

Workers Compensation Regulation 2016

[2016-559]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Workers Compensation Legislation Amendment Act 2018 No 62](#), Sch 1.3[1]-[4] (not commenced)
- **Staged repeal status**
This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2024

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Workers Compensation Regulation 2016



New South Wales

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Workers Compensation Regulation 2016



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Workers Compensation Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Workers Compensation Regulation 2010*, which is repealed on 1 September 2016 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

approved form means a form approved by the Authority.

approved provider of workplace rehabilitation services means a provider that holds a certificate of approval.

category 1 employer means—

- (a) an employer insured under a policy of insurance to which the Workers Compensation Market Practice and Premiums Guidelines apply and whose basic tariff premium (within the meaning of those guidelines) for that policy would exceed \$50,000, if the period of insurance to which the premium relates were 12 months, or
- (b) an employer insured under more than one policy of insurance to which the Workers Compensation Market Practice and Premiums Guidelines apply and whose combined basic tariff premiums (within the meaning of those guidelines) for those policies would exceed \$50,000, if the period of insurance to which each premium relates were 12 months, or
- (c) an employer who is self-insured, or

- (d) an employer who is insured with a specialised insurer and who employs more than 20 workers.

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

certificate of approval means a certificate of approval as a provider of workplace rehabilitation services granted by the Authority under clause 23.

return-to-work guidelines means the guidelines, relating to return-to-work programs, determined by the Authority under section 52(2)(a) of the 1998 Act.

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

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

the 1998 Act means the [Workplace Injury Management and Workers Compensation Act 1998](#).

Note—

The 1987 Act, the 1998 Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation (other than notes in Schedule 6) do not form part of this Regulation.

Part 2 Work-related diseases

4 Diseases taken to be work-related

- (1) Each kind of employment set out in Column 2 of Schedule 1 is prescribed as employment to which section 19(1) of the 1987 Act applies.
- (2) A disease set out in Column 1 of Schedule 1 is prescribed as a disease that is related to the employment or, as the case may require, each kind of employment, set out in Column 2 of that Schedule opposite the description of that disease.

5 Medical tests and results to determine whether brucellosis, Q fever or leptospirosis is work-related

For the purposes of section 19(2) of the 1987 Act, any one of the results set out in Column 3 of Part 1 of Schedule 2, if obtained by means of the medical test the requirements of which are set out opposite that result in Column 2 of that Part, is a result prescribed in respect of the disease, the name of which appears opposite that result in Column 1 of that Part.

5A Firefighting bodies and agencies

The following bodies and agencies are prescribed for the purposes of section 19A of the 1987 Act—

- (a) the NSW Rural Fire Service,
- (b) Fire and Rescue NSW,
- (c) the Office of Environment and Heritage,
- (d) the Forestry Corporation,
- (e) Sydney Trains.

5B COVID-19—medical tests and results to determine if COVID-19 is work-related

- (1) For the purposes of section 19B(2) of the 1987 Act, a result set out in Column 3 of Part 2 of Schedule 2 in relation to COVID-19, if obtained by means of a medical test the requirements of which are set out opposite that result in Column 2 of that Part in relation to the disease, is a result prescribed in respect of the disease.
- (2) For the purposes of section 19B(3) of the 1987 Act, the clinical criteria prescribed for the purpose of making a classification of COVID-19 are the obtaining of a result prescribed under section 19B(2) of the 1987 Act in respect of the disease by means of a medical test that complies with the requirements prescribed under that subsection in relation to the disease.
- (3) A reference in Part 2 of Schedule 2 to the Australian Register of Therapeutic Goods is a reference to the register of that name maintained under the *Therapeutic Goods Act 1989* of the Commonwealth.

5C COVID-19—matters relating to incapacity

- (1) For the purposes of section 19B(5)(a) of the 1987 Act, the relevant date is the later of—
 - (a) the date that is 21 days after the date of the injury, or
 - (b) if a medical practitioner issues a certificate of capacity certifying that the worker still has COVID-19 on that date—the date that marks the end of the expected duration of the worker’s incapacity for work as a result of COVID-19 that is specified in the certificate.
- (2) Section 32A of the 1987 Act is modified by adding the following subsection at the end of the section—
 - (3) For the purposes of applying this Division to a worker referred to in section

19B(5), a reference in section 19B(5) to a worker being incapable of work is a reference to the worker having a total incapacity for work and no current work capacity.

(3) Subclauses (4) and (5) apply—

(a) to a worker the subject of a presumption under section 19B(1) of the 1987 Act in relation to whom the presumption under section 19B(5) of the 1987 Act is rebutted (a **relevant worker**), and

(b) for the purposes of Division 2 of Part 3 of the 1987 Act.

(4) To avoid doubt, section 33 of the 1987 Act applies to a relevant worker with a total or partial incapacity for work resulting from the worker's COVID-19 infection.

(5) A relevant worker to whom section 33 of the 1987 Act does not otherwise apply is taken to be partially incapacitated for work and to have current work capacity as a result of COVID-19 during the worker's isolation period if the worker's actual gross weekly earnings from paid employment during that period are—

(a) less than the gross weekly amount that the worker had the capacity to earn in the worker's pre-injury employment immediately before the injury, or

(b) nil.

(6) For the purposes of applying Division 2 of Part 3 of the 1987 Act to a relevant worker, the current weekly earnings of the worker in relation to a week are the worker's actual gross earnings in respect of that week, and clause 8 of Schedule 3 to the 1987 Act in its application to the worker is taken to be modified accordingly.

(7) In this clause—

isolation period in relation to a worker means the period for which the worker is required by a medical practitioner to isolate following the worker's diagnosis of COVID-19.

5D COVID-19—prescribed employment

For the purposes of the definition of **prescribed employment** in section 19B(9) of the 1987 Act, employment in any of the following is prescribed—

(a) cafes,

(b) supermarkets,

(c) funeral homes,

(d) child care facilities.

Part 3 Pre-injury average weekly earnings—injuries occurring before 21 October 2019

6AA Application of Part

This Part applies only to injuries received before 21 October 2019.

6 Minimum amount of pre-injury average weekly earnings

For the purposes of section 44C(7) of the 1987 Act, the amount of \$155 is prescribed as the minimum amount applicable to a worker.

7 Prescribed number of hours each week

For the purposes of the prescribed number of hours wherever referred to in Schedule 3 to the 1987 Act, 38 hours is prescribed.

Part 4 Pre-injury average weekly earnings—injuries occurring on or after 21 October 2019

Division 1 Preliminary

8 Application and operation of Part

- (1) This Part takes effect on and from 21 October 2019.
- (2) This Part applies only to injuries received on or after 21 October 2019.

8AA Definitions

In this Part—

pre-injury average weekly earnings agreement—see clause 8H.

the relevant earning period has the same meaning as in clause 2(2) of Schedule 3 to the 1987 Act.

unadjusted earning period—see clause 8A(3).

8AB Minimum amount of pre-injury average weekly earnings—Schedule 3, clause 2(4)

For the purposes of clause 2(4) of Schedule 3 to the 1987 Act, the amount of \$155 is prescribed as the minimum amount applicable to a worker.

Division 2 Relevant earning period

8A Operation of Division

- (1) This Division provides for the adjustment of the relevant earning period under clause 2(2) of Schedule 3 to the 1987 Act for a worker in employment for the purposes of

calculating the pre-injury average weekly earnings in relation to the worker.

- (2) The relevant earning period in respect of the employment is to be adjusted in accordance with the provisions of this Division in the following order—
 - (a) Clause 8B (Adjustment for workers not continuously employed),
 - (b) Clause 8C (Adjustment for financially material change to earnings),
 - (c) Clause 8D (Alignment of relevant earning period with pay period),
 - (d) Clause 8E (Adjustment for unpaid leave),
 - (e) Clause 8EA (Adjustment for prescribed periods relating to COVID-19).
- (3) Accordingly, a reference in a provision of this Division—
 - (a) to the relevant earning period is a reference to the relevant earning period as adjusted in accordance with any preceding provision applicable to the worker, or
 - (b) to the ***unadjusted earning period*** is a reference to the relevant earning period as so adjusted, but without regard to any adjustment under the provision in which the expression is used.

8B Adjustment for workers not continuously employed—Schedule 3, clause 2(3)(a) of 1987 Act

- (1) The relevant earning period for a worker in employment is to be adjusted in accordance with this clause if the worker was not engaged in the employment from the beginning of the unadjusted earning period.
- (2) The relevant earning period for the worker in the employment is to be adjusted by excluding any period before the day on which the worker was first engaged in the employment.

8C Adjustment for financially material change to earnings—Schedule 3, clause 2(3)(a) of 1987 Act

- (1) The relevant earning period for a worker is to be adjusted in accordance with this clause if, during the unadjusted earning period, there was a change of an ongoing nature to the employment arrangement resulting in a financially material change to the earnings of the worker (for example, a change from full-time to part-time work).
- (2) The relevant earning period is to be adjusted by excluding from the period any period before the change to the earnings of the worker occurred.

8D Alignment of relevant earning period with pay period—Schedule 3, clause 2(3)(b) of 1987 Act

- (1) The relevant earning period for a worker in employment may be adjusted to align the

relevant earning period with any regular interval at which the worker is entitled to receive payment of earnings for work performed in the employment.

- (2) The relevant earning period is not to be adjusted as provided by this clause unless the insurer is reasonably satisfied that the amount of pre-injury average weekly earnings calculated by reference to the period as so adjusted is not less than the amount that it would have been but for the adjustment.

8E Adjustment for unpaid leave—Schedule 3, clause 2(3)(a) of 1987 Act

- (1) The relevant earning period for a worker is to be adjusted in accordance with this clause if, during any period of not less than seven consecutive calendar days within the unadjusted earning period—
 - (a) no earnings in the employment were paid or payable to the worker, and
 - (b) the worker took a period of unpaid leave (***the unpaid leave period***) commencing on the first day of that consecutive period.
- (2) The relevant earning period is to be adjusted by excluding each day (whether or not the day was a usual work day for the worker) of the period commencing on the first day of the unpaid leave period and ending immediately before the day on which earnings in the employment once again became payable to the worker.

8EA Adjustment for prescribed periods relating to COVID-19—Schedule 3, clause 2(3)(a) of 1987 Act

- (1) The relevant earning period for a worker in employment is to be adjusted in accordance with this clause if, during the unadjusted earning period, there was a change to the worker's employment arrangements as a direct result of the impact of the COVID-19 pandemic on the operations or general financial position of an employer of the worker.
- (2) If the change to the worker's employment arrangements resulted in a financially material reduction to the total earnings of the worker during the first prescribed period, the relevant earning period is to be adjusted by excluding the first prescribed period.
- (3) The relevant earning period for a worker to whom subclause (2) applies is to be further adjusted in accordance with subclause (4) if the change to the worker's employment arrangements resulted in no earnings in employment being paid or payable to the worker for a period of 2 or more days commencing on the first day of the second prescribed period.
- (4) For subclause (3), the relevant earning period is to be further adjusted by excluding each day, whether or not the day was a usual work day for the worker, of the period commencing on the first day of the second prescribed period and ending on the earlier

of—

- (a) the day immediately before the day on which earnings in any employment once again became payable to the worker, and
- (b) the last day of the second prescribed period.

(5) In this clause—

first prescribed period means the period on and from 23 March 2020 to 14 June 2020.

second prescribed period means the period on and from 15 June 2020 to 27 September 2020.

Division 3 Pre-injury average weekly earnings—short-term workers, apprentices, trainees and young people

8F Pre-injury average weekly earnings for short-term workers—Schedule 3, clause 4(2) of 1987 Act

- (1) In determining the earnings that a worker could reasonably have been expected to have earned in employment for the purposes of clause 4(1) of Schedule 3 to the 1987 Act, the following matters are to be taken into account—
 - (a) any contract of employment made before the date of the injury,
 - (b) any award or agreement relating to the employment,
 - (c) any hours worked or earnings received by the worker during the period of 52 weeks before the injury.
- (2) If the consideration of those matters does not reasonably assist in determining the earnings that the worker could reasonably have been expected to have earned in the employment, the earnings are to be determined by having regard to the average weekly amount earned during the period of 52 weeks before the injury by other persons for the performance of similar work as the worker (whether or not with the worker's employer).

8G Pre-injury average weekly earnings of apprentices, trainees and young people—Schedule 3, clause 5(3)(c) of 1987 Act

- (1) For the purposes of clause 5(3)(c) of Schedule 3 to the 1987 Act, the worker's pre-injury average weekly earnings are to be determined by having regard to the average weekly amount earned during the latest earning stage—
 - (a) by other persons who have attained the age of 21 years, and
 - (b) for the performance by those persons of similar work as the worker (whether or

not with the worker's employer).

(2) If there are no persons who have attained that age and who are so employed and performing similar work as the worker, the worker's pre-injury average weekly earnings is the maximum weekly compensation amount.

(3) In this clause—

latest earning stage means the period of 52 weeks before the worker attained the age of 21 years.

Division 4 Pre-injury average weekly earnings agreements

8H Operation of Division

- (1) This Division sets out matters relating to an agreement between a worker and the employer as to the amount of pre-injury average weekly earnings that is to apply to the worker for the purposes of Division 2 of Part 3 of the 1987 Act (a **pre-injury average weekly earnings agreement**).
- (2) An obligation of the insurer to determine an application for approval of a pre-injury average weekly earnings agreement under this Division ceases if the insurer disputes liability for the weekly payments of compensation.
- (3) An agreement approved under this Division ceases to have effect for the purposes of clause 8I if the insurer disputes liability for the weekly payments of compensation.

8I Agreements to be approved by insurer—Schedule 3, clause 3(2)

- (1) The amount of pre-injury average weekly earnings that applies to a worker for the purposes of Division 2 of Part 3 of the 1987 Act is the amount specified in a pre-injury average weekly earnings agreement (if any) approved by the insurer in accordance with this Division.

Note—

See clause 8H(2) in relation to the cessation of the operation of this Division where liability is disputed.

- (2) The amount specified in a pre-injury average weekly earnings agreement under subclause (1) is subject to the minimum amount prescribed under clause 8AB.

8J Application for approval of agreement—Schedule 3, clause 3(1)

- (1) The worker or the employer may apply for the approval by the insurer of a pre-injury average weekly earnings agreement.
- (2) The application is to be made within 5 days after the initial notification to the insurer of the injury (within the meaning of Part 3 of Chapter 7 of the 1998 Act).
- (3) The application is to be in writing and is to include each of the following—

- (a) the agreed amount of pre-injury average weekly earnings,
 - (b) the date of the agreement,
 - (c) the date of the injury and claim number,
 - (d) the name of the worker and of the employer,
 - (e) the name and contact details of any person authorised by the employer to enter into the agreement,
 - (f) details of any other employment in which the worker is engaged,
 - (g) any supporting information (including, for example, a contract of employment or payslips),
 - (h) any other information that the worker or the employer considers was taken into account in reaching the agreement,
 - (i) acknowledgement of the consent of the parties to the agreement.
- (4) The worker or the employer may withdraw the application by giving notice in writing to the insurer.

8K Approval of agreement—Schedule 3, clause 3(1)

- (1) After receiving an application for approval of a pre-injury average weekly earnings agreement in accordance with clause 8J, the insurer is to determine whether to approve, or refuse to approve, the agreement.
- (2) The insurer is to determine the application within 7 days after receiving the application (except as provided by subclause (3)).
- (3) If the insurer has a reasonable excuse for not commencing provisional weekly payments of compensation, the insurer is to determine the application within 7 days after the earlier of the following—
 - (a) the insurer ceases to have a reasonable excuse for not commencing those weekly payments,
 - (b) the insurer accepts liability for weekly payments of compensation in respect of the injury.
- (4) The insurer is to approve a pre-injury average weekly earnings agreement if satisfied that the agreed amount reasonably reflects the worker's pre-injury earnings (excluding any earnings before or after the period of 52 weeks ending immediately before the date of the injury) and that the agreement is otherwise fair and reasonable.
- (5) The insurer must not approve a pre-injury average weekly earnings agreement

relating to a worker who is a person under legal incapacity.

- (6) The insurer may decide to make weekly payments of compensation on the basis of the agreed amount of pre-injury average weekly earnings until the application for approval of the agreement is determined (an **interim payment decision**).
- (7) For the avoidance of doubt, an interim payment decision is, for the purposes of clause 3 of Schedule 3 to the 1987 Act, a decision that is authorised to be made before the agreement can take effect.

Note—

Clause 3 of Schedule 3 to the 1987 Act provides that certain decisions authorised or required to be made by the regulations are taken not to be work capacity decisions for the purposes of Division 2 of Part 3 of that Act.

- (8) The insurer is not to approve a pre-injury average weekly earnings agreement if, before the application for approval of the agreement was made, the insurer made a work capacity decision about the amount of the worker's pre-injury average weekly earnings.
- (9) The insurer is not to make a work capacity decision about the amount of the worker's pre-injury average weekly earnings before the application for approval of the pre-injury average weekly earnings agreement is determined.
- (10) As soon as practicable after an application is determined, the insurer must notify the worker and the employer of the determination.
- (11) In this clause—

person under legal incapacity includes the following persons—

- (a) a child under the age of 18 years,
- (b) an involuntary patient or forensic patient within the meaning of the [Mental Health Act 2007](#),
- (c) a person under guardianship within the meaning of the [Guardianship Act 1987](#),
- (d) a protected person within the meaning of the [NSW Trustee and Guardian Act 2009](#),
- (e) an incommunicate person, being a person with a physical or mental disability that prevents the person from receiving communications, or expressing their will, in relation to their property or affairs.

8L Variation of agreement

- (1) Only one pre-injury average weekly earnings agreement may be approved by the insurer in respect of the worker's claim for weekly payments of compensation.

- (2) However, the insurer may approve a variation of the pre-injury average weekly earnings agreement on the application of the worker or the employer if the worker's entitlement to the use of a non-monetary benefit has been withdrawn on or after the date of the injury concerned.

8M Withdrawal of pre-injury average weekly earnings agreement—Schedule 3, clause 3(2) and (3)

- (1) A party to a pre-injury average weekly earnings agreement approved under this Division may withdraw from the agreement at any time by giving notice in writing to the other party and to the insurer.
- (2) Within 7 days after receiving notice of the withdrawal, the insurer is to—
- (a) determine the amount of the pre-injury average weekly earnings that applies to the worker for the purposes of Division 2 of Part 3 of the 1987 Act, and
 - (b) give the worker and the employer notice in writing of the withdrawal from the agreement and of the amount determined in accordance with paragraph (a).
- (3) A decision of the insurer under this clause determining the applicable amount of pre-injury average weekly earnings is a work capacity decision and takes effect on the date of the notice under subclause (2)(b).
- (4) However, subclause (3) does not limit the application of clause 8N in respect of any payment increase decision.

Note—

See also section 80 of the 1998 Act with respect to the required period of notice for the reduction of weekly payments.

Division 5 Miscellaneous

8N Insurer procedures for work capacity decisions—section 44BAA

- (1) Within 14 days after making a payment increase decision, the insurer must pay to the worker the amount of the increase in weekly payments of compensation that has become payable to the worker as a result of the decision.

Maximum penalty—20 penalty units.

- (2) A **payment increase decision** is a work capacity decision about the amount of a worker's pre-injury average weekly earnings or current weekly earnings that results in an increase in the amount of weekly payments of compensation becoming payable to the worker in respect of any period before the decision is made.

Part 5 Return to work assistance

9 Liability to pay compensation for work assistance

- (1) For the purposes of section 64B of the 1987 Act, a pre-injury employer is not liable to pay compensation for the cost of work assistance provided to assist a worker to return to work with a new employer if—
 - (a) the offer of employment with the new employer is an offer of employment for a period of less than 3 months, or
 - (b) the offer of employment has not been made in writing.
- (2) The person on whom a claim for compensation under section 64B of the 1987 Act is made must, within 14 days after the claim is made, determine the claim by accepting, or disputing, liability to pay the compensation.
- (3) Words and expressions used in this clause have the same meaning as in section 64B of the 1987 Act.

10 Liability to pay compensation for education or training

- (1) For the purposes of section 64C of the 1987 Act, an employer is not liable to pay compensation for the cost of education or training provided to assist a worker to return to work if—
 - (a) the provision of the education or training is inconsistent with the retraining or employment objectives of the injury management plan established for the worker, or
 - (b) the education or training is provided by any person or body other than—
 - (i) an NVR registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth, or
 - (ii) a registered higher education provider within the meaning of the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth.
- (2) The person on whom a claim for compensation under section 64C of the 1987 Act is made must, within 21 days after the claim is made, determine the claim by accepting, or disputing, liability to pay the compensation.

Part 6 Return-to-work programs under the 1998 Act

11 Time within which program to be established

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

becomes a category 1 employer.

- (2) A return-to-work program required to be established by a category 2 employer must be established before the expiration of the period of 12 months after the employer becomes a category 2 employer.
- (3) The Authority may, in a particular case, extend the period during which a return-to-work program is required to be established.

Note—

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

12 Offence—failure to establish program

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

Maximum penalty—

- (a) in the case of a category 1 employer—20 penalty units, or
- (b) in the case of a category 2 employer—5 penalty units.

13 Standard return-to-work programs for category 2 employers

- (1) The Authority may prepare (in accordance with the return-to-work guidelines) standard return-to-work programs for category 2 employers generally or for different kinds of category 2 employers.
- (2) A category 2 employer may establish a return-to-work program by adopting a relevant standard return-to-work program prepared by the Authority under this clause.
- (3) The Authority may include in a compensation claim approved form under section 65(1)(b) of the 1998 Act a copy of any standard return-to-work program prepared under this clause.

14 Program to comply with return-to-work guidelines etc

- (1) An employer is not to be regarded as having established a return-to-work program unless the program complies with the return-to-work guidelines and any directions under or requirements of this Regulation.
- (2) A category 2 employer who adopts a relevant standard return-to-work program under clause 13 is to be regarded as having duly established a return-to-work program.

15 Return-to-work guidelines for programs—directions

- (1) The Authority may give an employer directions in writing in connection with any

return-to-work program established, or to be established, by the employer to ensure that the program complies with the return-to-work guidelines.

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

16 Nomination in programs of approved providers of workplace rehabilitation services

- (1) A return-to-work program must, if the return-to-work guidelines so require, nominate an approved provider of workplace rehabilitation services (or a list of approved providers) for the purposes of the program.
- (2) Consultation on the nomination of an approved provider of workplace rehabilitation services is to be carried out in such circumstances and in the manner that the return-to-work guidelines may provide.

16A Notification of program

A return-to-work program required to be notified to workers under section 52 of the 1998 Act may be notified by way of a computer program designed for use on a smartphone or other mobile device (in addition to any other method authorised by that section).

17 Offence—failure to display or notify program

An employer who fails to display or notify a return-to-work program in accordance with section 52(2)(c) and (d) of the 1998 Act is guilty of an offence.

Maximum penalty—

- (a) in the case of a category 1 employer—10 penalty units, or
- (b) in the case of a category 2 employer—2 penalty units.

18 Notification etc of program by category 2 employer

A category 2 employer is not required to display or notify a return-to-work program in accordance with section 52(2)(c) and (d) of the 1998 Act—

- (a) if the employer provides a copy of the program to any worker who requests a copy or who claims compensation for any injury, or
- (b) if the employer makes other appropriate arrangements to ensure that workers have access to a copy of the program.

19 Category 1 employers must have return-to-work co-ordinator

- (1) A category 1 employer must—
 - (a) employ a person to be a return-to-work co-ordinator for injured workers of the

employer, being a person who has undergone such training as the return-to-work guidelines may require, or

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

Maximum penalty—20 penalty units.

- (2) The following are examples of the arrangements that the return-to-work guidelines can permit for the purposes of this clause—
 - (a) the engagement of a person under an arrangement with a person or organisation that provides return-to-work co-ordinators to employers,
 - (b) an arrangement under which a person is engaged on a shared basis by 2 or more employers.
- (3) The return-to-work guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1)(b).
- (4) The return-to-work guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be return-to-work co-ordinators under subclause (1)(b).

20 Functions of return-to-work co-ordinators

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

21 Exemptions

The following classes of employers, to the extent indicated, are exempt from the requirement to establish a return-to-work program under section 52 of the 1998 Act and from clause 19—

- (a) employers (including bodies corporate for strata schemes or strata (leasehold) schemes) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent of the workers concerned),
- (b) employers who hold owner-builder permits under the *Home Building Act 1989* (but only to the extent of workers employed for the purposes of the work to which the permits relate),
- (c) employers (being corporations) who only employ workers who are directors of the corporation,
- (d) employers who only employ workers who are members of the employer's family,

- (e) employers who only employ workers who perform work while outside New South Wales,
- (f) employers exempted in writing by the Authority (but only to the extent specified in the exemption).

Part 7 Approval of workplace rehabilitation providers

22 Application for certificate of approval

- (1) A person may apply to the Authority for a certificate of approval as a provider of workplace rehabilitation services.
- (2) Two or more persons jointly providing, or intending to jointly provide, workplace rehabilitation services may (but are not required to) apply for a joint certificate of approval.
- (3) An application must—
 - (a) be in the approved form, and
 - (b) contain the particulars and be accompanied by the documents that are required by that form, and
 - (c) be accompanied by such fee as the Authority may determine.

23 Determination of application

- (1) The Authority is to determine an application for a certificate of approval—
 - (a) by granting a certificate to the applicant in the applicant's name, or, if there is more than one applicant, in their joint names, or
 - (b) by refusing to grant a certificate.
- (2) In determining an application for a certificate of approval, the Authority is to have regard to—
 - (a) the application, and
 - (b) in relation to the applicant or each applicant (if more than one)—
 - (i) if the applicant is a natural person—the desirability of granting individual approval to natural persons, and
 - (ii) the capacity of the applicant to comply with the conditions of approval for workplace rehabilitation providers approved by the Authority, and
 - (iii) any information supplied by a trade union or employer organisation relating to the applicant's provision of rehabilitation services, and

- (iv) any complaint lodged with the Authority against the applicant by a client of the applicant, and
 - (v) information procured in the course of any interviews with or examination of premises used by the applicant, and
 - (vi) verification of any references supplied by the applicant, and
 - (c) any relevant information relating to workers compensation costs and statistics concerning the return to work of injured workers, and
 - (d) any other matters that the Authority thinks fit.
- (3) The Authority must not grant a certificate unless—
- (a) in the case of an application by a natural person or natural persons—the Authority is of the opinion that the applicant or each applicant is a fit and proper person to hold a certificate and is of or above the age of 18 years, and
 - (b) in the case of an application by a corporation—
 - (i) the Authority is of the opinion that the corporation is a fit and proper person to hold a certificate, and
 - (ii) each director of the corporation would, if the application had been made by the director, be a fit and proper person to be granted a certificate.

24 Form of certificate of approval

- (1) A person may be granted a certificate of approval in respect of one or more of the following classes of approval—
- (a) a provider of services related to return to work with the pre-injury employer,
 - (b) a provider of services related to return to work with a different employer,
 - (c) a provider of specialist workplace rehabilitation services.
- (2) A certificate is to be in the approved form and is to specify—
- (a) the name of the person or, in the case of a joint certificate, the names of the persons to whom the certificate is granted, and
 - (b) the class or classes of approval for which the certificate is granted.

25 Holder of certificate to comply with conditions

- (1) It is a requirement of every certificate of approval that the holder of the certificate must comply with the conditions for approval for workplace rehabilitation providers approved by the Authority that are appropriate for the class or classes of approval for

which the certificate is granted, being conditions of which the holder has been notified.

- (2) A certificate may be granted subject to such other conditions as may be specified in the certificate.
- (3) The Authority may, by notice in writing served on the holder of a certificate, amend or revoke the conditions specified in the certificate or add to those conditions.
- (4) Any such amendment, revocation or addition takes effect on and from a date specified in the Authority's notice, being a date at least 7 days after the notice is served on the holder of the certificate.

26 Amendment of certificate

- (1) The Authority may amend a certificate—
 - (a) on the application of a person who does not hold a certificate and proposes to provide a workplace rehabilitation service jointly with the holder of a certificate, by adding the name of the person as a joint holder of the certificate, or
 - (b) on the application of a joint holder of a certificate who ceases to provide workplace rehabilitation services, by deleting the person's name from the certificate, or
 - (c) on the application of a holder of a certificate, by amending the specification of the class or classes of approval for which the certificate is granted.
- (2) An application under this clause must—
 - (a) be in the approved form, and
 - (b) contain the particulars and be accompanied by the documents that are specified in that form, and
 - (c) be accompanied by such fee as the Authority may determine.
- (3) The Authority is to determine an application under this clause—
 - (a) by granting the application and amending the certificate accordingly, or
 - (b) by refusing the application.
- (4) If an application referred to in subclause (1)(a) is granted and the certificate is amended by specifying in the certificate the name of the person concerned, that person is taken to be a person to whom the certificate is granted.

27 Notice of refusal

- (1) If the Authority refuses to grant or amend a certificate of approval, the Authority must

as soon as practicable cause notice of the refusal to be served on the applicant.

- (2) In the case of a joint application, it is a sufficient compliance with subclause (1) if the notice of refusal is served on any one of the applicants.
- (3) The Authority is taken to have refused to grant or amend a certificate (and is taken to have notified the applicant accordingly) if the Authority does not give a decision on an application within 4 months after the date of lodgment of the application.

28 Duration of certificates

- (1) A certificate of approval remains in force, unless sooner cancelled or surrendered, for the period determined by the Authority and specified in the certificate.
- (2) A certificate may be renewed from time to time by the grant of a further certificate.

29 Surrender of certificates

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

30 Duplicate certificates

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

31 Register of certificates

- (1) The Authority is to cause a register of certificates of approval to be kept, in the form determined by the Authority, and is to cause to be recorded in the register in respect of each certificate—
 - (a) the matters required by this Regulation to be specified in the certificate, and
 - (b) particulars of any amendment of the certificate, and
 - (c) particulars of any cancellation, suspension or surrender of the certificate, and
 - (d) any other matters that the Authority thinks fit.
- (2) The Authority may cause to be made such alterations of the register that are necessary to ensure that the register is an accurate record.
- (3) The register may be inspected by any person at the office of the Authority during the Authority's usual office hours and copies of all or any part of the register may be taken on payment of such fee as the Authority may determine.

32 False or misleading statements

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

Maximum penalty—20 penalty units.

33 Cancellation or suspension of certificate

- (1) The Authority may cancel or suspend a certificate of approval if the Authority is satisfied—
- (a) that the holder of the certificate has made a statement in or in connection with an application for the certificate or amendment of the certificate that the holder knows to be false or misleading in a material particular, or
 - (b) that the holder of the certificate has contravened a condition of the certificate, or
 - (c) that the holder of the certificate has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more, or
 - (d) that the holder of the certificate, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit, or
 - (e) that the holder of the certificate, being a corporation—
 - (i) is in the course of being wound up, or
 - (ii) is under administration, or
 - (iii) is a corporation in respect of the property of which a receiver or manager (or other controller within the meaning of the *Corporations Act 2001* of the Commonwealth) has been appointed, or
 - (iv) has entered into a compromise or arrangement with its creditors, or
 - (f) that the holder of the certificate has not provided workplace rehabilitation services for a continuous period of 3 months or more, or
 - (g) that the holder of the certificate is for any other reason not a fit and proper person to hold a certificate, or
 - (h) in the case of a holder of a certificate, being a corporation—that any director of the corporation—
 - (i) has been convicted of an offence referred to in paragraph (c), or

- (ii) for any other reason would not be a fit and proper person to hold a certificate, if the certificate were held by the person.
- (2) The grounds referred to in subclause (1) (except paragraph (f)) are taken to exist—
 - (a) in the case of a joint certificate—if those grounds apply to any holder of that certificate, or
 - (b) in the case of 2 or more certificates held by persons providing workplace rehabilitation services in partnership—if those grounds apply to any holder of any of those certificates.
- (3) Before cancelling or suspending a certificate, the Authority must give the holder of the certificate an opportunity to show cause why the certificate should not be cancelled or suspended on such grounds as are notified to the holder.
- (4) The cancellation or suspension of a certificate does not take effect until notice in writing of the cancellation or suspension has been served on the holder of the certificate.

34 False claim of approval

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

Maximum penalty—20 penalty units.

Part 8 Notices and claims procedure

35 Notification of workplace injury

- (1) For the purposes of section 44(2) of the 1998 Act, notification to an insurer or the Nominal Insurer by an employer that a worker has received a workplace injury must be given in any of the following ways—
 - (a) by electronic communication (using a mode of electronic communication approved by the insurer or the Nominal Insurer) providing the information requested by the insurer or the Nominal Insurer,
 - (b) in writing by completing a notification form approved for the purpose by the insurer or the Nominal Insurer and sending the completed form to the insurer or the Nominal Insurer by post or facsimile transmission at the address or facsimile number indicated on the form, or by completing and lodging the form in person at an office of the insurer or the Nominal Insurer,
 - (c) by telephone to the insurer or the Nominal Insurer, giving such information as may be requested of the caller.
- (2) An employer who gives a notification under section 44(2) of the 1998 Act must make

and keep for at least 5 years after the notification is given—

- (a) a record of the date, time, place and nature of the injury to which the notification relates, and
- (b) a record of the date on which and the way in which the notification was given, and
- (c) a record of any acknowledgment (such as a receipt number) given to the employer by the insurer or the Nominal Insurer as evidence of receipt of the notification.

Note—

An entry in the register of injuries kept under section 256 of the 1998 Act is a sufficient record of an injury for the purposes of this clause. The record of an acknowledgment of the notification can also be made and kept as part of the register of injuries.

- (3) An employer must make the records kept under subclause (2) available for inspection in accordance with, and in any event no later than 7 days after the date of, a request by—
 - (a) an authorised officer, or
 - (b) if any employee of the employer is a member of an industrial organisation of employees—an authorised employee representative of that organisation.

- (4) In this clause—

authorised employee representative of an industrial organisation of employees, means a person who is an authorised industrial officer within the meaning of Part 7 of Chapter 5 of the *Industrial Relations Act 1996* in respect of that industrial organisation of employees.

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

Maximum penalty—20 penalty units.

36 Employer must give early notification of workplace injury

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

Maximum penalty—20 penalty units.

37 Notice of injury involving loss of hearing

- (1) If an injury is a loss, or further loss, of hearing that is of such a nature as to be caused by a gradual process (including boilermaker's deafness and any deafness of a similar origin)—
 - (a) notice of injury is to be given by the worker under section 61 of the 1998 Act—
 - (i) if the worker is employed by an employer in an employment to the nature of

which the injury is due to that employer, or

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

(b) the notice must be in writing and be in the approved form.

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

38 Notice of insurer decisions

(1) A notice under section 78 of the 1998 Act of an insurer's decision to dispute liability in respect of a claim or any aspect of a claim (except in connection with a work injury damages matter), or to discontinue or reduce the amount of weekly payments of compensation, is to contain the following information—

- (a) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation, and by the employer in connection with the claim,
- (b) a statement identifying all the reports of the type to which clause 41 applies that are relevant to the decision, whether or not the reports support the reasons for the decision,
- (c) a statement advising that a copy of a report required to be provided by the insurer under clause 41(3) (except as provided by clause 41(5) or (6)) accompanies the notice,
- (d) details of the procedure for requesting a review of the decision,
- (e) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from an Australian legal practitioner, from the Independent Review Officer or from any other relevant service established by the Authority,
- (f) the contact details for the Independent Review Officer,
- (g) the street address and the email address of the President,
- (h) a summary, in the approved form, of the effect of the decision, the worker's rights of review, the procedure for requesting a review and the legal and other services that may be available to the worker to provide advice or assistance in relation to the dispute.

(2) If the notice relates to a decision to discontinue weekly payments of compensation, the insurer must give a copy of the summary referred to in subclause (1)(h) to any

current employer of the worker who is liable to pay the compensation (except in circumstances where the compensation is paid by the insurer).

38A Notice of insurer decisions—work injury damages

A notice under section 78 of the 1998 Act of an insurer's decision to dispute liability in a work injury damages matter is to contain the following information—

- (a) a statement to the effect that, before a claimant can commence court proceedings, the claimant must firstly serve a pre-filing statement (in accordance with section 315 of the 1998 Act) on the defendant and secondly refer the claim to the Commission for mediation (in accordance with section 318A of the 1998 Act),
- (b) a statement to the effect that the claimant is not entitled to raise matters in court proceedings that are materially different from those contained in the pre-filing statement, except with the leave of the court,
- (c) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation,
- (d) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from an Australian legal practitioner or from any relevant service established by the Authority,
- (e) the street address and the email address of the President or the Principal Registrar (within the meaning of the [District Court Act 1973](#)) of the District Court.

38B Notice requirements—coal miners

A notice under section 74 of the 1998 Act of an insurer's decision to dispute liability in a coal miner matter is to contain the following information—

- (a) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation,
- (b) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from an Australian legal practitioner or from any relevant service established by the Authority,
- (c) a statement to the effect that the worker can refer the dispute for determination by the District Court,
- (d) if the insurer has referred or proposes to refer the dispute for determination by the District Court, a statement to that effect specifying the date of referral or proposed referral,
- (e) a statement to the effect that the matters that may be referred to the District Court are limited to matters notified in the notice, in a notice after a further review in

correspondence prior to any such referral concerning an offer of settlement or in a request for a further review, except with the leave of the District Court,

- (f) the street address and the email address of the Principal Registrar (within the meaning of the *District Court Act 1973*) of the District Court.

Note—

The repeal of section 74 of the 1998 Act by the *Workers Compensation Legislation Amendment Act 2018* does not apply to coal miners. See clause 5 of Part 19L of Schedule 6 to the 1987 Act.

39 Form of notice to be posted up at workplace

- (1) For the purposes of section 231(1) of the 1998 Act—
- (a) a summary of the requirements of that Act with regard to the giving of notice of injuries and the making of claims is to be in the approved form, and
 - (b) other information required to be posted up in accordance with that section is the other information contained in the approved form.
- (2) An approved form that ceases to be an approved form (as a result of the amendment or substitution of an approved form) continues to be an approved form for the purposes of a notice posted up under section 231 of the 1998 Act that was in that form immediately before it ceased to be an approved form, but only until the earlier of—
- (a) the renewal or replacement of the notice, or
 - (b) 12 months after the form ceases to be an approved form.

40 Form of register of injuries to be kept at workplace

- (1) The register of injuries required to be kept under section 256 of the 1998 Act may be kept in written or electronic form.
- (2) The register of injuries may be kept in electronic form only if the employer provides education, training and facilities to ensure that workers are able to access the register.
- (3) The particulars to be entered in the register of injuries are the following—
- (a) the name of the injured worker,
 - (b) the worker's address,
 - (c) the worker's age at the time of injury,
 - (d) the worker's occupation at the time of injury,
 - (e) the industry in which the worker was engaged at the time of injury,

- (f) the time and date (or deemed date) of injury,
- (g) the nature of the injury,
- (h) the cause of the injury.

41 Access to certain medical reports and other reports obtained by insurer

- (1) This clause applies to the following types of reports that an employer or insurer has in the employer's or insurer's possession—
 - (a) medical reports, including medical reports provided pursuant to section 119 (Medical examination of workers at direction of employer) of the 1998 Act,
 - (b) certificates of capacity,
 - (c) clinical notes,
 - (d) investigators' reports,
 - (e) workplace rehabilitation providers' reports,
 - (f) health service providers' reports,
 - (g) reports obtained by or provided to an employer or insurer that contain information relevant to the claim on which a decision to dispute liability is made.
- (2) This clause applies to the following decisions of an employer or insurer relating to an injured worker—
 - (a) a decision to dispute liability in respect of a claim, or any aspect of a claim (in circumstances requiring the insurer to give the worker a notice under Division 3 of Part 2 of Chapter 4 of the 1998 Act),
 - (b) a decision to discontinue payment, or to reduce the amount of weekly benefits (in circumstances requiring the insurer to give the worker a notice under Division 3 of Part 2 of Chapter 4 of the 1998 Act),
 - (c) a decision on the review under section 287A of the 1998 Act of a decision described in paragraph (a) or (b) that confirms the original decision.
- (3) For the purposes of sections 73(1) and 126(2) of the 1998 Act, if an employer or insurer makes a decision to which this clause applies, the employer or insurer must provide a copy of any relevant report to which this clause applies to the worker, as an attachment to a notice under Division 3 of Part 2 of Chapter 4 of the 1998 Act or section 287A of the 1998 Act, as the case may be, except where the report has already been supplied to the worker and that report is identified in a statement under clause 38(1)(d).

- (4) The obligation in this clause to provide a copy of a report applies to any report that is relevant to the claim or any aspect of the claim to which the decision relates, whether or not the report supports the reasons for the decision.
- (5) If the employer or insurer is of the opinion that supplying a worker with a copy of a report would pose a serious threat to the life or health of the worker or any other person, the employer or insurer may instead supply the report—
 - (a) in the case of a medical report, certificate of capacity or clinical notes—to a medical practitioner nominated by the worker for that purpose, or
 - (b) in any other case—to a law practice representing the worker.
- (6) If, on the application of an employer or insurer, the Authority is satisfied that supplying the worker with a copy of the report would pose a serious threat to the life or health of the worker or any other person and that supplying the report as provided by this clause would not be appropriate, the Authority may—
 - (a) direct that the report be supplied to such other persons as the Authority considers appropriate, or
 - (b) make such other directions as the Authority thinks fit.

42 Interim payment direction not presumed to be warranted

For the purposes of section 297(3)(e) of the 1998 Act, it is not to be presumed that an interim payment direction for weekly payments of compensation is warranted in circumstances where the insurer has given the worker notice under section 78 of the 1998 Act (Insurer to give notice of decisions).

42A Review of decisions by insurer

- (1) A request under section 287A of the 1998 Act for a review of a decision of an insurer must be in writing.
- (2) The insurer must consider any relevant material submitted by the worker in connection with the request.
- (3) The request must not be dealt with by any person substantially involved in making the decision the subject of the request.

42B Notice of review decision

A notice under section 287A of the 1998 Act of an insurer's decision on a review is to—

- (a) be in writing, and
- (b) contain the information referred to in clause 38(1), and
- (c) contain a concise and readily understandable statement of the reason for the insurer's

decision and of the issues relevant to the decision, and

- (d) identify any provision of the workers compensation legislation on which the insurer relies in making the decision.

Part 9 Restrictions on obtaining medical reports

43 Definitions

In this Part—

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

medical assessor has the same meaning as in the 1998 Act.

proceedings means proceedings before the Commission or the District Court.

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

44 Restrictions on number of medical reports that can be admitted

- (1) In any proceedings on a claim or a work injury damages threshold dispute in relation to an injured worker, only one forensic medical report may be admitted on behalf of a party to proceedings.
- (2) A report referred to in subclause (1) must be from a specialist medical practitioner with qualifications relevant to the treatment of the injured worker's injury.
- (3) Where the injury has involved treatment by more than one specialist medical practitioner, with different qualifications, then an additional forensic medical report may be admitted from a medical practitioner with qualifications in that specialty.
- (4) In this clause—

forensic medical report, in relation to a claim or dispute—

- (a) means a report from a specialist medical practitioner who has not treated the worker and that has been obtained for the purpose of proving or disproving an entitlement, or the extent of an entitlement, in respect of the claim or dispute, and
- (b) includes a medical report provided by a specialist medical practitioner in respect of an examination of the injured worker pursuant to section 119 of the 1998 Act, and
- (c) does not include a report from a specialist medical practitioner who has not treated the worker and that has been obtained for the purpose of proving or disproving an entitlement, or the extent of an entitlement, in respect of another

claim or dispute.

45 Supplementary reports admissible

- (1) Despite clauses 44 and 46, a medical report other than the original report (**a supplementary report**) may be admitted if—
 - (a) it has the purpose of clarifying the original report, for example, where it can be shown that there has been some omission in relation to the material originally provided that could lead to an opinion in the original report being expressed on the basis of inaccurate or incomplete information and it does not go outside the parameters of the original report, but merely confirms, modifies or retracts an opinion expressed in the original report, or
 - (b) it has the purpose of updating the original report by confirming, modifying or retracting an opinion expressed in the original report, or
 - (c) it has the purpose of addressing issues omitted from the original report, or
 - (d) it has the purpose of addressing an opinion in the other party's medical report.
- (2) A supplementary report can be provided as an addendum to the original report and in any such case the original report together with that addendum constitute the report referred to in clauses 44 and 46.
- (3) A supplementary report must have been provided by the medical practitioner who provided the original report except when the medical practitioner has ceased (permanently or temporarily) to practise in the specialty concerned, in which case the supplementary report must be provided by another medical practitioner of the same specialty.

46 Restriction on disclosure of forensic medical reports to medical assessors

- (1) A forensic medical report must be disclosed to a medical assessor in connection with a claim or a work injury damages threshold dispute if any of the following occurs—
 - (a) the report was admitted in proceedings on the claim or dispute,
 - (b) no decision has been made as to whether or not the report is to be admitted, and—
 - (i) the report was the report nominated by the claimant or respondent as the report that the claimant or respondent concerned would introduce into evidence in proceedings on the claim, or
 - (ii) the report was the sole report in the particular specialty concerned that was lodged in relation to the claim by the claimant or respondent, as the case may be,

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

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

(3) Nothing in this clause permits more than one forensic medical report of the type referred to in clause 44 to be disclosed to a medical assessor on behalf of a party to proceedings.

(4) In this clause—

forensic medical report—

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

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

47 Restrictions on recovery of cost of medical reports

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

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

(b) the report has been disclosed to a medical assessor.

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

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

(b) the report could be disclosed to a medical assessor.

(3) In this clause—

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

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

48 Medical treatment not affected

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

49 Reports of medical panels and referees not affected

This Part does not apply in respect of a medical report provided by a medical assessor under Part 7 of Chapter 7 of the 1998 Act in respect of the assessment of a new claim within the meaning of that Chapter.

Part 10 Insurance policies

50 Administration fees and late payment fees for exempt employers

- (1) The amount of \$175 is prescribed as the administration fee payable under section 155AA(5) of the 1987 Act.
- (2) The Nominal Insurer may serve a notice in writing on an employer to whom section 155AA(5) of the 1987 Act applies notifying the employer that the administration fee referred to in that subsection is due and payable.
- (3) The administration fee referred to in subclause (2) must be paid by the employer within one month of the service of the notice.
- (4) A late payment fee calculated at the prescribed rate (within the meaning of section 172 of the 1987 Act) applicable to a policy of insurance issued or renewed on the date that notice was served is payable if an administration fee is not paid within the one month period referred to in subclause (3).
- (5) The Authority may waive payment (either in full or in part) of an administration fee or late payment fee payable under section 155AA of the 1987 Act.
- (6) The Nominal Insurer is to pay any administration fees and late payment fees it has received under section 155AA of the 1987 Act into the Insurance Fund. Administration fees paid into the Insurance Fund are to be treated as premiums payable under policies of insurance.

51 Provisions of policies of insurance

For the purposes of section 159 of the 1987 Act, a policy of insurance—

- (a) must contain the provisions specified in Schedule 3, and
- (b) may contain any other provisions, but only if those provisions have been agreed on by the insurer and employer concerned and approved by the Authority.

52 Excess recoverable from employer

- (1) A weekly compensation claim made in respect of a worker who receives an injury in the circumstances referred to in section 11 (Recess claims) of the 1987 Act is prescribed for the purposes of section 160(8)(b) of the 1987 Act.
- (2) Exempt employer policies (within the meaning of section 155AA of the 1987 Act) are exempt from section 160 of the 1987 Act.

53 Information to be provided for certificate of currency

- (1) An employer who requests an insurer to provide a certificate of currency with respect to a policy of insurance must provide the insurer with a statement in an approved form that contains a reasonable estimate of the wages that will be payable during the current period of insurance to workers employed by the employer.
- (2) An insurer may refuse to issue the requested certificate of currency until the employer complies with this clause.

54 Certificate of currency—period of insurance

For the purposes of the definition of **certificate of currency** in section 163A(1) of the 1987 Act, a period not exceeding 12 months is prescribed.

55 Liability for subcontractor premiums—exemption for farming operations

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

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

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

56 Employers excluded from grouping provisions

- (1) For the purposes of section 175D(2)(c)(ii) of the 1987 Act, the amount of \$750,000 is prescribed in relation to a policy of insurance issued at or after 4 pm on 30 June 2014.
- (2) The following employers are excluded from the operation of Division 2A (Grouping of employers for insurance purposes) of Part 7 of the 1987 Act—
 - (a) an employer who is insured with a specialised insurer,

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

Part 11 Modification of provisions applying to self-insurers

57 Interpretation

- (1) When one or more subsidiaries of the holder of a licence as a self-insurer under the 1987 Act is endorsed on the licence, each of those endorsed subsidiaries and the licence holder are **group self-insurers** for the purposes of this Part.
- (2) The holder of a licence as a group self-insurer may for the purposes of this Part, by notice in writing to the Authority from time to time, designate any one or more of the group self-insurers covered by the licence as **designated insurer** for some or all of the group self-insurers. The licence holder can designate itself as a designated insurer.
- (3) Except where otherwise expressly provided, this Part provides for the modification of provisions of Chapter 3 of the 1998 Act in their application to the following self-insurers—
 - (a) a self-insurer who is a Government employer covered for the time being by the Government’s managed fund scheme,
 - (b) a group self-insurer for whom there is a designated insurer.

58 References to “insurer”

- (1) Sections 43, 44, 45, 47 and 52 of the 1998 Act are to be read as if—
 - (a) a reference to **insurer** were, in the case of a self-insurer who is a Government employer covered for the time being by the Government’s managed fund scheme, a reference to the Self Insurance Corporation, and
 - (b) a reference to **insurer** were, in the case of a self-insurer for whom there is a designated insurer, a reference to that designated insurer, and
 - (c) the Self Insurance Corporation were the insurer of each employer who is a Government employer covered for the time being by the Government’s managed fund scheme, and
 - (d) the designated insurer for a group self-insurer were the insurer of the group self-insurer.
- (2) A reference in sections 50 and 58 of the 1998 Act to **insurer** is to be read as including a reference—
 - (a) to the Self Insurance Corporation, when the insurer is a Government employer covered for the time being by the Government’s managed fund scheme, and

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

59 Modification of exceptions for self-insurers

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

- (a) section 43(3)—omit “This subsection does not apply to a self-insurer.”,
- (b) section 43(4)—omit “(except when the insurer is a self-insurer)”,
- (c) section 43(5)—omit “This subsection does not apply when the employer is a self-insurer.”,
- (d) omit section 44(4),
- (e) section 45(2)—omit “(except when the insurer is a self-insurer)”,
- (f) section 45(5)—omit “This subsection does not apply when the insurer is a self-insurer.”,
- (g) omit section 46(3).

60 Preparation of injury management plan

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

- (1) When it appears that a workplace injury is a significant injury, an injury management plan must be established for the injured worker by—
 - (a) if the self-insurer who is or may be liable to pay compensation to the injured worker is a Government employer covered for the time being by the Government’s managed fund scheme—the Self Insurance Corporation, or
 - (b) if the insurer who is or may be liable to pay compensation to the injured worker is a group self-insurer for whom there is a designated insurer—that designated insurer.

61 Self-insurer’s licence

- (1) A reference in section 55 of the 1998 Act to ***insurer’s licence*** is, in the application of that section to a group self-insurer (whether or not a group self-insurer for whom there is a designated insurer), to be read as a reference to the licence as a self-insurer on which the group self-insurer is endorsed.
- (2) It is a condition of a licence as a self-insurer that the holder of the licence must ensure that any subsidiary of the holder endorsed on the licence complies with the subsidiary’s obligations under Chapter 3 of the 1998 Act.

Part 12 Workers Compensation Operational Fund

62 Definitions

In this Part—

basic tariff premium and **dust diseases contribution** have the same meanings respectively as they have in the *Insurance Premiums Order 2015–2016* and in the Workers Compensation Market Practice and Premiums Guidelines in force in respect of the relevant financial year.

63 Definition of “premium income” for purposes of insurers’ contributions

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

64 Definition of “deemed premium income” for purposes of self-insurers’ contributions

For the 2017–2018 financial year and each subsequent financial year, the prescribed circumstances referred to in the definition of **deemed premium income** in section 37 of the 1998 Act are the circumstances in which the amount payable as premiums referred to in that definition is calculated in the manner fixed by the *Deemed Premium Income Calculation Methodology*, published by the Authority in July 2017.

Part 13 Deemed employment

65 Ministers of religion

For the purposes of clause 17 of Schedule 1 to the 1998 Act, it is declared that the class of persons specified in the Table to Schedule 4 are ministers of religion of the religious body or organisation specified, and are employees of the person specified in that Table.

Note—

See also clause 18 of Schedule 1 to the 1998 Act which provides that if a policy of insurance covers a minister of religion, the minister of religion is taken to be a worker and the person insured under the policy is taken to be the minister’s employer.

Part 14 Insurers’ Guarantee Fund

66 Definitions

Expressions used in this Part have the same meanings as in Division 7 of Part 7 of the 1987 Act.

67 Financial years for contributions to Insurers’ Guarantee Fund

For the purposes of section 228(1) of the 1987 Act, the financial year commencing 1 July

1989 and any subsequent financial year are prescribed.

68 Time etc for payment of insurer's contribution

The contribution payable by an insurer under section 228 of the 1987 Act in respect of any financial year is payable—

- (a) except as provided by paragraph (b), in quarterly instalments (each being equal to one-fourth of the contribution payable) due on the last day of each quarter of the financial year, or
- (b) in such other instalments and within such other time as may be determined by the Authority and specified in a notice to the insurer.

69 Further contributions payable by insurers

- (1) If the Authority has determined an amount under section 228(1) of the 1987 Act in respect of a financial year, it may subsequently determine under that provision a further amount to be contributed to the Guarantee Fund in respect of that year, being an amount that it considers is necessary—
 - (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insolvent insurers, and
 - (b) to provide for the payment of any other amounts to be paid under Division 7 of Part 7 of the 1987 Act from the Guarantee Fund during that financial year.
- (2) Section 228 of the 1987 Act applies to and in respect of the payment of any such further contribution.

70 Determination of contributions and further contributions

- (1) For the purpose of determining the amount of any contribution (or further contribution) to the Guarantee Fund, the Authority is entitled to rely on an estimate determined by it of the amount required to be contributed by insurers to the Workers Compensation Operational Fund.
- (2) If the Authority determines that any change in that estimate is appropriate, it is to re-determine the contributions (or further contributions) of insurers to the Guarantee Fund, and the relevant amounts become payable by, or repayable to, insurers.

Part 15 Penalty notice offences

71 Penalty notice offences

For the purposes of section 246 of the 1998 Act—

- (a) each of the following offences is declared to be a penalty notice offence—
 - (i) an offence created by a provision of the 1987 Act specified in Column 1 of Part 1 of

Schedule 5,

- (ii) an offence created by a provision of the 1998 Act specified in Column 1 of Part 2 of Schedule 5,
 - (iii) an offence created by a provision of this Regulation specified in Column 1 of Part 3 of Schedule 5, and
- (b) the prescribed penalty for such an offence is the amount specified opposite it in Column 2 of Schedule 5, and
- (c) the following persons are declared to be authorised officers—
- (i) each inspector appointed under the *Work Health and Safety Act 2011*,
 - (ii) each member of staff of the Authority authorised by the Authority for the purposes of section 238 of the 1998 Act.

Part 16 Marketing of work injury agent services

Division 1 Preliminary

Note—

Expressions used in this Part have the same meaning as in Division 8 of Part 2 of Chapter 4 of the 1998 Act.

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

- (a) advising the person with respect to the making of a claim,
- (b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim,
- (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,
- (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim.

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

72 Definitions

In this Part—

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

agent means a person who acts, or holds himself or herself out as willing to act, as an agent for a person for a fee or reward in connection with a claim but does not include a lawyer.

lawyer means an Australian legal practitioner and includes a law practice within the

meaning of the *Legal Profession Uniform Law (NSW)*.

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

publish means—

- (a) publish in a newspaper, magazine, journal, periodical, directory or other printed publication, or
- (b) disseminate by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or
- (c) broadcast by radio or television, or
- (d) display on an Internet website or otherwise publicly disseminate by means of the Internet, or
- (e) publicly exhibit in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or
- (f) display on any document (including a business card or letterhead) gratuitously sent or gratuitously delivered to any person or thrown or left on any premises or on any vehicle, or
- (g) display on any document provided to a person as a receipt or record in respect of a transaction or bet.

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

Division 2 Advertising by agents

73 Restrictions on advertising work injury services

An agent must not publish or cause or permit to be published an advertisement that promotes the availability or use of an agent to provide agent services if the advertisement includes any reference to or depiction of any of the following—

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

Maximum penalty—200 penalty units.

74 Exception for advertising specialty

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

- (a) an entry in a practitioner directory that states only the name and contact details of the agent and any area of practice or specialty of the agent, or
- (b) a sign displayed at a place of business of the agent that states only the name and contact details of the agent and any specialty of the agent, or
- (c) an advertisement on a website operated by the agent the publication of which would be prevented under this Division solely because it refers to work injury or work injury services in a statement of specialty of the agent.

75 Other exceptions

This Division does not prevent the publication of any advertisement—

- (a) to any person who is already a client of the agent (and to no other person), or
- (b) to any person on the premises of a place of business of the agent, but only if the advertisement cannot be seen from outside those premises, or
- (c) in accordance with any order by a court, or
- (d) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or
- (e) by an industrial organisation (within the meaning of the [Industrial Relations Act 1996](#)) if the advertisement (or so much of it as would otherwise contravene clause 73) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or
- (f) that is required to be published by or under a written law of the State.

76 Responsibility for employees and others

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

77 Responsibility for advertisements published by others

- (1) For the purposes of this Division, an advertisement is taken to have been published or caused to be published by an agent if—
 - (a) the advertisement advertises or otherwise promotes the availability or use of the agent (either by name or by reference to a business name under which the agent practises or carries on business) for the provision of agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or
 - (b) the agent is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the referral of persons to the agent for the provision of agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or
 - (c) the agent is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the person to advertise on behalf of the agent.
- (2) This clause does not apply to an advertisement if the agent proves that the agent took all reasonable steps to prevent the advertisement being published.

Division 3 Advertising by persons other than agents or lawyers

78 Application of Division

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

79 Definition of “work injury advertisement”

In this Division—

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

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

80 Restrictions on work injury advertisements

- (1) A person must not publish or cause or permit to be published a work injury advertisement if the advertisement—
 - (a) advertises or otherwise promotes the availability or use of an agent (whether or

not a particular agent) to provide agent services, whether or not that is its purpose or only purpose and whether or not that is its only effect, or

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

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

81 Exception for advertising specialty

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

- (a) an entry in a practitioner directory that states only the name and contact details of the agent and any area of practice or specialty of the agent, or
- (b) a sign displayed at a place of business of the agent that states only the name and contact details of the agent and any specialty of the agent, or
- (c) an advertisement on a website operated on behalf of the agent the publication of which would be prevented under this Division solely because it refers to work injury or agent services in a statement of specialty of the agent.

82 Other exceptions

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

- (a) in accordance with any order by a court, or
- (b) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or

- (c) by an industrial organisation (within the meaning of the [Industrial Relations Act 1996](#)) if the advertisement (or so much of it as would otherwise contravene clause 80) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or
- (d) by a person in the ordinary course of the person's business as an insurer or insurance agent or broker, to the extent only that it includes a reference to or depiction of the recovery of money under a policy of insurance, or
- (e) that is required to be published by or under a written law of the State.

83 Protection of publishers

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

Part 17 Costs

Division 1 Preliminary

84 Definitions

- (1) In this Part, and in Schedules 6 and 7—

health service provider has the same meaning as in the [Health Care Complaints Act 1993](#).

insurer includes an employer.

number of an item in a Table in Part 2 of Schedule 6 includes a letter.

- (2) Expressions used in this Part, and in Schedules 6 and 7, have the same meanings as they have in Division 1 of Part 8 of Chapter 7 of the 1998 Act.

Note—

Section 332(2) of the 1998 Act provides that expressions used in Division 1 of Part 8 of Chapter 7 of that Act have the same meanings as they have in the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)), except as provided by that section.

85 Definition of “costs”

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

86 Costs not regulated by this Part

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

- (a) costs for legal services provided for an appeal under section 353 (Appeal against decision of Commission constituted by Presidential member) of the 1998 Act,
- (b) fees for investigators' reports or for other material produced or obtained by investigators (such as witness statements or other evidence),
- (c) fees for accident reconstruction reports,
- (d) fees for accountants' reports,
- (e) fees for reports from health service providers (except as provided in item 4 of Part 3 of Schedule 6),
- (f) fees for other professional reports relating to treatment or rehabilitation (for example, architects' reports concerning house modifications),
- (g) fees for interpreter or translation services,
- (h) fees imposed by a court or the Commission,
- (i) travel costs and expenses of the claimant in the matter for attendance at medical examinations, a court or the Commission,
- (j) witness expenses at a court or the Commission.

Note—

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

Division 2 Costs recoverable in compensation matters

Subdivision 1 Preliminary

87 Application of Division

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

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

Note—

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

Subdivision 2 Maximum costs recoverable by law practices and agents in compensation matters

88 Maximum costs recoverable

- (1) The costs that are recoverable, and the maximum costs that are recoverable, for—
- (a) legal services or agent services provided in or in relation to a claim for compensation, and
 - (b) matters that are not legal services or agent services but are related to a claim for compensation,

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

Note—

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

- (2) If there is a change in the law practice or agent retained by a party in or in relation to a claim made or to be made for compensation, the relevant costs are to be apportioned between the law practices or agents concerned.
- (3) If there is a dispute as to such an apportionment, either law practice or agent concerned (or the client) may refer the dispute to the President for determination.
- (4) A law practice or agent has the same right of appeal against a determination made under subclause (3) as the law practice or agent would have under clause 125 if the determination were a determination made by the President in relation to a bill of costs.

Note—

Division 3 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#) requires a law practice to provide a client with information disclosing the basis on which legal costs will be calculated, and an estimate of the total legal costs, as soon as practicable after instructions are given in relation to any matter.

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

In workers compensation matters, the costs that are recoverable, and the maximum costs that are recoverable, in respect of costs of a kind referred to in clause 86 or Part 3 of Schedule 6 are, if section 61 of the 1987 Act or section 339 of the 1998 Act applies in respect of costs of that kind, costs equal to the amount fixed by or by order under the

section concerned.

90 Costs not recoverable in certain circumstances (workers compensation matters)

- (1) This clause applies to workers compensation matters.
- (2) No amount is recoverable for costs (including disbursements) other than those referred to in clause 86 or Schedule 6.
- (3) No amount is recoverable for costs for any service or matter unless the claim or dispute (or the relevant aspect of the claim or dispute) to which the service or matter relates is resolved or otherwise dealt with in accordance with Schedule 6.
- (4) Despite subclause (3), if an appeal is lodged in respect of a claim or dispute, no amount is recoverable for costs for any service or matter (or the relevant aspect of the claim or dispute) unless the appeal is determined, is withdrawn or lapses.

Division 3 Costs recoverable in work injury damages matters

Subdivision 1 Maximum costs recoverable by law practices in work injury damages matters

91 Application of Division

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

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

Note—

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

92 Fixing of maximum costs recoverable by law practices

- (1) The maximum costs for—
 - (a) legal services provided in or in relation to a claim for work injury damages, and
 - (b) matters that are not legal services but are related to a claim for work injury damages,are the costs set out in Schedule 7, except as otherwise provided by this Part.

Note—

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

- (2) If there is a change in the law practice retained by a party in or in relation to a claim for work injury damages, the relevant costs are to be apportioned between the law practices concerned.
- (3) If there is a dispute as to such an apportionment, either law practice concerned (or the client concerned) may refer the dispute to the President for determination.
- (4) A law practice has the same right of appeal against a determination made under subclause (3) as the law practice would have under clause 125 if the determination were a determination made by the President in relation to a bill of costs.

Note—

Division 3 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#) requires a law practice to provide a client with information disclosing the basis on which legal costs will be calculated, and an estimate of the total legal costs, as soon as practicable after instructions are given in relation to any matter.

93 Contracting out—law practice/client costs

- (1) This clause applies in respect of costs in or in relation to a claim for work injury damages if a law practice—
 - (a) makes a disclosure under Division 3 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#) (sections 174(4) and 178 excepted) to a party to the matter with respect to the costs, and
 - (b) enters into a costs agreement (other than a conditional costs agreement, under section 181 or 182 of that Law, that provides for the payment of a premium of more than 10% of the costs otherwise payable under the agreement on the successful outcome of the matter concerned) with that party as to those costs in accordance with Division 4 of that Part, and
 - (c) before entering into the costs agreement, advises the party (in a separate written document) that, even if costs are awarded in favour of the party, the party will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the amount that would be payable under the 1998 Act in the absence of a costs agreement.
- (2) Schedule 7 does not apply to the costs concerned to the extent that they are payable on a law practice and client basis.

Subdivision 2 Restriction on awarding of costs

Note—

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

In the event of any inconsistency between the provisions of this Regulation and rules of court, the provisions of this Regulation prevail to the extent of the inconsistency: section 346(4) of the 1998 Act.

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

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

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

- (1) If a claimant obtains an order or judgment on a claim that is less favourable to the claimant than the terms of the insurer's final offer of settlement in mediation under the 1998 Act as certified by the mediator under section 318B of the 1998 Act, the court is to order the claimant to pay the insurer's costs on the claim assessed on a party and party basis.
- (2) If a claimant does not obtain an order or judgment on a claim (that is, if the court finds the insurer has no liability for the claim), the court is to order the claimant to pay the insurer's costs on the claim assessed on a party and party basis.

96 Costs in other cases

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

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

- (1) If—
 - (a) the insurer wholly denies liability, and
 - (b) no mediation occurs, and
 - (c) the claimant obtains an order or judgment on the claim,costs are to be awarded in accordance with this Subdivision as if—
 - (d) the insurer had made a final offer of settlement at mediation of \$0, and
 - (e) the claimant had made a final offer of settlement at mediation of—
 - (i) in the case where the President issued a certificate verifying the matters referred to in paragraphs (a) and (b) and the claimant, within one month of the

issue of that certificate, made a subsequent offer of settlement to the insurer—the amount of damages specified in that subsequent offer of settlement, or

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

(2) If—

(a) the insurer wholly denies liability, and

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

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

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

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

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

- (i) in the case where the claimant, within one month of the conclusion of that mediation, made a subsequent offer of settlement to the insurer—the amount of damages specified in that subsequent offer of settlement, or
- (ii) in any other case—the amount of the claimant's final offer of settlement in mediation under the 1998 Act as certified by the mediator under section 318B of the 1998 Act.

Note—

Persons claiming work injury damages who wish to be awarded costs on a party and party basis should apply to the Commission for the mediation of the dispute before the matter goes to court. The availability of costs on a party and party basis is subject to the provisions of clause 94 and this clause.

98 Subdivision does not apply to ancillary proceedings

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

99 Multiple parties

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the claimant and rights of contribution or indemnity appear to exist between the defendants, this Subdivision does not apply to an offer of settlement unless—

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

- (b) in the case of an offer made to the claimant—
 - (i) the offer is to settle the claim against all the defendants concerned, and
 - (ii) where the offer is made by 2 or more defendants—by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the claimant for the whole amount of the offer.

Division 3A

99A, 99B (Repealed)

Division 4 Assessment of costs

Subdivision 1 Preliminary

100 Definitions

In this Division—

agent bill of costs means a bill of costs for providing agent services.

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

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

legal bill of costs means a bill for providing legal services given under Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#).

101 Application by client for assessment of law practice/client or agent/client costs

- (1) A client who is given a bill of costs may apply to the President for an assessment of the whole of, or any part of, so much of those costs as are payable on a law practice and client basis or an agent and client basis.
- (2) An application relating to a bill of costs may be made even if the costs have been wholly or partly paid.
- (3) If any costs have been paid without a bill of costs, the client may nevertheless apply for an assessment. For that purpose the request for payment by the law practice or agent is taken to be the bill of costs.

102 Application by instructing law practice or agent for assessment of law practice/client or agent/client costs

- (1) A law practice or agent that—
 - (a) retains another law practice or agent to act on behalf of the client, and

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

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

- (2) An application may not be made if there is a costs agreement between the client and the other law practice or agent.
- (3) An application is to be made within 30 days after the bill of costs is given and may be made even if the costs have been wholly or partly paid.

103 Application by billing law practice or agent for assessment of law practice/client or agent/client costs

- (1) A law practice or agent that has given a bill of costs may apply to the President for an assessment of the whole of, or any part of, so much of those costs as are payable on a law practice and client basis or an agent and client basis.
- (2) An application may not be made unless—
 - (a) the bill of costs includes the following particulars—
 - (i) a description of the legal services or agent services provided,
 - (ii) if relevant, an identification of each general resolution type referred to in Table 2 in Part 2 of Schedule 6 by reference to the item number and Column number in Table 2 of the general resolution type that was attained,
 - (iii) if relevant, an identification of each special resolution type referred to in Table 3 in Part 2 of Schedule 6 by reference to the item number and Column number in Table 3 of the special resolution type that was attained,
 - (iv) if relevant, an identification of the phase of each general resolution type referred to in Table 1 in Part 2 of Schedule 6 by reference to the item number and Column number in Table 1 of the general resolution type that was attained,
 - (v) if relevant, an identification of each additional legal service or other factor referred to in Table 4 in Part 2 of Schedule 6 by reference to the item number and (where relevant) Column number in Table 4 of the legal service or factor,
 - (vi) an identification of each disbursement incurred by reference to a paragraph number in clause 86 or an item number in Part 3 of Schedule 6,
 - (vii) an identification of each activity, event or stage specified in Schedule 7, by reference to the item number of the activity, event or stage, that was carried

out,

(viii) the amount sought, and

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

104 Application for assessment of party/party costs—compensation matters

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

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

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

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

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

(3) A court or the Commission may, after making an order in relation to a matter—

(a) refer the matter to the President, and

(b) request the President to make arrangements for the assessment of costs payable as a result of the order.

Note—

Schedule 3, clause 5(2) of the [Personal Injury Commission Act 2020](#) requires the Commission to be constituted by 1 non-presidential member assigned to the Workers Compensation Division of the Commission when dealing with the assessment of costs under this Regulation.

(4) A referral under subclause (3) is taken to be an application for assessment duly made under this Division.

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

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

- (2) A court or the Commission may, after making an order in relation to a matter—
 - (a) refer the matter to the President, and
 - (b) request the President to make arrangements for the assessment of costs payable as a result of the order.

Note—

Schedule 3, clause 5(2) of the *Personal Injury Commission Act 2020* requires the Commission to be constituted by 1 non-presidential member assigned to the Workers Compensation Division of the Commission when dealing with the assessment of costs under this Regulation.

- (3) A referral under subclause (2) is taken to be an application for assessment duly made under this Division.

106 Making an application for assessment

- (1) An application for assessment is to be made in the form approved by the Commission and is, subject to subclause (3), to be accompanied by the fee determined by the Commission from time to time.
- (2) The application must authorise the Commission to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any law practice or agent concerned, in respect of the matter to which the application relates.
- (3) The Commission may waive or postpone payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (4) The Commission may refund the fee paid under this clause either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

107-109 (Repealed)

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

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

Subdivision 2 Assessment of bills of costs between law practice or agent and client

111 Assessment of bills generally

- (1) When considering an application relating to a bill of costs, the Commission must consider—

- (a) whether or not it was reasonable to carry out the work to which the costs relate, and
 - (b) whether or not the work was carried out in a reasonable manner, and
 - (c) the fairness and reasonableness of the amount of the costs in relation to that work.
- (2) The Commission is to determine the application by confirming the bill of costs or, if the Commission is satisfied that the disputed costs are unfair or unreasonable, by substituting for the amount of the costs an amount that, in the Commission's opinion, is a fair and reasonable amount.
 - (3) Any amount substituted for the amount of the costs may include an allowance for any fee paid or payable for the application by the applicant.
 - (4) If a law practice is liable under section 204(2) of the *Legal Profession Uniform Law (NSW)* to pay the costs of the costs assessment (including the costs of the Commission), the Commission is to determine the amount of those costs. The costs incurred by the client are to be deducted from the amount payable under the bill of costs and the costs of the Commission are to be paid to the Commission.
 - (5) The Commission may not determine that any part of a bill of costs that is not the subject of an application is unfair or unreasonable.

Note—

Clause 110 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

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

112 Additional matters to be considered in assessing bills of costs

- (1) In assessing what is a fair and reasonable amount of costs, the Commission may have regard to any or all of the following matters—
 - (a) whether the law practice or agent complied with any relevant regulation, Legal Practice Rules or Legal Profession Conduct Rules,
 - (b) in the case of a law practice—whether the law practice disclosed the basis of the costs or an estimate of the costs under Division 3 of Part 4.3 of the *Legal Profession Uniform Law (NSW)* and any disclosures made,
 - (c) any relevant costs agreement (subject to clause 113),
 - (d) the skill, labour and responsibility displayed on the part of the law practice or agent responsible for the matter,

- (e) the instructions and whether the work done was within the scope of the instructions,
 - (f) the complexity, novelty or difficulty of the matter,
 - (g) the quality of the work done,
 - (h) the place where and circumstances in which the legal services were provided,
 - (i) the time within which the work was required to be done.
- (2) In this clause, **Legal Practice Rules** and **Legal Profession Conduct Rules** have the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

113 Costs agreements not subject to assessment

- (1) The Commission is to decline to assess a bill of costs if—
- (a) the disputed costs are subject to a costs agreement that complies with Division 4 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#), and
 - (b) the costs agreement specifies the amount of the costs or the dispute relates only to the rate specified in the agreement for calculating the costs.
- (2) If the dispute relates to any other matter, costs are to be assessed on the basis of that specified rate despite clause 111. The Commission is bound by a provision for the payment of a premium that is not determined to be unjust under clause 114.
- (3) This clause does not apply to any provision of a costs agreement that the Commission determines to be unjust under clause 114.
- (4) This clause does not apply to a costs agreement applicable to the costs of legal services if a law practice failed to make a disclosure in accordance with Division 3 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#) of the matters required to be disclosed by section 174 of that Law in relation to those costs.

114 Unjust costs agreements

- (1) The Commission may determine whether a term of a particular costs agreement entered into by a law practice and a client is unjust in the circumstances relating to it at the time it was made.
- (2) For that purpose, the Commission is to have regard to the public interest and to all the circumstances of the case and may have regard to the matters specified in section 172 of the [Legal Profession Uniform Law \(NSW\)](#).
- (3) For the purposes of this clause, a person is taken to have represented another person if the person represented the other person, or assisted the other person to a significant degree, in the negotiations process up to, or at, the time the agreement

was made.

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

115 Interest on amount outstanding

- (1) The Commission may, in an assessment, determine that interest is not payable on the amount of costs assessed or on any part of that amount and determine the rate of interest (not exceeding the rate referred to in section 195(4) of the *Legal Profession Uniform Law (NSW)*).
- (2) This clause applies despite any costs agreement or section 195 of the *Legal Profession Uniform Law (NSW)*.
- (3) This clause does not authorise the giving of interest on interest.
- (4) This clause does not apply to or in respect of the assessment of costs referred to in Subdivision 3 (Assessment of party/party costs).

Subdivision 3 Assessment of party/party costs

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

- (1) When dealing with an application relating to costs payable as a result of an order made by a court or the Commission or as a result of an agreement referred to in clause 104(1)(b), the Commission must consider—
 - (a) whether or not it was reasonable to carry out the work to which the costs relate, and
 - (b) what is a fair and reasonable amount of costs for the work concerned.
- (2) The Commission is to determine the costs payable as a result of the order or agreement by assessing the amount of the costs that, in the Commission's opinion, is a fair and reasonable amount.
- (3) If a court or the Commission has ordered that costs are to be assessed on an indemnity basis, the Commission must assess the costs on that basis, having regard to any relevant rules of the court or Commission.
- (4) The costs assessed are to include the costs of the assessment (including the costs of the parties to the assessment, and the Commission). The Commission may determine by whom and to what extent the costs of the assessment are to be paid.
- (5) The costs of the Commission are to be paid to the Commission.

Note—

Subdivision 2 of Division 3 of this Part limits the circumstances in which costs may be awarded on a party/party basis in relation to a claim for work injury damages.

Clause 110 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

117 Additional matters to be considered by Commission in assessing costs ordered by court or Commission

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

- (a) the skill, labour and responsibility displayed on the part of the law practice or agent responsible for the matter,
- (b) the complexity, novelty or difficulty of the matter,
- (c) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done,
- (d) the place where and circumstances in which the legal services were provided,
- (e) the time within which the work was required to be done,
- (f) the outcome of the matter.

118 Effect of costs agreements in assessments of party/party costs

- (1) The Commission may obtain a copy of, and may have regard to, a costs agreement.
- (2) However, the Commission must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or the Commission.

119 Court or Commission may specify amount etc

This Division does not limit any power of a court or the Commission to determine in any particular case the amount of costs payable or that the amount of the costs is to be determined on an indemnity basis.

Subdivision 4 Enforcement of assessment

120 Certificate as to determination

- (1) On making a determination, the Commission is to issue to each party a certificate that sets out the determination.
- (2) The Commission may issue more than one certificate in relation to an application for costs assessment. Such certificates may be issued at the same time or at different stages of the assessment process.

- (3) In the case of an amount of costs that has been paid, the amount (if any) by which the amount paid exceeds the amount specified in any such certificate may be recovered as a debt in a court of competent jurisdiction.
- (4) In the case of an amount of costs that has not been paid, the certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs, and the rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed.
- (5) For this purpose, the amount of unpaid costs does not include the costs incurred by the Commission in the course of a costs assessment.
- (6) To avoid any doubt, this clause applies to or in respect of both the assessment of costs referred to in Subdivision 2 of this Division (law practice/client costs) and the assessment of costs referred to in Subdivision 3 of this Division (party/party costs).
- (7) If the costs of the Commission are payable by a party to the assessment (as referred to in clause 122), the Commission may refuse to issue a certificate relating to the Commission's determination under this clause until the costs of the Commission have been paid.
- (8) Subclause (7) does not apply in respect of a certificate issued before the completion of the assessment process under subclause (2).

121 Reasons for determination

The Commission must ensure that a certificate issued under clause 120 that sets out the Commission's determination is accompanied by—

- (a) a statement of the reasons for the Commission's determination, and
- (b) the amount of costs the Commission determines is fair and reasonable, and
- (c) if the Commission declines to assess a bill of costs under clause 113—the basis for doing so, and
- (d) if the Commission determines that a term of a costs agreement is unjust—the basis for doing so, and
- (e) a statement of any determination under clause 115 that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.

122 Recovery of costs of costs assessment

- (1) This clause applies when the costs of the Commission are payable by a party to the assessment (under section 204(2) of the [Legal Profession Uniform Law \(NSW\)](#) or

clause 111 or 116(5)).

- (2) On making a determination, the Commission may issue to each party a certificate that sets out the costs incurred by the Commission in the course of the costs assessment.
- (3) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs.
- (4) A Registrar of the Commission may take action to recover the costs of the Commission.

123 (Repealed)

124 Determination to be final

The Commission's determination of an application is binding on all parties to the application and no appeal or other review lies in respect of the determination, except as provided by this Division.

Subdivision 5 Appeals

125 Appeal against decision of Commission as to matter of law

- (1) This clause applies to a party to an application for an assessment of costs who is dissatisfied with a decision of the Commission (the **first instance Commission**) as to a matter of law arising in the proceedings to determine the application.
- (2) A party to whom this clause applies may, in accordance with the Commission rules, appeal to the Commission against the decision (the **appellate Commission**).
- (3) The appeal is to be—
 - (a) in the form approved by the President, and
 - (b) accompanied by the fee approved by the President from time to time.
- (4) After deciding the question that is the subject of the appeal, the appellate Commission may, unless it affirms the first instance Commission's decision—
 - (a) make a determination in relation to the application that, in its opinion, should have been made by the first instance Commission, or
 - (b) remit its decision on the question to the first instance Commission and order the first instance Commission to re-determine the application.
- (5) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.
- (6) In proceedings to determine an application for the assessment of costs under

Schedule 6, subclause (2) only applies to a decision of the first instance Commission that is made in, or in connection with, the referral of a dispute to the President under clause 88(3).

Note—

Schedule 3, clause 5 of the *Personal Injury Commission Act 2020* requires the Commission to be constituted by—

- (a) when dealing with the assessment of costs under this Regulation—1 non-presidential member of the Workers Compensation Division of the Commission, and
- (b) when dealing with an appeal against an assessment—1 presidential member of the Workers Compensation Division.

126 Effect of appeal on application

If a party to an application has appealed against a determination or decision of the first instance Commission under clause 125, the first instance Commission, the appellate Commission or the court may suspend the operation of the determination or decision until whichever occurs first—

- (a) the appeal is determined, or
- (b) for a suspension imposed by the first instance Commission—the suspension is ended by the first instance Commission, the appellate Commission or the court, or
- (c) for a suspension imposed by the appellate Commission—the suspension is ended by the appellate Commission or the court, or
- (d) for a suspension imposed by the court—the suspension is ended by the court.

Subdivision 6 Miscellaneous

127 Liability of law practice or agent for costs in certain cases

- (1) The Commission may act as set out in subclause (2) if it appears to the Commission that costs have been incurred improperly or without reasonable cause, or have been wasted by undue delay or by any other misconduct or default.
- (2) The Commission may in the determination—
 - (a) disallow the costs as between the law practice or agent and the law practice's or agent's client, and
 - (b) direct the law practice or agent to repay to the client costs that the client has been ordered by a court or the Commission to pay to any other party, and
 - (c) direct the law practice or agent to indemnify any party other than the client against costs payable by the party indemnified.
- (3) Before taking action under this clause, the Commission must give notice of the

proposed action to the law practice or agent and the client and give them a reasonable opportunity to make written submissions in relation to the proposed action.

- (4) The Commission must give due consideration to any submissions so made.

128 Referral of misconduct to designated local regulatory authority

- (1) If the Commission considers that any conduct of a law practice, lawyer or agent involves the deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations as to costs, the Commission must refer the matter to the designated local regulatory authority (within the meaning of the *Legal Profession Uniform Law (NSW)*).
- (2) For the purposes of the *Legal Profession Uniform Law (NSW)*, the deliberate charging of grossly excessive amounts of costs and deliberate misrepresentations as to costs are each declared to be professional misconduct.
- (3) The Commission may refer any failure by a law practice or lawyer to comply with a provision of this Division to the designated local regulatory authority (within the meaning of the *Legal Profession Uniform Law (NSW)*).

Division 5 Goods and services tax

129 GST may be added to costs

- (1) Despite the other provisions of this Part, a cost fixed by Division 2 (Costs recoverable in compensation matters) or Division 3 (Costs recoverable in work injury damages matters) may be increased by the amount of any GST payable in respect of the service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Part.
- (2) In this clause—

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

Division 6 Miscellaneous

130 Modifications to *Legal Profession Uniform Law (NSW)* relating to assessment of costs

A reference in Division 3 of Part 4.3 of the *Legal Profession Uniform Law (NSW)* to costs being assessed, however described, is to be read as including, as an alternative to a costs assessment under that Part, assessment of costs under Division 4 of Part 8 of Chapter 7 of the 1998 Act.

131 Special provision for matters involving coal miners

This Part does not apply to legal services or agent services provided in any workers compensation matter involving a claim for compensation or work injury damages by a coal miner, and regulations made under section 59(1)(a) of the *Legal Profession Uniform Law Application Act 2014* continue to apply to legal services provided in such a matter.

132 Bill of costs to be in approved form

In workers compensation matters, a bill of costs (as defined by clause 100)—

- (a) must, if there is an approved form for the purposes of this clause, be given in or to the effect of the approved form, and
- (b) must include relevant particulars of the kind referred to in clause 103(2)(a) even if the bill is not one to which clause 103 applies.

133 Costs orders in respect of certain matters

The Commission may, subject to Schedule 6, make a costs order in connection with any of the following—

- (a) an application for or the giving of an interim payment direction under Division 2 (Disputes concerning weekly payments or medical expenses) of Part 5 of Chapter 7 of the 1998 Act,
- (b) the determination of a dispute under Division 2A (Disputes concerning past weekly payments) of that Part,
- (c) the making of a recommendation under Division 3 (Disputes about non-compliance with Chapter 3) of that Part.

Part 18 Insurance premiums

Division 1 Preliminary

134 Application of Part

This Part is subject to the Workers Compensation Market Practice and Premiums Guidelines.

135 Definitions

In this Part—

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

cost of claims means—

- (a) in relation to the calculation of a premium for the issue or renewal of an employer's

policy (other than a retro-paid loss premium policy)—

- (i) except as provided by subparagraph (ii), the cost of claims (within the meaning of Division 4) for an injury year for the employer, being that cost as at the commencement of the period of insurance to which the premium relates, or
 - (ii) after that period of insurance has expired, the cost of claims (within the meaning of that Division) for an injury year for the employer, being that cost as at the expiration of that period, and
- (b) in relation to the calculation of a premium for the issue or renewal of an employer's policy (being a retro-paid loss premium policy), the cost of claims for the employer for the period of insurance concerned.

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

employer includes a person who proposes to become an employer.

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

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

insurer means a licensed insurer, or a former licensed insurer, within the meaning of the 1987 Act.

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

policy or **policy of insurance** means a policy of insurance within the meaning of the 1998 Act.

retro-paid loss premium policy means a policy to which the optional alternative method of premium calculation (within the meaning of section 168A of the 1987 Act before the repeal of that section) applies.

wages means wages as defined in section 174(9) of the 1987 Act.

136 Meaning of “injury year”

In this Part, a reference to an injury year, when made in relation to the calculation of a premium for the issue or renewal of a policy, is a reference to any of the successive

periods of 12 consecutive months occurring before the commencement of the period of insurance for which the premium is or is to be calculated.

137 Non wages-based calculation of premium

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

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

Division 2 Declaration of wages

138 Employer to supply insurer with return relating to wages—standard policies

- (1) An employer must, as soon as practicable (but not later than 2 months) after—
 - (a) making an application to an insurer for the issue of a policy, or
 - (b) the renewal of a policy,

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

- (2) Subclause (1)(b) does not apply to a small employer.
- (3) An employer must, not later than 4 months after the end of the relevant period of insurance relating to a policy, supply the insurer who issued or renewed the policy with a notice in the approved form, duly completed, which contains a full and correct declaration by the employer of the wages that were actually paid by the employer during that period of insurance to workers employed by the employer.
- (4) In this clause, **small employer**, in relation to a policy of insurance, has the same meaning as in the Workers Compensation Market Practice and Premiums Guidelines that apply to that policy.
- (5) This clause does not apply in relation to a retro-paid loss premium policy.

139 Employer to supply insurer with return relating to wages—retro-paid loss premium policies

- (1) This clause applies in relation to a retro-paid loss premium policy.
- (2) An employer must, at least 2 months before the commencement of a period of

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

- (3) An employer must, at the request of an insurer who issued a policy at any time during the period of insurance of the policy, supply the insurer with a notice in the approved form, duly completed, which contains a full and correct declaration by the employer of the wages that have actually been paid by the employer during that period of insurance to workers employed by the employer up to the date specified in the insurer's request.
- (4) An employer must, not later than 2 months after the end of the period of insurance of a policy, supply the insurer who issued the policy with a notice in the approved form, duly completed, which contains a full and correct declaration by the employer of the wages that were actually paid by the employer during that period of insurance to workers employed by the employer.

140 Experience premium return

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

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

141 Offence by employer

An employer who, without reasonable excuse, refuses or fails to comply with clause 138 or 139 or with a requirement made in accordance with clause 140 is guilty of an offence.

Maximum penalty—20 penalty units.

Division 3 Input tax credit entitlements

142 Employer to give insurer notice of input tax credit entitlement

An employer must, prior to the commencement of the period of insurance for which the premium is to be calculated, notify the insurer concerned in writing of the employer's input tax credit entitlement.

Division 4 Certification of cost of claims

143 Definitions

- (1) In this Division, **cost of claims** means—
- (a) in relation to an injury year related to, or a period of insurance for, a policy issued or renewed so as to take effect before 4 pm on 30 June 2015 (other than a retro-paid loss premium policy)—the total of the following costs—
 - (i) the total of the costs of each individual claim of which the insurer has notice at the time of expiry or renewal (as appropriate) of the policy concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the 1987 Act or the former Act to have been received) during the injury year or the period of insurance, whichever is relevant, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the 1987 Act,
 - (ii) the total of the costs of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, under Part 3 of Chapter 7 of the 1998 Act by the insurer, being payments of compensation on the basis of provisional acceptance of liability to a worker employed by a particular employer with respect to an injury received (or that is deemed by the 1987 Act to have been received) during the injury year or the period of insurance, and
 - (b) in relation to an injury year related to, or a period of insurance for, a policy issued or renewed so as to take effect on or after 4 pm on 30 June 2015 but before 4 pm on 30 June 2016 (other than a retro-paid loss premium policy)—the amount calculated in accordance with the relevant insurance premiums order that applies to the policy concerned, and
 - (c) in relation to an injury year related to, or a period of insurance for, a policy issued or renewed so as to take effect on or after 4 pm on 30 June 2016—the amount calculated in accordance with the Workers Compensation Market Practice and Premiums Guidelines, and
 - (d) in relation to an injury year related to, or a period of insurance for, a retro-paid loss premium policy—the total of the following costs—
 - (i) the total of the costs of each individual claim of which the insurer has notice at the time of each adjustment date concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the 1987 Act or the former Act to have been received) during the period of insurance, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the 1987 Act,

(ii) the total of the costs of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, under Part 3 of Chapter 7 of the 1998 Act by the insurer, being payments of compensation on the basis of provisional acceptance of liability to a worker employed by a particular employer with respect to an injury received (or that is deemed by the 1987 Act to have been received) during the period of insurance,

but, in any case where a single event leads to 3 or more individual claims, the total costs of all those claims in relation to that event are not to exceed the amount that is twice the relevant large claim limit for the policy (as determined in accordance with clause 145(5)-(7) or the relevant insurance premiums order (as appropriate)).

(2) Despite subclause (1), **cost of claims**, in relation to a policy issued or renewed so as to take effect before 4 pm on 30 June 1995, has the meaning given to it by clause 135 of the *Workers Compensation Regulation 2003* before its substitution by the *Workers Compensation Amendment (Retro-Paid Loss Premium Method) Regulation 2009*.

144 Prevention of double allowance for provisional compensation payments

(1) In this clause—

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

(2) For the purposes of paragraphs (a) and (d) of the definition of **cost of claims** in clause 143(1), if payments are made in respect of a claim pursuant to the 1987 Act and provisional compensation payments have been made in respect of the injury concerned—

(a) the provisional compensation payments are, for the purposes of determining the cost of the claim, taken to be payments made by the insurer in respect of the claim pursuant to the 1987 Act and are to be included as such under clause 145, and

(b) clause 146 does not apply to those provisional compensation payments, and

(c) the cost of those provisional compensation payments is not to be included in the total of the costs of provisional compensation payments under paragraphs (a)(ii) and (d)(ii) of the definition of **cost of claims** in clause 143(1).

145 Cost of an individual claim

(1) For the purposes of paragraphs (a) and (d) of the definition of **cost of claims** in

clause 143(1), the cost of an individual claim is (except as provided by subclause (2)) the sum of the following—

- (a) the payments, if any, made by the insurer in respect of the claim pursuant to the 1987 Act or the former Act,
- (b) the payments, if any, of damages at common law and under the *Compensation to Relatives Act 1897* made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim,
- (c) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the claim,
- (d) legal costs, if any, paid by the insurer in relation to the settlement or investigation of the claim or as a consequence of proceedings at law, including any such costs that were paid to the claimant or incurred by the insurer on the insurer's own account,
- (e) the most accurate estimation for the time being of the insurer's outstanding liability reasonably likely to arise out of the claim,

whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability that will arise) during or after the injury year or period of insurance in which the injury to which the claim relates was received (or is deemed by the 1987 Act or the former Act to have been received).

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

- (a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and
- (b) in relation to a policy (other than a retro-paid loss premium policy)—is to be reduced by the amounts, if any, that have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
- (c) in relation to a retro-paid loss premium policy—is to be reduced by the amounts, if any, that have been recovered or that, in the opinion of the Nominal Insurer, are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
- (d) is to be reduced by—
 - (i) in the case where the injured worker's weekly payment of compensation is less than \$500 or is not known (for example, the claim is for payment of medical expenses compensation only)—\$500 or, if the cost of the claim is less than

- \$500, that lesser cost, or
- (ii) in any other case—an amount that is the lesser of the following—
- (A) the amount that the injured worker is entitled to receive as one week’s weekly payment of compensation,
 - (B) if the claim is covered by a policy of insurance that was issued or renewed so as to take effect before 4 pm on 30 June 2006—\$1,449.50,
 - (C) if the claim is covered by a policy of insurance that was issued or renewed so as to take effect on or after 4 pm on 30 June 2006, the amount specified by the relevant insurance premiums order that applies to that policy, and
- (e) does not include any amount paid or payable under section 64A (Compensation for cost of interpreter services) of the 1987 Act, and
- (f) does not include any amount which section 54(4)(b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer, and
- (g) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of the payments, fees, expenses or costs included in the cost of the individual claim under subclause (1), pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.
- (3) In this clause, references to the insurer’s outstanding liability reasonably likely to arise out of the claim are references to the amount calculated to be sufficient to meet all reasonably likely future payments in respect of the claim, including adjustments (at such rates, if any, as the Authority from time to time determines) to take account of expected future earnings on investments and expected future inflation or deflation on that amount.
- (4) For the purpose of this clause, in the case of a claim in respect of the death of or injury to a person caused by or arising out of a motor accident as defined in the *Motor Accidents Act 1988*—
- (a) the insurer’s liability to indemnify an employer in respect of the employer’s liability to the claimant independently of the 1987 Act is taken to be limited to the amount of damages (if any) that would be payable if Division 3 of Part 5 of the 1987 Act applied to the award of damages concerned, and
 - (b) the insurer is taken not to be liable for legal costs connected with proceedings under the *Motor Accidents Compensation Act 1999* if damages would not have been payable if that Division applied to that award.

- (5) If the cost of an individual claim exceeds the large claim limit that applied when the injury to which the claim relates was received (or is deemed by the 1987 Act or the former Act to have been received), the cost of the individual claim is the amount of that large claim limit.
- (6) For the purposes of subclause (5) in relation to a policy (other than a retro-paid loss premium policy), the large claim limit specified in Column 2 of the Table to this clause applies to an injury that was received or is deemed to have been received during a year specified in Column 1 of that Table in relation to that limit.
- (7) For the purposes of subclause (5), in relation to a retro-paid loss premium policy, an employer is, before the commencement of the policy, to elect a large claim limit of one of the following amounts to apply to injuries received or deemed to have been received during the period of insurance—
- (a) \$350,000,
 - (b) \$500,000.

Large claim limits

Column 1	Column 2
Period of 12 months commencing with— Large claim limit	
30 June 1985	\$100,000
30 June 1986	\$200,000
30 June 1987 or 30 June of the years 1988 to 1994	\$100,000
30 June 1995 or 30 June of the years 1996 to 2014	\$150,000
30 June 2015	The amount specified in the relevant insurance premiums order that applies to the policy concerned
30 June 2016	The amount specified in the Workers Compensation Market Practice and Premiums Guidelines that applies to the policy concerned
30 June 2017 or 30 June of any subsequent year	The amount specified by the insurer in the cost of claims in accordance with the Workers Compensation Market Practice and Premiums Guidelines that applies to the policy concerned

146 Cost of provisional payments of compensation

- (1) For the purposes of paragraphs (a) and (d) of the definition of **cost of claims** in

clause 143(1), the cost of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to a particular injury is (except as provided by subclause (2)) the sum of the following—

- (a) the sum of the payments of provisional weekly payments of compensation and provisional medical expenses compensation, if any, made by the insurer in respect of the injury pursuant to the 1998 Act,
- (b) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the injury,
- (c) legal costs, if any, paid by the insurer in relation to the investigation of the injury, the determination of liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation and otherwise in complying with Divisions 1 and 3 of Part 3 of Chapter 7 of the 1998 Act,
- (d) the most accurate estimation for the time being of the insurer's outstanding liability to make provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to the injury,

whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability that will arise) during or after the injury year or period of insurance in which the injury was received (or is deemed by the 1987 Act to have been received).

- (2) However, the cost of provisional weekly payments of compensation and provisional payment of medical expenses compensation with respect to a particular injury—
 - (a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and
 - (b) in relation to a policy (other than a retro-paid loss premium policy)—is to be reduced by the amounts, if any, that have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
 - (c) in relation to a retro-paid loss premium policy—is to be reduced by the amounts, if any, that have been recovered or that, in the opinion of the Nominal Insurer, are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
 - (d) is to be reduced by—
 - (i) in the case where the injured worker's provisional weekly payment of

compensation is less than \$500 or is not known (for example, the claim is for provisional payment of medical expenses compensation only)—\$500 or, if the cost of the payments is less than \$500, that lesser cost, or

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

147 Certificates relating to cost of claims

- (1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance—
 - (a) an employer to whom a policy has been issued by an insurer, or
 - (b) another insurer,may, by notice in writing served on the insurer who issued the policy not later than 1 month after the commencement of the period of insurance, require the insurer who issued the policy to furnish the employer or other insurer, within 21 days of service of

the notice, with a certificate in the approved form, specifying (with respect to the whole or any part of the last 3 injury years which occurred or will have occurred before the commencement of the period of insurance) the particulars relating to costs of claims required by the form to be inserted in it.

(2) An insurer who, without reasonable excuse—

- (a) fails to comply with a requirement made in accordance with subclause (1), or
- (b) in purported compliance with any such requirement, furnishes a certificate knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular,

is guilty of an offence.

Maximum penalty—20 penalty units.

148 Effect of certificate

- (1) Where an insurer has, in accordance with clause 147, furnished a certificate to an employer or another insurer for the purpose of ascertainment of the premium payable in respect of a period of insurance, the particulars relating to costs of claims specified in the last or only certificate so furnished are binding on the employer and any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance, except as provided by subclause (2).
- (2) If an insurer (other than the insurer who furnished the certificate) does not agree with any of those particulars and applies to the Authority for a variation of those particulars (and the application is not withdrawn or, in the opinion of the Authority, abandoned), the particulars relating to costs of claims specified in the certificate as confirmed or varied by the Authority are binding on any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance.

149 Certificates by scheme agents relating to cost of claims—retro-paid loss premium policy

- (1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance in relation to a retro-paid loss premium policy, the Nominal Insurer may, by notice in writing, require the scheme agent through whom the policy was issued, to furnish the Nominal Insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying the particulars relating to costs of claims requested in the notice.
- (2) A scheme agent must not, without reasonable excuse—
 - (a) fail to comply with a requirement made in accordance with subclause (1), or

- (b) in purported compliance with any such requirement, furnish a certificate knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular.

Maximum penalty—20 penalty units.

150 Employers who were previously self-insurers

- (1) If an employer—

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

- (b) was a self-insurer during any part of the last 3 injury years occurring before the proposed period of insurance,

the cost of claims in relation to the period as a self-insurer is to be calculated (subject to any relevant determination of the Authority) as if the employer had been insured under a policy in respect of that period.

- (2) The provisions of this Division relating to insurers apply (subject to such modifications and exceptions as the Authority may determine) to such an employer in respect of the period as a self-insurer.

Division 5 Demand for premium

151 Notice of premium calculation

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

Division 6 Payment of premiums by instalments

152 Payment of premiums by instalments

An employer may elect to pay the premiums under any policy of insurance by instalment plans as detailed in the premium filings of the insurer, but only if the instalment plans are approved by, or are plans of a class approved by, the Authority for that policy or policies of that class.

153-161

Division 7 Miscellaneous

162 Transitional—operation of amendments

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

163 Rebate of premium where fraud or mistake involved in claims

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

Part 19 Miscellaneous

164 Disclosure of information for complaint about health practitioners

- (1) The Authority may disclose any information obtained in connection with the administration or execution of the workers compensation legislation concerning a health practitioner or any person to whom a health service has been provided by a health practitioner if the disclosure is made to the Commission or to a professional council or to a registration authority within the meaning of the [Health Practitioner Regulation National Law \(NSW\)](#).
- (2) Disclosure under this clause is allowed only for the purpose of—

- (a) the making of a complaint by the Authority about the health practitioner under the Health Practitioner Regulation National Law or the [Health Care Complaints Act 1993](#), or
- (b) assisting with any subsequent investigation, hearing or other action under the Health Practitioner Regulation National Law or the [Health Care Complaints Act 1993](#) in connection with the complaint.

(3) In this clause—

Authority includes the Nominal Insurer.

Commission, health practitioner, Health Practitioner Regulation National Law, health service and **registration authority** have the same meanings as in the [Health Care Complaints Act 1993](#).

the workers compensation legislation means the 1998 Act, the 1987 Act and the former 1926 Act.

165 Disclosure of information to Long Service Corporation—the 1998 Act, s 243(2)

- (1) The Authority may disclose details of contract cleaning industry employers, obtained in connection with the administration or execution of the workers compensation legislation, to the Long Service Corporation.
- (2) Disclosure under this clause is allowed only in relation to the following information—
 - (a) the name and contact details of a contract cleaning industry employer,
 - (b) the number of employees of a contract cleaning industry employer,
 - (c) the location of business operations of a contract cleaning employer.
- (3) In this clause—

contract cleaning industry employer means an employer within the meaning of the [Contract Cleaning Industry \(Portable Long Service Leave Scheme\) Act 2010](#).

Long Service Corporation means the Long Service Corporation constituted under the [Long Service Corporation Act 2010](#).

166 Additional records to be kept by employers

For the purposes of section 174 of the 1987 Act, the following are prescribed as matters for which an employer must keep records—

- (a) to the extent that is relevant to the employer—the number of taxi plates of the employer, the number of rides for jockeys and the number of bouts for boxers and wrestlers,

- (b) in the case of workers paid under contracts of the kind referred to in paragraph (b) of the definition of **wages** in section 174(9) of the 1987 Act—details of the contract concerned and related documentation, sufficient to enable an insurer to determine the amount of any costs to be deducted as referred to in that paragraph,
- (c) in the case of a worker engaged as an apprentice—records sufficient to establish the existence of the apprenticeship, including—
 - (i) any documents required to be kept under the *Apprenticeship and Traineeship Act 2001* in relation to the apprentice, and
 - (ii) any apprenticeship contracts approved by the Department of Education in relation to the apprentice.

167 Uninsured liabilities—modification of provisions of 1987 Act

For the purposes of sections 142A(2) and 148(3) of the 1987 Act, the following modifications are made to the provisions of the 1987 Act in their application to claims made under the Scheme—

- (a) references in sections 54 and 84 of the 1987 Act and in sections 71, 119, 122, 125 and 126 of the 1998 Act to an insurer or employer are to be read as references to the Nominal Insurer,
- (b) references in section 11A(8) of the 1987 Act and in sections 58 and 65(5) of the 1998 Act to an insurer or self-insurer are to be read as references to the Nominal Insurer,
- (c) in a case where a claim is made to a court or the Commission under section 142B of the 1987 Act and the employer named by the applicant under section 142B(1) is a corporation that has ceased to exist or a deceased person whose estate has been distributed—section 142B(1) is to be read as if it also provided that (in such a case) the application is not, subject to any rules of the court or the Commission, required to serve a copy of the application on that person,
- (d) section 174(6A) of the 1987 Act is to be read as if section 174(6B) were omitted.

168 Costs of medical assessment

- (1) For the purposes of section 330 of the 1998 Act, the following are prescribed as matters that an employer or insurer is not required to pay any costs of medical assessment in connection with—
 - (a) a medical assessment under Part 7 of Chapter 7 of the 1998 Act, if the worker failed without reasonable excuse to submit himself or herself to a medical examination conducted for the assessment,
 - (b) any further examination conducted for a medical assessment referred to in paragraph (a),

(c) an appeal against such a medical assessment, if the worker failed without reasonable excuse to attend a hearing on the appeal,

(d) any further hearing held on an appeal referred to in paragraph (c).

(2) The worker is required to pay any costs of assessment referred to in subclause (1)(a)–(d).

169 (Repealed)

170 Proceedings to enter up award on agreement for compensation

An application for determination of a claim for compensation by way of an award to give effect to an agreement between the parties may be lodged only if the application is accompanied by such evidence that the proceedings are not prevented by section 66B of the 1987 Act from being entertained by the Commission as is specified by the Commission rules for that purpose.

171 Powers of entry by inspectors

SafeWork NSW is prescribed for the purposes of paragraph (b) of the definition of **inspector** in section 238(1) of the 1998 Act as a body that can authorise a person for the purposes of that section.

172 Power to obtain information, documents and evidence

SafeWork NSW is prescribed for the purposes of paragraph (b) of the definition of **inspector** in section 238AA(7) of the 1998 Act as a body that can authorise a person for the purposes of that section.

173 Applications for licences

For the purposes of sections 177(2) and 210(2) of the 1987 Act, an application for a licence is to be in the approved form.

174 Medical practitioner may be required to attend Commission

For the purposes of section 127(4) of the 1998 Act, a medical practitioner may be required to attend the Commission and be cross-examined on the contents of a medical report by—

(a) notice served on the medical practitioner, or

(b) summons to appear under the [Personal Injury Commission Act 2020](#), section 51(1).

175 Evidence as to work capacity for second or subsequent certificates

(1) For the purposes of section 44B(3)(a1) of the 1987 Act, a second or subsequent certificate of capacity must be—

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

(b) given by—

(i) a medical practitioner, or

(ii) if the injured worker is receiving medical or related treatment (as defined in Division 3 of Part 3) for the injury by a physiotherapist or psychologist who is appropriately qualified within the meaning of section 60—the physiotherapist or psychologist.

Note—

Section 60(2C)(e) provides that the Workers Compensation Guidelines may specify the qualifications or experience a person requires to be appropriately qualified, including by providing that a person is not appropriately qualified unless approved or accredited by the Authority.

(2) If a subsequent certificate covers a period that overlaps wholly or in part with a period covered by an earlier certificate, the later certificate prevails for the whole of the period covered by the later certificate except to the extent that the later certificate relates to a period before the later certificate was provided.

(3) (Repealed)

176 Service of notices—the 1998 Act, s 236

For the 1998 Act, section 236(b), a notice may be given or served—

(a) by email to an email address specified by the person for the service of notices, or

(b) by electronic transmission to an address or location specified by the person for the service of notices.

177 Lump sum death benefit—additional compensation fees

For the 1987 Act, section 25(1A), the fee calculated in accordance with the following formula is prescribed—

$$A + ((F \times B) + C) + (D \times E) + (F \times G) = \text{Fee}$$

Where—

A is \$1,309.

B is the amount specified in Table 1, Column 2 that corresponds to the lump sum death benefit, including interest, payable to the dependant specified in Table 1, Column 1.

C is the amount specified in Table 1, Column 3 that corresponds to the lump sum death benefit, including interest, payable to the dependant specified in Table 1, Column 1.

D is \$917.82.

E is the amount specified in Table 2, Column 2 that corresponds to the age of the dependant specified in Table 2, Column 1.

F is the lump sum death benefit, including interest, payable to the dependant.

G is the amount specified in Table 2, Column 3 that corresponds to the age of the dependant specified in Table 2, Column 1.

Table 1

Column 1	Column 2	Column 3
less than or equal to \$100,000	0.0385	0
\$100,000.01 to \$200,000	0.0275	1100
\$200,000.01 to \$300,000	0.0165	3300
more than \$300,000	0.0055	6600

Table 2

Column 1	Column 2	Column 3
Age (years)		
0	11.69	0.2529
1	11.27	0.2358
2	10.84	0.2191
3	10.38	0.2028
4	9.90	0.1869
5	9.39	0.1714
6	8.86	0.1562
7	8.31	0.1414
8	7.72	0.1270
9	7.11	0.1129
10	6.46	0.0991
11	5.79	0.0857
12	5.08	0.0725
13	4.33	0.0455
14	3.55	0.0370

15	2.72	0.0282
16	1.86	0.0191
17	0.95	0.0097

Schedule 1 Diseases taken to be work-related

(Clause 4)

Column 1	Column 2
Poisoning by lead, its alloys or compounds, and its sequelae	<p>Handling of ore containing lead including fine shot in zinc factories</p> <p>Casting of old zinc and lead in ingots</p> <p>Manufacture of articles made of cast lead or of lead alloys</p> <p>Employment in the polygraphic industries</p> <p>Manufacture of lead compounds</p> <p>Manufacture and repair of electric accumulators</p> <p>Preparation and use of enamels containing lead</p> <p>Polishing by means of lead files or putty powder with a lead content</p> <p>All painting operations involving the preparation and manipulation of coating substances, cements or colouring substances containing lead pigments</p>
Poisoning by mercury or its amalgams or compounds, and its sequelae	<p>Handling of mercury ore</p> <p>Manufacture of mercury compounds</p> <p>Manufacture of measuring and laboratory apparatus</p> <p>Preparation of raw material for the hat-making industry</p> <p>Hot gilding</p> <p>Use of mercury pumps in the manufacture of incandescent lamps</p> <p>Manufacture of fulminate of mercury primers</p>
Anthrax infection	<p>Work in connection with animals infected with anthrax</p> <p>Handling of animal carcasses or parts of such carcasses including hides, hoofs and horns</p> <p>Loading and unloading or transport of merchandise that has come in contact with animals infected with anthrax or with animal carcasses or parts of such carcasses</p>
Phosphorus poisoning by phosphorus or its compounds, and its sequelae	Any process involving the production, liberation or utilisation of phosphorus or its compounds
Arsenic poisoning by arsenic or its compounds, and its sequelae	Any process involving the production, liberation or utilisation of arsenic or its compounds
Poisoning by benzene or its homologues, their nitro- and amido-derivatives, and its sequelae	Any process involving the production, liberation or utilisation of benzene or its homologues, or their nitro- and amido-derivatives

Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series	Any process involving the production, liberation or utilisation of halogen derivatives of hydrocarbons of the aliphatic series
Pathological manifestations of a kind that are due to or contributed to by— (a) radium and other radioactive substances, (b) X-rays	Any process involving exposure to the action of radium, radioactive substances or X-rays
Primary epitheliomatous cancer of the skin	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances
Brucellosis, Leptospirosis and Q fever	Slaughtering of cattle on the slaughter-floor of an abattoir or slaughter-house Handling or processing of the slaughtered carcasses of cattle in an abattoir or slaughter-house Penning up or running cattle through a race at an abattoir or slaughter-house Any activity, incidental or necessary to the carrying out of the above activities, on the slaughter-floor, in any area where the raw by-products of slaughtered cattle are handled or in or about any pen or race of an abattoir or slaughter-house

Schedule 2 Medical tests and results—brucellosis, Q fever, leptospirosis and COVID-19

(Clauses 5 and 5B)

Part 1 Medical tests and results—brucellosis, Q fever and leptospirosis

Column 1	Column 2	Column 3
Brucellosis	<i>Brucella</i> agglutination titres or complement fixation titres between acute and convalescent phase serum samples (taken at least 2 weeks apart and, where possible, conducted at the same laboratory)	IgG seroconversion or a four-fold or greater increase in antibody titre
	A single high <i>Brucella</i> agglutination titre or complement fixation test	An antibody titre of 640 or greater
	A laboratory culture of any specimen	The isolation of <i>Brucella</i>
Q fever	Nucleic acid testing of a specimen	Detection of <i>Coxiella burnetii</i>
	Phase II antigen in sera taken at least 2 weeks apart and tested, in parallel, in the absence of recent Q fever vaccination	Seroconversion or a four-fold or greater increase in antibody titre
	A laboratory culture of any specimen	The isolation of <i>Coxiella burnetii</i>

	Q fever IgM in the absence of recent Q fever vaccination in a person with a clinically compatible illness: fever, sweating and chills, severe headache, myalgia and arthralgia, extreme fatigue, weakness and malaise	Detection
Leptospirosis	<i>Leptospira</i> agglutination titres between acute and convalescent phase sera (taken at least 2 weeks apart and, preferably, conducted at the same laboratory)	A four-fold or greater increase in antibody titre
	A single <i>Leptospira</i> micro agglutination titre supported by a positive EIA IgM result	Greater than or equal to 400
	A laboratory culture of any specimen	The isolation of pathogenic <i>leptospira</i> species

Part 2 Medical tests and results—COVID-19

Column 1	Column 2	Column 3
COVID-19	Nucleic acid testing of any specimen using a specific SARS-CoV-2 nucleic acid test that is listed in the Australian Register of Therapeutic Goods	Detection of SARS-CoV-2
	A laboratory culture of any specimen, with confirmatory testing using a PCR test that is listed in the Australian Register of Therapeutic Goods	The isolation of SARS-CoV-2, confirmed with PCR

Schedule 3 Mandatory provisions in employer's insurance policy

(Clause 51)

Part 1 Preliminary

1 Definitions

In this Policy—

Employer means the person insured under this Policy, being the person named as the Employer in the Schedule of Employer Particulars.

Insurer means the insurer of the Employer under this Policy, being the person named as the Insurer in the Schedule of Employer Particulars.

period of insurance means the period specified in the Schedule of Employer Particulars as the period during which this Policy is in force, and any subsequent period in respect of which this Policy is duly renewed.

Schedule of Employer Particulars means the Schedule most recently issued by the Insurer to the Employer as the Schedule of Employer Particulars in respect of this Policy.

the Act means the [Workers Compensation Act 1987](#) and includes the [Workplace Injury](#)

Management and Workers Compensation Act 1998.

the Proposal means the proposal for insurance in respect of which this Policy is issued (made by the Employer to the Insurer).

worker has the same meaning as in the Act (including the extended meaning it has because of Schedule 1 (Deemed employment of workers) to the Act).

2 Proposal and Schedule form part of Policy

The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer Particulars are considered to form part of this Policy.

Part 2 Cover provided by Policy

3 What the Insurer is liable for

The Insurer will indemnify the Employer against all of the following sums for which the Employer becomes liable during or in respect of the period of insurance—

- (a) compensation that the Employer becomes liable to pay under the Act to or in respect of any person who is a worker of the Employer (including any person to whom the Employer is liable under section 20 of the *Workers Compensation Act 1987*),
- (b) any other amount that the Employer becomes liable to pay independently of the Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury to any such person (not including liability in respect of an injury, suffered by a person other than such a worker, arising out of any rescue or attempted rescue),
- (c) costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceeding in which any such liability is alleged.

The Insurer will not indemnify the Employer for the Employer's liability for GST payable on the settlement of a claim.

4 Businesses and industrial activities to which Policy applies

This Policy applies to a business or industrial activity described in the Schedule of Employer Particulars. The Employer can change the businesses or industrial activities to which this Policy applies by giving notice of the change in writing to the Insurer. The Schedule of Employer Particulars is taken to have been changed to give effect to any such notice given by the Employer. The premium payable for this Policy is to be adjusted in accordance with any change in the businesses or industrial activities to which this Policy applies.

5 Insurer is directly liable to workers

The Insurer (as well as the Employer) is directly liable to any worker and (if the worker dies) to the worker's dependants or other persons to pay the compensation under the Act or other amount independently of the Act for which the Employer is liable and indemnified under this Policy. This means that a claim can be made and action taken directly against the Insurer.

6 Insurer is bound by judgments etc against Employer

The Insurer is bound by and subject to any judgment, order, decision or award given or made against the Employer, in respect of any liability for which the Insurer is liable to indemnify the Employer under this Policy.

7 Premium

The premium for this Policy is calculated in accordance with the Workers Compensation Market Practice and Premiums Guidelines.

Part 3 Conditions of Policy

8 Employer must give Insurer or the Nominal Insurer notice of injury to worker

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

9 How notices are to be given

- (1) Notices to be given under this Policy to the Insurer are to be given by being delivered, posted or transmitted electronically to the address of the Insurer last notified to the person giving the notice.
- (2) Notices to be given under this Policy to the Employer are to be given by being delivered, posted or transmitted electronically to the address of the Employer last known to the Insurer.
- (3) The notification of injury required by clause 8 is to be given to the Insurer in the manner required by subclause (1) or in such other manner as the Insurer indicates to the Employer that the Insurer will accept.

10 Employer not to make admissions etc

The Employer must not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement or admission of liability in respect of any injury to or claim made by any worker.

11 Defence of proceedings

The Insurer can use the name of the Employer in respect of anything indemnified under

this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must comply with all reasonable requests by the Insurer for information, assistance and documents to enable the Insurer to settle or resist a claim.

12 Subrogation

The Insurer can use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise. The Insurer has the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by this Policy. The Employer must execute such documents as may be necessary for the purpose of vesting any of those rights in the Insurer, as and when required to do so by the Insurer.

13 Precautions to prevent injury

The Employer must take all reasonable precautions to prevent injury.

14 Alterations and repairs following injury

So far as is reasonably practicable, the Employer must not alter or repair any work, machinery, plant, way or appliance after an injury to a worker occurs in connection with it, until the Insurer has had an opportunity to examine it or has consented to the alteration or repair being made.

15 Insurer's right of inspection

The Insurer is entitled to inspect at any reasonable time any work, machinery, plant, way or appliance used in the Employer's business or industrial activity.

16 Assignment

An assignment of interest under this Policy does not bind the Insurer unless the written consent of the Insurer to the assignment has been obtained.

17 Renewal of Policy

This Policy is renewed on the expiration of the current period of insurance to which it applies, except where—

- (a) the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required, or
- (b) the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy, but the Insurer cannot refuse to renew this Policy unless the Authority has given its prior consent in writing to the refusal.

The period of each renewal is 12 months, or such shorter period as the Insurer and the Employer agree to before renewal.

18 Cancellation of Policy

- (1) The Insurer may cancel this Policy at any time if the Insurer has first obtained the written consent of the Authority.
- (2) The Insurer cannot cancel this Policy without that consent except in any circumstances approved by the Authority and specified in this Policy.
- (3) The Insurer cancels this Policy by giving notice of cancellation in writing to the Employer.
- (4) The cancellation takes effect on the cancellation day notified in the notice of cancellation but that day must not be less than 7 days after the notice of cancellation is given to the Employer.
- (5) Section 184 of the 1987 Act applies as if the Policy had been cancelled under that section.

19 No waiver or alteration

A provision of this Policy cannot be waived or altered unless the consent of the Insurer has been previously obtained and signified by endorsement on this Policy.

20 Employer must tell Insurer if unable to give suitable work requested by injured worker

If a worker employed by the Employer is partially incapacitated for work as a result of an injury and requests the Employer to provide suitable employment for him or her and the Employer does not immediately provide suitable employment, the Employer must promptly notify the Insurer of the following—

- (a) the fact of the worker's request and that the Employer has not provided suitable employment,
- (b) any proposal to provide or arrange for suitable employment for the worker, having regard to the certificate of capacity which the worker supplies and to the Employer's return-to-work program (if any) or otherwise.

21 Employer must advise change of business or industry

The Employer must notify the Insurer, as soon as practicable, of any change in the business or industrial activity carried on by the Employer.

22 Records to be kept of wages

The Employer agrees to allow the Insurer to inspect the records kept by the Employer under section 174 of the 1987 Act.

Note—

Section 174 of the 1987 Act requires the Employer to keep certain records (such as records of wages paid to workers) and requires the Employer to keep those records for at least 5 years. The section gives the Authority certain rights to inspect those records.

23 Cover conditional on Employer complying with Policy, Act and regulations

The indemnity provided by this Policy is conditional on compliance by the Employer with the provisions of this Policy, the Act and the regulations under the Act.

24 Act and regulations form part of Policy

This Policy is subject to the provisions of the Act and the regulations under the Act and those provisions are taken to form part of this Policy.

Notes—

1 Recovery of excess from Employer. Under section 160 of the 1987 Act, the Employer is required to repay the prescribed excess amount, as specified by the Workers Compensation Market Practice and Premiums Guidelines, in respect of each claim for weekly compensation paid by the Insurer.

An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant worker or makes an appropriate debit against any amount standing to the Employer's credit for premiums.

2 Domestic etc workers. If this Policy is issued for domestic or similar workers (including when this Policy forms part of a household insurance package) it is to be read as if—

- (a) the reference to the Employer carrying on business were a reference to the Employer employing domestic or similar workers, and
- (b) the provisions in clause 4 for the Employer to notify a change of business or industrial activity were omitted, and the provisions of clauses 17 (Renewal of Policy) and 21 (Employer must advise change of business or industry) were omitted.

3 Workplace injury management. The Employer of an injured worker who has been totally or partially incapacitated for work has certain obligations under Chapter 3 of the [Workplace Injury Management and Workers Compensation Act 1998](#), including an obligation under section 49 to provide suitable employment if the worker is able to return to work. It is a condition of this Policy that the Employer must comply with the requirements of that Chapter, but only if the Insurer has taken appropriate steps to ensure that the Employer is made aware of those obligations.

Schedule 4 Ministers of religion

(Clause 65)

Religious body or organisation	Class	Employer
Anglican Church of Australia—Diocese of Canberra and Goulburn	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	Anglican Church Property Trust, Diocese of Canberra and Goulburn

Anglican Church of Australia—Diocese of Grafton	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	The Corporate Trustees of the Diocese of Grafton
Anglican Church of Australia—Diocese of Riverina	Clergy holding a licence from the Bishop of the Diocese who perform work wholly or partly in New South Wales	Riverina Diocesan Trust
Assemblies of God New South Wales	Ministers serving a congregation in New South Wales affiliated with or recognised by the Assemblies of God New South Wales who receive a stipend paid by that congregation	The Assembly of the congregation concerned
The Baptist Union of New South Wales	Ministers serving a congregation in New South Wales affiliated with or recognised by The Baptist Union of New South Wales who receive a stipend paid by that congregation	The Secretary of the congregation concerned
Central Coast Christian Life Centre	Ministers serving a congregation in New South Wales affiliated with or recognised by the Central Coast Christian Life Centre who receive a stipend paid by that congregation	The Central Coast Christian Life Centre Limited
Church of Christ (Non-denominational)—Bankstown	Ministers serving a congregation in New South Wales affiliated with or recognised by the Church of Christ (Non-denominational)—Bankstown who receive a stipend paid by that congregation	The congregation concerned
Classis New South Wales of the Reformed Churches of Australia	Ministers serving a congregation in New South Wales affiliated with or recognised by the Classis New South Wales of the Reformed Churches of Australia who receive a stipend paid by that congregation	The Session of the congregation concerned
Coptic Orthodox Church, New South Wales, Australia	Ministers serving the Classis New South Wales of the Reformed Churches of Australia who receive a stipend paid by the Classis	The Classis New South Wales of the Reformed Churches of Australia
Coptic Orthodox Church, New South Wales, Australia	Clergy authorised by the President of the Church Council in New South Wales to serve a parish in New South Wales	Coptic Orthodox Church (NSW) Property Trust
Fellowship of Congregational Churches	Clergy serving a congregation in New South Wales affiliated with or recognised by the Fellowship of Congregational Churches who receive a stipend paid by that congregation	The Secretary of the congregation concerned
Presbyterian Church of Australia in the State of New South Wales	Presbyterian Ministers	Presbyterian Church in the State of New South Wales
Southside Christian Fellowship	Ministers serving a congregation in New South Wales affiliated with or recognised by the Southside Christian Fellowship who receive a stipend paid by that congregation	The Southside Christian Fellowship Incorporated

Uniting Church in Australia—Synod of NSW and the ACT	Ministers serving a congregation in New South Wales affiliated with or recognised by the Uniting Church in Australia, Synod of NSW and the ACT who receive a stipend paid by that congregation	Uniting Church in Australia—Synod of NSW and the ACT
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Schedule 5 Penalty notice offences

clause 71

Part 1 Provisions of the 1987 Act

Column 1	Column 2
Provision	Penalty \$
Section 43(2A)	200
Section 155(1)	1,250
Section 161(3)	1,100
Section 163(1) and (3)	2,200
Section 163A(2) and (7)	1,100
Section 174(1)–(3) and (8)	1,250
Section 192A(4A)	1,100

Part 2 Provisions of the 1998 Act

Column 1	Column 2
Provision	Penalty \$
Section 59D	1,100
Section 63(5)	1,100
Section 69(1)	1,100
Section 74A(3)	1,100
Section 85	1,100
Section 94	1,100
Section 231(3)	220
Section 232(2)(a)	440
Section 256(5)	1,100
Section 264(1)–(3)	1,100
Section 267(5)	1,100

Section 268	1,100
Section 283(1)	1,100
Section 285	1,100
Section 287A(3)	1,100
Section 290(2)	1,100

Part 3 Provisions of this Regulation

Column 1	Column 2
Provision	Penalty \$
Clause 12	For a category 1 employer—440 For a category 2 employer—110
Clause 17	For a category 1 employer—220 For a category 2 employer—50
Clause 36	550
Clause 73	1,100
Clause 141	550

Schedule 6 Maximum costs—compensation matters

Part 1 Application and operation of Schedule

1 Introduction

- (1) This Schedule applies to—
 - (a) workers compensation claims and disputes that are resolved before proceedings are commenced in the Commission (in certain circumstances), and
 - (b) disputes that are resolved after proceedings have been commenced in the Commission.
- (2) When a claim or dispute is resolved, law practices or agents representing the parties will need to determine what type of resolution has been reached and when it was resolved. By applying these factors to this Schedule, the law practices or agents will be able to ascertain the costs recoverable.
- (3) If a claim or dispute involves a number of resolution types that are resolved concurrently, or within a specified time frame, the costs recoverable are restricted to the resolution for which the highest amount of costs is payable.
- (4) The recoverable costs will be either—

- (a) a maximum flat, predetermined figure, or
 - (b) in the case of certain “special resolutions”, a maximum amount establishing a range within which the parties may negotiate their costs entitlement.
- (5) If a claim or dispute (other than a claim or dispute resolved by special resolution) includes “additional legal services” or involves “factors” as referred to in Table 4, there may be an additional allowance that can be added to the entitlement to costs.
- (6) Part 3 determines regulated disbursements. Unregulated disbursements as identified by clause 86 of the *Workers Compensation Regulation 2016* may be determined in accordance with the *Legal Profession Uniform Law (NSW)*, or if that Law does not apply, then principles of fairness and reasonableness apply. Disbursements that are neither regulated under Part 3 nor specified in clause 86 of the *Workers Compensation Regulation 2016* are not recoverable, subject to clause 17 (Recovery of certain charges for certain documents from public authorities) of this Part.
- (7) This Schedule contains three Parts—
- (a) Part 1 contains definitions, describes how the Tables operate and in some cases modifies the operation of the Tables.
 - (b) Part 2 contains four tables—
 - (i) Table 1 sets out the phases at which claims and disputes may be resolved and the costs that apply for the resolution at each phase.
 - (ii) Table 2 sets out the types of resolutions that apply to Table 1, and indicates the level of costs (ie 75% or 100%) that will apply to that resolution type.
 - (iii) Table 3 sets out alternate or “special” resolution types and the applicable costs for each party. Tables 1 and 2 do not apply to these “special” resolution types.
 - (iv) Table 4 sets out additional legal services and other factors that may result in an increase to the costs claimable under Table 1.
 - (c) Part 3 lists regulated disbursements.

2 Definitions

- (1) In this Schedule—

application means an application for resolution of a claim or dispute in the approved form accepted by the Commission for registration.

complying agreement has the same meaning as in section 66A of the 1987 Act.

decision notice means—

- (a) a notice issued under section 54 of the 1987 Act, or
- (b) a notice issued under section 74 of the 1998 Act, or
- (b1) a notice issued under section 78 of the 1998 Act, or
- (c) a notice issued under section 287A of the 1998 Act.

fee order means an order made by the Authority in relation to fees.

insurer includes the Nominal Insurer, a self-insurer and a specialised insurer.

lead scheme agent means the agent who is representing the Nominal Insurer on behalf of a number of scheme agents in the conduct of a claim or dispute.

Nominal Insurer has the same meaning as in the 1987 Act.

resolved—see subclauses (2) and (3).

respondent means a person who is a party to a dispute other than the applicant.

scheme agent has the same meaning as in the 1987 Act.

self-insurer has the same meaning as in the 1987 Act.

specialised insurer has the same meaning as in the 1987 Act.

Table means a Table in Part 2.

teleconference means a telephone conference conducted by the Commission.

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

- (2) **Meaning of “resolved”—claimant** For the purposes of this Schedule, a claim or dispute is resolved, in relation to a claimant, if—
- (a) the claim or dispute is wholly or partly resolved in the claimant’s favour, or
 - (b) an application brought by an insurer in relation to the claim or dispute is successfully defended in whole or in part,
- but does not include a matter discontinued, withdrawn, dismissed or struck out without any resolution referred to in paragraph (a) or (b) unless otherwise ordered or certified for the purposes of cost recovery by the Commission.
- (3) **Meaning of “resolved”—insurer** For the purposes of this Schedule, a claim or dispute involving a claimant is resolved, in relation to an insurer, if—
- (a) the claim or dispute is concluded, or
 - (b) an application brought by the insurer in respect of the claim or dispute is

concluded,

unless otherwise ordered or certified for the purposes of cost recovery by the Commission.

- (4) **Meaning of other compensation claim or dispute in Table 1** A reference in Table 1 to an **other compensation claim or dispute** (or **other compensation dispute**) is a reference to a claim or dispute (or a dispute) concerning compensation to which the resolutions in items 5–16 of Table 2 relate.

Note—

The purpose of this subclause is to make it clear that the successive use of the word “other” in Table 1 does not result in successive narrowing of the terms used.

3 Overall application of Schedule

- (1) This Schedule is to be read and applied in its entirety, and accordingly this Schedule applies in relation to costs in accordance with—
- (a) the descriptions contained in Tables 1 to 4, and
 - (b) the notes in Part 2, and
 - (c) Parts 1 and 3.
- (2) This Schedule prescribes the maximum costs recoverable in respect of work carried out to achieve the resolution types described in Tables 2 and 3 for—
- (a) resolving claims and disputes before an application is accepted by the Commission for registration, or
 - (b) resolving disputes after an application is accepted by the Commission for registration.

4 General application of Tables

- (1) **General resolution types** The maximum amount of costs for the resolution of a claim or dispute as described in Table 2 is the amounts set out in—
- (a) column 1 or 2 of Table 1 for the claimant, and
 - (b) column 3 or 4 of Table 1 for the insurer,
- for the applicable phase.
- However—
- (a) that maximum amount may be decreased by an amount already received under an entitlement from Table 3 in circumstances specified in that Table, and
 - (b) that maximum amount may be increased by an entitlement under Table 4 in

circumstances specified in that Table.

- (2) **Special resolution types** The maximum amount of costs for the resolution of a claim or dispute as described in Table 3 is the amounts set out in that Table.
- (3) **Additional legal services or other factors—general** The maximum amount of costs for an additional legal service or other factor in respect of a resolution as described in items 1-5 of Table 4 is up to the amount or percentage of costs set out in—
- (a) columns 1 and 3 of items 1-4 of Table 4 for the claimant, and
 - (b) columns 2 and 4 of items 1-4 of Table 4 for the insurer, and
 - (c) column 1 of item 5 of Table 4 for the claimant, and
 - (d) column 2 of item 5 of Table 4 for the insurer.

Accordingly and for the avoidance of doubt—

- (a) an entitlement to costs under item 1, 2 or 3 of Table 4 as certified by the Commission may be added to the costs recoverable under item B, D, E or F of Table 1, and
 - (b) an entitlement to a percentage increase in costs ascertained under item 4 or 5 of Table 4 and as certified by the Commission applies to increase the costs claimable under item D, E or F of Table 1, and
 - (c) an entitlement to costs under item 1, 2 or 3 of Table 4 as certified by the Commission is recoverable by an insurer in respect of a resolution referred to in item B of Table 1 even though no costs may be recoverable by the insurer under that item.
- (4) **Additional legal services or other factors—multiple respondents or lead scheme agent** The maximum costs for an additional legal service or other factor as described in items 6 and 7 of Table 4 are up to the percentage applicable for the claimant and insurer as specified.

Accordingly and for the avoidance of doubt, an entitlement to a percentage increase in costs ascertained under items 6 and 7 of Table 4 applies to increase the costs claimable under items A to F of Table 1.

- (5) **Table 4 costs not separately claimable** Except as referred to in subclause (3)(c), costs specified in Table 4 are recoverable only if costs as described in Table 1 are also recoverable.

5 When Table 1 costs recoverable

Costs specified in clause 4 of this Part are recoverable only on resolution of the claim or dispute concerned.

6 Special provisions for Table 1 costs—dispute about permanent impairment and pain and suffering

- (1) An exception to the standard method of determining the appropriate Table 1 costs for a claimant and an insurer based upon the meaning of “resolved” under clause 2 of this Part and the types of resolutions set out in Table 2 applies, where—
- (a) a claimant has made an application to the Commission to resolve a dispute about permanent impairment and pain and suffering pursuant to sections 66 and 67 of the 1987 Act, and
 - (b) the section 67 claim has been substantiated by—
 - (i) a report, from a medical specialist with qualifications and training relevant to the body system being assessed who has been trained in the NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, to the effect that the claimant has sustained 10% or more whole person impairment where—
 - (A) the injury was sustained on or after 1 January 2002, and
 - (B) that report has been served on the insurer, or
 - (ii) a medical report to the effect that the claimant has sustained a loss or losses of 10% or more of the maximum amount referred to in section 66(1) of the 1987 Act where—
 - (A) the injury was sustained before 1 January 2002, and
 - (B) that report has been served on the insurer, and
 - (c) the medical assessment certificate issued by a medical assessor or Appeal Panel is to the effect that the degree of whole person impairment of the claimant is below 10% or the loss or losses are not 10% or more of the maximum amount referred to in section 66(1) of the 1987 Act.
- (2) In a case to which subclause (1) applies—
- (a) the claimant is entitled to maximum costs in the amount of \$4,400, and
 - (b) the insurer is entitled to maximum costs in the amount of \$2,062.50.
- (3) In this clause—

Appeal Panel means an Appeal Panel constituted under section 328 of the 1998 Act.

Note—

The deduction in respect of an advice to an insurer under item F of Table 3 applies to this costs provision.

7 When Table 3 costs recoverable, and reduction of subsequent Table 1 costs

- (1) **When Table 3 costs recoverable** Costs specified in Table 3 as “Special Resolution Types” are recoverable only—
- (a) on resolution of the dispute in respect of items A, B and C of that Table, or
 - (b) on registration of the agreement with the Commission in respect of item D of that Table, or
 - (c) when an existing decision of the insurer has been varied as a consequence of a legal service, where it was reasonable to carry out that service in respect of item E of that Table, or
 - (d) when written advice has been provided to the insurer in respect of item F of that Table, or
 - (e) when independent legal advice has been given to a claimant in respect of a complying agreement proposed by an insurer in respect of item G of that Table.
- (2) **Reduction of subsequent Table 1 costs** The costs referred to in subclause (1) are not payable or recoverable in conjunction with any other items in this Schedule (with the exception of disbursements under Part 3 or disbursements specified in clause 86) with the result that—
- (a) if costs have been recovered in respect of item A, B or C of Table 3 and costs subsequently become recoverable under Table 1 in respect of a resolution that relates to the same issue, the entitlement to costs under Table 1 is to be reduced by any payment already made in respect of item A, B or C of Table 3, and
 - (b) if costs have been recovered in respect of item E of Table 3 and costs subsequently become payable under Table 1 in respect of a resolution that relates to the same issue, the entitlement to costs under Table 1 is to be reduced by any payment made in respect of item E of Table 3, and
 - (c) if costs have been recovered in respect of item F of Table 3 and costs subsequently become payable under Table 1 in respect of a claim or dispute relating to the issue addressed in the written advice, the entitlement to costs under Table 1 is to be reduced by any payment made in respect of item F of Table 3 (but the maximum reduction is the amount paid for the first such advice), and
 - (d) if costs have been recovered in respect of item G of Table 3 and costs subsequently become payable under Table 1 in respect of a claim or dispute relating to the issue addressed in the complying agreement, the entitlement to costs under Table 1 is to be reduced by a payment made in respect of item G of Table 3.
- (3) Subclause (2)(c) does not apply where—

- (a) payment was for advice given on issues that are not in dispute and thus are not part of the Table 1 resolution, in which case there is to be no deduction, or
- (b) a period of more than 12 months has elapsed between the giving of the advice and the Table 1 resolution, or
- (c) the President, on application, determines that the need for the costs to be incurred for the Table 1 resolution could not have been foreseen at the time that costs for the advice were first incurred.

No costs are payable or recoverable in respect of an application for the purposes of paragraph (c).

- (4) Subclause (2)(d) does not apply where a period of more than 12 months has elapsed between the giving of the advice in respect of the complying agreement and the Table 1 resolution.

8 Maximum payable where more than one resolution type

- (1) Subject to clause 7 of this Part, where the resolution includes more than one resolution type in Table 2, or includes resolution types in Tables 2 and 3, the following provisions apply—
 - (a) in relation to a claimant—
 - (i) if all resolutions fall within column 1 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
 - (ii) if all resolutions fall within column 2 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
 - (iii) if resolutions fall within both columns 1 and 2 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
 - (iv) if resolutions fall within both Tables 1 and 3, the single highest amount claimable for a resolution is payable, once only,
 - (b) in relation to an insurer—
 - (i) if all resolutions fall within column 3 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
 - (ii) if all resolutions fall within column 4 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
 - (iii) if resolutions fall within both columns 3 and 4 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
 - (iv) if resolutions fall within both Tables 1 and 3, the single highest amount

claimable for a resolution is payable, once only.

- (2) Where subclause (1) applies and additional legal services or other factors set out in Table 4 are also claimable, the Table 4 items are payable up to the highest rate claimable, once only.

9 Maximum payable where more than one claim or dispute

- (1) If more than one claim or dispute is resolved in respect of a particular injury, the maximum costs recoverable, regardless of how many resolution types there are, is the maximum as set out in clause 8 of this Part.
- (2) Subclause (1) does not apply if—
 - (a) a period of more than 12 months has elapsed between each successive resolution in respect of the injury, or
 - (b) the President, on application, orders that the resolutions are to be treated as separate resolutions for the purposes of the calculation or assessment of costs.

No costs are payable or recoverable in respect of an application for the purposes of paragraph (b).

10 Maximum payable covers all work

The costs allowed under—

- (a) Table 1 in column 1, 2, 3 or 4 for each type of general resolution, and
- (b) Table 3 for each type of special resolution, and
- (c) Table 4 for additional legal services or other factors,

cover all work performed in the course of the claim, dispute, legal service or factor. This includes but is not limited to conferences, seeking a review of the claim, completing all necessary preparation and documentation, appearances and advocacy, executing and lodging settlement documents, reviewing the determination of the Commission and concluding attendances.

11 Determination of maximum payable where an upper limit is set

If Table 3 or 4 or Part 3 sets an upper limit for the maximum payable by way of any costs, the maximum payable is to be an amount determined, within the range from and including nil to and including the upper limit, by reference to—

- (a) any applicable procedural direction of the President or the Commission rules, and
- (b) subject to paragraph (a), the nature and extent of the service performed.

12 Table 2—resolution after teleconference and before further attendance

Where the Commission issues a determination in respect of a resolution type in Table 2, following the initial teleconference and before any further attendances, the costs in relation to that resolution fall within item D of Table 1.

13 Table 3—orders

For the purposes of Table 3, the Commission may make an order declaring that a particular proceeding is in respect of the resolution of “other proceedings” as referred to in item C of that Table.

14 Special provisions for Table 1 and Table 3 costs—legal advice to claimant on complying agreement

- (1) Costs are not recoverable under item A of Table 1 in respect of independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer, if the only service provided to the claimant relates to the giving of that advice.
- (2) Costs are not recoverable under item G of Table 3 in respect of independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer, unless the only service provided to the claimant relates to the giving of that advice.

Note—

Section 66A(6) of the 1987 Act provides that nothing in section 66A prevents a complying agreement from containing provision as to the payment of costs. Accordingly, a complying agreement may provide for the payment of costs, but the maximum recoverable is subject to Part 2.

15 Country/interstate loadings—Part 3

Country or interstate loadings (including travel and accommodation expenses) are payable in accordance with clause 3 or 4 (as relevant) of Schedule 1 to the *Motor Accidents Compensation Regulation 2015*, and the provisions of those clauses apply, with any necessary modifications and with any modifications contained in a procedural direction of the President or the Commission rules, for that purpose.

16 Certain agents not entitled to costs

- (1) No amount is recoverable for costs by an agent who is not an agent as defined in section 356(6) of the 1998 Act, with the result that the agent is not entitled to be paid or recover any amount for the service or matter concerned.
- (2) Nothing in this clause prevents an agent who is a law practice from being entitled to be paid or recover any costs.

17 Recovery of certain charges for certain documents from public authorities

Nothing in this Regulation (including this Schedule) prevents the recovery, as a

disbursement, of the fee or charge set for any of the following reports, certificates, searches or services by the agency concerned in a claim in respect of a particular injury—

- (a) a report from a coroner, the NSW Police Force or Transport for NSW relevant to the claim,
- (b) a land title search from Land and Property Information NSW relevant to the claim,
- (c) a certificate from the Registry of Births, Deaths and Marriages relevant to the claim,
- (d) an application under the *Government Information (Public Access) Act 2009* relevant to the claim,
- (e) a company or business name search from the Australian Securities and Investments Commission relevant to the claim.

Part 2 Costs

Table 1 General resolution types—costs payable

General resolution Item (for general resolution types refer to Table 2)	Claimant		Insurer	
	Column 1 75%	Column 2 100%	Column 3 75%	Column 4 100%
Lump sum compensation claim or dispute resolved				
• before application accepted by the President	\$3,130.90	\$4,142.90	\$1,992.40	N/A
(Table 2—items 1-4—Claimant: item 2 only—Insurer)				
Lump sum compensation claim or dispute resolved			\$3,225.75	
• after application accepted by the President and up to and including the issue of a Certificate of Determination	\$4,459.15	\$5,913.90 (or \$5,060.00 where clause 6 of Part 1 applies)	(or \$2,371.90 where clause 6 of Part 1 applies)	N/A
(Table 2—items 1-4—Claimant: item 2 only—Insurer)				

	Other compensation claim or dispute resolved				
	• after decision notice issued and before application accepted by the President, or				
C	• before application accepted by the President for a claim for compensation in relation to the death of a worker	\$3,617.90	\$4,788.05	\$2,966.45	\$3,921.50
	(Table 2—items 5-16)				
	Other compensation dispute resolved				
	• after application accepted by the President, and up to and including the initial teleconference including consequential settlement attendances				
D		\$4,895.55	\$6,495.80	\$4,244.10	\$5,629.25
	(Table 2—items 5-16)				
	Other compensation dispute resolved				
	• after initial teleconference and up to and including conciliation conference including consequential settlement attendances				
E		\$5,376.25	\$7,140.95	\$4,636.25	\$6,147.90
	(Table 2—items 5-16)				
	Other compensation dispute resolved				
	• following conciliation conference and up to and including arbitration hearing				
F		\$5,838.00	\$7,748.15	\$4,977.80	\$6,609.65
	(Table 2—items 5-16)				

Table 2 General resolution types—applicable rate

Item	General resolution types	Column 1 75%	Column 2 100%
	Lump sum compensation resolutions		

1	<p>Lump sum compensation for permanent impairment under section 66 of the 1987 Act (excluding any claim for pain and suffering under section 67 of that Act) where—</p> <ul style="list-style-type: none"> • the extent of impairment is the only issue, or • a decision notice has not been issued <p>(Claimant only—item A or B of Table 1)</p>	75%	—
2	<p>Lump sum compensation for pain and suffering under section 67 of the 1987 Act (Item A or B of Table 1)</p>	75%	—
3	<p>Lump sum compensation under section 16 of the 1926 Act where—</p> <ul style="list-style-type: none"> • the extent of impairment (or loss) is the only issue, or • a decision notice has not been issued <p>(Claimant only—item A or B of Table 1)</p>	75%	—
4	<p>Lump sum compensation for permanent impairment under section 66 of the 1987 Act and for pain and suffering under section 67 of that Act where—</p> <ul style="list-style-type: none"> • the extent of impairment and pain and suffering are the only issues, or • a decision notice has not been issued <p>(Claimant only—item A or B of Table 1)</p>	—	100%
Other compensation resolutions			
5	<p>Lump sum compensation for permanent impairment where—</p> <ul style="list-style-type: none"> • a decision notice has been issued, or • the matter is referred to the Commission for determination <p>(Item C, D, E or F of Table 1)</p>	—	100%
6	<p>Weekly payments compensation for a period not exceeding 12 weeks in total, excluding interim payment directions under Chapter 7, Part 5, of the 1998 Act (Item C, D, E or F of Table 1)</p>	75%	—
7	<p>Weekly payments compensation for a period exceeding 12 weeks in total, being a period in respect of which an interim payment direction under Chapter 7, Part 5, of the 1998 Act has not been made (Item C, D, E or F of Table 1)</p>	—	100%

8	Termination or reduction of weekly payments compensation (on a review under section 55 of the 1987 Act) (Insurer only—item C, D, E or F of Table 1)	—	100%
9	Successfully defending an application to terminate or reduce weekly payments compensation (Claimant only—item C, D, E or F of Table 1)	—	100%
10	Increase in weekly payments compensation (on a review under section 55 of the 1987 Act) (Claimant only—item C, D, E or F of Table 1)	—	100%
11	Defending an application to increase weekly payments compensation (on a review under section 55 of the 1987 Act) (Insurer only—item C, D, E or F of Table 1)	—	100%
12	Medical expenses compensation not exceeding \$7,500.00, excluding interim payment directions under Chapter 7, Part 5, of the 1998 Act (Item C, D, E or F of Table 1)	75%	—
13	Medical expenses compensation exceeding \$7,500.00 (Item C, D, E or F of Table 1)	—	100%
14	Compensation in respect of the death of a worker under Part 3, Division 1, of the 1987 Act where— • the respondent admits liability, and • there is no dispute regarding dependency (Item C of Table 1)	75%	—
15	Compensation in respect of the death of a worker under Part 3, Division 1, of the 1987 Act where— • the respondent disputes liability, and/or • the respondent disputes dependency (Item C, D, E or F of Table 1)	—	100%
16	Reduction in liability of employer to reimburse the Insurance Fund under section 145 of the 1987 Act by determination of the Commission or agreement after referral (Item D, E or F of Table 1)	75%	—

Table 3 Special resolution types—costs payable

Item	Application on behalf of claimant		Application on behalf of insurer	
	Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
Special resolution types				

A Interim payment dispute resolved

1	Dispute resolved by direction or agreement, after application accepted by the President	\$2,087.25	\$1,771.00	N/A	N/A
2	If further dispute about the same claim is resolved by direction or agreement, after application accepted by the President	\$695.75	\$695.75	N/A	N/A

B Workplace injury management dispute resolved

1	Dispute resolved by direction, recommendation, determination or agreement, after application accepted by the President	\$2,435.15	\$2,118.90	\$2,435.15	\$2,118.90
2	If further dispute about the same claim is resolved by direction, recommendation, determination or agreement, after application accepted by the President	\$695.75	\$695.75	\$695.75	\$695.75

C Resolution of other proceedings

1	As ordered or certified by the Commission or the President	Upper limit of \$1,391.50	Upper limit of \$1,391.50	Upper limit of \$1,391.50	Upper limit of \$1,391.50
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D Registration of commutation agreement

1	Where agreement approved by the Authority and registered with the President (including all preparation and documentation in approved form in accordance with Rules)	\$1,897.50	\$1,897.50	\$1,897.50	\$1,897.50
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Item Special resolution types

Claimant

E Legal service to claimant before decision notice

1	Where an insurer's decision on the existing entitlement to weekly payments is varied to the worker's benefit by an increase of 5% or more in weekly payments as a consequence of a legal service, where it was reasonable to carry out that service	Upper limit of \$1,391.50
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Item Special resolution types

Insurer

F Written advice provided at the request of the insurer

1	Where— <ul style="list-style-type: none"> the legal advice to an insurer is the provision of written advice at the request of the insurer before the issue of a decision notice, and costs are not recoverable under Table 1 in relation to the claim or dispute the subject of that advice (Subject to clause 7 of Part 1)	Upper limit of \$1,043.65
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G Advice in relation to complying agreement

1	Where independent legal advice given to a claimant in relation to a complying agreement proposed by an insurer under section 66A of the 1987 Act (Subject to clause 7 of Part 1)	\$1,043.65
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Table 4 Additional legal services or other factors

Additional legal services or other factors	Application on behalf of claimant		Application on behalf of insurer	
	Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
1 Appeal against an arbitral decision to Presidential member				

	Appeal resolved by decision of Presidential member	(a) Nil if unsuccessful			(a) Nil if unsuccessful
	Costs to be as ordered or certified by the Presidential member and may encompass all parties' costs	(b) Upper limit of \$2,783.00 if successful	Upper limit of \$2,783.00	Upper limit of \$2,783.00	(b) Upper limit of \$2,783.00 if successful
2	Question of law determined by the President				
	Matter resolved by the decision of the President				
	Costs to be as ordered or certified by the President and may encompass all parties' costs	Upper limit of \$2,783.00	Upper limit of \$2,783.00	Upper limit of \$2,783.00	Upper limit of \$2,783.00
3	Appeal against a medical assessment under Chapter 7, Part 7, of the 1998 Act				
	Appeal resolved by the decision of Appeal Panel	(a) Nil if result is not more favourable			(a) Nil if result is not more favourable
	Costs to be as ordered or certified by the Commission and may encompass all parties' costs	(b) Upper limit of \$1,391.50 if result is more favourable	Upper limit of \$1,391.50	Upper limit of \$1,391.50	(b) Upper limit of \$1,391.50 if result is more favourable
4	Dispute determined or otherwise resolved after proceedings have been commenced in the Commission				

If—

- the Commission certifies the matter as complex, and
- neither item 6 nor 7 of this Table also applies

Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1

Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1

Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1

Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1

Item	Additional legal services or other factors	Column 1 Claimant	Column 2 Insurer
5	Dispute determined or otherwise resolved after proceedings have been commenced in the Commission		

If—

- the Commission certifies the matter as complex, and
- item 6 or 7 of this Table would otherwise have application

Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1

Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1

Item	Additional legal services or other factors	Claimant
6	Costs associated with multiple respondents	

If the claim or dispute is resolved by an award or settlement apportioned between more than one respondent

Percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table

Note—

The increase does not apply for each additional respondent. Accordingly, 30% is the maximum allowable increase notwithstanding the number of respondents.

Note—

This allowance does not apply to a resolution that has an increase in fees under item 4 or 5 of this Table.

Item	Additional legal services or other factors	Insurer
7	Costs associated with acting for lead scheme agent	

If the claim or dispute is resolved by a scheme agent on behalf of multiple scheme agents

Note—

This allowance does not apply to a resolution that has an increase in fees under item 4 or 5 of this Table.

(a) Lead scheme agent: percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table

(b) Other agents: no costs recoverable

Note—

The increase referred to in paragraph (a) does not apply for each additional scheme agent, and accordingly 30% is the maximum allowable increase notwithstanding the number of scheme agents who are parties to the resolution.

Part 3 Regulated disbursements

Item	Disbursement	Applicable provisions
1	Country/interstate loadings (including travel and accommodation expenses)	<p>Payable in accordance with the Motor Accidents Compensation Regulation 2015, Schedule 1, clause 3 or 4 (as relevant)</p> <p>Note—</p> <p>Clause 15 of Part A applies for this purpose.</p>
2	Conduct money to comply with notice for the production of documents	<p>Where the producer is a party other than the worker—nil payable</p> <p>Where the producer is the worker—an amount sufficient to meet the reasonable expenses of complying with the notice is payable</p>
3	Conduct money to comply with direction for the production of documents	<p>An amount sufficient to meet the reasonable expenses of complying with the direction is payable</p> <p>In the case of medical practitioners, the term “sufficient to meet the reasonable expenses” is an amount calculated in accordance with the AMA Resource-Based Relative Value Scale as in force from time to time</p> <p>In the case of production by a government agency—the standard rate applied by that agency is payable</p>

If a claim or dispute is resolved whether before or after proceedings commenced—

Claimant—

(a) nil fee payable, unless paragraph (b) applies, or

(b) fee allowed in accordance with any applicable fee order where—

(i) request for report made to insurer, and

4 Treating health service provider's report

(ii) either—

- insurer does not provide report within 14 days, or

- report supplied by insurer does not address the report requirements of the claimant, and

(iii) report is served on insurer

Insurer: fee allowed in accordance with any applicable fee order

Report of independent medical examination by an appropriately qualified and experienced medical practitioner in accordance with NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment
Fee allowed in accordance with any applicable fee order where paragraph (a) or (b) opposite applies

5

(a) If a claim or dispute is resolved before proceedings are commenced—a report of the kind referred to in clause 44 has been served on the other party

(b) If a dispute is resolved after proceedings are commenced—a report of the kind referred to in clause 44 has been admitted in the proceedings or disclosed to a medical assessor

Note—

A supplementary report that complies with clause 45 gives rise to a further entitlement to costs under this item, if the supplementary report otherwise satisfies the provisions of this item.

		If a claim or dispute is resolved whether before or after proceedings commenced—
		Claimant—
		(a) nil fee payable, unless paragraph (b) applies, or
		(b) payment in accordance with AMA Resource-Based Relative Value Scale as in force from time to time or any applicable fee order (the latter to prevail over the former) where—
		(i) request made to insurer, and
6	Treating health service provider's clinical notes and records	(ii) insurer does not provide within 7 days, and
		(iii) clinical notes and records are served on insurer
		Insurer—
		(a) nil fee payable if clinical notes and records are served by claimant under paragraph (b) above, or
		(b) otherwise, payment in accordance with AMA Resource-Based Relative Value Scale as in force from time to time or any applicable fee order (the latter to prevail over the former)
7	Fee for the provision of independent financial advice by a qualified financial adviser for a commutation by agreement that is approved by the Authority and registered with the Commission	Upper limit of \$1,150.00, on the production of account or receipt

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

1 Costs determined by reference to certain stages in the matter

- (1) The maximum costs for legal services provided for a stage of a claim for work injury damages set out in Column 1 of the Work Injury Costs Table A to this clause are the costs set out in Column 2 opposite that stage.
- (2) However, if a law practice was first retained in the matter after a certificate as to mediation was issued under section 318B of the 1998 Act (or, if the matter is not referred to mediation because the insurer wholly denies liability, or the insurer has failed to respond to the pre-filing statement, after the service of the pre-filing statement of claim), the maximum costs are those set out in the Work Injury Costs Table B to this clause.
- (3) Costs may be charged for more than one stage described in this Schedule.
- (4) Other than stage 1 in the Work Injury Costs Table B to this clause, each stage specifies

the maximum costs payable for all legal services provided in the period commencing on the occurrence of one specified event and concluding on either the occurrence of another specified event or settlement of the matter (whichever occurs first).

- (5) A reference in this Schedule to an amount of a settlement or an award is a reference to the amount inclusive of any weekly payment of compensation under Division 2 of Part 3 of the 1987 Act.

Work Injury Costs Table A

Column 1	Column 2
Stage	Costs
<p>1 From the acceptance of the retainer to the preparation and service of a claim under section 260 of the 1998 Act (including the provision of all relevant particulars under section 281 of that Act)</p>	<p>(a) in the case of a law practice acting for a claimant—\$200</p> <p>(b) in the case of a law practice acting for an insurer—nil</p>
<p>2 From service of the claim under section 260 of the 1998 Act to the preparation and service of the pre-filing statement of claim under section 315 of that Act</p>	<p>(a) in the case of a law practice acting for a claimant—\$300</p> <p>(b) in the case of a law practice acting for an insurer—nil</p>

- In addition to the \$500 specified for stages 1 and 2 (if chargeable)—
- (a) if the settlement amount is \$20,000 or less and the insurer wholly admitted liability for the claim—\$500
 - (b) if the settlement amount is \$20,000 or less and the insurer wholly or partly denied liability for the claim—10% of the settlement amount
 - (c) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer wholly admitted liability for the claim—\$500 plus 12% of the settlement amount over \$20,000
 - (d) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer wholly or partly denied liability for the claim—\$2,000 plus 12% of the settlement amount over \$20,000
 - (e) if the settlement amount is \$50,001 or more but less than \$100,001 and the insurer wholly admitted liability for the claim—\$4,100 plus 10% of the settlement amount over \$50,000
 - (f) if the settlement amount is \$50,001 or more but less than \$100,001 and the insurer wholly or partly denied liability for the claim—\$5,600 plus 10% of the settlement amount over \$50,000
 - (g) if the settlement amount is \$100,001 or more and the insurer wholly admitted liability for the claim—\$9,100 plus 2% of the settlement amount over \$100,000
 - (h) if the settlement amount is \$100,001 or more and the insurer wholly or partly denied liability for the claim—\$10,600 plus 2% of the settlement amount over \$100,000
- If—
- 3
- (a) the matter is referred to mediation and settlement occurs after the service of the pre-filing statement of claim without the issue of a certificate as to mediation under section 318B of the 1998 Act, or
 - (b) the matter is not referred to mediation (because the insurer denies liability) and settlement occurs without the commencement of court proceedings, or
 - (c) the insurer does not respond to the pre-filing statement of claim and settlement occurs without the commencement of court proceedings
- from service of the pre-filing statement to finalisation of the matter

4	If the matter is referred to mediation and settlement occurs after the issue of a certificate as to the mediation under section 318B of the 1998 Act but without the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter	<p>The total of the following—</p> <p>(a) an amount determined, in accordance with stage 3, by reference to the amount of the settlement,</p> <p>(b) 2% of the amount of the settlement</p>
5	If the matter is referred to mediation and the claim is withdrawn by the claimant after the issue of a certificate as to the mediation under section 318B of the 1998 Act but before the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter	<p>(a) in the case of a law practice acting for a claimant—nil</p> <p>(b) in the case of a law practice acting for an insurer—\$12,500</p>
6	If the matter is referred to mediation and is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	<p>The total of the following—</p> <p>(a) an amount determined in accordance with stage 4, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 4,</p> <p>(b) 2% of the amount of the settlement or award</p>
7	If the matter is not referred to mediation and the matter is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	<p>The total of the following—</p> <p>(a) an amount determined in accordance with stage 3, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 3,</p> <p>(b) 2% of the amount of the settlement or award</p>
8	If the matter is finalised after the commencement of court proceedings other than by settlement or an award of damages—from service of the pre-filing statement to finalisation of the matter	<p>(a) in the case of a law practice acting for a claimant—nil</p> <p>(b) in the case of a law practice acting for an insurer—\$20,600</p>

Work Injury Costs Table B

Column 1

Stage

Column 2

Costs

1	Advice on the certificate as to mediation (if the matter is referred to mediation)	\$250	<p>In addition to the \$250 specified for stage 1 (if chargeable)—</p> <p>(a) if the settlement amount or award is \$20,000 or less—nil</p> <p>(b) if the settlement amount or award is more than \$20,000 but less than \$50,001—10% of the settlement amount or award over \$20,000</p>
2	From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter by settlement or award of damages		<p>(c) if the settlement amount or award is \$50,001 or more but less than \$100,001—\$3,000 plus 8% of the settlement amount or award over \$50,000</p> <p>(d) if the settlement amount or award is \$100,001 or more—\$7,000 plus 2% of the settlement amount or award over \$100,000</p>
3	From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter other than by settlement or an award of damages.		<p>(a) in the case of a law practice acting for a claimant—nil</p> <p>(b) in the case of a law practice acting for an insurer—in addition to the \$250 specified for stage 1 (if chargeable)—\$12,500</p>

2 Other costs for legal services

- (1) Maximum costs for legal services provided in a claim for work injury damages may include (in addition to the costs for legal services referred to in clause 1) the costs set out in the Other Work Injury Costs Table to this clause.
- (2) However, an amount for the fees for senior counsel, or for more than one advocate, are not to be included unless the court so orders.

Other Work Injury Costs Table

Column 1	Column 2
Nature of costs	Maximum costs

1	Costs associated with a dispute under Part 6 of Chapter 7 of the 1998 Act as to whether the degree of permanent impairment of an injured worker is sufficient for an award of damages (including costs associated with referring the dispute for assessment by a medical assessor under Part 7 of that Chapter)	\$500
2	Costs associated with a dispute under section 317 of the 1998 Act as to whether a pre-filing statement is defective	\$200
3	Cost of representation at a mediation under section 318A of the 1998 Act—	
	(a) flat fee	\$400
	(b) additional amount, at the mediator's discretion, if the conference exceeds 2 hours	up to \$125 per hour (or part of an hour) in excess of 2 hours
4	If the matter was referred to mediation and counsel advised before mediation about settlement—	
	(a) counsel's fee for advice about settlement	\$500 (separate to the daily rate below)
	(b) cost of representation in court, per day, for advocate other than senior counsel	\$1,500
	(c) cost of representation in court, per day, for senior counsel	\$2,200
	If the matter was not referred to mediation—	
	(a) cost of representation in court, per day, for advocate other than senior counsel	\$1,500
	(b) cost of representation in court, per day, for senior counsel	\$2,200

Schedule 8 Savings and transitional provisions

Part 1 Workers Compensation Legislation Amendment Act 2012

1 Interpretation

- (1) Words and expressions used in this Part have the same meaning as in Part 19H of Schedule 6 to the 1987 Act.
- (2) The provisions of Part 19H of Schedule 6 to the 1987 Act are deemed to be amended to the extent necessary to give effect to this Part.

2 Weekly payments amendments—workers with highest needs

- (1) If a worker is a worker with highest needs and a claim for compensation in respect of the worker's injury was made before 17 September 2012, the following provisions apply—
 - (a) the weekly payments amendments apply to the compensation payable to the worker in respect of the injury (while the worker is a worker with highest needs) on and from 17 September 2012,
 - (b) the amount of the weekly payments of compensation payable to the worker pursuant to the weekly payments amendments is not to be less than the amount of the weekly payments of compensation that would have been payable to the worker had the weekly payments amendments not applied to the worker (having regard to the period for which the worker has been entitled to weekly payments and the effect this has on entitlement to weekly payments or the amount of weekly payments),
 - (c) the adjustment of the transitional amount (which the worker's pre-injury average weekly earnings are deemed to equal) under section 80 of the 1987 Act that occurs on 1 October 2012 is backdated to have effect on and from 17 September 2012 in respect of the compensation payable to the worker on and from 17 September 2012,
 - (d) the amount of the weekly payments of compensation that would have been payable to the worker had the weekly payments amendments not applied to the worker is to be determined as if the adjustment of any relevant amount under Division 6 of Part 3 of the 1987 Act that occurs on 1 October 2012 were backdated to have effect on and from 17 September 2012 in respect of the compensation payable to the worker on and from 17 September 2012.
- (2) For the purposes of the application of the weekly payments amendments to a worker with highest needs whose claim for compensation was made before 1 October 2012, the worker's pre-injury average weekly earnings are deemed to be equal to the transitional amount whether or not the worker is an existing recipient of weekly

payments.

3 Weekly payments amendments—other than workers with highest needs

- (1) If a claim for compensation in respect of a worker's injury was made before 1 October 2012, the weekly payments amendments and the relevant transitional arrangements do not apply to the compensation payable in respect of the injury until 1 January 2013.

Note—

In the case of a claim made on or after 1 October 2012, the weekly payments amendments apply to the claim from when the claim is made.

- (2) This clause does not apply to a worker with highest needs.
- (3) In this clause—

relevant transitional arrangements means the provisions of Division 2 (Weekly payments) of Part 19H of Schedule 6 to the 1987 Act.

4 5 year limit on weekly payments

For the purposes of the application of section 39 (Cessation of weekly payments after 5 years) of the 1987 Act, as substituted by the 2012 amending Act, in respect of a claim made before 1 October 2012, no regard is to be had to any weekly payment of compensation paid or payable to the worker before 1 January 2013 (for the purpose of determining the aggregate period in respect of which a weekly payment has been paid or is payable to the worker).

Note—

Section 39 limits the payment of weekly payments of compensation to a period of 5 years. This clause ensures that for claims made before 1 October 2012, weekly payments made before 1 January 2013 will not be counted towards the 5 years.

5 Limit on payment of medical, hospital and rehabilitation expenses

In the application of section 59A (Limit on payment of compensation) of the 1987 Act in respect of a claim for compensation made before 1 October 2012—

- (a) the claim is deemed to have been made immediately before 1 January 2013, and
- (b) no regard is to be had to any weekly payment of compensation paid or payable to the worker before 1 January 2013 (for the purpose of determining when a worker ceased to be entitled to weekly payments of compensation).

Note—

Section 59A limits the payment of compensation to a period of 12 months after a claim for compensation is made or 12 months after weekly payments of compensation cease. This clause ensures that for claims made before 1 October 2012 the 12 month period will commence no earlier than 1 January 2013.

6 Compensation for medical and other expenses for existing claimants

- (1) Compensation is payable in accordance with Division 3 of Part 3 of the Act to an existing injured worker for any of the following treatments, services or assistance if approved by the insurer before 1 January 2014—
 - (a) treatment by a medical practitioner, a registered dentist or a dental prosthetist,
 - (b) hospital treatment and any related workplace rehabilitation services,
 - (c) any nursing, medicines, medical or surgical supplies or curative apparatus, supplied or provided for the worker otherwise than as hospital treatment,
 - (d) the provision of artificial members, hearing aids, hearing aid batteries, crutches, spectacles, eyes or teeth and other artificial aids.
- (2) This clause has effect despite any provision of section 59A of the Act but does not affect the operation of section 151A of the Act.
- (3) In this clause—

existing injured worker means a worker who was in receipt of compensation under Part 3 of the Act before the commencement of section 59A of the Act.

7 Giving of notice when liability disputed

Despite the substitution of section 74 of the 1998 Act by the 2012 amending Act, that section as in force before 1 October 2012 continues to apply to a notice given under that section before 1 January 2013 in respect of a claim for compensation made before 1 October 2012.

8 Awarding of costs by Commission

Division 3 (Special provisions for costs in compensation and damages assessment matters) of Part 8 of the 1998 Act continues to apply (as in force immediately before the amendment of that Division by the 2012 amending Act) to costs in relation to a claim for compensation made before 1 October 2012 if proceedings on the claim are commenced in the Commission before 31 March 2013.

9 Nervous shock claims

An amendment made by Schedule 3 to the 2012 amending Act extends to a claim for damages in respect of harm arising from mental or nervous shock suffered before 19 June 2012 but does not apply to a claim for damages if the claimant commenced court proceedings for the recovery of those damages before 19 June 2012.

10 Lump sum compensation

- (1) The amendments made by Schedule 2 to the 2012 amending Act extend to a claim for

compensation made before 19 June 2012, but not to a claim that specifically sought compensation under section 66 or 67 of the 1987 Act.

- (2) Clause 15 of Part 19H of Schedule 6 to the 1987 Act is to be read subject to subclause (1).

11 Lump sum compensation: further claims

- (1) A further lump sum compensation claim may be made in respect of an existing impairment.
- (2) Only one further lump sum compensation claim can be made in respect of the existing impairment.
- (3) Despite section 66(1) of the 1987 Act, the degree of permanent impairment in respect of which the further lump sum compensation claim is made is not required to be greater than 10%.
- (4) For the purposes of subclauses (1) and (2)—
- (a) a further lump sum compensation claim made, and not withdrawn or otherwise finally dealt with, before the commencement of subclause (1) is to continue and be dealt with as if section 66(1A) of the 1987 Act had never been enacted, and
 - (b) no regard is to be had to any further lump sum compensation claim made in respect of the existing impairment—
 - (i) that was withdrawn or otherwise finally dealt with before the commencement of subclause (1), and
 - (ii) in respect of which no compensation has been paid, and
 - (c) section 322A of the 1998 Act does not operate to prevent an assessment being made under section 322 of that Act for the purposes of a further lump sum compensation claim.
- (5) The following provisions are to be read subject to this clause—
- (a) section 66 of, and clause 15 of Part 19H of Schedule 6 to, the 1987 Act,
 - (b) section 322A of the 1998 Act,
 - (c) clauses 10 and 19 of this Schedule.
- (6) In this clause—

existing impairment means a permanent impairment resulting from an injury in respect of which a lump sum compensation claim was made before 19 June 2012.

further lump sum compensation claim means a lump sum compensation claim

made on or after 19 June 2012 in respect of an existing impairment.

lump sum compensation claim means a claim specifically seeking compensation under section 66 of the 1987 Act.

12 Employer improvement notices

Part 3 of Chapter 3 of the 1998 Act applies only in relation to a contravention of Chapter 3 of the 1998 Act that occurs after the commencement of that Part.

13 Determination of degree of permanent impairment—Table of Disabilities

- (1) The fact that a worker's injury was received before the commencement of the 2001 lump sum compensation amendments does not prevent the degree of permanent impairment of the injured worker from being assessed for the purpose of determining whether the worker is a worker with highest needs under Division 2 of Part 3 of the 1987 Act.
- (2) In this clause, the **2001 lump sum compensation amendments** means the amendments made by Schedule 3 to the [Workers Compensation Legislation Amendment Act 2001](#) and Schedule 2 to the [Workers Compensation Legislation Further Amendment Act 2001](#).

14 Maximum legal costs

Parts 2 and 3 of Schedule 6 (Maximum costs—compensation matters) to the [Workers Compensation Regulation 2010](#) as in force immediately before the substitution of those Parts by the [Workers Compensation Amendment \(Transitional\) Regulation 2012](#) continue to apply in respect of legal services provided before 1 October 2012.

15 1926 Act claims—weekly payments amendments do not apply

The amount of weekly payment of compensation payable under Division 2 of Part 3 of the 1987 Act in respect of any period of incapacity that resulted from an injury received before the commencement of that Division is to be determined as if the weekly payments amendments had not been made.

16 Continuation of weekly payments after second entitlement period—exemptions from application requirement

- (1) Section 38(3)(a) of the 1987 Act does not apply in respect of a claim for compensation made before 1 October 2012 if the second entitlement period for the claim expires before, or less than 1 month after, the weekly payments amendments first apply in respect of the claim.

Note—

Section 38(3)(a) requires a worker to apply before the end of the second entitlement period for the continuation of weekly payments after the second entitlement period. Subclause (1) removes the need for such an application if the second entitlement period ends less than 1 month before section 38(3)(a) would

become applicable to the claim.

- (2) Section 38(3)(a) of the 1987 Act does not apply in respect of a worker who is an existing recipient of weekly payments if—
 - (a) the second entitlement period for the claim expires less than 1 month after the insurer notifies the worker (as required by the WorkCover Guidelines) of the requirement under section 38 of the 1987 Act that the worker must apply to the insurer in writing before the end of the second entitlement period for continuation of weekly payments after the second entitlement period, or
 - (b) the insurer fails to notify the worker of that requirement as required by the WorkCover Guidelines.
- (3) A worker who, by virtue of subclause (1) or (2), is not required to apply before the end of the second entitlement period for continuation of weekly payments after the second entitlement period is, within 18 months of being assessed as having current work capacity, required to apply to the insurer in writing (in the form approved by the Authority) for continuation of weekly payments in order for the worker to continue to be entitled to weekly payments compensation.

17 Weekly payments amendments to apply where work capacity assessment not conducted

- (1) On and from 1 September 2015, the weekly payments amendments apply to the compensation payable under Division 2 of Part 3 of the 1987 Act (in respect of any period of incapacity occurring on and after that date) to an existing recipient of weekly payments in respect of whom a work capacity assessment has not been conducted before that date.
- (2) For the purposes of the application under this clause of the weekly payments amendments to an existing recipient of weekly payments who is in receipt of weekly payments of compensation immediately before 1 September 2015, the worker is taken (until a work capacity assessment is conducted in respect of the worker) to have been assessed by the insurer as having no current work capacity.

18 Lump sum compensation for hearing loss—injury before 1.1.2002

Section 69A of the 1987 Act (as in force before its repeal by the 2012 amending Act) continues to apply, despite its repeal, to a claim for compensation made on or after 19 June 2012 for loss of hearing resulting from an injury received before 1 January 2002.

19 Only one claim for permanent impairment compensation—injuries received before 1.1.2002

- (1) In the application of section 66(1A) of the 1987 Act to a claim resulting from an injury received before 1 January 2002—

- (a) a reference in that subsection to permanent impairment compensation is taken to be a reference to lump sum compensation payable under Division 4 of Part 3 of the 1987 Act (as in force immediately before 1 January 2002), and
 - (b) a reference in that subsection to permanent impairment is taken to be a reference to an injury of a kind to which any such lump sum compensation applies.
- (2) Section 66(1A) of the 1987 Act is deemed to be amended to the extent necessary to give effect to this clause.

20 Discontinuation of certain entitlements

An existing recipient of weekly payments who has an entitlement arising under clause 9(2) or 11 of Part 19H of Schedule 6 to the 1987 Act ceases to have that entitlement if, at any time after the commencement of the weekly payments amendments—

- (a) the worker ceases to be entitled to weekly payments of compensation, or
- (b) the worker no longer meets the criteria to be paid weekly payments of compensation under the provisions of Division 2 of Part 3 of the 1987 Act (as in force immediately before the commencement of the weekly payments amendments) in respect of which weekly payments of compensation were paid to the worker.

21 Application of weekly payments amendments to existing recipients of weekly payments

- (1) On the expiration of a period of 3 months after an insurer makes a work capacity decision arising from the first work capacity assessment (as required by Division 2 of Part 19H of Schedule 6 to the 1987 Act) of an existing recipient of weekly payments, the weekly payments amendments apply to the compensation payable under Division 2 of Part 3 of the 1987 Act to the worker in respect of any period of incapacity after the expiration of that period.

Note—

Clause 9(1) of Part 19H of Schedule 6 to the 1987 Act provides that the weekly payments amendments apply to an existing recipient of weekly payments 3 months after an insurer first conducts a work capacity assessment of the worker. Subclause (1) provides instead for the amendments to apply to such a worker 3 months after the insurer makes a work capacity decision in respect of the worker.

- (2) However, if, in the case of an existing recipient of weekly payments, the worker returns to work before the expiration of the 3-month period referred to in subclause (1), the weekly payments amendments apply, as from the date on which the worker returns to work, to the compensation payable under Division 2 of Part 3 of the 1987 Act to the worker in respect of any period of incapacity after that return to work.

22 Work capacity decision to be made as soon as practicable after assessment

An insurer must, for the purposes of Division 2 of Part 19H of Schedule 6 to the 1987 Act, make a work capacity decision in respect of an existing recipient of weekly payments as

soon as practicable after the first work capacity assessment of the worker is conducted by the insurer as required by that Division.

23 Existing recipients of weekly payments who reach retiring age

An existing recipient of weekly payments who reaches the retiring age (within the meaning of section 52 of the 1987 Act) on or after 1 October 2012 but before 1 January 2013 is, subject to meeting the requirements under Subdivision 2 of Division 2 of Part 3 of the 1987 Act, entitled to 12 months' weekly payments from the date on which the person reaches that age.

Part 2 Special provisions for existing claims—2012 amendments

24 Interpretation

(1) In this Part—

existing claim means a claim for compensation in respect of an injury made before 1 October 2012.

(2) Words and expressions used in this Part have the same meaning as in Part 19H of Schedule 6 to the 1987 Act.

(3) The provisions of Part 19H of Schedule 6 to the 1987 Act and Part 1 of this Schedule are deemed to be amended to the extent necessary to give effect to this Part.

25 Application of Part

This Part remakes Part 2 of Schedule 8 to the [Workers Compensation Regulation 2010](#) which took effect on 1 October 2012.

26 Termination of weekly payments on retiring age

The amendment made to section 52 of the 1987 Act by the 2012 amending Act does not apply in respect of an existing claim.

27 Medical and related expenses

(1) An existing claim is exempt from the operation of section 59A (Limit on payment of compensation) of the 1987 Act in respect of the following compensation until the injured worker reaches retiring age—

(a) compensation payable to an injured worker under Division 3 of Part 3 of the 1987 Act if the worker's injury has resulted in permanent impairment of greater than 20%,

(b) compensation payable in respect of the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles (including hearing aids and hearing aid batteries),

(c) compensation payable in respect of the modification of a worker's home or vehicle.

(2) A worker's injury is considered to have resulted in permanent impairment of greater than 20% only if the injury has resulted in permanent impairment and—

(a) the degree of permanent impairment has been assessed for the purposes of Division 4 of Part 3 of the 1987 Act to be greater than 20%, or

(b) an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or

Note—

Paragraph (b) no longer applies once the degree of permanent impairment has been assessed.

(c) the insurer is satisfied that the degree of permanent impairment is likely to be greater than 20%.

(3) In this clause—

retiring age has the same meaning as in section 52 of the 1987 Act.

28 Secondary surgery

(1) An existing claim is exempt from the operation of section 59A (Limit on payment of compensation) of the 1987 Act in respect of compensation for the cost of secondary surgery.

(2) Surgery is **secondary surgery** if—

(a) the surgery is directly consequential on earlier surgery and affects a part of the body affected by the earlier surgery, and

(b) the surgery is approved by the insurer within 2 years after the earlier surgery was approved (or is approved later than that pursuant to the determination of a dispute that arose within those 2 years).

(3) This clause does not affect the requirements of section 60 of the 1987 Act (including, for example, the requirement for the prior approval of the insurer for secondary surgery).

Note—

This clause only creates an exception from section 59A of the 1987 Act in respect of compensation for secondary surgery that would have been payable (had it not been for section 59A) as part of the original claim for compensation. It does not relate to surgery for an injury that gives rise to a separate claim for compensation.

Part 2A Special provisions for existing recipients of weekly

payments—2012 amendments

28A Interpretation

- (1) Words and expressions used in this Part have the same meaning as in Part 19H of Schedule 6 to the 1987 Act.
- (2) The following provisions are deemed to be amended to the extent necessary to give effect to this Part—
 - (a) section 39 of the 1987 Act,
 - (b) Part 19H of Schedule 6 to the 1987 Act,
 - (c) section 322A of the 1998 Act.

28B Application and operation of Part

- (1) This Part takes effect on and from 1 October 2012.
- (2) This Part applies to an injured worker who is an existing recipient of weekly payments.

28C 5 year limit on weekly payments

Section 39 of the 1987 Act (as substituted by the 2012 amending Act) does not apply to an injured worker if the worker's injury has resulted in permanent impairment and—

- (a) an assessment of the degree of permanent impairment for the purposes of the Workers Compensation Acts is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or
- (b) the insurer is satisfied that the degree of permanent impairment is likely to be more than 20% (whether or not the degree of permanent impairment has previously been assessed).

28D Further permanent impairment assessments

- (1) This clause applies to an injured worker if the degree of permanent impairment resulting from the worker's injury is or has been assessed for the purposes of the Workers Compensation Acts.
- (2) Section 322A of the 1998 Act does not operate to prevent a further assessment being made of the degree of permanent impairment resulting from the worker's injury for the purposes of Part 3 of the 1987 Act.
- (3) However, only one further assessment may be made of the degree of permanent impairment resulting from the worker's injury.

Part 3 Workers Compensation Amendment Act 2015

Note—

Consequent on the amendment made to section 52 of the 1987 Act by the 2015 amending Act, certain workers who were injured before reaching the retiring age (and who reached the retiring age during the period commencing on 1 October 2012 and ending on 15 October 2015) may be eligible for weekly payments of compensation after the day on which they reached the retiring age. As a result of this extension of eligibility for weekly payments of compensation, the period during which certain workers are eligible for compensation for medical and related expenses may also be extended. See section 59A of the 1987 Act for the effect of weekly payments of compensation on eligibility for compensation for medical and related expenses.

29 Interpretation

(1) In this Part—

retirement period, in relation to a worker who reached the retiring age during the transition period, means the period commencing on the day immediately following the day on which the worker reached the retiring age and ending on 15 October 2015 (inclusive).

retiring age has the same meaning as in section 52 of the 1987 Act.

transition period means the period commencing on 1 October 2012 and ending on 15 October 2015 (inclusive).

(2) A worker is a **retiring-age worker** for the purposes of this Part if—

- (a) the worker received an injury before reaching the retiring age, and
- (b) the worker reached the retiring age during the transition period, and
- (c) weekly payments of compensation are payable to the worker under Division 2 of Part 3 of the 1987 Act, as amended by the 2015 amending Act, in respect of any period of incapacity occurring during the retirement period.

(3) Words and expressions used in this Part have the same meaning as in Part 19I of Schedule 6 to the 1987 Act.

(4) The provisions of the 1987 Act, including Part 19I of Schedule 6 to that Act, are deemed to be amended to the extent necessary to give effect to this Part.

30 Medical and related expenses

(1) Section 59A of the 1987 Act (as substituted by the 2015 amending Act) extends to the compensation payable to any injured worker in respect of any period before 4 December 2015 but not before 17 September 2012.

(2) The following provisions of the 1987 Act do not apply with respect to any exempt medical treatment—

- (a) section 60(2A)(a),

(b) sections 61(2), 62(1) and 63A(2).

(3) However, subclause (1) does not affect the operation of section 60A of the 1987 Act.

(4) In this clause—

exempt medical treatment means any treatment, service or assistance referred to in Division 3 of Part 3 of the 1987 Act in respect of which compensation has become payable under that Division—

(a) to a retiring-age worker by reason of the amendment made to section 52 of the 1987 Act by the 2015 amending Act, or

(b) to any injured worker by reason of the substitution of section 59A of the 1987 Act by the 2015 amending Act.

31 Certificates of capacity

A certificate of capacity provided under section 44B of the 1987 Act may relate to a period that is more than 90 days before the certificate is provided if—

(a) the worker to whom the certificate relates is a retiring-age worker, and

(b) the period to which the certificate relates occurred wholly during the retirement period.

32 Lump sum compensation

The amendments made to section 66 of the 1987 Act by the 2015 amending Act extend to an injury received by a worker on or after 5 August 2015.

33 Workers with highest needs

A worker to whom paragraph (b) of the definition of **seriously injured worker** in section 32A of the 1987 Act applied immediately before 4 December 2015 is taken to be a worker with highest needs for the purposes of Division 2 of Part 3 of that Act (as amended by the 2015 amending Act) until the degree of permanent impairment is assessed in respect of the worker's injury.

34 Continuation of weekly payments after second entitlement period

(1) The section 38 amendments do not apply to the determination of the compensation payable in respect of any period of incapacity occurring before 17 September 2012.

(2) The requirement under section 38(3A) of the 1987 Act that any application for continuation of weekly payments after the second entitlement period must be made no earlier than 52 weeks before the end of the second entitlement period does not apply in respect of a worker to whom compensation has become payable by reason of the section 38 amendments (and clause 9(1) of Part 19I of Schedule 6 to the 1987 Act

in its application to those amendments) in respect of any period of incapacity occurring before 4 December 2015.

Note—

A worker to whom subclause (2) and section 38(3A) of the 1987 Act applies must apply to the insurer in writing (in the form approved by the Authority) to be entitled to compensation under section 38 of that Act.

- (3) A certificate of capacity provided under section 44B of the 1987 Act may relate to a period that is more than 90 days before the certificate is provided if—
- (a) compensation has become payable to the worker to whom the certificate relates by reason of the section 38 amendments (and clause 9(1) of Part 19I of Schedule 6 to the 1987 Act in its application to those amendments), and
 - (b) the period to which the certificate relates occurred wholly during the period commencing on 17 September 2012 and ending on 3 December 2015 (inclusive).
- (4) In this clause—

section 38 amendments means the amendments made by Schedule 2[4] and [5] to the 2015 amending Act to section 38 of the 1987 Act.

35 Weekly payments—workers with highest needs

- (1) Section 38A of the 1987 Act does not apply to the determination of the compensation payable in respect of any period of incapacity occurring before 17 September 2012.
- (2) Section 38A of the 1987 Act does not apply to a worker whose pre-injury average weekly earnings have been deemed to be equal to the transitional amount for the purposes of the application under clause 9 or 10 of Part 19H of Schedule 6 to the 1987 Act of the weekly payments amendments (within the meaning of that Part) to the worker.

36 Return to work assistance—education and training

Section 64C of the 1987 Act (as inserted by the 2015 amending Act) does not apply to education or training provided before the commencement of that section.

Part 4 Special provision for death benefits—2015 amendments

37AA Operation of amendments

This Part ceases to have effect on the commencement of the amendments made to the 1987 Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2019*.

37 Application of death benefits amendment to fire, emergency and rescue services volunteers

- (1) To the extent that clause 3 of Part 19I of Schedule 6 to the 1987 Act applies in respect of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,

that clause does not apply to the amendment made by the 2015 amending Act to section 25 of the 1987 Act (or to clause 5 of that Part in its application to that amendment).

Note—

The effect of this subclause is that a reference in the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to section 25 of the 1987 Act is (in respect of deaths occurring on or after 5 August 2015) a reference to that provision as amended by the 2015 amending Act.

- (2) The provisions of Part 19I of Schedule 6 to the 1987 Act are deemed to be amended to the extent necessary to give effect to this clause.
- (3) In this clause, **2015 amending Act** means the *Workers Compensation Amendment Act 2015*.

37A Application of death benefits amendments to coal miners

- (1) Clause 15 of Part 19I of Schedule 6 to the 1987 Act does not apply, and is taken never to have applied, to the amendments made by Schedule 1 to the *Workers Compensation Amendment Act 2015* to sections 25 and 26 of the 1987 Act.

Note—

The effect of this subclause is that sections 25 and 26 of the 1987 Act, as amended by Schedule 1 to the *Workers Compensation Amendment Act 2015*, apply in respect of deaths of coal miners occurring on or after 5 August 2015.

- (2) The provisions of Part 19I of Schedule 6 to the 1987 Act are deemed to have been amended as necessary to give effect to this clause.

Part 5 Provisions consequent on making of *Workers Compensation Amendment (Premiums) Regulation 2016*

38 Insurance premiums orders

Any amendment (other than this clause) made by the *Workers Compensation Amendment (Premiums) Regulation 2016* that applies in relation to insurance premiums orders in force immediately before the commencement of the amendment does not apply in relation to any insurance premiums orders referred to in clause 2(1) of Part 19J of Schedule 6 to the 1987 Act.

Part 6 Provision consequent on repeal of *Workers Compensation Regulation 2010*

39 Saving and transitional provision

- (1) Any act, matter or thing that, immediately before the repeal of the *Workers Compensation Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.

- (2) Without limiting subclause (1), clauses 6–10, 46(1)(g) and (i) and 180, and Part 5, of the *Workers Compensation Regulation 2010*, as in force immediately before the repeal of that Regulation, continue to apply to or in respect of claims to which Division 2 of Part 3 of the 1987 Act continues to apply as if that Division had not been amended by the *Workers Compensation Legislation Amendment Act 2012* (by virtue of clause 4, 6, 25 or 26 of Part 19H of Schedule 6 to the 1987 Act).

Note—

Clauses 4, 6, 25 and 26 of Part 19H of Schedule 6 to the 1987 Act provide, among other things, that certain amendments made to Division 2 of Part 3 of the 1987 Act by the *Workers Compensation Legislation Amendment Act 2012* do not apply to certain injured workers. Accordingly, the relevant clauses of the *Workers Compensation Regulation 2010* continue to have effect with respect to those injured workers.

Part 7 Provision consequent on making of *Workers Compensation Amendment (Premiums, Large Claim Limits and Policy Cancellation) Regulation 2017*

40 Payment of premiums by instalments

The substitution of Division 6 of Part 18 by the *Workers Compensation Amendment (Premiums, Large Claim Limits and Policy Cancellation) Regulation 2017* does not affect the payment of premiums by an employer who had elected to pay the premiums under a policy of insurance by instalments for the financial year ending on 30 June 2017.

Part 8 Provision consequent on enactment of *Workers Compensation Legislation Amendment Act 2018*

41 Meaning of “latest index number”

For the purposes of paragraph (b) of the definition of **latest index number** in section 79 of the 1987 Act (as in force before the commencement of Schedule 5 to the *Workers Compensation Legislation Amendment Act 2018*), the latest index number in respect of an adjustment date is the number specified in the Table to this clause.

Table

Column 1	Column 2
Adjustment date	Latest index number
1 April 1988	229.3
1 October 1988	234.2
1 April 1989	240.1
1 October 1989	248.8
1 April 1990	254.1

1 April 1998	146.4
1 October 1998	149.0
1 April 1999	151.6
1 October 1999	154.1
1 April 2000	156.6
1 October 2000	158.3
1 April 2001	161.9
1 October 2001	164.7
1 April 2002	167.6
1 October 2002	170.0
1 April 2003	172.9
1 October 2003	176.4
1 April 2004	179.6
1 October 2004	182.9
1 April 2005	185.8
1 October 2005	189.6
1 April 2006	193.5
1 October 2006	197.1
1 April 2007	200.9
1 October 2007	204.5
1 April 2008	208.5
1 October 2008	212.1
1 April 2009	216.4
1 October 2009	220.3
1 April 2010	224.5
1 October 2010	227.5
1 April 2011	232.1
1 October 2011	236.1
1 April 2012	240.5

1 October 2012	244.4
1 April 2013	249.0
1 October 2013	251.7
1 April 2014	254.9
1 October 2014	258.2
1 April 2015	261.5
1 October 2015	263.7
1 April 2016	267.2
1 October 2016	269.2
1 April 2017	272.7
1 October 2017	274.9
1 April 2018	278.4
1 October 2018	280.6