

Workplace Injury Management and Workers Compensation Act 1998 No 86

[1998-86]



New South Wales

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Provisions in force

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

Notes—

- **Does not include amendments by**
 - [Workers Compensation Legislation Amendment \(Miscellaneous Provisions\) Act 2005 No 113](#), Sch 3.1 [11] (not commenced)
 - [Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#) (not commenced)
- **See also**
 - [Workers Compensation Legislation Amendment Bill 2012](#)
 - [Safety, Return to Work and Support Board Bill 2012](#)

Authorisation

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Workplace Injury Management and Workers Compensation Act 1998 No 86



New South Wales

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Workplace Injury Management and Workers Compensation Act 1998 No 86



New South Wales

An Act to provide for the effective management of work-related injuries and injury compensation for workers in respect of such injuries; and for other purposes.

Chapter 1 Preliminary

1 Name of Act

This Act is the *Workplace Injury Management and Workers Compensation Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 System objectives

The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives:

- (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
- (b) to provide:
 - prompt treatment of injuries, and
 - effective and proactive management of injuries, and
 - necessary medical and vocational rehabilitation following injuries,in order to assist injured workers and to promote their return to work as soon as possible,
- (c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
- (d) to be fair, affordable, and financially viable,

- (e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
- (f) to deliver the above objectives efficiently and effectively.

4 Definitions (cf 1987 s 3; 1989 s 3)

(1) In this Act:

approved medical specialist has the meaning given by section 319.

Arbitrator means an Arbitrator of the Commission appointed under this Act.

Authority means the WorkCover Authority of New South Wales constituted under this Act.

Board of Directors means the Board of Directors of the Authority.

Chief Executive Officer of the Authority means the person exercising functions under the [Public Sector Employment and Management Act 2002](#) as the Division Head of the relevant Government Service Division.

claim means a claim for compensation or work injury damages that a person has made or is entitled to make.

claimant means a person who makes or is entitled to make a claim.

coal miner matter means any matter arising under the Workers Compensation Acts concerning a claim in respect of a worker employed in or about a mine.

Commission means the Workers Compensation Commission of New South Wales established by this Act.

compensation means compensation under the Workers Compensation Acts, and includes any monetary benefit under those Acts.

Compensation Court means the Compensation Court of New South Wales constituted under the [Compensation Court Act 1984](#).

Council means the Workers Compensation and Work Health and Safety Council of New South Wales constituted under this Act.

death benefit compensation means compensation under Division 1 (Compensation payable on death) of Part 3 of the 1987 Act.

dependants of a worker means such of the members of the worker's family as were wholly or in part dependent for support on the worker at the time of the worker's death, or would but for the incapacity due to the injury have been so dependent, and

includes:

- (a) a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker, and
- (b) a divorced spouse of the worker so dependent, and
- (c) a person so dependent who:
 - (i) in relation to an injury received before the commencement of Schedule 7 to the *Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998*—although not legally married to the worker, lived with the worker as the worker’s husband or wife on a permanent and genuine domestic basis, or
 - (ii) in relation to an injury received after that commencement—is the de facto partner of the worker.

Note—

“De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

Deputy President means a Deputy President of the Commission.

doctor means a medical practitioner.

dust disease has the same meaning as it has in the *Workers’ Compensation (Dust Diseases) Act 1942*.

employer includes:

- (a) the legal personal representative of a deceased employer, or
- (b) a government employer, or
- (c) a former employer.

Without limiting the meaning of the expression, an employer can be an individual, a corporation, a firm, an unincorporated body of persons, a government agency or the Crown.

exercise a function includes perform a duty.

existing claim has the same meaning as in Chapter 7 (New claims procedures).

existing claim matter has the same meaning as in Chapter 7 (New claims procedures).

financial year means a year commencing 1 July.

former 1926 Act means the *Workers’ Compensation Act 1926*.

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

- (a) was previously a licensed insurer under this Act, the 1987 Act or section 27 of the former 1926 Act, and
- (b) continues to have liabilities under policies of insurance previously issued or renewed by the person.

function includes a power, authority or duty.

government agency means any department, person or body exercising executive or administrative functions on behalf of the Government.

government employer means the Crown or any government agency, and includes:

- (a) a public health organisation within the meaning of the [Health Services Act 1997](#), and
- (b) an employer prescribed by the regulations.

government worker means a worker whose employer is a government employer.

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

incapacity includes a disfigurement that is sufficient to affect the earning capacity of a worker or a worker's opportunities for employment.

injury:

- (a) means a personal injury arising out of or in the course of employment, and
- (b) includes:
 - (i) a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease, or
 - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration, but
- (c) does not include (except in the case of a worker employed in or about a mine):
 - (i) a dust disease, or
 - (ii) the aggravation, acceleration, exacerbation or deterioration of a dust disease.

insurance includes indemnity.

Investment Board means the Workers Compensation Insurance Fund Investment Board established by this Act.

lump sum compensation means compensation under Division 4 (Compensation for non-economic loss) of Part 3 of the 1987 Act.

mediator means a person appointed as a mediator under section 318F.

medical assessment means assessment of a medical dispute by an approved medical specialist under Part 7 of Chapter 7.

medical certificate means a certificate given by a medical practitioner.

medical dispute has the meaning given by section 319.

medical expenses compensation means compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of the 1987 Act.

member of a family means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.

member of staff means any person who is employed in the relevant Government Service Division.

motor accident damages means damages to which Part 6 of the [Motor Accidents Act 1988](#) or Chapter 5 of the [Motor Accidents Compensation Act 1999](#) applies.

new claim has the same meaning as in Chapter 7 (New claims procedures).

new claim matter has the same meaning as in Chapter 7 (New claims procedures).

pain and suffering compensation means compensation for pain and suffering under section 67 of the 1987 Act.

permanent impairment compensation means compensation for permanent impairment under section 66 of the 1987 Act.

policy of insurance means a policy of insurance that an employer obtains under the 1987 Act or the former 1926 Act.

premium income:

- (a) in relation to contributions payable under this Act or the 1987 Act by an insurer (other than a specialised insurer) in respect of a financial year—means the amount the insurer receives during that financial year as premiums in respect of policies of insurance issued or renewed by the insurer (whether the policies are issued or renewed during that financial year or during a previous financial year), or
- (b) in relation to contributions payable under this Act or the 1987 Act by a specialised insurer in respect of a financial year—means the amount the insurer receives,

whether during or after that financial year, as premiums in respect of policies of insurance issued or renewed by the insurer during that financial year,

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

President means the President of the Commission.

Presidential member means the President or a Deputy President.

records includes books, accounts, minutes, registers, deeds, documents and any other sources of information compiled, recorded or stored in written form, on microfilm, by electronic process or in any other manner.

Registrar means the Registrar of the Commission appointed under this Act.

related body corporate has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

relevant Government Service Division means the Division of the Government Service comprising the group of staff who are employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) to enable the Authority to exercise its functions.

Rules means the Rules of the Commission made by the Minister under this Act.

Self Insurance Corporation means the NSW Self Insurance Corporation constituted by the [NSW Self Insurance Corporation Act 2004](#).

spouse of a person means:

- (a) in relation to an injury received before the commencement of Schedule 7 to the [Workers Compensation Legislation Amendment \(Dust Diseases and Other Matters\) Act 1998](#)—a husband or wife of the person, or
- (b) in relation to an injury received after that commencement:
 - (i) a husband or wife of the person, or
 - (ii) a de facto partner of the person.

the 1987 Act means the [Workers Compensation Act 1987](#).

training contract has the meaning it has in the [Apprenticeship and Traineeship Act 2001](#).

Note—

A training contract is a contract entered into for the purpose of establishing an apprenticeship or traineeship.

weekly payment, in relation to compensation, means a weekly payment of compensation under Division 2 of Part 3 of the 1987 Act in respect of a period of total or partial incapacity for work.

work health and safety legislation means:

- (a) the [Work Health and Safety Act 2011](#) and the instruments under that Act, or
- (b) any other Act or instrument (or part) prescribed by the regulations under this Act.

work injury means an injury in respect of which compensation is payable.

work injury damages has the same meaning as in Chapter 7 (New claims procedures).

WorkCover Authority Fund means the WorkCover Authority Fund established under this Act.

WorkCover Guidelines means guidelines issued under section 376 (Issue of guidelines).

worker means a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:

- (a) a member of the NSW Police Force who is a contributor to the Police Superannuation Fund under the [Police Regulation \(Superannuation\) Act 1906](#), or
- (b) a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer's trade or business, or
- (c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year, or
- (d) except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the [Sporting Injuries Insurance Act 1978](#)) while:
 - (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or
 - (ii) engaged in training or preparing himself or herself with a view to so

participating, or

- (iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged,

if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.

Workers Compensation Acts means this Act and the 1987 Act.

workers compensation legislation means:

- (a) this Act and the instruments under this Act, or
- (b) the 1987 Act and the instruments under that Act, or
- (c) the [Workers Compensation \(Bush Fire, Emergency and Rescue Services\) Act 1987](#) and the instruments under that Act, or
- (d) the [Workers' Compensation \(Dust Diseases\) Act 1942](#) and the instruments under that Act, or
- (e) any other Act or instrument (or part) prescribed by the regulations.

(2) **Extended meaning of injured worker** A reference in this Act to a worker who has been injured includes, if the worker is dead, a reference to the worker's legal personal representative, or the worker's dependants, or any other person to whom or for whose benefit compensation is payable.

(3) **Notes** Notes in the text of this Act do not form part of this Act.

(4) (Repealed)

(5) **Meaning of "related"** The following provisions have effect for the purposes of this section:

(a) Persons are **related** if:

- (i) one is the parent, or another ancestor, of the other, or
- (ii) one is the child, or another descendant, of the other, or
- (iii) they have a parent in common.

(b) For the purposes of paragraph (a):

- (i) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was

an adopted child, and

- (ii) the relationship of parent and child between an adoptive parent and an adopted child is taken to continue even though the order by which the adoption was effected has been annulled, cancelled or discharged or the adoption has otherwise ceased to be effective, and
- (iii) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent, and
- (iv) a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.

(c) In paragraph (b), **adopted** means adopted under the law of any place, whether in Australia or not, relating to the adoption of children.

(5A) Subsection (5) applies in relation to a child whose parentage is transferred as a result of a parentage order, or an Interstate parentage order, within the meaning of the [Surrogacy Act 2010](#) in the same way as it applies in relation to an adopted child. For that purpose, a reference in that subsection to an adoptive parent is to be read as a reference to a person to whom the parentage of a child is transferred under such a parentage order.

(6) **Certain references to “mines”** A reference to a mine in the definitions of **coal miner matter** and **injury** is a reference to a mine within the meaning of the [Coal Mines Regulation Act 1982](#) as in force immediately before its repeal by the [Coal Mine Health and Safety Act 2002](#), but does not include a reference to any place that, in accordance with section 8 (3) of the [Coal Mine Health and Safety Act 2002](#), is a place to which that Act does not apply.

Note—

Section 2A of the 1987 Act provides that the 1987 Act is to be construed with, and as if it formed part of, this Act. Accordingly, a reference in this Act to this Act generally includes a reference to the 1987 Act.

5 Deemed employment of workers (cf 1987 s 5)

Schedule 1 has effect.

6 Application of Act in certain respects (cf 1987 s 3 (3), (4), (5))

- (1) **Public or local authority** For the purposes of this Act, the exercise of the functions of a public or local authority is taken to be its trade or business.
- (2) **Racing or recreation club** For the purposes of this Act, the operations of a racing or recreation club are taken to be its trade or business.
- (3) **NSW Police Force** For the purposes of this Act, the Crown is taken to be the employer of

members of the NSW Police Force.

Note—

Members of the NSW Police Force who are contributors to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906* are not workers within the meaning of this Act. That fund was closed to new members on and from 1 April 1988. Accordingly members of the NSW Police Force who are not contributors to that fund are workers within the meaning of this Act.

7 Act binds Crown (cf 1987 s 6)

- (1) This Act binds the Crown in right of New South Wales and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) (Repealed)

8 Certain Acts not affected (cf 1987 s 7)

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

Workers' Compensation (Dust Diseases) Act 1942,

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

9 (Repealed)

9A Application of Act in respect of coal industry

- (1) The workers compensation company (within the meaning of the *Coal Industry Act 2001*) is taken to be a licensed insurer that is a specialised insurer under, and for the purposes of, this Act.
- (2) However, the following provisions of this Act do not apply to or in respect of the workers compensation company:
 - (a) sections 146 and 146A,
 - (b) Parts 3, 4, 5, 6, 7, 8 and 9 of Chapter 5.
- (3) For avoidance of doubt:
 - (a) an employee of an employer in the coal industry is not eligible to make a claim under Part 9 of Chapter 5, and
 - (b) a person who is taken, under Schedule 1, to be a worker employed by another person is not entitled to make a claim referred to in paragraph (a) if the other person by whom the person is taken to be employed is engaged in the coal industry.
- (4) The workers compensation company is taken to be the insurer under this Act of all employers in the coal industry (whether or not any such employer maintains a policy of insurance with that company).

Chapter 2 Administration

Part 1

10-13 (Repealed)

Part 2 WorkCover Authority of New South Wales

Division 1 Constitution of Authority

14 Constitution of Authority

- (1) There is constituted by this Act a corporation with the corporate name of the WorkCover Authority of New South Wales.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

15 Board of Directors (cf 1989 s 5)

- (1) There is to be a Board of Directors of the Authority.
- (2) The Board is to consist of 8 directors, being:
 - (a) the Chief Executive Officer of the Authority, and
 - (b) 7 part-time directors appointed by the Governor on the recommendation of the Minister.
- (3) The persons recommended for appointment by the Minister must have such managerial, commercial or other qualifications or experience as the Minister considers necessary to enable the Board of Directors to exercise its functions.
- (4) (Repealed)
- (5) A person cannot be a member of both the Council and the Board at the same time unless the person is the Chief Executive Officer of the Authority or the Chairperson of the Council.
- (6) Schedule 3 has effect with respect to the Board of Directors.

16, 17 (Repealed)

Division 2 Management of Authority

18 The Minister (cf 1989 s 9)

The Board of Directors and the Chief Executive Officer are, in the exercise of their respective functions, subject to the control and direction of the Minister, except in relation to the contents of any advice, report or recommendation given to the Minister.

19 Board of Directors (cf 1989 s 6)

- (1) The Board of Directors has the function of determining the administrative policies of the Authority.
- (2) In exercising that function, the Board of Directors must, as far as practicable, ensure that the activities of the Authority are carried out properly and efficiently.

19A Investment Board

- (1) There is to be a Workers Compensation Insurance Fund Investment Board.
- (2) The Investment Board is to consist of 6 members, being:
 - (a) the Chief Executive Officer, and
 - (b) 5 part-time members appointed by the Governor on the joint recommendation of the Minister and the Treasurer.
- (3) The persons recommended for appointment as members of the Investment Board must have such business, investment or other qualifications or experience as the Minister and the Treasurer consider necessary to enable the Investment Board to exercise its functions.
- (4) The Investment Board has the following functions:
 - (a) determining investment policies for the investment of the Insurance Fund,
 - (b) reporting to the Minister on the investment performance of the Insurance Fund.
- (5) The functions of the Board of Directors do not include any function of the Investment Board.
- (6) Schedule 3A has effect with respect to the Investment Board.

20 Chief Executive Officer (cf 1989 s 8)

- (1) Subject to sections 18 and 19, the affairs of the Authority are to be managed and controlled by the Chief Executive Officer.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer is taken to have been done by the Authority.

21 Delegation of functions (cf 1989 s 11)

- (1) The Authority may delegate to an authorised person any of the functions of the Authority (other than this power of delegation).
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.

(3) In this section:

authorised person means:

- (a) a member of staff, or
- (b) a person of a class prescribed by the regulations or of a class approved by the Board of Directors.

Division 3 Functions of Authority

22 General functions of Authority (cf 1989 s 12)

(1) The general functions of the Authority are:

- (a) to be responsible for ensuring compliance with the workers compensation legislation and the work health and safety legislation,
- (b) to be responsible for the day to day operational matters relating to the schemes to which any such legislation relates,
- (c) to monitor and report to the Minister on the operation and effectiveness of the workers compensation legislation and the work health and safety legislation, and on the performance of the schemes to which that legislation relates,
- (d) to undertake such consultation as it thinks fit in connection with current or proposed legislation relating to any such scheme as it thinks fit,
- (d1) to monitor and review key indicators of financial viability and other aspects of any such schemes,
- (e) to report and make recommendations to the Minister on such matters as the Minister requests or the Authority considers appropriate.

(2) The Authority has such other functions as are conferred or imposed on it by or under the workers compensation legislation, the work health and safety legislation or any other legislation.

(3) In exercising its functions, the Authority must:

- (a) promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces, and
- (b) promote the prompt, efficient and effective management of injuries to persons at work, and
- (c) ensure the efficient operation of workers compensation insurance arrangements, and
- (d) ensure the appropriate co-ordination of arrangements for the administration of the

schemes to which the workers compensation legislation or the work health and safety legislation relates.

(4) The Authority cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.

23 Specific functions (cf 1989 s 13)

(1) The Authority has, in particular, the following functions:

- (a) to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers,
- (b) to ensure the availability of high quality education and training in such prevention, management and rehabilitation,
- (c) to develop equitable and effective programs to identify areas of unnecessarily high costs in or for schemes to which the workers compensation legislation or the work health and safety legislation relates,
- (d) to foster a co-operative relationship between management and labour in relation to the health, safety and welfare of persons at work,
- (e) (Repealed)
- (f) to identify (and facilitate or promote the development of programs that minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers, or both,
- (g) to assist in the provision of measures to deter and detect fraudulent workers compensation claims,
- (h) to develop programs to meet the special needs of target groups, including:
 - workers who suffer severe injuries
 - injured workers who are unable to return to their pre-injury occupation
 - injured workers who are unemployed
 - persons who live in remote areas
 - women
 - persons of non-English speaking background

- persons who have a disability,
- (i) to facilitate and promote the establishment and operation of:
- work health and safety committees at places of work
 - return-to-work programs,
- (j) to investigate workplace accidents,
- (k) to develop policies for injury management, worker rehabilitation, and assistance to injured workers,
- (l) to monitor the operation of requirements and arrangements imposed or made by or under the workers compensation legislation or the work health and safety legislation, including requirements and arrangements for all or any of the following:
- injury management
 - worker rehabilitation
 - workers compensation insurance
 - workers compensation insurer licensing,
- and to commence and conduct prosecutions for offences in connection with any such requirements and arrangements,
- (m) to collect, analyse and publish data and statistics, as the Authority considers appropriate,
- (n) to provide advisory services to workers, employers, insurers and the general community (including information in languages other than English),
- (o) to provide funds for or in relation to:
- measures for the prevention or minimisation of work injuries or diseases
 - work health and safety education,
- (p) to arrange, or facilitate the provision of, interpreter services to assist injured workers,
- (q) to provide and administer (subject to the regulations) a legal aid service for persons who are parties to proceedings relating to workers compensation,
- (r) to provide administrative and other support to the Council and Industry Reference Groups.

- (2) The Authority is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Council.

23A Nominal Insurer functions of Authority

- (1) The Authority has such additional functions as may be necessary or convenient for enabling the Authority to act for the Nominal Insurer and to ensure that the Nominal Insurer's functions are able to be exercised without restriction by any of the Authority's other functions.
- (2) When acting for the Nominal Insurer, the Authority has and may exercise all the functions of the Nominal Insurer and is not limited by any of the Authority's other functions.
- (3) When acting for the Nominal Insurer, the Authority must exercise its functions so as to ensure the efficient exercise of the functions of the Nominal Insurer and the proper collection of premiums for policies of insurance and the payment of claims in accordance with this Act and the 1987 Act.

Part 3

24-27 (Repealed)

Part 4 Workers Compensation and Work Health and Safety Council of New South Wales

28 Constitution of Council

There is constituted by this Act a Workers Compensation and Work Health and Safety Council of New South Wales.

29 Membership and procedure of Council

- (1) The Council is to consist of the following members:
 - (a) 1 person appointed by the Minister who is to be Chairperson of the Council,
 - (b) 5 persons appointed by the Minister as employer representatives from a panel of at least 6 persons nominated by such bodies or organisations representing employers as are approved by the Minister,
 - (c) 5 persons appointed by the Minister as employee representatives from a panel of at least 6 persons nominated by Unions NSW, with one of those 5 appointed to represent injured workers,
 - (d) 1 person appointed by the Minister to represent legal practitioners,
 - (e) 1 person appointed by the Minister to represent medical practitioners,

- (f) 1 person appointed by the Minister to represent other health care professionals,
 - (g) 1 person appointed by the Minister to represent insurers,
 - (h) 1 person appointed by the Minister, being a person whom the Minister considers has expertise in injury management and rehabilitation,
 - (i) 1 person appointed by the Minister, being a person whom the Minister considers has expertise in work health and safety,
 - (j) 2 other persons appointed by the Minister.
- (2) In appointing members of the Council, the Minister is to ensure that the interests of rural employers and employees are adequately represented.
- (3) Schedule 2 has effect with respect to the Council.

30 Functions of Council

- (1) The Council has the following functions:
- (a) to provide advice to the Minister on any matter relating to work health and safety, injury management and workers compensation that the Minister refers to the Council for advice,
 - (b) to provide advice to the Minister on matters of concern to scheme participants arising from the operation of current workers compensation legislation and work health and safety legislation, including advice on more appropriate strategies for achieving the objectives of that legislation,
 - (c) to serve as a channel of communication between scheme participants and the Minister,
 - (d) to provide advice to the Minister on emerging issues, problems or trends in relation to work health and safety, injury management and workers compensation,
 - (d1) to provide advice to the Minister on proposals for WorkCover Guidelines and regulations under the workers compensation legislation,
 - (e) to examine the operation of the WorkCover scheme,
 - (f) such other functions as are conferred or imposed on it by or under this or any other Act.
- (1A) Before a WorkCover Guideline is published in the Gazette or a regulation (whether made under this Act or the 1987 Act) is published on the NSW legislation website, a copy of the Guideline or the regulation must be provided to the Council.
- (2) In this section:

scheme participants means employers, employees and other participants in the schemes to which the workers compensation legislation and work health and safety legislation relate.

31 (Repealed)

Part 5 Industry Reference Groups

32 Industry Reference Groups

- (1) The Authority is to establish a system of Industry Reference Groups. The Authority may abolish any such Group at any time.
- (2) The Authority may establish an Industry Reference Group consisting of such number of members as the Authority thinks fit and may assign to it terms of reference.
- (3) An Industry Reference Group is:
 - (a) to consist of equal numbers of representatives of workers and employers, and
 - (b) to comprise persons who in the opinion of the Authority have appropriate expertise or experience in matters relating to workers compensation, work health and safety or injury management.
- (4) Members of the Authority may, but need not, be members of Industry Reference Groups.
- (5) The procedure for the calling of meetings of an Industry Reference Group and for the conduct of business at those meetings is to be as determined by the Authority or (subject to any determination of the Authority) by the Group.

33 Functions of Industry Reference Groups

- (1) The functions of an Industry Reference Group are as set out in the terms of reference assigned to it.
- (2) The functions of an Industry Reference Group may include the following:
 - (a) to develop industry specific strategies for:
 - injury prevention
 - injury management
 - the education of and giving of practical advice to workers and employers,
 - (b) to liaise with the Authority,
 - (c) to investigate and report to the Authority on specific matters of concern arising under or in connection with any workers compensation legislation.

Part 6 Financial provisions

Division 1 WorkCover Authority Fund

34 WorkCover Authority Fund (cf 1989 s 18)

The Authority is required to establish and maintain a WorkCover Authority Fund.

35 Payments into and from Fund (cf 1989 s 19)

(1) The following is to be paid into the WorkCover Authority Fund:

- (a) money contributed by insurers and self-insurers under Division 2,
- (a1) money approved by the Minister to be paid into the Fund from the Insurance Fund under subsection (1A),
- (b) money required to be paid into the Fund by or under this or any other Act,
- (c) all other money received by the Authority and not otherwise appropriated.

(1A) The Minister may approve the payment into the Fund of amounts from the Insurance Fund having regard to the estimates, provisions and determinations made by the Authority under section 38 and any need for additional funding to provide for the proper exercise of the Authority's functions.

(2) The following is to be paid from the WorkCover Authority Fund:

- (a) the remuneration (including allowances) of the Board of Directors, Investment Board and those members of staff who are principally involved in the administration of this Act,
- (b) the remuneration (including allowances) of members of, and any other costs of operation of, the Council and any consultative body established by the Authority,
- (c) (Repealed)
- (d) expenditure incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliators under this Act by conciliators who are officers of that Department, including the remuneration payable to those officers,
- (e) the remuneration (including allowances) of conciliators appointed under this Act who are not officers of the Department of Industrial Relations,
- (e1) the costs of operation of the Commission including the remuneration (and allowances) of the members and of the staff of the Commission, and the remuneration of approved medical specialists,
- (f) payments required to be made under section 35A (Residual and ongoing costs of

Compensation Court jurisdiction),

- (g) all payments required to meet expenditure incurred in relation to the functions of the Authority,
 - (h) all other money required by or under this or any other Act to be paid from the Fund.
- (3) The maximum amount payable from the WorkCover Authority Fund for the costs of operation of the Compensation Court is to be the amount determined by the Minister administering the *Compensation Court Act 1984* after consultation with the Minister administering this Act.
- (4) The Authority may pay from the Fund into the Insurance Fund any amount by which the Authority determines the Fund to be in surplus from time to time. Any such surplus may be paid to the Insurance Fund by transfer of any investment held by the Fund (as an alternative to the payment of money).

35A Certain ongoing costs of Compensation Court jurisdiction

- (1) The following costs are payable from the WorkCover Authority Fund:
- (a) the costs of operation of the Compensation Court (until the repeal of the *Compensation Court Act 1984*),
 - (b) such of the costs of operation of the District Court, incurred on or before 30 June 2005, relating to matters that would have been matters within the jurisdiction of the Compensation Court (had the repeal Act not been enacted) as the Ministers agree are to be paid from the Fund, and
 - (c) such of the ongoing costs of operation of the Compensation Court (those costs determined as if the repeal Act had not been enacted) as the Ministers agree are to be paid from the Fund, and
 - (d) such other costs resulting from the operation of the repeal Act as the Ministers agree are to be paid from the Fund.
- (2) The costs of operation of a court include:
- (a) the remuneration (including allowances) of Judges of the court and of officers and employees of the public service employed in connection with the exercise of functions of the court, and
 - (b) costs associated with the employment and remuneration of those Judges and officers and employees and of retired Judges of the court (such as contributions for and payments of pensions and superannuation benefits), and
 - (c) court accommodation.

(3) In this section:

repeal Act means the *Compensation Court Repeal Act 2002*.

the Ministers means the Minister administering the *District Court Act 1973* and the Minister administering this Act.

36 Investment (cf 1989 s 20)

The Authority may invest money held by it:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power to invest money held by the Authority, in any other manner approved by the Minister with the concurrence of the Treasurer.

Division 2 Contributions to WorkCover Authority Fund

37 Definitions (cf 1987 s 258)

In this Division:

Comcare employer means an employer who:

- (a) is licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth after a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority, and
- (b) would otherwise be required:
 - (i) to obtain and maintain in force a policy of insurance pursuant to section 155 of the 1987 Act, or
 - (ii) to be licensed as a self-insurer.

deemed premium income, in relation to the contribution payable by a self-insurer or Comcare employer under this Division for any period during a financial year, means the amount that the self-insurer or Comcare employer would have been liable to pay (in such circumstances as may be prescribed by the regulations) to a licensed insurer as premiums on policies of insurance that would otherwise be required under the 1987 Act during that period if the person were not a self-insurer or Comcare employer, and:

- (a) includes any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year, and
- (b) does not include any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year.

financial year, in relation to an insurer:

- (a) includes the period after 4 pm on the day preceding the first day of the financial year, and
- (b) does not include the period after 4 pm on the last day of the financial year.

insurer means a licensed insurer or a former licensed insurer who was previously a licensed insurer under this Act.

38 Assessment by Authority of amount to be contributed to Fund (cf 1987 s 260)

The Authority is required, as soon as practicable in respect of each financial year:

- (a) to make an estimate of the total of the amounts already paid and the amounts to be paid from the WorkCover Authority Fund during that financial year, and
- (b) to determine what amounts, if any, are to be set aside as provision to meet expenditure from the Fund in future years, and specify for what purpose each such provision is being made, and
- (c) to make an estimate of the total amounts (including the amounts already received) to be received into the Fund during that financial year otherwise than by way of contributions in respect of that financial year from specialised insurers, self-insurers and Comcare employers under this Division, and
 - (c1) to make an estimate of the amount required to be contributed to the Fund from the Insurance Fund during that financial year, and
 - (d) to determine the total amount to be contributed to the Fund in respect of that financial year by specialised insurers, self-insurers and Comcare employers under this Division after having regard to:
 - (i) the amounts standing to the credit of the Fund at the beginning of the year, including any amounts set aside in earlier years as provisions to meet expenditure in later years, and
 - (ii) the amounts estimated under paragraph (c) to be received into the Fund during the year, and
 - (iii) the amounts to be contributed to the Fund from the Insurance Fund during the year, and
 - (e) to specify in writing the estimates, provisions and amounts to be contributed to the Fund by specialised insurers, self-insurers and Comcare employers.

39 Contributions to Fund by specialised insurers and self-insurers (cf 1987 s 261)

- (1) Each specialised insurer and self-insurer must pay the contributions prescribed by this

section to the Authority for payment into the WorkCover Authority Fund.

- (2) The contribution to be paid by a specialised insurer in respect of each financial year is an amount equal to the percentage (determined by the Authority in accordance with this section) of the premium income of the specialised insurer in respect of that financial year.
- (3) The contribution to be paid by a self-insurer, in respect of each financial year (being a financial year during the whole or part of which the person was a self-insurer) is an amount equal to the percentage (determined by the Authority in accordance with this section) of the deemed premium income of the self-insurer during the relevant period when the person was a self-insurer.
- (4) The percentage determined by the Authority pursuant to subsections (2) and (3):
 - (a) is to be such as, in the opinion of the Authority, will be sufficient to yield the total amount to be contributed to the Fund by specialised insurers and self-insurers in respect of the relevant financial year as determined pursuant to section 38, and
 - (b) is to be the same percentage for all specialised insurers and for all self-insurers, and
 - (c) (Repealed)
- (5) A contribution by a specialised insurer is payable at such times and in respect of premium income received during such periods in such manner as may be determined by the Authority and notified to the specialised insurer.
- (6) A contribution by a self-insurer is payable in such instalments and at such times as may be determined by the Authority and notified to the self-insurer.
- (6A) The Authority may, at any time during or after a financial year, re-determine the percentages determined pursuant to subsections (2) and (3) in respect of the financial year if the estimated total amount of premium income and deemed premium income for the financial year is less than the previously estimated amount on which the original determination of the percentage was based.
- (6B) If a percentage is re-determined, the Authority is to make the necessary adjustments to the contributions payable by specialised insurers and self-insurers.
- (7) If a contribution payable by a specialised insurer or a self-insurer has not been paid within the time prescribed by or under this section:
 - (a) the specialised insurer or self-insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
 - (b) the amount of that contribution together with a late payment fee calculated at the rate of 15 per cent of that amount per annum compounded quarterly (or, where

another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.

- (8) Subject to subsection (4), more than one percentage may be determined by the Authority for different portions of a financial year for the purposes of subsection (2) or (3).
- (9) A certificate executed by the Authority as to the amount of a contribution payable under this section by a specialised insurer or self-insurer specified in the certificate and the due date for payment is (without proof of its execution by the Authority) admissible in proceedings under this section and is evidence of the matters specified in the certificate.
- (10) The obligation of a person (being a self-insurer) to make a contribution under this section in respect of any period during which the person was a self-insurer does not cease merely because the person subsequently ceases to be a self-insurer.

39A Contributions to Fund by Comcare employers

- (1) Each Comcare employer must pay the contributions prescribed by this section to the Authority for payment into the WorkCover Authority Fund.
- (2) The contribution to be paid by a Comcare employer, in respect of each financial year (being a financial year during the whole or part of which the person was a Comcare employer), is an amount equal to the percentage (determined by the Authority in accordance with this section) of the deemed premium income of the Comcare employer during the relevant period when the person was a Comcare employer.
- (3) The percentage determined by the Authority pursuant to subsection (2):
 - (a) subject to paragraph (b), is to be such as, in the opinion of the Authority, will be sufficient to yield the total amount to be contributed to the Fund by Comcare employers in respect of the relevant financial year as determined pursuant to section 38, and
 - (b) is to be 60%, or such other percentage (not exceeding 70%) as determined by the Authority by order, of the percentage determined in accordance with section 39, and
 - (c) is to be rounded to 2 decimal places, and
 - (d) is to be the same percentage for all Comcare employers.

Example—

If the percentage determined in accordance with section 39 is 4%, unless an order under subsection (3) (b) has been made, the percentage under subsection (2) will be $(60\% \times 4\% =) 2.40\%$.

If the percentage determined in accordance with section 39 is still 4%, but an order under subsection (3) (b)

has been made increasing that percentage to 62.1%, then the percentage under subsection (2) will be $(62.1\% \times 4\% = 2.484\%$, then rounded to the nearest two decimal places) 2.48%.

- (4) A contribution by a Comcare employer is payable in such instalments and at such times as may be determined by the Authority and notified to the Comcare employer.
- (5) The Authority may, at any time during or after a financial year, re-determine the percentage determined pursuant to subsection (2) in respect of the financial year if the estimated total amount of premium income and deemed premium income for the financial year is less than the previously estimated amount on which the original determination of the percentage was based.
- (6) If a percentage is re-determined, the Authority is to make the necessary adjustments to the contributions payable by Comcare employers.
- (7) If a contribution payable by a Comcare employer has not been paid within the time prescribed by or under this section:
 - (a) the Comcare employer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
 - (b) the amount of that contribution together with a late payment fee calculated at the rate of 15% of that amount per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (8) Subject to subsection (3), more than one percentage may be determined by the Authority for different portions of a financial year for the purposes of subsection (2).
- (9) A certificate executed by the Authority as to the amount of a contribution payable under this section by a Comcare employer specified in the certificate and the due date for payment is (without proof of its execution by the Authority) admissible in proceedings under this section and is evidence of the matters specified in the certificate.
- (10) The obligation of a person (being a Comcare employer) to make a contribution under this section in respect of any period during which the person was a Comcare employer does not cease merely because the person subsequently ceases to be a Comcare employer.
- (11) This section does not apply to a Comcare employer on and from the date that the Comcare employer becomes subject to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* of the Commonwealth.

Division 3 Financial year of Authority

40 Financial year of Authority (cf 1989 s 21)

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

Chapter 3 Workplace injury management

41 Object and application of Chapter

- (1) The object of this Chapter is to establish a system that seeks to achieve optimum results in terms of the timely, safe and durable return to work for workers following workplace injuries.
- (2) The various provisions of this Chapter apply only in respect of injuries that happen after the commencement of the provision concerned.

41A Chapter applies even when liability disputed

The requirements of this Chapter apply even when there is a dispute as to liability.

42 Definitions

- (1) In this Chapter:

injured worker means a worker who has received a workplace injury.

injury management means the process that comprises activities and procedures that are undertaken or established for the purpose of achieving a timely, safe and durable return to work for workers following workplace injuries.

injury management plan means a plan for co-ordinating and managing those aspects of injury management that concern the treatment, rehabilitation and retraining of an injured worker, for the purpose of achieving a timely, safe and durable return to work for the worker.

injury management program means a co-ordinated and managed program that integrates all aspects of injury management (including treatment, rehabilitation, retraining, claims management and employment management practices) for the purpose of achieving optimum results in terms of a timely, safe and durable return to work for injured workers.

insurer means a licensed insurer, specialised insurer or self-insurer.

nominated treating doctor means the treating doctor nominated from time to time by a worker for the purposes of an injury management plan for the worker.

significant injury means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both.

workplace injury means an injury to a worker in respect of which compensation is or may be payable under this Act.

- (2) If 2 or more employers are or may be liable to pay compensation to an injured worker, a reference in this Chapter to the employer is a reference to whichever of those employers last employed the worker and a reference to the insurer is a reference to that employer's insurer.

42A Injury management pilot projects

Schedule 5A has effect.

42B Claims assistance

- (1) The Authority may provide assistance (**claims assistance**) to injured workers and employers in connection with claims for compensation and work injury damages.
- (2) In particular the Authority may establish an advisory service to provide claims assistance.
- (3) The Authority may provide funds to fund the provision of claims assistance by organisations representing employers or employees, including by means of the establishment of an advisory service to provide claims assistance.
- (4) Funds may only be provided within a period of 1 year after the commencement of this section (**the initial period**). However, funds may be provided for a period of 2 years following the expiry of the initial period (**the additional period**) if, before the expiry of the initial period, both Houses of Parliament pass a resolution approving the provision of funds during the additional period.

Editorial note—

The following resolution was passed by the Legislative Assembly on 31.10.2002 and the Legislative Council on 13.11.2002:

That in accordance with section 42B (4) of the *Workplace Injury Management and Workers Compensation Act 1998*, this House approves funds being provided for an additional period of 2 years to fund the provision of claims assistance by organisations representing employers or employees to help them assist their members understand and comply with the new workers compensation and occupational health and safety legislation.

- (5) Before the Authority first provides any funds under this section, the Authority is to:
 - (a) advertise in a newspaper circulating in New South Wales for expressions of interest from organisations to provide claims assistance, and

- (b) publish in the Gazette the name of each organisation to which the Authority intends to provide funds, the amount of funding to be provided and a description of the claims assistance that the organisation is to provide.
- (6) Within 1 month after the expiry of the initial period, a statement is to be laid before each House of Parliament setting out:
- (a) the name of each organisation to which funds have been provided under this section, and
 - (b) the amount paid to each organisation, and
 - (c) a description of the claims assistance provided by the organisation.

43 Injury management programs

- (1) An insurer must establish and maintain an injury management program and must revise its injury management program from time to time or when the Authority directs. An insurer must lodge a copy of its injury management program, and any revised injury management program, with the Authority.
- (2) An insurer must give effect to its injury management program and for that purpose must comply with the obligations imposed on the insurer by or under the program.
- (3) An insurer must take appropriate steps to ensure that each employer who is insured by the insurer is made aware of the employer's obligations under this Chapter and made and kept aware of the requirements of the insurer's injury management program. This subsection does not apply to a self-insurer.
- (4) Within 3 working days after being notified of a significant injury to a worker, the insurer must initiate action under the insurer's injury management program and must (in accordance with that program) make contact with the worker, the employer (except when the insurer is a self-insurer) and (if appropriate and reasonably practicable) the worker's treating doctor. A **working day** is any day except a Saturday, Sunday or public holiday.
- (5) An employer must comply with the obligations imposed on the employer by or under the insurer's injury management program. This subsection does not apply when the employer is a self-insurer.

44 Early notification of workplace injury

- (1) An injured worker must notify the employer that the worker has received a workplace injury as soon as possible after the injury happens.
- (2) The employer of an injured worker must notify the insurer or the Authority within 48 hours after becoming aware that a worker has received a workplace injury in the manner prescribed by the regulations.

- (3) If an employer has given notice to the insurer in accordance with subsection (2) of a workplace injury to a worker, the insurer must forward that notice to the Authority in accordance with the regulations.
- (3A) If an employer has given notice to the Authority in accordance with subsection (2) of a workplace injury to a worker:
 - (a) the Authority must as soon as practicable forward that notice to the insurer, and
 - (b) the notice given to the Authority is taken to be notice given to the insurer for the purposes of the employer's policy of insurance.
- (4) Subsection (2) do not apply when the insurer is a self-insurer.
- (5) An insurance premiums order referred to in the definition of **prescribed excess amount** in section 160 (1) of the 1987 Act may make provision for the prescribed excess amount applicable to an employer under that section to vary according to the time within which the employer notifies the insurer concerned that a worker has received a workplace injury.

Note—

The obligations imposed by this section are in addition to those imposed by sections 61-69.

45 Injury management plan for worker with significant injury

- (1) When it appears that a workplace injury is a significant injury, an insurer who is or may be liable to pay compensation to the injured worker must establish an injury management plan for the injured worker.
- (2) The injury management plan must be established in consultation with the employer (except when the insurer is a self-insurer), the treating doctor and the worker concerned, to the maximum extent that their co-operation and participation allow.
- (3) The insurer must provide both the employer and the injured worker with information with respect to the injury management plan.
- (4) The information that the insurer must provide to the injured worker includes a statement to the effect that the worker may have no entitlement to weekly payments of compensation if the worker fails unreasonably to comply with the requirements of this Chapter after being requested to do so by the insurer.
- (5) The insurer must keep the employer of a worker who has received a significant injury informed of significant steps taken or proposed to be taken under the injury management plan for the worker. This subsection does not apply when the insurer is a self-insurer.
- (6) An insurer must as far as possible ensure that vocational retraining provided or

arranged for an injured worker under an injury management plan is such as may reasonably be thought likely to lead to a real prospect of employment or an appropriate increase in earnings for the injured worker.

- (7) An insurer must give effect to an injury management plan established for an injured worker and for that purpose must comply with the obligations imposed on the insurer by or under the plan.

45A Injury management consultants

- (1) The Authority may by instrument in writing approve a person as an injury management consultant for the purposes of the Workers Compensation Acts.
- (2) Such an approval may be for a fixed or indefinite period and may be made subject to conditions.
- (3) The Authority may by instrument in writing revoke the approval of an injury management consultant for any breach of the conditions of the approval or for such other reason as the Authority thinks appropriate.
- (4) WorkCover Guidelines may provide for the functions of approved injury management consultants.
- (5) A person approved as an injury management consultant under this section is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as an approved injury management consultant.
- (6) An injury management consultant who is aggrieved by a decision of the Authority to revoke the consultant's approval may apply to the Administrative Decisions Tribunal for a review of the decision.

46 Employer's injury management plan obligations

- (1) The employer must participate and co-operate in the establishment of an injury management plan required to be established for an injured worker.
- (2) The employer must comply with obligations imposed on the employer by or under an injury management plan for an injured worker.
- (3) This section does not apply when the employer is a self-insurer.

47 Worker's injury management plan obligations

- (1) An injured worker must participate and co-operate in the establishment of an injury management plan required to be established for the worker.
- (2) The worker must comply with obligations imposed on the worker by or under an injury

management plan for the worker.

- (3) The worker must, when requested to do so by the insurer, nominate as the worker's treating doctor for the purposes of an injury management plan for the worker a medical practitioner who is prepared to participate in the development of, and in the arrangements under, the plan.
- (4) A medical practice can be nominated as treating doctor for the purposes of subsection (3). Such a nomination operates as a nomination of the members of the practice who treat the worker from time to time and a reference in this Chapter to the nominated treating doctor is a reference to those members of the practice.
- (5) The worker must authorise the worker's nominated treating doctor to provide relevant information to the insurer or the employer for the purposes of an injury management plan for the worker.
- (6) An injury management plan must provide for the procedure for changing the worker's nominated treating doctor.

48 Injured worker's obligation to return to work

An injured worker must make all reasonable efforts to return to work with his or her pre-injury employer (that is, the employer liable to pay compensation to the worker) as soon as possible, having regard to the nature of the injury.

49 Employer must provide suitable work

- (1) If a worker who has been totally or partially incapacitated for work as a result of an injury is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer liable to pay compensation to the worker under this Act in respect of the injury must at the request of the worker provide suitable employment for the worker.
- (2) The employment that the employer must provide is employment that is both suitable employment (as defined in section 43A of the 1987 Act) and (subject to that qualification) so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was at the time of the injury.
- (3) This section does not apply if:
 - (a) it is not reasonably practicable to provide employment in accordance with this section, or
 - (b) the worker voluntarily left the employment of that employer after the injury happened (whether before or after the commencement of the incapacity for work), or
 - (c) the employer terminated the worker's employment after the injury happened,

other than for the reason that the worker was not fit for employment as a result of the injury.

Note—

See also Part 7 Chapter 2 of the *Industrial Relations Act 1996* for provisions for protection of employment of injured workers.

50 Payment of cost of treatment of injured worker

- (1) An injury management plan may provide for the insurer to pay the following costs:
 - (a) the cost of any treatment for the workplace injury provided to the worker by the nominated treating doctor if the nominated treating doctor is prepared to participate in the arrangements under the plan,
 - (b) the cost of other specified treatment provided to the worker for the workplace injury (specified by reference to such factors as the kind of treatment, the identity of the health care professional who provides the treatment, and the circumstances in which the treatment is provided).
- (2) For the purposes of any such payment, it does not matter that the worker has not made a claim for compensation, the insurer has not accepted liability in respect of the injury or the insurer disputes liability in respect of the injury.
- (3) If the insurer pays any such costs and another insurer or another employer accepts liability to pay compensation to the worker in respect of the injury concerned, the insurer is entitled to recover those costs (to the extent that compensation is payable under this Act in respect of those costs) as a debt from that other insurer or other employer. Any amount so recoverable is taken to be payable by the other insurer or other employer as compensation to the injured worker.

51 (Repealed)

52 Workplace rehabilitation (cf 1987 s 152)

- (1) An employer must establish a return-to-work program with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer. An employer's return-to-work program must not be inconsistent with the injury management program of the employer's insurer and is of no effect to the extent of any such inconsistency.
- (2) A return-to-work program is to be established in accordance with the regulations and must, subject to the regulations:
 - (a) comply with any guidelines determined by the Authority, and
 - (b) be developed by the employer in consultation with the workers concerned and any industrial union of employees representing those workers, and

- (c) be in writing and be displayed or notified at places of work.
- (3) The Authority may, in determining guidelines for the purposes of this section, consult with such persons and bodies as the Authority considers to be appropriate.
- (4) The regulations:
 - (a) may require a return-to-work program to be approved by the Authority or other person or body, and
 - (b) may exempt specified classes of employers from this section, and
 - (c) may provide for the approval of providers of rehabilitation services for the purposes of return-to-work programs and may require employers to use the services of approved providers in connection with the program, and
 - (d) may create offences with respect to any failure to comply with this section or with a return-to-work program, and
 - (e) may make other provisions that are necessary or convenient for the purposes of giving effect to this section.
- (5) A group of 2 or more employers may establish a single return-to-work program under this section for each member of the group if the employers are authorised to do so by the regulations.

53 Vocational re-education etc provided by Authority (cf 1987 s 153)

- (1) The Authority may institute, administer or co-ordinate vocational re-education and rehabilitation schemes for injured workers.
- (2) The Authority may draw from the WorkCover Authority Fund such amounts as may be necessary or desirable for the purposes of the vocational re-education and rehabilitation of injured workers.
- (3) Without limiting the generality of subsection (2), the Authority may draw from the WorkCover Authority Fund such amounts as the Authority considers appropriate:
 - (a) to provide financial incentives to employers who offer employment to injured workers unable to find suitable employment and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers, or
 - (b) to provide financial incentives to employers who retain or re-employ their injured workers and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers, or
 - (c) to provide financial assistance to employers or others who offer injured workers work-trial experience or other voluntary work as part of the workers' rehabilitation training (being assistance in connection with the cost of any necessary insurance

arrangements relating to the workers or for other incidental expenses).

- (4) The Authority may establish within the WorkCover Authority Fund an account, to be known as the Vocational Re-education and Rehabilitation Account, for the purpose of keeping a separate record of the money in that Fund set aside by the Authority for the purposes of this section and the money paid from that Fund under this section.

54 Second-injury scheme (cf 1987 s 153A)

- (1) The Authority is to institute and administer under section 53 a scheme (to be called **the second-injury scheme**) to encourage the employment of injured workers by providing financial incentives to their employers in connection with insurance liabilities arising from further injuries to the workers.
- (2) The second-injury scheme applies to such injured workers as are approved by the Authority as being suitable for inclusion in the scheme.
- (3) Any such approval:
 - (a) applies to such employment of the injured worker as is specified in the approval (including employment that is limited to, or excludes, employment with particular employers), and
 - (b) applies for a period of 6 months of any such employment or such other period as is specified in the approval, and
 - (c) applies to all injuries or only to particular injuries, or injuries of a class, specified in the approval, and
 - (d) is subject to any other conditions imposed by the Authority.
- (4) If the second-injury scheme applies to an injured worker:
 - (a) the employer of the worker is not required under section 152 (Recovery of excess from employer) to repay the relevant part of any weekly compensation claim paid under a policy of insurance for compensation for an injury to the worker to which the scheme applies, and
 - (b) any such claim (or any liability of the employer independently of this Act for that injury) is to be excluded from the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.
- (5) Subsection (4) is subject to:
 - (a) the regulations, and
 - (b) the terms and conditions of the Authority's approval for the inclusion of the injured worker in the second-injury scheme, and

(c) any other limitation imposed by the Authority when giving that approval.

(6) The regulations may make provision for or with respect to the operation of the second-injury scheme.

55 Compliance by insurers

(1) It is a condition of an insurer's licence that the insurer must comply with the requirements of this Chapter.

(2) If the Authority is satisfied that an insurer has persistently or repeatedly failed to comply with the requirements of this Chapter without reasonable excuse, the Authority can do any of the following:

(a) cancel or suspend the insurer's licence,

(b) impose a pecuniary penalty of up to an amount that is equivalent to 100 penalty units,

(c) amend the terms or conditions of the insurer's licence (for example by the inclusion of a condition providing for increased supervision of the insurer by the Authority),

(d) issue a letter of censure to the insurer.

(3) Before the Authority takes action under this section, the Authority must give the insurer concerned an opportunity to make submissions to the Authority regarding the proposed action. The Authority is to consider any submissions so made.

(4) If the Authority then decides to take the proposed action or other action authorised by this section, the Authority is to give the insurer written notice of the action. Any action taken by the Authority under this section takes effect when notice of it is given to the insurer or on such later date as the notice may provide.

(5) The Authority may, at any time, terminate or reduce a period of suspension of an insurer's licence.

(6) A pecuniary penalty imposed on an insurer under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Crown.

(7) The Authority is to monitor compliance by insurers with the requirements of this Chapter.

55A Compliance by scheme agents

A scheme agent must comply with the requirements of this Chapter.

Maximum penalty: 1,000 penalty units.

Note—

Section 154M (2) of the 1987 Act provides that certain provisions of this Act (including certain provisions of this Chapter) extend to scheme agents acting on behalf of the Nominal Insurer.

56 Compliance by employer

- (1) Any increased costs associated with a failure by an employer to comply with a requirement of this Chapter can be taken into account (in conformity with the requirements of this Act with respect to the determination of premiums) in the calculation of a claims experience factor for the employer for use in the determination of the premium payable for an insurance policy by the employer.
- (2) The regulations may make provision for or with respect to the payment by an employer who fails to comply with a requirement of this Chapter of an amount by way of a premium surcharge.
- (3) The amount of any such premium surcharge payable under the regulations need not be referable to any increase in costs attributable to or associated with the employer's failure to comply.
- (4) The amount of a premium surcharge payable under the regulations is to be added to, and becomes payable as part of, the premium payable by the employer for the issue or renewal of a policy of insurance as provided by the regulations.
- (5) It is a condition of any policy of insurance issued under the 1987 Act that the employer must comply with the requirements of this Chapter, but only if the insurer has taken appropriate steps to ensure that the employer is made aware of those obligations.

57 Compliance by worker

- (1) If a worker fails unreasonably to comply with a requirement of this Chapter after being requested to do so by the insurer, the worker has no entitlement to weekly payments of compensation during any period that the failure continues, subject to subsection (2).
- (2) A worker's entitlement to weekly payments does not cease under this section until the insurer has given the worker written notice to that effect, together with a statement of the reasons for the entitlement ceasing and the action that the insurer considers the worker must take to be entitled to the resumption of weekly payments.
- (3) The resumption of weekly payments does not entitle the worker to weekly payments for the period in respect of which the worker had no entitlement to weekly payments.

Note—

See also provisions for discontinuation of weekly payments in the 1987 Act (ss 52A, 54).

58 Liability not affected

None of the following things done by an insurer or employer constitutes an admission of liability by the employer or insurer under this Act or independently of this Act:

- (a) anything done under or for the purposes of an injury management program or injury management plan,
- (b) anything done in connection with the assessment of an injured worker for rehabilitation or for employment or the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers (whether done under a return-to-work program or otherwise).

59 Regulations

The regulations:

- (a) may provide for the way in which an injury management program or injury management plan is to be established by an insurer, and
- (b) may require an injury management program or injury management plan to be approved by the Authority or by some other person or body, and
- (c), (d) (Repealed)
- (e) may create offences with respect to any failure to comply with this Chapter or with any injury management program or injury management plan, and
- (f) may modify the operation of any provision of this Chapter in its application to self-insurers and may exempt self-insurers or a particular class of self-insurers from the operation of any provision of this Chapter, and
- (g) may make other provisions that are necessary or convenient for the purposes of giving effect to this Chapter.

Chapter 4 Workers compensation

Part 1 Compensation—general

60 Liability, benefits, common law and other matters

- (1) Provisions relating to a worker's entitlement to compensation, the benefits payable, common law remedies and other matters are contained in the 1987 Act.
- (2) The 1987 Act is, by the operation of section 2A of that Act, to be construed as if it formed part of this Act.

Note—

See, in particular, sections 9–87C and 149–151AB of, and Schedule 6 to, the 1987 Act, as amended by the

Workers Compensation Legislation Amendment Act 1998.

Part 2 Compensation—claims and proceedings

Division 1 Notice of injury etc and claims for compensation

60A Application of Division

- (1) Sections 61–64 apply only in respect of an injury received before the commencement of this section (as inserted by the *Workers Compensation Legislation Amendment Act 2001*).
- (2) Sections 65 and 66 apply only in respect of the making of a claim before the commencement of this section (as inserted by the *Workers Compensation Legislation Amendment Act 2001*).

Note—

Chapter 7 (New claims procedures) provides for notice of injury and making of claims in all other cases.

61 Notice of injury to be given to employer (cf former s 88)

- (1) Compensation may not be recovered under this Act unless notice of the injury has been given to the employer as soon as possible after the injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury.
- (2) Notwithstanding subsection (1), the absence of, or any defect or inaccuracy in, any such notice is not a bar to the recovery of compensation if it is found in proceedings to recover that compensation:
 - (a) that the person against whom the proceedings are taken has not been prejudiced in respect of the proceedings, or
 - (b) that the absence of, or defect or inaccuracy in, the notice was occasioned by ignorance, mistake, absence from the State or other reasonable cause, or
 - (c) that the person against whom the proceedings are taken had knowledge of the injury from any source at or about the time when the injury happened, or
 - (d) where the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, office or shop:
 - (i) that the summary referred to in section 231 has not been posted up in accordance with that section or the employer has otherwise contravened that section, or
 - (ii) that the injury has been reported by or on behalf of the employer to an inspector of mines or factories, shops and industries, or

(iii) that the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop, or

(e) that the injury has been reported by the employer to the Authority in accordance with this Act.

62 Provisions relating to giving of notice of injury (cf former s 89)

(1) A notice of injury must state:

- (a) the name and address of the person injured, and
- (b) the cause of the injury (in ordinary language), and
- (c) the date on which the injury happened.

(2) A notice of injury may be given orally or in writing.

(3) If there is more than one employer, a notice of injury may be given to any one of those employers.

(4) A notice of injury is taken to have been given to an employer:

- (a) if it is given to any person designated for the purpose by the employer, or
- (b) if it is given to any person under whose supervision the worker is employed.

(5) A written notice of injury may be served by delivering it, or by sending it by post to, the residence or any place of business of the person on whom it is to be served.

(6) If the regulations so require (and notwithstanding anything to the contrary in this section), a notice of injury must be given in the manner, and contain the particulars, prescribed by the regulations.

63 Register of injuries (cf former s 90)

(1) There is to be kept at every mine, quarry, factory, workshop, office or shop in some readily accessible place a register of injuries.

(2) A worker employed at any such mine, quarry, factory, workshop, office or shop, or any person acting on the worker's behalf, may enter in the register of injuries particulars of any injury received by the worker.

(3) The regulations may prescribe the form of a register of injuries and the particulars to be entered in the register.

(4) If particulars of an injury are duly entered in a register of injuries as soon as possible after an injury happened, the entry is sufficient notice of the injury for the purposes of this Act.

- (5) If subsection (1) is contravened, the manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, is guilty of an offence and liable to a penalty not exceeding 50 penalty units.

64 Notice of incapacity, medical etc treatment and damage to property (cf former s 91)

- (1) Sections 61–63 apply with respect to:

- (a) the giving of notice of incapacity resulting from injury that happens after the worker leaves the employment in which the worker was at the time of the injury, and
- (b) the giving of notice of any medical or related treatment, hospital treatment, workplace rehabilitation service or ambulance service to which Division 3 of Part 3 of the 1987 Act applies, and
- (c) the giving of notice of any damage to property to which Division 5 of Part 3 of the 1987 Act applies,

in the same way as those sections apply to notice of injury.

- (2) The particulars required to be given in any such notice are (subject to the regulations) reasonable particulars of the incapacity, of the treatment or service or of the damage to property.

65 Making a claim for compensation (cf former s 92)

- (1) A claim for compensation must be:

- (a) in writing, and
- (b) in such form or contain such information as may be prescribed by the regulations or approved by the Authority, and
- (c) in the case of a claim for weekly payments of compensation—accompanied by a medical certificate that is in or to the effect of the approved form, or that is in any other form and contains information that is reasonably sufficient in the circumstances to assist in the determination of the claim, and
- (d) accompanied by such additional medical certificates or other documents as may be prescribed by the regulations, and
- (e) made in the manner prescribed by section 66.

- (2) A claim for compensation need not be accompanied by a medical certificate or other document under this section if the medical certificate or document relates to information that is substantially available to the person on whom the claim is made from other appropriate documentation given or served by or on behalf of the claimant.

- (3) To the extent that information has been furnished or material provided in the course of the making of a claim for compensation, it is not necessary to furnish that information or provide that material when making any further claim for compensation in respect of the same injury.
- (4) The medical certificate required to accompany a claim for weekly payments of compensation must (unless the claim is a claim under section 10, 11 or 12 of the 1987 Act) include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor.
- (5) If a claim is deficient because subsection (4) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as possible after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement):
 - (a) the claim is not considered to have been duly made for the purposes of section 93 until subsection (4) is complied with, and
 - (b) court proceedings cannot be commenced in respect of the claim until subsection (4) is complied with.
- (6) All claims for compensation under sections 66 and 67 of the 1987 Act in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later.
- (7) Compensation may not be recovered under this Act unless a claim for the compensation has been made within 6 months after the injury or accident happened or, in the case of death, within 6 months of the date of death.
- (8) If a claim for compensation was made by an injured worker within the period required by subsection (7), that subsection does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker's claim related.
- (9) For the purposes of subsection (7), a person is considered to have made a claim for compensation when the person makes any claim for compensation under this Act in respect of the injury or death concerned, even if the person's claim did not relate to the particular compensation in question.
- (10) If there is no entitlement to compensation under section 66 of the 1987 Act for a loss

of hearing because of section 69A of the 1987 Act (No compensation for less than 6% hearing loss) notice of injury given in accordance with section 62 suffices (for the purposes of this section) as a claim for the compensation concerned.

- (11) If a claim for compensation and any medical certificate or other document required to accompany the claim are not given or served at the same time, the claim for compensation is taken not to have been made until the day on which the last of those documents is given or served. In that case, all of those documents are taken to have accompanied the claim.
- (12) The failure to make a claim in accordance with subsection (1) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause.
- (13) The failure to make a claim within the period required by subsection (7) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either:
 - (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or
 - (b) the claim is not made within that 3 years but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.
- (14) The failure to make a claim within the period required by subsection (7) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.
- (15) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of subsections (7) and (13) taken to have been received when the worker first became so aware. If death results from an injury and a person who is entitled to claim compensation under this Act in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of subsections (7) and (13) to a claim by that person, taken to be the date that the person became so aware.
- (16) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries) a claim for the compensation is for the purposes of this section taken to have been made when a claim is made on any one of those persons.
- (17) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the

purposes of subsections (7) and (13) as the making of a claim for compensation in respect of the injury.

- (18) In this section, **approved form**, in relation to a medical certificate, means a form in or to the effect of:
- (a) a form approved by the Authority for the purposes of this section or any form previously approved by the Authority for the purposes of this section, or
 - (b) any form previously prescribed by the regulations for the purposes of this section.
- (19) The regulations may provide that, despite subsection (18), the approved form of a medical certificate must be in or to the effect of a particular form only in the case of any specified class of claims for compensation.
- (20) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or workplace rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliator information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.

66 Manner of making claim for compensation (cf former 92A)

- (1) The manner of making a claim for compensation is by serving the claim on the employer from whom the compensation is claimed.
- (2) A claim for compensation may be made by serving the claim on an insurer who has indemnified the employer in respect of the claim if:
- (a) the person making the claim has reason to believe that the employer may not forward the claim to the insurer in accordance with section 69 (1) (a), or
 - (b) the employer has refused to receive the claim, or
 - (c) the person making the claim cannot identify or find the employer, or
 - (d) the employer (being a natural person) is dead, or
 - (e) the employer (being a corporation) has been wound up.
- (2A) Once a claim for compensation (the **initial claim**) in respect of injury or death has been duly made by a person in accordance with subsection (1) or (2), any further claim by the person for compensation in respect of the injury or death may be made by serving it on either the employer from whom compensation is claimed or the insurer who has indemnified the employer.
- (2B) In subsection (2A), **further claim** includes:

(a) any claim by the person for compensation of a different kind from that claimed in respect of the injury or death by the initial claim, or

(b) any claim that is supplementary to or associated with the initial claim.

(2C) An insurer must notify the employer concerned when a further claim is made by serving it on the insurer if the claim:

(a) is for compensation under Division 4 (Compensation for non-economic loss) of Part 3 of the 1987 Act, or

(b) is a claim of a kind that is prescribed by the regulations for the purposes of this section.

(2D) The regulations may provide that in a specified class or classes of case a further claim must, despite subsection (2A), be served on the employer from whom the compensation is claimed.

(3) For the purposes of this section, a claim for compensation is served on a person if:

(a) it is given personally to the person, or

(b) it is delivered or sent by post to the residence or any place of business of the person, or

(c) it is served in any other manner authorised by sections 109X and 601CX of the *Corporations Act 2001* of the Commonwealth.

67, 68 (Repealed)

69 Action by employer in respect of claims (cf former s 93)

(1) An employer (not being a self-insurer):

(a) who receives a claim for compensation or any other documentation in respect of such a claim—must, within 7 days after receipt of the claim or documentation, forward it to the insurer who the employer believes is liable to indemnify the employer in respect of the claim, or

(b) who receives a request from that insurer for further specified information in respect of the claim or documentation—must, within 7 days after receipt of the request, furnish that insurer with such of the specified information as is in the employer's possession or reasonably obtainable by the employer, or

(c) who has received compensation money under this Act from an insurer—must, as soon as practicable, pay the money to the person entitled to the compensation.

Maximum penalty: 50 penalty units.

- (2) A person is not guilty of an offence for a failure to comply with any provision of subsection (1) if there was a reasonable excuse for that failure.

Division 2 Administration by insurers of claims for compensation or damages

70 Definitions (cf former s 93A)

In this Division:

claim means a claim for compensation under this Act or any claim for damages to which a policy of insurance applies, whether the claim was made before or after the commencement of this Division.

claimant means a person who makes or is entitled to make a claim.

insurer means a licensed insurer, a former licensed insurer or a self-insurer.

71 Duty of claimant to co-operate (cf former s 93C)

- (1) A claimant must co-operate fully in respect of the claim with the insurer liable under the claim.
- (2) In particular, the claimant must comply with any reasonable request by the insurer to furnish specified information (in addition to the information furnished in the claim form).
- (3) The duty under this section applies only until proceedings before the Commission are commenced in respect of the claim but if the claimant fails without reasonable excuse to comply with this section, proceedings before the Commission cannot be commenced in respect of the claim while the failure continues.

72 Inspection of relevant claims information (cf former s 93D)

- (1) The Authority may allow:
- (a) an insurer, or
 - (b) such other persons or bodies as the Authority thinks appropriate,
- to inspect information held by the Authority relating to claims or any other information held by the Authority that is prescribed by the regulations.
- (2) Insurers are authorised to exchange information held by them relating to claims or any other information held by them that is prescribed by the regulations.
- (3) In this section:
- claims** includes claims for compensation under the 1987 Act or the former 1926 Act, claims for compensation or other benefits under any other Act and potential claims.

insurer includes the Self Insurance Corporation and a licensed insurer under the *Motor Accidents Compensation Act 1999*.

73 Insurer to provide copies of reports to worker (cf former s 93E)

- (1) The regulations may make provision for or with respect to requiring an insurer to provide a worker, a worker's legal representative or any other person with a copy of a specified report, or a report of a specified kind, obtained by the insurer in relation to a claim by the worker.
- (2) Without limiting subsection (1), the kind of reports to which the regulations under this section can apply include investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.
- (3) If an insurer fails to provide a copy of a report as required by the regulations under this section:
 - (a) the insurer cannot use the report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
 - (b) the report is not admissible in proceedings on such a dispute before the Commission, and
 - (c) the report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

74 Insurers to give notice and reasons when liability disputed (cf former s 94A)

- (1) If an insurer disputes liability in respect of a claim or any aspect of a claim, the insurer must give notice of the dispute to the claimant.
- (2) The notice must contain the following:
 - (a) a statement of the reason the insurer disputes liability and of the issues relevant to the decision,
 - (a1) a statement to the effect that the worker can request a review of the claim by the insurer,
 - (b) unless paragraph (c) applies, a statement to the effect that the worker can refer the dispute for determination by the Commission,
 - (c) 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,

- (c1) 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,
- (d) 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,
- (e) such other information as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers.

(2A) In the case of a claim for compensation under this Act, a statement of reasons in a notice under this section is to indicate the provision of the workers compensation legislation on which the insurer relies to dispute liability.

(2B) A notice under this section must be expressed in plain language.

(3) The regulations may make provision for the form of and for other information to be included in or to accompany a notice under this section.

The regulations may require an insurer to give a copy of a notice under this section to the claimant's employer.

(3A) The regulations may create offences in connection with any failure to comply with this section.

Note—

A dispute as to liability to commence weekly payments within the requisite period after a claim for compensation is made must be notified in accordance with this section (See section 93 and the offence arising under section 94).

(4) Notice is not required to be given under this section with respect to a dispute if notice has been given under section 54 of the 1987 Act with respect to the dispute and that notice contained the statements and information that a notice under this section is required to contain.

(5) Before giving a notice under this section, an insurer must carry out an internal review of the decision to dispute liability in respect of the claim or an aspect of the claim.

74A Duty of insurer to pay compensation promptly

- (1) An insurer who admits liability to pay compensation must pay that compensation promptly following the admission of liability.
- (2) If the Authority is satisfied that an insurer has failed to comply with this section, the Authority may by notice in writing to the insurer direct the insurer to pay the

compensation concerned within a period specified in the direction.

(3) An insurer must comply with such a direction.

Maximum penalty: 50 penalty units.

75 Report about delays and the incurring of unreasonable costs by insurers (cf former s 94B)

(1) The Registrar or another member of the Commission may make a report to the Authority on:

- (a) delays by insurers in dealing with claims under this Act, and
- (b) cases of the unreasonable cessation of weekly payments of compensation to injured workers by insurers, and
- (c) cases of unreasonable interference by insurers in the medical treatment of injured workers, and
- (d) cases of insurers being responsible for costs in proceedings before the Commission being unreasonably incurred, as provided by section 115, and
- (e) cases of insurers making unreasonable determinations as to the kind of work that is suitable for an injured worker.

(2) The Authority may take such action as it considers appropriate on the basis of any such report.

Division 3 Conciliation of disputes by conciliator

75A Division applies only to existing claims

This Division applies only in respect of existing claims.

Note—

Conciliation is not applicable to new claims. See Chapter 7 (New claims procedures).

76 Definition of “dispute” (cf former s 95)

In this Division:

Department means the Department of Industrial Relations.

dispute means a dispute in connection with a claim for compensation between:

- (a) the person who makes the claim and the person on whom the claim is made (or the insurer on whom the claim has been served under section 66 (3) or to whom the claim has been forwarded under section 69), or
- (b) the person on whom the claim is made and that insurer.

77 Principal Conciliator and other conciliators (cf former s 96)

- (1) For the purposes of this Act, the Principal Conciliator is the person holding office as such in the Department under Part 2 of the *Public Sector Management Act 1988*.
- (2) For the purposes of this Act, a conciliator is:
 - (a) the Principal Conciliator, or
 - (b) a person holding office as such in the Department under Part 2 of the *Public Sector Management Act 1988*, or
 - (c) a person holding any other office in the Department that is designated by the Department Head as a conciliator for the purposes of this Act, or
 - (d) a person appointed under subsection (3).
- (3) The Governor may, on the recommendation of the Minister, appoint other suitably qualified persons to be conciliators for the purposes of this Act, to conciliate on disputes as and when required to do so by the Principal Conciliator. Schedule 6 has effect with respect to conciliators appointed under this subsection.
- (4) The Principal Conciliator can delegate to any conciliator any of the Principal Conciliator's functions under this Part, except this power of delegation.
- (5) In the month of March (or such other month as the Minister may determine) in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department in relation to the exercise of the functions of the Principal Conciliator and other conciliators, including the remuneration payable to them.

78 Referral of disputes for conciliation (cf former s 97)

- (1) Any party to a dispute may refer the dispute to the Principal Conciliator for conciliation by a conciliator.
- (2) The Compensation Court may at any stage of proceedings refer a matter in dispute between the parties to the Principal Conciliator for conciliation or further conciliation by a conciliator.
- (3) The Principal Conciliator is responsible for making arrangements as to the conciliator who is to conciliate in connection with a particular dispute or class of disputes.

79 Conciliation of disputes (cf former s 98)

- (1) A conciliator is to make all reasonable efforts to conciliate in connection with a dispute referred to him or her and to bring the parties to agreement having proper regard to relevant entitlements and liabilities under this Act.

- (2) The conciliator may do any one or more of the following things in connection with the dispute or any part of the dispute:
 - (a) make such recommendations to the parties to the dispute as he or she considers appropriate,
 - (b) in the case of a dispute to which Division 4 applies—give directions under that Division,
 - (c) decline to make any recommendation or give any direction.
- (3) A conciliator may conciliate with respect to a dispute (and make or give relevant recommendations or directions) even though the dispute is pending determination in the Compensation Court, unless the Court otherwise orders.

79A Exchange of information before conciliation

- (1) A party (***the applicant***) to a dispute who refers the dispute for conciliation must, at the time it is referred, provide the following material to the Principal Conciliator:
 - (a) a list identifying the documents on which the applicant proposes to rely in connection with the conciliation of the dispute,
 - (b) a list identifying all other documents that the applicant has that are relevant to the dispute,
 - (c) such other documents or information as the regulations may require the applicant to provide.
- (2) The applicant must also provide that material to the other party (***the respondent***) to the dispute at or before the time the dispute is referred for conciliation.
- (3) Within 7 days after the applicant provides that material to the respondent, the respondent must provide the following material to the applicant and to the Principal Conciliator:
 - (a) a list identifying the documents on which the respondent proposes to rely in connection with the conciliation of the dispute,
 - (b) a list identifying all other documents that the respondent has that are relevant to the dispute,
 - (c) such other documents or information as the regulations may require the respondent to provide.
- (4) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (5) A document that a party to a dispute has failed to identify in a list provided as required by this section (being a document that the person has when the list is required to be provided) is not admissible on behalf of the party in proceedings on such a dispute before a conciliator or the Compensation Court.
- (6) Subsections (4) and (5) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.
- (7) The regulations may provide for exceptions to subsection (5). In particular, the regulations may authorise a conciliator or the Compensation Court to permit the admission in proceedings before the conciliator or Court in specified circumstances of a document that would otherwise be not admissible under that subsection.
- (8) If a conciliator is satisfied that a party to a dispute has failed without reasonable excuse to comply with a requirement of this section, the conciliator may:
 - (a) refer the matter to the Authority, and
 - (b) note the matter in a conciliation certificate issued by the conciliator in respect of the dispute (together with details of the documents to which the failure relates).

Note—

Examples of the documents to which this section applies are medical reports, investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.

80 Power of conciliator to require information (cf former s 98A)

- (1) A conciliator may give a direction in writing to a party to a dispute referred to the conciliator requiring the party:
 - (a) to produce to the conciliator or to another party to the dispute, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the conciliator considers relevant to the dispute concerned, or
 - (b) to furnish specified information to the conciliator or to another party to the dispute within a time specified in the direction, being information that the conciliator considers relevant to the dispute concerned.
- (2) If a dispute in respect of a claim for weekly payments of compensation has been referred for conciliation by the worker and the person on whom the claim was made has or claims to have a reasonable excuse for failing to commence the weekly payments (or the balance of weekly payments in dispute) within 21 days after the claim was duly made, the information that a conciliator can require that person to furnish includes details of that excuse.

- (3) A conciliator must not give a direction under this section to a worker unless the conciliator is satisfied that the worker will be represented by a legal practitioner at a conciliation conference on the dispute.
- (4) A direction under this section can extend to copies of documents lodged or produced in proceedings before the Compensation Court unless the Court otherwise orders in those proceedings.
- (5) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (6) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Compensation Court or a conciliator have the document or information admitted into evidence in the proceedings unless the Court or the conciliator otherwise orders in the special circumstances of the case. This subsection does not apply to a worker unless the worker was represented by a legal practitioner at the time of the failure.
- (7) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section,
 - (b) specifying cases and circumstances in which a conciliator is required to exercise the conciliator's powers under subsection (1).

81 Power of conciliator to provide information and documents to a party (cf former s 98AA)

- (1) When information or documents are furnished or produced to a conciliator by a party to a dispute (whether or not pursuant to a requirement under this Act), the conciliator may furnish or produce the information or documents to any other party to the dispute.
- (2) The regulations may make provision for or with respect to any of the following matters:
 - (a) specifying cases and circumstances in which a conciliator is required to exercise the conciliator's powers under subsection (1),
 - (b) excepting specified kinds of information or documents from the operation of this section,
 - (c) specifying circumstances in which information or documents furnished or produced to a conciliator may not be furnished or produced by the conciliator to

another party to the dispute.

81A Parties to conciliation to provide copies of documents before conciliation conference

- (1) At least 7 days before a conciliation conference on the dispute, each party to the dispute must provide to the other party and to the conciliator a copy of any documents on which the party proposes to rely in connection with the conciliation of the dispute.
- (2) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.
- (4) Any document that a party has that is not provided by the party as required by this section is not admissible on behalf of the party in proceedings on such a dispute before a conciliator or the Compensation Court.
- (5) The regulations may provide for exceptions to subsection (4). In particular, the regulations may authorise a conciliator or the Compensation Court to permit the admission in proceedings before the conciliator or Court in specified circumstances of a document that would otherwise be not admissible under that subsection.
- (6) If a conciliator is satisfied that a party to a dispute has failed without reasonable excuse to comply with a requirement of this section, the conciliator may:
 - (a) refer the matter to the Authority, and
 - (b) note the matter in a conciliation certificate issued by the conciliator in respect of the dispute (together with details of the documents to which the failure relates).
- (7) Nothing in this section affects any power of the conciliator under section 80 (Power of conciliator to require information) or 81 (Power of conciliator to provide information and documents to a party).

Note—

Examples of the documents to which this section applies are medical reports, investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.

82 Summons to appear at conciliation conference (cf former s 98B)

- (1) The Principal Conciliator may issue a summons requiring the attendance of a party to a dispute at a conciliation conference (as defined in section 90) on the dispute if the

Principal Conciliator is satisfied that the party has failed without reasonable excuse to comply with a request by a conciliator to attend a conciliation conference on the dispute.

- (2) The Principal Conciliator must not issue a summons under this section requiring the attendance of a worker at a conciliation conference unless satisfied that the worker will be represented by a legal practitioner at the conciliation conference.
- (3) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.

Maximum penalty: 50 penalty units.

83 Role for conciliator in preparing for medical panel (cf former s 98C)

- (1) When a dispute referred to a conciliator concerns compensation payable under section 66 of the 1987 Act and it appears to the conciliator that any issues in dispute may be appropriate for referral to a medical panel, the conciliator can take such steps as may be necessary or desirable for the purpose of ensuring that the matter is properly prepared for referral to a medical panel.
- (2) The conciliator can assist any party with respect to the making of an application under section 122 for referral of a medical dispute to a medical panel.
- (3) The conciliator can refer a completed application to the Principal Conciliator for forwarding on to the registrar of the Compensation Court, and any such application is taken to have been made by the party or parties on whose behalf it was forwarded to the registrar.

84 Certificates as to conciliation of disputes (cf former s 98D)

- (1) A conciliation certificate is a certificate referred to in subsection (5) that is issued by a conciliator with respect to the conciliation of a dispute free of charge to the parties to the dispute.
- (2) A conciliator is to issue a conciliation certificate for a dispute only when directed to do so by the Principal Conciliator.
- (3) The Principal Conciliator must direct the issue of a conciliation certificate as to the matters referred to in subsection (5) (a) and (b) if any person who is or has been a party to conciliation of the dispute applies for such a certificate.
- (4) The Principal Conciliator may, either on the recommendation of the conciliator or on his or her own initiative, refer a conciliation certificate to the registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned.
- (5) A conciliation certificate is a certificate as to such of the following matters as the

Principal Conciliator directs:

- (a) whether a dispute with respect to a claim under this Act is or has been the subject of conciliation under this Division,
- (b) the date of referral of the dispute to conciliation,
- (c) the current position (as at the date of the certificate) with respect to conciliation of the dispute,
- (d) any final outcome of the conciliation (including, if applicable, matters identified as remaining in dispute at the conclusion of the conciliation),
- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that,
- (f) whether (and, if so, how) a particular party to the dispute has unreasonably failed to participate in conciliation,
- (g) if the worker has unreasonably failed to participate in conciliation, whether the amount of the conciliation costs payable by the employer should be reduced and, if so, by what amount.

(6) A conciliation certificate is evidence of the matters that it certifies.

85 Time within which disputes must be referred to conciliation (cf former s 98E)

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a claim can be referred for conciliation under this Division.

86 Agreements arising from conciliation (cf former s 98F)

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliator may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement.
- (2) If the agreement relates to compensation under section 66 or 67 of the 1987 Act, the conciliator can refer the agreement to the Principal Conciliator for forwarding on to the Authority to be registered under section 66A of the 1987 Act. An application for registration of the agreement under section 66A of the 1987 Act is then taken to have been made by a party to the agreement.
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Principal Conciliator.
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified

conditions,

- (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's return-to-work program, rehabilitation training or other specified activities designed to assist the worker to return to work,
- (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliator concerning any dispute or potential dispute,
- (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliator,
- (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum.

87 Control and direction of conciliators (cf former s 99)

- (1) A conciliator is not subject to control and direction by the Authority, the appropriate Department Head or any other public servant with regard to any of the decisions of the conciliator that affect the interests of the parties to the dispute and the Authority, appropriate Department Head or other public servant may not overrule or interfere with any such decision of the conciliator in respect of any such dispute.
- (2) Subject to subsection (1), conciliators are, in the exercise of their functions, subject to the general control and direction of the Principal Conciliator.
- (3) Subsection (1) does not prevent the making of arrangements for the training of conciliators, and does not prevent conciliators obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations.
- (4) Conciliators are subject to guidelines issued by the Principal Conciliator with respect to the procedures to be followed in the conciliation of disputes, being guidelines issued for the purpose of achieving consistency in the application of the provisions of this Act and the regulations. Any such guidelines are subject to the regulations under section 91.
- (5) This section does not affect the exercise of the functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to conciliators.

88 Conciliation costs

- (1) In this section:

conciliation costs means the following costs incurred in conciliating a dispute under this Division:

- (a) the costs for legal services provided to a worker (or other claimant) in connection with any such conciliation,
- (b) the costs of services provided to a worker (or other claimant) of an agent acting in that capacity in connection with any such conciliation.

conciliation disbursements means disbursements in relation to the services referred to in the definition of **conciliation costs** in this subsection.

- (2) The conciliation costs in a dispute are payable by the employer unless the Principal Conciliator reduces the amount payable by the employer on the basis of a recommendation in a conciliation certificate. The regulations may fix the maximum amount of conciliation costs in a dispute that are payable by the employer.
- (3) Conciliation costs are payable at the end of the conciliation proceedings concerned, regardless of outcome.
- (4) The regulations may make provision for or with respect to the following:
 - (a) requiring all or any conciliation disbursements to be paid by the employer,
 - (b) fixing the maximum amount of conciliation disbursements that are payable by the employer,
 - (c) requiring the payment of conciliation disbursements at the end of the conciliation proceedings concerned, regardless of outcome.
- (5) A requirement imposed by or under this section may be enforced as if it were a requirement of an order for the payment of costs made by the Compensation Court under section 112.

89 Protection of conciliators (cf former s 100)

- (1) A matter or thing done or omitted to be done by a conciliator in the exercise of the conciliator's functions does not, if the matter or thing was done or omitted in good faith, subject the conciliator personally to any action, liability, claim or demand.
- (2) A conciliator is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a conciliator (including as to matters in a conciliation certificate issued by a conciliator).

90 Proceedings before conciliators (cf former s 100A)

- (1) In this section, **conciliation conference** means any conference or other proceeding held with or before a conciliator:
 - (a) to resolve a dispute referred for conciliation, or

(b) for the purpose of giving directions under Division 4 in connection with any such dispute.

- (2) A person who is a party to any dispute referred for conciliation is entitled to be represented by a legal practitioner, and by an agent of such a class as may be prescribed by the regulations. The conciliator may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
- (3) A party to a dispute at a conciliation conference is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to adequately communicate at the conciliation conference.
- (4) A conciliator must take into account any written submission prepared by a legal practitioner acting for a party to the dispute and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at a conciliation conference on the dispute).
- (5) A conciliator may, subject to any general directions by the Principal Conciliator:
 - (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliator considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and
 - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute.
- (6) If the conciliator is satisfied that sufficient information has been supplied to him or her in connection with a dispute, the conciliator may exercise functions under this Division and Division 4:
 - (a) without holding any conciliation conference or formal hearing, and
 - (b) without requesting submissions from the parties to the dispute.
- (7) A person who, in connection with a dispute referred for conciliation, makes a statement that the person knows to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units.
- (8) In proceedings before the Compensation Court, evidence of a statement made during any conciliation conference is not admissible unless the person who made the statement agrees to the evidence being admitted.

- (9) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
- (a) when the parties to the agreement otherwise agree, or
 - (b) in such circumstances as the regulations may specify.

91 Regulations (cf former s 100C)

The regulations may make provision for or with respect to the exercise of a conciliator's functions under this Division and Division 4 and, in particular, for or with respect to:

- (a) the manner in which disputes are to be referred for conciliation, and
- (b) excluding disputes (other than disputes to which Division 4 applies) from this Division.

Division 4 Special provisions with respect to weekly payments of compensation

91A Division applies only to existing claims

This Division applies only in respect of existing claims.

Note—

Chapter 7 (New claims procedures) provides for weekly payments in the case of new claims.

92 Definitions (cf former s 101)

- (1) In this Division:

weekly payment, in relation to compensation, includes a payment of compensation under section 25 (1) (b) of the 1987 Act with respect to a dependent child of a deceased worker.

- (2) In this Division, a reference to a person on whom a claim for a weekly payment of compensation is made includes a reference to an insurer on whom the claim has been served under section 66 (3) or to whom the claim has been forwarded under section 69.
- (3) In this Division, a reference to a dispute as to liability to make or continue to make weekly payments includes a reference to a dispute as to whether a worker is or should be treated as totally incapacitated for work or as to any other matter which affects the amount of the weekly payments.

93 Claims for weekly compensation—commencement of payments (cf former s 102A)

- (1) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.
- (2) If the person on whom a claim is made disputes liability in accordance with section 74

to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply.

Note—

If liability is disputed the worker can refer the dispute to conciliation. See section 101.

- (3) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (1) and (2) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends:
 - (a) 42 days after the claim for compensation is duly made, or
 - (b) when the person ceases to have that reasonable excuse,whichever is earlier.
- (4) An employer has such a reasonable excuse if:
 - (a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
- (5) A person who has or anticipates having such a reasonable excuse must notify the claimant in writing as soon as practicable.
- (6) This section ceases to apply if the claim for compensation is withdrawn.

94 Offences—commencement of weekly payments (cf former s 103)

- (1) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person fails to commence those payments within the time required by section 93.
- (2) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person refers a matter which the person knows is not a genuine dispute for the purpose of delaying, without good cause, the commencement of weekly payments of compensation.

Maximum penalty: 50 penalty units.

95 Direction by conciliator—commencement or continuation of weekly payments (cf former

s 104)

(1) This section applies if a dispute relating to:

- (a) a claim for weekly payments of compensation, or
- (b) the continuation of weekly payments of compensation,

has been referred for conciliation under Division 3, but a conciliator is unable to bring the parties to agreement by conciliation.

(2) If the conciliator is satisfied that there is no genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliator may direct:

- (a) the person on whom the claim for weekly payments was made, or
- (b) the person who was making the weekly payments,

to pay or continue to pay compensation in accordance with the direction.

(3) There is considered to be no genuine dispute with respect to a liability if there is no sufficient basis or no reasonable basis for dispute (but this does not limit the circumstances in which there can be considered to be no genuine dispute).

(4) If the conciliator is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliator must notify the person who made the claim for weekly payments, or who was receiving weekly payments, of that fact and that an application may be made to the Compensation Court to determine the matter.

(5) A direction of the conciliator may be given subject to such conditions as are specified in the direction.

96 Maximum period of weekly payments of compensation under direction of conciliator (cf former s 105)

(1) A direction (or further direction) of a conciliator under this Division may require a person to pay or continue to pay weekly payments for such period (not exceeding 12 weeks) as is specified in the direction.

(2) Nothing in this section prevents a conciliator from giving a further direction (or further directions) for payment of compensation after the expiry of an earlier direction (except where the earlier direction is revoked by the Compensation Court).

(3) A conciliator may direct payment of weekly payments during a period that is before the direction is given, but that period must not exceed 10 weeks.

97 Revocation of directions of conciliator (cf former s 106)

- (1) A direction given by a conciliator under this Division may be revoked by the conciliator or by any other conciliator.
- (2) The Compensation Court may, on the application of a person who is liable to make weekly payments in accordance with a direction of a conciliator under this Division, revoke the direction.
- (3) The applicant must serve a copy of the application on the Principal Conciliator within 7 days (or such other period as the rules of the Compensation Court may specify) after the application is made. The Compensation Court must not hear or determine the application until a copy of the application has been served on the Principal Conciliator.
- (4) If a direction is revoked, the obligation to make weekly payments under the direction ceases.
- (5) If the Compensation Court subsequently determines that a person is not liable under this Act to make the weekly payments of compensation that have been paid in accordance with a direction of a conciliator, the following provisions apply:
 - (a) the worker or other person who received those payments is not required to refund those payments unless the Court otherwise orders under paragraph (b),
 - (b) if the Court is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, it may order the worker or other person concerned to refund the whole or a specified part of those payments,
 - (c) the Court may order that the Insurance Fund bear the liability for the refund of the whole or a specified part of those payments (unless it makes an order under paragraph (b) for a refund),
 - (d) the Court may (instead of making an order for a refund) order any other person whom it determines was liable for the whole or any part of those payments to reimburse the person who made those payments,
 - (e) those payments are to be excluded from any determination of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.
- (6) This section does not affect the recovery of weekly payments under section 58 of the 1987 Act.

98 Offence—failure to comply with directions (cf former s 106A)

A person who fails to comply with a direction of a conciliator under this Division is guilty of an offence.

Maximum penalty: 50 penalty units.

99 Payment under direction etc not admission of liability (cf former s 106B)

(1) The fact that a person:

(a) pays or continues to pay compensation in accordance with a direction of a conciliator under this Division, or

(b) does not apply for a revocation of any such direction,

is not an admission of liability by the person.

(2) The grant or refusal by the Compensation Court of an application for revocation of a direction is not a finding as to liability in respect of the matter in dispute.

100 Direction under section 95 not to be challenged on technicality (cf former s 106C)

The validity of a direction under section 95 is not affected merely because the referral of the dispute to which the direction relates contained, or was done on a basis containing, a defect of manner or form.

Division 5 Restrictions on commencing court proceedings

100A Division applies only to existing claims

This Division applies only in respect of existing claims.

Note—

Chapter 7 (New claims procedure) provides for restrictions on commencing court proceedings in the case of new claims.

101 Restrictions on commencing court proceedings about weekly payments (cf former s 106FB)

(1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 3 and either:

(a) the conciliator has issued a conciliation certificate that indicates that conciliation was wholly or partially unsuccessful, or

(b) the conciliator has given a notification under section 95 (4) in respect of the dispute, or

(c) a period of 35 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.

- (2) Further, if the conciliator has issued a conciliation certificate indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the liability has subsequently been referred for conciliation under Division 3 and either:
- (a) the conciliator has issued a further conciliation certificate, or
 - (b) the conciliator has given a notification under section 95 (4) in respect of the dispute, or
 - (c) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was subsequently referred for conciliation,
- whichever happens first.
- (3) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 3 until:
- (a) the person on whom the claim is made has disputed liability to make the payments, or
 - (b) the time within which the person on whom the claim is made is required under section 93 to commence those payments (including any extension under section 93 (3)) has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),
- whichever happens first.

Note—

Section 93 allows up to 42 days for the commencement of weekly payments of compensation.

- (4) A worker cannot commence court proceedings in respect of related compensation until this section allows the commencement of proceedings in respect of the weekly payments of compensation concerned. **Related compensation** is compensation under Division 3 of Part 3 of the 1987 Act that relates to the incapacity for work to which the weekly payments of compensation relate.
- (5) This section does not prevent the commencement of court proceedings in any of the following circumstances:
- (a) if the proceedings concern an application for a determination under section 53 of the 1987 Act,
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of the 1987 Act,

(d) any circumstances prescribed by the regulations.

102 Restrictions on commencing court proceedings for lump sum compensation (cf former s 106FC)

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 of the 1987 Act unless a dispute about that compensation has been referred for conciliation under Division 3 and either:
 - (a) the conciliator has issued a conciliation certificate that indicates that conciliation was wholly or partially unsuccessful, or
 - (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.
- (2) Further, if the conciliator has issued a conciliation certificate indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the compensation has subsequently been referred for conciliation under Division 3 and either:
 - (a) the conciliator has issued a further conciliation certificate, or
 - (b) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was subsequently referred for conciliation,whichever happens first.
- (3) A worker cannot refer a dispute about compensation under section 66 of the 1987 Act for conciliation under Division 3 until:
 - (a) 12 weeks after the claim for the compensation is duly made, or
 - (b) the person on whom the claim is made disputes liability to pay the compensation,whichever happens first.
- (4) If the person on whom a claim for compensation under section 66 of the 1987 Act is made has, within 12 weeks after that claim is duly made, duly applied under section 122 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) or (2) would otherwise prevent commencement of proceedings at that time.
- (5) A worker cannot commence court proceedings in respect of compensation under section 67 of the 1987 Act for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 of the 1987 Act for the loss

or further loss. **Related compensation** is compensation under Division 3 of Part 3 of the 1987 Act that relates to that loss, further loss or pain and suffering.

- (6) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66 of the 1987 Act, the proceedings are to be adjourned until:
 - (a) 12 weeks after the claim was amended, or
 - (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates, whichever is later.
- (7) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (6).
- (8) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 of the 1987 Act unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3) of the 1987 Act.
- (9) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 of the 1987 Act without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim.
- (10) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations.

103 Restrictions on commencing court proceedings about medical, hospital and other expenses (cf former s 106FD)

- (1) 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 unless a dispute about that compensation has been referred for conciliation under Division 3 and either:
 - (a) the conciliator has issued a conciliation certificate that indicates that conciliation was wholly or partially unsuccessful, or

(b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.

(2) Further, if the conciliator has issued a conciliation certificate indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the compensation has subsequently been referred for conciliation under Division 3 and either:

(a) the conciliator has issued a further conciliation certificate, or

(b) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was subsequently referred for conciliation,

whichever happens first.

(3) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 of the 1987 Act for conciliation under Division 3 until:

(a) 28 days after the claim for compensation is duly made, or

(b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.

(4) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 of the 1987 Act and are commenced in compliance with section 101 or 102 (whichever is appropriate).

(5) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.

104 Court rules and regulations providing for evidence of compliance (cf former s 106FE)

The rules of the Compensation Court or the regulations may make provision for or with respect to:

(a) requiring an application commencing proceedings in the Compensation Court to which section 101 or 102 applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and

(b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

Division 6 Proceedings before Commission or the Compensation Court

105 Jurisdiction of Commission and Compensation Court

- (1) Subject to this Act, the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under this Act and the 1987 Act.
- (2) The Commission does not have that jurisdiction in respect of matters arising under Part 5 (Common law remedies) of the 1987 Act except for the purposes of and in connection with the operation of Part 6 of Chapter 7 of this Act.
- (3) The Commission does not have jurisdiction in respect of matters that the Compensation Court or (after the repeal of the *Compensation Court Act 1984*) the District Court has jurisdiction to examine, hear and determine.
- (4) Subject to this Act and the *Compensation Court Act 1984*, the Compensation Court has exclusive jurisdiction to examine, hear and determine all existing claim matters except matters arising under Part 5 of the 1987 Act.
- (4A) After the repeal of the *Compensation Court Act 1984*, the District Court has exclusive jurisdiction to examine, hear and determine all coal miner matters (except matters arising under Part 5 of the 1987 Act).
- (5) Despite section 17 (4) of the *Compensation Court Act 1984*, the Compensation Court does not have jurisdiction to reconsider a matter, or to rescind, alter or amend any decision previously made or given by the Court in relation to a matter, once the matter has become a new claim matter.
- (6) For the purposes of giving effect to subsections (4) and (4A), references in this Act to the Commission are to be read as references:
 - (a) to the Compensation Court, to the extent that the reference relates to a matter that the Compensation Court has jurisdiction to examine, hear and determine, or
 - (b) to the District Court, to the extent that the reference relates to a matter that the District Court has jurisdiction to examine, hear and determine.

Note—

Provision is made in the 1987 Act for regulations to require existing claims to be treated as new claims (**transferred claims**). The Compensation Court ceases to have jurisdiction in respect of transferred claim matters and the Commission acquires exclusive jurisdiction in respect of transferred claim matters.

106 Authority may intervene in proceedings (cf former s 107A)

- (1) The Authority has a right to be heard in any proceedings before the Commission.
- (2) The Authority may, for that purpose, be represented by a legal practitioner or a member of staff or by any other person.
- (3) In any such proceedings the Authority may apply for an order for which any party may

apply in those proceedings.

107 Applications to be heard together (cf former s 108)

- (1) A person who has applied to the Commission for a determination of a claim for compensation under this Act against 2 or more persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any of the applications heard together.
- (2) If more than one employer or more than one insurer may be involved in an application for compensation or any other matter under this Act, the regulations may make provision for or with respect to requiring one of those insurers or one of those employers, the Authority or some other person, to represent the employers or insurers in any proceedings relating to the application.

108 Interim awards (cf former s 112)

- (1) This section applies where:
 - (a) there is a dispute between employers or insurers, between a self-insurer and an insurer or between an employer and an insurer, as to whether incapacity or death resulted from more than one injury, or
 - (b) there is a dispute between employers or insurers, or between a self-insurer and an insurer, as to the apportionment between them of liability as referred to in section 22 (Compensation to be apportioned where more than one injury etc) of the 1987 Act, or
 - (c) an employer has at any time or from time to time been a self-insurer under this Act, the 1987 Act or the former 1926 Act and at another time or at other times has obtained a policy of insurance from an insurer, and a dispute arises as to whether an insurer is liable to indemnify the employer in respect of compensation payable under this Act for a particular injury, or
 - (d) an insurer is, pursuant to section 224 (2) (b), joined as a party to proceedings, or
 - (e) a person is, by the operation of this Act, deemed to be a worker employed by more than one principal or other person, and there is a dispute as to which principal or other person is liable to pay compensation under this Act.
- (2) Where this section applies, the Commission may:
 - (a) if the Commission is satisfied that compensation is payable (but is not yet able to finally determine that compensation is payable, the amount of the compensation, the appropriate apportionment of liability for the compensation or the person liable to pay the compensation), make such interim awards as the Commission thinks fit:

- (i) for compensation by an insurer or self-insurer, or
- (ii) for indemnity by an insurer, or
- (iii) for payment under Division 6 of Part 4 of the 1987 Act,

and make such interim orders as the Commission thinks fit for contribution on the part of an insurer, employer or principal or other person or under Division 6 of Part 4 of the 1987 Act, and

- (b) make such final awards and orders as the Commission thinks fit with respect to any of the matters the subject of an interim award or order under paragraph (a), and
 - (c) if the Commission makes a final award or order, make such orders as the Commission thinks fit with respect to adjustments to be made between persons against whom orders have been made under paragraphs (a) and (b) or between any such persons and the Insurance Fund.
- (3) If the Commission subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Commission:
- (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and
 - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (4) This section does not affect the recovery of weekly payments under section 58 of the 1987 Act.

109 Interest before order for payment (cf former s 113)

- (1) In any proceedings before the Commission, the Commission may order that there is to be included, in any sum to be paid, interest at such rate as the Commission thinks fit on the whole or any part of the sum for the whole or any part of the period before the sum is payable, subject to the limitations imposed by this section.
- (2) Interest cannot be ordered under this section:
 - (a) on any compensation payable under Division 4 of Part 3 of the 1987 Act, or
 - (b) on any compensation payable under this Act for any period before a claim for the compensation was duly made, or
 - (c) on any compensation payable under this Act for any period during which proceedings before the Commission were adjourned on the application of the

claimant for the compensation or pursuant to section 102.

(3) This section does not:

- (a) authorise the giving of interest upon interest, or
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

110 Interest after order for payment (cf former s 114)

- (1) Unless the Commission orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum ordered to be paid by the Commission as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum ordered to be paid:
 - (a) is to be calculated as from the date when the order was made or from such later date as the Commission in any particular case fixes, and
 - (b) is to be calculated at the rate prescribed for the purposes of section 101 of the [Civil Procedure Act 2005](#) or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and
 - (c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest.
- (3) Despite subsections (1) and (2), where:
 - (a) the amount of any sum ordered to be paid (excluding the amount of costs to be assessed) is paid in full within 21 days after the sum becomes payable, or
 - (b) the amount of costs assessed is paid in full within 21 days after that amount is assessed, interest is not payable on the amount so paid, unless the Commission otherwise orders.

111 Interest on agreed payment of lump sum compensation (cf former s 115)

- (1) Unless the Commission orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum agreed to be paid as permanent impairment compensation or pain and suffering compensation as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum so agreed to be paid:
 - (a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or (if the agreement does not so provide) the date that is 21 days after the date the agreement was made, and
 - (b) is to be calculated at the rate prescribed for the purposes of section 101 of the

Civil Procedure Act 2005 or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and

- (c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

111A Costs provisions apply only to existing claim matters

Sections 112–116 apply only in respect of existing claim matters.

Note—

Chapter 7 (New claims procedures) provides for costs in respect of new claim matters.

112 Costs (cf former s 116)

- (1) In this section, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.
- (2) Subject to this Act and the regulations and the rules of the Compensation Court and subject to any other Act:
 - (a) costs in or in relation to any proceedings are in the discretion of the Court, and
 - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings, and
 - (c) the Court may order costs to be assessed on the basis set out in Division 11 of Part 3.2 of the *Legal Profession Act 2004* or on an indemnity basis.
- (3) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation was frivolous or vexatious, fraudulent or made without proper justification.
- (4) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application.
- (5) If a person claiming compensation appeals under section 34A (Appeal to Judge from commissioner) of the *Compensation Court Act 1984*, costs in or in relation to the appeal are to be paid by the unsuccessful party unless the Compensation Court is of the opinion that such a requirement would be unjust in the circumstances of the case.
- (6) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under this Act if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker.
- (7) An order of the Court for payment of costs may include:

- (a) the costs actually incurred or to be incurred by a person claiming compensation, and
- (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person’s claim, and
- (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 3), and
- (d) costs incidental to an application for referral of a medical dispute under section 121 or 122, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act, and
- (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.

(8) In this section:

application for compensation includes any proceedings in connection with an application for compensation.

compensation means compensation under this Act.

113 Regulations fixing maximum costs recoverable by legal practitioners or agents (cf former s 117)

- (1) The regulations may make provision for or with respect to the following:
 - (a) fixing maximum costs for legal services or agent services provided to a worker (or other claimant), an employer or an insurer in any workers compensation matter,
 - (b) fixing maximum costs for matters that are not legal services or agent services but are related to proceedings on a workers compensation matter (for example, expenses for witnesses or medical reports (including certificates)).
- (2) 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 the regulations under this section. An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (3) To the extent that the regulations so provide, a legal practitioner or agent is not entitled to be paid or recover costs of the kind referred to in subsection (1) (b) that are incurred in connection with the obtaining of any medical report (including any certificate) or opinion for use for any of the following purposes and which is not used

for the purpose for which it was obtained:

- (a) for use in the making of a claim for compensation under this Act,
- (b) for use in negotiations or conciliation in respect of a claim for compensation,
- (c) for consideration by a medical panel or medical referee under section 122 or by a medical specialist under section 121,
- (d) for use in court proceedings.

- (4) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 2004*.
- (5) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 2004* (in particular section 329 of that Act) and the regulations under that Act. An assessment under Division 11 of Part 3.2 of that Act of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.
- (6) Expressions used in this section have the same meanings as they have in Part 3.2 of the *Legal Profession Act 2004*, except as provided by this section.
- (7) In this section:

agent means a person who acts as agent for a person in connection with a claim for compensation under this Act.

agent service means any service performed by a person in the person's capacity as an agent.

costs includes:

- (a) costs actually incurred or to be incurred by a person claiming compensation, and
- (b) if liability for a claim for compensation is admitted without recourse to the Compensation Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
- (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 3), and
- (d) costs incidental to an application for referral of a medical dispute under section 121 or 122, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act, and
- (f) costs incurred in relation to the mediation or neutral evaluation of any matter

under Part 4A of the *Compensation Court Act 1984*.

114 Maximum fees recoverable by medical practitioners for medico-legal services (cf former s 118)

- (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by medical practitioners of the following services:
 - (a) provision of any medical report (including any certificate) for use in court proceedings in connection with a claim for compensation under this Act,
 - (b) appearance as a witness in court proceedings on a claim for compensation under this Act.
- (2) A medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.
- (3) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 2004*.

115 Limit on recovery of costs unreasonably incurred (cf former s 119)

- (1) If the Compensation Court is satisfied that any costs in proceedings under this Act before the Court were unreasonably incurred, the Court is to order that those costs are to be treated as unreasonably incurred for the purposes of this section and the Court is not to make an order for payment of those costs by any other party to the proceedings.
- (2) Costs incurred by a party to proceedings are considered to have been unreasonably incurred for the purposes of this section only if they were incurred by the party:
 - (a) after a reasonable offer of settlement in the proceedings was made to the party, or
 - (b) after the party has failed without reasonable excuse to comply with a written request from another party to the proceedings to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or
 - (c) after the party has unreasonably failed to participate in a conciliation of the dispute with which the proceedings are concerned and the Court is of the opinion that the failure has resulted in unnecessary litigation, or
 - (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by

section 128 (2)) and the Court is of the opinion that the application was frivolous or vexatious.

- (3) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 84 certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate.
- (4) A legal practitioner representing a party to proceedings in the Compensation Court is not entitled to recover from the party any costs that the Court has ordered are to be treated as unreasonably incurred.
- (5) The Court may by order exempt any costs or a proportion of any costs from the operation of subsection (4) if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.

116 Solicitor/client costs in compensation proceedings (cf former s 122)

- (1) The legal representative or agent of a person claiming compensation under this Act is not entitled:
 - (a) to recover from the person any costs in respect of the claim, or
 - (b) to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation,unless those costs are awarded by the Compensation Court.
- (2) Any such award may be made on the application either of the person claiming compensation or the person's legal representative or agent.
- (3) Any sum so awarded is subject to assessment in accordance with Division 11 of Part 3.2 of the *Legal Profession Act 2004*.
- (4) This section prevails to the extent of any inconsistency with Part 3.2 of the *Legal Profession Act 2004*.
- (5) A person must not:
 - (a) claim a lien that the person is not entitled to claim because of subsection (1), or
 - (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of subsection (1).

Maximum penalty: 50 penalty units.

- (6) A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of subsection (1) is entitled to recover the amount paid as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.
- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

117 Admissibility of statements by injured workers (cf former s 124)

- (1) If a worker after receiving an injury makes any statement in writing in relation to that injury to the worker's employer or to an insurer or to any person acting on behalf of the employer or insurer, the statement may not be admitted in evidence if tendered or used by the employer or insurer in any proceedings before the Commission unless the employer or insurer has, at least 14 days before the hearing, furnished to the worker or to the legal representative or agent of the worker a copy in writing of the statement.
- (2) (Repealed)
- (3) In this section:

employer, in relation to a worker, includes a principal referred to in section 20 of the 1987 Act who is liable to pay compensation to the worker.

insurer means licensed insurer or former licensed insurer.

118 Registration of certain persons involving interpreting etc services (cf former s 125)

- (1) On and from the commencement date prescribed by the regulations for the purposes of this section, a person who:
 - (a) for fee or reward, acts as interpreter for a worker in connection with a claim for compensation under this Act, whether or not the claim is eventually made and whether or not the person also provides a related service, or
 - (b) holds himself or herself out as being available to do so,is guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units if the person is not registered under this section.
- (2) A person who acts as interpreter for a worker is taken to act for fee or reward if the fee or reward:
 - (a) is payable or given by some person on behalf of the worker, or
 - (b) is payable or given to some person who employs, or is nominated by, the person acting as interpreter, or

- (c) is payable or given for any related service provided to the worker by the person acting as interpreter.
- (3) This section does not apply to a person who acts as interpreter:
- (a) if the person is a solicitor, barrister, medical practitioner or other person prescribed by the regulations, or
 - (b) if the person is engaged by, and the person's services are paid for by:
 - (i) the Authority, or
 - (ii) the Community Relations Commission, or
 - (iii) an employer or insurer, or
 - (iv) an industrial union of employees or employers, or
 - (v) any other person or body prescribed by the regulations.
- (4) The regulations may make provision for or with respect to:
- (a) applications for registration under this section and the disposal of any such applications, and
 - (b) the fees to be paid by applicants for registration, and
 - (c) the qualifications, experience, fitness and character of applicants for registration, and
 - (d) the duration of registration, and
 - (e) the conditions to which any registration is subject (including conditions regulating any related service provided by the registered person), and
 - (f) the cancellation or suspension of registration, and
 - (g) any other matter in connection with registration under this section.
- (5) The regulations under this section are to provide for a right of appeal against a decision of the Authority:
- (a) to refuse to register a person under this section, or
 - (b) to cancel or suspend any such registration, or
 - (c) to attach any condition to any such registration.
- (6) The regulations may make provision for or with respect to the maximum amount that may be charged by a person who is registered or required to be registered under this section:

- (a) for acting as interpreter as referred to in subsection (1), and
 - (b) for any related service provided to the worker concerned.
- (7) A person who acts as interpreter in contravention of subsection (1) is not entitled to charge or recover any fee for so acting or for any related service provided to the worker concerned.
- (8) A reference in this section:
- (a) to a person acting as interpreter includes a reference to a person who translates documents into another language, or
 - (b) to a related service includes a reference to the services of an agent or adviser.

Division 7 Medical examinations and disputes

118A Application of certain provisions of Division only to existing claims

Sections 121-124 and 128-130 apply only in respect of existing claims.

119 Medical examination of workers at direction of employer (cf former s 129)

- (1) A worker who has given notice of an injury must, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
- (2) A worker receiving weekly payments of compensation under this Act must, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
- (3) If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to the weekly payments,is suspended until the examination has taken place.
- (4) A worker must not be required to submit himself or herself for examination by a medical practitioner under this section otherwise than in accordance with the WorkCover Guidelines or at more frequent intervals than may be prescribed by the WorkCover Guidelines.
- (5) The regulations may make provision for or with respect to requiring an employer or insurer to provide a worker, a worker's legal representative or any other person, within the period required by the regulations, with a copy of any medical opinion or report

furnished to the employer or insurer by a medical practitioner in connection with an examination of the worker pursuant to a requirement under this section.

- (6) If an employer or insurer fails to provide a copy of an opinion or report as required by the regulations under subsection (5):
- (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the opinion or report for any other purpose prescribed by the regulations for the purposes of this section, and
 - (b) the opinion or report is not admissible in proceedings on such a dispute before the Commission, and
 - (c) the opinion or report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

120 Medical examination of worker at direction of Commission (cf former s 130)

- (1) The Commission or the Authority may, at any time or from time to time, require any worker:
- (a) who claims compensation under this Act, or
 - (b) who is in receipt of weekly payments of compensation under this Act,
- to submit himself or herself for examination by an approved medical specialist on a date and at a place arranged by the Registrar.
- (2) If a worker refuses to submit himself or herself for any such examination or in any way obstructs the examination:
- (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.

121 Assessment of medical disputes by approved medical specialists

- (1) In this section:

approved medical specialist means a medical practitioner who is on a list of medical practitioners approved from time to time by the Authority as approved medical specialists for the purposes of this section.

medical dispute means a disagreement between a worker and the employer as to:

- (a) the worker's condition, or
- (b) the worker's fitness for employment,

but does not include a medical dispute concerning the extent of a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.

Note—

See section 72 of the 1987 Act which requires a dispute concerning the extent of any such deafness to be referred to a medical panel under section 122.

- (2) A worker or employer can refer a medical dispute for assessment to:
 - (a) an approved medical specialist agreed to by the worker and employer,
 - (b) an approved medical specialist nominated by the Principal Conciliator if the worker and employer are not able to agree on the matter.

The worker and the employer can agree that some or all of the approved medical specialist's findings on the dispute are to be binding on them for the purposes of the worker's claim for compensation.

- (3) The approved medical specialist is to make an assessment of a dispute referred under this section and:
 - (a) make findings on the dispute as required by the terms of reference, and
 - (b) give a certificate as to those findings.
- (4) The certificate is, in any proceedings:
 - (a) conclusive evidence of those matters certified on which the parties agreed to be bound, and
 - (b) prima facie evidence of any other matters certified.
- (5) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (6) and (7).
- (6) If a medical dispute is referred under this section after the commencement of court proceedings in respect of the compensation to which the referral relates, subsection (4) (a) does not apply to any certificate issued as a result of the referral unless the worker and the employer agree that subsection (4) (a) is to apply.
- (7) Once the hearing (or part of the hearing) of court proceedings that deals with a medical dispute has commenced, a medical dispute relating to the proceedings may not be referred under this section unless the other party consents or the court grants leave.

- (8) An approved medical specialist is competent to give evidence as to matters in a certificate given by the specialist under this section, but the specialist may not be compelled to give any such evidence.
- (9) A worker or employer who is a party to an agreement under this section may apply to the Authority for registration of the agreement and any certificate given under this section, and the Authority is to register the agreement and certificate. The Authority is to provide the Compensation Court with a copy of the agreements and certificates that are registered by the Authority under this section.
- (10) The regulations may make provision for or with respect to the approval of medical practitioners for the purposes of this section and the referral of medical disputes to approved medical specialists for the purposes of this section.
- (11) An approved medical specialist may:
 - (a) consult with any medical practitioner who is treating or has treated the worker in connection with the worker's claim, and
 - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of the fair and proper consideration of the matter.
- (12) If a worker refuses to submit himself or herself for examination by the approved medical specialist to whom the medical dispute has been referred if required to do so, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments,is suspended until the examination has taken place.
- (13) The fees of the approved medical specialist to whom a medical dispute is referred under this section are to be paid by the employer.

122 Referral of medical disputes to referee or panel on application of worker or employer (cf former s 131)

- (1) In this section:

medical dispute means a disagreement between a worker and the employer as to:

- (a) the worker's condition, or
- (b) the worker's fitness for employment.

- (2) If there is a medical dispute, the registrar of the Compensation Court must, on the application of either the worker or the employer, refer the medical dispute to a medical panel or (if subsection (3) permits) to a medical referee, but only if:
 - (a) the worker has submitted himself or herself for examination by a medical practitioner in accordance with a requirement of the employer under section 119 or has been examined by a medical practitioner selected by the worker, and
 - (b) the employer or worker (as the case may be) has furnished the other with a copy of the medical practitioner's report of the examination (being a report relevant to the medical dispute).
- (3) A medical dispute can be referred under this section to a medical referee only if the registrar is satisfied that it is not reasonably practicable in the circumstances to constitute a medical panel. A medical dispute must not in any circumstances be referred to a medical referee if the dispute concerns the extent of a loss, or a further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.
- (4) The registrar of the Compensation Court may refuse to refer any such medical dispute to a medical referee or medical panel if the medical practitioner's report was not furnished to the other party within 30 days (or such longer period as the worker and the employer may agree) after it was received from the medical practitioner or within such longer period as the registrar of the Compensation Court, in the circumstances of the case, considers justified.
- (5) The medical referee or medical panel to whom a medical dispute is so referred is to give a certificate as to:
 - (a) the worker's condition, or
 - (b) the worker's fitness for employment (specifying, where necessary, the kind of employment for which the worker is fit).
- (6) Any such certificate of a medical panel is conclusive evidence as to the matters certified, except in relation to the following:
 - (a) the fitness of the worker for employment,
 - (b) the question of whether any of the following losses or impairments exist and, if so, the nature and extent of the loss or impairment:
 - (i) the loss of the sense of taste or smell,
 - (ii) the loss of sexual organs,
 - (iii) permanent brain damage,
 - (iv) the impairment of the back, neck or pelvis,

- (v) any loss or impairment added to the Table to Division 4 of Part 3 of the 1987 Act by the regulations.
- (7) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (8) and (9).
- (8) If an application for referral of a medical dispute is made under this section after the commencement of court proceedings in respect of the compensation to which the application relates, subsection (6) does not apply to any certificate issued on the application unless:
- (a) the dispute concerns the extent of a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin, or
 - (b) the dispute concerns compensation that is the subject of proceedings by reason of the amendment of a claim as referred to in section 102 (5), or
 - (c) the worker and the employer agree that subsection (6) is to apply.
- (9) Once the hearing (or part of the hearing) of court proceedings that deals with a medical dispute has commenced, an application may not be made under this section in respect of the medical dispute concerned unless the other party consents or the Compensation Court grants leave.
- (10) A medical panel or medical referee may call for the production of such medical records (including X-rays and the results of other tests) and other information as the panel or referee considers necessary or desirable for the purposes of the fair and proper consideration of the matter.
- (11) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical referee or medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
- (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.
- (12) If there is a disagreement between a worker and the employer as to whether or to what extent the incapacity of the worker is due to the injury, this section applies (subject to the regulations) as if the question were one as to the condition of the worker.
- (13) The rules of the Compensation Court may make provision for or with respect to:

- (a) applications and certificates under this section, and
- (b) the application of this section for the purposes of subsection (12).

123 Reference of medical disputes by Principal Conciliator (cf former s 131B)

- (1) When a medical dispute (as defined in section 122) is the subject of conciliation by a conciliator and concerns the compensation payable under section 66 of the 1987 Act, the Principal Conciliator may request the registrar of the Compensation Court to refer the dispute to a medical panel and the registrar is to refer the dispute accordingly.
- (2) The medical panel to whom a medical dispute is so referred is to give a certificate as to the worker's condition, in accordance with the terms of reference of the dispute.
- (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.
- (4) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments,is suspended until the examination has taken place.

124 Submission by Court, conciliator etc of matters to medical referee or panel for report (cf former s 132 and s 20 (1) (c) *Compensation Court Act 1984*)

- (1) The Compensation Court or a conciliator may refer to a medical referee or medical panel for report any matter which appears to be relevant to any question arising in proceedings before the Compensation Court or the conciliator.
- (2) The Authority may refer to a medical referee or medical panel for report any matter which appears to be relevant to the exercise of its functions.
- (3) A medical referee or medical panel is to submit a report to the Compensation Court or the conciliator or the Authority in accordance with the terms of a reference under this section.

125 Reimbursement of worker for loss of wages and expenses associated with medical examination (cf former s 133)

- (1) If a worker is required to submit himself or herself for examination pursuant to this Division, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided:

- (a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and
 - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.
- (2) A worker required to submit himself or herself for examination by an approved medical specialist is not entitled to recover any amount if:
- (a) the matter was referred on the application of the worker, and
 - (b) the Commission finds that the application was unreasonable or unnecessary.
- (3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.
- (4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of section 64 of the 1987 Act.
- (5) (Repealed)

126 Copies of certain medical reports to be supplied to worker (cf former s 134)

- (1) In this section:

insurer means a licensed insurer or a former licensed insurer.

medical report, in relation to an injured worker, means a written report by:

- (a) a medical practitioner by whom the worker has been referred to another medical practitioner for treatment or tests related to the injury, or
 - (b) a medical practitioner who has treated the injury, or
 - (c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the injury.
- (2) The regulations may make provision for or with respect to requiring an employer or insurer in possession of a medical report relating to an injured worker to provide a copy of the report to the worker, the worker's legal representative or any other person, if the worker's claim is disputed.
- (3) If an employer or insurer fails to provide a copy of a report as required by the

regulations under subsection (2):

- (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
- (b) the report is not admissible in proceedings on such a dispute before the Commission, and
- (c) the report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

127 Admissibility of medical reports

- (1) A medical report is admissible in proceedings before the Commission.
- (2) Subsection (1) is subject to any provision of the regulations relating to the giving of notice of the admission of the medical report.
- (3) Subsection (1) is also subject to any provision of the regulations relating to the number of medical reports that may be admitted in connection with a claim or any aspect of a claim.
- (4) A medical practitioner whose medical report is admissible under subsection (1) may be required, in accordance with the regulations, to attend and be cross-examined on the contents of the report.
- (5) In proceedings relating to the making of an interim award, a medical practitioner whose medical report is admissible in evidence under subsection (1) may not be required to attend and be cross-examined on the contents of the report without the leave of the Commission given in any case where the Commission is satisfied there is a real issue as to whether the worker is entitled to receive compensation from any of the parties.
- (6) In this section, **medical report** means any written report of a medical practitioner relating to the worker.

128 Admissibility and evidentiary value of certificates and reports of medical referees and panels (cf former s 136 and s 20 (2) [Compensation Court Act 1984](#))

- (1) A certificate or report given by a medical referee or medical panel is admissible in evidence in any proceedings before the Compensation Court.
- (2) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of

the matters in the certificate or report.

- (3) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.
- (4) A medical referee is competent to give evidence as to matters in a certificate or report given by the referee or by a medical panel of which the referee was a member, but the referee may not be compelled to give any such evidence.

129 Power to correct mistakes in medical reports or certificates (cf former s 136A)

- (1) A medical referee or medical panel may, of the referee's or panel's own motion or on the application of a party to proceedings (and without formally reconvening), correct a certificate or report given by the referee or panel if it contains:
 - (a) a clerical mistake, or
 - (b) an error arising from an accidental slip or omission, or
 - (c) a material miscalculation of figures or material mistake in the description of any person, thing or matter referred to in the certificate or report, or
 - (d) a defect of form.
- (2) This section applies to a medical certificate given by a medical specialist pursuant to section 121 as if the medical specialist were a medical referee.

130 Rules of Court and regulations with respect to medical evidence (cf former s 137)

- (1) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence), and
 - (b) the disclosure of medical reports (including X-rays and the results of other tests) to medical referees and medical panels (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report), and
 - (b1) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular:
 - (i) limiting the number of medical reports that may be produced in connection with the conciliation of a dispute, and

- (ii) limiting the number of medical reports that may be admitted in evidence in proceedings before the Compensation Court, and
 - (iii) limiting the medical reports that may be so admitted in evidence to those produced in connection with the conciliation of the dispute concerned, and
 - (iv) excluding the costs of excess medical reports from the costs recoverable in connection with a claim (whether the reports were obtained for the purposes of making or dealing with a claim or for the purposes of conciliation or court proceedings), and
- (c) limiting the number of medical witnesses that may be called by any party, and
- (d) the manner of referring matters to a medical referee or medical panel for report.
- (2) This section only authorises rules of the Compensation Court in connection with proceedings before that Court or matters referred to a medical panel or medical referee.

Division 8 Prohibited conduct relating to touting for claims

131 Definitions (cf former s 148B)

- (1) In this Division:

agent means 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 (unless the regulations otherwise provide) include a legal practitioner.

claim means a claim for compensation under this Act.

hearing loss claim means:

- (a) a claim under section 66 of the 1987 Act (as in force at any time before the commencement of this definition) for loss of hearing, or
- (b) a claim for permanent impairment compensation in respect of loss of hearing.

lawyer means a legal practitioner.

prohibited conduct has the meaning given by section 132.

protected claim means:

- (a) a hearing loss claim, and
- (b) a claim for the cost of provision of a hearing aid, and
- (c) any other claim that is declared by the regulations to be a protected claim for the purposes of this section.

- (2) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 132 does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct.
- (3) Each of the following activities is considered to constitute acting as agent for a person in connection with 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,
 - (e) any other activity prescribed by the regulations.
- (4) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division.

132 Prohibited conduct by agents (cf former s 148C)

- (1) The following conduct by an agent is prohibited conduct for the purposes of this Division:
 - (a) making a statement to a person, knowing that the statement is false or misleading in a material particular, for the purpose of encouraging the person or any other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
 - (b) using information obtained by the agent in connection with a claim to contact any other person for the purpose of encouraging that other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
 - (c) seeking to obtain information from a client of the agent for the purpose of using that information as described in paragraph (b),
 - (d) inducing or attempting to induce a client of the agent to encourage any other person to make a claim (whether or not it is a protected claim) and to use (in connection with the claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the claim,

- (e) making any unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client of the agent, for the purpose of encouraging the person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
 - (f) such other conduct as may be prescribed by the regulations as prohibited conduct for the purposes of this section.
- (2) The regulations can specify circumstances in which conduct that would otherwise be prohibited conduct under subsection (1) is not to be regarded as prohibited conduct for the purposes of this Division.
 - (3) For the purposes of this Division, any conduct engaged in by a person on behalf of an agent, or that an agent has caused or procured the person to engage in, is taken to have been engaged in by the agent.

133 Offence of engaging in prohibited conduct (cf former s 148D)

An agent who engages in prohibited conduct is guilty of an offence.

Maximum penalty: 50 penalty units.

134 Consequences of prohibited conduct for recovery of fees by agents (cf former s 148E)

- (1) An agent is not entitled to recover from a person any fees, costs or other charges that would otherwise be payable by the person in connection with services made use of by the person if the services were made use of as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.
- (2) If prohibited conduct engaged in by an agent involved encouraging a person to make use of services and the person makes use of those services after the conduct is engaged in, it is to be presumed for the purposes of this section that the services were made use of as a result of that prohibited conduct, unless the agent concerned establishes otherwise.
- (3) If the services of an agent were made use of as a result of prohibited conduct engaged in by the agent in connection with a hearing loss claim, it is to be presumed for the purposes of this section that any services of the agent made use of in connection with a subsequent hearing loss claim in respect of further loss of hearing made by the same worker (whether or not made against the same employer) were made use of as a result of prohibited conduct engaged in by the agent, unless the agent concerned establishes otherwise.
- (4) A person who has paid any amount in respect of fees, costs or other charges to an agent that the agent would not have been entitled to recover because of this section

is entitled to recover the amount from the agent as a debt in a court of competent jurisdiction.

135 Consequences of prohibited conduct for lawyers (cf former s 148F)

- (1) A lawyer who acts for a person on a claim must not include in any bill given to the person, and must not otherwise seek to recover from the person, any amount by way of disbursements for fees paid to an agent in connection with referral of the person to the lawyer by the agent if the lawyer knows or has reasonable cause to suspect that the agent engaged in prohibited conduct that involved encouraging the person to make the claim, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

Maximum penalty: 50 penalty units.

- (2) A lawyer who acts for a person on a claim is not entitled to recover from any person any amount by way of disbursements for fees paid to an agent in connection with the claim if the claim was made as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.
- (3) If prohibited conduct engaged in by an agent involved encouraging a person to make a claim and the person makes a claim after the conduct is engaged in, it is to be presumed for the purposes of subsection (2) that the claim was made as a result of that prohibited conduct unless the lawyer establishes otherwise.
- (4) If a hearing loss claim was made as a result of prohibited conduct engaged in by an agent, it is to be presumed for the purposes of subsection (2) that any subsequent hearing loss claim in respect of further loss of hearing made by the same worker (whether or not made against the same employer) in connection with which that agent performed any service was made as a result of prohibited conduct engaged in by that agent, unless the lawyer concerned establishes otherwise.
- (5) A person who has paid any amount in respect of disbursements to a lawyer that the lawyer would not have been entitled to recover because of subsection (2) is entitled to recover the amount from the lawyer as a debt in a court of competent jurisdiction.

136 Lawyers and agents can be requested to certify as to prohibited conduct (cf former s 148G)

- (1) An employer or insurer who is liable to pay a lawyer or agent any fees, costs or other charges incurred in connection with a protected claim made by a person is entitled to request the lawyer or agent to provide a certificate under this section about the claim (unless the lawyer or agent has already provided it). The request must be in writing.
- (2) A certificate under this section is a certificate that to the best of the lawyer's or agent's knowledge, no agent has engaged in prohibited conduct that involved

encouraging the person to make the claim or any previous claim, except as may be disclosed in the certificate.

(3) If a certificate is requested:

(a) the lawyer or agent is not entitled to be paid by or recover from the employer or insurer any fees, costs or other charges incurred in connection with the claim concerned until the certificate is provided (even if the fees, costs or other charges are payable under an award or order of a court or Commission), and

(b) no interest that might otherwise be payable on those fees, costs or other charges is payable for the period from when the certificate is requested until it is provided (despite any order or award of a court or Commission for the payment of that interest).

(4) A lawyer or agent can provide an employer or insurer with a certificate under this section even if the employer or insurer has not requested it.

(5) A lawyer or agent who gives a certificate under this section about a claim made by a person is guilty of an offence if the lawyer or agent knew or had reasonable cause to suspect that an agent had engaged in prohibited conduct that involved encouraging the person to make the claim.

Maximum penalty: 50 penalty units.

137 Power to restrict or ban recovery of costs by agents who engage in prohibited conduct (cf former s 148H)

(1) The Authority can by notification given to insurers and self-insurers direct that an agent specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.

(2) Such a notification cannot be given unless the Authority is satisfied that:

(a) the agent has persistently engaged in conduct that constitutes a contravention of section 133 or 343 (4), or

(b) in the case of an agent that is a corporation, a director of the corporation or other person concerned in the management of the corporation has persistently engaged in any such conduct.

(3) Before the Authority gives such a notification it must give the agent a reasonable opportunity to make written submissions to the Authority on the matter.

(4) The effect of a notification under this section is that the agent specified in the notification is not entitled to recover fees, costs or other charges (as provided by the

notification) in respect of services performed while the notification is in force.

- (5) An agent aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the agent to whom it applies.

138 Power to restrict or ban recovery of costs by solicitors (cf former s 148HA)

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, incorporated legal practice or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the incorporated legal practice is a director of or has a financial interest in an agent and:
 - (a) the agent has persistently engaged in conduct that constitutes a contravention of section 133 or 343 (4), or
 - (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the solicitor, incorporated legal practice or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.
- (4) The effect of a notification under this section is that the solicitor, incorporated legal practice or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) A solicitor, incorporated legal practice or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, incorporated legal practice or firm of solicitors concerned.

- (7) For the purposes of this section, a **financial interest** in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

139 Power to restrict or ban agents who engage in prohibited conduct (cf former s 148I)

- (1) The Authority can by direction in writing given to an agent prohibit the agent from acting for any person in connection with any claims or in connection with specified types of claims. The prohibition can be absolute or subject to conditions.
- (2) Such a direction cannot be given unless:
- (a) the Authority is satisfied that the agent concerned has persistently engaged in conduct that constitutes a contravention of section 133 or 343 (4) and as a result is not a fit and proper person to act in connection with claims to which the direction relates, and
 - (b) the Authority has given the agent a reasonable opportunity to make written submissions to the Authority on the matter.
- (3) An agent who acts in contravention of a direction given under this section:
- (a) is guilty of an offence for which the maximum penalty is 200 penalty units, and
 - (b) is not entitled to recover any fees, costs or other charges from a person for anything done by the agent in contravention of the direction.
- (4) A person aggrieved by a direction under this section can appeal against the direction to the Compensation Court within 14 days after the direction is given to the agent. An appeal does not stay the operation of the direction unless the Court otherwise orders.
- (5) A direction remains in force until it is withdrawn. A direction can be withdrawn at any time by the Authority by giving written notice of withdrawal to the agent concerned.

140 Past conduct included in assessing persistent conduct (cf former s 148J)

- (1) A reference in sections 137, 138 and 139 to conduct that constitutes a contravention of section 133 or 343 (4) includes a reference to:
- (a) conduct engaged in by a person before the commencement of this section, and
 - (b) conduct engaged in before the commencement of section 133 or 343 (4) that would, if engaged in after that commencement, have constituted a contravention of the provision.
- (2) However, a person cannot be considered to have persistently engaged in conduct that constitutes a contravention of section 133 or 343 (4) unless at least one instance of

that conduct occurred after the commencement of this section.

For the purposes of section 138, at least one instance of the conduct must have occurred after the commencement of that section.

141 Duty of claimants to comply with requests for information about agents and lawyers (cf former s 148K)

- (1) A person who makes a protected claim must comply with a request from the insurer or self-insurer concerned for information as to whether the person made use of the services of an agent or lawyer in respect of the claim and how the person came to make use of those services. Such a request by the insurer may be made at any time (whether or not proceedings before the Commission have been commenced in respect of the claim).
- (2) The regulations may make provision for limiting the operation of this section with respect to lawyers.

142 Regulation of advertising (cf former s 148L)

- (1) The regulations may make provision for or with respect to regulating or prohibiting conduct by any person that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act or claims for work injury damages, including (without limitation) regulating or prohibiting any of the following:
 - (a) advertising by a lawyer or agent,
 - (b) advertising by any person for or on behalf of a lawyer or agent,
 - (c) advertising by any person in connection with the provision of those services,
 - (d) advertising by any person of services connected with injuries.
- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the [Legal Profession Act 2004](#).
- (3) Any such regulation can impose a penalty not exceeding 200 penalty units for any contravention of the regulations.
- (4) The Minister may direct a person in writing not to engage in conduct described in the direction if the Minister is satisfied that:
 - (a) the conduct contravenes the regulations under this section, and
 - (b) the person has been engaged in conduct of that or a similar kind.
- (5) A person who contravenes a direction under this section is guilty of an offence.

Maximum penalty: 200 penalty units.

- (6) The Minister is not required, before giving a direction under this section, to notify the person to whom the direction is given or any other person who may be affected by the direction.
- (7) A direction under this section may be amended or revoked by the Minister.

Chapter 5

143-230 (Repealed)

Chapter 6 Miscellaneous

230A Premium Discount Schemes

- (1) The Authority may establish a Premium Discount Scheme to encourage employers to improve work health and safety and injury management performance so as to minimise the financial and social costs of workplace injury.
- (2) A Premium Discount Scheme can provide for any of the following:
 - (a) the conditions or requirements that must be met to be eligible to participate in the scheme,
 - (b) the awarding to employers who participate in the scheme of discounts on the premiums payable by them for policies of insurance under this Act or the 1987 Act,
 - (c) the approval of persons (**approved persons**) to exercise functions under the scheme, including the function of awarding premium discounts under the scheme to employers, and the suspension or withdrawal of any such approval,
 - (d) the regulation of the conduct and activities of approved persons and employers under the scheme,
 - (e) the review and measurement of the work health and safety and injury management performance of approved persons and employers participating in the scheme,
 - (f) the authorisation of different approved persons to award different levels of premium discounts, depending on such factors as the Authority determines.
- (3) The regulations may make provision for or with respect to premium discount schemes.
- (4) In particular (but without limiting the generality of subsection (3)) the regulations may do any of the following:
 - (a) make provision for or with respect to any of the matters provided for in subsection (2),

- (b) provide for a review by the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* of specified decisions made by the Authority in connection with the operation of a Premium Discount Scheme,
 - (c) create offences punishable by a penalty not exceeding 50 penalty units.
- (5) An insurance premiums order may include provision for or with respect to requiring the calculation of the premium payable by an employer for a policy of insurance under the 1987 Act to take account of any premium discount awarded to the employer under a Premium Discount Scheme.
- (6), (7) (Repealed)
- (8) The Authority is to review the effectiveness of the first Premium Discount Scheme after the Scheme has been in operation for 12 months. The review is to include consideration of the introduction of no-claim bonuses.

231 Posting summary of Act (cf 1926 s 43 (1)-(3); 1987 s 269)

- (1) There must be kept constantly posted up in some conspicuous place at or near every mine, quarry, factory, workshop, office or shop, and on every ship to which this Act applies, where it may be conveniently read by a person employed there:
- (a) a summary (in the form prescribed by the regulations or approved by the Authority from time to time) of the requirements of this Act with regard to the giving of notice of injuries and the making of claims, and
 - (b) if the employer has obtained a policy of insurance in respect of the persons employed there and the policy is for the time being in force—a statement setting out the name and address of the insurer from whom the policy was obtained and stating that insurance under this Act has been effected with that insurer, and
 - (c) if the employer is a self-insurer—a statement that the employer is a self-insurer under this Act, and
 - (d) such other information as may be prescribed by the regulations.
- (2) If the summary or statement is damaged, obliterated or destroyed, it must be renewed as soon as possible.
- (3) If this section is contravened, the manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, or the master of the ship, as the case requires, is guilty of an offence.

Maximum penalty: 20 penalty units.

232 Worker's right to information (cf 1926 s 18B; 1987 s 270)

- (1) A worker may request the employer of the worker to supply the following information:

- (a) the employer's name and address for the service of documents for the purposes of this Act, and
 - (b) the name and address of the insurer from whom the employer has obtained a policy of insurance or, if the employer is a self-insurer, to be so informed.
- (2) An employer, or a person acting for an employer in the management of the employer's trade or business, must not:
- (a) fail to supply any such information, or
 - (b) supply information which the employer or person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

- (3) In this section:

employer, in relation to a worker, includes a principal within the meaning of section 20 of the 1987 Act who is liable to pay compensation to the worker.

233 No contribution from workers (cf 1926 s 48; 1987 s 271)

- (1) An employer must not, directly or indirectly, take or receive any money from a worker, whether by way of deduction from wages or otherwise, in respect of any liability under this Act (including under the 1987 Act or the former 1926 Act).

Maximum penalty: 100 penalty units.

- (2) Any money so taken or received from a worker, whether with the consent of the worker or not, may be recovered by the worker as a debt from the employer, or from the person who took or received it.
- (3) To avoid doubt, a reference in this section to a liability under this Act includes a reference to a liability to pay a premium for a policy of insurance.

234 No contracting out (cf 1926 s 45; 1987 s 272)

This Act and the 1987 Act apply despite any contract to the contrary.

235 Non-assignability of compensation (cf 1926 s 55; 1987 s 273)

- (1) Compensation under this Act (including the 1987 Act and the former 1926 Act):
- (a) is not capable of being assigned, charged or attached, and
 - (b) does not pass to any other person by operation of law, nor can any claim be set off against that compensation.

- (2) Subsection (1) has no effect to the extent to which (but for this subsection) it would

operate to prevent:

- (a) the satisfaction of an obligation by the worker to maintain another person pursuant to an order of a court of competent jurisdiction, or
- (b) the passing of accrued vested rights of a deceased worker to the legal personal representative.

235A Fraud on workers compensation scheme

- (1) A person who by deception obtains, or attempts to obtain, for himself or herself any financial advantage in connection with the workers compensation scheme under this Act or the 1987 Act is guilty of an offence if the person knows or has reason to believe that the person is not eligible to receive that financial advantage.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

- (2) A person who by deception obtains, or attempts to obtain, for another person any financial advantage in connection with the workers compensation scheme under this Act or the 1987 Act is guilty of an offence if the person knows or has reason to believe that the other person is not eligible to receive that financial advantage.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

- (3) A person is not liable to be convicted of an offence against this section and any other provision of this Act or the 1987 Act as a result of the same conduct.

- (4) In this section:

deception means any deception, by words or other conduct, as to fact or as to law, including the making of a statement or the production of a document that is false or misleading.

financial advantage includes a financial advantage for an injured worker (or a person who claims to be an injured worker), an employer, an insurer or a medical or other service provider.

235B Remedy available where claim fraudulent

- (1) This section applies to a claimant or insurer if it is established that, for the purpose of obtaining a financial advantage, the claimant or insurer did or omitted to do anything (including the making of a statement) concerning an injury or any claim relating to an injury with knowledge that the doing of the thing or the omission to do the thing was false or misleading.

- (2) If this section applies to a claimant:

- (a) a person who has a liability in respect of a payment, settlement, compromise or judgment relating to the claim is relieved from that liability to the extent of the

financial advantage so obtained by the claimant, and

- (b) a person who has paid an amount to the claimant in connection with the claim (whether under a settlement, compromise or judgment, or otherwise) is entitled to recover from the claimant the amount of the financial advantage so obtained by the claimant and any costs incurred in connection with the claim.
- (3) If this section applies to an insurer, the claimant is entitled to recover from the insurer as a debt the amount of the financial advantage so obtained by the insurer and any costs incurred by the claimant in connection with the claim.

235C False claims

- (1) A person must not make a statement knowing that it is false or misleading in a material particular:
 - (a) in a claim made by the person, or
 - (b) in a medical certificate or other document that relates to a claim, or
 - (c) when furnishing information to any person concerning a claim or likely claim (whether the information is furnished by the person who makes or is entitled to make the claim or not).

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

- (2) This section does not apply to statements:
 - (a) made in documents filed, or information furnished, in proceedings before a court, or
 - (b) made in the course of giving evidence on oath before the Commission, or
 - (c) made in any document or information in any case in which the person who made the statement did not know that the document or information was to be given, served or furnished in connection with a claim.
- (3) This section applies to a statement even though it has been verified by statutory declaration.

235D Order for refund of overpayments of compensation

- (1) This section applies to a payment to a person, purportedly made pursuant to an obligation arising under this Act, to which the person is not entitled under this Act. Such a payment is referred to in this section as an **overpayment**.
- (2) If the Authority is satisfied that a person has received an overpayment as a result or partly as a result of an act that constitutes a contravention of section 235A or 235C (whether or not the person has been proceeded against or convicted for an offence in

respect of the contravention), the Authority may order the person to refund the amount of the overpayment to the person who made the payment.

- (3) Any such refund may, in accordance with the terms of the Authority's order, be deducted from future payments of compensation, but not if it is payable under an award of the Commission.
- (4) An order under this section is enforceable as a civil debt and may be recovered as such in any court of competent jurisdiction by the person to whom the order requires payment to be made.
- (5) This section does not limit any other right of recovery that a person may have against another person in respect of any overpayment to that other person.
- (6) A person against whom an order is made under this section may apply for a review of the order by the Commission.

236 Service of notices (cf 1926 s 66E; 1987 s 275)

A notice required or authorised to be given to, or served on, a person by or under this Act or the 1987 Act must be in writing and must be given to, or served on, that person:

- (a) personally or by post, or
- (b) if a manner of giving or serving the notice is prescribed by or under this Act or the 1987 Act, in the manner so prescribed.

237 Service of documents (cf 1989 s 25)

- (1) In this section:

body means the Authority or the Council.

- (2) A document may be served on a body by leaving it at, or by sending it by post to:
 - (a) the office of the body, or
 - (b) if it has more than one office—any one of its offices.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a body in any other manner.

238 Powers of entry and inspection by officers of Authority (cf 1926 ss 18A (1B)–(1E), (2D), (2E), 30B; 1987 s 274)

- (1) In this section:

authorised officer means a member of staff authorised by the Authority or the Nominal Insurer for the purposes of this section.

insurer means a licensed insurer under this Act or the 1987 Act, former licensed insurer or self-insurer, and includes any insurance broker or commission agent engaged in workers compensation insurance business and (without limiting section 154M (2) of the 1987 Act) includes any scheme agent.

premises includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not).

- (2) An authorised officer may do any or all of the following:
- (a) on production of his or her authority, enter at any reasonable hour any premises used, or that the authorised officer reasonably suspects to be used, by an employer, insurer or agent (as defined in section 131) for the storage or custody of any record,
 - (b) on production of his or her authority, enter at any reasonable hour any premises in or on which the authorised officer knows, or reasonably suspects, an employer, worker or insurer to be,
 - (c) remain in or on premises while exercising any power conferred by this section,
 - (d) require an employer, insurer or any other person in or on those premises to produce any such record that is in his or her possession or under his or her control and is capable of being produced,
 - (e) require an employer, insurer or any other person having possession or control of any such record that is not written, or is not written in the English language, or is not decipherable on sight, to produce a statement, written in the English language and decipherable on sight, of the information contained in the record,
 - (f) inspect, or make copies of or extracts from, a record produced pursuant to paragraph (d) or a statement produced pursuant to paragraph (e), or retain such a statement,
 - (g) require an employer, insurer or any other person in or on those premises to answer questions relating to:
 - (i) an injury to, or incapacity of, a worker, or
 - (ii) the business or financial position of an insurer, or
 - (iii) the observance of this Act, the 1987 Act or the regulations under those Acts.
 - (h) (Repealed)
- (3) A person must not:
- (a) refuse or fail to allow an authorised officer to enter premises under this section, or

- (b) wilfully obstruct or delay an authorised officer when exercising any powers under this section, or
- (c) unreasonably refuse or fail to produce a record or statement to an authorised officer under this section, or
- (d) if an authorised officer informs a person that by virtue of this Act the person is obliged to answer questions relating to any matter referred to in subsection (2) (g):
 - (i) refuse or fail to answer such a question, or
 - (ii) give an answer to such a question that the person knows is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (4) The powers of entry conferred by this section are not exercisable in relation to any part of premises used only for residential purposes except:
 - (a) with the permission of the occupier of the premises, or
 - (b) under the authority conferred by a search warrant.

238A Search warrant

- (1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for a search warrant if the officer has reasonable grounds for believing that a provision of this Act, the 1987 Act or the regulations under those Acts has been or is being or is about to be contravened in or about any premises.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer under this Act named in the warrant:
 - (a) to enter the premises, and
 - (b) to search the premises for evidence of a contravention of this Act, the 1987 Act or the regulations under those Acts, and
 - (c) to exercise in the premises any powers conferred on the officer under section 238.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

authorised officer has the same meaning as it has in section 238.

premises has the same meaning as it has in section 238.

238AA Power to obtain information, documents and evidence

- (1) An authorised officer may, by notice in writing served on a person who is, on reasonable grounds, believed by the authorised officer to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of this Act or the 1987 Act or the regulations under those Acts require the person to do any one or more of the following things:
 - (a) to give an authorised officer, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to an authorised officer, in accordance with the notice, any such documents,
 - (c) to appear before an authorised officer at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.
- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.
- (3) An authorised officer may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
- (4) An authorised officer may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an authorised officer to be a true copy.
- (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
- (6) Until a certified copy of a document is provided under subsection (4), the authorised officer who has possession of the document must, at such times and places as the authorised officer thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.
- (7) In the section, **authorised officer** means a member of staff authorised by the Authority or the Nominal Insurer for the purposes of this section.

(8) A person must not:

- (a) without reasonable excuse, refuse or fail to comply with a requirement under this section, or
- (b) in purported compliance with a requirement under this section, give information or evidence or produce a document knowing it to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

238B Protection from incrimination

- (1) **Self-incrimination not an excuse** A person is not excused from a requirement under section 238 or 238AA to produce a document, record or statement, to give information or evidence or to answer a question on the ground that the document, record, statement, information, evidence or answer might incriminate the person or make the person liable to a penalty.
- (2) **Answer, information or evidence not admissible if objection made** However, any answer, information or evidence given by a natural person in compliance with a requirement under section 238 or 238AA is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 238 or 238AA) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned at an appropriate time that the person may object to giving the answer, information or evidence on the ground that it might incriminate the person.
- (3) **Appropriate time for giving warning about incrimination** An **appropriate time** for warning a person as referred to in subsection (2) (b) is any of the following times:
 - (a) the time when the requirement to give the answer, information or evidence is made,
 - (b) in the case of evidence required to be given when appearing before an authorised officer, any time after the start of the appearance before the authorised officer,
 - (c) at or about the time immediately before the person gives the answer, information or evidence.
- (4) **Documents, records or statements admissible** Any document, record or statement produced by a person in compliance with a requirement under section 238 or 238AA is not inadmissible in evidence against the person in criminal proceedings on the ground that the document, record or statement might incriminate the person.

- (5) **Further information** Further information obtained as a result of a document, record or statement produced or information, evidence or answer given in compliance with a requirement under section 238 or 238AA is not inadmissible on the ground:
- (a) that the document, record, statement, information, evidence or answer had to be produced or given, or
 - (b) that the document, record, statement, information, evidence or answer might incriminate the person.

238C Authorised officer may request assistance

- (1) A police officer may accompany and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Act:
- (a) in executing a search warrant issued under section 238A, or
 - (b) if the authorised officer reasonably believes that he or she may be obstructed in the exercise of those functions.
- (2) Any person whom an authorised officer believes to be capable of providing assistance in the exercise of the officer's functions under this Act may accompany the officer and take all reasonable steps to assist the officer in the exercise of the officer's functions.
- (3) Nothing in subsection (1) is to be taken to limit the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

239 Authority may obtain documents from certain registries (cf 1989 s 22)

- (1) The Authority is entitled, for the purpose of exercising its functions:
- (a) to inspect or copy, or take extracts from, any documents held in the registry of the Commission, and
 - (b) to inspect or copy, or take extracts from, such documents held in the registry of the District Court as relate to its residual jurisdiction under Division 8A of Part 3 of the *District Court Act 1973*.
- (2) The Registrar of the District Court and the Registrar of the Commission are required to give all necessary assistance to the Authority to enable it to exercise its powers under this section.
- (3) The Commission may, in respect of any information obtained by the Authority from the Registrar under this section, order that the information is not to be used in any proceedings, or any specified proceedings, before the Commission.
- (4) The regulations may make provision for or with respect to the keeping of statistics or other information at the registry of the Commission, or (in relation to its residual jurisdiction under Division 8A of Part 3 of the *District Court Act 1973*) at the registry of

the District Court, and the supply of the statistics or information to the Authority.

- (5) In this section, a reference to the Authority is taken to include a reference to the Nominal Insurer.

240 Personal liability (cf 1989 s 23)

- (1) In this section:

body means the Authority, the Board of Directors, the Investment Board, a committee of the Board of Directors or of the Investment Board, the Council or a committee of the Council.

- (2) A matter or thing done by a body, by a member of a body or by a person acting under the direction of a body does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of a body or a person so acting personally to any action, liability, claim or demand.

241 Seal of Authority (cf 1989 s 24)

- (1) The seal of the Authority is to be kept by the Chief Executive Officer and may be affixed to a document only:
- (a) in the presence of the Chief Executive Officer or a member of staff authorised for the purpose by the Chief Executive Officer, and
 - (b) with an attestation by the signature of the Chief Executive Officer or that member of staff of the fact of the affixing of the seal.
- (2) (Repealed)

242 Recovery of money by Authority

Any charge, fee or money due to the Authority, or to the Crown in respect of the activities of the Authority, may be recovered by the Authority as a debt in a court of competent jurisdiction if no express provision is otherwise made for its recovery.

243 Disclosure of information (cf 1926 s 66F; 1987 s 276)

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) in accordance with section 72 (Inspection of relevant claims information etc), or

- (e) in accordance with the requirement imposed under the *Ombudsman Act 1974*, or
- (f) with other lawful excuse.

Maximum penalty: 50 penalty units or imprisonment for 2 years.

- (2) The Authority may disclose any information obtained in connection with the administration or execution of this Act to:
 - (a) the Council (including a committee of the Council) and any consultative body established by the Authority for the purposes of the workers compensation legislation, and
 - (b) the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*, and
 - (c) the Insurance and Superannuation Commissioner under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth, and
 - (d) any other person or body prescribed by the regulations for the purposes of this paragraph.
- (3) In this section, **this Act** includes the 1987 Act and the former 1926 Act.
- (4) In this section, a reference to the Authority is taken to include a reference to the Nominal Insurer.

243A Information gathering and use by Authority and Nominal Insurer

- (1) The Authority and the Nominal Insurer may collect, analyse, use and disclose data, statistics and other information relating to any of the following:
 - (a) claims for compensation and work injury damages,
 - (b) the functions, activities and performance of scheme agents, specialised insurers and self-insurers,
 - (c) policies of insurance,
 - (d) the investment of assets of the Insurance Fund.
- (2) For that purpose, the Authority and the Nominal Insurer may obtain information from scheme agents, specialised insurers, self-insurers and from any other source.
- (3) This section extends to authorise the Authority and the Nominal Insurer to collect and analyse, and to disclose to such persons or classes of persons as may be prescribed by the regulations, personal information about the health of an individual, but only in relation to (or in connection with) the matters referred to in subsection (1).
- (4) Section 243 does not prevent the disclosure of information in accordance with this

section.

244 Offences by corporations (cf 1926 s 68 (3); 1987 s 277)

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, the 1987 Act or a regulation under those Acts, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the person's knowledge, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act, the 1987 Act or the regulations under those Acts.

245 Proceedings for offences (cf 1926 s 68; 1987 s 278)

- (1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts are to be dealt with summarily:
 - (a) before the Local Court, or
 - (b) before the Industrial Relations Commission in Court Session.
- (2) The maximum monetary penalty that may be imposed in those proceedings by the Local Court is 200 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is the lesser.
- (3) The maximum penalty that may be imposed in those proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.
- (4) The provisions of section 197 of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from, and the stating of a case by, the Local Court to the Industrial Relations Commission in Court Session apply to proceedings before the Local Court for offences against this Act, the 1987 Act or the regulations under those Acts.
- (5) Proceedings for an offence against this Act, the 1987 Act or the regulations under

those Acts may be instituted by (but not only by) the Authority.

245A Evidence—criminal proceedings under WHS legislation

- (1) An admission of liability by an employer in common law work injury proceedings against the employer cannot be relied upon in any proceedings against the employer for an offence under work health and safety legislation.
- (2) An admission of guilt by an employer in proceedings against the employer for an offence under work health and safety legislation may be relied upon in common law work injury proceedings against the employer.
- (3) In this section:

common law work injury proceedings means proceedings for the recovery of damages to which Division 3 (Modified common law damages) of Part 5 of the 1987 Act applies.

246 Penalty notices (cf 1987 s 278A)

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the 1987 Act (or the regulations under those Acts), being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **authorised officer** means a person declared by the regulations to be an authorised officer for the purposes of this section.

247 Time for instituting proceedings (cf 1926 s 18 (5); 1987 s 279)

- (1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.
- (2) Any such proceedings may be instituted by (but not only by) the Authority.
- (3) Despite subsection (1), proceedings for an offence under section 144 of this Act or 155 of the 1987 Act (Compulsory insurance for employers) may be instituted by the Authority:
 - (a) within 2 years after the act or omission alleged to constitute the offence, or
 - (b) in a case where the Authority first becomes aware of the act or omission alleged to constitute the offence because of a claim made by a worker of the employer concerned under Division 6 of Part 4 of the 1987 Act or Part 9 of Chapter 5 of this Act—within 6 months after the Authority pays compensation or makes any other payment to the worker in respect of the claim under that Division of the 1987 Act or that Part of this Act or the Commission determines the claim (whichever occurs later),

whichever provides the longer time for proceedings to be instituted.

248 Regulations (cf 1926 s 66; 1987 s 280)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may be made under this Act for or with respect to any matter for which regulations may be made under the 1987 Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

248A Review of Act

- (1) The Independent Pricing and Regulatory Tribunal is to conduct a review of the amendments made by the [Workers Compensation Legislation Amendment Act 2001](#)

and the *Workers Compensation Legislation Further Amendment Act 2001* to determine whether the policy objectives of those amendments remain valid and whether the terms of the Workers Compensation Acts remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to the *Workers Compensation Legislation Further Amendment Act 2001*, and is to be completed by 27 April 2003.
- (3) Within 1 month of the completion of the review, the Independent Pricing and Regulatory Tribunal is to:
 - (a) cause a statement setting out the results of the review to be provided to the Minister to be laid before each House of Parliament before 27 April 2003, and
 - (b) give a copy of the review to the Council.
- (4) The Council is to cause a statement setting out its views, if any, on the review to be provided to the Minister to be laid before each House of Parliament within 1 month after the Council receives the copy of the review and before 27 April 2003.
- (5) If a House of Parliament is not sitting when a statement is sought to be laid before the House, the statement is to be presented to the Clerk of the House concerned.
- (6) The statement:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a statement published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day on the House after receipt of the statement by the Clerk.

249 Repeal of *WorkCover Administration Act 1989 No 120*

The *WorkCover Administration Act 1989* is repealed.

Chapter 7 New claims procedures

Part 1 Preliminary

250 Interpretation

(1) In this Chapter:

damages has the same meaning as in Part 5 (Common law remedies) of the 1987 Act.

existing claim means a claim for compensation that is made before the commencement of this section or a related claim that is made or entitled to be made (whether before or after the commencement of this section).

Note—

Part 18C of Schedule 6 to the 1987 Act provides for the transfer of existing claims, so that the claims transferred will be treated as new claims.

existing claim matter means any matter arising under the Workers Compensation Acts in respect of an existing claim.

insurer means a licensed insurer, specialised insurer or self-insurer, or a former licensed insurer.

new claim means any claim (made or entitled to be made) that is not an existing claim.

new claim matter means any matter arising under the Workers Compensation Acts in respect of a new claim.

related claims are claims or further claims for compensation in respect of the same injury, whether or not the claims are in respect of the same kind of compensation.

work injury damages means damages recoverable from a worker's employer in respect of:

- (a) an injury to the worker caused by the negligence or other tort of the employer, or
- (b) the death of the worker resulting from or caused by an injury caused by the negligence or other tort of the employer,

whether the damages are recoverable in an action for tort or breach of contract or in any other action, but does not include motor accident damages.

Note—

However, **work injury damages** generally extends to damages recoverable from a worker's employer in the case of an injury to a coal miner where the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (see section 3D of the [Motor Accidents Act 1988](#) and section 3B of the [Motor Accidents Compensation Act 1999](#)).

(2) In the definition of **work injury damages** in subsection (1), a reference to a worker's

employer includes a reference to:

- (a) a person who is vicariously liable for the acts of the employer, and
 - (b) a person for whose acts the employer is vicariously liable.
- (3) A claim served on an insurer in accordance with the WorkCover Guidelines or forwarded to an insurer by the employer is taken to have been made on the insurer (and to have been so made when it was made on the employer).

251 Application of Chapter

Except as otherwise specifically provided in this Chapter, this Chapter applies to and in respect of new claim matters only.

Note—

Part 18C of Schedule 6 to the 1987 Act provides for the transfer of existing claims, so that the claims transferred will be treated as new claims.

Part 2 Giving notice of injury and making a claim

Division 1 Notice of injury

252 Application of Division

This Division applies only in respect of injuries received after the commencement of this section.

253 Interpretation

Words and expressions used in this Part have the same meaning as in Part 5 (Common law remedies) of the 1987 Act.

254 Notice of injury must be given to employer

- (1) Neither compensation nor work injury damages are recoverable by an injured worker unless notice of the injury is given to the employer as soon as possible after the injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury.
- (2) The failure to give notice of injury as required by this section (or any defect or inaccuracy in a notice of injury) is not a bar to the recovery of compensation or work injury damages if in proceedings to recover the compensation or damages it is found that there are special circumstances as provided by this section.
- (3) Each of the following constitutes special circumstances:
 - (a) the person against whom the proceedings are taken has not been prejudiced in respect of the proceedings by the failure to give notice of injury or by the defect or inaccuracy in the notice,

- (b) the failure to give notice of injury, or the defect or inaccuracy in the notice, was occasioned by ignorance, mistake, absence from the State or other reasonable cause,
 - (c) the person against whom the proceedings are taken had knowledge of the injury from any source at or about the time when the injury happened,
 - (d) the injury has been reported by the employer to the Authority in accordance with this Act.
- (4) In addition, if the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, office or shop, each of the following constitutes special circumstances:
- (a) the summary referred to in section 231 has not been posted up in accordance with that section or the employer has otherwise contravened that section,
 - (b) the injury has been reported by or on behalf of the employer to an inspector of mines or an inspector under the [Work Health and Safety Act 2011](#),
 - (c) the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop.

255 How notice of injury is given

- (1) A notice of injury must state:
 - (a) the name and address of the person injured, and
 - (b) the cause of the injury (in ordinary language), and
 - (c) the date on which the injury happened.
- (2) A notice of injury may be given orally or in writing.
- (3) If there is more than one employer, a notice of injury may be given to any one of those employers.
- (4) A notice of injury is taken to have been given to an employer:
 - (a) if it is given to any person designated for the purpose by the employer, or
 - (b) if it is given to any person under whose supervision the worker is employed.
- (5) A written notice of injury may be served by delivering it to, or by sending it by post to, the residence or any place of business of the person on whom it is to be served.
- (6) If the regulations so require (and despite anything to the contrary in this section), a notice of injury must be given in the manner, and contain the particulars, prescribed by the regulations.

256 Register of injuries

- (1) A register of injuries must be kept in some readily accessible place at every mine, quarry, construction site, factory, workshop, office or shop.
- (2) A worker employed at any such mine, quarry, construction site, factory, workshop, office or shop, or any person acting on the worker's behalf, may enter in the register of injuries particulars of any injury received by the worker.
- (3) The regulations may prescribe the form of a register of injuries and the particulars to be entered in the register.
- (4) If particulars of an injury are duly entered in a register of injuries as soon as possible after an injury happened, the entry is sufficient notice of the injury for the purposes of this Act.
- (5) If subsection (1) is contravened, the manager of the mine or quarry, or the occupier of the construction site, factory, workshop, office or shop, is guilty of an offence.

Maximum penalty: 50 penalty units.

257 Notice of incapacity, medical etc treatment and damage to property

- (1) The provisions of this Part apply with respect to:
 - (a) the giving of notice of incapacity resulting from injury that happens after the worker leaves the employment in which the worker was at the time of the injury, and
 - (b) the giving of notice of any medical or related treatment, hospital treatment, workplace rehabilitation service or ambulance service to which Division 3 of Part 3 of the 1987 Act applies, and
 - (c) the giving of notice of any damage to property to which Division 5 of Part 3 of the 1987 Act applies,

in the same way as those provisions apply to notice of injury.

- (2) The particulars required to be given in any such notice are (subject to the regulations) reasonable particulars of the incapacity, of the treatment or service or of the damage to property.

258 Offence

A person must not make a statement in a notice given by the person under this Division knowing that the statement is false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

Division 2 Making a claim for compensation or damages

259 Application of Division

- (1) This Division applies to the making of a claim after the commencement of this section (even if the injury concerned was received before the commencement of this section).
- (2) However, this Division does not apply to the making of a claim for work injury damages if court proceedings to recover the work injury damages concerned were commenced before the commencement of this section.

260 How a claim is made

- (1) A claim must be made in accordance with the applicable requirements of the WorkCover Guidelines.
- (2) The WorkCover Guidelines may make provision for or with respect to the following matters in connection with the making of a claim:
 - (a) the form in which a claim is to be made,
 - (b) the manner in which a claim is to be made,
 - (c) the means by which a claim may be made,
 - (d) the information that a claim is to contain,
 - (e) requiring specified documents and other material to accompany or form part of a claim,
 - (f) such other matters as may be prescribed by the regulations.
- (3) Without limiting this section, the WorkCover Guidelines can require that a claim be accompanied by a form of authority signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or workplace rehabilitation services to the claimant in connection with the injury to which the claim relates to give the insurer concerned information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.
- (4) The WorkCover Guidelines can also provide for any of the following matters in connection with the making of a claim:
 - (a) waiving the requirement for the making of a claim in specified cases (such as cases in which notice of injury has been given or provisional weekly payments of compensation have commenced),
 - (b) providing for the time at which a claim is taken to have been made in any case in which the requirement for the making of a claim has been waived,

- (c) providing for the time when a claim is taken to have been made in a case in which requirements of the Guidelines with respect to the making of the claim have been complied with at different times.
- (5) The failure to make a claim as required by this section is not a bar to the recovery of compensation or work injury damages if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause or because of a minor defect in form or style.
- (6) Except to the extent that the WorkCover Guidelines otherwise provide, an insurer can waive a requirement of those Guidelines with respect to the making of a claim on the insurer.
- (7) The WorkCover Guidelines can require an insurer to notify a worker of any failure by the worker to comply with a requirement of those Guidelines with respect to the making of a claim, and can provide for the waiver of any such failure by the worker if the insurer fails to give the required notification.

261 Time within which claim for compensation must be made

- (1) Compensation cannot be recovered unless a claim for the compensation has been made within 6 months after the injury or accident happened or, in the case of death, within 6 months after the date of death.
- (2) If a claim for compensation was made by an injured worker within the period required by this section, this section does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker's claim related.
- (3) For the purposes of this section, a person is considered to have made a claim for compensation when the person makes any claim for compensation in respect of the injury or death concerned, even if the person's claim did not relate to the particular compensation in question.
- (4) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either:
 - (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or
 - (b) the claim is not made within that 3 years but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.
- (5) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if the insurer concerned determines to accept the claim outside that period. An insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate)

except with the approval of the Authority.

- (6) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of this section taken to have been received when the worker first became so aware.
- (7) If death results from an injury and a person who is entitled to claim compensation in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of this section to a claim by that person, taken to be the date that the person became so aware.
- (8) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries), a claim is for the purposes of this section taken to have been made when a claim is made on any one of those persons.
- (9) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of this section as the making of a claim for compensation in respect of the injury.

262 Time within which claim for work injury damages must be made

Court proceedings for the recovery of work injury damages cannot be commenced until a claim for the damages has been made.

263 Lump sum compensation claims to be made at same time

- (1) All claims for permanent impairment compensation or pain and suffering compensation in respect of an injury must, as far as practicable, be made at the same time.
- (2) A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of proceedings) unless there is a good reason for the claim being made later.

264 Action by employer in respect of claims, injuries and compensation

- (1) An employer (not being a self-insurer) who receives a claim or any other documentation in respect of a claim must, within 7 days after receiving the claim or documentation, forward it to the employer's insurer.

Maximum penalty: 50 penalty units.

- (2) An employer who receives a request from the employer's insurer for specified information in respect of a claim or notified injury, or documentation in respect of a

claim or notified injury, must, within 7 days after receipt of the request, furnish the insurer with such of the specified information or documentation as is in the employer's possession or reasonably obtainable by the employer.

Maximum penalty: 50 penalty units.

- (3) An employer who has received compensation money under this Act from an insurer must, as soon as practicable, pay the money to the person entitled to the compensation.

Maximum penalty: 50 penalty units.

- (4) A person is not guilty of an offence for a failure to comply with a provision of this section if there was a reasonable excuse for that failure.

- (5) In this section:

employer's insurer means the insurer who the employer believes is liable to indemnify the employer in respect of the claim or injury concerned.

notified injury means an injury to a worker notified to an insurer.

Part 3 Dealing with claims

Division 1 Special provisions for commencement of weekly payments after initial notification of injury

265 Application of Division

This Division applies in respect of the initial notification of an injury after the commencement of this section (even if the injury concerned was received before the commencement of this section).

266 Meaning of initial notification of injury

In this Part, ***initial notification*** to an insurer of an injury to a worker means the first notification of the injury that is given to the insurer, in the manner and form required by the WorkCover Guidelines, by the worker or the employer or by some other person (for example, a medical practitioner) acting for or on behalf of the worker or the employer.

267 Duty to commence weekly payments following initial notification of injury

- (1) Provisional weekly payments of compensation by an insurer are to commence within 7 days after initial notification to the insurer of an injury to a worker, unless the insurer has a reasonable excuse for not commencing those weekly payments.
- (2) A person does not have a reasonable excuse for not commencing those weekly payments unless the person has an excuse that the WorkCover Guidelines provide is a reasonable excuse.

- (3) The payment of provisional weekly payments of compensation under this section is on the basis of the provisional acceptance of liability by the insurer for a period of up to 12 weeks determined by the insurer having regard to the nature of the injury and the period of incapacity.
- (4) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act.
- (5) An insurer who fails to commence weekly payments of compensation as required by this section is guilty of an offence.

Maximum penalty: 50 penalty units.

268 Insurer must notify worker of reasonable excuse for not commencing weekly payments

If an insurer does not commence weekly payments of compensation because the insurer has a reasonable excuse for not doing so, the insurer must within 7 days after receiving the initial notification of injury give the worker notice in writing that the insurer has a reasonable excuse for not commencing weekly payments of compensation and include in that notice:

- (a) details of that reasonable excuse, and
- (b) a statement that the worker is entitled to make a claim for compensation and that the claim will be determined within 21 days, and
- (c) details of how that claim can be made.

Maximum penalty: 50 penalty units.

269 Notice to be given of commencement of weekly payments

As soon as practicable after an insurer commences weekly payments of compensation under this Division, the insurer must give the worker a notice in writing notifying the worker that:

- (a) weekly payments of compensation to the worker have commenced on the basis of provisional acceptance of liability by the insurer, and
- (b) the payment of weekly payments of compensation to the worker will continue for a period (up to a maximum of 12 weeks) determined by the insurer having regard to the nature of the injury and the period of incapacity, and
- (c) the insurer will develop an injury management plan for the worker (if required to do so by Chapter 3), and
- (d) the worker is entitled to make a claim for compensation (and include details of how that claim can be made).

270 Obligations of worker to provide authorisations and medical evidence

- (1) An insurer who commences weekly payments of compensation under this Division may require the worker to provide the insurer with:
 - (a) a medical certificate certifying as to the worker's incapacity for work, and
 - (b) a form of authority signed by the worker authorising a provider of medical or related treatment, hospital treatment or workplace rehabilitation services to the worker in connection with the injury to give the insurer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the injury.
- (2) The insurer may discontinue weekly payments of compensation under this Division if the worker fails to comply with a requirement under this section within 7 days after it is communicated to the worker by the insurer.

271 Liability to make weekly payments not affected by making of claim

- (1) An obligation of an insurer to make weekly payments of compensation pursuant to the provisional acceptance of liability under this Division ceases if the insurer disputes liability to make those payments.

Note—

Section 74 requires notice of a dispute to be given.

- (2) Otherwise, a liability to make weekly payments of compensation pursuant to the acceptance of liability on a provisional basis under this Division is not affected by the making of a claim for compensation.

272 Recovery by insurer

- (1) If an insurer pays any compensation under this Division and another insurer or another employer accepts liability to pay compensation to the worker in respect of the injury concerned, the insurer is entitled to recover the compensation so paid as a debt from that other insurer or other employer.
- (2) Any amount so recoverable is taken to have been payable by the other insurer or other employer as compensation to the injured worker.

273 Provision for recovery of excess for provisional payments

Section 160 (Recovery of excess from employer) of the 1987 Act and section 152 of this Act apply to and in respect of the payment of provisional weekly payments of compensation under this Division as if the payment were payable under a weekly compensation claim as referred to in those sections.

Division 2 Claims for weekly payments

274 Liability to be accepted and weekly payments commenced within 21 days

- (1) Within 21 days after a claim for weekly payments is made the person on whom the claim is made must determine the claim by:
 - (a) accepting liability and commencing weekly payments, or
 - (b) disputing liability.

Note—

Section 283 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given.

- (2) An insurer can accept liability for weekly payments on a provisional basis for a period of up to 12 weeks determined by the insurer having regard to the nature of the injury and the period of incapacity.
- (3) The acceptance of liability on a provisional basis operates to extend the period within which the claim must be determined until the end of the period for which liability has been accepted on a provisional basis.

Note—

This allows the insurer more time to determine liability while providing for the commencement of weekly payments on the basis of the provisional acceptance of liability.

- (4) Liability cannot be accepted on a provisional basis under this section if the insurer is already making weekly payments on the basis of the provisional acceptance of liability under Division 1 when the claim for weekly payments is made.
- (5) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act.
- (6) An employer is not required to determine a claim as provided by this section if:
 - (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

Note—

A claim forwarded to the insurer is taken to have been made on the insurer.

275 Duty to commence provisional weekly payments if claim is first notification of injury

- (1) If the claim for weekly payments is the first notification that an insurer has received of the injury to the worker, section 267 (Duty to commence weekly payments following initial notification of injury) applies to require the commencement of provisional weekly payments of compensation within 7 days after the claim is made.

- (2) The provisional acceptance of liability pursuant to the commencement of provisional weekly payments of compensation under that section operates to extend the period within which the claim must be determined for the purposes of this Division until the end of the period for which liability has been provisionally accepted.

Note—

This allows the insurer more time to determine liability while providing for the commencement of weekly payments on the basis of the provisional acceptance of liability.

276 Continuation of provisional payments started before claim made

- (1) If an insurer is already making provisional weekly payments when the claim for weekly payments is made (on the basis of the provisional acceptance of liability before the claim was made), the period within which liability for weekly payments must be determined is extended to the end of the period for which liability has been provisionally accepted.
- (2) If the period for which liability has been provisionally accepted ends before the end of the period within which liability for weekly payments must be determined, the insurer may continue to make weekly payments on the basis of the provisional acceptance of liability until the end of that period.

277 Provision for recovery of excess for provisional payments

Section 160 (Recovery of excess from employer) of the 1987 Act and section 152 of this Act apply to and in respect of the payment of provisional weekly payments of compensation under this Division as if the payment were payable under a weekly compensation claim as referred to in those sections.

278 Early acceptance of liability not prevented

This Division does not prevent the acceptance of liability and the commencement of weekly payments before the end of the provisional liability period.

Division 3 Claims for medical expenses

279 Liability to be accepted within 21 days

- (1) Within 21 days after a claim for medical expenses compensation is made the person on whom the claim is made must determine the claim by accepting or disputing liability.

Note—

Section 283 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given.

- (2) An employer is not required to determine a claim as provided by this section if:
 - (a) the employer has duly forwarded the claim to an insurer who the employer

believes is liable to indemnify the employer in respect of the claim, and

- (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

Note—

A claim forwarded to the insurer is taken to have been made on the insurer.

280 Provisional acceptance of liability

- (1) An insurer can accept liability for medical expenses compensation on the basis of the provisional acceptance of liability for an amount of up to \$5,000 or such other amount as may be specified by the WorkCover Guidelines.
- (2) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act.

Division 4 Claims for lump sum compensation and work injury damages

280A Claim for lump sum compensation a pre-condition to damages claim

A claim for work injury damages in respect of an injury cannot be made unless a claim for lump sum compensation in respect of the injury is made before or at the same time as the claim for work injury damages.

280B Lump sum compensation to be paid before damages recovered

- (1) An injured worker cannot recover damages in respect of an injury from the employer liable to pay compensation under this Act in respect of the injury unless and until any permanent impairment compensation and pain and suffering compensation to which the worker is entitled in respect of the injury has been paid.
- (2) This section does not prevent a claim for damages from being made before any permanent impairment compensation and pain and suffering compensation to which the worker is entitled in respect of the injury has been paid.

Note—

This section ensures that an injured worker receives the compensation to which the worker is entitled before damages are recovered (because section 151A of the 1987 Act would prevent the payment of compensation after damages are recovered).

281 Liability to be accepted and settlement offer made

- (1) The person on whom a claim for lump sum compensation or work injury damages is made must, within the time required by this section, determine the claim by:
 - (a) accepting liability and making a reasonable offer of settlement to the claimant, or

(b) disputing liability.

(2) A claim must be so determined:

- (a) within 1 month after the degree of permanent impairment first becomes fully ascertainable, as agreed by the parties or as determined by an approved medical specialist, or
- (b) within 2 months after the claimant has provided to the insurer all relevant particulars about the claim,

whichever is the later.

Note—

Section 283 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given. If an offer of settlement is not made as required by this section, the claim can be referred for assessment as soon as the time for making the offer has expired.

- (2A) The determination of a claim cannot be delayed beyond 2 months after the claimant has provided to the insurer all relevant particulars about the claim (that delay being on the basis that the degree of permanent impairment of the injured worker resulting from the injury is not fully ascertainable), unless the insurer has within that 2-month period notified the claimant that the degree of permanent impairment of the injured worker resulting from the injury is not fully ascertainable.
- (2B) When the person on whom a claim is made accepts or disputes liability, the person must notify the claimant as to whether or not the person accepts that the degree of permanent impairment of the injured worker resulting from the injury is sufficient for an award of damages.
- (3) An offer of settlement is to specify an amount of compensation or damages or a manner of determining an amount of compensation or damages.
- (4) If an offer of settlement is made on the basis that the insurer accepts only partial liability for the claim, the offer is to include details sufficient to ascertain the extent to which liability is accepted.
- (5) An employer is not required to determine a claim as provided by this section if:
 - (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

Note—

A claim forwarded to the insurer is taken to have been made on the insurer.

(6) This section does not apply to a claim for work injury damages in respect of the death

of a person, except as the WorkCover Guidelines may otherwise provide.

282 Relevant particulars about a claim

- (1) The **relevant particulars about a claim** are full details of the following, sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement on the claim:
 - (a) the injury received by the claimant,
 - (b) all impairments arising from the injury,
 - (c) any previous injury, or any pre-existing condition or abnormality, to which any proportion of an impairment is or may be due (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act),
 - (d) in the case of a claim for work injury damages, details of the economic losses that are being claimed as damages and details of the alleged negligence or other tort of the employer,
 - (e) information relevant to a determination as to whether or not the degree of permanent impairment resulting from the injury will change,
 - (f) in addition, in the case of a claim for lump sum compensation, details of all previous employment to the nature of which the injury is or may be due,
 - (g) such other matters as the WorkCover Guidelines may require.
- (2) If the employer requires the claimant to submit himself or herself for examination by a medical practitioner provided and paid for by the employer, the claimant is not considered to have provided all relevant particulars about the claim until the worker has complied with that requirement.
- (3) The insurer is not entitled to delay the determination of a claim under this Division on the ground that any particulars about the claim are insufficient unless the insurer requested further relevant particulars within 2 weeks after the claimant provided particulars.
- (4) In this section, **injury** is not limited by the meaning given by section 4.

Division 5 Enforcement of claims obligations

283 Offence of failing to determine a claim for compensation

- (1) A person who fails to determine a claim as and when required by this Part is guilty of an offence unless the person has a reasonable excuse for the failure.

Maximum penalty: 50 penalty units.

- (2) A person does not have a reasonable excuse for a failure for the purposes of this section unless the person has an excuse that the WorkCover Guidelines provide is a reasonable excuse.
- (3) A person who has or anticipates having a reasonable excuse for the purposes of this section must notify the claimant in writing as soon as practicable.

284 Insurer liable to pay fee if claim goes to assessment

- (1) If it appears to the Registrar that an insurer has:
 - (a) failed without reasonable excuse to determine a claim as and when required by this Part, or
 - (b) referred a matter that the insurer knows is not a genuine dispute for the purpose of delaying, without good cause, the determination of a claim,and the claim concerned is referred to the Commission for determination of a dispute or for assessment, the Registrar is to direct the insurer to pay the administration fee provided for by this section.
- (2) The administration fee is a fee of \$250 or such other amount as may be prescribed by the regulations and is payable to the Authority for payment into the WorkCover Authority Fund.
- (3) (Repealed)
- (4) An administration fee payable under this section is recoverable as a debt due to the Authority.
- (5) A person does not have a reasonable excuse for a failure to determine a claim as and when required by this Part unless the person has an excuse that the WorkCover Guidelines provide is a reasonable excuse.
- (6) The Registrar is to notify the Authority of a direction under this section.

285 Offence of referring non-genuine disputes

A person on whom a claim is made must not refer a matter that the person knows is not a genuine dispute for the purpose of delaying, without good cause, the determination of the claim.

Maximum penalty: 50 penalty units.

286 Partial acceptance of liability

- (1) Liability for compensation can be partially accepted and partially disputed and references in this Part to accepting liability and disputing liability are to be interpreted accordingly.

- (2) A person who accepts liability for compensation on the basis of the partial acceptance of liability (including acceptance on a provisional basis) must, when notifying the claimant of the partial acceptance of liability, include details sufficient to ascertain the extent to which liability is accepted.

Part 4 Compensation dispute determination

287 Disputes to which Part applies

- (1) This Part applies to a dispute in connection with a claim for compensation between:
 - (a) the person who makes the claim and a person on whom the claim is made, or
 - (b) the employer on whom the claim is made and the insurer on whom the claim is made.
- (2) This Part extends to a dispute that concerns failure to commence provisional weekly payments of compensation as required by Division 1 of Part 3 (even though no claim has been made for that compensation) and so extends as if:
 - (a) a reference in this Part to weekly payments included a reference to provisional weekly payments, and
 - (b) initial notification of injury (as defined in Part 3) constituted a claim for the compensation.

287A Reviews prior to referral

- (1) A worker may request an insurer to review a claim after the insurer has disputed the claim or any aspect of the claim. A request may be made at any time before the dispute is referred to the Registrar for determination by the Commission.
- (2) On such a request, the insurer must review the claim not later than 14 days after the request is made and may accept the claim or, if the insurer determines that it disputes liability in respect of the claim or any aspect of the claim, must give notice of the dispute to the claimant.
- (3) The notice must contain the matters required to be set out under section 74 in a notice of a dispute and may contain such other information as the regulations may prescribe.
- (4) The notice is to comply with the other requirements for a notice given under section 74.

288 Referral of disputes to Commission

- (1) Any party to a dispute about a claim may refer the dispute to the Registrar for determination by the Commission. However, if the dispute is about lump sum compensation, only the claimant can refer the dispute.

Note—

A medical dispute concerning the claim can also be referred for assessment under Part 7 (Medical assessment).

- (2) The Registrar may not accept a dispute for referral for determination to the Commission if the dispute is a dispute that, under this Part, cannot be referred for determination by the Commission.

289 Restrictions as to when dispute can be referred to Commission

- (1) A dispute about a claim for weekly payments cannot be referred for determination by the Commission unless the person on whom the claim is made:

- (a) disputes liability for the claim (wholly or in part), or
- (b) fails to determine the claim as and when required by this Act.

Note—

The determination of a claim requires the commencement of weekly payments of compensation. The failure to commence weekly payments without having disputed liability constitutes a failure to determine the claim.

- (2) A dispute about a claim for medical expenses compensation cannot be referred for determination by the Commission unless the person on whom the claim is made:

- (a) disputes liability for the claim (wholly or in part), or
- (b) fails to determine the claim as and when required by this Act.

- (2A) Subsection (2) does not prevent the referral to the Commission of a dispute about whether any proposed treatment or service is reasonably necessary as a result of an injury.

Note—

Section 60 of the 1987 Act provides for such a dispute to be referred to the Commission.

- (3) A dispute about a claim for lump sum compensation cannot be referred for determination by the Commission unless the person on whom the claim is made:

- (a) wholly disputes liability for the claim, or
- (b) made an offer of settlement to the claimant pursuant to the determination of the claim as and when required by this Act and 1 month has elapsed since the offer was made, or
- (c) fails to determine the claim as and when required by this Act.

Note—

The determination of a claim requires the making of a reasonable offer of settlement (if liability is wholly or

partly accepted). Failure to make a reasonable offer of settlement constitutes a failure to determine the claim.

- (4) A dispute about a claim for compensation under Division 5 (Compensation for property damage) of Part 3 of the 1987 Act cannot be referred for determination by the Commission until:
 - (a) 28 days after the claim for compensation is made, or
 - (b) the person on whom the claim is made disputes liability for the claim (wholly or in part),whichever happens first.
- (5) The Commission may not hear or otherwise deal with any dispute if this section provides that the dispute cannot be referred for determination by the Commission.

289A Further restrictions as to when a dispute can be referred to Commission

- (1) A dispute cannot be referred for determination by the Commission unless it concerns only matters previously notified as disputed.
- (2) A matter is taken to have been previously notified as disputed if:
 - (a) it was notified in a notice of dispute under this Act or the 1987 Act after a claim was made or a claim was reviewed, or
 - (b) it concerns matters, raised in writing between the parties before the dispute is referred to the Registrar for determination by the Commission, concerning an offer of settlement of a claim for lump sum compensation.
- (3) The Commission may not hear or otherwise deal with any dispute if this section provides that the dispute cannot be referred for determination by the Commission. However, the Commission may hear or otherwise deal with a matter subsequently arising out of such a dispute.
- (4) Despite subsection (3), a dispute relating to previously unnotified matters may be heard or otherwise dealt with by the Commission if the Commission is of the opinion that it is in the interests of justice to do so.

290 Information exchange between parties

- (1) When a dispute is referred for determination by the Commission, each party to the dispute must provide to the other party and to the Registrar, as and when required to do so by the Rules, such information and documents as the Rules require.
- (2) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) Any document or information that a party to a dispute has failed to provide in contravention of this section cannot be admitted on behalf of the party in proceedings on the dispute before the Commission.
- (4) Subsections (2) and (3) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.
- (5) The regulations may provide for exceptions to subsection (3). In particular, the regulations may authorise the Commission to permit the admission in proceedings before the Commission in specified circumstances of a document or information that would otherwise be not admissible under that subsection.
- (6) If the Registrar is satisfied that an applicant has failed without reasonable excuse to comply with a requirement of this section, the Registrar may do any one or more of the following:
 - (a) refer the matter to the Authority,
 - (b) note the matter in a certificate issued by the Registrar in respect of the dispute (together with details of the documents or information to which the failure relates),
 - (c) order that a specified amount or proportion of the costs that would otherwise be recoverable by the party in connection with the referral of the matter to the Commission are not recoverable.

291 Duties of insurer when dispute referred to Commission

When the worker refers a dispute with an insurer for determination by the Commission, the insurer must review the claim to which the dispute relates as required by the WorkCover Guidelines.

292 Expedited assessment

When a dispute is referred for determination by the Commission, the Registrar may deal with the dispute under Part 5 (Expedited assessment) if the dispute is one to which that Part applies, and may defer determination of a dispute by the Commission while the dispute is being dealt with under Division 2 or 3 of that Part.

293 Medical assessment

- (1) When a dispute referred for determination by the Commission concerns a medical dispute within the meaning of Part 7, the Registrar may, in accordance with this section, refer the medical dispute for medical assessment under Part 7, and defer determination of the dispute by the Commission pending the outcome of that medical assessment.

- (2) If the dispute concerns the degree of permanent impairment (including hearing loss) of an injured worker, the Registrar must refer that aspect of the dispute for assessment under Part 7 and defer determination of the dispute by the Commission pending the outcome of that medical assessment.
- (3) The Registrar may not refer for assessment:
 - (a) a medical dispute concerning permanent impairment (including hearing loss) of an injured worker where liability is in issue and has not been determined by the Commission, or
 - (b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

294 Certificate of Commission's determination

- (1) If a dispute is determined by the Commission, the Commission must as soon as practicable after the determination of the dispute issue the parties to the dispute with a certificate as to the determination.
- (2) A brief statement is to be attached to the certificate setting out the Commission's reasons for the determination.
- (3) If the Registrar is satisfied that a certificate as to a determination or a statement attached to the certificate contains an obvious error, the Registrar may issue, or approve of an Arbitrator issuing, a replacement certificate or statement to correct the error.

294A Rules and regulations concerning medical evidence

- (1) The Rules and the regulations may make provision for or with respect to:
 - (a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given in evidence before the Commission (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence), and
 - (b) the disclosure of medical reports (including X-rays and the results of other tests) to approved medical specialists (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report), and
 - (c) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular, limiting the number of medical reports that may be admitted in evidence in proceedings before the Commission, and
 - (d) limiting the number of expert witnesses that may be called by any party and

otherwise restricting the calling of expert witnesses by a party.

- (2) This section only authorises Rules in connection with proceedings before the Commission.

Part 5 Expedited assessment

Division 1 Preliminary

295 Disputes to which Part applies

- (1) This Part applies to a dispute referred to the Commission that concerns:
 - (a) weekly payments of compensation or medical expenses compensation, or
 - (b) failure by an insurer, employer or worker to comply with a requirement imposed by or under Chapter 3 (Workplace injury management).
- (2) This Part extends to a dispute that concerns failure to commence provisional weekly payments of compensation as required by Division 1 of Part 3 (even though no claim has been made for that compensation) and so extends as if:
 - (a) a reference in this Part to weekly payments included a reference to provisional weekly payments, and
 - (b) initial notification of injury (as defined in Part 3) constituted a claim for the compensation.

296 Exercise of functions of Registrar

- (1) The Registrar may exercise functions under this Part with respect to a dispute on the basis of the documents and information provided to the Registrar when the dispute was referred for determination by the Commission.
- (2) Except as provided by this Part, the exercise of any function of the Registrar under Division 2 or 3 of this Part is not subject to appeal or review.

Division 2 Disputes concerning weekly payments or medical expenses

297 Directions for interim payment of weekly payments or medical expenses compensation

- (1) When a dispute to which this Part applies concerns weekly payments of compensation or medical expenses compensation, the Registrar can direct the person on whom the claim is made to pay the compensation concerned. Such a direction is referred to in this Part as an *interim payment direction*.
- (2) An interim payment direction for payment of medical expenses compensation cannot be for an amount of more than \$7,500 or such other amount as may be prescribed by

the regulations.

Note—

The amount of \$7,500 is subject to adjustment under Division 6 of Part 3 of the 1987 Act.

- (3) The Registrar is to presume that an interim payment direction for weekly payments of compensation is warranted unless it appears to the Registrar that:
 - (a) the claim concerned has minimal prospects of success, or
 - (b) the worker has returned to work, or
 - (c) the injury was not reported by the worker as required by section 44 (Early notification of workplace injury), or
 - (d) insufficient medical evidence is available concerning the period of incapacity of the worker, or
 - (e) circumstances exist that are prescribed by the regulations as circumstances in which it is not to be presumed that such a direction is warranted.
- (4) If an injury management plan for the worker is in place or the insurer has accepted that the worker has received an injury (as defined in this Act), the Registrar is to presume that an interim payment direction for medical expenses compensation is warranted if satisfied that the treatment or service to which the compensation relates is reasonably necessary:
 - (a) to prevent deterioration of the worker's condition, or
 - (b) to promote an early return to work, or
 - (c) to relieve significant pain or discomfort, or
 - (d) for such other reason as may be prescribed by the regulations.
- (5) Subsections (3) and (4) do not limit the circumstances in which an interim payment direction can be given.
- (6) An interim payment direction can be given subject to conditions.
- (7) A further interim payment direction or directions can be given after the expiry of any earlier direction.

298 Period for which interim payment of weekly payments can be directed

- (1) An interim payment direction (or further interim payment direction) can direct the person on whom the claim is made to pay weekly payments of compensation for a period that does not exceed 12 weeks.

Note—

The 12-week limit applies to each direction or further direction.

- (2) An interim payment direction can direct payment of weekly payments during a period that is before the direction is given, but that period must not exceed 10 weeks.

299 Revocation of interim payment direction

- (1) The Registrar can revoke an interim payment direction at any time.
- (2) When an interim payment direction is revoked, the obligation to make payments under the direction ceases.
- (3) The revocation of an interim payment direction does not affect the requirement to make payments before the revocation.

300 Offence of failure to comply with interim payment direction

A person who fails to comply with an interim payment direction is guilty of an offence.

Maximum penalty: 50 penalty units.

301 Effect of payment under interim payment direction

- (1) The payment of compensation in accordance with an interim payment direction is not an admission of liability by the insurer or employer.
- (2) An insurer can continue to pay compensation on the basis of the provisional acceptance of liability after the period for which payment is required by an interim payment order. The acceptance of liability on a provisional basis is not an admission of liability.

302 Rules relating to interim payment directions

The giving of interim payment directions by the Registrar is subject to relevant provisions of the Rules relating to those directions.

303 Commission can give interim payment direction

The Commission has and may exercise any function of the Registrar under this Division, in connection with a dispute referred to the Commission for determination.

304 Recovery of payments

If the Commission subsequently determines that a person is not liable to make the weekly payments of compensation that have been paid in accordance with an interim payment direction, the following provisions apply:

- (a) the worker or other person who received those payments is not required to refund those payments unless the Commission otherwise orders under paragraph (b),
- (b) if the Commission is satisfied that the claim for compensation was wholly or partly

fraudulent or made without proper justification, the Commission may order the worker or other person concerned to refund the whole or a specified part of those payments,

- (c) the Commission may (instead of making an order for a refund) order any other person whom it determines was liable for the whole or any part of those payments to reimburse the person who made those payments,
- (d) those payments are to be excluded from any determination of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.

Division 2A Disputes concerning past weekly payments

304A Disputes to which Division applies

- (1) This Division applies in respect of a dispute that concerns weekly payments of compensation if the payments are for a period (not exceeding 12 weeks) before the dispute is referred to the Commission, being a period in respect of which an interim payment direction under this Part may not be made.
- (2) A dispute that also relates to medical expenses may be dealt with partly under this Division (in relation to weekly payments) and partly under Division 2 (in relation to medical expenses).

304B Registrar may deal with dispute

- (1) The Registrar may determine the dispute instead of the Commission.
- (2) For the purposes of determining the dispute and subject to the regulations, the Registrar has all the functions of the Commission constituted by an Arbitrator under the Workers Compensation Acts and any determination of the Registrar is taken to be the determination of the Commission constituted by an Arbitrator.
- (3) This Division does not affect any jurisdiction of the Commission to determine a dispute involving weekly payments of compensation.
- (4) To avoid doubt, the Registrar may, under section 371, delegate a function conferred on the Registrar under subsection (1) or (2).

Division 3 Disputes about non-compliance with Chapter 3

305 Disputes to which Division applies

This Division applies in respect of a dispute that concerns a failure by a party to the dispute to comply with an obligation imposed by or under Chapter 3.

306 Ways in which dispute can be dealt with

The Registrar may deal with the dispute:

- (a) by conciliating in connection with the dispute (to bring the parties to agreement having proper regard to relevant entitlements and obligations under the Workers Compensation Acts), or
- (b) by directing that an injury management consultant or other suitably qualified person (paid for by the employer) conduct a workplace assessment in connection with the dispute, or
- (c) by referring the dispute to the Authority, or
- (d) by making a recommendation as provided for by this Division.

Note—

The Registrar can refer the dispute to the Commission for determination if action under this Division is not successful.

307 Registrar can recommend certain action

- (1) The Registrar can deal with the dispute by recommending that a party to the dispute take specified action, being action that the Registrar considers necessary or desirable to remedy the failure with which the dispute is concerned.
- (2) If the dispute concerns failure to comply with an obligation imposed by an injury management plan, the Registrar can recommend compliance with the injury management plan subject to such modifications as the Registrar considers appropriate.
- (3) If the dispute concerns the provision of suitable employment for the worker, the Registrar is to have regard to the requirements of section 49 in making a recommendation with respect to the provision of suitable employment.

308 Compliance with recommendations of Registrar

- (1) A party to the dispute to whom a recommendation is made by the Registrar must, within 14 days (or such longer period as the Registrar may allow in a particular case):
 - (a) comply with the recommendation, or
 - (b) request the Registrar to refer the dispute to the Commission for determination.

Maximum penalty: 50 penalty units.

- (2) If a worker's failure to comply with the Registrar's recommendation constitutes a failure to comply with this section, the worker has no entitlement to weekly payments of compensation during any period that the failure to comply with the recommendation continues.
- (3) If an employer's failure to comply with the Registrar's recommendation constitutes a

failure to comply with this section, the employer's insurer is entitled to recover from the employer (despite the terms of the relevant policy of insurance) the amount of weekly payments of compensation paid by the insurer in respect of any period that failure to comply with the recommendation continues.

309 Employers—representation and admissions

- (1) At any conference or hearing before the Registrar for the purposes of this Division:
 - (a) an employer is entitled to separate representation if the employer requests separate representation, and
 - (b) an employer is not prevented by the terms of any relevant policy of insurance from making any admission of liability in respect of the injury or claim concerned.
- (2) Evidence of an admission made by the employer at any conference or hearing before the Registrar for the purposes of this Division is not admissible in other proceedings before the Commission.

310 Referral of dispute to Commission

If the dispute is referred to the Commission for determination, the Commission may make orders with respect to any matter that can be the subject of a recommendation by the Registrar under this Division.

Part 6 Court proceedings for work injury damages

Division 1 Preliminary

311 Interpretation

In this Part:

claimant means a claimant for work injury damages.

defendant means the person against whom proceedings for the recovery of work injury damages are commenced or are to be commenced.

312 Forum for court proceedings

Proceedings in respect of a claim for work injury damages may be taken in any court of competent jurisdiction, subject to this Part.

Division 2 Threshold for award of damages

313 Threshold dispute prevents service of pre-filing statement and commencement of court proceedings

If there is a dispute as to whether the degree of permanent impairment of the injured

worker resulting from an injury is sufficient for an award of damages, the claimant cannot commence court proceedings for the recovery of work injury damages and cannot serve a pre-filing statement under Division 3 unless the degree of permanent impairment has been assessed by an approved medical specialist under Part 7.

314 What constitutes threshold dispute

- (1) For the purposes of this Part, there is considered to be a dispute as to whether the degree of permanent impairment of the injured worker resulting from an injury is sufficient for an award of damages if:
 - (a) the person on whom the claim is made has not accepted that the degree of permanent impairment of the injured worker resulting from the injury is at least 15%, or
 - (b) there is a dispute as to whether the degree of permanent impairment resulting from the injury is fully ascertainable.

Note—

Under section 322 (4), an approved medical specialist may decline to make an assessment of the degree of permanent impairment of an injured worker until satisfied that the degree of permanent impairment is fully ascertainable.

- (2) There is considered to be no dispute as to whether the degree of permanent impairment of the injured worker resulting from an injury is sufficient for an award of damages if:
 - (a) the person on whom the claim is made has accepted that the degree of permanent impairment of the injured worker is at least 15%, or
 - (b) an approved medical specialist has given a medical assessment certificate certifying that the degree of permanent impairment of the injured worker is at least 15%.

Division 3 Pre-filing statements

315 Requirement for pre-filing statement before commencing court proceedings

- (1) Before a claimant can commence court proceedings for the recovery of work injury damages, the claimant must serve on the defendant a **pre-filing statement** setting out such particulars of the claim and the evidence that the claimant will rely on to establish or in support of the claim as the Rules may require.

Note—

Section 314 prevents a pre-filing statement being served if there is a dispute as to whether the degree of permanent impairment is sufficient for an award of damages.

- (2) The pre-filing statement cannot be served unless:

- (a) the person on whom the claim is made wholly disputes liability for the claim, or
- (b) the person on whom the claim is made has made an offer of settlement to the claimant pursuant to the determination of the claim as and when required by section 281 and 1 month has elapsed since the offer was made, or
- (c) the person on whom the claim is made has failed to determine the claim as and when required by section 281.

Note—

The determination of a claim in accordance with section 281 requires the making of a reasonable offer of settlement (if liability is wholly or partly accepted). Failure to make a reasonable offer of settlement constitutes a failure to determine the claim. Section 74 requires notice of a dispute as to liability to be given.

316 Defendant must respond to pre-filing statement

- (1) The defendant must, within 28 days after the pre-filing statement has been served on the defendant, respond to the pre-filing statement by:
 - (a) accepting or denying liability (wholly or in part), and
 - (b) (to the extent, if any, that the defendant does not accept liability) serving on the claimant a defence to the claim setting out such particulars of the defence and evidence that the defendant will rely on to defend the claim as the Rules may require.

Note—

A defence can be filed after 28 days but after 28 days the claimant can refer the claim to mediation under Division 4.

- (2) If the defendant fails to respond to the pre-filing statement as required by this section within 42 days after it is served on the defendant, the claimant can commence court proceedings for the recovery of work injury damages.

Note—

If the defendant fails to respond within 42 days, the defendant is prevented from filing a defence (see section 318) and the claimant can proceed to obtain summary judgment on the question of liability. If the defendant responds to the pre-filing statement within 42 days, the matter is required to proceed to mediation under Division 4 before court proceedings can be commenced.

317 Defective pre-filing statement

- (1) The defendant is not entitled to assert that a pre-filing statement served by the claimant is defective (by reason of incompleteness or otherwise) unless the defendant has notified the claimant, giving details of any alleged defects, within 7 days after the pre-filing statement is served by the claimant.
- (2) A dispute as to whether a pre-filing statement served by the claimant is defective may

be referred to the Registrar for determination.

- (3) The Registrar may give a direction to the claimant as to the action necessary to cure any defect in the pre-filing statement served by the claimant. If the claimant fails to comply with the Registrar's direction within the time allowed for compliance, the pre-filing statement served by the claimant is taken not to have been served.

Note—

The effect of such a failure is that the claimant must serve the pre-filing statement again.

- (4) If the documents and information that comprise the pre-filing statement are furnished to the defendant at different times, the pre-filing statement is not considered to have been served on the defendant until the last of the required documents and information is served.

318 Parties limited to pre-filing statement and defence

- (1) For the purposes of court proceedings on a claim for work injury damages:
- (a) the claimant is not entitled to file a statement of claim that is materially different from the proposed statement of claim that formed part of the pre-filing statement served by the claimant, except with leave of the court, and
 - (b) the defendant is not entitled to file a defence that is materially different from any defence served on the claimant in response to the claimant's pre-filing statement within 42 days after service of the pre-filing statement, except with leave of the court, and
 - (c) the defendant is not entitled to file a defence that wholly or partly disputes liability for the claim if the defendant has failed to serve on the claimant a defence to the claim as required by this Division within 42 days after the claimant served the pre-filing statement on the defendant, and
 - (d) a party to the proceedings is not entitled to have any report or other evidence admitted in the proceedings on the party's behalf if the report or other evidence was not disclosed by the party in a pre-filing statement or defence served under this Division, except with leave of the court.
- (2) The court is not to grant leave under this section unless satisfied that:
- (a) the material concerned was not reasonably available to the party when the pre-filing statement or defence was served, and
 - (b) the failure to grant leave would substantially prejudice the party's case.
- (3) The regulations may provide for exceptions to this section.

Division 4 Mediation

318A Mediation of claim before commencement of court proceedings

- (1) A claimant must refer a claim for work injury damages for mediation under this Division before the claimant can commence court proceedings for recovery of those work injury damages. The claim cannot be referred for mediation until at least 28 days after the pre-filing statement has been served on the defendant under Division 3.
- (2) The claimant need not refer a claim for work injury damages for mediation if the defendant has failed to respond to the claimant's pre-filing statement as required under Division 3 within 42 days after it is served on the defendant.

Note—

A defence can still be filed in the 28–42 day period. A defence can be filed after 42 days but such a defence cannot dispute liability. A defence filed after 42 days can deal with such matters as quantum of damages or contributory negligence.

- (3) The defendant may decline to participate in mediation of the claim if the defendant wholly disputes liability in respect of the claim, but in any other case the defendant cannot decline to participate in mediation.
- (4) Court proceedings for recovery of work injury damages cannot be commenced while the claim is the subject of mediation in the Commission.
- (5) A claim is referred for mediation by being referred to the Registrar for mediation by a mediator. The Registrar is to give directions as to which mediator is to mediate on a particular claim referred for mediation.
- (6) The Rules may make provision for or with respect to mediation under this Division.

318B Mediator to bring parties to agreement

- (1) The mediator must use the mediator's best endeavours to bring the parties to agreement on the claim.
- (2) Failing agreement, the mediator is to issue a certificate certifying as to the final offers of settlement made by the parties in the mediation.

318C Legal and other assistance at mediation

At the mediation of a claim, an injured worker is entitled to be accompanied by a person (whether or not a legal adviser or agent) to act as the injured worker's advocate and assist him or her to present his or her case to the mediator.

318D Powers of mediators

- (1) For the purposes of and in connection with the mediation of a claim, a mediator has all the functions of the Commission under sections 357–359 and those sections apply in respect of the mediation of a claim in the same way as they apply in respect of proceedings on a dispute before the Commission.

- (2) A mediator may award costs in connection with the mediation of a claim.

318E Offers made at mediation not to be disclosed to court

The amount of any offer of settlement made by a party in the course of mediation of a claim is not to be specified in any pleading, affidavit or other document filed in or in connection with court proceedings on the claim, and is not to be disclosed to or taken into account by the court, before the court's determination of the amount of damages in the proceedings.

318F Appointment of mediators

- (1) The President is, in accordance with criteria developed by the Minister, to appoint persons to be mediators for the purposes of this Act to mediate on claims for work injury damages as and when required to do so by the Registrar.
- (2) Mediators are in the exercise of their functions subject to the general control and direction of the Registrar.
- (3) Subject to this section, a mediator holds office for such period (not exceeding 5 years) as may be specified in the instrument of appointment of the mediator, but is eligible for re-appointment.
- (4) A mediator is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a mediator as the Minister may from time to time determine in respect of the mediator.
- (5) A mediator is taken to have vacated office if the mediator:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (d) becomes a mentally incapacitated person, or
 - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (f) resigns the office by instrument in writing addressed to the President, or
 - (g) is removed from office by the President.
- (6) The President may at any time remove a mediator from office.

- (7) Part 2 of the *Public Sector Management Act 1988* does not apply to a mediator.

318G Protection of mediators

- (1) A matter or thing done or omitted to be done by a mediator in the exercise of the mediator's functions does not, if the matter or thing was done or omitted in good faith, subject the mediator personally to any action, liability, claim or demand.
- (2) A mediator is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a mediator.

318H Mediation fees

- (1) The regulations may make provision for or with respect to the fees to be paid in connection with mediation under this Division.
- (2) In particular, the regulations may specify any such fee or the method by which the fee is to be calculated, and may specify by whom and in what circumstances the fee is payable.
- (3) Fees payable under the regulations under this section are payable into the WorkCover Authority Fund.

Division 5 General

318I Orders for access to information and premises

- (1) If there is no dispute that the degree of permanent impairment of an injured worker is sufficient for an award of damages, the Registrar may on the application of the claimant give either or both of the following written directions to the defendant:
- (a) a direction directing the defendant to produce to the claimant within a specified period specified reports and other documents in the defendant's possession,
- (b) a direction directing the defendant to provide or allow the claimant access to specified premises within a specified period for a purpose relevant to the claimant's claim.
- (2) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

Note—

The Commission also has power under section 357 to require the production of documents and the furnishing of information by the parties.

Part 7 Medical assessment

319 Definitions

In this Act:

approved medical specialist means a medical practitioner appointed under this Part as an approved medical specialist.

medical dispute means a dispute between a claimant and the person on whom a claim is made about any of the following matters or a question about any of the following matters in connection with a claim:

- (a) the worker's condition (including the worker's prognosis, the aetiology of the condition, and the treatment proposed or provided),
- (b) the worker's fitness for employment,
- (c) the degree of permanent impairment of the worker as a result of an injury,
- (d) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality, and the extent of that proportion,
- (e) the nature and extent of loss of hearing suffered by a worker,
- (f) whether impairment is permanent,
- (g) whether the degree of permanent impairment of the injured worker is fully ascertainable.

320 Appointment of approved medical specialists

- (1) The President is, in accordance with criteria developed by the Minister in consultation with the Council, to appoint medical practitioners to be approved medical specialists for the purposes of this Part.
- (1A) The Council may make recommendations to the President in relation to the appointment of a medical practitioner under subsection (1) and the President is to have regard to any such recommendation in making the appointment.
- (2) The terms of any such appointment may restrict an approved medical specialist to medical disputes of a specified kind.
- (2A) One or more approved medical specialists may be appointed as a senior approved medical specialist, either by the instrument of appointment of the approved medical specialist or by a later instrument executed by the President.
- (3) The President is to ensure that, as far as reasonably practicable, arrangements are in place to facilitate the taking place of assessments under this Part in the regional areas of the State.

- (4) The Authority may arrange for the provision of training and information to approved medical specialists to promote accurate and consistent assessments under this Part.
- (5) The Registrar may from time to time issue a list of the medical practitioners who are for the time being appointed as approved medical specialists under this section. The list is evidence of the appointments concerned.
- (6) A matter or thing done or omitted to be done by an approved medical specialist in the exercise of functions under this Act does not, if the matter or thing was done or omitted in good faith, subject the approved medical specialist personally to any action, liability, claim or demand.

321 Referral of medical dispute for assessment

- (1) A medical dispute may be referred for assessment under this Part by a court, the Commission or the Registrar, either of their own motion or at the request of a party to the dispute. The Registrar is to give the parties notice of the referral.
- (2) The parties to the dispute may agree on the approved medical specialist who is to assess the dispute but if the parties have not agreed within 7 days after the dispute is referred, the Registrar is to choose the approved medical specialist who is to assess the dispute.
- (3) The Commission may not refer for assessment under this Part a medical dispute concerning permanent impairment (including hearing loss) of an injured worker.
- (4) The Registrar may not refer for assessment under this Part:
 - (a) a medical dispute concerning permanent impairment (including hearing loss) of an injured worker where liability is in issue and has not been determined by the Commission, or
 - (b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

322 Assessment of impairment

- (1) The assessment of the degree of permanent impairment of an injured worker for the purposes of the Workers Compensation Acts is to be made in accordance with WorkCover Guidelines (as in force at the time the assessment is made) issued for that purpose.
- (2) Impairments that result from the same injury are to be assessed together to assess the degree of permanent impairment of the injured worker.
- (3) Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured

worker.

Note—

Section 65A of the 1987 Act provides for impairment arising from psychological/psychiatric injuries to be assessed separately from impairment arising from physical injury.

- (4) An approved medical specialist may decline to make an assessment of the degree of permanent impairment of an injured worker until the approved medical specialist is satisfied that the impairment is permanent and that the degree of permanent impairment is fully ascertainable. Proceedings before a court or the Commission may be adjourned until the assessment is made.

323 Deduction for previous injury or pre-existing condition or abnormality

- (1) In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the impairment that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act) or that is due to any pre-existing condition or abnormality.
- (2) If the extent of a deduction under this section (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence.

Note—

So if the degree of permanent impairment is assessed as 30% and subsection (2) operates to require a 10% reduction in that impairment to be assumed, the degree of permanent impairment is reduced from 30% to 27% (a reduction of 10%).

- (3) The reference in subsection (2) to medical evidence is a reference to medical evidence accepted or preferred by the approved medical specialist in connection with the medical assessment of the matter.
- (4) The WorkCover Guidelines may make provision for or with respect to the determination of the deduction required by this section.
- (5) (Repealed)

Note—

Section 68B of the 1987 Act makes provision for how this section applies for the purpose of calculating workers compensation lump sum benefits for permanent impairment and associated pain and suffering in cases to which section 15, 16, 17 or 22 of the 1987 Act applies.

324 Powers of approved medical specialist on assessment

- (1) The approved medical specialist assessing a medical dispute may:

- (a) consult with any medical practitioner or other health care professional who is treating or has treated the worker, and
 - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of assessing a medical dispute referred to him or her, and
 - (c) require the worker to submit himself or herself for examination by the approved medical specialist.
- (2) If a worker refuses to submit himself or herself for examination by the approved medical specialist if required to do so, or in any way obstructs the examination:
- (a) the worker's right to recover compensation with respect to the injury, or
 - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.
- (3) This section extends to the assessment of a medical dispute in the course of an appeal or further assessment under this Part. An approved medical specialist who is a member of the Appeal Panel hearing the appeal or who is assessing the matter by way of further assessment has all the powers of an approved medical specialist under this section on an assessment of a medical dispute.

325 Medical assessment certificate

- (1) The approved medical specialist to whom a medical dispute is referred is to give a certificate (a **medical assessment certificate**) as to the matters referred for assessment.
- (2) A medical assessment certificate is to be in a form approved by the Registrar and is to:
 - (a) set out details of the matters referred for assessment, and
 - (b) certify as to the approved medical specialist's assessment with respect to those matters, and
 - (c) set out the approved medical specialist's reasons for that assessment, and
 - (d) set out the facts on which that assessment is based.
- (3) If the Registrar is satisfied that a medical assessment certificate contains an obvious error, the Registrar may issue, or approve of the approved medical specialist issuing, a replacement medical assessment certificate to correct the error.
- (4) An approved medical specialist is competent to give evidence as to matters in a

certificate given by the specialist under this section, but may not be compelled to give evidence.

326 Status of medical assessments

- (1) An assessment certified in a medical assessment certificate pursuant to a medical assessment under this Part is conclusively presumed to be correct as to the following matters in any proceedings before a court or the Commission with which the certificate is concerned:
 - (a) the degree of permanent impairment of the worker as a result of an injury,
 - (b) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality,
 - (c) the nature and extent of loss of hearing suffered by a worker,
 - (d) whether impairment is permanent,
 - (e) whether the degree of permanent impairment is fully ascertainable.
- (2) As to any other matter, the assessment certified is evidence (but not conclusive evidence) in any such proceedings.

327 Appeal against medical assessment

- (1) A party to a medical dispute may appeal against a medical assessment under this Part, but only in respect of a matter that is appealable under this section and only on the grounds for appeal under this section.
- (2) A matter is appealable under this section if it is a matter as to which the assessment of an approved medical specialist certified in a medical assessment certificate under this Part is conclusively presumed to be correct in proceedings before a court or the Commission.
- (3) The grounds for appeal under this section are any of the following grounds:
 - (a) deterioration of the worker's condition that results in an increase in the degree of permanent impairment,
 - (b) availability of additional relevant information (but only if the additional information was not available to, and could not reasonably have been obtained by, the appellant before the medical assessment appealed against),
 - (c) the assessment was made on the basis of incorrect criteria,
 - (d) the medical assessment certificate contains a demonstrable error.
- (4) An appeal is to be made by application to the Registrar. The appeal is not to proceed

unless the Registrar is satisfied that, on the face of the application and any submissions made to the Registrar, at least one of the grounds for appeal specified in subsection (3) has been made out.

- (5) If the appeal is on a ground referred to in subsection (3) (c) or (d), the appeal must be made within 28 days after the medical assessment appealed against, unless the Registrar is satisfied that special circumstances justify an increase in the period for an appeal.
- (6) The Registrar may refer a medical assessment for further assessment under section 329 as an alternative to an appeal against the assessment (but only if the matter could otherwise have proceeded on appeal under this section).

Note—

Section 329 also allows the Registrar to refer a medical assessment back to the approved medical specialist for reconsideration (whether or not the medical assessment could be appealed under this section).

- (7) There is to be no appeal against a medical assessment once the dispute concerned has been the subject of determination by a court or the Commission or agreement registered under section 66A of the 1987 Act.
- (8) Section 345 of the [Legal Profession Act 2004](#) applies to and in respect of the provision of legal services in connection with an appeal under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that section.

Note—

Section 345 of the [Legal Profession Act 2004](#) prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

328 Procedure on appeal

- (1) An appeal against a medical assessment is to be heard by an Appeal Panel constituted by 2 approved medical specialists and 1 Arbitrator, chosen by the Registrar.
- (2) The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made. The WorkCover Guidelines can provide for the procedure on an appeal.
- (3) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal by a party to the appeal unless the evidence was not available to the party before that medical assessment and could not reasonably have been obtained by the party before that medical assessment.

- (4) When attending an Appeal Panel for the purposes of an assessment, an injured worker is entitled to be accompanied by a person (whether or not a legal adviser or agent) to act as the injured worker's advocate and assist him or her to present his or her case to the Appeal Panel.
- (5) The Appeal Panel may confirm the certificate of assessment given in connection with the medical assessment appealed against, or may revoke that certificate and issue a new certificate as to the matters concerned. Section 326 applies to any such new certificate.
- (6) The decision of a majority of the members of an Appeal Panel is the decision of the Appeal Panel.

329 Referral of matter for further medical assessment or reconsideration

- (1) A matter referred for assessment under this Part may be referred again on one or more further occasions for assessment in accordance with this Part, but only by:
 - (a) the Registrar as an alternative to an appeal against the assessment as provided by section 327, or
 - (b) a court or the Commission.
- (1A) A matter referred for assessment under this Part may be referred again on one or more further occasions by the Registrar to the approved medical specialist for reconsideration.
- (2) A certificate as to a matter referred again for further assessment or reconsideration prevails over any previous certificate as to the matter to the extent of any inconsistency.

330 Costs of medical assessment

- (1) The costs of medical assessments under this Part (including the remuneration of approved medical specialists) are payable by the employer or insurer, except as otherwise provided by the regulations. The Authority may, for the purposes of meeting those costs, impose fees for the carrying out of medical assessments or make other arrangements for meeting those costs.
- (2) If a worker is required to submit himself or herself for examination pursuant to this Part, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided:
 - (a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and
 - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.

- (3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.
- (4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of section 64 of the 1987 Act.
- (5) A reference in this section to a medical assessment includes a reference to a further medical assessment and an appeal against a medical assessment.

331 Guidelines

Medical assessments, appeals and further assessments under this Part are subject to relevant provisions of the WorkCover Guidelines relating to the procedures for the referral of matters for assessment or appeal, the procedure on appeals and the procedure for assessments.

Part 8 Costs

Division 1 Preliminary

332 Definitions

- (1) In this Part:

agent means a person who acts as agent for a person in connection with a claim.

agent service means any service performed by a person in the person's capacity as an agent.

costs includes:

- (a) costs actually incurred or to be incurred by a person claiming compensation or work injury damages, and
- (b) if liability for a claim is admitted without recourse to the Commission or court—the reasonable expenses incurred by a person in pursuing the person's claim, and
- (c) costs incurred in relation to any proceedings in respect of a claim, and
- (d) costs incidental to an application for referral of a medical dispute for medical assessment, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act or an agreement to commute liability to a lump sum, and

(f) such other costs as may be prescribed by the regulations.

court includes a court arbitrator or arbitrators.

medical report includes medical certificate and medical opinion.

(2) Expressions used in this Division have the same meanings as they have in Part 3.2 of the *Legal Profession Act 2004*, except as provided by this section.

Note—

Under the *Legal Profession Act 1987*, **costs** includes barristers' and solicitors' fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

333 Costs to which Part applies

This Part applies to and in respect of costs payable on a party and party basis, on a practitioner and client basis or on any other basis, unless this Part or the regulations otherwise provides.

334 Part prevails over *Legal Profession Act 2004*

This Part, and the regulations under this Part, prevail to the extent of any inconsistency between them and the *Legal Profession Act 2004* or the regulations under that Act.

335 Assessment of costs

An assessment of costs is to be made so as to give effect to the provisions of this Part (whether or not the assessment is made under Division 11 of Part 3.2 of the *Legal Profession Act 2004*).

336 Exclusion of matters from this Part

The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Part.

Division 2 Fixing of maximum costs and fees

337 Maximum lawyer and agent costs

- (1) The regulations may make provision for or with respect to the following:
- (a) fixing maximum costs for legal services or agent services provided to a claimant, an employer or an insurer in or in connection with any workers compensation matter or work injury damages matter,
 - (b) fixing maximum costs for matters that are not legal services or agent services but are related to a claim for compensation or work injury damages (for example, expenses for witnesses or medical reports).

- (2) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 2004*.
- (3) 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 the regulations under this section.
- (4) An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (5) This section does not entitle a legal practitioner to recover costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.
- (6) The power under this section to make regulations fixing maximum costs for services or matters includes power to make regulations to provide that no amount is recoverable for a particular service or matter or class of services or matters, with the result that a legal practitioner or agent is not entitled to be paid or recover any amount for the service or matter concerned.

338 Costs of obtaining medical and other reports

To the extent that the regulations so provide, a legal practitioner or agent is not entitled to be paid or recover the cost of obtaining a medical report or other report obtained for use in connection with a workers compensation matter or work injury damages assessment.

339 Maximum fees payable to health service providers

- (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by health service providers of the following services:
 - (a) provision of any report for use in connection with a claim for compensation or work injury damages,
 - (b) appearance as a witness in proceedings before the Commission or a court in connection with a claim for compensation or work injury damages.
- (2) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 2004*.
- (3) A health service provider is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.
- (4) In this section:

health service provider means a person who provides a health service as defined in the *Health Care Complaints Act 1993*.

Editorial note—

For orders published under this section see Gazettes No 178 of 7.11.2003, p 10480; No 34 of 18.3.2005, p 849; No 51 of 6.5.2005, p 1640; No 166 of 23.12.2005, pp 11904, 11906; No 192 of 29.12.2006, p 12014; No 83 of 29.6.2007, p 4364; No 175 of 30.11.2007, pp 8762, 8766; No 158 of 12.12.2008, pp 12257, 12263, 12291; No 207 of 18.12.2009, pp 6398, 6400, 6402; No 135 of 17.12.2010, pp 6002, 6031, 6051; No 127 of 16.12.2011, pp 7195, 7220, 7253 (and see erratum in Gazette No 130 of 20.12.2011, p 7269) and No 12 of 3.2.2012, pp 315, 327, 332.

Division 3 Special provisions for costs in compensation and damages assessment matters

340 Application of Division

This Division applies to costs payable by a party, or by a party's insurer, in or in relation to a claim for compensation.

341 Costs to be determined by Commission

- (1) Costs to which this Division applies are in the discretion of the Commission.
- (2) The Commission has full power to determine by whom, to whom and to what extent costs are to be paid.
- (3) The Commission may order costs to be assessed on the basis set out in Division 11 of Part 3.2 of the *Legal Profession Act 2004* (or in relevant regulations under Division 4 of this Part) or on an indemnity basis.
- (4) The Commission may not order the payment of costs by a claimant unless the Commission is satisfied that the claim was frivolous or vexatious, fraudulent or made without proper justification.
- (5) If the Commission is satisfied that a part only of a claim was frivolous or vexatious, fraudulent or made without proper justification, the Commission may order the claimant to pay the costs relating to that part of the claim.
- (6) Any party to a claim may apply to the Commission for an award of costs.

342 Costs unreasonably incurred

- (1) If the Commission is satisfied that any party's costs on a claim have been unreasonably incurred, the Commission is to order that those costs are not to be paid by any other party to the claim.
- (1A) A costs agreement within the meaning of Part 3.2 of the *Legal Profession Act 2004* is of no effect to the extent to which it relates to costs the subject of an order in force under subsection (1).
- (2) Costs incurred by a party to a claim are considered to have been unreasonably

incurred for the purposes of this section only if they were incurred by the party:

- (a) after a reasonable offer of settlement of the claim was made to the party, or
 - (b) after the party has failed without reasonable excuse to comply with a written request from another party to the claim to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or
 - (c) after the party has unreasonably failed to participate in conciliation of a dispute with which the claim is concerned and the Commission is of the opinion that the failure has resulted in unnecessary litigation, or
 - (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a medical assessment certificate of an approved medical specialist that has been admitted in evidence in proceedings is evidence (whether or not conclusive evidence) and the Commission is of the opinion that the application was frivolous or vexatious, or
 - (e) in connection with any issue raised in relation to a claim in respect of which there were, when the issue was raised, no grounds for a reasonable belief that the issue would be determined in favour of the party by whom it was raised.
- (3) A legal practitioner representing a party to proceedings before the Commission, or providing legal services to the party's insurer, is not entitled to recover from the party or insurer, as the case may be, any costs that the Commission has ordered are to be treated as unreasonably incurred.
- (4) The Commission may by order exempt any costs or a proportion of any costs from the operation of this section if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.

343 Restrictions on recovery of solicitor/client costs

- (1) The legal representative or agent of a person in respect of a claim made or to be made by the person:
- (a) is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission, and
 - (b) is not entitled to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation unless those costs are awarded by the Commission.
- (2) Any such award of costs may be made on the application either of the person or of the legal representative or agent concerned.

(3) This section prevails to the extent of any inconsistency with Part 3.2 of the *Legal Profession Act 2004*.

(4) A person must not:

- (a) claim a lien that the person is not entitled to claim because of this section, or
- (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of this section.

Maximum penalty: 50 penalty units.

(5) A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of this section is entitled to recover the amount paid as a debt in a court of competent jurisdiction.

344 Liability of legal practitioner for client's costs in certain cases

(1) The Commission may, at any stage of a matter, make one or more of the following orders in respect of a legal practitioner whose serious neglect, serious incompetence or serious misconduct delays, or contributes to delaying, the matter:

- (a) an order disallowing the whole or any part of the costs between the legal practitioner and his or her client,
- (b) an order directing the legal practitioner to repay to his or her client the whole or any part of the costs that the client has been ordered to pay to any other party,
- (c) an order directing the legal practitioner to indemnify any party other than his or her client against the whole or any part of the costs payable by the party indemnified.

(2) The Commission may refer a matter to a costs assessor for inquiry and report before making such an order.

(3) The Commission may order that notice of such an order against a legal practitioner is to be given to the legal practitioner's client in a specified manner.

(4) A legal practitioner is not entitled to demand, recover or accept from his or her client any part of the amount for which the legal practitioner is directed by the Commission to indemnify a party pursuant to such an order.

(5) This section does not limit any other provision of this Part.

345 Costs penalties where appeal is unsuccessful

(1) On an appeal from the Commission constituted by an Arbitrator to the Commission constituted by a Presidential member:

- (a) if the appellant is unsuccessful on the appeal, the Commission is to order that the appellant's costs on the appeal are not to be paid by any other party to the appeal, and
 - (b) if the appellant is an insurer (other than a licensed insurer that maintains a statutory fund under the 1987 Act) and is unsuccessful on the appeal, the Commission may order the insurer to pay to the Authority for payment into the WorkCover Authority Fund an administration fee of \$1,000 or such other amount as may be prescribed by the regulations.
- (2) A costs agreement within the meaning of Part 3.2 of the *Legal Profession Act 2004* is of no effect to the extent to which it relates to costs the subject of an order in force under subsection (1) (a).
 - (3) If an appeal concerns lump sum compensation, weekly payments of compensation or medical expenses compensation, the appellant is considered to be unsuccessful on the appeal unless the decision on appeal results in a change in favour of the appellant in the amount awarded or ordered to be paid in the decision appealed against of at least \$5,000 (or such other amount as may be prescribed by the regulations) and at least 20% of the amount awarded or ordered to be paid.
 - (4) An administration fee that an insurer is ordered to pay is recoverable as a debt due to the Authority.
 - (5) The Registrar is to notify the Authority of an order to an insurer under this section to pay an administration fee.

Division 3A Special provisions for costs in work injury damages proceedings

346 Costs

- (1) This section applies to costs (including disbursements) payable by a party in or in relation to a claim for work injury damages, including court proceedings for work injury damages.
- (2) The regulations may make provision for or with respect to the awarding of costs to which this section applies. The regulations may provide for the awarding of costs on a party and party basis, on a practitioner and client basis, or on any other basis.
- (3) A party is not entitled to an award of costs to which this section applies, and a court may not award such costs, except as prescribed by the regulations under this Act or by the rules of the court concerned.
- (4) In the event of any inconsistency between the provisions of the regulations under this section and rules of court, the provisions of the regulations prevail to the extent of the inconsistency.

Division 4 Costs assessment

347 Regulations for costs assessment

- (1) The regulations may make provision for or with respect to:
 - (a) the assessment or taxation of costs payable to a legal practitioner or agent in connection with a claim for compensation or work injury damages, and
 - (b) matters associated with the assessment or taxation of those costs.
- (2) In particular, the regulations may make provision for or with respect to any matter for or in connection with which provision is made by Division 11 of Part 3.2 of the *Legal Profession Act 2004*.
- (3) Regulations for the purposes of this Division may adopt, with or without modification, any of the provisions of Division 11 of Part 3.2 of the *Legal Profession Act 2004*.
- (4) Without limiting this section, the regulations may make provision for or with respect to the assessment of costs by the Commission.
- (5) The regulations may make such modifications to the provisions of Part 3.2 of the *Legal Profession Act 2004* as may be consequential on the assessment or taxation of costs payable to a legal practitioner being provided for by the regulations under this Division rather than under Division 11 of that Part.

348 (Repealed)

Part 9 Proceedings before Commission

349 Arrangement of business

The arrangement of the business of the Commission is to be as determined by the Registrar, subject to the regulations.

350 Decisions of Commission

- (1) Except as otherwise provided by this Act, a decision of the Commission under the Workers Compensation Acts is final and binding on the parties and is not subject to appeal or review.
- (2) A decision of or proceeding before the Commission is not:
 - (a) to be vitiated because of any informality or want of form, or
 - (b) liable to be challenged, appealed against, reviewed, quashed or called into question by any court.
- (3) The Commission may reconsider any matter that has been dealt with by the

Commission and rescind, alter or amend any decision previously made or given by the Commission.

351 Reference of question of law on compensation claim to Commission constituted by Presidential member

- (1) A question of law arising in proceedings before the Commission constituted by an Arbitrator may, with the leave of the President, be referred by the Arbitrator for the opinion of the Commission constituted by the President.
- (2) The reference of a question under this section may be made on the application of a party to the proceedings or of the Arbitrator's own motion.
- (3) The President is not to grant leave for the referral of a question of law under this section unless satisfied that the question involves a novel or complex question of law.
- (4) If the President refuses to grant leave for the referral of a question of law under this section, the President must state his or her reasons in writing to the parties for the refusal.
- (5) Despite the reference of a question under this section, the Commission constituted by an Arbitrator may make an award in the matter in which the question arose unless the question is the question of whether the Commission may exercise functions under this Act in relation to a matter.
- (6) On the determination of a question referred to the Commission under this section:
 - (a) if an award has not been made in the matter in which the question arose, an award may be made that is not inconsistent with the opinion of the Commission on the question, or
 - (b) if an award has been made in the matter in which the question arose, the award must be varied in such a way as will make it consistent with the opinion of the Commission on the question.
- (7) The reference of a question of law under this section may be by stating a case on a question of law.
- (8) The President may delegate to a Deputy President any function of the President under this section (except this power of delegation), but only if the President is satisfied that the delegation is necessary to avoid a conflict of interest or the appearance of bias.

352 Appeal against decision of Commission constituted by Arbitrator

- (1) A party to a dispute in connection with a claim for compensation may appeal to the Commission constituted by a Presidential member against a decision in respect of the dispute by the Commission constituted by an Arbitrator.

- (2) An appeal is to be made by application to the Registrar. The appeal is not to proceed unless the Registrar is satisfied that the procedural requirements of this section and any applicable Rules and regulations as to the making of an appeal have been complied with. The Registrar is not required to be satisfied as to the substance of the appeal.
- (3) There is no appeal under this section unless the amount of compensation at issue on the appeal is both:
 - (a) at least \$5,000 (or such other amount as may be prescribed by the regulations), and
 - (b) at least 20% of the amount awarded in the decision appealed against.
- (3A) There is no appeal under this section against an interlocutory decision except with the leave of the Commission. The Commission is not to grant leave unless of the opinion that determining the appeal is necessary or desirable for the proper and effective determination of the dispute.
- (4) An appeal can only be made within 28 days after the making of the decision appealed against.
- (5) An appeal under this section is limited to a determination of whether the decision appealed against was or was not affected by any error of fact, law or discretion, and to the correction of any such error. The appeal is not a review or new hearing.
- (5A) An appeal under this section stays the operation of the decision appealed against pending the determination of the appeal. However, an appeal does not stay or otherwise affect the operation of a decision as to weekly payments of compensation and weekly payments of compensation remain payable despite any appeal.
- (6) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against may not be given on an appeal to the Commission except with the leave of the Commission. The Commission is not to grant leave unless satisfied that the evidence concerned was not available to the party, and could not reasonably have been obtained by the party, before the proceedings concerned or that failure to grant leave would cause substantial injustice in the case.
- (7) On appeal, the decision may be confirmed or may be revoked and a new decision made in its place.

Alternatively, the matter may be remitted back to the Arbitrator concerned, or to another Arbitrator, for determination in accordance with any decision or directions of the Commission.
- (7A) Section 345 of the *Legal Profession Act 2004* applies to and in respect of the

provision of legal services in connection with an appeal to the Commission under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that section.

Note—

Section 345 of the *Legal Profession Act 2004* prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

- (8) In this section, **decision** includes an award, interim award, order, determination, ruling and direction.

353 Appeal against decision of Commission constituted by Presidential member

- (1) If a party to any proceedings before the Commission constituted by a Presidential member is aggrieved by a decision of the Presidential member in point of law, the party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the Commission constituted by a Presidential member for determination by the Commission in accordance with any decision of the Court and may make such other order in relation to the appeal as the Court thinks fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the Commission and on all the parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made only with leave of the Court of Appeal:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal where the amount of compensation in dispute is less than \$20,000 (or such other amount as may be prescribed by the regulations),
 - (d) an appeal from a decision made with the consent of the parties.
- (5) In this section, **decision** includes an award, interim award, order, determination, ruling, opinion and direction.

354 Procedure before Commission

- (1) Proceedings in any matter before the Commission are to be conducted with as little formality and technicality as the proper consideration of the matter permits.

- (2) The Commission is not bound by the rules of evidence but may inform itself on any matter in such manner as the Commission thinks appropriate and as the proper consideration of the matter before the Commission permits.
- (3) The Commission is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (4) Proceedings need not be conducted by formal hearing and may be conducted by way of a conference between the parties, including a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.
- (5) Subject to any general directions of the President, the Commission may hold a conference with all relevant parties in attendance and with relevant experts in attendance, or a separate conference in private with any of them.
- (6) If the Commission is satisfied that sufficient information has been supplied to it in connection with proceedings, the Commission may exercise functions under this Act without holding any conference or formal hearing.
- (7) An assessment or determination is to be made by the Commission having regard to such information as is conveniently available to the Commission, even if one or more of the parties to the assessment or determination proceedings does not co-operate or ceases to co-operate.
- (7A) The Commission may dismiss proceedings before it before or during the conduct of proceedings:
 - (a) if it is satisfied that the proceedings have been abandoned, or
 - (b) if it is satisfied that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance, or
 - (c) for any other ground of dismissal specified in the Rules.
- (8) In proceedings before a court with respect to a claim for work injury damages (other than proceedings under section 235A or 235C or under the *Crimes Act 1900* with respect to fraud), evidence of a statement made in proceedings before the Commission is not admissible unless the person who made the statement agrees to the evidence being admitted.

355 Arbitrator to attempt conciliation

- (1) The Commission constituted by an Arbitrator is not to make an award or otherwise determine a dispute referred to the Commission for determination without first using the Arbitrator's best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.
- (2) No objection may be taken to the making of an award or the determination of a

dispute by an Arbitrator on the ground that the Arbitrator had previously used the Arbitrator's best endeavours to bring the parties to the dispute to a settlement.

356 Representation before Commission

- (1) A person who is a party to proceedings before the Commission is entitled to be represented by a legal practitioner or by an agent.
- (2) The Commission may refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
- (3) In proceedings in respect of a claim, the Commission may refuse to permit an insurer to be represented by a legal practitioner if the claimant is not represented by a legal practitioner.
- (4) A party to proceedings before the Commission is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to communicate adequately at any conference or hearing.
- (5) The Commission must take into account any written submission prepared by a legal practitioner acting for a party to proceedings and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at any conference or hearing in the proceedings).
- (6) In this section, **agent** means:
 - (a) an officer of an industrial organisation of employers or employees registered under the *Industrial Relations Act 1996*, or
 - (b) an officer of an association of employers or employees registered under the *Workplace Relations Act 1996* of the Commonwealth, or
 - (c) a person employed by a licensed insurer or former licensed insurer or by a self-insurer, or
 - (d) a person employed by a solicitor, solicitor corporation or incorporated legal practice.

357 Power of Commission to require information

- (1) The Commission may give a direction in writing to any person (whether or not a party to a dispute before the Commission) requiring the person:
 - (a) to produce, at a time and place specified in the direction, specified documents in the possession of the person, or
 - (b) to furnish specified information within a time specified in the direction.

- (2) The direction may require the documents to be produced or the information to be furnished:
 - (a) to the Commission or to another party to a dispute before the Commission, in the case of a direction given to a party to the dispute, or
 - (b) to the Commission in the case of a direction given to a person who is not a party to a dispute before the Commission.
- (3) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.
- (4) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Commission or a court have the document or information admitted in the proceedings.
- (5) The Commission may exercise powers under this section at the request of a party to a dispute before the Commission or of the Commission's own motion.
- (6) The Registrar has and may exercise any power of the Commission under this section.
- (7) The regulations or Rules may make provision for or with respect to any of the following matters:
 - (a) exempting specified kinds of documents or information from the operation of this section,
 - (b) specifying cases and circumstances in which the Commission is required to exercise the Commission's powers under this section,
 - (c) specifying cases and circumstances in which the Commission is not to exercise the Commission's powers under this section.

358 Power of Commission to provide documents and information to a party

- (1) When documents or information relevant to proceedings before the Commission are produced or furnished to the Commission by a party to the proceedings or another person (whether or not pursuant to a requirement under this Act), the Commission may produce or furnish the documents or information to:
 - (a) any other party to the proceedings, or
 - (b) any other party's legal representative, or
 - (c) a medical practitioner (including an approved medical specialist).

- (2) The Commission may, when furnishing or producing information or documents to a legal practitioner or medical practitioner, direct that the person must not cause or permit disclosure of the information, or the information in the documents, to another party.
- (3) A legal practitioner or medical practitioner must not contravene the Commission's direction under this section.

Maximum penalty: 50 penalty units.

- (4) The regulations may make provision for or with respect to any of the following matters:
 - (a) exempting specified kinds of documents or information from the operation of this section,
 - (b) specifying cases and circumstances in which the Commission is required to exercise the Commission's powers under this section,
 - (c) specifying circumstances in which documents or information produced or furnished to the Commission may not be produced or furnished by the Commission to another party to the proceedings or to a legal practitioner or medical practitioner.

359 Summons to appear at conference or hearing

- (1) The Registrar may issue a summons requiring the attendance of a person at any conference or hearing before the Commission in connection with proceedings before the Commission.
- (2) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.

Maximum penalty: 50 penalty units.

- (3) In this section, **conference** includes a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.

360 Powers of Commission to require evidence

- (1) The Commission may require any person appearing before the Commission:
 - (a) to give evidence on oath or affirmation (and may, for that purpose, administer an oath or affirmation), and
 - (b) to answer any relevant question put to the person.
- (2) A person must not without reasonable excuse refuse or fail to comply with a requirement duly made under this section.

Maximum penalty: 50 penalty units.

- (3) A person is not obliged to answer a question under this section if the answer to that question would tend to incriminate the person of an offence.

361 Protection of legal practitioners, witnesses and others

- (1) A practising legal practitioner or other person appearing before the Commission on behalf of a party has the same protection and immunity as a practising legal practitioner has in appearing for a party in proceedings in the District Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection, and is subject to the same liabilities, as a witness in proceedings in the Supreme Court.

362 Recovery of amounts ordered to be paid

- (1) For the purposes of the recovery of any amount ordered to be paid by the Commission (including costs, but not including a civil or other penalty), the amount is to be certified by the Registrar.
- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of the Registrar under this section that is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, operates as such a judgment.

363 (Repealed)

364 Rules of the Commission

- (1) The Minister may from time to time by order make Rules of the Commission for or with respect to any aspect of procedures to be followed in connection with the jurisdiction or functions of the Commission, including provision for or with respect to:
 - (a) the manner of referring claims or disputes for assessment or determination by the Commission, and
 - (b) the documentation that is to accompany such a reference of a claim or dispute for assessment or determination, and
 - (c) the manner of presenting documents and information to the Commission by the parties, including time limits for the presentation of the documents and information, and
- (c1) requiring the provision of documents and information by a party to a matter before the Commission to any other party to the matter, and

- (d) the making of assessments and determinations by the Commission, and
 - (e) the manner of specifying an amount of damages or compensation, and
 - (f) default awards and orders, and
 - (g) the extension or abridgment of any period referred to in this Part, and
 - (h) all matters of practice and procedure in proceedings before the Commission, and
 - (i) the issue of a seal for the Commission and the use and effect of the seal, and
 - (j) any other matter that this Act or the 1987 Act provides may be the subject of Rules of the Commission.
- (2) Rules of the Commission may be made so as to apply differently according to such factors as may be specified in the Rules.
- (3) On or before 1 July in each year (commencing 2002) or as soon as practicable after each such date, the Minister is to cause the Rules of the Commission, as in force for the time being, to be laid before both Houses of Parliament.
- (4) Rules of the Commission are not a statutory rule for the purposes of the [Interpretation Act 1987](#).

365 Publication of decisions and inspection of registers of agreements

- (1) The Commission may cause details of its decisions and determinations under the Workers Compensation Acts to be published.
- (2) The Commission may make the following available for public inspection by employers, insurers, workers, the Authority, and their legal representatives, and by such other persons or classes of persons as may be prescribed by the regulations:
- (a) (Repealed)
 - (b) a summary of the details of agreements registered under section 66A of the 1987 Act.

Part 10 Administration

Division 1 Workers Compensation Commission

366 Establishment of Commission

- (1) The Workers Compensation Commission of New South Wales is established by this Act.
- (2) The Commission has and may exercise such functions as are conferred or imposed on

it by or under the Workers Compensation Acts or any other Act.

367 Objectives of Commission

- (1) The Commission has the following objectives:
 - (a) to provide a fair and cost effective system for the resolution of disputes under the Workers Compensation Acts,
 - (b) to reduce administrative costs across the workers compensation system,
 - (c) to provide a timely service ensuring that workers' entitlements are paid promptly,
 - (d) to create a registry and dispute resolution service that meets worker and employer expectations in relation to accessibility, approachability and professionalism,
 - (e) to provide an independent dispute resolution service that is effective in settling matters and leads to durable agreements between the parties in accordance with the Workers Compensation Acts,
 - (f) to establish effective communication and liaison with interested parties concerning the role of the Commission.
- (2) In exercising their functions, the members of the Commission must have regard to the Commission's objectives.

368 Members of Commission

- (1) The Commission consists of the following members:
 - (a) a President,
 - (b) Deputy Presidents,
 - (c) a Registrar,
 - (d) Arbitrators.
- (2) The members of the Commission are to be appointed by the Minister.
- (3) The instrument of appointment of a member is to specify whether a member has been appointed as:
 - (a) the President, or
 - (b) a Deputy President, or
 - (c) the Registrar, or
 - (d) an Arbitrator.

- (4) One or more of the Arbitrators may be appointed as a Senior Arbitrator, either by the instrument of appointment of the Arbitrator or by a later instrument executed by the Minister.

369 Qualifications for appointment

- (1) A person is eligible to be appointed as President only if the person is a Judge of a court of record.
- (2) A person is eligible to be appointed as Deputy President only if the person:
 - (a) is or has been a judicial officer (within the meaning of the *Judicial Officers Act 1986*), or
 - (b) is an Australian lawyer of at least 5 years' standing.
- (3) A person is eligible to be appointed as the Registrar or as an Arbitrator only if the person:
 - (a) is an Australian lawyer, or
 - (b) has such qualifications, skills or experience as may be determined by the Minister.
- (4) The appointment of a person who is not an Australian lawyer as an Arbitrator may be made on terms that limit the person to dealing with matters of a particular type or types.

370 Functions of members

A member of the Commission has and may exercise the functions conferred or imposed on the member by or under this or any other Act.

371 Functions of Registrar

- (1) The Registrar has and may exercise all the functions of an Arbitrator.
- (2) The Registrar can delegate to any member or member of staff of the Commission any of the Registrar's functions under the Workers Compensation Acts, except this power of delegation.
- (3) The Registrar may exercise any of the functions of the Commission constituted by an Arbitrator to dismiss proceedings before the Commission.

372 Control and direction of members of Commission

- (1) The members of the Commission other than the Arbitrators are, in the exercise of their functions, subject to the general control and direction of the President.
- (2) Arbitrators are, in the exercise of their functions, subject to the general control and direction of the Registrar.

373 Provisions concerning members

Schedule 5 has effect with respect to the members of the Commission.

374 Staff and facilities

- (1) Such staff as may be necessary for the Commission to exercise its functions are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002* as staff of the Commission.
- (2) Those staff are, in the exercise of their functions, subject to the general control and direction of the Registrar.
- (3) This section does not affect the exercise of the functions of the appropriate Department Head under the *Public Sector Employment and Management Act 2002* with respect to those staff.
- (4) The Authority or such other Department of the Government as the regulations may specify is to provide for the Commission:
 - (a) facilities (including registry facilities), and
 - (b) any additional staff that may be necessary.
- (5) The Department Head of the Department in which staff of the Commission are employed may delegate to the Registrar any of the Department Head's functions under the *Public Sector Employment and Management Act 2002* with respect to those staff (other than this power of delegation).
- (6) For the purposes of section 12 of the *Public Finance and Audit Act 1983*, the Registrar is taken to be an officer of the Department in which staff of the Commission are employed.

375 Constitution of Commission for particular proceedings

- (1) For the purposes of any proceedings, the Commission is to be constituted by an Arbitrator except as provided by this section.
- (2) The Registrar may give directions as to which Arbitrator is to constitute the Commission for the purposes of any particular proceedings or class of proceedings.
- (3) For the purposes of any proceedings on an appeal against a decision of the Commission constituted by an Arbitrator, the Commission is to be constituted by a Presidential member.
- (4) The Registrar does not constitute, and does not exercise functions as, the Commission (except when acting as an Arbitrator pursuant to the Registrar's power to exercise the functions of an Arbitrator).

Division 2 WorkCover guidelines

376 Issue of guidelines

- (1) The Authority may issue guidelines with respect to the following:
 - (a) the assessment of the degree of permanent impairment of an injured worker as a result of an injury,
 - (a1) the professional or other requirements (including qualifications, training or membership of professional bodies) for a medical practitioner to be permitted to assess (or carry out any function related to assessing), for the purposes of the Workers Compensation Acts, the degree of permanent impairment of an injured worker as a result of an injury,
 - (b) the giving of interim payment directions by the Registrar under Part 5,
 - (c) such other matters as a provision of the Workers Compensation Acts provides may be the subject of WorkCover Guidelines.
- (2) The Minister may issue guidelines with respect to the procedure for assessment under Part 7 (Medical assessment).
- (3) The Authority may amend, revoke or replace WorkCover Guidelines made by the Authority, and the Minister may amend, revoke or replace WorkCover Guidelines made by the Minister.
- (4) WorkCover Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (5) WorkCover Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (6) The regulations may make provision for or with respect to any matter for which the WorkCover Guidelines can provide.

Editorial note—

For Guidelines issued under this section see Gazettes No 21 of 4.2.2005, p 317; No 34 of 18.3.2005, p 852; No 129 of 27.10.2006, pp 9288, 9334, 9346, 9434, 9441; No 143 of 7.11.2008, p 10819; No 29 of 6.2.2009, p 826; No 63 of 17.4.2009, pp 1706, 1756, 1769; No 15 of 18.2.2011, p 826 and No 30 of 23.3.2012, pp 793, 802.

377 Special requirements relating to WorkCover Guidelines relating to impairment

- (1) This section applies to WorkCover Guidelines that relate to the assessment of the degree of permanent impairment of an injured worker as a result of an injury.

- (2) Those Guidelines must be developed in consultation with relevant medical colleges, including the Royal Australasian College of Physicians, the Royal Australasian College of Surgeons, the Australian Orthopaedic Association and other relevant colleges and associations.
- (3) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to those Guidelines in the same way as those sections apply to statutory rules.

Part 11 Reconsideration of decisions

378 Reconsideration of decisions of Registrar or Appeal Panel

- (1) The Registrar or an Appeal Panel may reconsider any matter that has been dealt with by the Registrar or an Appeal Panel, respectively, and rescind, alter or amend any decision previously made or given.
- (2) Without limiting subsection (1), if the Registrar is satisfied that there is an obvious error in the text of a decision, the Registrar may alter the text of the decision to correct the error.
- (3) Without limiting subsection (1), if an Appeal Panel is satisfied that its decision or any medical assessment certificate it has issued contains an obvious error, the Appeal Panel concerned may correct that error and, if necessary, issue a replacement medical assessment certificate (which is to prevail over any previous certificate).
- (4) The reconsideration of a matter that is in response to an application for reconsideration must be completed within 2 months after the application is received.
- (5) This section does not affect any other power under this Act or the 1987 Act to review or amend a decision.

Schedule 1 Deemed employment of workers

(Section 5)

Editorial note—

Section 4 provides that, in the Workers Compensation Acts:

worker means a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:

- (a) a member of the NSW Police Force who is a contributor to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906*, or
- (b) a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer's trade or business, or
- (c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the

association does not exceed \$700 per year, or

- (d) except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*) while:
- (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or
 - (ii) engaged in training or preparing himself or herself with a view to so participating, or
 - (iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged,

if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.

Section 5 provides that the provisions of this Schedule (which deem certain classes of persons to be workers) have effect.

1 Workers lent or on hire

If the services of a worker are temporarily lent or let on hire to another person (***the labour buyer***) by the person with whom the worker has entered into a contract of service or a training contract (***the labour hirer***), the labour hirer is, for the purposes of this Act, taken to continue to be the employer of the worker while the worker is working for the labour buyer.

1A Outworkers

(1) If:

- (a) a person (***the principal***) contracts with another person to perform any work as an outworker, and
- (b) the outworker neither employs any worker, nor subcontracts with any person, to perform any of the work for the profit of the outworker,

the outworker is, for the purposes of this Act, taken to be a worker employed by the principal.

(2) In this clause:

outworker means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale:

- (a) in the person's own home, or
- (b) on other premises not under the control or management of the person who gave out the articles or materials.

2 Other contractors (cf former Sch 1 cl 2)

(1) Where a contract:

- (a) to perform any work exceeding \$10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor's own name, or

under a business or firm name), or

(b) (Repealed)

is made with the contractor, who neither sublets the contract nor employs any worker, the contractor is, for the purposes of this Act, taken to be a worker employed by the person who made the contract with the contractor.

(2) (Repealed)

(3) A person excluded from the definition of **worker** in section 4 (1) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

2A Contractors under labour hire services arrangements

(1) In this clause:

labour hire services contract means a contract or arrangement (not being a contract of service or a training contract) under which a person is provided with services to facilitate the performance of work by the person, such as the following services:

- (a) services for finding work for the person,
- (b) services for payment for work performed by the person,
- (c) services for insurance coverage in connection with any such work.

(2) If:

- (a) a person (**a labour hire agency**) under a labour hire services contract with another person (**a contractor**) arranges for the contractor to perform work for a third person (**the host employer**), and
- (b) the work performed is not incidental to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name, and
- (c) the contractor neither employs any worker, nor subcontracts with any person, to perform any of that work, and
- (d) the labour hire agency provides services to the contractor under the labour hire services contract during the performance of that work,

the contractor is, for the purposes of this Act, taken to be a worker employed by the labour hire agency while performing that work.

(3) For the avoidance of doubt, this clause applies:

- (a) where a labour hire agency and a host employer are related bodies corporate, and

- (b) in addition to any other provisions of this Act relating to the employment of workers.

3 Rural work (cf former Sch 1 cl 3)

(1) This clause applies to the following work:

- (a) The work of supplying timber, if the timber is obtained, or is to be obtained, from trees felled, or to be felled, by a contractor (whether the trees are the property of the principal or the contractor or any other person).
- (b) The work of felling or ringbarking trees, or cutting scrub, or hauling or loading timber.
- (c) The work of clearing land of stumps or logs.
- (d) The work of cutting sugar cane.
- (e) The work of erecting, constructing or demolishing or assisting in the erection, construction or demolition of:
 - (i) fences, or
 - (ii) yards or enclosures for horses, cattle, sheep or other animals, on farms, orchards, vineyards or agricultural or pastoral holdings.
- (f) All classes of work normally carried out or performed by derrick operators in or in connection with the transport of sugar cane to a mill.
- (g) Any other class of work prescribed by the regulations.

(2) If:

- (a) any person (in this clause referred to as **the principal**) in the course of, or for the purposes of, the person's trade or business enters into a contract, agreement or arrangement with any other person (in this clause referred to as **the contractor**) under which the contractor agrees to carry out work to which this clause applies, and
- (b) the contractor:
 - (i) does not either sublet any part of the work to be carried out, or employ a worker, or
 - (ii) (although either subletting part of the work or employing a worker) actually performs some part of the work himself or herself,

the contractor and any worker so employed by the contractor are, for the purposes of this Act, taken to be workers employed by the principal, and a worker so employed by

the contractor is, for the purposes of this Act, other than this clause, taken not to be a worker employed by the contractor.

- (3) If the principal has given or offered the contractor the option to or the opportunity to so supply timber if the contractor so desires, then, for the purposes of this clause, the contractor is taken to have agreed to supply timber.
- (4) This clause does not apply to or in respect of a contract, agreement or arrangement to haul or load timber if the timber has been subjected to a manufacturing process as defined by the *Factories, Shops and Industries Act 1962* in a factory as defined by that Act.
- (5) All the principals by whom a person is taken to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Commission determines.
- (6) For the purposes of this Act, a notice of injury given by a person employed by the contractor is taken to be given to the employer if it is given either to the contractor or the principal.
- (7) The contractor must, on request, inform a person employed by the contractor of the name and address of the principal.
- (8) In this clause:

timber includes sleepers, piles, poles and logs.

4 Timbergetters (cf former Sch 1 cl 4)

- (1) If any person (in this clause referred to as **the principal**) advertises or otherwise notifies that he or she will accept timber delivered or supplied in accordance with the advertisement or notification, any person who gives notice to the principal that he or she will deliver or supply the timber or any part of the timber is, for the purposes of this Act, taken to be a worker employed by the principal.
- (2) Notice of intention to deliver or supply timber:
 - (a) must indicate the nature of the actual work to be undertaken, and
 - (b) must be given prior to injury.
- (3) All the principals by whom a person is taken to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Commission determines.
- (4) In this clause:

timber includes sleepers, piles, poles and logs.

5 Salespersons, canvassers, collectors and others (cf former Sch 1 cl 5)

- (1) A salesperson, canvasser, collector or other person paid wholly or partly by commission is, for the purposes of this Act, taken to be a worker in the employment of the person by whom the commission is payable, unless the commission is received for or in connection with work incidental to a trade or business regularly carried on by the salesperson, canvasser, collector or other person or by a firm of which he or she is a member.
- (2) All the employers who engaged any such salesperson, canvasser, collector or other person at the time of an injury to the salesperson, canvasser, collector or other person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Commission determines.

6 Tributaries (cf former Sch 1 cl 6)

A tributer working in connection with any mine (as defined in the [Mining Act 1992](#)) and also any workers employed by any such tributer are, for the purposes of this Act, taken to be workers employed by the person with whom the tribute agreement was made by the tributer.

7 Mine employees (cf former Sch 1 cl 7)

Any person usually employed about a mine or in connection with the operations of a mine whose remuneration is provided wholly or partly by the workers employed at the mine is, for the purposes of this Act, taken to be a worker employed by the person by or for whom the mine is being worked.

8 Mines rescue personnel (cf former Sch 1 cl 8)

- (1) For the purposes of this Act:
 - (a) a member of the New South Wales Mines Rescue Brigade engaged in mine rescue work, or undergoing training, in accordance with Part 4 of the [Coal Industry Act 2001](#) is, while so engaged or undergoing training, taken to be a worker employed by the mines rescue company, and
 - (b) a place at which such a member is so engaged or undergoing training is taken to be a place at which the member is employed.
- (2) A member of the New South Wales Mines Rescue Brigade who receives an injury while journeying between the place from which the member was required to attend for the purpose of engaging in mine rescue work or of undergoing training and a place referred to in subclause (1) (b) is, if the journeying was exclusively and genuinely for that purpose, entitled to receive compensation in accordance with this Act from the mines rescue company.

- (3) In this clause, **mines rescue company** means the mines rescue company within the meaning of the *Coal Industry Act 2001*.

9 Jockeys and harness racing drivers (cf former Sch 1 cl 9)

- (1) A person who:

- (a) is engaged to ride a horse for fee or reward at a meeting for horse racing conducted or held by a racing club or association, or
- (b) drives a horse at a meeting for harness racing conducted or held by a racing club or association and at which betting is allowed, or
- (c) is engaged in riding work in connection with horse racing (but not harness racing) on the racecourse or other premises of a racing club or association,

is, for the purposes of this Act, taken to be a worker employed by the racing club or association.

- (2) Subclause (1) does not apply to a racing club or association having its headquarters in a town with a population not exceeding 3,000 people if:

- (a) the meetings of the racing club or association are conducted or held within a radius of 8 kilometres from the town, and
- (b) the profits derived from the operations of the racing club or association are applied for charitable purposes.

- (3) For the purpose of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are:

- (a) to be calculated in such manner (if any) as may be prescribed by the regulations, or
- (b) if the person was not working under contract of service—to be calculated in such manner as the Commission considers to be reasonable in the circumstances.

- (4) The regulations may make provision for or with respect to the exemption of any class of persons from the operation of subclause (1) (b).

10 Drivers of hire-vehicles or hire-vessels—contract of bailment (cf former Sch 1 cl 10)

A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, is, for the purposes of this Act, taken to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.

11 Caddies and others employed through club (cf former Sch 1 cl 11)

A person (not being a person excluded from being a worker by reason of paragraph (d) of the definition of **worker** in section 4 (1)):

- (a) whose employment is of a casual nature, and
- (b) who is employed otherwise than for the purposes of his or her employer's trade or business, and
- (c) who is employed for the purposes of any game or recreation, and
- (d) who is engaged or paid through a club,

is, for the purposes of this Act, taken to be a worker employed by the club.

12 Shearers' cooks and others (cf former Sch 1 cl 12)

Any person employed in connection with a pastoral or agricultural occupation, as cook, cook's help or hut-keeper, whose remuneration is provided wholly or partly by the employees in any such occupation is, for the purposes of this Act, taken to be a worker employed by the person by or for whom the work in any such occupation is undertaken.

13 Fire fighters in fire districts (cf former Sch 1 cl 13)

(1) A person who (without remuneration or reward):

- (a) voluntarily and without obligation engages in fighting a bush fire in any fire district constituted under the *Fire Brigades Act 1989* with the consent of or under the authority and supervision of or in co-operation with:
 - (i) any volunteer fire brigade within the meaning of that Act, or
 - (ii) the Director-General or any officer of New South Wales Fire Brigades or any member of a permanent fire brigade, or
- (b) is undergoing training for the purposes of fighting bush fires in those circumstances,

is, for the purposes of this Act, taken to be a worker employed by the Director-General of New South Wales Fire Brigades.

(2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the "average weekly earnings" of the person are:

- (a) if the person was working under a contract of service immediately before fighting the bush fire—to be computed according to the earnings of the person under that contract of employment, or
- (b) if the person was not working under a contract of service immediately before

fighting the bush fire—to be such amount as the Commission considers to be reasonable in the circumstances.

(3) In this clause:

bush fire means a fire burning in grass, bush, scrub or timber and any fire arising from such a fire.

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

14 Workers at place of pick-up (cf former Sch 1 cl 14)

Where any person is ordinarily engaged in any employment in connection with which persons customarily attend certain prearranged places at which employers select and engage persons for employment, any such person is:

- (a) while in attendance at any such place of pick-up for the purpose of being so selected, or
- (b) while travelling thereto from his or her place of abode, or
- (c) where the person is not so selected, while travelling from such place of pick-up to his or her place of abode,

taken to be a worker employed by the employer who last employed the person in his or her customary employment.

15 Boxers, wrestlers, referees and entertainers (cf former Sch 1 cl 15)

(1) A person engaged for fee or reward to take part:

- (a) as a boxer, wrestler or referee in any public boxing or wrestling contest in a stadium or place to which the public is admitted on payment of a fee or charge, or
- (b) as a boxer, wrestler or referee in any boxing or wrestling contest in or on premises subject to a club licence under the [Liquor Act 2007](#), or
- (c) as an entertainer in any public performance in a place of public entertainment to which the public is admitted on payment of a fee or charge, or
- (d) as an entertainer in any performance in or on premises subject to a club licence under the [Liquor Act 2007](#),

is, for the purposes of this Act, taken to be a worker employed by the person conducting or holding the contest or public or other performance.

- (2) A person who takes part in a genuine amateur contest or performance conducted or held by a person who holds or is taken to hold an authority granted under the *Charitable Fundraising Act 1991*, is not, for the purposes of this clause, taken to be engaged for fee or reward only because a trophy or certificate is offered or awarded as a prize in the contest or performance.
- (3) A person excluded from being a worker because of paragraph (d) of the definition of **worker** in section 4 (1) is taken not to be a person referred to in subclause (1) (c) or (d).
- (4) If 2 or more persons conduct or hold a contest or public or other performance, those persons are liable to contribute to any compensation payable under this Act for the injury in such proportion as, in default of agreement, the Commission determines.

16 Voluntary ambulance workers (cf former Sch 1 cl 16)

- (1) A person who (without remuneration or reward) voluntarily and without obligation engages in any ambulance work with the consent of or under the authority and supervision of or in co-operation with the Health Administration Corporation constituted by the *Health Administration Act 1982* is, for the purposes of this Act, taken to be a worker employed by that Corporation.
- (2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are:
 - (a) if the person was working under a contract of service immediately before engaging in the ambulance work—to be computed according to the earnings of the person under that contract of employment, or
 - (b) if the person was not working under a contract of service immediately before engaging in the ambulance work—to be such amount as the Commission considers to be reasonable in the circumstances.
- (3) In this clause, **ambulance work** means work in or in connection with the rendering of first aid to, or the transport of, sick or injured persons.

17 Ministers of religion (cf former Sch 1 cl 17)

- (1) The regulations may declare that persons within a specified class are ministers of religion of a specified religious body or organisation.
- (2) A person within such a class is, for the purposes of this Act, taken to be a worker employed by a person specified in the regulation as the employer of persons within that class.
- (3) A regulation relating to a religious body or organisation may not be made except at the request of that body or organisation.

- (4) An order under section 6 (14E) of the former 1926 Act, continued in force by clause 17 of Schedule 1 to the 1987 Act and in force immediately before the commencement of this clause has effect as if it were a regulation under this clause (but may be revoked by any such regulation).

18 Ministers of religion covered by policies (cf former Sch 1 cl 17A)

- (1) For the purposes of this Act, if a policy of insurance covers a minister of religion, that minister of religion is taken to be a worker and the person insured under the policy is taken to be the minister's employer.
- (2) A minister of religion is considered to be covered by a policy of insurance if the policy provides (whether on its own terms or in some other document recognised by or referred to in the policy) that the coverage provided by the policy extends to the minister or to ministers of a class of which that minister is a member.
- (3) A religious body or organisation, and any official of the body or organisation, is taken to have an insurable interest for the purpose of enabling the body, organisation or official to obtain and maintain in force a policy of insurance that covers a minister of religion of that body or organisation.
- (4) If there is a conflict between the operation of this clause and clause 17 in respect of a particular minister of religion, this clause prevails.
- (5) In this clause:

official of a religious body or organisation includes a person or body who or which holds an office or position, or exercises official functions, within the religious body or organisation.

19 Participants in training programs (cf former Sch 1 cl 18)

- (1) The regulations may:
 - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
 - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is, for the purposes of this Act, taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.
- (3) A payment that is declared by the regulations to be wages in respect of a participant

in a declared training program is, for the purposes of this Act, taken to be the participant's wages in the employment by the person who provides the workplace based training.

- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause.

Schedule 2 Provisions relating to Council

(Section 29)

1 Definition

In this Schedule:

member means a member of the Council.

2 Nomination of panels for appointment as members

- (1) If nominations to constitute a panel are not made within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be appointed from the panel.
- (2) A person so appointed is taken to have been duly nominated for appointment.

3 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) The deputy of a member appointed from a panel is to be appointed from the same or a further panel.
- (3) In the absence of a member, the member's deputy:
- (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (4) The deputy of a member who is Chairperson of the Council does not (because of this clause) have the member's functions as Chairperson.
- (5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

4 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

5 Allowances

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

6 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove a member from office.

(3) The Minister must remove a member from office if:

- (a) the member is a member appointed under section 29 (1) (b) or (c), and
- (b) the bodies or organisations that nominated the panel of persons from whom the member was appointed request the Minister in writing to remove the member

from office.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

9 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

10 Quorum

The quorum for a meeting of the Council is 10 members.

11 Presiding member

- (1) The Chairperson of the Council is to preside at a meeting of the Council.
- (2) In the absence of the Chairperson at a meeting of the Council, a member chosen by the members present at the meeting is to preside at the meeting.
- (3) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

13 Attendance by non-members

A person authorised by the Council or the Chairperson of the Council may attend a meeting of the Council for the purpose of assisting the Council to exercise its functions.

14 First meeting

The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

15 Committees of Council

- (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Council.
- (3) The procedure for calling meetings of a committee and for the conduct of those meetings is to be determined by the Council or (subject to any determination by the Council) by the committee.
- (4) The Council may delegate to a committee any of the functions of the Council, other than this power of delegation.

Schedule 3 Provisions relating to Board of Directors

(Section 15)

1 Definitions

In this Schedule:

appointed director means a director of the Board other than the Chief Executive Officer.

Board means the Board of Directors.

director means any director of the Board.

2 Chairperson and Deputy Chairperson

- (1) Of the appointed directors, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Governor) to be appointed as Chairperson and Deputy Chairperson of the Board respectively.
- (2) The Governor may at any time remove an appointed director from the office of Chairperson or Deputy Chairperson.
- (3) A director holding the office of Chairperson or Deputy Chairperson vacates that office if the person:

- (a) is removed from that office by the Governor, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a director.

3 Deputies of appointed directors

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed director, and the Minister may revoke any such appointment.
- (2) In the absence of an appointed director, the director's deputy:
 - (a) may, if available, act in the place of the director, and
 - (b) while so acting, has all the functions of the director and is taken to be a director.
- (3) A person while acting in the place of an appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a director is taken to be an absence of the director.

4 Term of office of appointed directors

Subject to this Schedule, an appointed director holds office for such period (not exceeding 3 years) as is specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Remuneration

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

6 Vacancy in office of appointed director

- (1) The office of an appointed director becomes vacant if the director:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Governor under this clause or Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice

has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may at any time remove an appointed director from office.

(3) Without limiting subclause (2), an appointed director may be removed from office under that subclause for a contravention of clause 7.

7 Disclosure of pecuniary interests

(1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to

inspection by any person on payment of the fee determined by the Board.

- (4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:
 - (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

8 Filling of vacancy in office of appointed director

If the office of an appointed director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed director.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

10 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

11 Quorum

The quorum for a meeting of the Board is 5 directors.

12 Presiding member

- (1) The Chairperson of the Board or (in the absence of the Chairperson) the Deputy Chairperson is to preside at a meeting of the Board.
- (2) In the absence of both the Chairperson and the Deputy Chairperson at a meeting of the Board, another director chosen by the directors present at the meeting is to preside at the meeting.
- (3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

14 Transaction of business outside meetings or by telephone

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the Board for the time being, and a resolution in writing approved in writing by a majority of those directors is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 Committees of Board

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not directors of the Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

16 First meeting

The Minister is to call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 3A Provisions relating to Investment Board

(Section 19A (6))

1 Definitions

In this Schedule:

appointed member means a member of the Investment Board other than the Chief Executive Officer.

member means any member of the Investment Board.

2 Chairperson and Deputy Chairperson

- (1) Of the appointed members, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Governor) to be appointed as Chairperson and Deputy Chairperson of the Investment Board respectively. An appointment of a member as Chairperson or Deputy Chairperson is to be on the joint recommendation of the Minister and the Treasurer.
- (2) The Governor may at any time remove an appointed member from the office of Chairperson or Deputy Chairperson.
- (3) A member holding the office of Chairperson or Deputy Chairperson vacates that office if the person:
 - (a) is removed from that office by the Governor, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

3 Term of office of appointed members

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

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

5 Vacancy in office of appointed member

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Governor under this clause or Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
- (e) is absent from 3 consecutive meetings of the Investment Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Investment Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Investment Board for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may at any time remove an appointed member from office.

(3) Without limiting subclause (2), an appointed member may be removed from office under that subclause for a contravention of clause 6.

6 Disclosure of pecuniary interests

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Investment Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Investment Board.

(2) A disclosure by a member at a meeting of the Investment Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Investment Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Investment Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Investment Board otherwise determines:

- (a) be present during any deliberation of the Investment Board with respect to the matter, or
- (b) take part in any decision of the Investment Board with respect to the matter.

(5) For the purposes of the making of a determination by the Investment Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Investment Board for the purpose of making the determination, or
- (b) take part in the making by the Investment Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Investment Board.

7 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

9 General procedure

The procedure for the calling of meetings of the Investment Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Investment Board.

10 Quorum

The quorum for a meeting of the Investment Board is 4 members.

11 Presiding member

- (1) The Chairperson of the Investment Board or (in the absence of the Chairperson) the Deputy Chairperson is to preside at a meeting of the Investment Board.
- (2) In the absence of both the Chairperson and the Deputy Chairperson at a meeting of the Investment Board, another member chosen by the members present at the meeting is to preside at the meeting.
- (3) The person presiding at a meeting of the Investment Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Investment Board at which a quorum is present is a decision of the Investment Board.

13 Transaction of business outside meetings or by telephone

- (1) The Investment Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Investment Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Investment Board.
- (2) The Investment Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Investment Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Investment Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

14 Committees of Investment Board

- (1) The Investment Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Investment Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Investment Board or (subject to any determination of the Investment Board) by the committee.

15 First meeting

The Minister is to call the first meeting of the Investment Board in such manner as the Minister thinks fit.

Schedule 4 (Repealed)

Schedule 5 Provisions relating to members of Commission

(Section 373)

1 Definition

In this Schedule, **judicial office** means the office of:

- (a) Magistrate, or
- (b) Judge of the District Court, or
- (c) Judicial Member of the Industrial Relations Commission, or
- (d) Judge of the Land and Environment Court, or
- (e) Judge of the Supreme Court.

2 Terms of appointment

- (1) Subject to this Act, a member of the Commission holds office for such period as is specified in the instrument of the member's appointment.
- (2) The term of an appointment must not exceed 7 years in the case of a Presidential member or 5 years in the case of any other member.
- (3) A member is eligible for reappointment.

3 Protection and immunities of member

A member of the Commission has, in the performance of functions performed as a member, the same protection and immunities as a Judge of the District Court.

4 Remuneration

- (1) The following are entitled to be paid remuneration (including travelling and subsistence allowances) in accordance with the [Statutory and Other Offices Remuneration Act 1975](#):
 - (a) a Presidential member,
 - (b) the Registrar,
 - (c) a Senior Arbitrator or any other Arbitrator appointed on a full-time basis by the instrument of appointment of the Arbitrator or by a later instrument executed by the Minister.
- (2) Any other Arbitrator is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a member of the Commission as the Minister may from time to time determine in respect of the Arbitrator.

5 Provisions where judicial officer is holding office as member

- (1) The appointment of a person who is the holder of a judicial office as a member, or service by a person who is the holder of a judicial office as a member, does not affect:
 - (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as a member is, for all purposes, taken to be service as the holder of that judicial office.

6 Vacancy in office

- (1) The office of a member of the Commission becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) in the case of the Registrar, ceases to hold any qualification required for the appointment of the Registrar, or
 - (i) is removed from office under this clause.
- (2) The Minister may remove a member of the Commission from office for incapacity, incompetence or misbehaviour.
- (3) (Repealed)

7 Acting President

- (1) If the President is absent from duty, the most senior Deputy President is to be Acting President unless the Minister makes an appointment under subclause (2).
- (2) The Minister may appoint a Deputy President or other member to be Acting President during the absence of the President from duty.
- (3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (4) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.
- (5) In this clause, **absence from duty** includes a vacancy in the office of President.

7A Acting Deputy Presidents

- (1) If a Deputy President is absent from duty, the Minister may appoint a person to be an Acting Deputy President during the absence of the Deputy President.
- (2) The Minister may make an appointment for a particular absence or for any absence that occurs from time to time.
- (3) The Minister may also appoint such additional Acting Deputy Presidents as the Minister determines may be necessary having regard to the workload of the Commission and the need for the proper and efficient exercise of its functions.
- (4) A person may be appointed as an Acting Deputy President only if the person is eligible to be appointed as a Deputy President.
- (5) An Acting Deputy President may be appointed for up to 12 months but may, despite the expiration of that period, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the Acting Deputy President before the expiration of that period.
- (6) A retired judicial officer may be appointed as an Acting Deputy President even though that person has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.
- (7) An Acting Deputy President has the functions of a Deputy President and anything done by an Acting Deputy President in the exercise of those functions has effect as if it had been done by a Deputy President.
- (8) For the avoidance of doubt, an Acting Deputy President is a member of the Commission and is a Presidential member.

- (9) Clause 2 does not apply to an Acting Deputy President.
- (10) In this clause, **absence from duty** includes a vacancy in the office of Deputy President and an absence due to a Deputy President being Acting President in accordance with clause 7.

8 Seniority

- (1) The members of the Commission have seniority according to the following order of precedence:
 - (a) the President,
 - (b) Deputy Presidents according to the days on which their appointments took effect or, if the appointments of 2 of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
 - (c) Registrar,
 - (c1) Senior Arbitrators according to the days on which their appointments took effect or, if the appointments of 2 of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
 - (d) other members according to the days on which their appointments took effect.
- (2) If a person is re-appointed under this Act, the person's seniority is to be determined as if there had been no break in the person's service.

9 Leave

- (1) The entitlement of a member of the Commission to annual and other leave is to be as stated in the instrument of the member's appointment.
- (2) A member may be granted leave:
 - (a) in the case of the President—by the Minister, and
 - (b) in any other case—by the President.

10 Superannuation and leave—preservation of rights

- (1) In this clause:

eligible member means a member of the Commission who, immediately before holding that office, was a public servant or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.

superannuation scheme means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and that is established by or under an Act.

- (2) An eligible member:
 - (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and
 - (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme, as if he or she had continued to be such a contributor during service as a member of the Commission.
- (3) Service by the eligible member as a member of the Commission is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
- (7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

11 Effect of other Acts

- (1) The *Public Sector Management Act 1988* (except Part 8) does not apply to the appointment of a member of the Commission and the member is not, as a member of the Commission, subject to that Act.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member of the Commission or from accepting and retaining any remuneration payable to the person under this Act as a part-time member of the Commission.

12 Oaths

The Minister may require oaths to be taken by the President and any Deputy President of

the Commission.

13 2010 Amending Act—saving of existing appointments

- (1) The substitution of section 368 of this Act by the *Workers Compensation Amendment (Commission Members) Act 2010* does not affect the continuity in office of any member of the Commission holding office immediately before the commencement of that Act.
- (2) An Arbitrator holding office immediately before the commencement of that Act is eligible to be appointed as a Senior Arbitrator or on a full-time basis.

Schedule 5A Injury management pilot projects

(Section 42A)

1 2 year pilot scheme

- (1) This Schedule (except subclause (2)) operates for a 2 year period following the commencement of this Schedule.
- (2) The effectiveness of this Schedule is to be evaluated by an independent person or body, chosen by the Authority by private tender, and the results of the evaluation are to be referred to the Law and Justice Committee of the Legislative Council which is to review the results and report to Parliament.

2 Definitions

In this Schedule:

employer's injury manager means the person for the time being appointed under this Schedule as injury manager for the group of employers of which the employer is a member.

injury management functions means:

- (a) any function arising under Chapter 3 (Workplace injury management),
- (b) any function that may be exercised in connection with dealing with and satisfying any claim against which an employer is indemnified under a policy of insurance,
- (c) such other functions in connection with the operation of this Act or the 1987 Act or the regulations under those Acts as may be prescribed by the regulations for the purposes of this definition.

3 Appointment of injury manager for group of employers

- (1) The Authority may, by order published in the Gazette, appoint a person as injury manager for the employers in a group of employers identified in the order as the group of employers to whom the order applies.

- (2) A group of employers may be identified in an order by reference to employers in a geographical area or to employers engaged in a particular business or industry or may be identified in any other manner.
- (3) The appointment of an injury manager may be made so as to apply in respect of all claims or injuries or be limited to apply in respect of a specified class or classes of claims or injuries, and may be made subject to specified terms and conditions.
- (4) The Authority may by order in writing direct that an order under subclause (1) is not to apply to a specified employer or to a specified class of employers, and such a direction has effect accordingly.

4 Injury manager appointed as agent and attorney of employers and insurers

- (1) An employer's injury manager is by this clause appointed as the agent and attorney of the employer, and of any insurer of the employer, in respect of such of the injury management functions of the employer or insurer as are specified in the order appointing the injury manager.
- (2) As agent and attorney of an employer or insurer, an injury manager may exercise such of the rights and discharge such of the obligations of the employer and the insurer as may be necessary or convenient for the effectual exercise by the injury manager of the functions in respect of which the injury manager is appointed agent and attorney of the employer or insurer.
- (3) The functions of an injury manager under this Schedule are subject to:
 - (a) the terms and conditions of the appointment of the injury manager, and
 - (b) such directions as the Authority may give to the injury manager in writing from time to time.
- (4) An injury manager may exercise rights and discharge obligations as agent of an employer in the name of the employer or in the injury manager's own name.
- (5) When an injury manager is authorised under this Schedule to exercise any rights or discharge any obligations of an employer or insurer as agent and attorney, the employer or insurer is not entitled to exercise those rights or discharge those obligations, except with the consent of the injury manager or the Authority.
- (6) The order appointing an injury manager may require that any specified reference in this Act, the 1987 Act, the regulations under those Acts or a policy of insurance to an insurer or to an employer is, in connection with the exercise of any functions of the injury manager under this Schedule, to be read as a reference to the injury manager.
- (7) The appointment effected by this clause may be revoked only by order under this Schedule.

5 Disclosure of information

The regulations may make provision for or with respect to authorising the Authority to disclose information obtained by the Authority as a result of or in connection with the operation of this Schedule.

6 Funding

- (1) The Authority may establish a fund (an ***injury management fund***) to be used for the payment of amounts by an injury manager in the performance of functions as agent and attorney of an employer or insurer.
- (2) (Repealed)
- (3) The regulations may make provision for or with respect to the following matters in connection with injury management funds:
 - (a) requiring the payment of interest on and the recovery of overdue payments required to be made by insurers into an injury management fund,
 - (b) the functions of an injury manager in connection with the administration of an injury management fund,
 - (c) the winding up of any such fund and the payment into the Insurance Fund of amounts standing to the credit of the fund,
 - (d) the auditing of an injury management fund.
- (4) (Repealed)

Schedule 6 (Repealed)