 Act is of no further force or effect to the extent that it confers or imposes a power, authority, duty or function on a conciliator or the Principal Conciliator or provides for conciliation of a dispute.

(2) If a dispute has been referred to conciliation before the commencement of this clause and a conciliation certificate has not been issued before that commencement, court proceedings may be commenced with respect to the dispute in accordance with sections 101–103 of the 1998 Act (as modified by clauses 218–220).

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

(1) Section 101 of the 1998 Act is modified by replacing subsections (1)–(3) with the following subsection:

(1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of weekly payments of compensation within 21 days after the worker made the claim for that compensation.

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

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

(1) Section 102 of the 1998 Act is modified by replacing subsections (1)–(3) with the following subsection:

(1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of compensation under section 66 of the 1987 Act (as in force immediately before its amendment by the amending Acts) within 2 months after the worker made the claim for that compensation.

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

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

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

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

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

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

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

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

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

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

223 Assessment of impairment dispute

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

(a) omit section 322 (Assessment of impairment),

(b) omit section 323 (Deduction for previous injury or pre-existing condition or abnormality).

Subdivision 4 Transfer of existing claims

224 Transfer of existing claims

(1) On and from 1 April 2002, each existing claim in respect of which there is no pending application for determination by the Compensation Court is to be treated as a new claim for the purposes of the Workers Compensation Acts (under clause 5 of Part 18C of Schedule 6 to the 1987 Act).

(2) An existing claim in respect of which an application for determination by the Compensation Court is pending on 1 April 2002 is to be treated as a new claim for the

purposes of the Workers Compensation Acts (under clause 5 of Part 18C of Schedule 6 to the 1987 Act):

(a) on the day on which the Compensation Court makes a final award or order determining the claim (including a consent award or order), or

(b) on the day on which the claim is resolved by an agreement between the parties being registered under section 66A of the 1987 Act,

whichever occurs first.

(3) An application for determination by the Compensation Court that is pending on 1 April 2002 may be amended after that day if the amendment relates to the injury in respect of which the application for determination is made.

225 Transfer of existing claims by election of worker

(1) If proceedings on a claim for compensation are pending in the Compensation Court immediately before 28 February 2003, the claimant can elect in a form approved by the Commission to transfer the claim to the Commission.

(2) On receipt by the Commission of the election, the claim is to be treated as a new claim for the purposes of the Workers Compensation Acts (under clause 5 of Part 18C of Schedule 6 to the 1987 Act).

(3) The consent of the employer or insurer is not required for the making or operation of an election under this clause.

(4) Neither the Commission nor the Compensation Court has any discretion or power to refuse to accept an election under this clause.

(5) The Commission is to notify the Compensation Court of an election under this clause and is to make arrangements with the Court for the transfer of court records and other documents relevant to the claim, for the purpose of facilitating the hearing and determination of proceedings on the claim by the Commission.

Note—

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

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

(1) On and from 1 January 2004, each existing claim in respect of which proceedings instituted in the Compensation Court were pending on 31 December 2003 is to be treated as a new claim for the purposes of the Workers Compensation Acts (under clause 5 of Part 18C of Schedule 6 to the 1987 Act).

(2) Subclause (1) does not apply to a claim in respect of which the relevant proceedings

are exempted from transfer to the Commission by operation of the *Compensation Court Repeal (Transitional) Regulation 2003*.

Note—

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

227 Transitional provision—certificates

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

(a) the certificate is conclusive evidence as to a matter on which the certificate was conclusive evidence when it was issued, and

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

(2) If:

(a) a medical dispute with respect to an existing claim was referred to an approved medical specialist under section 121 of the 1998 Act, or to a medical panel or medical referee under section 122 of the 1998 Act, before 1 April 2002, and

(b) a certificate was not given for the dispute before 1 April 2002,

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

(3) If a certificate is given as referred to in subclause (2):

(a) the certificate continues on and from 1 April 2002 to be conclusive evidence as to a matter on which it would have been conclusive evidence under section 121 or 122 of the 1998 Act or section 72 of the 1987 Act (as in force before its repeal by the *Workers Compensation Legislation Amendment Act 2001*), and

(b) the certificate is admissible after that day in proceedings before the Commission, and

(c) a medical dispute about a matter as to which the certificate is conclusive evidence is not required to be assessed under Part 7 of Chapter 7 of the 1998 Act (despite section 293 of the 1998 Act and clause 4 of Part 18C of Schedule 6 to the 1987 Act).

(4) In this clause:

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

(a) section 121 (Assessment of medical disputes by approved medical specialists),

(b) section 122 (Referral of medical disputes to referee or panel on application of worker or employer).

228 Modification of sec 281 of 1998 Act

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

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

229 Modification of sec 282 of 1998 Act

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

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

Subdivision 4A Amendments relating to work injury damages—transitional provisions

229A Application of 2001 amendments relating to work injury damages to discontinued transitional proceedings

(1) In this Subdivision:

discontinued transitional proceedings means proceedings to recover damages in respect of a transitional injury that were commenced in the 6 month period immediately before the commencement of Schedule 1.1 to the *Workers Compensation Legislation Further Amendment Act 2001* and are discontinued or struck out in connection with the application to the proceedings of section 151C of the 1987 Act.

transitional injury means an injury notice of which was given to the employer in the 6 month period immediately before the commencement of Schedule 1.1 to the

Workers Compensation Legislation Further Amendment Act 2001.

(2) Despite clause 9 (1) of Part 18C of Schedule 6 to the 1987 Act, an amendment made by Schedule 1 to the *Workers Compensation Legislation Further Amendment Act 2001* extends to the recovery of damages in respect of a transitional injury in relation to which discontinued transitional proceedings were commenced (even though the proceedings were commenced before the commencement of that Schedule).

(3) The commencement of discontinued transitional proceedings is to be ignored for the purposes of section 151A of the 1987 Act (as in force when the proceedings were commenced), with the result that the commencement of the proceedings does not operate (and is taken never to have operated) as an election to claim damages for the purposes of that section.

(4) Section 151D of the 1987 Act does not apply to the commencement of proceedings in respect of a transitional injury that may be commenced because of the operation of this clause (and that could not otherwise have been commenced).

Subdivision 5 Miscellaneous

230 Uninsured Liability and Indemnity Scheme

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

231 Appointment of mediators

(1) The President may select one or more Arbitrators to act as mediators until such time as the President appoints one or more persons to be mediators under section 318F of the 1998 Act.

(2) An Arbitrator selected by the President under this clause:

(a) has and may exercise all the functions of a mediator under the 1998 Act, and

(b) ceases to have those functions when one or more mediators are appointed.

Division 4 Coal miners—2001 amending Acts

232 Definitions

In this Division:

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

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

233, 234 (Repealed)

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

(1) Section 101 of the 1998 Act is modified in its application to coal miners by replacing subsections (1)–(3) with the following subsection:

(1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of weekly payments of compensation within 28 days after the worker made the claim for that compensation.

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

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

(1) Section 102 of the 1998 Act is modified in its application to coal miners by replacing subsections (1)–(3) with the following subsection:

(1) On and from 1 January 2002, a worker cannot commence court proceedings in respect of compensation under section 66 of the 1987 Act (as in force immediately before its amendment by the amending Acts) within 2 months after the worker made the claim for that compensation.

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

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

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

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

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

238 Application of amendments made by Workers Compensation (General) Amendment

(Savings, Transitional and Other Matters) Regulation 2001

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

Note—

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

Division 5 Insurance Reforms—2003 amending Act

Subdivision 1 Insurance reforms

239 Interpretation

(1) In this Subdivision:

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

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

240 Authority to act as temporary agent

(1) The authority of a managed fund insurer or GIO General Limited to act as a temporary agent is subject to the requirements of this clause (in addition to the requirements of any directions of the Nominal Insurer under this clause or clause 3 (1) (g) of Part 19A of Schedule 6 to the 1987 Act).

(2) A managed fund insurer or GIO General Limited is, in the exercise of functions as a temporary agent, subject to the direction and control of the Nominal Insurer.

(3) A managed fund insurer is authorised to act as temporary agent only in respect of the following policies of insurance (and in respect of claims and proceedings that relate to those policies):

(a) policies issued by or assigned to the insurer before the relevant date for the insurer,

(b) policies issued by the insurer as a temporary agent after the relevant date for the insurer,

(c) such other policies of insurance as the Nominal Insurer may from time to time authorise the insurer to act as agent for.

(3A) GIO General Limited is authorised to act as temporary agent only in respect of the following policies of insurance (and in respect of claims and proceedings that relate to those policies):

(a) policies issued by or assigned to GIO Workers Compensation (NSW) Limited before 1 July 2005,

(b) policies issued by GIO General Limited as a temporary agent on or after 1 July 2005,

(c) such other policies of insurance as the Nominal Insurer may from time to time authorise GIO General Limited to act as agent for.

(4) The Nominal Insurer may direct that a managed fund insurer or GIO General Limited (the ***claims agent***) is authorised to act as temporary agent in respect of specified claims and proceedings or classes of claims and proceedings even though the claims concerned relate to a policy or policies of insurance that another managed fund insurer (the ***policy agent***) is authorised to act as temporary agent in respect of, in which case:

(a) the claims agent is authorised to act as temporary agent in respect of those claims and proceedings, and

(b) the policy agent is not authorised to act as temporary agent in respect of those claims and proceedings (but otherwise continues to be authorised to act as temporary agent in respect of the policies concerned).

(5) A managed fund insurer must exercise the insurer's functions as temporary agent in accordance with any requirements that would have been applicable to the exercise of functions as a licensed insurer under the 1987 Act (including the conditions of the insurer's licence under the 1987 Act and any guidelines applicable under that Act to the exercise of those functions), except to the extent that any such requirement conflicts with the requirements of any directions of the Nominal Insurer.

(5A) GIO General Limited must exercise its functions as temporary agent in accordance with any requirements that would have been applicable to the exercise of the functions of GIO Workers Compensation (NSW) Limited as a licensed insurer under the 1987 Act (including the conditions of the licence of GIO Workers Compensation (NSW) Limited under the 1987 Act and any guidelines applicable under that Act to the exercise of those functions), except to the extent that any such requirement conflicts with the requirements of any directions of the Nominal Insurer.

(6) In the exercise of functions as provided by subclause (3), the insurer is not subject to Division 4 (Statutory funds of licensed insurers) of Part 7 of the 1987 Act, except to the extent that the Nominal Insurer may otherwise direct.

241 Directors under trustee duty

(1) A managed fund insurer must comply with the directions of the Nominal Insurer as to the payment of money by the insurer to or from the Insurance Fund in connection with the exercise of the insurer's functions as a temporary agent.

(1A) GIO General Limited must comply with the directions of the Nominal Insurer as to the payment of money by GIO General Limited to or from the Insurance Fund in connection with the exercise of its functions as a temporary agent.

(2) A director of a company that is a managed fund insurer or GIO General Limited is under the same liability, in the event of a contravention of such a direction, as the director would be if:

(a) the director had been a trustee under a trust for the execution of the direction, and

(b) the Authority and the appropriate policy holders had been beneficiaries of such a trust.

(3) This clause does not apply if the director proves that:

(a) the contravention occurred without the knowledge of the director, or

(b) the director was not in a position to influence the conduct of the insurer or GIO General Limited (as the case requires) in relation to the contravention, or

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

(4) The Authority may institute proceedings under this clause on behalf of the Authority and the appropriate policy holders.

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

242 Construction of references

(1) Functions exercised as temporary agent need not be exercised in the name of the Nominal Insurer. In particular, any document (such as a policy of insurance or any correspondence) issued by a managed fund insurer or GIO General Limited as a temporary agent need not be issued in the name of the Nominal Insurer.

(2) A reference to a managed fund insurer in any document issued by the insurer after the relevant date for the insurer is, to the extent that the reference relates to the exercise of any function of the insurer as a temporary agent after that relevant date, to be read as a reference to the insurer as agent for the Nominal Insurer.

(3) A reference to GIO General Limited in any document issued by GIO General Limited on or after 1 July 2005 is, to the extent that the reference relates to the exercise of any function of GIO General Limited as a temporary agent after that date, to be read as a reference to GIO General Limited as agent for the Nominal Insurer.

243 Contracts—references to Nominal Insurer

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

(a) contracts forming part of any arrangements for the reinsurance of specialised insurers, known collectively as *Workers Compensation Quota Share Re-insurance Agreements*,

(b) the contract for *Provision of Workers Compensation Wage Audit Services for the WorkCover Authority of NSW* dated 18 February 2005 and designated by the Authority as contract 0300896.

244 Transitional funding arrangements

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

(a) payments required to be made by the Nominal Insurer to temporary agents under arrangements made with temporary agents for their remuneration in respect of functions exercised as temporary agents,

(b) payments to a bank account operated by a managed fund insurer before the relevant date for the insurer for meeting claims under policies of insurance, being payments authorised by the Nominal Insurer as necessary for the honouring of cheques drawn on the account before that relevant date.

245 Termination of temporary agency arrangements

(1) If a managed fund insurer or GIO General Limited is appointed as a scheme agent, the authority of the insurer or GIO General Limited to act as a temporary agent is terminated when the appointment as scheme agent takes effect.

(2) The authority of a managed fund insurer or GIO General Limited to act as a temporary agent can also be terminated at any time by the Nominal Insurer by giving notice of termination to the insurer or GIO General Limited in writing.

(3) No compensation is payable for or in respect of the termination of the authority of a managed fund insurer or GIO General Limited to act as a temporary agent.

(4) On the termination under this clause of a managed fund insurer’s authority, or of the authority of GIO General Limited, to act as a temporary agent:

(a) the insurance records of the insurer or GIO General Limited (as the case requires) become the property of the Nominal Insurer, and

(b) the insurer or GIO General Limited must, in accordance with the directions of the Nominal Insurer, give possession of those insurance records to the Nominal Insurer or to such other person as the Nominal Insurer may direct.

Maximum penalty: 100 penalty units.

(5) In this clause:

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

246 Application of 2003 amendments to managed fund insurers

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

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

(1) GIO General Limited is, subject to this Subdivision and any directions of the Nominal Insurer, authorised to act as agent for the Nominal Insurer.

(2) Subclause (1) does not give rise to any entitlement on the part of GIO General Limited to be appointed as a scheme agent.

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

Subdivision 2 Uninsured Liability and Indemnity Scheme

247A Interpretation

In this Subdivision:

commencement date means 1 July 2007.

new Scheme means the arrangements made under the provisions of Division 6 of Part 4 of the 1987 Act as amended by the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

old Scheme means the Uninsured Liability and Indemnity Scheme constituted by Division 6 of Part 4 of the 1987 Act as in force before the commencement date.

247B Uninsured Liability and Indemnity Scheme

(1) On and from the commencement date:

(a) the assets, rights and liabilities of the Authority and the WorkCover Authority Fund in respect of the old Scheme become assets, rights and liabilities of the Nominal Insurer and the Insurance Fund in respect of the new Scheme, and

(b) any entitlement to payment from the WorkCover Authority Fund arising with respect to a claim under the old Scheme becomes an entitlement to payment from the Insurance Fund in that respect, and

(c) any liability of a person to reimburse an amount to the WorkCover Authority Fund in respect of a payment made under the old Scheme becomes a liability to reimburse that amount to the Insurance Fund.

(2) A claim made under the old Scheme and not determined before the commencement date is taken to be a claim made under the new Scheme.

(3) Any act, matter or thing done or omitted to be done in relation to the old Scheme by the Authority before the commencement date is (to the extent to which that act, matter or thing has any force or effect immediately before that date) taken to have been done or omitted to be done in relation to the new Scheme by the Nominal Insurer.

(4) Without limiting subclause (3), any payment made by the Authority from the WorkCover Authority Fund in respect of a claim under the old Scheme before the commencement date is taken to be a payment made by the Nominal Insurer from the Insurance Fund in respect of a claim under the new Scheme.

(5) A reference in a notice or other instrument served, published or otherwise made under Division 6 of Part 4 of the 1987 Act and that has force or effect immediately before the commencement date:

(a) to the Authority—is taken to be a reference to the Nominal Insurer, and

(b) to the WorkCover Authority Fund—is taken to be a reference to the Insurance Fund, and

(c) to the Uninsured Liability and Indemnity Scheme—is taken to be a reference to the new Scheme.

(6) A reference to the Authority or the WorkCover Authority Fund in a determination or order of the Commission made under section 144, 145 or 147 of the 1987 Act and with effect immediately before the commencement date is taken to be a reference to the

Nominal Insurer or the Insurance Fund, as appropriate.

(7) A submission made to the Authority after the commencement date in accordance with a notice issued by the Authority under section 146 (2) of the 1987 Act before that date is taken to have been made to the Nominal Insurer.

247C Appeals against decisions of Authority

(1) Section 144 of the 1987 Act continues to apply, as if it had not been repealed, to and in respect of an application made under that section but not determined before the commencement date.

(2) A claimant under the old Scheme who is dissatisfied with a decision of the Authority made before the commencement date in respect of a claim for compensation under that Scheme may apply to the Commission for determination of the claim.

(3) If such an application is made:

(a) the applicant must name the employer by whom the applicant alleges compensation is payable and the Nominal Insurer as respondents to 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 the 1987 Act (or may have insured that liability), join that person as a party to the proceedings.

(4) The Commission may hear and determine any such application and may make such orders in relation to the application as the Commission thinks fit.

(5) In a case where an employer named as a respondent as referred to in subclause (3) is a corporation that has ceased to exist or a deceased person whose estate has been distributed, the applicant is not, subject to any rules of the District Court or the Commission, required to serve a copy of the application on that person.

247D Court proceedings for work injury damages

(1) Section 144A of the 1987 Act continues to apply, as if it had not been repealed, to and in respect of court proceedings commenced under that section but not determined before the commencement date.

(2) For the purpose of court proceedings referred to in subclause (1), a reference in section 144A of the 1987 Act to the WorkCover Authority Fund is taken to be a reference to the Insurance Fund.

Division 6 2006 amending Act

248 Definition

In this Division, ***amending Act*** means the *Workers Compensation Legislation Amendment Act 2006*.

249 Saving

Until 4 pm on 30 June 2006:

(a) the Act continues to have effect as if sections 175G, 175H and 175J had not been inserted into the Act by the amending Act, and

(b) those sections do not have effect.

250 Transitional—prescriptions for purposes of excess recoverable from employer

(1) Clause 51 (1), as in force immediately before the commencement of Schedule 1 [2] to the amending Act, continues to apply to claims that are covered by a policy of insurance that was issued or renewed so as to take effect on or after 4 pm on 31 December 2005 but before 4pm on 30 June 2006.

(2) Clause 51 (1), as in force immediately before its repeal by the *Workers Compensation Amendment (Premiums Review) Regulation 2005*, continues to apply in relation to policies of insurance that were issued or renewed so as to take effect before 4 pm on 31 December 2005.

Division 7 2002 Regulation

251 Definition

In this Division:

2002 Regulation means the *Workplace Injury Management and Workers Compensation Regulation 2002*.

252 Savings and transitional provisions—workplace injury management

(1) Part 2A (Return to work plans) of the *Workers Compensation (Workplace Injury Management) Regulation 1995*, as in force immediately before the repeal of that Part by the 2002 Regulation, continues to have effect in respect of injuries that happened before the commencement of Chapter 3 of the 1998 Act.

(2) If an injury management plan has been prepared in compliance with section 45 of the 1998 Act in respect of an injury to a worker that happened before the commencement of Chapter 3 of the 1998 Act (and has been so prepared within the time within which a return-to-work plan under Part 2A of the *Workers Compensation (Workplace Injury Management) Regulation 1995* would have otherwise been required to be prepared):

(a) subclause (3) does not apply in respect of the injury, and

(b) despite section 41 (2) of the 1998 Act, sections 45 (7), 46, 47, 55, 56 and 57 of the 1998 Act apply in respect of the injury.

(3) Despite section 41 (2) of the 1998 Act, a reference in section 52, 53 and 54 of the 1998 Act to an injured worker is to be read as including a reference to an injured worker when the injury happened before the commencement of Chapter 3 of the 1998 Act.

Schedule 1 Forms

(Clause 4)

Form 1

(Clause 33)

Workplace Injury Management and Workers Compensation Act 1998

Industrial deafness—Notice of injury

1 Name and address of worker:

2 Age and occupation of worker:

3 Name and address of employer to whom notice of injury is given:

4 If not employed by the above employer at the date that this notice of injury is given, date of last day of employment with the employer:

5 Has the worker been paid any compensation for loss of hearing in Australia or elsewhere? YES/NO
If YES, give details:

6 Using the following list, give the worker's complete work history in any noisy work in Australia or elsewhere, including work as an employee, in any business carried on by the worker (either alone or with anyone else), in military service or otherwise. Include work in the list even if unsure about how noisy the work was.

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

.....(*Signature of worker*)

.....
(*Date*)

Form 2

(Clause 36)

Workplace Injury Management and Workers Compensation Act 1998

Register of Injuries

Particulars: .....

Name of injured worker: .....

Address: .....

Age: ..... Occupation:.....

Industry in which worker was engaged: .....

Operation in which worker was engaged at time of injury: .....

Date (or deemed date) of injury: ../../.. Hour: .. am/pm

Nature of injury: .....

Cause of injury: .....

Remarks: .....

(*Signed*) .....

(*Address*) .....

(*Date*) .....

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

Note—

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

Form 3

(Clause 49)

Workers Compensation Act 1987

New South Wales

Employer's Insurance Policy

Part 1 Preliminary

1 Definitions

In this Policy:

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

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

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

the Act means the *Workers Compensation Act 1987* and includes the *Workplace Injury Management and Workers Compensation Act 1998*.

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

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

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

2 Proposal and Schedule form part of Policy

The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer

Particulars are considered to form part of this Policy.

Part 2 Cover provided by Policy

3 What the Insurer is liable for

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

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

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

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

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

4 Businesses and industrial activities to which Policy applies

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

5 Insurer is directly liable to workers

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

6 Insurer is bound by judgments etc against Employer

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

7 Premium

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

Part 3 Conditions of Policy

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

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

9 How notices are to be given

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

(2) Notices to be given under this Policy to the Employer are to be given by being delivered, posted or transmitted electronically to the address of the Employer last known to the Insurer.

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

10 Employer not to make admissions etc

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

11 Defence of proceedings

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

12 Subrogation

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

13 Precautions to prevent injury

The Employer must take all reasonable precautions to prevent injury.

14 Alterations and repairs following injury

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

15 Insurer’s right of inspection

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

16 Assignment

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

17 Renewal of Policy

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

(a) the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required, or

(b) the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy, but the Insurer cannot refuse to renew this Policy unless the WorkCover Authority has given its prior consent in writing to the refusal.

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

18 Cancellation of Policy

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

19 No waiver or alteration

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

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

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

(a) the fact of the worker's request and that the Employer has not provided suitable employment,

(b) any proposal to provide or arrange for suitable employment for the worker, having regard to the medical certificate which the worker supplies and to the Employer's return-to-work program (if any) or otherwise.

21 Employer must advise change of business or industry

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

22 Records to be kept of wages

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

Note—

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

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

The indemnity provided by this Policy is conditional on compliance by the Employer with the provisions of

this Policy, the Act and the regulations under the Act.

24 Act and regulations form part of Policy

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

Notes—

1 *Recovery of excess from Employer.* Under section 160 of the Act, the Employer is required to repay a prescribed excess amount in respect of each claim for weekly compensation paid by the Insurer. Currently, under that section and clause 51 of the Regulation, that prescribed excess amount is:

(a) if the employer concerned notified the relevant insurance scheme agent of the injury that lead to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—$0, or

(b) in all other cases—the lesser of the following:

(i) the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,

(ii) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—$1,449.50.

An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant worker or makes an appropriate debit against any amount standing to the Employer's credit for premiums.

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

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

(a) the reference to the Employer carrying on business were a reference to the Employer employing domestic or similar workers, and

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

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

Schedule 2 Diseases

(Clause 5)

Column 1	Column 2

Poisoning by lead, its alloys or compounds, and its sequelae.	Handling of ore containing lead including fine shot in zinc factories. Casting of old zinc and lead in ingots. Manufacture of articles made of cast lead or of lead alloys. Employment in the polygraphic industries. Manufacture of lead compounds. Manufacture and repair of electric accumulators. Preparation and use of enamels containing lead. Polishing by means of lead files or putty powder with a lead content. All painting operations involving the preparation and manipulation of coating substances, cements or colouring substances containing lead pigments.
Poisoning by mercury or its amalgams or compounds, and its sequelae.	Handling of mercury ore. Manufacture of mercury compounds. Manufacture of measuring and laboratory apparatus. Preparation of raw material for the hat-making industry. Hot gilding. Use of mercury pumps in the manufacture of incandescent lamps. Manufacture of fulminate of mercury primers.
Anthrax infection.	Work in connection with animals infected with anthrax. Handling of animal carcases or parts of such carcases including hides, hoofs and horns. Loading and unloading or transport of merchandise that has come in contact with animals infected with anthrax or with animal carcases or parts of such carcases.
Phosphorus poisoning by phosphorus or its compounds, and its sequelae.	Any process involving the production, liberation or utilisation of phosphorus or its compounds.
Arsenic poisoning by arsenic or its compounds, and its sequelae.	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Poisoning by benzene or its homologues, their nitro- and amido-derivatives, and its sequelae.	Any process involving the production, liberation or utilisation of benzene or its homologues, or their nitro- and amido-derivatives.
Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series.	Any process involving the production, liberation or utilisation of halogen derivatives of hydrocarbons of the aliphatic series.
Pathological manifestations of a kind that are due to or contributed to by: (a) radium and other radioactive substances, (b) X-rays.	Any process involving exposure to the action of radium, radioactive substances or X-rays.
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances.

Brucellosis, Leptospirosis and Q fever.	Slaughtering of cattle on the slaughter-floor of an abattoir or slaughter-house. Handling or processing of the slaughtered carcases of cattle in an abattoir or slaughter-house. Penning up or running cattle through a race at an abattoir or slaughter-house. Any activity, incidental or necessary to the carrying out of the above activities, on the slaughter-floor, in any area where the raw by-products of slaughtered cattle are handled or in or about any pen or race of an abattoir or slaughter-house.

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

(Clause 6)

Column 1	Column 2	Column 3
Brucellosis.	A *Brucella abortus* agglutination or complement fixation test of 2 blood samples, the second of which was taken not earlier than 10 days and not later than 28 days after the day on which the first sample was taken.	A four-fold or greater increase in antibody titre.
	A *Brucella abortus* agglutination test of a single blood sample.	An antibody titre of 640 or greater.
	A *Brucella abortus* complement fixation test of a single blood sample, where the sample was taken from a person with symptoms consistent with chronic brucellosis.	An antibody titre of 640 or greater.
	A laboratory culture of any specimen.	The isolation of *Brucella abortus*.
Q fever.	A Q fever complement fixation test of 2 blood samples, the second of which was taken not earlier than 10 days and not later than 28 days after the day on which the first sample was taken.	A four-fold or greater increase in antibody titre.
	A fluorescence test of a single blood sample.	The demonstration of Q fever specific IgM antibodies.
	A laboratory culture of any specimen.	The isolation of *Coxiella burneti*.

Leptospirosis.	The comparison of 2 blood samples (the second of which was taken not earlier than 10 days and not later than 60 days after the day on which the first sample was taken) by any technical method that: (a) is the same as a technical method used by the Leptospiral Reference Laboratory at the Laboratory of Microbiology and Pathology, Department of Health, Brisbane, for the purpose of comparing blood samples to establish whether or not a person has contracted leptospirosis, and (b) involves the use of a panel of leptospiral antigens or serovars that is recommended by the Leptospiral Reference Laboratory for use in making such a comparison.	A four-fold or greater increase in antibody titre.
	The analysis of a single specimen of blood serum by any technical method that: (a) is the same as a technical method used by the Leptospiral Reference Laboratory at the Laboratory of Microbiology and Pathology, Department of Health, Brisbane, for the purpose of analysing a single specimen of blood serum to establish whether or not a person has contracted leptospirosis, and (b) involves the use of a panel of leptospiral antigens or serovars that is recommended by that Leptospiral Reference Laboratory for use in carrying out such an analysis.	Agglutination of a leptospiral antigen at a dilution of 1 in 400 or greater.
	A laboratory culture of a leptospire from blood or urine.	The isolation of an invasive leptospire.

Schedule 4

(Clause 62)

Religious body or organisation	Class	Employer
Anglican Church of Australia—Diocese of Canberra and Goulburn	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	Anglican Church of Australia Property Trust Diocese of Canberra and Goulburn
Anglican Church of Australia—Diocese of Grafton	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	The Corporate Trustees of the Diocese of Grafton
Anglican Church of Australia—Diocese of Riverina	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	Riverina Diocesan Trust

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

Schedule 5 Penalty notice offences

(Clause 73)

Part 1 Provisions of 1987 Act

Column 1	Column 2
Provision	**Penalty $**
Section 43 (2A)	200
Section 155 (1)	750
Section 161 (3)	200
Section 163 (1)	200
Section 163 (3)	200
Section 163A (2)	500
Section 163A (6)	500
Section 163A (7)	500
Section 174 (1) (a)	500
Section 174 (1) (b)	500
Section 174 (1) (c)	500
Section 174 (2)	500
Section 174 (3)	500
Section 174 (8)	500
Section 192A (4A)	500

Part 2 Provisions of 1998 Act

Column 1	Column 2
Provision	**Penalty $**
Section 63 (5)	500
Section 69 (1) (a)	500
Section 69 (1) (b)	500
Section 69 (1) (c)	500
Section 74A (3)	500
Section 79A (4)	200
Section 80 (5)	200

Section 81A (2)	200
Section 82 (3)	200
Section 90 (7)	200
Section 94 (1)	500
Section 94 (2)	500
Section 126 (2)	200
Section 155A (2)	500
Section 155A (6)	500
Section 155A (7)	500
Section 231 (3)	200
Section 232 (2) (a)	200
Section 232 (2) (b)	200
Section 256 (5)	500
Section 264 (1)	500
Section 264 (2)	500
Section 264 (3)	500
Section 267 (5)	500
Section 268	500
Section 283 (1)	500
Section 285	500
Section 290 (2)	500
Section 343 (4) (a)	500
Section 343 (4) (b)	500
Section 357 (3)	500
Section 358 (3)	500
Section 359 (2)	500

Part 3 Provisions of the Workers Compensation Regulation 2003

Column 1	**Column 2**
Provision	**Penalty $**
Clause 15B	50 (category 2 employer)

	200 (category 1 employer)
Clause 15G	20 (category 2 employer)
	100 (category 1 employer)
Clause 32A	500
Clause 34 (2)	200
Clause 75	750
Clause 133	500

Schedule 6 Maximum costs—compensation matters

(Clause 84)

Part A Application and operation of Schedule

1 Introduction

(1) This Schedule applies to:

(a) workers compensation claims and disputes that are resolved before proceedings are commenced in the Workers Compensation Commission (the ***Commission***) (in certain circumstances), and

(b) disputes that are resolved after proceedings have been commenced in the Commission.

Note—

Clause 125A of the *Workers Compensation Regulation 2003* contains transitional provisions regarding the operation of Schedule 6 as in force before 1 November 2006 and as substituted with effect from that date.

(2) When a claim or dispute is resolved, legal practitioners or agents representing the parties will need to determine what type of resolution has been reached and when it was resolved. By applying these factors to this Schedule, the legal practitioners or agents will be able to ascertain the costs recoverable.

(3) If a claim or dispute involves a number of resolution types that are resolved concurrently, or within a specified time frame, the costs recoverable are restricted to the resolution for which the highest amount of costs is payable.

(4) The recoverable costs will be either:

(a) a maximum flat, predetermined figure, or

(b) in the case of certain “special resolutions”, a maximum amount establishing a range within which the parties may negotiate their costs entitlement.

(5) If a claim or dispute (other than a claim or dispute resolved by special resolution) includes “additional legal services” or involves “factors” as referred to in Table 4, there may be an additional allowance that can be added to the entitlement to costs.

(6) Part C determines regulated disbursements. Unregulated disbursements as identified by clause 82 of the *Workers Compensation Regulation 2003*, may be determined by the *Legal Profession Regulation 2005*, or if that Regulation does not apply, then principles of fairness and reasonableness apply. Disbursements that are neither regulated under Part C nor specified in clause 82 of the *Workers Compensation Regulation 2003*are not recoverable, subject to clause 17 of this Part (Recovery of certain charges for certain documents from public authorities).

(7) This Schedule contains three Parts:

Part A contains definitions, describes how the Tables operate and in some cases modifies the operation of the Tables.

Part B contains four tables:

Table 1 sets out the phases at which claims and disputes may be resolved and the costs that apply for the resolution at each phase.

Table 2 sets out the types of resolutions that apply to Table 1, and indicates the level of costs (ie 75% or 100%) that will apply to that resolution type.

Table 3 sets out alternate or “special” resolution types and the applicable costs for each party. Tables 1 and 2 do not apply to these “special” resolution types.

Table 4 sets out additional legal services and other factors that may result in an increase to the costs claimable under Table 1.

Part C lists regulated disbursements.

2 Definitions

(1) In this Schedule:

application means an application for resolution of a claim or dispute in the approved form accepted by the Registrar for registration.

complying agreement has the same meaning as in section 66A of the 1987 Act.

dispute notice means:

(a) a notice issued under section 54 of the 1987 Act, or

(b) a notice issued under section 74 of the 1998 Act, or

(c) a notice issued under section 287A of the 1998 Act.

fee order means an order made by the Authority in relation to fees.

insurer includes the Nominal Insurer, a self-insurer and a specialised insurer.

lead scheme agent means the agent who is representing the Nominal Insurer on behalf of a number of scheme agents in the conduct of a claim or dispute.

legal practitioner means an Australian legal practitioner.

Nominal Insurer has the same meaning as in the 1987 Act.

resolved—see subclauses (2) and (3).

respondent means a person who is a party to a dispute other than the applicant.

scheme agent has the same meaning as in the 1987 Act.

self-insurer has the same meaning as in the 1987 Act.

specialised insurer has the same meaning as in the 1987 Act.

Table means a Table in Part B.

teleconference means a telephone conference conducted by the Registrar or the Commission.

the 1926 Act means the *Workers' Compensation Act 1926*.

(2) **Meaning of "resolved"—claimant** For the purposes of this Schedule, a claim or dispute is resolved, in relation to a claimant, if:

(a) the claim or dispute is wholly or partly resolved in the claimant's favour, or

(b) an application brought by an insurer in relation to the claim or dispute is successfully defended in whole or in part,

but does not include a matter discontinued, withdrawn, dismissed or struck out without any resolution referred to in paragraph (a) or (b) unless otherwise ordered or certified for the purposes of cost recovery by the Commission or the Registrar.

(3) **Meaning of "resolved"—insurer** For the purposes of this Schedule, a claim or dispute involving a claimant is resolved, in relation to an insurer, if:

(a) the claim or dispute is concluded, or

(b) an application brought by the insurer in respect of the claim or dispute is concluded,

unless otherwise ordered or certified for the purposes of cost recovery by the Commission or the Registrar.

(4) **Meaning of other compensation claim or dispute in Table 1** A reference in Table 1 to an ***other compensation claim or dispute*** (or ***other compensation dispute***) is a reference to a claim or dispute (or a dispute) concerning compensation to which the resolutions in items 5–16 of Table 2 relate.

Note—

The purpose of this subclause is to make it clear that the successive use of the word "other" in Table 1 does not result in successive narrowing of the terms used.

(5) **Notes** Despite clause 3 (2) of the *Workers Compensation Regulation 2003*, notes included in this Schedule form part of this Regulation.

3 Overall application of Schedule

(1) This Schedule is to be read and applied in its entirety, and accordingly this Schedule applies in relation to costs in accordance with:

(a) the descriptions contained in Tables 1 to 4, and

(b) the notes in Part B, and

(c) Parts A and C.

(2) This Schedule prescribes the maximum costs recoverable in respect of work carried out to achieve the resolution types described in Tables 2 and 3 for:

(a) resolving claims and disputes before an application is accepted by the Registrar for registration, or

(b) resolving disputes after an application is accepted by the Registrar for registration.

4 General application of Tables

(1) **General resolution types** The maximum amount of costs for the resolution of a claim or dispute as described in Table 2 are the amounts set out in:

- column 1 or 2 of Table 1 for the claimant, and
- column 3 or 4 of Table 1 for the insurer,

for the applicable phase.

However:

(a) that maximum amount may be decreased by an amount already received under an entitlement from Table 3 in circumstances specified in that Table, and

(b) that maximum amount may be increased by an entitlement under Table 4 in circumstances specified in that Table.

(2) **Special resolution types** The maximum amount of costs for the resolution of a claim or dispute as described in Table 3 are the amounts set out in that Table.

(3) **Additional legal services or other factors—general** The maximum amount of costs for an additional legal service or other factor in respect of a resolution as described in items 1–5 of Table 4 is up to the amount or percentage of costs set out in:

- columns 1 and 3 of items 1–4 of Table 4 for the claimant, and
- columns 2 and 4 of items 1–4 of Table 4 for the insurer, and
- column 5 of item 5 of Table 4 for the claimant, and
- column 6 of item 5 of Table 4 for the insurer.

Accordingly and for the avoidance of doubt:

(a) an entitlement to costs under item 1, 2 or 3 of Table 4 as certified by the Commission or the Registrar may be added to the costs recoverable under item B, D, E or F of Table 1, and

(b) an entitlement to a percentage increase in costs ascertained under item 4 or 5 of Table 4 and as certified by the Commission or the Registrar applies to increase the costs claimable under item D, E or F of Table 1, and

(c) an entitlement to costs under item 1, 2 or 3 of Table 4 as certified by the Commission or the Registrar is recoverable by an insurer in respect of a resolution referred to in item B of Table 1 even though no costs may be recoverable by the insurer under that item.

(4) **Additional legal services or other factors—multiple respondents or lead scheme agent** The maximum costs for an additional legal service or other factor as described in items 6 and 7 of Table 4 are up to the percentage applicable for the claimant and insurer as specified.

Accordingly and for the avoidance of doubt, an entitlement to a percentage increase in costs ascertained under items 6 and 7 of Table 4 applies to increase the costs claimable under items A to F of Table 1.

(5) **Table 4 costs not separately claimable** Except as referred to in subclause (3) (c), costs specified in Table 4 are recoverable only if costs as described in Table 1 are also recoverable.

5 When Table 1 costs recoverable

Costs specified in clause 4 of this Part are recoverable only on resolution of the claim or dispute concerned.

6 Special provisions for Table 1 costs—dispute about permanent impairment and pain and

suffering

(1) An exception to the standard method of determining the appropriate Table 1 costs for a claimant and an insurer based upon the meaning of "resolved" under clause 2 of this Part and the types of resolutions set out in Table 2 applies, where:

(a) a claimant has made an application to the Commission to resolve a dispute about permanent impairment and pain and suffering pursuant to sections 66 and 67 of the 1987 Act, and

(b) the section 67 claim has been substantiated by:

(i) a report, from a medical specialist with qualifications and training relevant to the body system being assessed who has been trained in the WorkCover Guidelines, to the effect that the claimant has sustained 10% or more whole person impairment where:

- the injury was sustained on or after 1 January 2002, and
- that report has been served on the insurer, or

(ii) a medical report to the effect that the claimant has sustained a loss or losses of 10% or more of the maximum amount referred to in section 66 (1) of the 1987 Act where:

- the injury was sustained before 1 January 2002, and
- that report has been served on the insurer, and

(c) the medical assessment certificate issued by an approved medical specialist or a Medical Appeal Panel is to the effect that the degree of whole person impairment of the claimant is below 10% or the loss or losses are not 10% or more of the maximum amount referred to in section 66 (1) of the 1987 Act.

(2) In a case to which subclause (1) applies:

(a) the claimant is entitled to maximum costs in the amount of $4,000, and

(b) the insurer is entitled to maximum costs in the amount of $1,875.

Note—

The deduction in respect of an advice to an insurer under item F of Table 3 applies to this costs provision.

7 When Table 3 costs recoverable, and reduction of subsequent Table 1 costs

(1) **When Table 3 costs recoverable** Costs specified in Table 3 as "Special Resolution Types" are recoverable only:

(a) on resolution of the dispute in respect of items A, B and C of that Table, or

(b) on registration of the agreement with the Commission in respect of item D of that Table, or

(c) when an existing decision of the insurer has been varied as a consequence of a legal service, where it was reasonable to carry out that service in respect of item E of that Table, or

(d) when written advice has been provided to the insurer in respect of item F of that Table, or

(e) when independent legal advice has been given to a claimant in respect of a complying agreement proposed by an insurer in respect of item G of that Table.

(2) **Reduction of subsequent Table 1 costs** The costs referred to in subclause (1) are not payable or recoverable in conjunction with any other items in this Schedule (with the exception of disbursements under Part C or disbursements specified in clause 82 of the *Workers Compensation Regulation 2003*) with the result that:

(a) if costs have been recovered in respect of item A, B or C of Table 3 and costs subsequently become recoverable under Table 1 in respect of a resolution that relates to the same issue, the entitlement to costs under Table 1 is to be reduced by any payment already made in respect of item A, B or C of Table 3, and

(b) if costs have been recovered in respect of item E of Table 3 and costs subsequently become payable under Table 1 in respect of a resolution that relates to the same issue, the entitlement to costs under Table 1 is to be reduced by any payment made in respect of item E of Table 3, and

(c) if costs have been recovered in respect of item F of Table 3 and costs subsequently become payable under Table 1 in respect of a claim or dispute relating to the issue addressed in the written advice, the entitlement to costs under Table 1 is to be reduced by any payment made in respect of item F of Table 3 (but the maximum reduction is the amount paid for the first such advice), and

(d) if costs have been recovered in respect of item G of Table 3 and costs subsequently become payable under Table 1 in respect of a claim or dispute relating to the issue addressed in the complying agreement, the entitlement to costs under Table 1 is to be reduced by a payment made in respect of item G of Table 3.

(3) Subclause (2) (c) does not apply where:

(a) payment was for advice given on issues that are not in dispute and thus are not part of the Table 1 resolution, in which case there is to be no deduction, or

(b) a period of more than 12 months has elapsed between the giving of the advice and the Table 1 resolution, or

(c) the Registrar, on application, determines that the need for the costs to be incurred for the Table 1 resolution could not have been foreseen at the time that costs for the advice were first incurred.

No costs are payable or recoverable in respect of an application for the purposes of paragraph (c).

(4) Subclause (2) (d) does not apply where a period of more than 12 months has elapsed between the giving of the advice in respect of the complying agreement and the Table 1 resolution.

8 Maximum payable where more than one resolution type

(1) Subject to clause 7 of this Part, where the resolution includes more than one resolution type in Table 2, or includes resolution types in Tables 2 and 3, the following provisions apply:

(a) in relation to a claimant:

(i) if all resolutions fall within column 1 of Table 1, the single highest amount claimable for a resolution is payable, once only, or

(ii) if all resolutions fall within column 2 of Table 1, the single highest amount claimable for a resolution is payable, once only, or

(iii) if resolutions fall within both columns 1 and 2 of Table 1, the single highest amount claimable for a resolution is payable, once only, or

(iv) if resolutions fall within both Tables 1 and 3, the single highest amount claimable for a resolution is payable, once only,

(b) in relation to an insurer:

(i) if all resolutions fall within column 3 of Table 1, the single highest amount claimable for a resolution is payable, once only, or

(ii) if all resolutions fall within column 4 of Table 1, the single highest amount claimable for a resolution is payable, once only, or

(iii) if resolutions fall within both columns 3 and 4 of Table 1, the single highest amount claimable for a resolution is payable, once only, or

(iv) if resolutions fall within both Tables 1 and 3, the single highest amount claimable for a resolution is payable, once only.

(2) Where subclause (1) applies and additional legal services or other factors set out in Table 4 are also claimable, the Table 4 items are payable up to the highest rate claimable, once only.

9 Maximum payable where more than one claim or dispute

(1) If more than one claim or dispute is resolved in respect of a particular injury, the maximum costs recoverable, regardless of how many resolution types there are, is the maximum as set out in clause 8 of this Part.

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

(a) a period of more than 12 months has elapsed between each successive resolution in respect of the injury, or

(b) the Commission or the Registrar, on application, orders that the resolutions are to be treated as separate resolutions for the purposes of the calculation or assessment of costs.

No costs are payable or recoverable in respect of an application for the purposes of paragraph (b).

10 Maximum payable covers all work

The costs allowed under:

(a) Table 1 in column 1, 2, 3 or 4 for each type of general resolution, and

(b) Table 3 for each type of special resolution, and

(c) Table 4 for additional legal services or other factors,

cover all work performed in the course of the claim, dispute, legal service or factor. This includes but is not limited to conferences, seeking a review of the claim, completing all necessary preparation and documentation, appearances and advocacy, executing and lodging settlement documents, reviewing the determination of the Commission and concluding attendances.

11 Determination of maximum payable where an upper limit is set

If Table 3 or 4 or Part C sets an upper limit for the maximum payable by way of any costs, the maximum payable is to be an amount determined, within the range from and including nil to and including the upper limit, by reference to:

(a) any applicable practice direction or Registrar's guideline, and

(b) subject to paragraph (a), the nature and extent of the service performed.

12 Table 2—resolution after teleconference and before further attendance

Where the Commission or the Registrar issues a determination in respect of a resolution type in Table 2, following the initial teleconference and before any further attendances, the costs in relation to that resolution fall within item D of Table 1.

13 Table 3—orders

For the purposes of Table 3, the Commission or the Registrar may order declaring that a particular proceeding is in respect of the resolution of "other proceedings" as referred to in item C of that Table.

14 Special provisions for Table 1 and Table 3 costs—legal advice to claimant on complying agreement

(1) Costs are not recoverable under item A of Table 1 in respect of independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer, if the only service provided to the claimant relates to the giving of that advice.

(2) Costs are not recoverable under item G of Table 3 in respect of independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer, unless the only service provided to the claimant relates to the giving of that advice.

Note—

Section 66A (6) of the 1987 Act provides that nothing in section 66A prevents a complying agreement from containing provision as to the payment of costs. Accordingly, a complying agreement may provide for the payment of costs, but the maximum recoverable is subject to Part B.

15 Country/interstate loadings—Part C

Country or interstate loadings (including travel and accommodation expenses) are payable in accordance with clause 3 or 4 (as relevant) of Schedule 1 to the *Motor Accidents Compensation Regulation 2005*, and the provisions of those clauses apply, with any necessary modifications and with any modifications contained in a practice direction or Registrar's guideline, for that purpose.

16 Certain agents not entitled to costs

(1) No amount is recoverable for costs by an agent who is not an agent as defined in section 356 (6) of the 1998 Act, with the result that the agent is not entitled to be paid or recover any amount for the service or matter concerned.

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

17 Recovery of certain charges for certain documents from public authorities

Nothing in the *Workers Compensation Regulation 2003* (including this Schedule) prevents the recovery, as a disbursement, of the fee or charge set for any of the following reports, certificates, searches or services by the agency concerned in a claim in respect of a particular injury:

(a) a report from a coroner, the NSW Police Force or the Roads and Traffic Authority

relevant to the claim,

(b) a land title search from Land and Property Information NSW relevant to the claim,

(c) a certificate from the Registry of Births, Deaths and Marriages relevant to the claim,

(d) an application under the *Freedom of Information Act 1989* relevant to the claim,

(e) a company or business name search from the Australian Securities and Investments Commission relevant to the claim.

18 Costs unreasonably incurred

Where the Commission is satisfied that a party's costs have been unreasonably incurred in accordance with section 342 of the 1998 Act, the maximum amount of recoverable costs, if any, is restricted to the costs recoverable in the phase where the circumstances referred to in section 342 (2) of that Act arose and is not to include any further costs.

Part B Costs

Table 1 General resolution types—costs payable

Item	General resolution (for general resolution types refer to Table 2)	Claimant		Insurer	
		Column 1 75%	Column 2 100%	Column 3 75%	Column 4 100%
A	Lump sum compensation claim or dispute resolved • before application accepted by the Registrar (Table 2—items 1–4—Claimant; item 2 only—Insurer)	$2,475	$3,275	$1,575	N/A
B	Lump sum compensation claim or dispute resolved • after application accepted by the Registrar and up to and including the issue of a Certificate of Determination (Table 2—items 1–4—Claimant; item 2 only—Insurer)	$3,525	$4,675 (or $4,000 where clause 6 of Part A applies)	$2,550 (or $1,875 where clause 6 of Part A applies)	N/A

C	Other compensation claim or dispute resolved • after dispute notice issued and before application accepted by the Registrar, or • before application accepted by the Registrar in relation to a claim for compensation in respect of the death of a worker (Table 2—items 5–16)	$2,860	$3,785		$2,345	$3,100
D	Other compensation dispute resolved • after application accepted by the Registrar, and up to and including the initial teleconference including consequential settlement attendances (Table 2—items 5–16)	$3,870	$5,135		$3,355	$4,450
E	Other compensation dispute resolved • after initial teleconference and up to and including conciliation conference including consequential settlement attendances (Table 2—items 5–16)	$4,250	$5,645		$3,665	$4,860
F	Other compensation dispute resolved • following conciliation conference and up to and including arbitration hearing (Table 2—items 5–16)	$4,615	$6,125		$3,935	$5,225

Table 2 General resolution types—applicable rate

Item	General resolution types	Column 1 75%	Column 2 100%
	Lump sum compensation resolutions		

1	Lump sum compensation for permanent impairment under section 66 of the 1987 Act (excluding any claim for pain and suffering under section 67 of that Act) where: • the extent of impairment is the only issue, or • a dispute notice has not been issued (Claimant only—item A or B of Table 1)	75%	—
2	Lump sum compensation for pain and suffering under section 67 of the 1987 Act (item A or B of Table 1)	75%	—
3	Lump sum compensation under section 16 of the 1926 Act where: • the extent of impairment (or loss) is the only issue, or • a dispute notice has not been issued (Claimant only—item A or B of Table 1)	75%	—
4	Lump sum compensation for permanent impairment under section 66 of the 1987 Act and for pain and suffering under section 67 of that Act where: • the extent of impairment and pain and suffering are the only issues, or • a dispute notice has not been issued (Claimant only—item A or B of Table 1)	—	100%
	Other compensation resolutions		
5	Lump sum compensation for permanent impairment where: • a dispute notice has been issued, or • the matter is referred by the Registrar for determination by an arbitrator (Item C, D, E or F of Table 1)	—	100%
6	Weekly payments compensation for a period not exceeding 12 weeks in total, excluding interim payment directions under Chapter 7, Part 5, of the 1998 Act (Item C, D, E or F of Table 1)	75%	—
7	Weekly payments compensation for a period exceeding 12 weeks in total, being a period in respect of which an interim payment direction under Chapter 7, Part 5, of the 1998 Act has not been made (Item C, D, E or F of Table 1)	—	100%

8	Termination or reduction of weekly payments compensation (on a review under section 55 of the 1987 Act) (Insurer only—item C, D, E or F of Table 1)	—	100%
9	Successfully defending an application to terminate or reduce weekly payments compensation (Claimant only—item C, D, E or F of Table 1)	—	100%
10	Increase in weekly payments compensation (on a review under section 55 of the 1987 Act) (Claimant only—item C, D, E or F of Table 1)	—	100%
11	Defending an application to increase weekly payments compensation (on a review under section 55 of the 1987 Act) (Insurer only—item C, D, E or F of Table 1)	—	100%
12	Medical expenses compensation not exceeding $7,500, excluding interim payment directions under Chapter 7, Part 5, of the 1998 Act (Item C, D, E or F of Table 1)	75%	—
13	Medical expenses compensation exceeding $7,500 (Item C, D, E or F of Table 1)	—	100%
14	Compensation in respect of the death of a worker under Part 3, Division 1, of the 1987 Act where: • the respondent admits liability, and • there is no dispute regarding dependency (Item C of Table 1)	75%	—
15	Compensation in respect of the death of a worker under Part 3, Division 1, of the 1987 Act where: • the respondent disputes liability, and/or • the respondent disputes dependency (Item C, D, E or F of Table 1)	—	100%
16	Reduction in liability of employer to reimburse the WorkCover Authority Fund under section 145 of the 1987 Act by determination of the Commission or agreement after referral (Item D, E or F of Table 1)	75%	—

Table 3 Special resolution types—costs payable

		Application of behalf of claimant		Application of behalf of insurer	
Item	**Special resolution types**	**Column 1 Claimant**	**Column 2 Insurer**	**Column 3 Claimant**	**Column 4 Insurer**

A	**Interim payment dispute resolved**					
	1	Dispute resolved by direction or agreement, after application accepted by the Registrar	$1,650	$1,400	N/A	N/A
	2	If further dispute about the same claim is resolved by direction or agreement, after application accepted by the Registrar	$550	$550	N/A	N/A
B	**Workplace injury management dispute resolved**					
	1	Dispute resolved by direction, recommendation, determination or agreement, after application accepted by the Registrar	$1,925	$1,675	$1,925	$1,675
	2	If further dispute about the same claim is resolved by direction, recommendation, determination or agreement, after application accepted by the Registrar	$550	$550	$550	$550
C	**Resolution of other proceedings**					
	1	As ordered or certified by the Commission or the Registrar	Upper limit of $1,100	Upper limit of $1,100	Upper limit of $1,100	Upper limit of $1,100
D	**Registration of commutation agreement**					

1	Where agreement approved by WorkCover Authority and registered with the Registrar (including all preparation and documentation in approved form in accordance with Rules	$1,500	$1,500	$1,500	$1,500

Item	Special resolution types	Claimant
E	**Legal service to claimant before dispute notice**	
1	Where an insurer's decision on the existing entitlement to weekly payments is varied to the worker's benefit by an increase of 5% or more in weekly payments as a consequence of a legal service, where it was reasonable to carry out that service	Upper limit of $1,100

Item	Special resolution types	Insurer
F	**Written advice provided at the request of the insurer**	
1	Where: • the legal advice to an insurer is the provision of written advice at the request of the insurer before the issue of a dispute notice, and • costs are not recoverable under Table 1 in respect of the claim or dispute the subject of that advice (subject to clause 7 of Part A)	Upper limit of $825

Item	Special resolution types	Claimant
G	**Advice in respect of complying agreement**	
1	Where independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer under section 66A of the 1987 Act (subject to clause 7 of Part A)	$825

Table 4 Additional legal services or other factors

Item	Additional legal services or other factors	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
1	**Appeal against an arbitral decision to Presidential member**				
	Appeal resolved by decision of Presidential member	(a) Nil if unsuccessful			(a) Nil if unsuccessful
	Costs to be as ordered or certified by the Presidential member and may encompass all parties' costs	(b) Upper limit of $2,200 if successful	Upper limit of $2,200	Upper limit of $2,200	(b) Upper limit of $2,200 if successful
2	**Question of law determined by the President**				
	Matter resolved by the decision of the President				
	Costs to be as ordered or certified by the President and may encompass all parties' costs	Upper limit of $2,200	Upper limit of $2,200	Upper limit of $2,200	Upper limit of $2,200
3	**Appeal against a medical assessment under Chapter 7, Part 7, of the 1998 Act**				
	Appeal resolved by the decision of Appeal Panel	(a) Nil if result is not more favourable			(a) Nil if result is not more favourable
	Costs to be as ordered or certified by the Commission or the Registrar and may encompass all parties' costs	(b) Upper limit of $1,100 if result is more favourable	Upper limit of $1,100	Upper limit of $1,100	(b) Upper limit of $1,100 if result is more favourable

4	**Dispute determined or otherwise resolved after proceedings have been commenced in the Commission** If: • the Commission or the Registrar certifies the matter as complex, and • neither item 6 nor 7 of this Table also applies	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1

Item	**Additional legal services or other factors**	**Column 5** **Claimant**	**Column 6** **Insurer**
5	**Dispute determined or otherwise resolved after proceedings have been commenced in the Commission** If: • the Commission or the Registrar certifies the matter as complex, and • item 6 or 7 of this Table would otherwise have application	Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1

Item	**Additional legal services or other factors**	**Claimant**
6	**Costs associated with multiple respondents**	

	If the claim or dispute is resolved by an award or settlement apportioned between more than one respondent **Note—** This allowance does not apply to any resolution that has an increase in fees under item 4 or 5 of this Table.	Percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table **Note—** The increase does not apply for each additional respondent, and accordingly 30% is the maximum allowable increase notwithstanding the number of respondents.
Item	**Additional legal services or other factors**	**Insurer**
7	**Costs associated with acting for lead scheme agent**	
	If the claim or dispute is resolved by a scheme agent on behalf of multiple scheme agents **Note—** This allowance does not apply to any resolution that has an increase in fees under item 4 or 5 of this Table.	(a) Lead scheme agent: percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table (b) Other agents: no costs recoverable **Note—** The increase referred to in paragraph (a) does not apply for each additional scheme agent, and accordingly 30% is the maximum allowable increase notwithstanding the number of scheme agents who are parties to the resolution.

Part C Regulated disbursements

Item	Disbursement	Applicable provisions
1	Country/interstate loadings (including travel and accommodation expenses)	Payable in accordance with the *Motor Accidents Compensation Regulation 2005*, Schedule 1, clause 3 or 4 (as relevant). **Note—** Clause 15 of Part A applies for this purpose.
2	Conduct money to comply with notice for the production of documents	Where the producer is a party other than the worker—nil payable Where the producer is the worker—an amount sufficient to meet the reasonable expenses of complying with the notice is payable

3	Conduct money to comply with direction for the production of documents	An amount sufficient to meet the reasonable expenses of complying with the direction is payable In the case of medical practitioners, the term “sufficient to meet the reasonable expenses” is an amount calculated in accordance with the AMA Revised Recommended Scale as in force from time to time In the case of production by a government agency—the standard rate applied by that agency is payable
4	Treating health service provider’s report	If a claim or dispute is resolved whether before or after proceedings commenced: Claimant: (a) nil fee payable, unless paragraph (b) applies, or (b) fee allowed in accordance with any applicable fee order where: (i) request for report made to insurer, and (ii) either: • insurer does not provide report within 14 days, or • report supplied by insurer does not address the report requirements of the claimant, and (iii) report is served on insurer Insurer: (a) fee allowed in accordance with any applicable fee order
5	Report of independent medical examination by an appropriately qualified and experienced medical practitioner in accordance with WorkCover Guidelines Fee allowed in accordance with any applicable fee order where paragraph (a) or (b) opposite applies **Note—** A supplementary report that complies with clause 43AA of the *Workers Compensation Regulation 2003* gives rise to a further entitlement to costs under this item, if the supplementary report otherwise satisfies the provisions of this item.	(a) If a claim or dispute is resolved before proceedings are commenced—a report of the kind referred to in clause 43 has been served on the other party (b) If a dispute is resolved after proceedings are commenced—a report of the kind referred to in clause 43 has been admitted in the proceedings or disclosed to an approved medical specialist

6	Treating health service provider's clinical notes and records	If a claim or dispute is resolved whether before or after proceedings commenced: Claimant: (a) nil fee payable, unless paragraph (b) applies, or (b) payment in accordance with AMA Revised Recommended Scale as in force from time to time or any applicable fee order (the latter to prevail over the former) where: (i) request made to insurer, and (ii) insurer does not provide within 7 days, and (iii) clinical notes and records are served on insurer Insurer: (a) nil fee payable if clinical notes and records are served by claimant under paragraph (b) above, or (b) otherwise, payment in accordance with AMA Revised Recommended Scale as in force from time to time or any applicable fee order (the latter to prevail over the former)
7	Fee for the provision of independent financial advice by a qualified financial adviser for a commutation by agreement that is approved by the Authority and registered with the Commission	Upper limit of $1,000, on the production of account or receipt

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

(Clause 87)

1 Costs determined by reference to certain stages in the matter

(1) The maximum costs for legal services provided for a stage of a claim for work injury damages set out in Column 1 of the Work Injury Costs Table A to this clause are the costs set out in Column 2 opposite that stage.

(2) However, if a legal practitioner was first retained in the matter after a certificate as to mediation was issued under section 318B of the 1998 Act (or, if the matter is not referred to mediation because the insurer wholly denies liability, or the insurer has failed to respond to the pre-filing statement, after the service of the pre-filing statement of claim), the maximum costs are those set out in the Work Injury Costs Table B to this clause.

(3) Costs may be charged for more than one stage described in this Schedule.

(4) Other than stage 1 in the Work Injury Costs Table B to this clause, each stage specifies the maximum costs payable for all legal services provided in the period commencing on the occurrence of one specified event and concluding on either the occurrence of another specified event or settlement of the matter (whichever occurs first).

(5) A reference in this Schedule to an amount of a settlement or an award is a reference to the amount inclusive of any weekly payment of compensation under Division 2 of Part 3 of the 1987 Act.

Work Injury Costs Table A

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

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

4	If the matter is referred to mediation and settlement occurs after the issue of a certificate as to the mediation under section 318B of the 1998 Act but without the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter	The total of the following: (a) an amount determined, in accordance with stage 3, by reference to the amount of the settlement, (b) 2% of the amount of the settlement
4A	If the matter is referred to mediation and the claim is withdrawn by the claimant after the issue of a certificate as to the mediation under section 318B of the 1998 Act but before the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter	(a) in the case of a legal practitioner acting for a claimant—nil (b) in the case of a legal practitioner acting for an insurer—$12,500
5	If the matter is referred to mediation and is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	The total of the following: (a) an amount determined in accordance with stage 4, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 4, (b) 2% of the amount of the settlement or award
6	If the matter is not referred to mediation and the matter is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	The total of the following: (a) an amount determined in accordance with stage 3, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 3, (b) 2% of the amount of the settlement or award
6A	If the matter is finalised after the commencement of court proceedings other than by settlement or an award of damages—from service of the pre-filing statement to finalisation of the matter	(a) in the case of a legal practitioner acting for a claimant—nil (b) in the case of a legal practitioner acting for an insurer—$20,600

Work Injury Costs Table B

Column 1	Column 2
Stage	**Costs**

1	Advice on the certificate as to mediation (if the matter is referred to mediation)	$250
2	From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter by settlement or award of damages.	In addition to the $250 specified for stage 1 (if chargeable): (a) if the settlement amount or award is $20,000 or less—nil (b) if the settlement amount or award is more than $20,000 but less than $50,001—10% of the settlement amount or award over $20,000 (c) if the settlement amount or award is $50,001 or more but less than $100,001—$3,000 plus 8% of the settlement amount or award over $50,000 (d) if the settlement amount or award is $100,001 or more—$7,000 plus 2% of the settlement amount or award over $100,000
3	From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter other than by settlement or an award of damages.	(a) in the case of a legal practitioner acting for a claimant—nil (b) in the case of a legal practitioner acting for an insurer—in addition to the $250 specified for stage 1 (if chargeable)—$12,500

2 Other costs for legal services

(1) Maximum costs for legal services provided in a claim for work injury damages may include (in addition to the costs for legal services referred to in clause 1) the costs set out in the Other Work Injury Costs Table to this clause.

(2) However, an amount for the fees for senior counsel, or for more than one advocate, are not to be included unless the court so orders.

Other Work Injury Costs Table

Column 1	**Column 2**
Nature of costs	**Maximum costs**

1	Costs associated with a dispute under Part 6 of Chapter 7 of the 1998 Act as to whether the degree of permanent impairment of an injured worker is sufficient for an award of damages (including costs associated with referring the dispute for assessment by an approved medical specialist under Part 7 of that Chapter)	$500
2	Costs associated with a dispute under section 317 of the 1998 Act as to whether a pre-filing statement is defective	$200
3	Cost of representation at a mediation under section 318A of the 1998 Act:	
	(a) flat fee	$400
	(b) additional amount, at the mediator's discretion, if the conference exceeds 2 hours	up to $125 per hour (or part of an hour) in excess of 2 hours
4	If the matter was referred to mediation and counsel advised before mediation about settlement:	
	(a) counsel's fee for advice about settlement	$500 (separate to the daily rate below)
	(b) cost of representation in court, per day, for advocate other than senior counsel	$1,500
	(c) cost of representation in court, per day, for senior counsel	$2,200
	If the matter was not referred to mediation:	
	(a) cost of representation in court, per day, for advocate other than senior counsel	$1,500
	(b) cost of representation in court, per day, for senior counsel	$2,200