



New South Wales

Workers Compensation Legislation Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Workplace Injury Management and Workers Compensation Bill 1998*.

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987* and other Acts in connection with the enactment of the *Workplace Injury Management and Workers Compensation Act 1998*.

Under the Bill:

- (a) the benefit provisions of the 1987 Act are maintained with modifications, including:
 - (i) the reduction, from 104 weeks to 52 weeks, in the maximum period of weekly compensation at total incapacity rates of partially incapacitated workers who are seeking suitable employment or receiving rehabilitation training,
 - (ii) the reduction in the rate of weekly "make-up" compensation for partially incapacitated workers who have unreasonably rejected suitable employment,
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- (iii) the removal of restrictions on the circumstances in which weekly payments of compensation may be commuted to a lump sum payment,
- (iv) the facilitation of the discontinuation of weekly payments for partially incapacitated workers after 104 weeks in certain cases where the worker is not seeking or has not obtained suitable employment,
- (v) the fixing of various rates of compensation for medical, hospital and other treatment by order of the WorkCover Authority rather than by regulation, and
- (b) the existing workers compensation insurance provisions of the 1987 Act are limited to insurance obtained up to 30 September 1999 and the Insurance Contribution Fund is closed, and
- (c) general savings and transitional provisions are enacted under the 1987 Act and other provisions consequentially repealed or amended, and
- (d) other Acts are consequentially amended.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Workers Compensation Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to amendments to other Acts set out in Schedule 2.

Schedules

Schedule 1 contains amendments to the *Workers Compensation Act 1987* to give effect to the objects mentioned above.

The Schedule deals with the provisions of the 1987 Act as follows:

Part 1 Preliminary

The Part is retained with consequential amendments. The 1987 Act is to be construed with and as if it formed part of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act)—see **Schedule 1 [1]**.

Part 2 Compensation—Liability

The Part is retained with consequential amendments (and not replicated in the 1998 Act) and will apply to liability for past and future injuries.

Part 3 Compensation—Benefits

The Part is retained with consequential amendments (and not replicated in the 1998 Act) and will apply to benefits for past and future injuries. Amendments are also made to give effect to the following proposed modifications of benefits described above:

- (a) the reduction, from 104 weeks to 52 weeks, in maximum period of total incapacity payments for partially incapacitated workers who are seeking suitable employment or receiving rehabilitation training—see **Schedule 1 [11]**,
- (b) the reduction in the rate of weekly “make-up” compensation for partially incapacitated workers who have unreasonably rejected suitable employment (generally by restricting the comparison of the worker’s pre-injury and post-injury earning potential for the purposes of calculating the “make-up” compensation to award and similar rates for the work rather than actual gross rates)—see **Schedule 1 [17]**,
- (c) the removal of restrictions on the circumstances in which weekly payments of compensation may be commuted to a lump sum payment—see **Schedule 1 [20]–[31]**,
- (d) the facilitation of the discontinuation of weekly payments for partially incapacitated workers after 104 weeks in certain cases where the worker is not seeking or has not obtained suitable employment—see **Schedule 1 [32]**,
- (e) the fixing of various rates of compensation for medical, hospital and other treatment by order of the WorkCover Authority rather than by regulation—see **Schedule 1 [38]–[58]**.

Part 4 Compensation claims and proceedings

This Part is repealed and is transferred (with modifications) to Part 2 of Chapter 4 of the 1998 Act and (in the case of the Uninsured Liability and Indemnity Scheme) to Part 9 of Chapter 5 of the 1998 Act—See **Schedule 1 [63]**.

Part 5 Common law remedies

The Part is retained (and not replicated in the 1998 Act) and will apply to common law remedies for past and future injuries. Amendments are made to the provisions relating to elections between common law remedies and workers compensation and to mitigation of damages—see **Schedule 1 [64]–[66]**.

Part 6 Rehabilitation of injured workers

This Part is repealed and its provisions incorporated (with modifications) in the proposed workplace injury management provisions of Chapter 3 of the 1998 Act—see **Schedule 1 [67]**.

Part 7 Insurance

This Part is retained with modifications to regulate the existing insurance arrangements. The new insurance arrangements are contained in Chapter 5 of the 1998 Act. Under the amendments to this Part:

- (a) Existing workers compensation licensed insurers (“the managed fund insurers”) will continue to issue and renew policies of insurance up to 30 September 1999. No further policies will be issued or renewed by them after that date. They will continue to manage the statutory insurance funds established under the 1987 Act for liabilities under the policies issued or renewed by them.
- (b) Existing self-insurers will become self-insurers under the 1998 Act and will cease to be self-insurers under the 1987 Act from 30 September 1999.
- (c) The Insurers’ Contribution Fund will be closed and amounts standing to the credit of the Fund will be distributed among the insurers entitled to claim against the Fund in proportion to each insurer’s market share.
- (d) Provisions for defaulting insurers and insolvent insurers are consequentially amended so that any future defaults or insolvencies will be dealt with under the parallel provisions of the 1998 Act.

See **Schedule 1 [68]–[82]**.

Part 8

Previously repealed.

Part 9 WorkCover Authority Fund

This Part is repealed and is transferred (with modifications) to Part 6 of Chapter 2 of the 1998 Act—see **Schedule 1 [83]**.

Part 10 Miscellaneous

The Part is retained with consequential amendments. Many of the provisions of the Part are repealed as a consequence of the enactment of general miscellaneous provisions in the 1998 Act applying to both that Act and the 1987 Act.

Schedule 1 Deemed employment of workers

This Schedule is repealed and is transferred to Schedule 1 to the 1998 Act.

Schedule 2 Provisions relating to appointed conciliation officers

This Schedule is repealed and is transferred to Schedule 6 to the 1998 Act.

Schedules 3, 4

Previously repealed.

Schedule 5 Repeals

Retained.

Schedule 6 Savings, transitional and other provisions

This Schedule is retained and is amended to include the relevant provisions consequent on the enactment of this amending Act and the 1998 Act.

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Schedule 2 contains consequential amendments to the following Acts:

Community Land Management Act 1989 No 202

Compensation Court Act 1984 No 89

Defamation Act 1974 No 18

Duties Act 1997 No 123

Fines Act 1996 No 99

Home Building Act 1989 No 147

Industrial Relations Act 1996 No 17

Motor Accidents Act 1988 No 102

Occupational Health and Safety Act 1983 No 20

Sporting Injuries Insurance Act 1978 No 141

Strata Schemes Management Act 1996 No 138

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

Workers' Compensation (Dust Diseases) Act 1942 No 14

First print



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New South Wales

Workers Compensation Legislation Amendment Bill 1998

No , 1998

A Bill for

An Act to amend the *Workers Compensation Act 1987* and other Acts in connection with the enactment of the *Workplace Injury Management and Workers Compensation Act 1998*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Workers Compensation Legislation Amendment Act 1998*.

2 Commencement

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

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

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4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 2A

Insert after section 2:

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2A Relationship to Workplace Injury Management and Workers Compensation Act 1998

- (1) The *Workplace Injury Management and Workers Compensation Act 1998* is referred to in this Act as ***the 1998 Act***.
- (2) This Act is to be construed with, and as if it formed part of, the 1998 Act. Accordingly, a reference in this Act to this Act includes a reference to the 1998 Act.
- (3) In the event of an inconsistency between this Act and the 1998 Act, the 1998 Act prevails to the extent of the inconsistency.

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[2] Section 3 Definitions

Insert before section 3 (1):

- (1AA) In this Act, words and expressions have the same meanings as they have in the 1998 Act, unless this Act provides otherwise.

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[3] Section 3 (1)

Omit the definitions of *Authority, Commissioner, compensation, Compensation Court, conciliation officer, dependants, employer, existing claim, financial year, Government employer, Government worker, incapacity, insurance, Insurance Ministerial Corporation, Judge, medical panel, medical referee, member of a family, new claim, policy of insurance, Principal Conciliator, records, related corporation, Senior Conciliation Officer, Uninsured Liability and Indemnity Scheme, weekly payment, WorkCover Authority Fund* and *worker*.

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Schedule 1 Amendment of Workers Compensation Act 1987

[4] Section 3 (2)

Omit the subsection.

[5] Section 5 Deemed employment of workers

Omit the section.

[6] Section 10 Journey claims

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Insert "to the 1998 Act" after "Schedule 1" in section 10 (3) (f).

[7] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit "section 92" from section 11A (7).

Insert instead "section 65 of the 1998 Act".

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[8] Section 11A (8) (a)

Omit "section 102 or 102A".

Insert instead "section 93 of the 1998 Act".

[9] Section 17 Loss of hearing—special provisions

Omit "section 88 (1)" from section 17 (1) (b).

Insert instead "section 61 of the 1998 Act".

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[10] Section 33 Weekly compensation during total or partial incapacity for work

Insert at the end of the section:

Note. Chapter 3 of the 1998 Act (Workplace injury management) provides that, if a worker fails unreasonably to comply with a requirement of that Chapter after being requested to do so by an insurer, the worker has no entitlement to weekly payments of compensation for the period that the failure continues.

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[11] Section 38 Partially incapacitated workers not suitably employed—special initial payments while seeking employment

Omit “104” from section 38 (2). Insert instead “52”.

[12] Section 38 (3)

Omit “and until the worker has been compensated under this section for a total of 52 weeks”. 5

[13] Section 38A Determination of whether worker seeking suitable employment

Omit “conciliation officer” from section 38A (4) (b).
Insert instead “conciliator”. 10

[14] Section 38A (5)

Omit “(unless the worker later demonstrates genuine efforts to seek suitable employment)”.

[15] Section 39 Incapacity treated as total—“odd-lot” rule

Omit “conciliation officer” wherever occurring in section 39 (6).
Insert instead “conciliator”. 15

[16] Section 40 Weekly payments during partial incapacity—general

Insert “(except as provided by this section)” after “weekly earnings is” in section 40 (2).

[17] Section 40 (2A) and (2B)

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Insert after section 40 (2):

(2A) **Calculation of reduction in earnings of worker—workers rejecting suitable employment.** If the worker has unreasonably rejected suitable employment, the reduction in the worker’s weekly earnings is the difference between:

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- (a) the current weekly wage rate for the worker’s pre-injury employment (but not exceeding \$1,000), and

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- (b) the current weekly wage rate for some suitable employment for the worker from time to time after the injury (but not exceeding \$1,000).
- (2B) For the purposes of subsection (2A), a person unreasonably rejects suitable employment if: 5
 - (a) a period of 28 days has elapsed since the worker was offered suitable employment by any person and the worker has unreasonably refused or not accepted the offer (whether or not the offer was available during the whole of that period), or 10
 - (b) the person obtains suitable employment with any person but subsequently unreasonably discontinues that employment.
- [18] Section 40 (4)**
Omit "conciliation officer". Insert instead "conciliator". 15
- [19] Section 43A Suitable employment**
Omit section 43A (1) (e). Insert instead:
 - (e) the provisions of any injury management plan for the worker,
- [20] Section 51 Exit payments by commutation of weekly payments** 20
Omit section 51 (1).
- [21] Section 51 (2)**
Omit "to which this section applies".
- [22] Section 51 (2) (b)**
Insert "the general health of the worker," after "the worker,". 25
- [23] Section 51 (2) (b)**
Omit "and" where lastly occurring.

[24] Section 51 (2) (d)

Insert at the end of section 51 (2) (c):

, and

- (d) other benefits that the worker may be entitled to
from any other source.

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[25] Section 51 (2A)

Insert after section 51 (2):

(2A) The Compensation Court is not to determine a lump sum
for the purposes of this section unless satisfied that:

- (a) the termination of liability concerned is in the best
interests of the worker, and 10
- (b) the worker fully understands the effect of the
termination of liability concerned and has received
adequate advice as to the consequences of the
termination. 15

[26] Section 51 (2B)

Insert before section 51 (3):

(2B) It is not necessary that the worker consent or agree to, or
understand the effect of, a termination of liability under
this section if the Compensation Court is satisfied that 20
the worker is unable, by reason of infirmity of mind or
body, properly to consent or agree to, or to understand
the effect of, the termination of liability concerned.

[27] Section 51 (3) (c)

Omit the paragraph.

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[28] Section 51 (4)

Omit the subsection.

[29] Section 51 (7)

Omit the subsection.

[30] Section 51 (9)

Omit "sections 15, 16, 22A, 122, 151Z and 273 of this Act and section 64 of the former Act (as so applied)".

Insert instead "this Act, the 1998 Act and the former Act (as applied by this Act)".

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[31] Section 51, note

Insert after section 51 (9):

Note. Clauses 6 and 6A of Part 4 of Schedule 6 make provision for commutations for those liabilities arising under the former Act and those arising before the commencement of the 1998 Act.

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[32] Section 52A

Omit the section. Insert instead:

52A Discontinuation of weekly payments for partial incapacity after 2 years

- (1) Weekly payments of compensation in respect of partial incapacity for work are not payable for any period beyond the first 104 weeks of partial incapacity for work (whether or not any part of that period is compensated as if the incapacity for work was total) but only if one or more of the following paragraphs (referred to in this section as *grounds for discontinuation*) applies to the worker at the *relevant time*:
- (a) the worker is not suitably employed (within the meaning of section 43A) and is not seeking suitable employment (as determined in accordance with section 38A),
- (b) the worker is not suitably employed (within the meaning of section 43A) and has previously unreasonably rejected suitable employment (within the meaning of section 40 (2B)),
- (c) the worker has sought suitable employment but has failed to obtain suitable employment primarily because of the state of the labour market (rather than because of the effects of the worker's injury).

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- (2) The *relevant time* for the purposes of this section is the time at which the notice under section 54 of intention to discontinue payment of compensation pursuant to this section is given. The discontinuation of payments under this section has effect even if, after the relevant time, none of the grounds for discontinuation applies to the worker. 5
- (3) A worker is not entitled to a resumption of payment of weekly compensation for partial incapacity for work once payment is discontinued because of this section. 10
- (4) The notice under section 54 of intention to discontinue payment of compensation pursuant to this section must be given. The notice can be given up to 6 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that. 15
- (5) The fact that the worker becomes totally incapacitated for work after the relevant time does not affect the operation of this section in respect of partial incapacity for work. 20
- (6) This section does not affect any entitlement to compensation under this Act in respect of any period of total incapacity for work.
- (7) A period of partial incapacity for work does not count as part of the 104 weeks referred to in subsection (1) unless the worker received or was entitled to receive compensation for that period. Separate periods during which the worker received or was entitled to receive those payments are to be aggregated. 25
- (8) If: 30
- (a) a claim for weekly payments of compensation is made by a worker after the earliest time at which a notice under section 54 to discontinue payment of compensation can be given under this section, or

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- (b) proceedings before the Compensation Court involve a claim for weekly payments of compensation in respect of any period of incapacity for work that includes any period beyond the end of the 104 week period, 5

the notice under section 54 may (but need not) be given before payments are discontinued. If the notice is not given, the relevant time for the purposes of this section is the time at which payments are discontinued.

- (9) This section does not apply to compensation for an injury received by a person as a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies. 10

[33] Section 52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years 15

Omit the section.

[34] Section 56 Award of compensation may be subject to supply of medical certificates etc

Omit "conciliation officer" from section 56 (3).
Insert instead "conciliator".

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[35] Section 57 Worker to notify return to work etc with other employer

Omit "conciliation officer" from section 57 (3).
Insert instead "conciliator".

[36] Section 58 Refund of weekly payments paid after return to work etc 25

Omit "conciliation officer" from section 58 (3).
Insert instead "conciliator".

[37] Section 59 Definitions

Omit "section 152" from the definition of *occupational rehabilitation service*.
Insert instead "section 52 of the 1998 Act".

[38] Section 60A Worker not liable for medical, hospital and rehabilitation charges above applicable rates

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Omit "prescribed" wherever occurring. Insert instead "fixed".

[39] Section 61 Rates applicable for medical or related treatment

Omit "prescribed by the regulations" from section 61 (2).
Insert instead "fixed by the Authority".

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[40] Section 61 (2)

Insert "by order published in the Gazette" after "that treatment".

[41] Section 61 (3) (b)

Omit "prescribed by the regulations".
Insert instead "fixed by the Authority by order published in the Gazette".

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[42] Section 61 (4)

Omit "prescribed". Insert instead "fixed".

[43] Section 61 (9)

Omit "a regulation".
Insert instead "an order of the Authority".

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[44] Section 62 Rates applicable for hospital treatment

Omit "prescribed by the regulations" from section 62 (1).
Insert instead "determined by the Authority by order published in the Gazette".

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[45] Section 62 (5) (b)

Omit "prescribed by the regulations".
Insert instead "fixed by the Authority by order published in the
Gazette".

[46] Section 62 (6)

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Omit "prescribed". Insert instead "fixed".

[47] Section 62 (8)

Omit "regulation". Insert instead "determination".

[48] Section 62 (9)

Omit "a regulation". 10
Insert instead "an order of the Authority".

[49] Section 63 Rates applicable for ambulance service

Omit "prescribed by the regulations" from section 63 (1) (b).
Insert instead "fixed by the Authority by order published in the
Gazette". 15

[50] Section 63 (2)

Omit "prescribed". Insert instead "fixed".

[51] Section 63 (2B)

Omit "a regulation".
Insert instead "an order of the Authority". 20

**[52] Section 63A Rates applicable for occupational rehabilitation
services**

Omit "prescribed by the regulations" from section 63A (1).
Insert instead "determined by the Authority by order published in the
Gazette". 25

[53] Section 63A (2)

Omit "prescribed by the regulations".
Insert instead "fixed by the Authority".

[54] Section 63A (2)

Insert "by order published in the Gazette" after "that service". 5

[55] Section 64 Rates applicable for car travel associated with treatment

Omit "prescribed by the regulations" from section 64 (b).
Insert instead "fixed by the Authority by order published in the Gazette". 10

[56] Section 64A Compensation for cost of interpreter services

Omit "regulations may prescribe" from section 64A (2).
Insert instead "Authority may by order published in the Gazette".

[57] Section 64A (2) (a)

Insert "establish" before "guidelines". 15

[58] Section 64A (2) (b)

Insert "fix" before "the maximum".

[59] Section 66A Registration of agreements for compensation

Omit "section 272" from section 66A (6).
Insert instead "section 234 of the 1998 Act". 20

[60] Section 69A No compensation for less than 6% hearing loss

Omit "section 129 or 131" from section 69A (7).
Insert instead "section 119 or 122 of the 1998 Act".

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[61] Section 72 Reference of matters to medical panel etc

Omit "section 131" from section 72 (1).
Insert instead "section 122 of the 1998 Act".

[62] Section 72 (1A)

Omit "section 131". Insert instead "section 122 of the 1998 Act". 5

[63] Part 4 Compensation—Claims and proceedings

Omit the Part.

[64] Section 151A Election—damages or "Table of Disabilities" compensation

Insert "(or is taken to have made that election)" after "that election" 10
in section 151A (3).

[65] Section 151A (3) (b)

Insert "or by the Compensation Court making an award in respect of
that permanent loss compensation" after "compensation".

[66] Section 151L Mitigation of damages 15

Omit "duly co-operated in the procedures under the employer's
workplace rehabilitation program" from section 151L (2) (c).
Insert instead "duly complied with the worker's obligations under
Chapter 3 of the 1998 Act (Workplace injury management)".

[67] Part 6 Rehabilitation of injured workers 20

Omit the Part.

[68] Part 7, Division 1A (sections 154A and 154B)

Insert after the heading to Part 7:

**Division 1A Commencement of insurance arrangements
under the 1998 Act**

154A New insurance arrangements to commence 1/10/99 5

- (1) For the purpose of providing for the commencement of insurance arrangements under the 1998 Act on 1 October 1999, the following provisions apply:
 - (a) this Part does not apply to require a policy of insurance to be obtained under this Act after 30 September 1999, 10
 - (b) a policy of insurance is not to be issued or renewed under this Act after 30 September 1999,
 - (c) a person is not a self-insurer under this Part for any period after 30 September 1999, 15
 - (d) the regulations may prescribe modification to this Part in its operation in respect of any period after 30 September 1999.
- (2) Nothing in this section affects the operation of a policy of insurance issued or renewed under this Act before 1 October 1999, or the operation of this Act in respect of such a policy, even to the extent that the policy applies to a period after 30 September 1999. 20
- (3) This section does not affect the operation of this Part after 30 September 1999 except as specifically provided by this section. 25

154B Existing insurer licences continue after 30/9/99

- (1) A licence granted under Division 3 of Part 7 and in force immediately before the commencement of this section continues in force, subject to the regulations, as if the period specified in the licence for the purposes of section 180 as the period during which the licence is to be in force were an indefinite period. 30

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- (2) Nothing in this section authorises a licensed insurer to issue or renew a policy of insurance after 30 September 1999.

- (3) The regulations may modify this section in its operation to specialised insurers.

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[69] Section 155A

Insert after section 155:

155A Policies to be for 12 month periods

A policy of insurance issued after the commencement of this section must be issued for a period of 12 months, unless the Authority otherwise approves in a particular case or class of cases.

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[70] Section 156A Misleading conduct by insurers and insurance intermediaries

Insert "or the 1998 Act" after "this Act" in section 156A (2) (a).

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[71] Section 156A (7)

Insert after section 156A (6):

- (7) A person is not liable to be convicted for an offence under both this section and the equivalent provision of the 1998 Act in respect of the same act or omission.

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[72] Section 158 Insurance for trainees

Insert after section 158 (10):

- (11) This section does not apply in respect of insurance for any period after 30 September 1999.

[73] Section 174 Records relating to wages, contracts etc to be kept and supplied by employers

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Insert "to the 1998 Act" after "Schedule 1" in paragraph (b) of the definition of *wages* in section 174 (9).

[74] Section 192A

Insert after section 192:

192A Claims administration manual-managed fund insurers
(cf former s 93B)

- | | | |
|-----|---|----|
| (1) | The Authority may prepare and publish a claims manual for use by licensed insurers under this Division. | 5 |
| (2) | In preparing the claims manual, the Authority is required to promote, as far as practicable: | |
| (a) | the prompt processing of claims and payment of amounts duly claimed, and | 10 |
| (b) | the giving of information about workers' entitlements and about procedures for the making of claims and the resolution of disputes, and | |
| (c) | the minimisation of the effect of injuries to workers by the making of prompt arrangements for rehabilitation, and | 15 |
| (d) | the proper investigation of liability for claims, and | |
| (e) | the recovery of proper contributions in connection with claims from other insurers or persons. | |
| (3) | The claims manual may make provision (not inconsistent with this Act, the 1998 Act or the regulations under those Acts) in connection with all matters relating to the administration of claims, including: | 20 |
| (a) | liaison between insurers and employers concerning rehabilitation assessment of injured workers, and | 25 |
| (b) | the provision or arrangement of suitable employment or rehabilitation training for partially incapacitated workers, and | |
| (c) | the monitoring of employment-seeking activities or rehabilitation training by partially incapacitated workers, and | 30 |
| (d) | arrangements for the settlement of claims for damages. | |

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- (4) The Authority may give an insurer directions as to the procedure to be followed in the administration of any claim or class of claims in order to comply with the claims manual, the 1998 Act and this Act.
 - (5) It is a condition of the licence of an insurer under this Division that the insurer comply with any direction given to the insurer under this section. 5
 - (6) Any claims manual in force under section 93B, immediately before its repeal, is taken to have been prepared and published under this section. 10
- [75] Section 195 Establishment of statutory fund of insurer**
Omit "the issue and renewal of" from section 195 (1).
- [76] Section 195 (1)**
Insert "issued or renewed" after "insurance".
- [77] Section 197 Application of statutory funds** 15
Omit ", being contributions relating to premium income payable into the statutory fund" from section 197 (1) (h1).
- [78] Section 221A**
Insert after section 221:
- 221A Closure of the Contribution Fund** 20
- (1) For the purposes of this section, an *eligible insurer* is an insurer to which a payment was made under section 221 during the period of 4 years ending on 31 March 1998.
 - (2) After the commencement of this section:
 - (a) no amount is payable under section 221 except to an eligible insurer, and 25
 - (b) no amount is payable under section 221 to an eligible insurer unless a claim for payment of the amount was made by the eligible insurer on or before 15 May 1998, and 30

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- (c) no amount is repayable under section 222 by an insurer (whether or not an eligible insurer) in respect of any amount received from another person after 15 May 1998.
- (3) The Authority is to determine, on the basis of actuarial advice, the amount (the *total liability of the Fund*) that is needed to satisfy the outstanding liabilities of the Contribution Fund as at 31 March 1998. 5
- (4) The Authority is to determine for each eligible insurer what proportion of the total amount of the payments made to eligible insurers under section 221 during the 4 year period referred to in subsection (1) is the proportion represented by the total amount of the payments made under that section during that period to the insurer. This proportion is *the market share* of the insurer. 10 15
- (5) The Authority may determine an amount that the Authority considers is necessary to be paid into the Contribution Fund to fund the shortfall between the amount standing to the credit of the Contribution Fund and the total liability of the Fund. The regulations may require payment of contributions by licensed insurers into the Contribution Fund to fund that shortfall. Section 220 (4) and (5) apply to contributions payable under the regulations as if the contributions were payable under section 220. 20 25
- (6) The Authority is to distribute from the Contribution Fund among eligible insurers an amount equal to the total liability of the Fund. The distribution is to be as provided by the regulations and is to be on the basis of the market share of each insurer. 30
- (7) In making the distribution, the Authority is to make appropriate allowance for any amount paid to an eligible insurer under section 221, or repaid by an eligible insurer under section 222, after 31 March 1998.
- (8) Any distribution made under this section after 30 September 1998 may be increased by the Authority to allow for investment return on funds after 31 March 35
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1998 (with the rate of investment return being as determined by the Authority having regard to actuarial advice).

- (9) Any entitlement of an insurer (whether or not an eligible insurer) to a payment under section 221 is extinguished except as provided by this section. 5
- (10) When the distribution required by this section is finalised, the Contribution Fund is to be closed and any amount standing to the credit of the Fund is to be paid by the Authority into the WorkCover Authority Fund. 10
- (11) Nothing in this section affects any entitlement of the Authority under section 221 (11). Any determination of the total liability of the Fund is to take account of the Authority's entitlements.

[79] Section 224B Declaration of defaulting insurers 15

Insert after section 224B (2):

- (3) A declaration is not to be made under this section after 30 September 1999.

[80] Section 226 Insolvent insurers

Insert at the end of the section: 20

- (2) No declaration is to be made under this section after 30 September 1999.

[81] Section 227 Insurers' Guarantee Fund

Insert after section 227 (2) (a):

- (a1) any amount directed to be paid into the Guarantee Fund out of the Premiums Adjustment Fund under section 228, 25

[82] Section 228 Contributions to Guarantee Fund

Insert after section 228 (2B):

(2C) Where the Authority so directs, the amount determined by the Authority under subsection (1) or (2A) is to be paid into the Guarantee Fund out of the Premiums Adjustment Fund, instead of being paid by insurers under subsection (2) or (2B).

5

[83] Part 9 WorkCover Authority Fund

Omit the Part.

[84] Section 269 Posting summary of Act

10

Omit the section.

[85] Section 270 Worker's right to information

Omit the section.

[86] Section 271 No contribution from workers

Omit the section.

15

[87] Section 272 No contracting out

Omit the section.

[88] Section 273 Non-assignability of compensation

Omit the section.

[89] Section 274 Powers of entry and inspection by officers of Authority

20

Omit the section.

[90] Section 275 Service of notices

Omit the section.

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[91] Section 276 Disclosure of information

Omit the section.

[92] Section 277 Offences by corporations

Omit the section.

[93] Section 278 Proceedings for offences

5

Omit the section.

[94] Section 278A Penalty notices

Omit the section.

[95] Section 279 Time for instituting proceedings

Omit the section.

10

[96] Section 280 Regulations

Insert "or order" after "A regulation" in section 280 (4).

[97] Section 280 (4)

Insert "or order" after "the regulation".

[98] Schedule 1 Deemed employment of workers

15

Omit the Schedule.

[99] Schedule 2 Provisions relating to appointed conciliation officers

Omit the Schedule.

[100] Schedule 6 Savings, transitional and other provisions

Insert after clause 5C of Part 4:

5D Operation of 1998 amending Act

- (1) **Definition.** In this clause, *the 1998 amending Act* means the *Workers Compensation Legislation Amendment Act 1998*. 5
- (2) **Reducing maximum s 38 benefit from 104 weeks to 52 weeks.** The amendments made by the 1998 amending Act to section 38 of this Act do not apply to any period of incapacity for work occurring before the commencement of those amendments. However, any such period of incapacity is not to be disregarded when determining the rate of compensation payable for the balance of any such period of incapacity occurring after that commencement. Accordingly, any such period of incapacity is to be taken into account in determining whether the worker has been compensated for the maximum period of 52 weeks in accordance with section 38 of this Act, as amended. 10
15
- (3) **Reducing s 40 benefit where suitable employment refused.** Subsections (2A) and (2B) of section 40, as inserted by the 1998 amending Act, apply to any period of incapacity for work (and to any unreasonable rejection of suitable employment) occurring after (but not before) the commencement of those subsections (whether the incapacity results from an injury received before or after that commencement). 20
25

[101] Schedule 6, Part 4, clause 6A

Insert after clause 6:

6A Commutations under section 51 for injuries received before 1998 amending Act 30

- (1) In this clause, *the 1998 amending Act* means the *Workers Compensation Legislation Amendment Act 1998*.

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Schedule 1 Amendment of Workers Compensation Act 1987

- (2) Section 51, as amended by the 1998 amending Act, applies to the commutation of a liability arising in respect of an injury received before or after the commencement of those amendments.
- (3) However, the regulations may limit the circumstances in which a liability arising in respect of an injury received before 1 October 1999 may be commuted and may make other modifications to the operation of that section in respect of the commutation of any such liability. 5

[102] Schedule 6, Part 4, clause 15 10

Insert after clause 14:

**15 Discontinuation of weekly payments after 2 years—
application of 1998 amendments**

- (1) The amendments to section 52A made by the *Workers Compensation Legislation Amendment Act 1998* apply to the discontinuation of payments of weekly compensation after the commencement of those amendments, whether the incapacity results from an injury received before or after that commencement and whether all or any part of the 104 weeks of incapacity for work referred to in that section occurred before that commencement. 15 20
- (2) This clause is subject to the regulations under Part 20 of this Schedule and the regulations under the 1998 Act.

[103] Schedule 6, Part 5, clause 10

Insert after clause 9: 25

10 New procedure for fixing rates etc—1998 amending Act

The regulations in force under sections 60A–64A, immediately before the commencement of the amendments made to those sections by the *Workers Compensation Legislation Amendment Act 1998*, continue in force until the commencement of the relevant orders made by the Authority that fix or determine the matters for which those regulations were made. 30

[104] Schedule 6, Part 14, clause 11

Insert after clause 10:

11 Amendment of sec 151A—1998 amending Act

The amendments made to section 151A by the *Workers Compensation Legislation Amendment Act 1998* apply in respect of injuries received before or after the commencement of those amendments, but do not apply in respect of awards made by the Compensation Court before that commencement or awards made by that Court in connection with proceedings instituted before that commencement. 5
10

[105] Schedule 6, Part 18A

Insert after Part 18:

Part 18A Additional provisions consequent on enactment of 1998 Act and 1998 amending Act 15

1 Definition

In this Part:

1998 amending Act means the *Workers Compensation Legislation Amendment Act 1998*. 20

2 Saving of notices of injury, claims for compensation, conciliation etc under repealed provisions of Part 4 of this Act

- (1) The repeal of Part 4 of this Act by the 1998 amending Act does not affect: 25
- (a) any notice of injury, or of incapacity, treatment or damage, under that Part, or
 - (b) any claim for compensation under that Part, or

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- (c) the referral of any dispute to conciliation, any certificate of conciliation or any agreement arising from conciliation under that Part, or
 - (d) any directions under that Part with respect to weekly payments, or 5
 - (e) any proceedings before the Compensation Court, or any award, order or other decision of the Court, under that Part, or
 - (f) any medical examination, any reference of a medical dispute to a medical referee or panel or any certificate of a medical referee or panel under that Part, or 10
 - (g) any claim under the Uninsured Liability and Indemnity Scheme, or
 - (h) any order, notice, direction, requirement or other thing given, made or done under that Part. 15
- (2) Any such thing is, for the purposes of the provisions of the 1998 Act corresponding to Part 4 of this Act, taken to have been given, made or done under those provisions of the 1998 Act. 20
- (3) The provisions of Part 4 of this Act relating to existing claims referred to in section 87D (as in force immediately before their repeal by the 1998 amending Act) continue to apply to any such claim that has not been finalised before that repeal. For that purpose, any officer of the WorkCover Authority who is a conciliation officer for the purposes of that claim may continue to exercise the functions of a conciliation officer for the purposes of finalising that claim. 25
- (4) Section 131A (as in force immediately before its repeal) continues to have effect with respect to references made to a medical practitioner before that repeal and certificates issued with respect to those referrals. 30
- (5) This clause has effect subject to the regulations under Part 20 of this Schedule and the regulations under the 1998 Act. 35

3 Saving of appointment of existing conciliation officers and Principal Conciliator

- (1) A person holding office as a conciliation officer under a provision of Part 4 of this Act immediately before its repeal by the 1998 amending Act (other than an officer of the WorkCover Authority) is taken to have been appointed as a conciliator under the corresponding provision of Chapter 4 of the 1998 Act. 5
- (2) The person holding office as the Principal Conciliator under section 87F of this Act immediately before its repeal by the 1998 amending Act is taken to have been appointed as the Principal Conciliator under section 77 of the 1998 Act. 10

4 Saving of regulations under repealed provisions of this Act

A regulation (or any separate provision of a regulation) made under a provision of this Act that is repealed by the 1998 amending Act is, to the extent that it could be made under a corresponding provision of the 1998 Act, taken to be a regulation made under the 1998 Act. 15 20

5 References to this Act

A reference to this Act in any other Act (other than the 1998 Act), in any instrument made under any Act or in any document is to be read as including a reference to the 1998 Act, unless the regulations or the context otherwise requires. 25

6 Abolition of former bodies

- (1) In this clause:
- former body* means the Workers Compensation Advisory Council established by the Minister before the commencement of the 1998 amending Act, the Board of Directors of the WorkCover Authority of New South Wales constituted under the *WorkCover Administration Act 1989* or the Occupational Health, Safety and Rehabilitation Council of New South Wales constituted under that Act. 30 35

-
- (2) The former bodies are abolished.
 - (3) A person who held office as a member of a former body immediately before its abolition ceases to hold office and is not entitled to any remuneration, or compensation, for loss of that office. However, any such person is eligible (if otherwise qualified) to be appointed to a body constituted under the 1998 Act. 5

7 Continuation of WorkCover Authority

The WorkCover Authority of New South Wales constituted under the 1998 Act is a continuation of, and the same legal entity as, the WorkCover Authority of New South Wales constituted under the *WorkCover Administration Act 1989*. 10

8 Continuation of WorkCover Authority Fund

The WorkCover Authority Fund established under the *WorkCover Administration Act 1989* is taken to have been established under the 1998 Act. 15

9 Insurers

- (1) The holder of a licence (an *existing licence*) under Division 5 (Self-insurers) of Part 7 of this Act immediately before 1 October 1999 is taken to have been granted a licence (a *new licence*) as a self-insurer under the 1998 Act on the same terms and conditions and subject to the same endorsements as the licence under this Act. 20
25
- (2) The new licence is taken to specify as the period during which it is to be in force the period on and from 1 October 1999 to the end of the period for which the existing licence was granted under this Act.
- (3) An application for a licence under Division 5 of Part 7 of this Act pending under this Act immediately before 1 October 1999 is to be dealt with as an application under the 1998 Act. 30

-
- (4) An amount of money deposited by a self-insurer under Division 5 of Part 7 of this Act is taken, for the purposes of the 1998 Act, to be money deposited by the self-insurer under the 1998 Act.

[106] Schedule 6, Part 20, clause 1 (1)

5

Insert at the end of the subclause:

Workers Compensation Legislation Amendment Act 1998

*Workplace Injury Management and Workers
Compensation Act 1998*

[107] Schedule 6, Part 20, clause 1 (6) (c)

10

Omit "31 December 1987". Insert instead "31 December 1999".

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Community Land Management Act 1989 No 202

Section 40 Other insurance required

Insert “and the *Workplace Injury Management and Workers Compensation Act 1998*” after “1987” in section 40 (2) (a). 5

2.2 Compensation Court Act 1984 No 89

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Workers Compensation Acts means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. 10

[2] Sections 6, 14A, 14B, 38, 41 and 43

Omit “*Workers Compensation Act 1987*” wherever occurring.
Insert instead “*Workers Compensation Acts*”. 15

[3] Section 18 Costs

Omit “Section 116 (Costs) of the *Workers Compensation Act 1987*”.
Insert instead “Section 112 of the *Workplace Injury Management and Workers Compensation Act 1998*”.

[4] Sections 38F and 39A (3) 20

Omit “section 19 (2) (c) of the *WorkCover Administration Act 1989*”
wherever occurring.
Insert instead “section 35 (2) (f) of the *Workplace Injury Management and Workers Compensation Act 1998*”.

[5] Sections 41 and 43

Omit "that Act" wherever occurring.
Insert instead "either of those Acts".

[6] Schedule 3 Functions of the Court that may be exercised by commissioners

5

Omit "conciliation officer" from paragraph (p).
Insert instead "conciliator".

[7] Schedule 3, paragraph (p)

Omit "section 98 (3) of the *Workers Compensation Act 1987*".
Insert instead "section 79 (3) of the *Workplace Injury Management and Workers Compensation Act 1998*".

10

2.3 Defamation Act 1974 No 18

[1] Section 17BB Conciliation officers and conciliators under Workers Compensation Acts

Insert "or conciliator" after "conciliation officer" wherever occurring.

15

[2] Sections 17BB (a) and 17BD (1) (a)

Insert "or the *Workplace Injury Management and Workers Compensation Act 1998*" after "1987" wherever occurring.

[3] Section 17BB (c)

20

Insert "or section 84 of the *Workplace Injury Management and Workers Compensation Act 1998*" after "1987".

[4] Sections 17BD (1) (c) and (d)

Insert "or section 72 of the *Workplace Injury Management and Workers Compensation Act 1998*" after "1987" wherever occurring.

25

[5] Section 17BD (2)

Omit the subsection. Insert instead:

- (2) In subsection (1), a reference to insurer or claim has the same meaning as it has in the provision of the *Workers Compensation Act 1987* or of the *Workplace Injury Management and Workers Compensation Act 1998* to which the reference relates. 5

[6] Schedule 2 Proceedings of public concern and official and public documents and records

Insert “or conciliator” after “conciliation officer” wherever occurring in clauses 2 (17) and 3 (6). 10

[7] Schedule 2, clauses 2 (17) and 3 (6)

Insert “or the *Workplace Injury Management and Workers Compensation Act 1998*” after “1987” wherever occurring.

[8] Schedule 2, clause 3 (6) 15

Omit “that Act”.

Insert instead “the *Workers Compensation Act 1987* or section 84 of the *Workplace Injury Management and Workers Compensation Act 1998*”.

2.4 Duties Act 1997 No 123 20

Section 259 What insurance is exempt from duty?

Insert “or the *Workplace Injury Management and Workers Compensation Act 1998*” after “1987” in section 259 (g).

2.5 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit "*Workers Compensation Act 1987*, section 278A".

Insert instead "*Workplace Injury Management and Workers Compensation Act 1998*, section 246". 5

2.6 Home Building Act 1989 No 147

[1] Section 51 Improper conduct: generally

Insert "or the *Workplace Injury Management and Workers Compensation Act 1998*" after "1987" in section 51 (2) (f). 10

[2] Section 51 (2) (f)

Omit "that Act". Insert instead "either of those Acts".

2.7 Industrial Relations Act 1996 No 17

[1] Section 91 Definitions

Insert "the *Workplace Injury Management and Workers Compensation Act 1998*," after "under" in section 91 (1). 15

[2] Section 96 Disputes as to fitness—medical referees and panels

Omit "*Workers Compensation Act 1987*" from section 96 (3).

Insert instead "*Workplace Injury Management and Workers Compensation Act 1998*". 20

2.8 Motor Accidents Act 1988 No 102

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Workers Compensation Acts means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. 5

[2] Sections 16, 39C and 67

Omit "*Workers Compensation Act 1987*" wherever occurring.
Insert instead "Workers Compensation Acts".

[3] Section 67 Claims register 10

Omit "State Compensation Board" from section 67 (2).
Insert instead "WorkCover Authority".

2.9 Occupational Health and Safety Act 1983 No 20

Section 4 Definitions

Omit "*WorkCover Administration Act 1989*" from the definition of *WorkCover Authority* in section 4 (1). 15
Insert instead "*Workplace Injury Management and Workers Compensation Act 1998*".

2.10 Sporting Injuries Insurance Act 1978 No 141

[1] Section 6 Appointment of referees and medical panels 20

Omit "*Workers Compensation Act 1987*" from section 6 (1).
Insert instead "*Compensation Court Act 1984*".

[2] Section 18 Failure of organisation to pay premiums

Omit "section 3 (1) of the *Workers Compensation Act 1987*" from section 18 (1).

Insert instead "section 4 (1) of the *Workplace Injury Management and Workers Compensation Act 1998*".

5

2.11 Strata Schemes Management Act 1996 No 138

Section 87 What other insurance must an owners corporation take out?

Insert "and the *Workplace Injury Management and Workers Compensation Act 1998*" after "1987" in section 87 (1) (a).

10

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

[1] Section 3 Definitions

Omit "*WorkCover Administration Act 1989*" from the definition of *Authority* in section 3 (1).

Insert instead "1998 Act".

15

[2] Section 3 (1)

Insert in alphabetical order:

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

20

[3] Sections 15, 16 (3), 29 and 30 (3)

Omit "the Principal Act" wherever occurring.

Insert instead "the 1998 Act".

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Schedule 2 Amendment of other Acts

- [4] **Sections 16 (3) and 30 (3)**
Omit "conciliation officer" wherever occurring.
Insert instead "conciliator".
- [5] **Sections 16 (6) and 30 (6)**
Insert "or the 1998 Act" after "the Principal Act" wherever occurring. 5
- [6] **Section 32 Application of Principal Act and 1998 Act**
Omit section 32 (1) (h), (j) and (k).
- [7] **Section 32 (1A)**
Insert after section 32 (1): 10
 (1A) Except as otherwise provided under this Act, the following provisions of the 1998 Act have effect as if included in this Act (with such modifications as may be necessary or as may be prescribed by the regulations):
 (a) Division 7 of Part 2 of Chapter 4 (Medical examinations and disputes), 15
 (b) section 234,
 (c) section 235,
 (d) any other provision prescribed by the regulations.
- [8] **Section 32 (2)** 20
Insert "and the 1998 Act" after "the Principal Act".

2.13 Workers' Compensation (Dust Diseases) Act 1942 No 14

- [1] **Section 3 Definitions**
Insert in alphabetical order in section 3 (1):
 the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*. 25

[2] Section 3 (1), definition of "WorkCover Authority"

Omit "*WorkCover Administration Act 1989*".

Insert instead "1998 Act".

[3] Sections 6 (7A) and (9) and 8 (5A)

Insert "or the 1998 Act" after "the Principal Act" wherever 5
occurring.

[4] Sections 6 (7B) and 8 (3A) and (4)

Insert "and the 1998 Act" after "the Principal Act" wherever
occurring.

[5] Section 8H Inspectors

10

Omit "section 274 of the Principal Act" from section 8H (4) (e).

Insert instead "section 238 of the 1998 Act".