

# Workplace Injury Management and Workers Compensation Act 1998 No 86

[1998-86]



New South Wales

## Status Information

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### Provisions in force

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### Responsible Minister

- Minister for Customer Service and Digital Government

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### 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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# Workplace Injury Management and Workers Compensation Act 1998 No 86



New South Wales

## Contents

|   |    |
|---|----|
| <b>Long title</b> .....   | 16 |
| <b>Chapter 1 Preliminary</b> .....  | 16 |
| 1 Name of Act .....   | 16 |
| 2 Commencement .....  | 16 |
| 3 System objectives .....   | 16 |
| 4 Definitions .....   | 17 |
| 5 Deemed employment of workers .....  | 25 |
| 6 Application of Act in certain respects .....  | 25 |
| 7 Act binds Crown .....   | 25 |
| 8 Certain Acts not affected .....   | 25 |
| 9 (Repealed) .....  | 25 |
| 9A Application of Act in respect of coal industry .....                                       | 25 |
| <b>Chapter 2 Administration</b> .....   | 26 |
| <b>Part 1 (Repealed)</b> .....  | 26 |
| <b>Part 2 General workers compensation functions</b> .....                                    | 26 |
| 14–21 (Repealed) .....  | 26 |
| 22 Objectives and general functions of Authority under workers compensation legislation ..... | 26 |
| 23 Specific functions .....   | 27 |
| 23A (Repealed) .....  | 29 |

|   |    |
|---|----|
| <b>Parts 3-5 (Repealed)</b> .....   | 29 |
| <b>Part 6 Financial provisions</b> .....  | 29 |
| <b>Division 1 Workers Compensation Operational Fund</b> .....   | 29 |
| 34 Workers Compensation Operational Fund.....   | 29 |
| 35 Payments into and from Fund.....   | 29 |
| 35A Certain ongoing costs of Compensation Court jurisdiction .....  | 31 |
| 36 Investment .....   | 31 |
| <b>Division 2 Contributions to Workers Compensation Operational Fund</b> .....  | 32 |
| 37 Definitions .....  | 32 |
| 38 Assessment by Authority of amount to be contributed to Fund.....   | 33 |
| 39 Contributions to Fund by insurers and self-insurers.....   | 33 |
| 39A Contributions to Fund by Comcare employers.....   | 35 |
| <b>Division 3 Financial year of Authority</b> .....   | 37 |
| 40 Financial year of Authority.....   | 37 |
| <b>Part 7 Information collection and sharing</b> .....  | 37 |
| 40A Definitions .....   | 37 |
| 40B General data gathering, exchange, etc, by Authority, insurers and relevant insurance or compensation authorities<br>..... | 37 |
| 40C Data required to be supplied to Authority by insurers.....  | 38 |
| 40D Mandatory notification .....  | 39 |
| <b>Chapter 3 Workplace injury management</b> .....  | 39 |
| <b>Part 1 Preliminary</b> .....   | 39 |
| 41 Object and application of Chapter .....  | 39 |
| 41A Chapter applies even when liability disputed .....  | 39 |
| 42 Definitions .....  | 40 |
| <b>Part 2 Obligations of insurers, employers and workers</b> .....  | 40 |
| 42A Injury management pilot projects .....  | 40 |

|   |           |
|---|-----------|
| 42B Claims assistance .....   | 41        |
| 43 Injury management programs .....                                   | 41        |
| 44 Early notification of workplace injury .....                       | 42        |
| 45 Injury management plan for worker with significant injury .....    | 42        |
| 45A Injury management consultants.....                                | 43        |
| 46 Employer’s injury management plan obligations.....                 | 43        |
| 47 Worker’s injury management plan obligations .....                  | 44        |
| 48 Return to work obligations of worker.....                          | 44        |
| 48A Failure to comply with return to work obligations of worker ..... | 45        |
| 49 Employer must provide suitable work .....                          | 46        |
| 50 Payment of cost of treatment of injured worker .....               | 47        |
| 51 (Repealed) .....   | 47        |
| 52 Workplace rehabilitation.....                                      | 47        |
| 53 Vocational re-education etc provided by Authority.....             | 48        |
| 54 Second-injury scheme .....   | 49        |
| 55 Compliance by insurers .....                                       | 50        |
| 55A Compliance by scheme agents.....                                  | 50        |
| 56 Compliance by employer.....  | 51        |
| 57 (Repealed) .....   | 51        |
| 58 Liability not affected.....  | 51        |
| 59 Regulations.....   | 52        |
| <b>Part 3 Employer improvement notices .....</b>                      | <b>52</b> |
| 59A Authorisation of inspectors.....                                  | 52        |
| 59B Issue of improvement notices .....                                | 52        |
| 59C Contents of improvement notices .....                             | 52        |
| 59D Compliance with improvement notice.....                           | 53        |
| 59E Extension of time for compliance with improvement notices .....   | 53        |
| <b>Chapter 4 Workers compensation .....</b>                           | <b>53</b> |
| <b>Part 1 Compensation—general .....</b>                              | <b>53</b> |
| 60 Liability, benefits, common law and other matters .....            | 53        |
| <b>Part 2 Compensation—claims and proceedings .....</b>               | <b>54</b> |

|   |    |
|---|----|
| <b>Division 1 Notice of injury etc and claims for compensation</b> .....                    | 54 |
| 60A Application of Division .....   | 54 |
| 61 Notice of injury to be given to employer .....   | 54 |
| 62 Provisions relating to giving of notice of injury .....                                  | 55 |
| 63 Register of injuries.....  | 55 |
| 64 Notice of incapacity, medical etc treatment and damage to property .....                 | 56 |
| 65 Making a claim for compensation.....   | 56 |
| 66 Manner of making claim for compensation.....   | 59 |
| 67, 68 (Repealed) .....   | 60 |
| 69 Action by employer in respect of claims .....  | 60 |
| <b>Division 2 Administration by insurers of claims for compensation or damages</b>          |    |
| .....   | 61 |
| 70 Definitions .....  | 61 |
| 71 Duty of claimant to co-operate.....  | 61 |
| 72 Inspection of relevant claims information.....   | 61 |
| 73 Insurer to provide copies of reports to worker .....                                     | 62 |
| 74 (Repealed) .....   | 62 |
| 74A Duty of insurer to pay compensation promptly .....                                      | 62 |
| 75 Report about delays and the incurring of unreasonable costs by insurers .....            | 63 |
| <b>Division 3 Notification of decisions of insurers</b> .....                               | 63 |
| <b>Subdivision 1 Preliminary</b> .....  | 63 |
| 76 Definitions .....  | 63 |
| 77 Requirement for refund of weekly payments not affected.....                              | 64 |
| <b>Subdivision 2 General notice requirements</b> .....                                      | 64 |
| 78 Insurer to give notice of decisions .....  | 64 |
| 79 How notice of decision is given .....  | 64 |
| <b>Subdivision 3 Notice period for discontinuation and reduction of weekly compensation</b> |    |
| .....   | 64 |

|  |           |
|--|-----------|
| 80 Required period of notice .....   | 65        |
| 81 Effect of stay of decision on notice period .....   | 65        |
| 82 Effect of review decision on notice period .....  | 65        |
| 83 Effect of affirmation of work capacity decision or withdrawal, discontinuance or dismissal of dispute proceedings ..... | 66        |
| 84 Recovery of weekly payments by worker where notice not given by insurer .....   | 66        |
| <b>Subdivision 4 Offences</b> .....  | <b>67</b> |
| 85 Failure to comply with notice requirement .....   | 67        |
| <b>Division 4 Special provisions with respect to weekly payments of compensation</b> .....                                 | <b>67</b> |
| 91A Division applies only to existing claims .....   | 67        |
| 92 Definitions .....   | 67        |
| 93 Claims for weekly compensation—commencement of payments.....  | 67        |
| 94 Offences—commencement of weekly payments .....  | 68        |
| 95 Direction by conciliator—commencement or continuation of weekly payments .....  | 68        |
| 96 Maximum period of weekly payments of compensation under direction of conciliator .....                                  | 69        |
| 97 Revocation of directions of conciliator .....   | 69        |
| 98 Offence—failure to comply with directions .....   | 70        |
| 99 Payment under direction etc not admission of liability .....  | 70        |
| 100 Direction under section 95 not to be challenged on technicality.....   | 71        |
| <b>Division 5 Restrictions on commencing court proceedings</b> .....   | <b>71</b> |
| 100A Division applies only to existing claims .....  | 71        |
| 101 Restrictions on commencing court proceedings about weekly payments .....   | 71        |
| 102 Restrictions on commencing court proceedings for lump sum compensation .....   | 72        |
| 103 Restrictions on commencing court proceedings about medical, hospital and other expenses .....                          | 74        |
| 104 Court rules and regulations providing for evidence of compliance .....   | 75        |
| <b>Division 6 Proceedings before Commission or the Compensation Court</b> .....  | <b>75</b> |
| 105 Jurisdiction of Commission and Compensation Court .....  | 75        |
| 106 (Repealed) .....   | 76        |

|   |           |
|---|-----------|
| 107 Applications to be heard together .....   | 76        |
| 108 Interim awards .....  | 77        |
| 109 Interest before order for payment .....   | 78        |
| 110 Interest after order for payment.....   | 78        |
| 111 Interest on agreed payment of lump sum compensation .....   | 79        |
| 111A Costs provisions apply only to existing claim matters.....   | 79        |
| 112 Costs .....   | 80        |
| 113 Regulations fixing maximum costs recoverable by legal practitioners or agents .....                 | 81        |
| 114 Maximum fees recoverable by medical practitioners for medico-legal services.....                    | 82        |
| 115 Limit on recovery of costs unreasonably incurred .....  | 83        |
| 116 Solicitor/client costs in compensation proceedings .....  | 84        |
| 117 Admissibility of statements by injured workers .....  | 85        |
| 118 Registration of certain persons involving interpreting etc services .....                           | 85        |
| <b>Division 7 Medical examinations and disputes.....</b>  | <b>87</b> |
| 118A Application of certain provisions of Division only to existing claims.....                         | 87        |
| 119 Medical examination of workers at direction of employer .....                                       | 87        |
| 120 Medical examination of worker at direction of Commission.....                                       | 88        |
| 121 Assessment of medical disputes by approved medical specialists .....                                | 88        |
| 122 Referral of medical disputes to referee or panel on application of worker or employer .....         | 90        |
| 123 Reference of medical disputes by Principal Conciliator .....  | 92        |
| 124 Referral of matters to medical referee or panel for report.....                                     | 93        |
| 125 Reimbursement of worker for loss of wages and expenses associated with medical examination<br>..... | 93        |
| 126 Copies of certain medical reports to be supplied to worker.....                                     | 94        |
| 127 Admissibility of medical reports.....   | 95        |
| 128 Admissibility and evidentiary value of certificates and reports of medical referees and panels....  | 95        |
| 129 Power to correct mistakes in medical reports or certificates .....                                  | 95        |
| 130 Rules of Court and regulations with respect to medical evidence .....                               | 96        |
| <b>Division 8 Prohibited conduct relating to touting for claims .....</b>                               | <b>97</b> |
| 131 Definitions .....   | 97        |
| 132 Prohibited conduct by agents .....  | 98        |
| 133 Offence of engaging in prohibited conduct.....  | 99        |
| 134 Consequences of prohibited conduct for recovery of fees by agents .....                             | 99        |

|  |     |
|--|-----|
| 135 Consequences of prohibited conduct for lawyers .....   | 99  |
| 136 Lawyers and agents can be requested to certify as to prohibited conduct.....                       | 100 |
| 137 Power to restrict or ban recovery of costs by agents who engage in prohibited conduct.....         | 101 |
| 138 Power to restrict or ban recovery of costs by solicitors .....                                     | 102 |
| 139 Power to restrict or ban agents who engage in prohibited conduct.....                              | 102 |
| 140 Past conduct included in assessing persistent conduct .....  | 103 |
| 141 Duty of claimants to comply with requests for information about agents and lawyers .....           | 103 |
| 142 Regulation of advertising.....   | 104 |
| <b>Chapter 5 (Repealed)</b> .....  | 104 |
| <b>Chapter 6 Miscellaneous</b> .....   | 105 |
| 230A Premium Discount Schemes.....   | 105 |
| 231 Notification of summary of Act and insurance details .....   | 106 |
| 232 Worker’s right to information.....   | 106 |
| 233 No contribution from workers .....   | 107 |
| 234 No contracting out.....  | 107 |
| 235 Non-assignability of compensation.....   | 107 |
| 235A Fraud on workers compensation scheme .....  | 108 |
| 235B Remedy available where claim fraudulent .....   | 108 |
| 235C False claims .....  | 109 |
| 235D Order for refund of overpayments of compensation .....  | 109 |
| 236 Service of notices .....   | 110 |
| 237 Service of documents .....   | 110 |
| 238 Powers of entry by inspectors.....   | 110 |
| 238A Search warrant .....  | 112 |
| 238AA Power to obtain information, documents and evidence .....  | 113 |
| 238B Protection from incrimination .....   | 114 |
| 238C Inspector may request assistance.....   | 115 |
| 239 Authority may obtain documents from certain registries .....                                       | 115 |
| 240–242 (Repealed) .....   | 116 |
| 243 Disclosure requirements.....   | 116 |
| 243AA Secrecy of information obtained from or relating to insurers or proposed insurers .....          | 117 |
| 243A (Repealed).....   | 118 |
| 244 Liability of directors etc for offences by corporation—accessory to the commission of the offences |     |



|  |     |
|--|-----|
| .....  | 118 |
| 245 Proceedings for offences .....   | 119 |
| 245A Evidence—criminal proceedings under WHS legislation .....               | 120 |
| 246 Penalty notices .....  | 120 |
| 247 Time for instituting proceedings .....                                   | 121 |
| 248 Regulations.....   | 121 |
| 248A (Repealed).....   | 121 |
| 249 Repeal of WorkCover Administration Act 1989 No 120 .....                 | 121 |
| <b>Chapter 7 New claims procedures</b> .....                                 | 121 |
| <b>Part 1 Preliminary</b> .....  | 121 |
| 250 Interpretation .....   | 122 |
| 251 Application of Chapter .....   | 123 |
| <b>Part 2 Giving notice of injury and making a claim</b> .....               | 123 |
| <b>Division 1 Notice of injury</b> .....                                     | 123 |
| 252 Application of Division .....  | 123 |
| 253 Interpretation .....   | 123 |
| 254 Notice of injury must be given to employer.....                          | 123 |
| 255 How notice of injury is given .....                                      | 124 |
| 256 Register of injuries.....  | 125 |
| 257 Notice of incapacity, medical etc treatment and damage to property ..... | 125 |
| 258 Offence .....  | 126 |
| <b>Division 2 Making a claim for compensation or damages</b> .....           | 126 |
| 259 Application of Division .....  | 126 |
| 260 How a claim is made .....  | 126 |
| 261 Time within which claim for compensation must be made .....              | 127 |
| 262 Time within which claim for work injury damages must be made .....       | 128 |
| 263 Lump sum compensation claims to be made at same time .....               | 128 |
| 264 Action by employer in respect of claims, injuries and compensation ..... | 128 |
| <b>Part 3 Dealing with claims</b> .....                                      | 129 |

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

..... 129

265 Application of Division ..... 129

266 Meaning of initial notification of injury ..... 129

267 Duty to commence weekly payments following initial notification of injury ..... 130

268 Insurer must notify worker of reasonable excuse for not commencing weekly payments..... 130

269 Notice to be given of commencement of weekly payments ..... 130

270 Obligations of worker to provide authorisations and medical evidence..... 131

271 Liability to make weekly payments not affected by making of claim ..... 131

272 Recovery by insurer..... 131

273 Provision for recovery of excess for provisional payments ..... 132

**Division 2 Claims for weekly payments**..... 132

274 Liability to be accepted and weekly payments commenced within 21 days ..... 132

275 Duty to commence provisional weekly payments if claim is first notification of injury..... 133

276 Continuation of provisional payments started before claim made ..... 133

277 Provision for recovery of excess for provisional payments ..... 133

278 Early acceptance of liability not prevented ..... 134

**Division 3 Claims for medical expenses**..... 134

279 Liability to be accepted within 21 days ..... 134

280 Provisional acceptance of liability..... 134

**Division 4 Claims for lump sum compensation and work injury damages**

..... 134

280A Claim for lump sum compensation a pre-condition to damages claim ..... 134

280B Lump sum compensation to be paid before damages recovered ..... 134

281 Liability to be accepted and settlement offer made ..... 135

282 Relevant particulars about a claim ..... 136

**Division 5 Enforcement of claims obligations** ..... 137

283 Offence of failing to determine a claim for compensation..... 137

284 Insurer liable to pay fee if claim goes to assessment..... 137

285 Offence of referring non-genuine disputes ..... 138

|  |            |
|--|------------|
| 286 Partial acceptance of liability .....  | 138        |
| <b>Part 4 Compensation dispute determination</b> .....                                       | <b>138</b> |
| <b>Division 1 Preliminary</b> .....  | <b>138</b> |
| 287 Disputes to which Part applies.....  | 138        |
| <b>Division 2 Reviews by insurer</b> .....   | <b>138</b> |
| 287A Request for review .....  | 139        |
| 287B Regulations relating to decisions and reviews by insurers .....                         | 139        |
| <b>Division 3 Determination of disputes by Commission</b> .....                              | <b>139</b> |
| 288 Referral of disputes to Commission .....   | 139        |
| 289 Restrictions as to when dispute can be referred to Commission .....                      | 139        |
| 289A Further restrictions as to when a dispute can be referred to Commission.....            | 141        |
| 289B Stay of disputed work capacity decision .....   | 141        |
| 290 Information exchange between parties .....   | 141        |
| 291 (Repealed) .....   | 142        |
| 292 Expedited assessment.....  | 142        |
| 293 Medical assessment .....   | 142        |
| 294 Certificate of Commission's determination.....   | 143        |
| 294A Commission rules and regulations concerning medical evidence .....                      | 143        |
| <b>Part 5 Expedited assessment</b> .....   | <b>144</b> |
| <b>Division 1 Preliminary</b> .....  | <b>144</b> |
| 295 Disputes to which Part applies.....  | 144        |
| 296 Exercise of functions of President.....  | 144        |
| <b>Division 2 Disputes concerning weekly payments or medical expenses</b><br>.....           | <b>144</b> |
| 297 Directions for interim payment of weekly payments or medical expenses compensation ..... | 144        |
| 298 Period for which interim payment of weekly payments can be directed .....                | 145        |
| 299 Revocation of interim payment direction.....   | 146        |
| 300 Offence of failure to comply with interim payment direction.....                         | 146        |
| 301 Effect of payment under interim payment direction.....                                   | 146        |

|   |            |
|---|------------|
| 302 Commission rules relating to interim payment directions .....   | 146        |
| 303 Commission can give interim payment direction.....  | 146        |
| 304 Recovery of payments.....   | 146        |
| <b>Division 2A Disputes concerning past weekly payments.....</b>  | <b>147</b> |
| 304A Disputes to which Division applies .....   | 147        |
| 304B President may deal with dispute .....  | 147        |
| <b>Division 3 Disputes about non-compliance with Chapter 3.....</b>   | <b>147</b> |
| 305 Disputes to which Division applies .....  | 147        |
| 306 Ways in which dispute can be dealt with.....  | 147        |
| 307 President can recommend certain action .....  | 148        |
| 308 Compliance with recommendations of President.....   | 148        |
| 309 Employers—representation and admissions.....  | 149        |
| 310 Referral of dispute to Commission.....  | 149        |
| <b>Part 6 Court proceedings for work injury damages .....</b>   | <b>149</b> |
| <b>Division 1 Preliminary .....</b>   | <b>149</b> |
| 311 Interpretation .....  | 149        |
| 312 Forum for court proceedings .....   | 149        |
| <b>Division 2 Threshold for award of damages.....</b>   | <b>149</b> |
| 313 Threshold dispute prevents service of pre-filing statement and commencement of court proceedings<br>..... | 149        |
| 314 What constitutes threshold dispute.....   | 150        |
| <b>Division 3 Pre-filing statements .....</b>   | <b>150</b> |
| 315 Requirement for pre-filing statement before commencing court proceedings.....                             | 150        |
| 316 Defendant must respond to pre-filing statement.....   | 151        |
| 317 Defective pre-filing statement.....   | 151        |
| 318 Parties limited to pre-filing statement and defence.....  | 152        |
| <b>Division 4 Mediation.....</b>  | <b>153</b> |
| 318A Mediation of claim before commencement of court proceedings.....   | 153        |
| 318B Mediator to bring parties to agreement .....   | 153        |

|  |     |
|--|-----|
| 318C Legal and other assistance at mediation.....                                | 153 |
| 318D Powers of mediators.....  | 154 |
| 318E Offers made at mediation not to be disclosed to court.....                  | 154 |
| 318F, 318G (Repealed).....   | 154 |
| 318H Mediation fees.....   | 154 |
| <b>Division 5 General</b> .....  | 154 |
| 318I Orders for access to information and premises .....                         | 154 |
| <b>Part 7 Medical assessment</b> .....   | 155 |
| 319 Definitions .....  | 155 |
| 320 (Repealed) .....   | 155 |
| 321 Referral of medical dispute for assessment.....                              | 155 |
| 321A Referral of medical dispute concerning permanent impairment.....            | 156 |
| 322 Assessment of impairment.....  | 156 |
| 322A One assessment only of degree of permanent impairment.....                  | 157 |
| 323 Deduction for previous injury or pre-existing condition or abnormality ..... | 157 |
| 324 Powers of medical assessor on assessment .....                               | 158 |
| 325 Medical assessment certificate.....  | 159 |
| 326 Status of medical assessments .....  | 159 |
| 327 Appeal against medical assessment.....                                       | 160 |
| 328 Procedure on appeal.....   | 161 |
| 329 Referral of matter for further medical assessment or reconsideration .....   | 161 |
| 330 Costs of medical assessment .....  | 162 |
| 331 Commission rules .....   | 162 |
| <b>Part 8 Costs</b> .....  | 163 |
| <b>Division 1 Preliminary</b> .....  | 163 |
| 332 Definitions .....  | 163 |
| 333 Costs to which Part applies.....   | 163 |
| 334 Part prevails over legal costs legislation.....                              | 164 |
| 335 Assessment of costs .....  | 164 |
| 336 Exclusion of matters from this Part.....                                     | 164 |
| <b>Division 2 Fixing of maximum costs and fees</b> .....                         | 164 |

|  |     |
|--|-----|
| 337 Maximum lawyer and agent costs .....                   | 164 |
| 338 Costs of obtaining medical and other reports.....      | 165 |
| 339 Maximum fees payable to health service providers ..... | 165 |

**Division 3 Special provisions for costs in compensation and damages assessment matters**

|   |     |
|---|-----|
| .....   | 165 |
| 340 Application of Division .....   | 166 |
| 341 Costs .....   | 166 |
| 342, 343 (Repealed) .....   | 166 |
| 344 Liability of legal practitioner for client’s costs in certain cases ..... | 166 |
| 345 (Repealed) .....  | 166 |

**Division 3A Special provisions for costs in work injury damages proceedings**

|                 |     |
|-----------------|-----|
| .....           | 166 |
| 346 Costs ..... | 167 |

**Division 4 Costs assessment .....** 167

|   |     |
|---|-----|
| 347 Regulations for costs assessment..... | 167 |
| 348 (Repealed) .....                      | 168 |

**Part 9 References and appeals .....** 168

|   |     |
|---|-----|
| 349, 350 (Repealed) .....   | 168 |
| 351 Reference of question of law on compensation claim to Commission constituted by presidential member ..... | 168 |
| 352 Appeal against decision of Commission constituted by non-presidential member .....                        | 169 |
| 353 Appeal against decision of Commission constituted by presidential member .....                            | 170 |
| 354–365 (Repealed) .....  | 171 |

**Part 10 Administration.....** 171

**Division 1 (Repealed).....** 171

**Division 2 Workers Compensation guidelines .....** 171

|                               |     |
|-------------------------------|-----|
| 376 Issue of guidelines ..... | 171 |
|-------------------------------|-----|

|   |     |
|---|-----|
| 377 Special requirements relating to Workers Compensation Guidelines relating to impairment ..... | 172 |
| <b>Part 11 (Repealed)</b> .....   | 172 |
| <b>Schedule 1 Deemed employment of workers</b> .....  | 172 |
| <b>Schedule 2-5 (Repealed)</b> .....  | 183 |
| <b>Schedule 5A Injury management pilot projects</b> .....   | 183 |
| <b>Schedule 6 (Repealed)</b> .....  | 185 |

# Workplace Injury Management and Workers Compensation Act 1998 No 86



New South Wales

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

## Chapter 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 System objectives

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

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



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

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

(1) In this Act—

**Authority** means the State Insurance Regulatory Authority constituted under the [State Insurance and Care Governance Act 2015](#).

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

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

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

**Commission** means the Personal Injury Commission of New South Wales established by the [Personal Injury Commission Act 2020](#).

**Commission rules** has the same meaning as in the [Personal Injury Commission Act 2020](#).

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

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

**current work capacity**—see Schedule 3 to the 1987 Act.

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

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

- (a) a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker, and
- (b) a divorced spouse of the worker so dependent, and
- (c) a person so dependent who—

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

**Note—**

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

**Deputy President** means a Deputy President of the Commission.

**doctor** means a medical practitioner.

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

**employer** includes—

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

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

**exercise** a function includes perform a duty.

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

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

**financial year** means a year commencing 1 July.

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

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

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

**function** includes a power, authority or duty.

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

**government employer** means the Crown or any government agency, and includes—

(a) a public health organisation within the meaning of the [Health Services Act 1997](#), and

(a1) a person exercising employer functions for the Crown or a government agency in relation to a worker, and

**Example—**

The [Government Sector Employment Act 2013](#), sections 26 and 31 provide for Secretaries of Departments and certain other heads of Public Service agencies to exercise the employer functions of the Government of New South Wales.

(b) an employer prescribed by the regulations.

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

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

**ICNSW** means Insurance and Care NSW constituted under the [State Insurance and Care Governance Act 2015](#).

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

**Independent Review Officer** means the Independent Review Officer appointed under Schedule 5 to the [Personal Injury Commission Act 2020](#).

**injury—**

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

(b) includes—

(i) a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease, or

(ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration, but

(c) does not include (except in the case of a worker employed in or about a mine)—

(i) a dust disease, or

(ii) the aggravation, acceleration, exacerbation or deterioration of a dust disease.

**insurance** includes indemnity.

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

**mandatory notification requirement**—see section 40D.

**mediator** means a person appointed as a mediator for the purposes of this Act under the [Personal Injury Commission Act 2020](#).

**medical assessment** means assessment of a medical dispute by a medical assessor under Part 7 of Chapter 7.

**medical assessor** means a person appointed under the [Personal Injury Commission Act 2020](#) as a medical assessor for the purposes of this Act.

**medical certificate** means a certificate given by a medical practitioner.

**medical dispute** has the meaning given by section 319.

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

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

**motor accident damages** means damages to which Part 6 of the [Motor Accidents Act 1988](#), Chapter 5 of the [Motor Accidents Compensation Act 1999](#) or Part 4 of the [Motor Accident Injuries Act 2017](#) applies.

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

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

**no current work capacity**—see Schedule 3 to the 1987 Act.

**non-presidential member** means a member of the Commission other than a presidential member.

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

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

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

**premium income**—

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

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

**President** means the President of the Commission.

**presidential member** has the same meaning as in the [Personal Injury Commission Act 2020](#).

**principal registrar** means the principal registrar of the Commission.

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

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

**SafeWork NSW** means SafeWork NSW as referred to in clause 1 of Schedule 2 to the [Work Health and Safety Act 2011](#).

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

**spouse** of a person means—

- (a) in relation to an injury received before the commencement of Schedule 7 to the [Workers Compensation Legislation Amendment \(Dust Diseases and Other Matters\) Act 1998](#)—a person to whom the person is legally married (including a husband or wife), or

(b) in relation to an injury received after that commencement—

(i) a person to whom the person is legally married (including a husband or wife),  
or

(ii) a de facto partner of the person.

**suitable employment**—see section 32A of the 1987 Act.

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

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

**Note—**

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

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

**work capacity decision**—see section 43 of the 1987 Act.

**work health and safety legislation** means—

(a) the [Work Health and Safety Act 2011](#) and the instruments under that Act, or

(b) any other Act or instrument (or part) prescribed by the regulations under this Act.

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

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

**Workers Compensation Guidelines** means guidelines issued under section 376.

**Workers Compensation Operational Fund** means the Workers Compensation Operational Fund established under this Act.

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

(a) a member of the NSW Police Force who is a contributor to the Police Superannuation Fund under the [Police Regulation \(Superannuation\) Act 1906](#), or

(b) a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the

employer's trade or business, or

- (c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year, or
- (d) except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*) while—
  - (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or
  - (ii) engaged in training or preparing himself or herself with a view to so participating, or
  - (iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged,

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

**Workers Compensation Acts** means this Act and the 1987 Act.

**workers compensation legislation** means—

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

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

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

benefit compensation is payable.

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

(4) (Repealed)

(5) **Meaning of “related”** The following provisions have effect for the purposes of this section—

(a) Persons are **related** if—

(i) one is the parent, or another ancestor, of the other, or

(ii) one is the child, or another descendant, of the other, or

(iii) they have a parent in common.

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

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

(ii) the relationship of parent and child between an adoptive parent and an adopted child is taken to continue even though the order by which the adoption was effected has been annulled, cancelled or discharged or the adoption has otherwise ceased to be effective, and

(iii) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent, and

(iv) a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.

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

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

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



with section 10 (2) of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, is a place to which that Act does not apply.

**Note—**

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

**5 Deemed employment of workers** (cf 1987 s 5)

Schedule 1 has effect.

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

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

**Note—**

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

**7 Act binds Crown** (cf 1987 s 6)

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

**8 Certain Acts not affected** (cf 1987 s 7)

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

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

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

**9 (Repealed)**

**9A Application of Act in respect of coal industry**

- (1) The workers compensation company (within the meaning of the *Coal Industry Act 2001*) is taken to be a licensed insurer that is a specialised insurer under, and for the purposes of, this Act.

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

***employer in the coal industry*** has the same meaning as in the [Coal Industry Act 2001](#).

## **Chapter 2 Administration**

### **Part 1**

**10-13 (Repealed)**

### **Part 2 General workers compensation functions**

**14-21 (Repealed)**

#### **22 Objectives and general functions of Authority under workers compensation legislation**

- (1) The principal objectives of the Authority in exercising its functions under the workers compensation legislation are as follows—
  - (a) to promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces,
  - (b) to promote the prompt, efficient and effective management of injuries to persons at work,
  - (c) to ensure the efficient operation of workers compensation insurance arrangements,

- (d) to ensure the timely and effective resolution of disputes arising under the workers compensation legislation,
  - (e) to ensure the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation relates.
- (2) The general functions of the Authority under the workers compensation legislation are as follows—
- (a) to be responsible for ensuring compliance with the workers compensation legislation,
  - (b) to be responsible for the day to day operational matters relating to the workers compensation scheme,
  - (c) to establish procedures for dealing with complaints made by employers and by injured workers in relation to matters arising under the workers compensation scheme,
  - (d) to monitor and report to the Minister on the operation and effectiveness of the workers compensation legislation and on the performance of the workers compensation scheme,
  - (e) to undertake such consultation as it thinks fit in connection with current or proposed legislation relating to the workers compensation scheme,
  - (f) to monitor and review key indicators of financial viability and other aspects of the workers compensation scheme,
  - (g) to report and make recommendations to the Minister on such matters as the Minister requests or the Authority considers appropriate.

**23 Specific functions** (cf 1989 s 13)

- (1) The Authority has, in particular, the following functions—
- (a) to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers,
  - (b) to ensure the availability of high quality education and training in such prevention, management and rehabilitation,
  - (c) to develop equitable and effective programs to identify areas of unnecessarily high costs in or for schemes to which the workers compensation legislation relates,
  - (d) to foster a co-operative relationship between management and labour in relation to the health, safety and welfare of persons at work,

- (e) (Repealed)
- (f) to identify (and facilitate or promote the development of programs that minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers, or both,
- (g) to assist in the provision of measures to deter and detect fraudulent workers compensation claims,
- (h) to develop programs to meet the special needs of target groups, including—
  - workers who suffer severe injuries
  - injured workers who are unable to return to their pre-injury occupation
  - injured workers who are unemployed
  - persons who live in remote areas
  - women
  - persons of non-English speaking background
  - persons who have a disability,
- (i) to facilitate and promote the establishment and operation of return-to-work programs,
- (j) to investigate workplace accidents,
- (j1) to enter into arrangements with SafeWork NSW for or in connection with the enforcement of the work health and safety legislation,
- (k) to develop policies for injury management, worker rehabilitation, and assistance to injured workers,
- (l) to monitor the operation of requirements and arrangements imposed or made by or under the workers compensation legislation, including requirements and arrangements for all or any of the following—
  - injury management
  - worker rehabilitation
  - workers compensation insurance
  - workers compensation insurer licensing,and to commence and conduct prosecutions for offences in connection with any such requirements and arrangements,

- (m) to collect, analyse and publish data and statistics, as the Authority considers appropriate,
- (n) to provide advisory services to workers, employers, insurers and the general community (including information in languages other than English),
- (o) to provide funds for or in relation to—
  - measures for the prevention or minimisation of work injuries or diseases
  - work health and safety education,
- (p) to arrange, or facilitate the provision of, interpreter services to assist injured workers,
- (q) to provide and administer (subject to the regulations) a legal aid service for persons who are parties to proceedings relating to workers compensation.
- (r) (Repealed)

(2) (Repealed)

### **23A (Repealed)**

## **Parts 3-5**

### **24-33 (Repealed)**

## **Part 6 Financial provisions**

### **Division 1 Workers Compensation Operational Fund**

#### **34 Workers Compensation Operational Fund** (cf 1989 s 18)

The Authority is required to establish and maintain a Workers Compensation Operational Fund.

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

- (1) The following is to be paid into the Workers Compensation Operational Fund—
  - (a) money contributed by insurers, self-insurers and deemed insurers under Division 2,
  - (a1) money approved by the Minister to be paid into the Fund from the Insurance Fund under subsection (1A),
  - (a2) the investment earnings accruing from the investment of the Fund,
  - (b) money required to be paid into the Fund by or under this or any other Act,

(c) all other money received by the Authority and not otherwise appropriated.

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

(2) The following is to be paid from the Workers Compensation Operational Fund—

(a) the remuneration, allowances, office accommodation and other associated costs of the Board of the Authority and the members of staff of the Authority to the extent that those costs relate to the administration of this Act and the 1987 Act,

(b) the remuneration, allowances, office accommodation and other associated costs of SafeWork NSW,

(c) the remuneration of the Independent Review Officer and staff of the Independent Review Officer and costs incurred in connection with the exercise of the functions of the Independent Review Officer arising under the Workers Compensation Acts,

(d), (e) (Repealed)

(e1) the costs associated with the establishment and operation of the Workers Compensation Division of the Commission arising from the Workers Compensation Acts, including—

(i) the expenditure incurred by the Commission in providing medical assessments and reviews of medical assessments for the purposes of those Acts, and

(ii) the expenditure incurred by the Commission in providing services (including mediation services) in respect of claims for work injury damages,

(f) payments required to be made under section 35A (Residual and ongoing costs of Compensation Court jurisdiction),

(f1) fees the Authority is required to pay to the Civil and Administrative Tribunal for applications made under the [State Insurance and Care Governance Act 2015](#), section 26F in connection with the provision of relevant services for the purposes of this Act,

(g) all payments required to meet expenditure incurred in relation to the functions of the Authority,

(h) all other money required by or under this or any other Act to be paid from the Fund.

(3) The maximum amount payable from the Workers Compensation Operational Fund for the costs of operation of the Compensation Court is to be the amount determined by

the Minister administering the *Compensation Court Act 1984* after consultation with the Minister administering this Act.

- (4) The Authority may pay from the Fund into the Insurance Fund any amount by which the Authority determines the Fund to be in surplus from time to time. Any such surplus may be paid to the Insurance Fund by transfer of any investment held by the Fund (as an alternative to the payment of money).

### **35A Certain ongoing costs of Compensation Court jurisdiction**

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

- (3) In this section—

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

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

### **36 Investment**

The Authority may invest money in the Workers Compensation Operational Fund that is

not immediately required for the purposes of the Fund—

- (a) if the Authority is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Authority is permitted to invest money under that Part, or
- (b) if the Authority is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister with the concurrence of the Treasurer.

## **Division 2 Contributions to Workers Compensation Operational Fund**

### **37 Definitions** (cf 1987 s 258)

In this Division—

**Comcare employer** means an employer who—

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

**deemed insurer** means a corporation (other than a licensed insurer) that is a party to a claims transfer agreement under Division 6 (Transfer of claims) of Part 7 of the 1987 Act.

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

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

**financial year**, in relation to an insurer—



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

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

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

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

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

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

- (1) Each insurer, deemed insurer and self-insurer must pay the contributions prescribed by this section to the Authority for payment into the Workers Compensation Operational Fund.

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

rate of 15 per cent of that amount per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.

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

### **39A Contributions to Fund by Comcare employers**

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

#### **Example—**

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

has been made, the percentage under subsection (2) will be  $(60\% \times 4\% =) 2.40\%$ .

If the percentage determined in accordance with section 39 is still 4%, but an order under subsection (3) (b) has been made increasing that percentage to 62.1%, then the percentage under subsection (2) will be  $(62.1\% \times 4\% = 2.484\%$ , then rounded to the nearest two decimal places) 2.48%.

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

## Division 3 Financial year of Authority

### 40 Financial year of Authority (cf 1989 s 21)

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) However, the financial year of the Authority is to be the annual reporting period (if any) for the Authority if the Treasurer has made a determination under section 2.10 of the *Government Sector Finance Act 2018* for that period to be different from the period referred to in subsection (1).

## Part 7 Information collection and sharing

### 40A Definitions

In this Part—

**data** means any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means).

**insurer** means a licensed insurer, a former licensed insurer, a self-insurer or a former self-insurer, and includes a scheme agent.

**relevant insurance or compensation authority** means a relevant authority for the purposes of section 10 of the *State Insurance and Care Governance Act 2015*, and includes authorities of the Commonwealth, the other States and Territories that administer insurance or compensation schemes.

### 40B General data gathering, exchange, etc, by Authority, insurers and relevant insurance or compensation authorities

- (1) The Authority may collect, use and disclose data relating to any of the following—
  - (a) policies of insurance,
  - (b) claims for compensation or for work injury damages,
  - (c) the functions, activities and performance of insurers and employers,
  - (d) the provision of health, legal and other services to injured workers,
  - (e) any matter in respect of which a complaint is made to the Authority or the Independent Review Officer concerning any aspect of the schemes to which the workers compensation legislation relates.
- (2) For that purpose, the Authority may obtain data from insurers, from relevant insurance or compensation authorities, from hospitals, from government agencies and from any other source.

- (3) Data concerning policies of insurance, claims and other related matters under the workers compensation legislation and policies, claims and other related matters under other insurance or compensation schemes is authorised to be exchanged between different parts of the Authority.
- (4) The Authority, the Independent Review Officer and insurers are authorised to exchange data concerning policies of insurance, claims, complaints and other related matters under the workers compensation legislation.
- (5) The Authority and relevant insurance or compensation authorities are authorised to exchange data concerning policies of insurance, claims and other related matters under the workers compensation legislation and policies, claims and other related matters under other insurance or compensation schemes administered by those authorities.
- (6) This section applies in respect of data that is personal information or health information about an individual despite anything to the contrary in the [Privacy and Personal Information Protection Act 1998](#) or the [Health Records and Information Privacy Act 2002](#).
- (7) Section 243 does not prevent the disclosure of information in accordance with this section.

#### **40C Data required to be supplied to Authority by insurers**

- (1) The Authority may require an insurer to disclose to the Authority (within the time and in the manner specified by the Authority) data relating to policies of insurance, claims and other related matters under the workers compensation legislation.
- (2) Subsection (1) extends to requiring—
  - (a) data relating to any aspect of a workers compensation insurance scheme under the workers compensation legislation (for example, the setting of premiums, the handling of claims, the cost of providing health, legal and other services to injured workers or the detection and prosecution of fraudulent claims), and
  - (b) data relating to policies or claims generally or to particular policies or claims.

This subsection does not affect the generality of subsection (1) or any other provision of this Act regarding the obtaining of data by the Authority.

- (3) An insurer may be required to disclose data to the Authority under this section that is personal information or health information about an individual despite anything to the contrary in the [Privacy and Personal Information Protection Act 1998](#) or the [Health Records and Information Privacy Act 2002](#).
- (4) Unless the insurer satisfies the court that it is not within its power to comply with a

requirement under this section, an insurer that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty—100 penalty units.

#### **40D Mandatory notification**

- (1) The regulations may make provision for or with respect to requiring a scheme participant to notify the Authority of any contravention of this Act of which the scheme participant becomes aware. Any such requirement is a **mandatory notification requirement**.
- (2) Each of the following is a **scheme participant**—
  - (a) an insurer,
  - (b) any specified person, or person of a specified class, on whom functions are conferred by this Act.
- (3) A mandatory notification requirement may apply in relation to all or any specified class of insurers.
- (4) Without limiting subsection (1), the regulations may—
  - (a) provide for the form and manner in which notification is to be given, and
  - (b) provide for when the notification is to be given, and
  - (c) provide for the information required to be notified, and
  - (d) provide for any further requirements relating to the notification (such as a requirement to provide further information or answer questions).

## **Chapter 3 Workplace injury management**

### **Part 1 Preliminary**

#### **41 Object and application of Chapter**

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

#### **41A Chapter applies even when liability disputed**

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

## 42 Definitions

(1) In this Chapter—

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

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

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

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

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

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

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

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

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

## Part 2 Obligations of insurers, employers and workers

### 42A Injury management pilot projects

Schedule 5A has effect.



#### 42B Claims assistance

- (1A) A reference to the Authority in this section includes a reference to the Nominal Insurer.
- (1) The Authority may provide assistance (**claims assistance**) to injured workers and employers in connection with claims for compensation and work injury damages.
- (2) In particular the Authority may establish an advisory service to provide claims assistance.
- (3) The Authority may provide funds to fund the provision of claims assistance by organisations representing employers or employees, including by means of the establishment of an advisory service to provide claims assistance.
- (4)-(6) (Repealed)

#### 43 Injury management programs

- (1) An insurer must establish and maintain an injury management program and must revise its injury management program from time to time or when the Authority directs. An insurer must lodge a copy of its injury management program, and any revised injury management program, with the Authority.
- (1A) Without limiting subsection (1), an insurer that is a scheme agent must revise its injury management program when directed to do so by the Nominal Insurer and lodge a copy of the revised program with the Nominal Insurer.
- (2) An insurer must give effect to its injury management program and for that purpose must comply with the obligations imposed on the insurer by or under the program.
- (3) An insurer must take appropriate steps to ensure that each employer who is insured by the insurer is made aware of the employer's obligations under this Chapter and made and kept aware of the requirements of the insurer's injury management program. This subsection does not apply to a self-insurer.
- (4) Within 3 working days after being notified of a significant injury to a worker, the insurer must initiate action under the insurer's injury management program and must (in accordance with that program) make contact with the worker, the employer (except when the insurer is a self-insurer) and (if appropriate and reasonably practicable) the worker's treating doctor. A **working day** is any day except a Saturday, Sunday or public holiday.
- (5) An employer must comply with the obligations imposed on the employer by or under the insurer's injury management program. This subsection does not apply when the employer is a self-insurer.

#### **44 Early notification of workplace injury**

- (1) An injured worker must notify the employer that the worker has received a workplace injury as soon as possible after the injury happens.
- (2) The employer of an injured worker must notify the insurer or the Nominal Insurer within 48 hours after becoming aware that a worker has received a workplace injury in the manner prescribed by the regulations.
- (3) If an employer has given notice to the insurer in accordance with subsection (2) of a workplace injury to a worker, the insurer must forward that notice to the Nominal Insurer in accordance with the regulations.
- (3A) If an employer has given notice to the Nominal Insurer in accordance with subsection (2) of a workplace injury to a worker—
  - (a) the Nominal Insurer must as soon as practicable forward that notice to the insurer, and
  - (b) the notice given to the Nominal Insurer is taken to be notice given to the insurer for the purposes of the employer's policy of insurance.
- (3B) If an employer or an insurer has given notice to the Nominal Insurer in accordance with subsection (2) or (3) of a workplace injury to a worker, the Nominal Insurer must as soon as practicable forward that notice to the Authority in accordance with the regulations.
- (4) Subsection (2) do not apply when the insurer is a self-insurer.
- (5) (Repealed)

**Note—**

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

#### **45 Injury management plan for worker with significant injury**

- (1) When it appears that a workplace injury is a significant injury, an insurer who is or may be liable to pay compensation to the injured worker must establish an injury management plan for the injured worker.
- (2) The injury management plan must be established in consultation with the employer (except when the insurer is a self-insurer), the treating doctor and the worker concerned, to the maximum extent that their co-operation and participation allow.
- (3) The insurer must provide both the employer and the injured worker with information with respect to the injury management plan.
- (4) The information that the insurer must provide to the injured worker includes a

statement to the effect that the worker may have no entitlement to weekly payments of compensation if the worker fails unreasonably to comply with the requirements of this Chapter after being requested to do so by the insurer.

- (5) The insurer must keep the employer of a worker who has received a significant injury informed of significant steps taken or proposed to be taken under the injury management plan for the worker. This subsection does not apply when the insurer is a self-insurer.
- (6) An insurer must as far as possible ensure that vocational retraining provided or arranged for an injured worker under an injury management plan is such as may reasonably be thought likely to lead to a real prospect of employment or an appropriate increase in earnings for the injured worker.
- (7) An insurer must give effect to an injury management plan established for an injured worker and for that purpose must comply with the obligations imposed on the insurer by or under the plan.

#### **45A Injury management consultants**

- (1) The Authority may by instrument in writing approve a person as an injury management consultant for the purposes of the Workers Compensation Acts.
- (2) Such an approval may be for a fixed or indefinite period and may be made subject to conditions.
- (3) The Authority may by instrument in writing revoke the approval of an injury management consultant for any breach of the conditions of the approval or for such other reason as the Authority thinks appropriate.
- (4) Workers Compensation Guidelines may provide for the functions of approved injury management consultants.
- (5) A person approved as an injury management consultant under this section is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as an approved injury management consultant.
- (6) An injury management consultant who is aggrieved by a decision of the Authority to revoke the consultant's approval may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision.

#### **46 Employer's injury management plan obligations**

- (1) The employer must participate and co-operate in the establishment of an injury management plan required to be established for an injured worker.

- (2) The employer must comply with obligations imposed on the employer by or under an injury management plan for an injured worker.
- (3) This section does not apply when the employer is a self-insurer.

#### **47 Worker's injury management plan obligations**

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

#### **48 Return to work obligations of worker**

- (1) A worker who has current work capacity must, in co-operation with the employer or insurer, make reasonable efforts to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment.
- (2) For the purposes of this section, a worker is to be treated as making a reasonable effort to return to work in suitable employment or pre-injury employment during any reasonable period in which—
  - (a) the worker is waiting for the commencement of a workplace rehabilitation service that is required to be provided under an injury management plan for the worker, or
  - (b) the worker is waiting for a response to a request for suitable employment or pre-injury employment made by the worker and received by the employer, or
  - (c) if the employer's response is that suitable employment or pre-injury employment will be provided at some time, the worker is waiting for suitable employment or

pre-injury employment to commence.

**48A Failure to comply with return to work obligations of worker**

- (1) If a worker does not comply with an obligation of the worker imposed under section 48, the insurer may in accordance with this section—
  - (a) suspend the payment of compensation in the form of weekly payments to the worker, or
  - (b) terminate the payment of compensation in the form of weekly payments to the worker, or
  - (c) cease and determine the entitlement of the worker to compensation in the form of weekly payments in respect of the injury under this Act.
- (2) If the insurer seeks to suspend payments of compensation under subsection (1) (a), the insurer must give written notice to the worker stating—
  - (a) the reason for the giving of the notice, and
  - (b) that unless the worker complies with the obligation under section 48 specified in the notice, weekly payments to the worker will be suspended from the date specified in the notice which must be a date at least 14 days after notice is given but no more than 60 days after notice is given, and
  - (c) the consequences of failing to comply as specified in the notice.
- (3) If the worker fails to comply with a written notice under subsection (2), the insurer may suspend the payment of weekly payments to the worker for a period of 28 days after the date specified in the notice referred to in subsection (2) (b).
- (4) If the worker complies with the obligation specified in the notice under subsection (2) during the period that weekly payments are suspended under subsection (3), the insurer must, subject to and in accordance with this Act, resume the payment of weekly payments with effect from the date on which the worker complied with the obligation.
- (5) If subsection (4) applies, the worker forfeits any compensation in the form of weekly payments that would otherwise have been made during the period of suspension until the worker complied with the obligation and that period is included in determining the first or second entitlement period under Division 2 of Part 3 of the 1987 Act.
- (6) If the worker does not comply with the obligation specified in the notice under subsection (2) for the entire period that weekly payments are suspended under subsection (3), the insurer may terminate the payment of compensation in the form of weekly payments to the worker in respect of the injury by written notice stating the reasons for giving the notice.

(7) If the worker—

- (a) does not comply with the obligation specified in the notice under subsection (2) for the entire period that weekly payments are suspended under subsection (3), and
- (b) has within the last 12 months prior to the giving of the notice referred to in paragraph (a)—
  - (i) been issued 2 notices under subsection (2) without a subsequent suspension of weekly payments, or
  - (ii) had compensation in the form of weekly payments suspended once under subsection (3),

the insurer may cease and determine the entitlement to compensation in the form of weekly payments in respect of the injury to the worker under this Act by written notice stating the reasons for giving the notice.

#### **49 Employer must provide suitable work**

(1) If a worker who has been totally or partially incapacitated for work as a result of an injury is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer liable to pay compensation to the worker under this Act in respect of the injury must at the request of the worker provide suitable employment for the worker.

Maximum penalty—50 penalty units.

(2) The employment that the employer must provide is employment that is both suitable employment (as defined in section 32A of the 1987 Act) and (subject to that qualification) so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was at the time of the injury.

(3) This section does not apply if—

- (a) it is not reasonably practicable to provide employment in accordance with this section, or
- (b) the worker voluntarily left the employment of that employer after the injury happened (whether before or after the commencement of the incapacity for work), or
- (c) the employer terminated the worker's employment after the injury happened, other than for the reason that the worker was not fit for employment as a result of the injury.

**Note—**

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

#### **50 Payment of cost of treatment of injured worker**

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

#### **51 (Repealed)**

#### **52 Workplace rehabilitation** (cf 1987 s 152)

- (1) An employer must establish a return-to-work program with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer. An employer's return-to-work program must not be inconsistent with the injury management program of the employer's insurer and is of no effect to the extent of any such inconsistency.
- (2) A return-to-work program is to be established in accordance with the regulations and must, subject to the regulations—
  - (a) comply with any guidelines determined by the Authority, and
  - (b) be developed by the employer in consultation with the workers concerned and any industrial union of employees representing those workers, and
  - (c) be in writing, and
  - (d) be displayed at places of work, or notified to workers by publishing it on a website or by any other method authorised by the regulations.

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

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

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



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

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

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

- (1) The Authority is to institute and administer under section 53 a scheme (to be called **the second-injury scheme**) to encourage the employment of injured workers by providing financial incentives to their employers in connection with insurance liabilities arising from further injuries to the workers.
- (2) The second-injury scheme applies to such injured workers as are approved by the Authority as being suitable for inclusion in the scheme.
- (3) Any such approval—
  - (a) applies to such employment of the injured worker as is specified in the approval (including employment that is limited to, or excludes, employment with particular employers), and
  - (b) applies for a period of 6 months of any such employment or such other period as is specified in the approval, and
  - (c) applies to all injuries or only to particular injuries, or injuries of a class, specified in the approval, and
  - (d) is subject to any other conditions imposed by the Authority.
- (4) If the second-injury scheme applies to an injured worker—
  - (a) the employer of the worker is not required under section 160 (Recovery of excess from employer) of the 1987 Act to repay the relevant part of any weekly compensation claim paid under a policy of insurance for compensation for an injury to the worker to which the scheme applies, and
  - (b) any such claim (or any liability of the employer independently of this Act for that injury) is to be excluded from the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.
- (5) Subsection (4) is subject to—
  - (a) the regulations, and
  - (b) the terms and conditions of the Authority's approval for the inclusion of the

injured worker in the second-injury scheme, and

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

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

## **55 Compliance by insurers**

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

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

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

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

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

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

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

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

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

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

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

## **55A Compliance by scheme agents**

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

Maximum penalty—1,000 penalty units.

**Note—**

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

**56 Compliance by employer**

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

**57 (Repealed)**

**58 Liability not affected**

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

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

## 59 Regulations

The regulations—

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

## Part 3 Employer improvement notices

### 59A Authorisation of inspectors

In this Part—

**inspector** means a member of staff who is an inspector for the purposes of section 238 (Powers of entry and inspection by officers of Authority).

### 59B Issue of improvement notices

- (1) This section applies if an inspector reasonably believes that an employer—
  - (a) is contravening a provision of this Chapter, or
  - (b) has contravened a provision of this Chapter in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may issue an improvement notice requiring the employer to—
  - (a) remedy the contravention, or
  - (b) prevent a likely contravention from occurring, or
  - (c) remedy the things or operations causing the contravention or likely contravention.

### 59C Contents of improvement notices

- (1) An improvement notice must state—

- (a) that the inspector believes the employer—
    - (i) is contravening a provision of this Chapter, or
    - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated, and
  - (b) the provision the inspector believes is being, or has been, contravened, and
  - (c) briefly, how the provision is being, or has been, contravened, and
  - (d) the day by which the person is required to remedy the contravention or likely contravention.
- (2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

#### **59D Compliance with improvement notice**

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Maximum penalty—100 penalty units.

#### **59E Extension of time for compliance with improvement notices**

- (1) An inspector may, by written notice given to the person, extend the compliance period for an improvement notice issued under this Part.
- (2) However, the inspector may extend the compliance period only if the period has not ended.
- (3) In this section—

***compliance period*** means the period stated in the improvement notice, and includes that period as extended under this section.

## **Chapter 4 Workers compensation**

### **Part 1 Compensation—general**

#### **60 Liability, benefits, common law and other matters**

- (1) Provisions relating to a worker's entitlement to compensation, the benefits payable, common law remedies and other matters are contained in the 1987 Act.

- (2) The 1987 Act is, by the operation of section 2A of that Act, to be construed as if it formed part of this Act.

**Note—**

See, in particular, sections 9-87C and 149-151AB of, and Schedule 6 to, the 1987 Act, as amended by the [Workers Compensation Legislation Amendment Act 1998](#).

## **Part 2 Compensation—claims and proceedings**

### **Division 1 Notice of injury etc and claims for compensation**

#### **60A Application of Division**

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

**Note—**

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

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

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

injury) has not been posted up in accordance with that section or the employer has otherwise contravened that section, or

(ii) that the injury has been reported by or on behalf of the employer to an inspector of mines or factories, shops and industries, or

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

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

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

(1) A notice of injury must state—

(a) the name and address of the person injured, and

(b) the cause of the injury (in ordinary language), and

(c) the date on which the injury happened.

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

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

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

(a) if it is given to any person designated for the purpose by the employer, or

(b) if it is given to any person under whose supervision the worker is employed.

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

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

## **63 Register of injuries** (cf former s 90)

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

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

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

be entered in the register.

- (4) If particulars of an injury are duly entered in a register of injuries as soon as possible after an injury happened, the entry is sufficient notice of the injury for the purposes of this Act.
- (5) If subsection (1) is contravened, the manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, is guilty of an offence and liable to a penalty not exceeding 50 penalty units.

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

- (1) Sections 61–63 apply with respect to—
  - (a) the giving of notice of incapacity resulting from injury that happens after the worker leaves the employment in which the worker was at the time of the injury, and
  - (b) the giving of notice of any medical or related treatment, hospital treatment, workplace rehabilitation service or ambulance service to which Division 3 of Part 3 of the 1987 Act applies, and
  - (c) the giving of notice of any damage to property to which Division 5 of Part 3 of the 1987 Act applies,in the same way as those sections apply to notice of injury.
- (2) The particulars required to be given in any such notice are (subject to the regulations) reasonable particulars of the incapacity, of the treatment or service or of the damage to property.

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

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



- (2) A claim for compensation need not be accompanied by a medical certificate or other document under this section if the medical certificate or document relates to information that is substantially available to the person on whom the claim is made from other appropriate documentation given or served by or on behalf of the claimant.
- (3) To the extent that information has been furnished or material provided in the course of the making of a claim for compensation, it is not necessary to furnish that information or provide that material when making any further claim for compensation in respect of the same injury.
- (4) The medical certificate required to accompany a claim for weekly payments of compensation must (unless the claim is a claim under section 10, 11 or 12 of the 1987 Act) include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor.
- (5) If a claim is deficient because subsection (4) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as possible after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement)—
  - (a) the claim is not considered to have been duly made for the purposes of section 93 until subsection (4) is complied with, and
  - (b) court proceedings cannot be commenced in respect of the claim until subsection (4) is complied with.
- (6) All claims for compensation under sections 66 and 67 of the 1987 Act in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later.
- (7) Compensation may not be recovered under this Act unless a claim for the compensation has been made within 6 months after the injury or accident happened or, in the case of death, within 6 months of the date of death.
- (8) If a claim for compensation was made by an injured worker within the period required by subsection (7), that subsection does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker's claim related.
- (9) For the purposes of subsection (7), a person is considered to have made a claim for

compensation when the person makes any claim for compensation under this Act in respect of the injury or death concerned, even if the person's claim did not relate to the particular compensation in question.

- (10) If there is no entitlement to compensation under section 66 of the 1987 Act for a loss of hearing because of section 69A of the 1987 Act (No compensation for less than 6% hearing loss) notice of injury given in accordance with section 62 suffices (for the purposes of this section) as a claim for the compensation concerned.
- (11) If a claim for compensation and any medical certificate or other document required to accompany the claim are not given or served at the same time, the claim for compensation is taken not to have been made until the day on which the last of those documents is given or served. In that case, all of those documents are taken to have accompanied the claim.
- (12) The failure to make a claim in accordance with subsection (1) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause.
- (13) The failure to make a claim within the period required by subsection (7) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either—
  - (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or
  - (b) the claim is not made within that 3 years but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.
- (14) The failure to make a claim within the period required by subsection (7) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.
- (15) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of subsections (7) and (13) taken to have been received when the worker first became so aware. If death results from an injury and a person who is entitled to claim compensation under this Act in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of subsections (7) and (13) to a claim by that person, taken to be the date that the person became so aware.
- (16) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different

injuries) a claim for the compensation is for the purposes of this section taken to have been made when a claim is made on any one of those persons.

- (17) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of subsections (7) and (13) as the making of a claim for compensation in respect of the injury.
- (18) In this section, **approved form**, in relation to a medical certificate, means a form in or to the effect of—
- (a) a form approved by the Authority for the purposes of this section or any form previously approved by the Authority for the purposes of this section, or
  - (b) any form previously prescribed by the regulations for the purposes of this section.
- (19) The regulations may provide that, despite subsection (18), the approved form of a medical certificate must be in or to the effect of a particular form only in the case of any specified class of claims for compensation.
- (20) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or workplace rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliator information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.

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

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

claim by the person for compensation in respect of the injury or death may be made by serving it on either the employer from whom compensation is claimed or the insurer who has indemnified the employer.

(2B) In subsection (2A), **further claim** includes—

- (a) any claim by the person for compensation of a different kind from that claimed in respect of the injury or death by the initial claim, or
- (b) any claim that is supplementary to or associated with the initial claim.

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

- (a) is for compensation under Division 4 (Compensation for non-economic loss) of Part 3 of the 1987 Act, or
- (b) is a claim of a kind that is prescribed by the regulations for the purposes of this section.

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

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

- (a) it is given personally to the person, or
- (b) it is delivered or sent by post to the residence or any place of business of the person, or
- (c) it is served in any other manner authorised by sections 109X and 601CX of the [Corporations Act 2001](#) of the Commonwealth.

## **67, 68 (Repealed)**

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

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

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

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

Maximum penalty—50 penalty units.

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

## **Division 2 Administration by insurers of claims for compensation or damages**

### **70 Definitions** (cf former s 93A)

In this Division—

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

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

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

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

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

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

- (1) The Authority may allow—
- (a) an insurer, or
  - (b) such other persons or bodies as the Authority thinks appropriate,
- to inspect information held by the Authority relating to claims or any other information held by the Authority that is prescribed by the regulations.
- (2) Insurers are authorised to exchange information held by them relating to claims or

any other information held by them that is prescribed by the regulations.

(3) In this section—

**claims** includes claims for compensation under the 1987 Act or the former 1926 Act, claims for compensation or other benefits under any other Act and potential claims.

**insurer** includes the Self Insurance Corporation and a licensed insurer under the *Motor Accidents Compensation Act 1999* or the *Motor Accident Injuries Act 2017*.

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

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

**74 (Repealed)**

**74A Duty of insurer to pay compensation promptly**

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

Maximum penalty—50 penalty units.

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

- (1) A member of the Commission may make a report to the Authority on—
- (a) delays by insurers in dealing with claims under this Act, and
  - (b) cases of the unreasonable cessation of weekly payments of compensation to injured workers by insurers, and
  - (c) cases of unreasonable interference by insurers in the medical treatment of injured workers, and
  - (d) cases of insurers being responsible for costs in proceedings before the Commission being unreasonably incurred, as provided by section 115, and
  - (e) cases of insurers making unreasonable determinations as to the kind of work that is suitable for an injured worker.
- (2) The Authority may take such action as it considers appropriate on the basis of any such report.

## **Division 3 Notification of decisions of insurers**

### **Subdivision 1 Preliminary**

#### **76 Definitions**

In this Division—

**internal review** means a review by an insurer of a work capacity decision under Part 4 of Chapter 7.

**notice of discontinuation or reduction** means a notice required by this Division of an insurer's decision to discontinue payment to a worker of weekly payments of compensation, or to reduce the amount of the compensation.

**original decision** means a work capacity decision that is the subject of an internal review or of a dispute referred for determination by the Commission.

**review decision** means—

- (a) in relation to an original decision that is the subject of an internal review—a work capacity decision made by an insurer as a result of the review, or
- (b) in relation to an original decision that is the subject of a dispute referred for determination by the Commission—a decision of the Commission determining the dispute.

## **77 Requirement for refund of weekly payments not affected**

This Division does not affect the operation of section 58 (Refund of weekly payments paid after return to work etc) of the 1987 Act.

## **Subdivision 2 General notice requirements**

### **78 Insurer to give notice of decisions**

- (1) An insurer must give notice in accordance with this Division of any decision of the insurer—
  - (a) to dispute liability in respect of a claim or any aspect of a claim, or
  - (b) to discontinue payment to a worker of weekly payments of compensation, or reduce the amount of the compensation.
- (2) Notice of a decision of an insurer involving both a liability dispute and a discontinuation or reduction of weekly compensation may be combined into a single notice (subject to any provision of the Workers Compensation Guidelines requiring separate notices to be given).
- (3) The requirement to give notice of a decision to discontinue payment to a worker of weekly payments of compensation does not affect any limitation on weekly payments of compensation under Division 2 of Part 3 of the 1987 Act.

### **79 How notice of decision is given**

- (1) A notice required by this Division must be given—
  - (a) to the claimant or worker concerned, and
  - (b) in the case of a notice of a decision to dispute liability—to the worker's employer, if required by the regulations.
- (2) The notice must contain a concise and readily understandable statement of the reason for the insurer's decision and of the issues relevant to the decision.
- (3) In addition, notice of a decision to dispute liability for a claim for compensation must identify any provision of the workers compensation legislation on which the insurer relies to dispute liability.
- (4) The regulations may make provision for—
  - (a) the manner in which a notice under this Division is to be given, and
  - (b) the form of and other information to be included in or to accompany the notice.

## **Subdivision 3 Notice period for discontinuation and reduction of**



## **weekly compensation**

### **80 Required period of notice**

- (1) An insurer must not discontinue payment to a worker of weekly payments of compensation, or reduce the amount of the compensation, unless the required period of notice (commencing when the notice of discontinuation or reduction is given in accordance with this Division) has expired.
- (2) This section applies to a worker only if the worker has received weekly payments for a continuous period of at least 12 weeks.
- (3) The **required period of notice** for a decision made on the basis of any reassessment by the insurer of the entitlement to weekly payments of compensation resulting from a work capacity decision of the insurer is 3 months.

**Note—**

See sections 81–83 for the effect of an internal review or determination of a dispute by the Commission on the required period of notice.

- (4) In any other case, the **required period of notice** is—
  - (a) for a worker who has been receiving weekly payments of compensation for a continuous period of less than 1 year—2 weeks, or
  - (b) for a worker who has been receiving weekly payments of compensation for a continuous period of 1 year or more—6 weeks.
- (5) The required period of notice of the discontinuation or reduction is required to be given in accordance with this Subdivision whether or not the notice also includes notice of a liability dispute.
- (6) Subsection (1) does not apply to a decision of an insurer to discontinue or reduce the amount of weekly payments of compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable. However, notice of the decision must be given before the expiration of the period of incapacity that results in the discontinuation or reduction.

### **81 Effect of stay of decision on notice period**

A stay of a decision to discontinue, or reduce an amount of, compensation that is the subject of a dispute referred to the Commission for determination does not operate to extend the required period of notice with respect to the discontinuation or reduction.

### **82 Effect of review decision on notice period**

- (1) In the application of this Subdivision to a discontinuation, or reduction of the amount, of payments of compensation as a result of a review decision (whether or not the

review decision is less favourable to the worker than the original decision)—

- (a) no regard is to be had to any period of notice given to the worker in respect of any discontinuation or reduction before the date on which the worker is notified of the review decision, and
- (b) the required period of notice starts on that date.

- (2) This section does not apply to a discontinuation or reduction as a result of a review decision that affirms an original decision with respect to the discontinuation or reduction.

**Note—**

See section 83 for the effect of the affirmation of an original decision on the required period of notice.

**83 Effect of affirmation of work capacity decision or withdrawal, discontinuance or dismissal of dispute proceedings**

The required period of notice with respect to a discontinuation or reduction of compensation is not affected by—

- (a) a review decision made by an insurer or by the Commission that affirms the original decision of the insurer with respect to the discontinuation or reduction, or
- (b) the withdrawal of a request for internal review of the original decision with respect to the discontinuation or reduction, or
- (c) the withdrawal of the referral to the Commission for determination of a dispute about a work capacity decision, or the discontinuance or dismissal of proceedings before the Commission in relation to the dispute.

**84 Recovery of weekly payments by worker where notice not given by insurer**

- (1) If an insurer discontinues payment to a worker of weekly payments of compensation, or reduces the amount of the compensation, in contravention of this Subdivision, the worker may recover from the insurer an amount of compensation in accordance with this section.
- (2) This section applies whether or not the insurer has been prosecuted for an offence under this Division involving the contravention.
- (3) The amount of compensation that may be recovered as a result of a failure to give the required period of notice is—
  - (a) if no period of notice has been given—an amount that is equal to the amount of compensation, or additional compensation, that would have been payable during the required period of notice if payment of the compensation had not been discontinued or if the amount of compensation had not been reduced, or

- (b) if less than the required period of notice has been given—an amount that is equal to the amount of compensation that would have been payable during the balance of the required period of notice if payment of the compensation had not been discontinued or if the amount of the compensation had not been reduced.

## **Subdivision 4 Offences**

### **85 Failure to comply with notice requirement**

An insurer who fails to comply with a requirement of this Division is guilty of an offence.

Maximum penalty—50 penalty units.

## **Division 4 Special provisions with respect to weekly payments of compensation**

### **91A Division applies only to existing claims**

This Division applies only in respect of existing claims.

**Note—**

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

### **92 Definitions** (cf former s 101)

- (1) In this Division—

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

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

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

- (1) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.
- (2) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly

payments in dispute) does not apply.

**Note—**

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

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

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

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

Maximum penalty—50 penalty units.

**95 Direction by conciliator—commencement or continuation of weekly payments** (cf former s 104)

- (1) This section applies if a dispute relating to—
  - (a) a claim for weekly payments of compensation, or

(b) the continuation of weekly payments of compensation,

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

- (2) If the conciliator is satisfied that there is no genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliator may direct—
  - (a) the person on whom the claim for weekly payments was made, or
  - (b) the person who was making the weekly payments,to pay or continue to pay compensation in accordance with the direction.
- (3) There is considered to be no genuine dispute with respect to a liability if there is no sufficient basis or no reasonable basis for dispute (but this does not limit the circumstances in which there can be considered to be no genuine dispute).
- (4) If the conciliator is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliator must notify the person who made the claim for weekly payments, or who was receiving weekly payments, of that fact and that an application may be made to the Compensation Court to determine the matter.
- (5) A direction of the conciliator may be given subject to such conditions as are specified in the direction.

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

- (1) A direction (or further direction) of a conciliator under this Division may require a person to pay or continue to pay weekly payments for such period (not exceeding 12 weeks) as is specified in the direction.
- (2) Nothing in this section prevents a conciliator from giving a further direction (or further directions) for payment of compensation after the expiry of an earlier direction (except where the earlier direction is revoked by the Compensation Court).
- (3) A conciliator may direct payment of weekly payments during a period that is before the direction is given, but that period must not exceed 10 weeks.

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

- (1) A direction given by a conciliator under this Division may be revoked by the conciliator or by any other conciliator.
- (2) The Compensation Court may, on the application of a person who is liable to make weekly payments in accordance with a direction of a conciliator under this Division, revoke the direction.

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

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

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

Maximum penalty—50 penalty units.

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

- (1) The fact that a person—
  - (a) pays or continues to pay compensation in accordance with a direction of a conciliator under this Division, or
  - (b) does not apply for a revocation of any such direction,

is not an admission of liability by the person.

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

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

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

## **Division 5 Restrictions on commencing court proceedings**

**100A Division applies only to existing claims**

This Division applies only in respect of existing claims.

**Note—**

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

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

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 3 and either—
  - (a) the conciliator has issued a conciliation certificate that indicates that conciliation was wholly or partially unsuccessful, or
  - (b) the conciliator has given a notification under section 95 (4) in respect of the dispute, or
  - (c) a period of 35 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.
- (2) Further, if the conciliator has issued a conciliation certificate indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the liability has subsequently been referred for conciliation under Division 3 and either—
  - (a) the conciliator has issued a further conciliation certificate, or
  - (b) the conciliator has given a notification under section 95 (4) in respect of the dispute, or

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

whichever happens first.

(3) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 3 until—

(a) the person on whom the claim is made has disputed liability to make the payments, or

(b) the time within which the person on whom the claim is made is required under section 93 to commence those payments (including any extension under section 93 (3)) has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),

whichever happens first.

**Note—**

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

(4) A worker cannot commence court proceedings in respect of related compensation until this section allows the commencement of proceedings in respect of the weekly payments of compensation concerned. **Related compensation** is compensation under Division 3 of Part 3 of the 1987 Act that relates to the incapacity for work to which the weekly payments of compensation relate.

(5) This section does not prevent the commencement of court proceedings in any of the following circumstances—

(a) if the proceedings concern an application for a determination under section 53 of the 1987 Act,

(b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,

(c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of the 1987 Act,

(d) any circumstances prescribed by the regulations.

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

(1) A worker cannot commence court proceedings in respect of compensation under section 66 of the 1987 Act unless a dispute about that compensation has been referred for conciliation under Division 3 and either—



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

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

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

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) or Division 5 (Compensation for property damage) of Part 3 of the 1987 Act unless a dispute about that compensation has been referred for conciliation under Division 3 and either—
- (a) the conciliator has issued a conciliation certificate that indicates that conciliation was wholly or partially unsuccessful, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- whichever happens first.
- (2) Further, if the conciliator has issued a conciliation certificate indicating that conciliation was successful, the worker cannot commence court proceedings as referred to in subsection (1) unless a dispute about the compensation has

subsequently been referred for conciliation under Division 3 and either—

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

whichever happens first.

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

- (a) 28 days after the claim for compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.

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

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

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

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

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

### **Division 6 Proceedings before Commission or the Compensation Court**

#### **105 Jurisdiction of Commission and Compensation Court**

- (1) Subject to this Act, the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under this Act and the 1987 Act.
- (2) The Commission does not have that jurisdiction in respect of matters arising under Part 5 (Common law remedies) of the 1987 Act except for the purposes of and in

connection with the operation of Part 6 of Chapter 7 of this Act.

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

**Note—**

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

**106 (Repealed)**

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

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

**108 Interim awards** (cf former s 112)

(1) This section applies where—

- (a) there is a dispute between employers or insurers, between a self-insurer and an insurer or between an employer and an insurer, as to whether incapacity or death resulted from more than one injury, or
- (b) there is a dispute between employers or insurers, or between a self-insurer and an insurer, as to the apportionment between them of liability as referred to in section 22 (Compensation to be apportioned where more than one injury etc) of the 1987 Act, or
- (c) an employer has at any time or from time to time been a self-insurer under this Act, the 1987 Act or the former 1926 Act and at another time or at other times has obtained a policy of insurance from an insurer, and a dispute arises as to whether an insurer is liable to indemnify the employer in respect of compensation payable under this Act for a particular injury, or
- (d) an insurer is, pursuant to section 224 (2) (b), joined as a party to proceedings, or
- (e) a person is, by the operation of this Act, deemed to be a worker employed by more than one principal or other person, and there is a dispute as to which principal or other person is liable to pay compensation under this Act.

(2) Where this section applies, the Commission may—

- (a) if the Commission is satisfied that compensation is payable (but is not yet able to finally determine that compensation is payable, the amount of the compensation, the appropriate apportionment of liability for the compensation or the person liable to pay the compensation), make such interim awards as the Commission thinks fit—
  - (i) for compensation by an insurer or self-insurer, or
  - (ii) for indemnity by an insurer, or
  - (iii) for payment under Division 6 of Part 4 of the 1987 Act,and make such interim orders as the Commission thinks fit for contribution on the part of an insurer, employer or principal or other person or under Division 6 of Part 4 of the 1987 Act, and
- (b) make such final awards and orders as the Commission thinks fit with respect to any of the matters the subject of an interim award or order under paragraph (a), and
- (c) if the Commission makes a final award or order, make such orders as the

Commission thinks fit with respect to adjustments to be made between persons against whom orders have been made under paragraphs (a) and (b) or between any such persons and the Insurance Fund.

- (3) If the Commission subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Commission—
  - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and
  - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (4) This section does not affect the recovery of weekly payments under section 58 of the 1987 Act.

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

- (1) In any proceedings before the Commission, the Commission may order that there is to be included, in any sum to be paid, interest at such rate as the Commission thinks fit on the whole or any part of the sum for the whole or any part of the period before the sum is payable, subject to the limitations imposed by this section.
- (2) Interest cannot be ordered under this section—
  - (a) on any compensation payable under Division 4 of Part 3 of the 1987 Act, or
  - (b) on any compensation payable under this Act for any period before a claim for the compensation was duly made, or
  - (c) on any compensation payable under this Act for any period during which proceedings before the Commission were adjourned on the application of the claimant for the compensation or pursuant to section 102.
- (3) This section does not—
  - (a) authorise the giving of interest upon interest, or
  - (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

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

- (1) Unless the Commission orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum ordered to be paid by the Commission as is from time to time unpaid.

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

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

- (1) Unless the Commission orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum agreed to be paid as permanent impairment compensation or pain and suffering compensation as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum so agreed to be paid—
  - (a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or (if the agreement does not so provide) the date that is 21 days after the date the agreement was made, and
  - (b) is to be calculated at the rate prescribed for the purposes of section 101 of the *Civil Procedure Act 2005* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and
  - (c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

**111A Costs provisions apply only to existing claim matters**

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

**Note—**

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

**112 Costs** (cf former s 116)

- (1) In this section, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.
- (2) Subject to this Act and the regulations and the rules of the Compensation Court and subject to any other Act—
  - (a) costs in or in relation to any proceedings are in the discretion of the Court, and
  - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings, and
  - (c) the Court may order costs to be assessed on the basis set out in the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)) or on an indemnity basis.
- (3) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation was frivolous or vexatious, fraudulent or made without proper justification.
- (4) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application.
- (5) If a person claiming compensation appeals under section 34A (Appeal to Judge from commissioner) of the [Compensation Court Act 1984](#), costs in or in relation to the appeal are to be paid by the unsuccessful party unless the Compensation Court is of the opinion that such a requirement would be unjust in the circumstances of the case.
- (6) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under this Act if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker.
- (7) An order of the Court for payment of costs may include—
  - (a) the costs actually incurred or to be incurred by a person claiming compensation, and
  - (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
  - (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 3), and



- (d) costs incidental to an application for referral of a medical dispute under section 121 or 122, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act, and
- (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.

(8) In this section—

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

**compensation** means compensation under this Act.

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

- (1) The regulations may make provision for or with respect to the following—
  - (a) fixing maximum costs for legal services or agent services provided to a worker (or other claimant), an employer or an insurer in any workers compensation matter,
  - (b) fixing maximum costs for matters that are not legal services or agent services but are related to proceedings on a workers compensation matter (for example, expenses for witnesses or medical reports (including certificates)).
- (2) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section. An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (3) To the extent that the regulations so provide, a legal practitioner or agent is not entitled to be paid or recover costs of the kind referred to in subsection (1) (b) that are incurred in connection with the obtaining of any medical report (including any certificate) or opinion for use for any of the following purposes and which is not used for the purpose for which it was obtained—
  - (a) for use in the making of a claim for compensation under this Act,
  - (b) for use in negotiations or conciliation in respect of a claim for compensation,
  - (c) for consideration by a medical panel or medical referee under section 122 or by a medical specialist under section 121,
  - (d) for use in court proceedings.

- (4) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Uniform Law Application Act 2014*.
- (5) This section and any regulations under this section prevail to the extent of any inconsistency with the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*). An assessment under that legislation of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.
- (6) Expressions used in this section have the same meanings as they have in the legal costs legislation, except as provided by this section.
- (7) In this section—

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

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

**costs** includes—

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

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

- (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by medical practitioners of the following services—
  - (a) provision of any medical report (including any certificate) for use in court proceedings in connection with a claim for compensation under this Act,

(b) appearance as a witness in court proceedings on a claim for compensation under this Act.

- (2) A medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.
- (3) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Uniform Law Application Act 2014*.

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

- (1) If the Compensation Court is satisfied that any costs in proceedings under this Act before the Court were unreasonably incurred, the Court is to order that those costs are to be treated as unreasonably incurred for the purposes of this section and the Court is not to make an order for payment of those costs by any other party to the proceedings.
- (2) Costs incurred by a party to proceedings are considered to have been unreasonably incurred for the purposes of this section only if they were incurred by the party—
  - (a) after a reasonable offer of settlement in the proceedings was made to the party, or
  - (b) after the party has failed without reasonable excuse to comply with a written request from another party to the proceedings to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or
  - (c) after the party has unreasonably failed to participate in a conciliation of the dispute with which the proceedings are concerned and the Court is of the opinion that the failure has resulted in unnecessary litigation, or
  - (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 128 (2)) and the Court is of the opinion that the application was frivolous or vexatious.
- (3) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 84 certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate.

- (4) A legal practitioner representing a party to proceedings in the Compensation Court is not entitled to recover from the party any costs that the Court has ordered are to be treated as unreasonably incurred.
- (5) The Court may by order exempt any costs or a proportion of any costs from the operation of subsection (4) if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.

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

- (1) The legal representative or agent of a person claiming compensation under this Act is not entitled—
  - (a) to recover from the person any costs in respect of the claim, or
  - (b) to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation,unless those costs are awarded by the Compensation Court.
- (2) Any such award may be made on the application either of the person claiming compensation or the person's legal representative or agent.
- (3) Any sum so awarded is subject to assessment in accordance with the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)).
- (4) This section prevails to the extent of any inconsistency with the legal costs legislation.
- (5) A person must not—
  - (a) claim a lien that the person is not entitled to claim because of subsection (1), or
  - (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of subsection (1).

Maximum penalty—50 penalty units.

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

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

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

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

**insurer** means licensed insurer or former licensed insurer.

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

- (1) On and from the commencement date prescribed by the regulations for the purposes of this section, a person who—
  - (a) for fee or reward, acts as interpreter for a worker in connection with a claim for compensation under this Act, whether or not the claim is eventually made and whether or not the person also provides a related service, or
  - (b) holds himself or herself out as being available to do so,is guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units if the person is not registered under this section.
- (2) A person who acts as interpreter for a worker is taken to act for fee or reward if the fee or reward—
  - (a) is payable or given by some person on behalf of the worker, or
  - (b) is payable or given to some person who employs, or is nominated by, the person acting as interpreter, or
  - (c) is payable or given for any related service provided to the worker by the person acting as interpreter.
- (3) This section does not apply to a person who acts as interpreter—
  - (a) if the person is a solicitor, barrister, medical practitioner or other person prescribed by the regulations, or
  - (b) if the person is engaged by, and the person's services are paid for by—

- (i) the Authority, or
  - (ii) Multicultural NSW, or
  - (iii) an employer or insurer, or
  - (iv) an industrial union of employees or employers, or
  - (v) any other person or body prescribed by the regulations.
- (4) The regulations may make provision for or with respect to—
- (a) applications for registration under this section and the disposal of any such applications, and
  - (b) the fees to be paid by applicants for registration, and
  - (c) the qualifications, experience, fitness and character of applicants for registration, and
  - (d) the duration of registration, and
  - (e) the conditions to which any registration is subject (including conditions regulating any related service provided by the registered person), and
  - (f) the cancellation or suspension of registration, and
  - (g) any other matter in connection with registration under this section.
- (5) The regulations under this section are to provide for a right of appeal against a decision of the Authority—
- (a) to refuse to register a person under this section, or
  - (b) to cancel or suspend any such registration, or
  - (c) to attach any condition to any such registration.
- (6) The regulations may make provision for or with respect to the maximum amount that may be charged by a person who is registered or required to be registered under this section—
- (a) for acting as interpreter as referred to in subsection (1), and
  - (b) for any related service provided to the worker concerned.
- (7) A person who acts as interpreter in contravention of subsection (1) is not entitled to charge or recover any fee for so acting or for any related service provided to the worker concerned.
- (8) A reference in this section—

- (a) to a person acting as interpreter includes a reference to a person who translates documents into another language, or
- (b) to a related service includes a reference to the services of an agent or adviser.

## **Division 7 Medical examinations and disputes**

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

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

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

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

regulations for the purposes of this section, and

- (b) the opinion or report is not admissible in proceedings on such a dispute before the Commission, and
- (c) the opinion or report may not be disclosed to a medical assessor or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

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

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

**121 Assessment of medical disputes by approved medical specialists**

- (1) In this section—

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

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

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

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

**Note—**

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



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

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

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

- (10) The regulations may make provision for or with respect to the approval of medical practitioners for the purposes of this section and the referral of medical disputes to approved medical specialists for the purposes of this section.
- (11) An approved medical specialist may—
- (a) consult with any medical practitioner who is treating or has treated the worker in connection with the worker's claim, and
  - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of the fair and proper consideration of the matter.
- (12) If a worker refuses to submit himself or herself for examination by the approved medical specialist to whom the medical dispute has been referred if required to do so, or in any way obstructs the examination—
- (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to weekly payments,
- is suspended until the examination has taken place.
- (13) The fees of the approved medical specialist to whom a medical dispute is referred under this section are to be paid by the employer.

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

- (1) In this section—
- medical dispute** means a disagreement between a worker and the employer as to—
- (a) the worker's condition, or
  - (b) the worker's fitness for employment.
- (2) If there is a medical dispute, the registrar of the Compensation Court must, on the application of either the worker or the employer, refer the medical dispute to a medical panel or (if subsection (3) permits) to a medical referee, but only if—
- (a) the worker has submitted himself or herself for examination by a medical practitioner in accordance with a requirement of the employer under section 119 or has been examined by a medical practitioner selected by the worker, and
  - (b) the employer or worker (as the case may be) has furnished the other with a copy of the medical practitioner's report of the examination (being a report relevant to

the medical dispute).

- (3) A medical dispute can be referred under this section to a medical referee only if the registrar is satisfied that it is not reasonably practicable in the circumstances to constitute a medical panel. A medical dispute must not in any circumstances be referred to a medical referee if the dispute concerns the extent of a loss, or a further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.
- (4) The registrar of the Compensation Court may refuse to refer any such medical dispute to a medical referee or medical panel if the medical practitioner's report was not furnished to the other party within 30 days (or such longer period as the worker and the employer may agree) after it was received from the medical practitioner or within such longer period as the registrar of the Compensation Court, in the circumstances of the case, considers justified.
- (5) The medical referee or medical panel to whom a medical dispute is so referred is to give a certificate as to—
  - (a) the worker's condition, or
  - (b) the worker's fitness for employment (specifying, where necessary, the kind of employment for which the worker is fit).
- (6) Any such certificate of a medical panel is conclusive evidence as to the matters certified, except in relation to the following—
  - (a) the fitness of the worker for employment,
  - (b) the question of whether any of the following losses or impairments exist and, if so, the nature and extent of the loss or impairment—
    - (i) the loss of the sense of taste or smell,
    - (ii) the loss of sexual organs,
    - (iii) permanent brain damage,
    - (iv) the impairment of the back, neck or pelvis,
    - (v) any loss or impairment added to the Table to Division 4 of Part 3 of the 1987 Act by the regulations.
- (7) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (8) and (9).
- (8) If an application for referral of a medical dispute is made under this section after the commencement of court proceedings in respect of the compensation to which the application relates, subsection (6) does not apply to any certificate issued on the

application unless—

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

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

- (1) When a medical dispute (as defined in section 122) is the subject of conciliation by a conciliator and concerns the compensation payable under section 66 of the 1987 Act, the Principal Conciliator may request the registrar of the Compensation Court to refer the dispute to a medical panel and the registrar is to refer the dispute accordingly.

- (2) The medical panel to whom a medical dispute is so referred is to give a certificate as to the worker's condition, in accordance with the terms of reference of the dispute.
- (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.
- (4) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical panel to whom the medical dispute has been referred, or in any way obstructs the examination—
  - (a) the worker's right to recover compensation under this Act with respect to the injury, or
  - (b) the worker's right to weekly payments,is suspended until the examination has taken place.

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

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

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

- (1) If a worker is required to submit himself or herself for examination pursuant to this Division, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided—
  - (a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and
  - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.
- (2) A worker required to submit himself or herself for examination by a medical assessor is not entitled to recover any amount if—
  - (a) the matter was referred on the application of the worker, and
  - (b) the Commission finds that the application was unreasonable or unnecessary.

- (3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.
- (4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of section 64 of the 1987 Act.
- (5) (Repealed)

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

- (1) In this section—

**insurer** means a licensed insurer or a former licensed insurer.

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

- (a) a medical practitioner by whom the worker has been referred to another medical practitioner for treatment or tests related to the injury, or
  - (b) a medical practitioner who has treated the injury, or
  - (c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the injury.
- (2) The regulations may make provision for or with respect to requiring an employer or insurer in possession of a medical report relating to an injured worker to provide a copy of the report to the worker, the worker's legal representative or any other person, if the worker's claim is disputed.
  - (3) If an employer or insurer fails to provide a copy of a report as required by the regulations under subsection (2)—
    - (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
    - (b) the report is not admissible in proceedings on such a dispute before the Commission, and
    - (c) the report may not be disclosed to a medical assessor or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

### **127 Admissibility of medical reports**

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

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

- (1) A certificate or report given by a medical referee or medical panel is admissible in evidence in any proceedings before the Compensation Court.
- (2) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report.
- (3) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.
- (4) A medical referee is competent to give evidence as to matters in a certificate or report given by the referee or by a medical panel of which the referee was a member, but the referee may not be compelled to give any such evidence.

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

- (1) A medical referee or medical panel may, of the referee's or panel's own motion or on

the application of a party to proceedings (and without formally reconvening), correct a certificate or report given by the referee or panel if it contains—

- (a) a clerical mistake, or
- (b) an error arising from an accidental slip or omission, or
- (c) a material miscalculation of figures or material mistake in the description of any person, thing or matter referred to in the certificate or report, or
- (d) a defect of form.

(2) This section applies to a medical certificate given by a medical specialist pursuant to section 121 as if the medical specialist were a medical referee.

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

- (1) The rules of the Compensation Court and the regulations may make provision for or with respect to—
- (a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence), and
  - (b) the disclosure of medical reports (including X-rays and the results of other tests) to medical referees and medical panels (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report), and
  - (b1) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular—
    - (i) limiting the number of medical reports that may be produced in connection with the conciliation of a dispute, and
    - (ii) limiting the number of medical reports that may be admitted in evidence in proceedings before the Compensation Court, and
    - (iii) limiting the medical reports that may be so admitted in evidence to those produced in connection with the conciliation of the dispute concerned, and
    - (iv) excluding the costs of excess medical reports from the costs recoverable in connection with a claim (whether the reports were obtained for the purposes of making or dealing with a claim or for the purposes of conciliation or court proceedings), and
  - (c) limiting the number of medical witnesses that may be called by any party, and



(d) the manner of referring matters to a medical referee or medical panel for report.

(2) This section only authorises rules of the Compensation Court in connection with proceedings before that Court or matters referred to a medical panel or medical referee.

## **Division 8 Prohibited conduct relating to touting for claims**

### **131 Definitions** (cf former s 148B)

(1) In this Division—

**agent** means a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a claim, but does not (unless the regulations otherwise provide) include a legal practitioner.

**claim** means a claim for compensation under this Act.

**hearing loss claim** means—

(a) a claim under section 66 of the 1987 Act (as in force at any time before the commencement of this definition) for loss of hearing, or

(b) a claim for permanent impairment compensation in respect of loss of hearing.

**lawyer** means a legal practitioner.

**prohibited conduct** has the meaning given by section 132.

**protected claim** means—

(a) a hearing loss claim, and

(b) a claim for the cost of provision of a hearing aid, and

(c) any other claim that is declared by the regulations to be a protected claim for the purposes of this section.

(2) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 132 does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct.

(3) Each of the following activities is considered to constitute acting as agent for a person in connection with a claim—

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

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

- (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,
  - (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim,
  - (e) any other activity prescribed by the regulations.
- (4) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division.

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

- (1) The following conduct by an agent is prohibited conduct for the purposes of this Division—
- (a) making a statement to a person, knowing that the statement is false or misleading in a material particular, for the purpose of encouraging the person or any other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
  - (b) using information obtained by the agent in connection with a claim to contact any other person for the purpose of encouraging that other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
  - (c) seeking to obtain information from a client of the agent for the purpose of using that information as described in paragraph (b),
  - (d) inducing or attempting to induce a client of the agent to encourage any other person to make a claim (whether or not it is a protected claim) and to use (in connection with the claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the claim,
  - (e) making any unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client of the agent, for the purpose of encouraging the person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
  - (f) such other conduct as may be prescribed by the regulations as prohibited conduct for the purposes of this section.
- (2) The regulations can specify circumstances in which conduct that would otherwise be prohibited conduct under subsection (1) is not to be regarded as prohibited conduct

for the purposes of this Division.

- (3) For the purposes of this Division, any conduct engaged in by a person on behalf of an agent, or that an agent has caused or procured the person to engage in, is taken to have been engaged in by the agent.

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

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

Maximum penalty—50 penalty units.

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

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

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

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

convicted for an offence in respect of that prohibited conduct.

Maximum penalty—50 penalty units.

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

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

- (1) An employer or insurer who is liable to pay a lawyer or agent any fees, costs or other charges incurred in connection with a protected claim made by a person is entitled to request the lawyer or agent to provide a certificate under this section about the claim (unless the lawyer or agent has already provided it). The request must be in writing.
- (2) A certificate under this section is a certificate that to the best of the lawyer's or agent's knowledge, no agent has engaged in prohibited conduct that involved encouraging the person to make the claim or any previous claim, except as may be disclosed in the certificate.
- (3) If a certificate is requested—
  - (a) the lawyer or agent is not entitled to be paid by or recover from the employer or insurer any fees, costs or other charges incurred in connection with the claim concerned until the certificate is provided (even if the fees, costs or other charges are payable under an award or order of a court or Commission), and
  - (b) no interest that might otherwise be payable on those fees, costs or other charges

is payable for the period from when the certificate is requested until it is provided (despite any order or award of a court or Commission for the payment of that interest).

- (4) A lawyer or agent can provide an employer or insurer with a certificate under this section even if the employer or insurer has not requested it.
- (5) A lawyer or agent who gives a certificate under this section about a claim made by a person is guilty of an offence if the lawyer or agent knew or had reasonable cause to suspect that an agent had engaged in prohibited conduct that involved encouraging the person to make the claim.

Maximum penalty—50 penalty units.

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

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

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

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

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

- (1) The Authority can by direction in writing given to an agent prohibit the agent from acting for any person in connection with any claims or in connection with specified types of claims. The prohibition can be absolute or subject to conditions.

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

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

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

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

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

- (1) A person who makes a protected claim must comply with a request from the insurer or self-insurer concerned for information as to whether the person made use of the services of an agent or lawyer in respect of the claim and how the person came to make use of those services. Such a request by the insurer may be made at any time

(whether or not proceedings before the Commission have been commenced in respect of the claim).

- (2) The regulations may make provision for limiting the operation of this section with respect to lawyers.

**142 Regulation of advertising** (cf former s 148L)

- (1) The regulations may make provision for or with respect to regulating or prohibiting conduct by any person that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act or claims for work injury damages, including (without limitation) regulating or prohibiting any of the following—
- (a) advertising by a lawyer or agent,
  - (b) advertising by any person for or on behalf of a lawyer or agent,
  - (c) advertising by any person in connection with the provision of those services,
  - (d) advertising by any person of services connected with injuries.
- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the [Legal Profession Uniform Law Application Act 2014](#).
- (3) Any such regulation can impose a penalty not exceeding 200 penalty units for any contravention of the regulations.
- (4) The Minister may direct a person in writing not to engage in conduct described in the direction if the Minister is satisfied that—
- (a) the conduct contravenes the regulations under this section, and
  - (b) the person has been engaged in conduct of that or a similar kind.
- (5) A person who contravenes a direction under this section is guilty of an offence.  
Maximum penalty—200 penalty units.
- (6) The Minister is not required, before giving a direction under this section, to notify the person to whom the direction is given or any other person who may be affected by the direction.
- (7) A direction under this section may be amended or revoked by the Minister.

## Chapter 5

### 143-230 (Repealed)



## Chapter 6 Miscellaneous

### 230A Premium Discount Schemes

- (1) The Authority or the Nominal Insurer may establish a Premium Discount Scheme to encourage employers to improve work health and safety and injury management performance so as to minimise the financial and social costs of workplace injury.
- (2) A Premium Discount Scheme can provide for any of the following—
  - (a) the conditions or requirements that must be met to be eligible to participate in the scheme,
  - (b) the awarding to employers who participate in the scheme of discounts on the premiums payable by them for policies of insurance under this Act or the 1987 Act,
  - (c) the approval of persons (***approved persons***) to exercise functions under the scheme, including the function of awarding premium discounts under the scheme to employers, and the suspension or withdrawal of any such approval,
  - (d) the regulation of the conduct and activities of approved persons and employers under the scheme,
  - (e) the review and measurement of the work health and safety and injury management performance of approved persons and employers participating in the scheme,
  - (f) the authorisation of different approved persons to award different levels of premium discounts, depending on such factors as the Authority or the Nominal Insurer determines.
- (3) The regulations may make provision for or with respect to premium discount schemes.
- (4) In particular (but without limiting the generality of subsection (3)) the regulations may do any of the following—
  - (a) make provision for or with respect to any of the matters provided for in subsection (2),
  - (b) provide for an administrative review by the Civil and Administrative Tribunal under the [Administrative Decisions Review Act 1997](#) of specified decisions made by the Authority or the Nominal Insurer in connection with the operation of a Premium Discount Scheme,
  - (c) create offences punishable by a penalty not exceeding 50 penalty units.
- (4A) The Minister is not to recommend the making of a regulation containing provisions

for the purposes of subsection (4) (b) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

(5)–(7) (Repealed)

(8) The Authority is to review the effectiveness of the first Premium Discount Scheme after the Scheme has been in operation for 12 months. The review is to include consideration of the introduction of no-claim bonuses.

**231 Notification of summary of Act and insurance details** (cf 1926 s 43 (1)–(3); 1987 s 269)

- (1) An employer must ensure that the following information is available at all times to workers of the employer—
  - (a) a summary of the requirements of this Act with regard to the giving of notice of injuries and the making of claims,
  - (b) if the employer has obtained a policy of insurance in respect of the persons employed there and the policy is for the time being in force—a statement setting out the name and address of the insurer from whom the policy was obtained and stating that insurance under this Act has been effected with that insurer,
  - (c) if the employer is a self-insurer—a statement that the employer is a self-insurer under this Act,
  - (d) such other information as may be prescribed by the regulations.
- (2) The information is to be made available to workers by publishing it on a website or by any other method authorised by the regulations.
- (3) If the information required by this section is made available to workers of the employer but becomes damaged, destroyed or otherwise inaccessible, the employer must renew the information (whether by the same or another method) as soon as practicable.
- (4) The Workers Compensation Guidelines may make provision for or with respect to the form of the information required to be made available.

Maximum penalty—20 penalty units.

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

- (1) A worker may request the employer of the worker to supply the following information—
  - (a) the employer's name and address for the service of documents for the purposes of this Act, and

(b) the name and address of the insurer from whom the employer has obtained a policy of insurance or, if the employer is a self-insurer, to be so informed.

(2) An employer, or a person acting for an employer in the management of the employer's trade or business, must not—

(a) fail to supply any such information, or

(b) supply information which the employer or person knows to be false or misleading in a material particular.

Maximum penalty—20 penalty units.

(3) In this section—

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

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

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

Maximum penalty—100 penalty units.

(2) Any money so taken or received from a worker, whether with the consent of the worker or not, may be recovered by the worker as a debt from the employer, or from the person who took or received it.

(3) To avoid doubt, a reference in this section to a liability under this Act includes a reference to a liability to pay a premium for a policy of insurance.

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

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

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

(1) Compensation under this Act (including the 1987 Act and the former 1926 Act)—

(a) is not capable of being assigned, charged or attached, and

(b) does not pass to any other person by operation of law,

nor can any claim be set off against that compensation.

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

(a) the satisfaction of an obligation by the worker to maintain another person

pursuant to an order of a court of competent jurisdiction, or

- (b) the passing of accrued vested rights of a deceased worker to the legal personal representative.

### **235A Fraud on workers compensation scheme**

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

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

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

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

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

- (4) In this section—

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

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

### **235B Remedy available where claim fraudulent**

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

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

(a) a person who has a liability in respect of a payment, settlement, compromise or judgment relating to the claim is relieved from that liability to the extent of the financial advantage so obtained by the claimant, and

(b) a person who has paid an amount to the claimant in connection with the claim

(whether under a settlement, compromise or judgment, or otherwise) is entitled to recover from the claimant the amount of the financial advantage so obtained by the claimant and any costs incurred in connection with the claim.

- (3) If this section applies to an insurer, the claimant is entitled to recover from the insurer as a debt the amount of the financial advantage so obtained by the insurer and any costs incurred by the claimant in connection with the claim.

### **235C False claims**

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

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

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

### **235D Order for refund of overpayments of compensation**

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

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

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

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

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

**237 Service of documents**

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

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

- (1) In this section—

***inspector*** means—

- (a) a member of staff of the Authority who is authorised by the Authority for the purposes of this section, or
- (b) any person authorised for the purposes of this section by a person or body prescribed by the regulations.

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

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

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

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

Maximum penalty—100 penalty units.

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

#### **238A Search warrant**

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



**inspector** has the same meaning as it has in section 238.

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

**238AA Power to obtain information, documents and evidence**

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

**inspector** means—

  - (a) a member of staff of the Authority who is authorised by the Authority for the purposes of this section, or

(b) any person authorised for the purposes of this section by a person or body prescribed by the regulations.

(8) A person must not—

(a) without reasonable excuse, refuse or fail to comply with a requirement under this section, or

(b) in purported compliance with a requirement under this section, give information or evidence or produce a document knowing it to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

### **238B Protection from incrimination**

(1) **Self-incrimination not an excuse** A person is not excused from a requirement under section 238 or 238AA to produce a document, record or statement, to give information or evidence or to answer a question on the ground that the document, record, statement, information, evidence or answer might incriminate the person or make the person liable to a penalty.

(2) **Answer, information or evidence not admissible if objection made** However, any answer, information or evidence given by a natural person in compliance with a requirement under section 238 or 238AA is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 238 or 238AA) if—

(a) the person objected at the time to doing so on the ground that it might incriminate the person, or

(b) the person was not warned at an appropriate time that the person may object to giving the answer, information or evidence on the ground that it might incriminate the person.

(3) **Appropriate time for giving warning about incrimination** An **appropriate time** for warning a person as referred to in subsection (2) (b) is any of the following times—

(a) the time when the requirement to give the answer, information or evidence is made,

(b) in the case of evidence required to be given when appearing before an inspector, any time after the start of the appearance before the inspector,

(c) at or about the time immediately before the person gives the answer, information or evidence.

(4) **Documents, records or statements admissible** Any document, record or statement

produced by a person in compliance with a requirement under section 238 or 238AA is not inadmissible in evidence against the person in criminal proceedings on the ground that the document, record or statement might incriminate the person.

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

**238C Inspector may request assistance**

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

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

- (1) The Authority is entitled, for the purpose of exercising its functions—
  - (a) to inspect or copy, or take extracts from, any documents held in the registry of the Commission, and
  - (b) to inspect or copy, or take extracts from, such documents held in the registry of the District Court as relate to its residual jurisdiction under Division 8A of Part 3 of the [District Court Act 1973](#).
- (2) The Registrar of the District Court and the principal registrar of the Commission are required to give all necessary assistance to the Authority to enable it to exercise its powers under this section.
- (3) The Commission may, in respect of any information obtained by the Authority from the Registrar or principal registrar under this section, order that the information is not

to be used in any proceedings, or any specified proceedings, before the Commission.

- (4) The regulations may make provision for or with respect to the keeping of statistics or other information at the registry of the Commission, or (in relation to its residual jurisdiction under Division 8A of Part 3 of the *District Court Act 1973*) at the registry of the District Court, and the supply of the statistics or information to the Authority.
- (5) In this section, a reference to the Authority is taken to include a reference to the Nominal Insurer.

#### **240-242 (Repealed)**

#### **243 Disclosure requirements** (cf 1926 s 66F; 1987 s 276)

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) in accordance with section 72 (Inspection of relevant claims information etc), or
  - (e) in accordance with the requirement imposed under the *Ombudsman Act 1974*, or
  - (f) with other lawful excuse.

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

- (2) The Authority may disclose any information obtained in connection with the administration or execution of this Act to—
  - (a) SafeWork NSW, and
  - (b) the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*, and
  - (c) the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission, and
  - (d) any other person or body prescribed by the regulations for the purposes of this paragraph.
- (3) In this section, **this Act** includes the 1987 Act and the former 1926 Act.
- (4) In this section, a reference to the Authority is taken to include a reference to the Nominal Insurer.

- (5) This section does not apply in relation to protected information within the meaning of section 243AA.

**243AA Secrecy of information obtained from or relating to insurers or proposed insurers**

- (1) A person who acquires protected information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person if the person is aware that it is protected information, except in the exercise of functions under this Act.

Maximum penalty—50 penalty units.

- (2) Despite subsection (1), protected information may be divulged—
- (a) to a particular person or persons, if the Authority certifies that it is necessary in the public interest that the information be divulged to the person or persons, or
  - (b) to a person or body prescribed by the regulations, or
  - (c) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or
  - (d) to the Minister.
- (3) A person cannot be required—
- (a) to produce in any court any document or other thing that contains protected information and that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or
  - (b) to divulge to any court any protected information that has come to the person's notice in the exercise of the person's functions under this Act.
- (4) Despite subsection (3), a person may be required to produce such a document or other thing in a court or to divulge protected information to a court if—
- (a) the Authority certifies that it is necessary in the public interest to do so, or
  - (b) a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.
- (5) An authority or person to whom protected information is divulged under subsection (2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.

- (6) This section does not apply to the divulging of information to, or the production of any document or other thing to—
- (a) any law enforcement agency, or
  - (b) any person or body prescribed by the regulations for the purposes of this subsection.

- (7) In this section—

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**functions under this Act** includes functions under the regulations or other instruments under this Act.

**produce** includes permit access to.

**protected information** means—

- (a) information concerning the business, commercial, professional or financial affairs of an applicant for a licence under Part 7 of the 1987 Act or of a licensed insurer, or
- (b) information obtained in the course of an investigation of an application for such a licence, or
- (c) information that was obtained by the Authority under this Act or the 1987 Act from a licensed insurer and that is the subject of an unrevoked declaration by the licensed insurer to the effect that the information is confidential,

not being information that is publicly available.

#### **243A (Repealed)**

#### **244 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if—
  - (a) a corporation commits a corporate offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is

in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

(c) the person—

- (i) aids, abets, counsels or procures the commission of the corporate offence, or
- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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

- (1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts are to be dealt with summarily—
  - (a) before the Local Court, or
  - (b) before the Industrial Relations Commission in Court Session.
- (2) The maximum monetary penalty that may be imposed in those proceedings by the Local Court is 200 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is the lesser.
- (3) The maximum penalty that may be imposed in those proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.

- (4) The provisions of the *Industrial Relations Act 1996*, section 197, and of the regulations under that Act, relating to appeals from, and the stating of a case by, the Local Court to the Industrial Relations Commission in Court Session apply to proceedings before the Local Court for offences against this Act, the 1987 Act or the regulations under those Acts.
- (5) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts may be instituted by (but not only by) the Authority.

#### **245A Evidence—criminal proceedings under WHS legislation**

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

- (3) In this section—

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

#### **246 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the 1987 Act (or the regulations under those Acts) that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

##### **Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means a person declared by the regulations to be



an authorised officer for the purposes of this section.

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

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

whichever provides the longer time for proceedings to be instituted.

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

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

**248A (Repealed)**

**249 Repeal of [WorkCover Administration Act 1989 No 120](#)**

The [WorkCover Administration Act 1989](#) is repealed.

## **Chapter 7 New claims procedures**

### **Part 1 Preliminary**

## 250 Interpretation

(1) In this Chapter—

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

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

**Note—**

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

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

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

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

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

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

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

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

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

**Note—**

However, **work injury damages** generally extends to damages recoverable from a worker's employer in the case of an injury to a coal miner where the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (see section 3D of the [Motor Accidents Act 1988](#), section 3B of the [Motor Accidents Compensation Act 1999](#) and section 1.10 of the [Motor Accident Injuries Act 2017](#)).

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

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

### **251 Application of Chapter**

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

**Note—**

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

## **Part 2 Giving notice of injury and making a claim**

### **Division 1 Notice of injury**

#### **252 Application of Division**

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

#### **253 Interpretation**

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

#### **254 Notice of injury must be given to employer**

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

occasioned by ignorance, mistake, absence from the State or other reasonable cause,

- (c) the person against whom the proceedings are taken had knowledge of the injury from any source at or about the time when the injury happened,
  - (d) the injury has been reported by the employer to the Nominal Insurer in accordance with this Act,
  - (e) the employer has contravened section 231,
  - (f) the injury has been treated in a first aid room at the place of work,
  - (g) if the employer is the owner of a mine—the injury has been reported by or on behalf of the employer to an inspector of mines or an inspector under the *Work Health and Safety Act 2011*.
- (4) In addition, if the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, office or shop, each of the following constitutes special circumstances—
- (a) the summary referred to in section 231 has not been posted up in accordance with that section or the employer has otherwise contravened that section,
  - (b) the injury has been reported by or on behalf of the employer to an inspector of mines or an inspector under the *Work Health and Safety Act 2011*,
  - (c) the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop.

## **255 How notice of injury is given**

- (1) A notice of injury must state—
  - (a) the name and address of the person injured, and
  - (b) the cause of the injury (in ordinary language), and
  - (c) the date on which the injury happened.
- (2) A notice of injury may be given orally or in writing.
- (3) If there is more than one employer, a notice of injury may be given to any one of those employers.
- (4) A notice of injury is taken to have been given to an employer—
  - (a) if it is given to any person designated for the purpose by the employer, or
  - (b) if it is given to any person under whose supervision the worker is employed.

- (5) A written notice of injury may be served by delivering it to, or by sending it by post to, the residence or any place of business of the person on whom it is to be served.
- (6) If the regulations so require (and despite anything to the contrary in this section), a notice of injury must be given in the manner, and contain the particulars, prescribed by the regulations.

### **256 Register of injuries**

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

Maximum penalty—50 penalty units.

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

- (1) The provisions of this Part apply with respect to—
  - (a) the giving of notice of incapacity resulting from injury that happens after the worker leaves the employment in which the worker was at the time of the injury, and
  - (b) the giving of notice of any medical or related treatment, hospital treatment, workplace rehabilitation service or ambulance service to which Division 3 of Part 3 of the 1987 Act applies, and
  - (c) the giving of notice of any damage to property to which Division 5 of Part 3 of the 1987 Act applies,in the same way as those provisions apply to notice of injury.
- (2) The particulars required to be given in any such notice are (subject to the regulations) reasonable particulars of the incapacity, of the treatment or service or of the damage to property.

## **258 Offence**

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

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

## **Division 2 Making a claim for compensation or damages**

### **259 Application of Division**

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

### **260 How a claim is made**

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

cases in which notice of injury has been given or provisional weekly payments of compensation have commenced),

- (b) providing for the time at which a claim is taken to have been made in any case in which the requirement for the making of a claim has been waived,
- (c) providing for the time when a claim is taken to have been made in a case in which requirements of the Guidelines with respect to the making of the claim have been complied with at different times.

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

## **261 Time within which claim for compensation must be made**

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

resulting in the death or serious and permanent disablement of a worker.

- (5) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if the insurer concerned determines to accept the claim outside that period. An insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.
- (6) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of this section taken to have been received when the worker first became so aware.
- (7) If death results from an injury and a person who is entitled to claim compensation in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of this section to a claim by that person, taken to be the date that the person became so aware.
- (8) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries), a claim is for the purposes of this section taken to have been made when a claim is made on any one of those persons.
- (9) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of this section as the making of a claim for compensation in respect of the injury.

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

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

#### **263 Lump sum compensation claims to be made at same time**

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

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

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



documentation, forward it to the employer's insurer.

Maximum penalty—50 penalty units.

- (2) An employer who receives a request from the employer's insurer for specified information in respect of a claim or notified injury, or documentation in respect of a claim or notified injury, must, within 7 days after receipt of the request, furnish the insurer with such of the specified information or documentation as is in the employer's possession or reasonably obtainable by the employer.

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

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

- (5) In this section—

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

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

## **Part 3 Dealing with claims**

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

#### **265 Application of Division**

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

#### **266 Meaning of initial notification of injury**

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

### **267 Duty to commence weekly payments following initial notification of injury**

- (1) Provisional weekly payments of compensation by an insurer are to commence within 7 days after initial notification to the insurer of an injury to a worker, unless the insurer has a reasonable excuse for not commencing those weekly payments.
- (2) A person does not have a reasonable excuse for not commencing those weekly payments unless the person has an excuse that the Workers Compensation Guidelines provide is a reasonable excuse.
- (3) The payment of provisional weekly payments of compensation under this section is on the basis of the provisional acceptance of liability by the insurer for a period of up to 12 weeks determined by the insurer having regard to the nature of the injury and the period of incapacity.
- (4) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act.
- (5) An insurer who fails to commence weekly payments of compensation as required by this section is guilty of an offence.

Maximum penalty—50 penalty units.

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

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

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

Maximum penalty—50 penalty units.

### **269 Notice to be given of commencement of weekly payments**

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

- (a) weekly payments of compensation to the worker have commenced on the basis of provisional acceptance of liability by the insurer, and

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

### **270 Obligations of worker to provide authorisations and medical evidence**

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

#### **Note—**

This section does not limit the obligations of a worker under section 44B (Evidence as to work capacity) of the 1987 Act.

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

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

#### **Note—**

Section 78 requires notice of a dispute to be given.

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

### **272 Recovery by insurer**

- (1) If an insurer pays any compensation under this Division and another insurer or another employer accepts liability to pay compensation to the worker in respect of the

injury concerned, the insurer is entitled to recover the compensation so paid as a debt from that other insurer or other employer.

- (2) Any amount so recoverable is taken to have been payable by the other insurer or other employer as compensation to the injured worker.

### **273 Provision for recovery of excess for provisional payments**

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

## **Division 2 Claims for weekly payments**

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

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

#### **Note—**

Section 283 makes failure to comply with this section an offence. Section 78 requires notice of a dispute to be given.

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

#### **Note—**

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

- (4) Liability cannot be accepted on a provisional basis under this section if the insurer is already making weekly payments on the basis of the provisional acceptance of liability under Division 1 when the claim for weekly payments is made.
- (5) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act.
- (6) An employer is not required to determine a claim as provided by this section if—

- (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
- (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

**Note—**

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

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

- (1) If the claim for weekly payments is the first notification that an insurer has received of the injury to the worker, section 267 (Duty to commence weekly payments following initial notification of injury) applies to require the commencement of provisional weekly payments of compensation within 7 days after the claim is made.
- (2) The provisional acceptance of liability pursuant to the commencement of provisional weekly payments of compensation under that section operates to extend the period within which the claim must be determined for the purposes of this Division until the end of the period for which liability has been provisionally accepted.

**Note—**

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

**276 Continuation of provisional payments started before claim made**

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

**277 Provision for recovery of excess for provisional payments**

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

### **278 Early acceptance of liability not prevented**

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

## **Division 3 Claims for medical expenses**

### **279 Liability to be accepted within 21 days**

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

**Note—**

Section 283 makes failure to comply with this section an offence. Section 78 requires notice of a dispute to be given.

- (2) An employer is not required to determine a claim as provided by this section if—
  - (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
  - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

**Note—**

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

### **280 Provisional acceptance of liability**

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

## **Division 4 Claims for lump sum compensation and work injury damages**

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

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

### **280B Lump sum compensation to be paid before damages recovered**

- (1) An injured worker cannot recover damages in respect of an injury from the employer

liable to pay compensation under this Act in respect of the injury unless and until any permanent impairment compensation to which the worker is entitled in respect of the injury has been paid.

- (2) This section does not prevent a claim for damages from being made before any permanent impairment compensation to which the worker is entitled in respect of the injury has been paid.

**Note—**

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

**281 Liability to be accepted and settlement offer made**

- (1) The person on whom a claim for lump sum compensation or work injury damages is made must, within the time required by this section, determine the claim by—
- (a) accepting liability and making a reasonable offer of settlement to the claimant, or
  - (b) disputing liability under Division 3 of Part 2 of Chapter 4.
- (2) A claim must be so determined—
- (a) within 1 month after the degree of permanent impairment first becomes fully ascertainable, as agreed by the parties or as determined by a medical assessor, or
  - (b) within 2 months after the claimant has provided to the insurer all relevant particulars about the claim,

whichever is the later.

**Note—**

Section 283 makes failure to comply with this section an offence. Section 78 requires notice of a dispute to be given. If an offer of settlement is not made as required by this section, the claim can be referred for assessment as soon as the time for making the offer has expired.

- (2A) The determination of a claim cannot be delayed beyond 2 months after the claimant has provided to the insurer all relevant particulars about the claim (that delay being on the basis that the degree of permanent impairment of the injured worker resulting from the injury is not fully ascertainable), unless the insurer has within that 2-month period notified the claimant that the degree of permanent impairment of the injured worker resulting from the injury is not fully ascertainable.
- (2B) When the person on whom a claim is made accepts or disputes liability, the person must notify the claimant as to whether or not the person accepts that the degree of permanent impairment of the injured worker resulting from the injury is sufficient for an award of damages.

- (3) An offer of settlement is to specify an amount of compensation or damages or a manner of determining an amount of compensation or damages.
- (4) If an offer of settlement is made on the basis that the insurer accepts only partial liability for the claim, the offer is to include details sufficient to ascertain the extent to which liability is accepted.
- (5) An employer is not required to determine a claim as provided by this section if—
  - (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
  - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

**Note—**

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

- (6) This section does not apply to a claim for work injury damages in respect of the death of a person, except as the Workers Compensation Guidelines may otherwise provide.

**282 Relevant particulars about a claim**

- (1) The **relevant particulars about a claim** are full details of the following, sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement on the claim—
  - (a) the injury received by the claimant,
  - (b) all impairments arising from the injury,
  - (c) any previous injury, or any pre-existing condition or abnormality, to which any proportion of an impairment is or may be due (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act),
  - (d) in the case of a claim for work injury damages, details of the economic losses that are being claimed as damages and details of the alleged negligence or other tort of the employer,
  - (e) information relevant to a determination as to whether or not the degree of permanent impairment resulting from the injury will change,
  - (f) in addition, in the case of a claim for lump sum compensation, details of all previous employment to the nature of which the injury is or may be due,
  - (g) such other matters as the Workers Compensation Guidelines may require.
- (2) If the employer requires the claimant to submit himself or herself for examination by a



medical practitioner provided and paid for by the employer, the claimant is not considered to have provided all relevant particulars about the claim until the worker has complied with that requirement.

- (3) The insurer is not entitled to delay the determination of a claim under this Division on the ground that any particulars about the claim are insufficient unless the insurer requested further relevant particulars within 2 weeks after the claimant provided particulars.
- (4) In this section, ***injury*** is not limited by the meaning given by section 4.

## **Division 5 Enforcement of claims obligations**

### **283 Offence of failing to determine a claim for compensation**

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

Maximum penalty—50 penalty units.

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

### **284 Insurer liable to pay fee if claim goes to assessment**

- (1) If it appears to the President that an insurer has—
  - (a) failed without reasonable excuse to determine a claim as and when required by this Part, or
  - (b) referred a matter that the insurer knows is not a genuine dispute for the purpose of delaying, without good cause, the determination of a claim,and the claim concerned is referred to the Commission for determination of a dispute or for assessment, the President is to direct the insurer to pay the administration fee provided for by this section.
- (2) The administration fee is a fee of \$250 or such other amount as may be prescribed by the regulations and is payable to the Authority for payment into the Workers Compensation Operational Fund.
- (3) (Repealed)
- (4) An administration fee payable under this section is recoverable as a debt due to the Authority.

(5) A person does not have a reasonable excuse for a failure to determine a claim as and when required by this Part unless the person has an excuse that the Workers Compensation Guidelines provide is a reasonable excuse.

(6) The President is to notify the Authority of a direction under this section.

### **285 Offence of referring non-genuine disputes**

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

Maximum penalty—50 penalty units.

### **286 Partial acceptance of liability**

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

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

## **Part 4 Compensation dispute determination**

### **Division 1 Preliminary**

#### **287 Disputes to which Part applies**

(1) This Part applies to a dispute in connection with a claim for compensation between—

(a) the person who makes the claim and a person on whom the claim is made, or

(b) the employer on whom the claim is made and the insurer on whom the claim is made.

(2) This Part extends to a dispute that concerns failure to commence provisional weekly payments of compensation as required by Division 1 of Part 3 (even though no claim has been made for that compensation) and so extends as if—

(a) a reference in this Part to weekly payments included a reference to provisional weekly payments, and

(b) initial notification of injury (as defined in Part 3) constituted a claim for the compensation.

### **Division 2 Reviews by insurer**

### **287A Request for review**

- (1) A worker may request an insurer to review—
  - (a) a work capacity decision of the insurer that is disputed by the worker, or
  - (b) a claim, or any aspect of a claim, that is disputed by the insurer.
- (2) A request may be made at any time before the dispute is referred for determination by the Commission.
- (3) The insurer must conduct the review, and notify the worker of the decision on the review, within 14 days after the request is made.

Maximum penalty—50 penalty units.

### **287B Regulations relating to decisions and reviews by insurers**

The regulations may make provision for or with respect to—

- (a) the notification of decisions of insurers, and
- (b) the procedure for conducting internal reviews, and
- (c) requiring insurers to conduct reviews of decisions in respect of which disputes are referred for determination by the Commission under this Part.

#### **Note—**

See section 78 for further requirements relating to the giving of notice of disputes.

## **Division 3 Determination of disputes by Commission**

### **288 Referral of disputes to Commission**

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

#### **Note—**

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

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

### **289 Restrictions as to when dispute can be referred to Commission**

- (1) A dispute about a claim for weekly payments (other than a dispute based on a work capacity decision) cannot be referred for determination by the Commission unless the

person on whom the claim is made—

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

**Note—**

The determination of a claim requires the commencement of weekly payments of compensation. The failure to commence weekly payments pursuant to a work capacity decision (without having disputed liability) constitutes a failure to determine the claim.

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

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

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

**Note—**

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

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

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

**Note—**

The determination of a claim requires the making of a reasonable offer of settlement (if liability is wholly or partly accepted). Failure to make a reasonable offer of settlement constitutes a failure to determine the claim.

(4) A dispute about a claim for compensation under Division 5 (Compensation for property damage) of Part 3 of the 1987 Act cannot be referred for determination by the Commission until—

- (a) 28 days after the claim for compensation is made, or
- (b) the person on whom the claim is made disputes liability for the claim (wholly or in part),

whichever happens first.

- (5) The Commission may not hear or otherwise deal with any dispute if this section provides that the dispute cannot be referred for determination by the Commission.

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

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

#### **289B Stay of disputed work capacity decision**

- (1) The referral of a dispute for determination by the Commission in relation to a work capacity decision to discontinue, or reduce the amount of, weekly payments of compensation operates to stay the decision and prevents the taking of action by an insurer based on the decision while the decision is stayed.
- (2) However, the decision is stayed only if the dispute is referred for determination by the Commission before the expiry of the required period of notice under section 80.
- (3) A stay operates from the time the President accepts the dispute for referral until the proceedings are determined, dismissed or discontinued.
- (4) The Commission may, if it considers that a party to the dispute is unreasonably delaying the proceedings on the dispute, order that the stay ceases to have effect.

#### **290 Information exchange between parties**

- (1) When a dispute is referred for determination by the Commission, each party to the dispute must provide to the other party and to the President, as and when required to do so by the Commission rules, such information and documents as the Commission

rules require.

- (2) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.

Maximum penalty—50 penalty units.

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

## **291 (Repealed)**

## **292 Expedited assessment**

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

## **293 Medical assessment**

- (1) When a dispute referred for determination by the Commission concerns a medical dispute within the meaning of Part 7, the President may (subject to the regulations under section 321A (Referral of medical dispute concerning permanent impairment))

refer the medical dispute for medical assessment under Part 7, and defer determination of the dispute by the Commission pending the outcome of that medical assessment.

(2) (Repealed)

(3) The President may not refer for assessment—

(a) (Repealed)

(b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

#### **294 Certificate of Commission's determination**

(1) If a dispute is determined by the Commission, the Commission must as soon as practicable after the determination of the dispute issue the parties to the dispute with a certificate as to the determination.

(2) A brief statement is to be attached to the certificate setting out the Commission's reasons for the determination.

(3) (Repealed)

#### **294A Commission rules and regulations concerning medical evidence**

(1) The Commission rules and the regulations may make provision for or with respect to—

(a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given in evidence before the Commission (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence), and

(b) the disclosure of medical reports (including X-rays and the results of other tests) to medical assessors (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report), and

(c) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular, limiting the number of medical reports that may be admitted in evidence in proceedings before the Commission, and

(d) limiting the number of expert witnesses that may be called by any party and otherwise restricting the calling of expert witnesses by a party.

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

## **Part 5 Expedited assessment**

### **Division 1 Preliminary**

#### **295 Disputes to which Part applies**

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

#### **296 Exercise of functions of President**

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

### **Division 2 Disputes concerning weekly payments or medical expenses**

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

- (1) When a dispute to which this Part applies concerns weekly payments of compensation or medical expenses compensation, the President can direct the person on whom the claim is made to pay the compensation concerned. Such a direction is referred to in this Part as an ***interim payment direction***.
- (1A) Section 298 does not apply to a dispute concerning a decision by the insurer to discontinue or reduce weekly payments of compensation on the basis of a work capacity decision under Division 2 of Part 3 of the 1987 Act.
- (2) An interim payment direction for payment of medical expenses compensation cannot be for an amount of more than \$7,500 or such other amount as may be prescribed by the regulations.



**Note—**

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

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

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

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

**Note—**

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

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

### **299 Revocation of interim payment direction**

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

### **300 Offence of failure to comply with interim payment direction**

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

Maximum penalty—50 penalty units.

### **301 Effect of payment under interim payment direction**

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

### **302 Commission rules relating to interim payment directions**

The giving of interim payment directions by the President is subject to relevant provisions of the Commission rules relating to those directions.

### **303 Commission can give interim payment direction**

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

### **304 Recovery of payments**

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

- (a) the worker or other person who received those payments is not required to refund those payments unless the Commission otherwise orders under paragraph (b),
- (b) if the Commission is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, the Commission may order the worker

or other person concerned to refund the whole or a specified part of those payments,

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

## **Division 2A Disputes concerning past weekly payments**

### **304A Disputes to which Division applies**

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

### **304B President may deal with dispute**

- (1) The President may determine the dispute instead of the Commission.
- (2) For the purposes of determining the dispute, the President has all the functions of the Commission under the Workers Compensation Acts and any determination of the President is taken to be the determination of the Commission.

#### **Note—**

The President has power under section 18 of the [Personal Injury Commission Act 2020](#) to delegate the President's function under this Act to certain members and registrars of the Commission.

- (3) This Division does not affect any jurisdiction of the Commission to determine a dispute involving weekly payments of compensation.

## **Division 3 Disputes about non-compliance with Chapter 3**

### **305 Disputes to which Division applies**

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

### **306 Ways in which dispute can be dealt with**

The President may deal with the dispute—

- (a) by conciliating in connection with the dispute (to bring the parties to agreement

having proper regard to relevant entitlements and obligations under the Workers Compensation Acts), or

- (b) by directing that an injury management consultant or other suitably qualified person (paid for by the employer) conduct a workplace assessment in connection with the dispute, or
- (c) by referring the dispute to the Authority, or
- (d) by making a recommendation as provided for by this Division.

**Note—**

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

**307 President can recommend certain action**

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

**308 Compliance with recommendations of President**

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

Maximum penalty—50 penalty units.

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

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

### **309 Employers—representation and admissions**

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

### **310 Referral of dispute to Commission**

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

## **Part 6 Court proceedings for work injury damages**

### **Division 1 Preliminary**

#### **311 Interpretation**

In this Part—

***claimant*** means a claimant for work injury damages.

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

#### **312 Forum for court proceedings**

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

### **Division 2 Threshold for award of damages**

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

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

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

### **314 What constitutes threshold dispute**

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

#### **Note—**

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

- (2) There is considered to be no dispute as to whether the degree of permanent impairment of the injured worker resulting from an injury is sufficient for an award of damages if—
  - (a) the person on whom the claim is made has accepted that the degree of permanent impairment of the injured worker is at least 15%, or
  - (b) a medical assessor has given a medical assessment certificate certifying that the degree of permanent impairment of the injured worker is at least 15%.
- (3) For the purposes of this Part, acceptance by the person on whom a claim for work injury damages is made of the degree of permanent impairment of the injured worker for the purposes of a claim against the person by the injured worker for permanent impairment compensation also constitutes acceptance of the degree of permanent impairment for the purposes of the claim for work injury damages.

## **Division 3 Pre-filing statements**

### **315 Requirement for pre-filing statement before commencing court proceedings**

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

#### **Note—**

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

- (2) The pre-filing statement cannot be served unless—
- (a) the person on whom the claim is made wholly disputes liability for the claim, or
  - (b) the person on whom the claim is made has made an offer of settlement to the claimant pursuant to the determination of the claim as and when required by section 281 and 1 month has elapsed since the offer was made, or
  - (c) the person on whom the claim is made has failed to determine the claim as and when required by section 281.

**Note—**

The determination of a claim in accordance with section 281 requires the making of a reasonable offer of settlement (if liability is wholly or partly accepted). Failure to make a reasonable offer of settlement constitutes a failure to determine the claim. Section 78 requires notice of a dispute as to liability to be given.

**316 Defendant must respond to pre-filing statement**

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

**Note—**

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

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

**Note—**

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

**317 Defective pre-filing statement**

- (1) The defendant is not entitled to assert that a pre-filing statement served by the claimant is defective (by reason of incompleteness or otherwise) unless the defendant

has notified the claimant, giving details of any alleged defects, within 7 days after the pre-filing statement is served by the claimant.

- (2) A dispute as to whether a pre-filing statement served by the claimant is defective may be referred to the President for determination.
- (3) The President may give a direction to the claimant as to the action necessary to cure any defect in the pre-filing statement served by the claimant. If the claimant fails to comply with the President's direction within the time allowed for compliance, the pre-filing statement served by the claimant is taken not to have been served.

**Note—**

The effect of such a failure is that the claimant must serve the pre-filing statement again.

- (4) If the documents and information that comprise the pre-filing statement are furnished to the defendant at different times, the pre-filing statement is not considered to have been served on the defendant until the last of the required documents and information is served.

**318 Parties limited to pre-filing statement and defence**

- (1) For the purposes of court proceedings on a claim for work injury damages—
  - (a) the claimant is not entitled to file a statement of claim that is materially different from the proposed statement of claim that formed part of the pre-filing statement served by the claimant, except with leave of the court, and
  - (b) the defendant is not entitled to file a defence that is materially different from any defence served on the claimant in response to the claimant's pre-filing statement within 42 days after service of the pre-filing statement, except with leave of the court, and
  - (c) the defendant is not entitled to file a defence that wholly or partly disputes liability for the claim if the defendant has failed to serve on the claimant a defence to the claim as required by this Division within 42 days after the claimant served the pre-filing statement on the defendant, and
  - (d) a party to the proceedings is not entitled to have any report or other evidence admitted in the proceedings on the party's behalf if the report or other evidence was not disclosed by the party in a pre-filing statement or defence served under this Division, except with leave of the court.
- (2) The court is not to grant leave under this section unless satisfied that—
  - (a) the material concerned was not reasonably available to the party when the pre-filing statement or defence was served, and
  - (b) the failure to grant leave would substantially prejudice the party's case.



- (3) The regulations may provide for exceptions to this section.

## **Division 4 Mediation**

### **318A Mediation of claim before commencement of court proceedings**

- (1) A claimant must refer a claim for work injury damages for mediation under this Division before the claimant can commence court proceedings for recovery of those work injury damages. The claim cannot be referred for mediation until at least 28 days after the pre-filing statement has been served on the defendant under Division 3.
- (2) The claimant need not refer a claim for work injury damages for mediation if the defendant has failed to respond to the claimant's pre-filing statement as required under Division 3 within 42 days after it is served on the defendant.

**Note—**

A defence can still be filed in the 28–42 day period. A defence can be filed after 42 days but such a defence cannot dispute liability. A defence filed after 42 days can deal with such matters as quantum of damages or contributory negligence.

- (3) The defendant may decline to participate in mediation of the claim if the defendant wholly disputes liability in respect of the claim, but in any other case the defendant cannot decline to participate in mediation.
- (4) Court proceedings for recovery of work injury damages cannot be commenced while the claim is the subject of mediation in the Commission.
- (5) A claim is referred for mediation by being referred to the President for mediation by a mediator. The President is to give directions as to which mediator is to mediate on a particular claim referred for mediation.
- (6) The Commission rules may make provision for or with respect to mediation under this Division.

### **318B Mediator to bring parties to agreement**

- (1) The mediator must use the mediator's best endeavours to bring the parties to agreement on the claim.
- (2) Failing agreement, the mediator is to issue a certificate certifying as to the final offers of settlement made by the parties in the mediation.

### **318C Legal and other assistance at mediation**

At the mediation of a claim, an injured worker is entitled to be accompanied by a person (whether or not a legal adviser or agent) to act as the injured worker's advocate and assist him or her to present his or her case to the mediator.

### **318D Powers of mediators**

- (1) For the purposes of and in connection with the mediation of a claim, a mediator has all the functions of the Commission under sections 49–51 of the *Personal Injury Commission Act 2020* and those sections apply in respect of the mediation of a claim in the same way as they apply in respect of proceedings on a dispute before the Commission.
- (2) A mediator may award costs in connection with the mediation of a claim.

### **318E Offers made at mediation not to be disclosed to court**

The amount of any offer of settlement made by a party in the course of mediation of a claim is not to be specified in any pleading, affidavit or other document filed in or in connection with court proceedings on the claim, and is not to be disclosed to or taken into account by the court, before the court's determination of the amount of damages in the proceedings.

### **318F, 318G (Repealed)**

### **318H Mediation fees**

- (1) The regulations may make provision for or with respect to the fees to be paid in connection with mediation under this Division.
- (2) In particular, the regulations may specify any such fee or the method by which the fee is to be calculated, and may specify by whom and in what circumstances the fee is payable.
- (3) Fees payable under the regulations under this section are payable into the Workers Compensation Operational Fund.

## **Division 5 General**

### **318I Orders for access to information and premises**

- (1) If there is no dispute that the degree of permanent impairment of an injured worker is sufficient for an award of damages, the President may on the application of the claimant give either or both of the following written directions to the defendant—
  - (a) a direction directing the defendant to produce to the claimant within a specified period specified reports and other documents in the defendant's possession,
  - (b) a direction directing the defendant to provide or allow the claimant access to specified premises within a specified period for a purpose relevant to the claimant's claim.
- (2) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty—50 penalty units.

**Note—**

The Commission also has power under section 49 of the *Personal Injury Commission Act 2020* to require the production of documents and the furnishing of information by the parties.

## **Part 7 Medical assessment**

### **319 Definitions**

In this Act—

**medical dispute** means a dispute between a claimant and the person on whom a claim is made about any of the following matters or a question about any of the following matters in connection with a claim—

- (a) the worker's condition (including the worker's prognosis, the aetiology of the condition, and the treatment proposed or provided),
- (b) the worker's fitness for employment,
- (c) the degree of permanent impairment of the worker as a result of an injury,
- (d) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality, and the extent of that proportion,
- (e) the nature and extent of loss of hearing suffered by a worker,
- (f) whether impairment is permanent,
- (g) whether the degree of permanent impairment of the injured worker is fully ascertainable.

### **320 (Repealed)**

### **321 Referral of medical dispute for assessment**

- (1) A medical dispute (other than a dispute concerning permanent impairment of an injured worker) may be referred for assessment under this Part by a court, the Commission or the President, either of their own motion or at the request of a party to the dispute. The President is to give the parties notice of the referral.
- (2) The parties to the dispute may agree on the medical assessor who is to assess the dispute but if the parties have not agreed within 7 days after the dispute is referred, the President is to choose the medical assessor who is to assess the dispute.
- (3) The President may arrange for a medical assessor to assess the dispute outside the State—
  - (a) if requested by a party to the dispute, or

(b) with the consent of the parties to the dispute.

(4) In deciding whether to make an arrangement under subsection (3), the President must consider the following—

(a) the interests and wishes of the parties to the dispute,

(b) the nature and complexity of the dispute,

(c) if the arrangement is necessary for the timely and cost effective assessment of the dispute,

(d) other matters the President considers relevant.

### **321A Referral of medical dispute concerning permanent impairment**

(1) The regulations may make provision for or with respect to—

(a) the circumstances in which a medical dispute concerning permanent impairment of an injured worker is authorised, required or not permitted to be referred for assessment under this Part, and

(b) the giving of notice of a referral to the parties to the dispute.

(2) Without limiting subsection (1), the regulations may provide that a medical dispute may not be referred for assessment under this Part if the dispute concerns permanent impairment of an injured worker where liability is in issue and has not been determined by the Commission.

(3) A medical dispute concerning permanent impairment of an injured worker that is authorised or required by the regulations to be referred for assessment under this Part may be referred by a court, the Commission or the President, either of their own motion or at the request of a party to the dispute.

### **322 Assessment of impairment**

(1) The assessment of the degree of permanent impairment of an injured worker for the purposes of the Workers Compensation Acts is to be made in accordance with Workers Compensation Guidelines (as in force at the time the assessment is made) issued for that purpose.

(2) Impairments that result from the same injury are to be assessed together to assess the degree of permanent impairment of the injured worker.

(3) Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured worker.

**Note—**

Section 65A of the 1987 Act provides for impairment arising from psychological/psychiatric injuries to be assessed separately from impairment arising from physical injury.

- (4) A medical assessor may decline to make an assessment of the degree of permanent impairment of an injured worker until the medical assessor is satisfied that the impairment is permanent and that the degree of permanent impairment is fully ascertainable. Proceedings before a court or the Commission may be adjourned until the assessment is made.

### **322A One assessment only of degree of permanent impairment**

- (1) Only one assessment may be made of the degree of permanent impairment of an injured worker.
  - (1A) A reference in subsection (1) to an assessment includes an assessment of the degree of permanent impairment made by the Commission in the course of the determination of a dispute about the degree of the impairment that is not the subject of a referral under this Part.
- (2) The medical assessment certificate that is given in connection with that assessment is the only medical assessment certificate that can be used in connection with any further or subsequent medical dispute about the degree of permanent impairment of the worker as a result of the injury concerned (whether the subsequent or further dispute is in connection with a claim for permanent impairment compensation, the commutation of a liability for compensation or a claim for work injury damages).
- (3) Accordingly, a medical dispute about the degree of permanent impairment of a worker as a result of an injury cannot be referred for, or be the subject of, assessment if a medical dispute about that matter has already been the subject of—
  - (a) assessment and a medical assessment certificate under this Part, or
  - (b) a determination by the Commission under Part 4.
- (4) This section does not affect the operation of section 327 (Appeal against medical assessment) or 352 (Appeal against decision of Commission constituted by non-presidential member).

### **323 Deduction for previous injury or pre-existing condition or abnormality**

- (1) In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the impairment that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act) or that is due to any pre-existing condition or abnormality.
- (2) If the extent of a deduction under this section (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be

assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence.

**Note—**

So if the degree of permanent impairment is assessed as 30% and subsection (2) operates to require a 10% reduction in that impairment to be assumed, the degree of permanent impairment is reduced from 30% to 27% (a reduction of 10%).

- (3) The reference in subsection (2) to medical evidence is a reference to medical evidence accepted or preferred by the medical assessor in connection with the medical assessment of the matter.
- (4) The Workers Compensation Guidelines may make provision for or with respect to the determination of the deduction required by this section.
- (5) (Repealed)

**Note—**

Section 68B of the 1987 Act makes provision for how this section applies for the purpose of calculating workers compensation lump sum benefits for permanent impairment and associated pain and suffering in cases to which section 15, 16, 17 or 22 of the 1987 Act applies.

### **324 Powers of medical assessor on assessment**

- (1) The medical assessor assessing a medical dispute may—
  - (a) consult with any medical practitioner or other health care professional who is treating or has treated the worker, and
  - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the medical assessor considers necessary or desirable for the purposes of assessing a medical dispute referred to him or her, and
  - (c) require the worker to submit himself or herself for examination by the medical assessor.
- (2) If a worker refuses to submit himself or herself for examination by the medical assessor if required to do so, or in any way obstructs the examination—
  - (a) the worker's right to recover compensation with respect to the injury, or
  - (b) the worker's right to weekly payments,is suspended until the examination has taken place.
- (3) This section extends to the assessment of a medical dispute in the course of an appeal or further assessment under this Part.

- (4) A medical assessor hearing the appeal or who is assessing the matter by way of further assessment has all the powers of a medical assessor under this section on an assessment of a medical dispute.

### **325 Medical assessment certificate**

- (1) The medical assessor to whom a medical dispute is referred is to give a certificate (a **medical assessment certificate**) as to the matters referred for assessment.
- (2) A medical assessment certificate is to be in a form approved by the President and is to—
  - (a) set out details of the matters referred for assessment, and
  - (b) certify as to the medical assessor's assessment with respect to those matters, and
  - (c) set out the medical assessor's reasons for that assessment, and
  - (d) set out the facts on which that assessment is based.
- (3) If the President is satisfied that a medical assessment certificate contains an obvious error, the President may issue, or approve of the medical assessor issuing, a replacement medical assessment certificate to correct the error.
- (4) A medical assessor is competent to give evidence as to matters in a certificate given by the assessor under this section, but may not be compelled to give evidence.

### **326 Status of medical assessments**

- (1) An assessment certified in a medical assessment certificate pursuant to a medical assessment under this Part is conclusively presumed to be correct as to the following matters in any proceedings before a court or the Commission with which the certificate is concerned—
  - (a) the degree of permanent impairment of the worker as a result of an injury,
  - (b) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality,
  - (c) the nature and extent of loss of hearing suffered by a worker,
  - (d) whether impairment is permanent,
  - (e) whether the degree of permanent impairment is fully ascertainable.
- (2) As to any other matter, the assessment certified is evidence (but not conclusive evidence) in any such proceedings.

### **327 Appeal against medical assessment**

- (1) A party to a medical dispute may appeal against a medical assessment under this Part, but only in respect of a matter that is appealable under this section and only on the grounds for appeal under this section.
- (2) A matter is appealable under this section if it is a matter as to which the assessment of a medical assessor certified in a medical assessment certificate under this Part is conclusively presumed to be correct in proceedings before a court or the Commission.
- (3) The grounds for appeal under this section are any of the following grounds—
  - (a) deterioration of the worker's condition that results in an increase in the degree of permanent impairment,
  - (b) availability of additional relevant information (but only if the additional information was not available to, and could not reasonably have been obtained by, the appellant before the medical assessment appealed against),
  - (c) the assessment was made on the basis of incorrect criteria,
  - (d) the medical assessment certificate contains a demonstrable error.
- (4) An appeal is to be made by application to the President. The appeal is not to proceed unless the President is satisfied that, on the face of the application and any submissions made to the President, at least one of the grounds for appeal specified in subsection (3) has been made out.
- (5) If the appeal is on a ground referred to in subsection (3) (c) or (d), the appeal must be made within 28 days after the medical assessment appealed against, unless the President is satisfied that special circumstances justify an increase in the period for an appeal.
- (6) The President may refer a medical assessment for further assessment under section 329 as an alternative to an appeal against the assessment (but only if the matter could otherwise have proceeded on appeal under this section).

**Note—**

Section 329 also allows the President to refer a medical assessment back to the medical assessor for reconsideration (whether or not the medical assessment could be appealed under this section).

- (7) There is to be no appeal against a medical assessment once the dispute concerned has been the subject of determination by a court or the Commission or agreement registered under section 66A of the 1987 Act.
- (8) Clause 2 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) applies to and in respect of the provision of legal services in connection with an appeal under this section in the same way as it applies to and in respect of the



provision of legal services in connection with a claim or defence of a claim for damages referred to in that clause.

**Note—**

Clause 2 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

**328 Procedure on appeal**

- (1) An appeal against a medical assessment is to be heard by an Appeal Panel constituted by 3 persons chosen by the President as follows—
  - (a) 2 medical assessors,
  - (b) 1 member of the Commission who is a member assigned to the Workers Compensation Division of the Commission.
- (2) The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.
- (2A) To avoid doubt, any medical re-examination of the worker for the purposes of the review need not be conducted by all of the members of the Appeal Panel if the members agree for it to be conducted by only some of the members.
- (3) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal by a party to the appeal unless the evidence was not available to the party before that medical assessment and could not reasonably have been obtained by the party before that medical assessment.
- (4) When attending an Appeal Panel for the purposes of an assessment, an injured worker is entitled to be accompanied by a person (whether or not a legal adviser or agent) to act as the injured worker's advocate and assist him or her to present his or her case to the Appeal Panel.
- (5) The Appeal Panel may confirm the certificate of assessment given in connection with the medical assessment appealed against, or may revoke that certificate and issue a new certificate as to the matters concerned. Section 326 applies to any such new certificate.
- (6) The decision of a majority of the members of an Appeal Panel is the decision of the Appeal Panel.

**329 Referral of matter for further medical assessment or reconsideration**

- (1) A matter referred for assessment under this Part may be referred again on one or more further occasions for assessment in accordance with this Part, but only by—

(a) the President as an alternative to an appeal against the assessment as provided by section 327, or

(b) a court or the Commission.

(1A) A matter referred for assessment under this Part may be referred again on one or more further occasions by the President to the medical assessor for reconsideration.

(2) A certificate as to a matter referred again for further assessment or reconsideration prevails over any previous certificate as to the matter to the extent of any inconsistency.

### **330 Costs of medical assessment**

(1) The costs of medical assessments under this Part (including the remuneration of medical assessors) are payable by the employer or insurer, except as otherwise provided by the regulations. The Authority may, for the purposes of meeting those costs, impose fees for the carrying out of medical assessments or make other arrangements for meeting those costs.

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

(a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and

(b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.

(3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.

(4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of section 64 of the 1987 Act.

(5) A reference in this section to a medical assessment includes a reference to a further medical assessment and an appeal against a medical assessment.

### **331 Commission rules**

Medical assessments, appeals and further assessments under this Part are subject to relevant provisions of the Commission rules relating to the procedures for the referral of

matters for assessment or appeal, the procedure on appeals and the procedure for assessments.

## Part 8 Costs

### Division 1 Preliminary

#### 332 Definitions

(1) In this Part—

**agent** means a person who acts as agent for a person in connection with a claim.

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

**costs** includes—

- (a) costs actually incurred or to be incurred by a person claiming compensation or work injury damages, and
- (b) if liability for a claim is admitted without recourse to the Commission or court—the reasonable expenses incurred by a person in pursuing the person's claim, and
- (c) costs incurred in relation to any proceedings in respect of a claim, and
- (d) costs incidental to an application for referral of a medical dispute for medical assessment, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act or an agreement to commute liability to a lump sum, and
- (f) such other costs as may be prescribed by the regulations.

**court** includes a court arbitrator or arbitrators.

**medical report** includes medical certificate and medical opinion.

(2) Expressions used in this Division have the same meanings as they have in the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)), except as provided by this section.

#### 333 Costs to which Part applies

This Part applies to and in respect of costs payable on a party and party basis, on a practitioner and client basis or on any other basis, unless this Part or the regulations otherwise provides.

### **334 Part prevails over legal costs legislation**

This Part, and the regulations under this Part, prevail to the extent of any inconsistency between them and the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)).

### **335 Assessment of costs**

An assessment of costs is to be made so as to give effect to the provisions of this Part (whether or not the assessment is made under the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#))).

### **336 Exclusion of matters from this Part**

The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Part.

## **Division 2 Fixing of maximum costs and fees**

### **337 Maximum lawyer and agent costs**

- (1) The regulations may make provision for or with respect to the following—
  - (a) fixing maximum costs for legal services or agent services provided to a claimant, an employer or an insurer in or in connection with any workers compensation matter or work injury damages matter,
  - (b) fixing maximum costs for matters that are not legal services or agent services but are related to a claim for compensation or work injury damages (for example, expenses for witnesses or medical reports).
- (2) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the [Legal Profession Uniform Law Application Act 2014](#).
- (3) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (4) An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (5) This section does not entitle a legal practitioner to recover costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.
- (6) The power under this section to make regulations fixing maximum costs for services or matters includes power to make regulations to provide that no amount is recoverable for a particular service or matter or class of services or matters, with the

result that a legal practitioner or agent is not entitled to be paid or recover any amount for the service or matter concerned.

### **338 Costs of obtaining medical and other reports**

To the extent that the regulations so provide, a legal practitioner or agent is not entitled to be paid or recover the cost of obtaining a medical report or other report obtained for use in connection with a workers compensation matter or work injury damages assessment.

### **339 Maximum fees payable to health service providers**

- (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by health service providers of the following services—
  - (a) provision of any report for use in connection with a claim for compensation or work injury damages,
  - (b) appearance as a witness in proceedings before the Commission or a court in connection with a claim for compensation or work injury damages.
- (2) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the [Legal Profession Uniform Law Application Act 2014](#).
- (3) A health service provider is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.
- (4) In this section—

**health service provider** means a person who provides a health service as defined in the [Health Care Complaints Act 1993](#).

#### **Editorial note—**

For orders published under this section see Gazettes No 178 of 7.11.2003, p 10480; No 34 of 18.3.2005, p 849; No 51 of 6.5.2005, p 1640; No 166 of 23.12.2005, pp 11904, 11906; No 192 of 29.12.2006, p 12014; No 83 of 29.6.2007, p 4364; No 175 of 30.11.2007, pp 8762, 8766; No 158 of 12.12.2008, pp 12257, 12263, 12291; No 207 of 18.12.2009, pp 6398, 6400, 6402; No 135 of 17.12.2010, pp 6002, 6031, 6051; No 127 of 16.12.2011, pp 7195, 7220, 7253 (and see erratum in Gazette No 130 of 20.12.2011, p 7269); No 12 of 3.2.2012, pp 315, 327, 332; No 177 of 20.12.2013, pp 5939, 5945, 5973; No 119 of 12.12.2014, pp 4493, 4498, 4546; No 111 of 11.12.2015, pp 4000, 4002, 4004; No 35 of 13.5.2016, p 1048; No 111 of 9.12.2016, pp 3408, 3472, 3475; No 126 of 24.11.2017, pp 7161, 7172, 7203; No 138 of 14.12.2018, n2018-4200, n2018-4201, n2018-4204; No 5 of 25.1.2019, n2019-115; No 180 of 20.12.2019, n2019-4067, n2019-4068, n2019-4073; No 52 of 20.3.2020, p 1032, n2020-800; No 83 of 17.4.2020, pp 1420, 1489, 1504, n2020-1055, n2020-1060, n2020-1061 and No 78 of 26.2.2021, n2021-0403, n2021-0407, n2021-0409. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

## **Division 3 Special provisions for costs in compensation and damages**

## **assessment matters**

### **340 Application of Division**

This Division applies to costs payable by a party, or by a party's insurer, in or in relation to a claim for compensation.

### **341 Costs**

- (1) Each party is to bear the party's own costs in or in relation to a claim for compensation.
- (2) The Commission has no power to order the payment of costs to which this Division applies, or to determine by whom, to whom or to what extent costs to which this Division applies are to be paid.

### **342, 343 (Repealed)**

### **344 Liability of legal practitioner for client's costs in certain cases**

- (1) The Commission may, at any stage of a matter, make one or more of the following orders in respect of a legal practitioner whose serious neglect, serious incompetence or serious misconduct delays, or contributes to delaying, the matter—
  - (a) an order disallowing the whole or any part of the costs between the legal practitioner and his or her client,
  - (b) an order directing the legal practitioner to repay to his or her client the whole or any part of the costs that the client has been ordered to pay to any other party,
  - (c) an order directing the legal practitioner to indemnify any party other than his or her client against the whole or any part of the costs payable by the party indemnified.
- (2) The Commission may refer a matter to a costs assessor for inquiry and report before making such an order.
- (3) The Commission may order that notice of such an order against a legal practitioner is to be given to the legal practitioner's client in a specified manner.
- (4) A legal practitioner is not entitled to demand, recover or accept from his or her client any part of the amount for which the legal practitioner is directed by the Commission to indemnify a party pursuant to such an order.
- (5) This section does not limit any other provision of this Part.

### **345 (Repealed)**

## **Division 3A Special provisions for costs in work injury damages**

## proceedings

### 346 Costs

- (1) This section applies to costs (including disbursements) payable by a party in or in relation to a claim for work injury damages, including court proceedings for work injury damages.
- (2) The regulations may make provision for or with respect to the awarding of costs to which this section applies. The regulations may provide for the awarding of costs on a party and party basis, on a practitioner and client basis, or on any other basis.
- (3) A party is not entitled to an award of costs to which this section applies, and a court may not award such costs, except as prescribed by the regulations under this Act or by the rules of the court concerned.
- (4) In the event of any inconsistency between the provisions of the regulations under this section and rules of court, the provisions of the regulations prevail to the extent of the inconsistency.

## Division 4 Costs assessment

### 347 Regulations for costs assessment

- (1) The regulations may make provision for or with respect to—
  - (a) the assessment or taxation of costs payable to a legal practitioner or agent in connection with a claim for compensation or work injury damages, and
  - (b) matters associated with the assessment or taxation of those costs.
- (2) In particular, the regulations may make provision for or with respect to any matter for or in connection with which provision is made by the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)).
- (3) Regulations for the purposes of this Division may adopt, with or without modification, any of the provisions of the legal costs legislation.
- (4) Without limiting this section (but subject to the [Personal Injury Commission Act 2020](#) and the Commission rules), the regulations may make provision for or with respect to—
  - (a) the assessment of costs by the Commission, and
  - (b) appeals to the Commission against the assessments of costs by the Commission.

#### Note—

Clause 5 of Schedule 3 to the [Personal Injury Commission Act 2020](#) provides for the Commission to be

constituted by 1 non-presidential member assigned to the Workers Compensation Division of the Commission when dealing with costs assessments under the regulations. The clause also provides that the Commission is to be constituted by a presidential member of the Division when dealing with appeals against costs assessments.

- (5) The regulations may make such modifications to the provisions of the legal costs legislation as may be consequential on the assessment or taxation of costs payable to a legal practitioner being provided for by the regulations under this Division rather than under the legal costs legislation.

### **348 (Repealed)**

## **Part 9 References and appeals**

### **349, 350 (Repealed)**

### **351 Reference of question of law on compensation claim to Commission constituted by presidential member**

- (1) A question of law arising in proceedings under the Workers Compensation Acts before the Commission constituted by a non-presidential member may, with the leave of the President, be referred by the member for the opinion of the Commission constituted by the President.
- (2) The reference of a question under this section may be made on the application of a party to the proceedings or of the non-presidential member's own motion.
- (3) The President is not to grant leave for the referral of a question of law under this section unless satisfied that the question involves a novel or complex question of law.
- (4) If the President refuses to grant leave for the referral of a question of law under this section, the President must state his or her reasons in writing to the parties for the refusal.
- (5) Despite the reference of a question under this section, the Commission constituted by a non-presidential member may make an award in the matter in which the question arose unless the question is the question of whether the Commission may exercise functions under this Act in relation to a matter.
- (6) On the determination of a question referred to the Commission under this section—
  - (a) if an award has not been made in the matter in which the question arose, an award may be made that is not inconsistent with the opinion of the Commission on the question, or
  - (b) if an award has been made in the matter in which the question arose, the award must be varied in such a way as will make it consistent with the opinion of the Commission on the question.



- (7) The reference of a question of law under this section may be by stating a case on a question of law.
- (8) The President may delegate to a Deputy President any function of the President under this section (except this power of delegation), but only if the President is satisfied that the delegation is necessary to avoid a conflict of interest or the appearance of bias.

**352 Appeal against decision of Commission constituted by non-presidential member**

- (1) A party to a dispute in connection with a claim for compensation may appeal to the Commission constituted by a presidential member against a decision in respect of the dispute by the Commission constituted by a non-presidential member.
- (2) An appeal is to be made by application to the President.
- (2A) The appeal is not to proceed unless the President is satisfied that the procedural requirements of this section and any applicable Commission rules and regulations as to the making of an appeal have been complied with.
- (2B) The President is not required to be satisfied as to the substance of the appeal.
- (3) There is no appeal under this section unless the amount of compensation at issue on the appeal is both—
  - (a) at least \$5,000 (or such other amount as may be prescribed by the regulations), and
  - (b) at least 20% of the amount awarded in the decision appealed against.
- (3A) There is no appeal under this section against an interlocutory decision except with the leave of the Commission. The Commission is not to grant leave unless of the opinion that determining the appeal is necessary or desirable for the proper and effective determination of the dispute.
- (4) The appeal must be made within—
  - (a) 28 days after the decision appealed against is made, or
  - (b) a longer period determined or allowed, whether generally or for the kind of proceedings, in accordance with the Commission rules.
- (5) An appeal under this section is limited to a determination of whether the decision appealed against was or was not affected by any error of fact, law or discretion, and to the correction of any such error. The appeal is not a review or new hearing.
- (5A) An appeal under this section stays the operation of the decision appealed against pending the determination of the appeal. However, an appeal does not stay or otherwise affect the operation of a decision as to weekly payments of compensation and weekly payments of compensation remain payable despite any appeal.

- (6) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against may not be given on an appeal to the Commission except with the leave of the Commission. The Commission is not to grant leave unless satisfied that the evidence concerned was not available to the party, and could not reasonably have been obtained by the party, before the proceedings concerned or that failure to grant leave would cause substantial injustice in the case.
- (6A) On appeal, the decision may be confirmed or may be revoked and a new decision made in its place.
- (7) Alternatively, the matter may be remitted back to the non-presidential member concerned, or to another non-presidential member, for determination in accordance with any decision or directions of the Commission (including, in the case of a decision about the degree of permanent impairment resulting from an injury, a direction to refer the matter for assessment by a medical assessor under Part 7).
- (7A) Clause 2 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) applies to and in respect of the provision of legal services in connection with an appeal to the Commission under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that clause.

**Note—**

Clause 2 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

- (8) In this section, **decision** includes an award, interim award, order, determination, ruling and direction.

**353 Appeal against decision of Commission constituted by presidential member**

- (1) If a party to any proceedings under the Workers Compensation Acts before the Commission constituted by a presidential member is aggrieved by a decision of the presidential member in point of law, the party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the Commission constituted by a presidential member for determination by the Commission in accordance with any decision of the Court and may make such other order in relation to the appeal as the Court thinks fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the Commission and on all the parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made only with leave of the Court of

Appeal—

- (a) an appeal from an interlocutory decision,
- (b) an appeal from a decision as to costs only,
- (c) an appeal where the amount of compensation in dispute is less than \$20,000 (or such other amount as may be prescribed by the regulations),
- (d) an appeal from a decision made with the consent of the parties.

(5) In this section, **decision** includes an award, interim award, order, determination, ruling, opinion and direction.

**354-365 (Repealed)**

**Part 10 Administration**

**Division 1**

**366-375 (Repealed)**

**Division 2 Workers Compensation guidelines**

**376 Issue of guidelines**

- (1) The Authority may issue guidelines with respect to the following—
  - (a) the assessment of the degree of permanent impairment of an injured worker as a result of an injury,
    - (a1) the professional or other requirements (including qualifications, training or membership of professional bodies) for a medical practitioner to be permitted to assess (or carry out any function related to assessing), for the purposes of the Workers Compensation Acts, the degree of permanent impairment of an injured worker as a result of an injury,
  - (b) (Repealed)
  - (c) such other matters as a provision of the Workers Compensation Acts provides may be the subject of Workers Compensation Guidelines.
- (2) (Repealed)
- (3) The Authority may amend, revoke or replace Workers Compensation Guidelines made by the Authority, and the Minister may amend, revoke or replace Workers Compensation Guidelines made by the Minister.
- (4) Workers Compensation Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular

time or from time to time.

- (5) Workers Compensation Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (6) The regulations may make provision for or with respect to any matter for which the Workers Compensation Guidelines can provide.

### **377 Special requirements relating to Workers Compensation Guidelines relating to impairment**

- (1) This section applies to Workers Compensation Guidelines that relate to the assessment of the degree of permanent impairment of an injured worker as a result of an injury.
- (2) Those Guidelines must be developed in consultation with relevant medical colleges, including the Royal Australasian College of Physicians, the Royal Australasian College of Surgeons, the Australian Orthopaedic Association and other relevant colleges and associations.
- (3) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the [Interpretation Act 1987](#) apply to those Guidelines in the same way as those sections apply to statutory rules.

## **Part 11**

### **378 (Repealed)**

## **Schedule 1 Deemed employment of workers**

(Section 5)

### **Editorial note—**

Section 4 provides that, in the Workers Compensation Acts—

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

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

*Injuries Insurance Act 1978*) while—

- (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or
- (ii) engaged in training or preparing himself or herself with a view to so participating, or
- (iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged,

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

Section 5 provides that the provisions of this Schedule (which deem certain classes of persons to be workers) have effect.

## **1 Workers lent or on hire**

If the services of a worker are temporarily lent or let on hire to another person (***the labour buyer***) by the person with whom the worker has entered into a contract of service or a training contract (***the labour hirer***), the labour hirer is, for the purposes of this Act, taken to continue to be the employer of the worker while the worker is working for the labour buyer.

### **1A Outworkers**

(1) If—

- (a) a person (***the principal***) contracts with another person to perform any work as an outworker, and
- (b) the outworker neither employs any worker, nor subcontracts with any person, to perform any of the work for the profit of the outworker,

the outworker is, for the purposes of this Act, taken to be a worker employed by the principal.

(2) In this clause—

***outworker*** means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale—

- (a) in the person's own home, or
- (b) on other premises not under the control or management of the person who gave out the articles or materials.

## **2 Other contractors** (cf former Sch 1 cl 2)

(1) Where a contract—

- (a) to perform any work exceeding \$10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor's own name, or under a business or firm name), or

(b) (Repealed)

is made with the contractor, who neither sublets the contract nor employs any worker, the contractor is, for the purposes of this Act, taken to be a worker employed by the person who made the contract with the contractor.

(2) (Repealed)

(3) A person excluded from the definition of **worker** in section 4 (1) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

## **2A Contractors under labour hire services arrangements**

(1) In this clause—

**labour hire services contract** means a contract or arrangement (not being a contract of service or a training contract) under which a person is provided with services to facilitate the performance of work by the person, such as the following services—

- (a) services for finding work for the person,
- (b) services for payment for work performed by the person,
- (c) services for insurance coverage in connection with any such work.

(2) If—

- (a) a person (**a labour hire agency**) under a labour hire services contract with another person (**a contractor**) arranges for the contractor to perform work for a third person (**the host employer**), and
- (b) the work performed is not incidental to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name, and
- (c) the contractor neither employs any worker, nor subcontracts with any person, to perform any of that work, and
- (d) the labour hire agency provides services to the contractor under the labour hire services contract during the performance of that work,

the contractor is, for the purposes of this Act, taken to be a worker employed by the labour hire agency while performing that work.

(3) For the avoidance of doubt, this clause applies—

- (a) where a labour hire agency and a host employer are related bodies corporate, and
- (b) in addition to any other provisions of this Act relating to the employment of workers.

**3 Rural work** (cf former Sch 1 cl 3)

(1) This clause applies to the following work—

- (a) The work of supplying timber, if the timber is obtained, or is to be obtained, from trees felled, or to be felled, by a contractor (whether the trees are the property of the principal or the contractor or any other person).
- (b) The work of felling or ringbarking trees, or cutting scrub, or hauling or loading timber.
- (c) The work of clearing land of stumps or logs.
- (d) The work of cutting sugar cane.
- (e) The work of erecting, constructing or demolishing or assisting in the erection, construction or demolition of—
  - (i) fences, or
  - (ii) yards or enclosures for horses, cattle, sheep or other animals, on farms, orchards, vineyards or agricultural or pastoral holdings.
- (f) All classes of work normally carried out or performed by derrick operators in or in connection with the transport of sugar cane to a mill.
- (g) Any other class of work prescribed by the regulations.

(2) If—

- (a) any person (in this clause referred to as **the principal**) in the course of, or for the purposes of, the person's trade or business enters into a contract, agreement or arrangement with any other person (in this clause referred to as **the contractor**) under which the contractor agrees to carry out work to which this clause applies, and
- (b) the contractor—
  - (i) does not either sublet any part of the work to be carried out, or employ a worker, or
  - (ii) (although either subletting part of the work or employing a worker) actually performs some part of the work himself or herself,

the contractor and any worker so employed by the contractor are, for the purposes of this Act, taken to be workers employed by the principal, and a worker so employed by the contractor is, for the purposes of this Act, other than this clause, taken not to be a worker employed by the contractor.

- (3) If the principal has given or offered the contractor the option to or the opportunity to so supply timber if the contractor so desires, then, for the purposes of this clause, the contractor is taken to have agreed to supply timber.
- (4) This clause does not apply to or in respect of a contract, agreement or arrangement to haul or load timber if the timber has been subjected to a manufacturing process as defined by the *Factories, Shops and Industries Act 1962* in a factory as defined by that Act.
- (5) All the principals by whom a person is taken to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Commission determines.
- (6) For the purposes of this Act, a notice of injury given by a person employed by the contractor is taken to be given to the employer if it is given either to the contractor or the principal.
- (7) The contractor must, on request, inform a person employed by the contractor of the name and address of the principal.
- (8) In this clause—  
**timber** includes sleepers, piles, poles and logs.

#### 4 Timbergetters (cf former Sch 1 cl 4)

- (1) If any person (in this clause referred to as **the principal**) advertises or otherwise notifies that he or she will accept timber delivered or supplied in accordance with the advertisement or notification, any person who gives notice to the principal that he or she will deliver or supply the timber or any part of the timber is, for the purposes of this Act, taken to be a worker employed by the principal.
- (2) Notice of intention to deliver or supply timber—
  - (a) must indicate the nature of the actual work to be undertaken, and
  - (b) must be given prior to injury.
- (3) All the principals by whom a person is taken to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Commission determines.
- (4) In this clause—  
**timber** includes sleepers, piles, poles and logs.



**5 Salespersons, canvassers, collectors and others** (cf former Sch 1 cl 5)

- (1) A salesperson, canvasser, collector or other person paid wholly or partly by commission is, for the purposes of this Act, taken to be a worker in the employment of the person by whom the commission is payable, unless the commission is received for or in connection with work incidental to a trade or business regularly carried on by the salesperson, canvasser, collector or other person or by a firm of which he or she is a member.
- (2) All the employers who engaged any such salesperson, canvasser, collector or other person at the time of an injury to the salesperson, canvasser, collector or other person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Commission determines.

**6 Tributery** (cf former Sch 1 cl 6)

A tributer working in connection with any mine (as defined in the [Mining Act 1992](#)) and also any workers employed by any such tributer are, for the purposes of this Act, taken to be workers employed by the person with whom the tribute agreement was made by the tributer.

**7 Mine employees** (cf former Sch 1 cl 7)

Any person usually employed about a mine or in connection with the operations of a mine whose remuneration is provided wholly or partly by the workers employed at the mine is, for the purposes of this Act, taken to be a worker employed by the person by or for whom the mine is being worked.

**8 Mines rescue personnel** (cf former Sch 1 cl 8)

- (1) For the purposes of this Act—
  - (a) a member of the New South Wales Mines Rescue Brigade engaged in mine rescue work, or undergoing training, in accordance with Part 4 of the [Coal Industry Act 2001](#) is, while so engaged or undergoing training, taken to be a worker employed by the mines rescue company, and
  - (b) a place at which such a member is so engaged or undergoing training is taken to be a place at which the member is employed.
- (2) A member of the New South Wales Mines Rescue Brigade who receives an injury while journeying between the place from which the member was required to attend for the purpose of engaging in mine rescue work or of undergoing training and a place referred to in subclause (1) (b) is, if the journeying was exclusively and genuinely for that purpose, entitled to receive compensation in accordance with this Act from the mines rescue company.
- (3) In this clause, **mines rescue company** means the mines rescue company within the

meaning of the *Coal Industry Act 2001*.

**9 Jockeys and harness racing drivers** (cf former Sch 1 cl 9)

(1) A person who—

- (a) is engaged to ride a horse for fee or reward at a meeting for horse racing conducted or held by a racing club or association, or
- (b) drives a horse at a meeting for harness racing conducted or held by a racing club or association and at which betting is allowed, or
- (c) is engaged in riding work in connection with horse racing (but not harness racing) on the racecourse or other premises of a racing club or association,

is, for the purposes of this Act, taken to be a worker employed by the racing club or association.

(2) Subclause (1) does not apply to a racing club or association having its headquarters in a town with a population not exceeding 3,000 people if—

- (a) the meetings of the racing club or association are conducted or held within a radius of 8 kilometres from the town, and
- (b) the profits derived from the operations of the racing club or association are applied for charitable purposes.

(3) For the purpose of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are—

- (a) to be calculated in such manner (if any) as may be prescribed by the regulations, or
- (b) if the person was not working under contract of service—to be calculated in such manner as the Commission considers to be reasonable in the circumstances.

(4) The regulations may make provision for or with respect to the exemption of any class of persons from the operation of subclause (1) (b).

**10 Drivers of hire-vehicles or hire-vessels—contract of bailment** (cf former Sch 1 cl 10)

A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, is, for the purposes of this Act, taken to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.

**11 Caddies and others employed through club** (cf former Sch 1 cl 11)

A person (not being a person excluded from being a worker by reason of paragraph (d) of

the definition of **worker** in section 4 (1)—

- (a) whose employment is of a casual nature, and
- (b) who is employed otherwise than for the purposes of his or her employer's trade or business, and
- (c) who is employed for the purposes of any game or recreation, and
- (d) who is engaged or paid through a club,

is, for the purposes of this Act, taken to be a worker employed by the club.

**12 Shearers' cooks and others** (cf former Sch 1 cl 12)

Any person employed in connection with a pastoral or agricultural occupation, as cook, cook's help or hut-keeper, whose remuneration is provided wholly or partly by the employees in any such occupation is, for the purposes of this Act, taken to be a worker employed by the person by or for whom the work in any such occupation is undertaken.

**13 Fire fighters in fire districts** (cf former Sch 1 cl 13)

(1) A person who (without remuneration or reward)—

- (a) voluntarily and without obligation engages in fighting a bush fire in any fire district constituted under the [Fire and Rescue NSW Act 1989](#) with the consent of or under the authority and supervision of or in co-operation with—
  - (i) any retained fire brigade within the meaning of that Act, or
  - (ii) the Commissioner or any officer of Fire and Rescue NSW or any member of a permanent fire brigade, or
- (b) is undergoing training for the purposes of fighting bush fires in those circumstances,

is, for the purposes of this Act, taken to be a worker employed in Fire and Rescue NSW.

(2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the "average weekly earnings" of the person are—

- (a) if the person was working under a contract of service immediately before fighting the bush fire—to be computed according to the earnings of the person under that contract of employment, or
- (b) if the person was not working under a contract of service immediately before fighting the bush fire—to be such amount as the Commission considers to be reasonable in the circumstances.

(3) In this clause—

**bush fire** means a fire burning in grass, bush, scrub or timber and any fire arising from such a fire.

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

**14 Workers at place of pick-up** (cf former Sch 1 cl 14)

Where any person is ordinarily engaged in any employment in connection with which persons customarily attend certain prearranged places at which employers select and engage persons for employment, any such person is—

- (a) while in attendance at any such place of pick-up for the purpose of being so selected, or
- (b) while travelling thereto from his or her place of abode, or
- (c) where the person is not so selected, while travelling from such place of pick-up to his or her place of abode,

taken to be a worker employed by the employer who last employed the person in his or her customary employment.

**15 Boxers, wrestlers, referees and entertainers** (cf former Sch 1 cl 15)

(1) A person engaged for fee or reward to take part—

- (a) as a boxer, wrestler or referee in any public boxing or wrestling contest in a stadium or place to which the public is admitted on payment of a fee or charge, or
- (b) as a boxer, wrestler or referee in any boxing or wrestling contest in or on premises subject to a club licence under the [Liquor Act 2007](#), or
- (c) as an entertainer in any public performance in a place of public entertainment to which the public is admitted on payment of a fee or charge, or
- (d) as an entertainer in any performance in or on premises subject to a club licence under the [Liquor Act 2007](#),

is, for the purposes of this Act, taken to be a worker employed by the person conducting or holding the contest or public or other performance.

(2) A person who takes part in a genuine amateur contest or performance conducted or held by a person who holds or is taken to hold an authority granted under the [Charitable Fundraising Act 1991](#), is not, for the purposes of this clause, taken to be engaged for fee or reward only because a trophy or certificate is offered or awarded as

a prize in the contest or performance.

- (3) A person excluded from being a worker because of paragraph (d) of the definition of **worker** in section 4 (1) is taken not to be a person referred to in subclause (1) (c) or (d).
- (4) If 2 or more persons conduct or hold a contest or public or other performance, those persons are liable to contribute to any compensation payable under this Act for the injury in such proportion as, in default of agreement, the Commission determines.

**16 Voluntary ambulance workers** (cf former Sch 1 cl 16)

- (1) A person who (without remuneration or reward) voluntarily and without obligation engages in any ambulance work with the consent of or under the authority and supervision of or in co-operation with the Health Administration Corporation constituted by the [Health Administration Act 1982](#) is, for the purposes of this Act, taken to be a worker employed by that Corporation.
- (2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person are—
  - (a) if the person was working under a contract of service immediately before engaging in the ambulance work—to be computed according to the earnings of the person under that contract of employment, or
  - (b) if the person was not working under a contract of service immediately before engaging in the ambulance work—to be such amount as the Commission considers to be reasonable in the circumstances.
- (3) In this clause, **ambulance work** means work in or in connection with the rendering of first aid to, or the transport of, sick or injured persons.

**17 Ministers of religion** (cf former Sch 1 cl 17)

- (1) The regulations may declare that persons within a specified class are ministers of religion of a specified religious body or organisation.
- (2) A person within such a class is, for the purposes of this Act, taken to be a worker employed by a person specified in the regulation as the employer of persons within that class.
- (3) A regulation relating to a religious body or organisation may not be made except at the request of that body or organisation.
- (4) An order under section 6 (14E) of the former 1926 Act, continued in force by clause 17 of Schedule 1 to the 1987 Act and in force immediately before the commencement of this clause has effect as if it were a regulation under this clause (but may be revoked by any such regulation).

**18 Ministers of religion covered by policies** (cf former Sch 1 cl 17A)

- (1) For the purposes of this Act, if a policy of insurance covers a minister of religion, that minister of religion is taken to be a worker and the person insured under the policy is taken to be the minister's employer.
- (2) A minister of religion is considered to be covered by a policy of insurance if the policy provides (whether on its own terms or in some other document recognised by or referred to in the policy) that the coverage provided by the policy extends to the minister or to ministers of a class of which that minister is a member.
- (3) A religious body or organisation, and any official of the body or organisation, is taken to have an insurable interest for the purpose of enabling the body, organisation or official to obtain and maintain in force a policy of insurance that covers a minister of religion of that body or organisation.
- (4) If there is a conflict between the operation of this clause and clause 17 in respect of a particular minister of religion, this clause prevails.
- (5) In this clause—

**official** of a religious body or organisation includes a person or body who or which holds an office or position, or exercises official functions, within the religious body or organisation.

**19 Participants in training programs** (cf former Sch 1 cl 18)

- (1) The regulations may—
  - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
  - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is, for the purposes of this Act, taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.
- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is, for the purposes of this Act, taken to be the participant's wages in the employment by the person who provides the workplace based training.
- (4) Except to the extent that the regulations may otherwise provide, this clause does not

apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause.

## **Schedule 2-5 (Repealed)**

### **Schedule 5A Injury management pilot projects**

(Section 42A)

#### **1 2 year pilot scheme**

- (1) This Schedule (except subclause (2)) operates for a 2 year period following the commencement of this Schedule.
- (2) The effectiveness of this Schedule is to be evaluated by an independent person or body, chosen by the Authority by private tender, and the results of the evaluation are to be referred to the Law and Justice Committee of the Legislative Council which is to review the results and report to Parliament.

#### **2 Definitions**

In this Schedule—

**employer's injury manager** means the person for the time being appointed under this Schedule as injury manager for the group of employers of which the employer is a member.

**injury management functions** means—

- (a) any function arising under Chapter 3 (Workplace injury management),
- (b) any function that may be exercised in connection with dealing with and satisfying any claim against which an employer is indemnified under a policy of insurance,
- (c) such other functions in connection with the operation of this Act or the 1987 Act or the regulations under those Acts as may be prescribed by the regulations for the purposes of this definition.

#### **3 Appointment of injury manager for group of employers**

- (1) The Authority may, by order published in the Gazette, appoint a person as injury manager for the employers in a group of employers identified in the order as the group of employers to whom the order applies.
- (2) A group of employers may be identified in an order by reference to employers in a geographical area or to employers engaged in a particular business or industry or may be identified in any other manner.

- (3) The appointment of an injury manager may be made so as to apply in respect of all claims or injuries or be limited to apply in respect of a specified class or classes of claims or injuries, and may be made subject to specified terms and conditions.
- (4) The Authority may by order in writing direct that an order under subclause (1) is not to apply to a specified employer or to a specified class of employers, and such a direction has effect accordingly.

#### **4 Injury manager appointed as agent and attorney of employers and insurers**

- (1) An employer's injury manager is by this clause appointed as the agent and attorney of the employer, and of any insurer of the employer, in respect of such of the injury management functions of the employer or insurer as are specified in the order appointing the injury manager.
- (2) As agent and attorney of an employer or insurer, an injury manager may exercise such of the rights and discharge such of the obligations of the employer and the insurer as may be necessary or convenient for the effectual exercise by the injury manager of the functions in respect of which the injury manager is appointed agent and attorney of the employer or insurer.
- (3) The functions of an injury manager under this Schedule are subject to—
  - (a) the terms and conditions of the appointment of the injury manager, and
  - (b) such directions as the Authority may give to the injury manager in writing from time to time.
- (4) An injury manager may exercise rights and discharge obligations as agent of an employer in the name of the employer or in the injury manager's own name.
- (5) When an injury manager is authorised under this Schedule to exercise any rights or discharge any obligations of an employer or insurer as agent and attorney, the employer or insurer is not entitled to exercise those rights or discharge those obligations, except with the consent of the injury manager or the Authority.
- (6) The order appointing an injury manager may require that any specified reference in this Act, the 1987 Act, the regulations under those Acts or a policy of insurance to an insurer or to an employer is, in connection with the exercise of any functions of the injury manager under this Schedule, to be read as a reference to the injury manager.
- (7) The appointment effected by this clause may be revoked only by order under this Schedule.

#### **5 Disclosure of information**

The regulations may make provision for or with respect to authorising the Authority to disclose information obtained by the Authority as a result of or in connection with the



operation of this Schedule.

## **6 Funding**

- (1) The Authority may establish a fund (an ***injury management fund***) to be used for the payment of amounts by an injury manager in the performance of functions as agent and attorney of an employer or insurer.
- (2) (Repealed)
- (3) The regulations may make provision for or with respect to the following matters in connection with injury management funds—
  - (a) requiring the payment of interest on and the recovery of overdue payments required to be made by insurers into an injury management fund,
  - (b) the functions of an injury manager in connection with the administration of an injury management fund,
  - (c) the winding up of any such fund and the payment into the Insurance Fund of amounts standing to the credit of the fund,
  - (d) the auditing of an injury management fund.
- (4) (Repealed)

## **Schedule 6 (Repealed)**