



New South Wales

Workers Compensation Legislation Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* (***the Workers Compensation Acts***) and certain other Acts to provide for the following:

- (a) provisional acceptance of liability for workers compensation within 7 days of notification of injury (thereby requiring limited payments of weekly benefits for up to 12 weeks to commence prior to liability being determined),
- (b) removal of the requirement for the Compensation Court to determine lump sum commutation of workers compensation benefits, subject to additional requirements for independent advice and scrutiny and registration of commutation agreements,
- (c) provision of enhanced assistance and information to injured workers and employers in connection with their rights and obligations under the legislation,

- (d) establishment by the WorkCover Authority (**WorkCover**) of advisory services to provide claims assistance to workers, employers and insurers and funding by WorkCover of the provision of those services by employee or employer associations for 3 years,
- (e) expanded sanctions for insurers that fail to make decisions on claims within the prescribed time frames, including requirements to pay administrative fees where such matters are determined by the new Claims Assessment Service,
- (f) a Claims Assessment Service (comprising a Director, Principal Commissioner, other Commissioners, and medical assessors) that will provide a dispute resolution service for disputes about workers compensation, assessment of common law claims, oversight of commutations and binding medical assessment,
- (g) directions by the Director for interim payment of weekly benefits for up to 12 weeks and reasonable and necessary medical treatment (pending full determination of a dispute) with provision for further directions,
- (h) binding determination of disputed medical issues by a medical assessor in the Claims Assessment Service,
- (i) determination of disputes about workers compensation by a Commissioner in the Claims Assessment Service with the decisions of a Commissioner being final and binding on the parties (subject to review by the Principal Commissioner and provision for the Director to refer a question of law to the Compensation Court),
- (j) a claim against an employer for common law damages in respect of an injury for which workers compensation is payable is to be assessed by a Commissioner before the matter can proceed to court (paralleling similar provisions of the *Motor Accidents Compensation Act 1999*),
- (k) the Commissioners will have the same jurisdiction that the Compensation Court presently has under the Workers Compensation Acts (including jurisdiction to determine other miscellaneous matters arising under workers compensation legislation, such as apportionment disputes),
- (l) a party to a determination or assessment by a Commissioner will be able to request a review of the determination or assessment on the basis of a mistake in a material respect and the review will be conducted by the Principal Commissioner or by another Commissioner nominated by the Principal Commissioner,
- (m) existing arrangements for the conciliation of disputes by conciliation officers and the determination of disputes by the Compensation Court will continue in respect of existing claims (subject to the transfer of existing claims to the new claims provisions),

- (n) claimants, employers and insurers will be entitled to legal representation before Commissioners but an insurer will not be entitled to representation if the claimant is unrepresented,
- (o) existing cost sanctions will be expanded to apply to legal representatives who contribute to delay,
- (p) the regulations will be able to provide for the assessment or taxation of costs,
- (q) entitlement to lump sum compensation for non-economic loss will be based on the degree of permanent impairment suffered (with the degree of permanent impairment to be assessed in accordance with guidelines) rather than the existing Table of Disabilities,
- (r) consequential amendments are made to the common law threshold to align current arrangements with the proposed use of guidelines (including adjustment of the threshold required to recover damages for economic loss or non-economic loss at common law so that a single threshold of 25% permanent impairment will apply),
- (s) consequential amendments are made to the threshold for entitlement to lump sum pain and suffering compensation (specifically, provision for a 10% permanent impairment threshold),
- (t) transitional provisions are enacted with existing claims to remain subject to current provisions and power for the regulations to progressively transfer claims to the new claims procedures,
- (u) fine tuning of provisions for the notification and making of claims.

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*, the *Workplace Injury Management and Workers Compensation Act 1998* and other Acts set out in Schedules 1–6.

Schedule 1 makes the amendments referred to in paragraph (b) of the overview (concerning commutation to a lump sum of workers compensation liabilities) together with consequential amendments.

Schedule 2 makes the amendments referred to in paragraphs (c) and (d) of the Overview (concerning the provision of assistance and information and the establishment and funding of claims assistance advisory services. The Schedule also provides for the accreditation of injury management consultants by WorkCover and for WorkCover Guidelines to provide for their functions. Accredited injury management consultants will be competent but not compellable to give evidence.

Schedule 3 makes the amendments to provisions for lump sum statutory compensation for permanent injuries referred to in paragraph (q) of the Overview. Currently lump sum compensation is assessed pursuant to a Table of Disabilities based on a proportion of the maximum amount payable that is determined by reference to the percentage allocated to the loss in the Table. The amendments will provide for the payment of *permanent impairment compensation* based on the degree of permanent impairment that results from the injury (with the degree of permanent impairment assessed in accordance with WorkCover Guidelines). Consequential amendments are made to provisions for pain and suffering compensation and various other provisions to reflect the change to the way in which permanent impairment compensation is to be calculated.

The Schedule also makes other amendments that are consequential on the amendments made by Schedule 5 concerning new claims handling and dispute resolution procedures.

Schedule 4 makes the amendments referred to in paragraph (r) of the Overview. The Schedule amends provisions of the 1987 Act that restrict the recovery of common law damages for non-economic loss. Existing monetary restrictions on common law recovery are replaced with equivalent restrictions that are based on assessment of the degree of permanent impairment resulting from an injury, to line up with the new arrangements for the calculation of lump sum permanent injury statutory compensation. No damages will be able to be awarded for non-economic loss or economic loss unless the degree of permanent impairment is greater than 25%. Provision is also made for the determination of disputes in common law recovery actions about the degree of permanent impairment to be referred to a medical assessor for binding determination.

Schedule 5 makes the other amendments referred to in the Overview.

Schedule 5.1 makes consequential amendments to provisions that deal with the effect of the recovery of damages on entitlements to statutory compensation. The amendments are consequential on the application of a fixed 25% threshold for recovery of both economic and non-economic loss damages. Schedule 5.1 also inserts transitional provisions for the Bill, including provisions for the transfer of existing claims (which will continue to be dealt with in accordance with existing

claims procedure and compensation entitlement procedures) to new claims procedures and entitlements.

Schedule 5.2 [14] inserts new Chapter 7 into the 1998 Act, providing for new procedures for the making and determination of claims for statutory compensation and common law damages and disputes involving those claims.

Significant features of the new arrangements are as follows:

- (a) Division 1 of Part 2 simplifies procedures for the giving of notice of injury.
- (b) Division 2 of Part 2 simplifies procedures for the making of a claim for statutory compensation (with the introduction of significant flexibility by reference to WorkCover Guidelines) and extends some of these procedures to claims for (common law) work injury damages.
- (c) Division 1 of Part 3 imposes a duty on insurers to commence weekly payments of compensation (pursuant to provisional acceptance of liability) within 7 days after initial notification of injury.
- (d) Division 2 of Part 3 deals with claims for weekly payments and requires claims to be determined within 21 days. A claim is determined by accepting liability and commencing weekly payments or by disputing liability. Liability can be accepted provisionally for up to 12 weeks.
- (e) Division 3 of Part 3 deals with claims for medical expenses and requires a claim to be determined within 21 days by either accepting or disputing liability. Liability can be accepted provisionally for an amount of up to \$1,000.
- (f) Division 4 of Part 3 deals with claims for lump sum statutory compensation or work injury damages. A claim must be determined by accepting liability and making a reasonable offer of settlement or by disputing liability. A claim must be determined within 2 months after the claimant provides all relevant information or (if the injury has not stabilised within that time) within 1 month after it has stabilised.
- (g) Division 5 of Part 3 deals with the enforcement of claims determination provisions. The Division creates offences for failing to determine a claim within the required time or for referring a non-genuine dispute for the purposes of delay. Insurers can be required to pay an administration fee if they fail to determine a claim within the required time and the claim is referred for dispute determination.
- (h) Part 4 provides for the determination of disputes about claims for statutory compensation by a Workers Compensation Commissioner (rather than the Compensation Court, as at present). The Part imposes restrictions on when a dispute can be referred for determination.

- (i) Part 5 provides for the new Director of the Claims Assessment Service or a Commissioner to be able to give an interim payment direction to pay weekly compensation or medical expenses compensation, pending the determination of any dispute about the compensation.
- (j) Part 6 provides for the assessment by the Commissioners of claims for (common law) work injury damages. The assessment of a claim is not a determination of the claim (except to the extent that liability is accepted by the insurer and the insurer accepts the amount of damages assessed). Claims assessment is a precondition to the commencement of court proceedings on the claim (unless the claim is exempt from assessment).
- (k) Part 7 deals with the appointment of medical assessors and the assessment by medical assessors of medical disputes. The assessment of degree of permanent impairment is required to be in accordance with certain guidelines. An assessment of a medical dispute is conclusive in respect of claims for statutory compensation, and conclusive as to degree of impairment, reasonableness of treatment and stabilisation of injury in respect of work injury damages claims.
- (l) Part 8 deals with legal costs in workers compensation matters. The Part simplifies and expands existing provisions and extends costs fixing powers to costs in court proceedings on work injury damages claims. The regulations can provide for the assessment and taxation of costs. Division 4 makes special provisions for costs disincentives in a case where court proceedings on a work injury damages claim fail to exceed the amount of damages assessed by a Commissioner on an assessment of a claim.
- (m) Part 9 deals with proceedings before Commissioners. Decisions and assessments of Commissioners are final, subject to the review of a Commissioner's decision by the Principal Commissioner on the basis that the decision was incorrect in a material respect. Provision is also made for the referral of a question of law or stated case on a question of law to the Compensation Court.
- (n) Part 10 deals with administrative matters, including the establishment of the Workers Compensation Claims Assessment Services (comprising the Director, the Commissioners, the medical assessors and the staff of the Service), the appointment of Commissioners and the issuing of WorkCover Guidelines.

Schedule 5.2 [1]–[13] make consequential amendments.

Schedule 5.3 makes consequential amendments to the *Compensation Court Act 1984*.

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Schedule 5.4 makes consequential amendments to the *Defamation Act 1974*.

Schedule 6 makes consequential amendments to the 1987 and 1998 Acts.



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New South Wales

Workers Compensation Legislation Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to make further provision for claims procedures, dispute resolution, commutation, lump sum compensation, common law damages and other matters; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Workers Compensation Legislation Amendment Act 2001</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation.	6 7
(2) A proclamation under this section may appoint a particular time on a day as the time for commencement on that day.	8 9
3 Amendments	10
Each Act specified in Schedules 1–6 is amended as set out in those Schedules.	11 12

Schedule 1	Amendments relating to commutation procedures	1
		2
	(Section 3)	3
	Workers Compensation Act 1987 No 70	4
[1]	Section 35 Maximum weekly payment	5
	Omit “under section 51” from section 35 (3).	6
[2]	Section 37 Weekly payment during total incapacity—after first 26 weeks	7
	Omit “under section 51” from section 37 (6B).	8
[3]	Section 40 Weekly payments during partial incapacity—general	9
	Omit “under section 51” from section 40 (7).	10
[4]	Section 45 Reduction of weekly payments to qualify for other benefits	11
	Omit “under section 51” from section 45 (3).	12
	Insert instead “under this Act”.	13
[5]	Section 51 Exit payments by commutation of weekly payments	14
	Omit the section.	15
[6]	Part 3, Division 9	16
	Insert after Division 8 of Part 3:	17
	Division 9 Commutation of compensation	18
	87D Definition	19
	In this Division:	20
	<i>commutation agreement</i> means an agreement to commute a liability to a lump sum, as provided by section 87F.	21
		22

87E	Compensation that may be commuted	1
(1)	A liability in respect of any of the following kinds of compensation under this Act or the former Act may be commuted to a lump sum as provided by this Division (and not otherwise):	2
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(a)	weekly payments of compensation,	6
(b)	compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of this Act or section 10 of the former Act.	7
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(2)	Such a liability cannot be commuted to a lump sum by an order or award of a Commissioner (but this subsection does not affect the operation of section 87G).	10
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		12
87F	Commutation by agreement	13
(1)	A liability may be commuted to a lump sum with the agreement of the worker.	14
		15
(2)	A commutation agreement must not be entered into unless (before the agreement is entered into):	16
		17
(a)	a legal practitioner instructed independently of the insurer and the employer has certified in writing that the legal practitioner has advised the worker on the full legal implications of the agreement, including implications with respect to any entitlement of the worker to compensation under this Act or to benefits under any other law (including a law of the Commonwealth), and	18
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(b)	the worker has confirmed in writing that the worker has been given and understands the advice referred to in paragraph (a).	26
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(3)	A commutation agreement (including an agreement purporting to be a commutation agreement) is not subject to review or challenge in proceedings before a Commissioner or the Compensation Court.	29
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(4)	The worker has 14 days after entering into a commutation agreement in which to withdraw from the agreement by giving notice in writing to the insurer. Withdrawal from the agreement by the worker makes the agreement a nullity.	33
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(5) A liability cannot be commuted under this section if the worker is legally incapacitated because of the worker's age or mental capacity.	1 2 3
Note. Section 87G provides for the commutation of a liability when the worker is legally incapacitated.	4 5
(6) A commutation agreement is of no effect unless and until it is registered as provided by this Part. Registration of the agreement removes the liability to which the agreement relates.	6 7 8
(7) The amount payable under an agreement is payable within 7 days after the agreement is registered. Interest calculated at the rate prescribed by the regulations is payable on any amount due and unpaid. The amount payable under a commutation agreement and any interest payable on that amount is recoverable as a debt in a court of competent jurisdiction.	9 10 11 12 13 14
87G Commutation when worker legally incapacitated	15
(1) If a worker is legally incapacitated because of the worker's age or mental capacity, a liability in respect of compensation may be commuted to a lump sum by determination by a Commissioner made having regard to:	16 17 18 19
(a) any dispute as to liability to pay compensation under this Act, and	20 21
(b) the injury, the age of the worker, the general health of the worker, and the occupation of the worker at the time of the occurrence of the injury, and	22 23 24
(c) the worker's diminished ability to compete in an open labour market, and	25 26
(d) other benefits that the worker may be entitled to from any other source.	27 28
(2) A Commissioner is not to determine a lump sum for the purposes of this section unless satisfied that the termination of liability concerned is in the best interests of the worker.	29 30 31
(3) Payment of the lump sum to which a liability has been commuted under this section removes the liability.	32 33
87H Registration of commutation agreements	34
(1) A party to a commutation agreement may apply to the Director for registration of the agreement by the Director.	35 36

- (2) The Director must refuse to register a commutation agreement unless satisfied that the worker received independent legal advice, before the agreement was entered into, on the full legal implications of the agreement. 1
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- (3) Before registering a commutation agreement, the Director may (on the application of a party to the agreement or of the Director's own motion) refer the agreement to the Principal Commissioner for review by a Commissioner. The Director is not to register the agreement if the Commissioner recommends that the agreement not be registered. 5
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- (4) The Commissioner reviewing a commutation agreement may recommend to the Director that the agreement not be registered if the Commissioner considers that the agreement is inaccurate or that the lump sum to which a liability has been commuted by the agreement is inadequate. 11
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- (5) In reviewing a commutation agreement, a Commissioner may have regard to the following matters: 16
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- (a) any dispute as to liability to pay compensation under the Workers Compensation Acts, 18
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 - (b) the injury, the age of the worker, the general health of the worker, and the occupation of the worker at the time of the occurrence of the injury, 20
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22
 - (c) the worker's diminished ability to compete in an open labour market, 23
24
 - (d) other benefits that the worker may be entitled to from any other source. 25
26
- (6) The registration of a commutation agreement may not be cancelled except within such period after the agreement is registered, and in such manner, as may be authorised by the regulations. 27
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- (7) This section has effect despite section 234 of the 1998 Act (No contracting out). 31
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- (8) This section does not prevent a commutation agreement containing provision as to the payment of costs. 33
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87I	Payment	1
(1)	If a liability in respect of compensation is only partially commuted under this Division, the balance of the compensation continues to be payable under and subject to this Act.	2 3 4
(2)	A lump sum may be paid to the Public Guardian for the benefit of the worker if:	5 6
(a)	the worker agrees, in the case of a lump sum agreed to by the worker, or	7 8
(b)	by order of a Commissioner, in the case of a lump sum determined by a Commissioner.	9 10
(3)	The annual report of the Authority is to include a statement as to trends in the commutation of liabilities under this Act.	11 12
87J	Other commutation agreements invalid	13
(1)	Neither agreement as to the commutation of a payment to a lump sum nor payment of the sum payable under the agreement exempts the person by whom the payment is payable from any liability under this Act, except as provided by this Division.	14 15 16 17
(2)	This section does not affect the operation of section 51 in respect of a liability commuted under that section before the commencement of this section.	18 19 20
87K	Commutation payment taken to be payment of compensation	21
	Payment of a lump sum to which liability in respect of any weekly payment of compensation has been wholly or partially commuted under this Division or section 51, or redeemed under section 15 of the former Act (as applied by Schedule 6 to this Act), is taken for the purposes of this Act, the 1998 Act and the former Act (as applied by this Act) to be payment of the compensation concerned in pursuance of the liability to pay the compensation concerned.	22 23 24 25 26 27 28 29

[7] Section 146	1
Omit the section. Insert instead:	2
146 Commutation of weekly payments from Scheme	3
(1) Division 9 of Part 3 applies to the commutation of a liability under the Scheme.	4 5
(2) A liability under the Scheme may not be commuted to a lump sum with the agreement of the worker unless the Authority:	6 7
(a) has given the employer notice of the proposed agreement and has given the employer a reasonable opportunity to make submissions to the Authority with respect to the matter, and	8 9 10 11
(b) has taken into account any submissions so made to the Authority.	12 13
(3) Subsection (2) does not apply if the worker has been unable, after due search and inquiry, to identify the relevant employer.	14 15
(4) In the case of commutation by determination of a Commissioner under section 87G (Commutation when worker legally incapacitated), the Commissioner may on the application of the employer, if the Commissioner thinks fit, refuse to make such a determination in respect of a liability under the Scheme.	16 17 18 19 20 21
(5) The making of such an application by the employer in no way fetters the discretion of the Commissioner to make the determination, and a commutation made in consequence of the determination is binding on the employer whether or not the employer has made such an application.	22 23 24 25 26
(6) The Authority may apply for registration of a commutation agreement under section 87H as a party to the agreement.	27 28
[8] Section 151N Contributory negligence—generally	29
Omit “under section 51 if the person concerned were eligible to be paid a lump sum under that section” from section 151N (2).	30 31
Insert instead “under Division 9 of Part 3 if the person concerned were eligible to be paid a lump sum under that Division”.	32 33

[9] Section 221 Payments from Contribution Fund	1
Omit “under section 51” from section 221 (12).	2
Insert instead “under Division 9 of Part 3”.	3
[10] Schedule 6 Savings, transitional and other provisions	4
Insert after Part 2 of Schedule 6:	5
Part 2A Provisions relating to compensation generally	6
	7
1 Commutation—Workers Compensation Legislation Amendment Act 2001	8
	9
(1) This clause applies on and from the repeal of section 51 by the <i>Workers Compensation Legislation Amendment Act 2001</i> .	10
	11
(2) Division 9 (Commutation of compensation) of Part 3 applies to the commutation of a liability arising in respect of an injury received before or after the commencement of that Division.	12
	13
	14
(3) This clause extends to apply to a case in which proceedings for a determination under section 51 are pending when that section is repealed.	15
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	17
(4) A liability may be commuted under Division 9 of Part 3 even if the Compensation Court refused, before the repeal of section 51, to make a determination under that section.	18
	19
	20
(5) Section 87F (Commutation by agreement) extends to an agreement made before the commencement of that section.	21
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Schedule 2	Amendments relating to assistance for injured workers	1
		2
	(Section 3)	3
2.1	Workers Compensation Act 1987 No 70	4
[1]	Section 192A Claims administration manual	5
	Insert after section 192A (3):	6
	(3A) The WorkCover Guidelines under the 1998 Act can make provision in connection with any matter in connection with which the claims manual can make provision.	7 8 9
[2]	Section 192A (4)	10
	Insert “the WorkCover Guidelines,” after “claims manual,”.	11
[3]	Section 192A (4A)	12
	Insert after section 192A (4):	13
	(4A) An insurer who fails to comply with a direction under subsection (4) is guilty of an offence.	14 15
	Maximum penalty: 50 penalty units.	16
2.2	Workplace Injury Management and Workers Compensation Act 1998 No 86	17 18
[1]	Section 42B	19
	Insert after section 42A:	20
	42B Claims assistance	21
	(1) The Authority may provide assistance (<i>claims assistance</i>) to injured workers and employers in connection with claims for compensation and work injury damages.	22 23 24

(2) In particular the Authority may establish an advisory service to provide claims assistance.	1 2
(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. Funds may only be provided within 3 years after the commencement of this section.	3 4 5 6 7 8
[2] Section 45A	9
Insert after section 45:	10
45A Injury management consultants	11
(1) The Authority may by instrument in writing accredit a person as an injury management consultant for the purposes of the Workers Compensation Acts.	12 13 14
(2) Accreditation may be for a fixed or indefinite period and may be made subject to conditions.	15 16
(3) The Authority may by instrument in writing revoke the accreditation of an injury management consultant for any breach of the conditions of accreditation or for such other reason as the Authority thinks appropriate.	17 18 19 20
(4) WorkCover Guidelines may provide for the functions of accredited injury management consultants.	21 22
(5) A person accredited as an injury management consultant 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 accredited injury management consultant.	23 24 25 26 27 28
[3] Section 59 Regulations	29
Omit section 59 (c) and (d).	30

Schedule 3	Amendments relating to lump sum compensation	1
		2
	(Section 3)	3
3.1	Workers Compensation Act 1987 No 70	4
[1]	Sections 65 and 66	5
	Omit the sections. Insert instead:	6
	65 Determination of degree of permanent impairment	7
	(1) For the purposes of this Division, the degree of permanent impairment that results from an injury is to be assessed as provided by this section and Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.	8 9 10 11
	(2) If a worker receives more than one injury arising out of the same incident, those injuries are together to be treated as one injury for the purposes of this Division and the impairments that result from those injuries are to be assessed together to assess the degree of permanent impairment of the injured worker.	12 13 14 15 16 17
	(3) No psychiatric or psychological impairment is to be taken into account in assessing the degree of permanent impairment.	18 19
	(4) If there is a dispute about the degree of permanent impairment of an injured worker, a Commissioner may not award permanent impairment compensation or pain and suffering compensation unless the degree of permanent impairment has been assessed by a medical assessor.	20 21 22 23 24
	(5) A Commissioner may, at any stage in proceedings on a claim for permanent impairment compensation or pain and suffering compensation, refer the matter for assessment of the degree of permanent impairment by a medical assessor.	25 26 27 28

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- 66 Entitlement to compensation for permanent impairment** 1
- (1) A worker who receives an injury that results in permanent 2
impairment is entitled to receive from the worker's employer 3
compensation for that permanent impairment as provided by 4
this section. Permanent impairment compensation is in addition 5
to any other compensation under this Act. 6
- (2) No permanent impairment compensation is payable for any 7
psychiatric or psychological impairment. 8
- (3) The amount of permanent impairment compensation is to be 9
calculated as follows: 10
- (a) if the degree of permanent impairment is not more than 11
10%, the amount of permanent impairment 12
compensation is to be calculated as follows: 13
 $D \times \$750$, 14
- (b) if the degree of permanent impairment is more than 15
10% but not more than 20%, the amount of permanent 16
impairment compensation is to be calculated as follows: 17
 $\$7,500 + [(D - 10) \times \$1,500]$, 18
- (c) if the degree of permanent impairment is more than 19
20% but not more than 30%, the amount of permanent 20
impairment compensation is to be calculated as follows: 21
 $\$22,500 + [(D - 20) \times \$2,500]$, 22
- (d) if the degree of permanent impairment is more than 23
30% but less than 66%, the amount of permanent 24
impairment compensation is to be calculated as follows: 25
 $\$47,500 + [(D - 30) \times \$3,500]$, 26
- (e) if the degree of permanent impairment is 66% or more, 27
the amount of permanent impairment compensation is 28
\$173,500, 29
- where *D* is the number derived by expressing the degree of 30
permanent impairment as *D*%. 31
- (4) The amount of permanent impairment compensation is to be 32
calculated under this section as it was in force at the date the 33
injury was received. 34
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[2] Section 66A Registration of agreements for compensation	1
Omit section 66A (1). Insert instead:	2
(1) An agreement by a worker to receive an amount of permanent impairment compensation or pain and suffering compensation in respect of impairment may be registered by the Authority. Once the agreement is registered the worker is not entitled to receive any additional compensation in respect of the impairment under an award of a Commissioner.	3 4 5 6 7 8
[3] Section 66A (2)	9
Omit “the Compensation Court”. Insert instead “a Commissioner”.	10
[4] Section 66A (7)	11
Omit the subsection. Insert instead:	12
(7) This section does not limit an award of additional compensation in accordance with this Part in respect of an increase in the degree of permanent impairment that occurs after the impairment to which an agreement relates.	13 14 15 16
[5] Section 66A (8)	17
Omit “Compensation Court”. Insert instead “Principal Commissioner”.	18
[6] Section 66B	19
Omit the section. Insert instead:	20
66B No proceedings to enter up award on agreement for compensation	21 22
(1) When a worker agrees to receive an amount of permanent impairment compensation or pain and suffering compensation, a Commissioner is not to entertain proceedings for entry of an award to give effect to the agreement unless the proceedings also relate to some dispute in connection with the worker’s claim for compensation under this Act.	23 24 25 26 27 28
(2) The regulations may prescribe exceptions to this section.	29

(3) The regulations may make provision for or with respect to:	1
(a) requiring an application referring a matter to a Commissioner to be accompanied by evidence (in the form of a certificate or other information provided for by the regulations) that the proceedings are not prevented by this section from being entertained by a Commissioner, and	2 3 4 5 6 7
(b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.	8 9 10
[7] Section 67 Compensation for pain and suffering	11
Omit section 67 (1), (1A) and (2).	12
Insert instead:	13
(1) A worker who receives an injury that results in a degree of permanent impairment that is greater than 10% is entitled to receive from the worker’s employer as compensation for pain and suffering resulting from the permanent impairment an amount not exceeding \$50,000. Pain and suffering compensation is in addition to any other compensation under this Act.	14 15 16 17 18 19 20
(2) Because there is a distinction between injury and impairment resulting from an injury (and compensation is payable under this section only for pain and suffering resulting from impairment), the pain and suffering for which compensation is payable does not include pain and suffering that results from the injury but not from the impairment	21 22 23 24 25 26
[8] Section 67 (3)	27
Omit “loss or losses”. Insert instead “permanent impairment”.	28
[9] Section 67 (4)	29
Omit “the Compensation Court”. Insert instead “a Commissioner”.	30

[10] Section 67 (4A)	1
Omit the subsection. Insert instead:	2
(4A) It is permissible for an agreement as to the amount of pain and suffering compensation to be paid to a worker to provide that the amount to be paid is the proportion of the maximum amount payable under this section that is the same as the proportion of the maximum amount payable under this Act as permanent impairment compensation that is represented by the amount payable to the worker as permanent impairment compensation in respect of the impairment concerned. This subsection does not prevent an agreement that some other amount is to be the amount to be paid to a worker as pain and suffering compensation.	3 4 5 6 7 8 9 10 11 12 13
[11] Section 67 (7)	14
Omit “loss”. Insert instead “permanent impairment”.	15
[12] Section 67A Special provisions for HIV/AIDS	16
Omit section 67A (1). Insert instead:	17
(1) For the purposes of the determination of the amount of pain and suffering compensation payable, HIV infection and AIDS are each considered to be a most extreme case, so that the maximum amount of pain and suffering compensation is payable.	18 19 20 21 22
(1A) For the purposes of the determination of the amount of permanent impairment compensation payable, HIV infection and AIDS are each considered to result in a degree of permanent impairment of 100%.	23 24 25 26
[13] Section 67A (4)	27
Omit the subsection. Insert instead:	28
(4) Permanent impairment compensation and pain and suffering compensation are not payable in respect of permanent impairment that is HIV infection or AIDS if the impairment resulted from voluntary sexual activity or illicit drug use. This subsection does not limit the operation of section 14 (Conduct of worker etc).	29 30 31 32 33 34

[14] Section 68 Proportionate loss of use	1
Omit the section.	2
[15] Section 68A	3
Omit the section.	4
[16] Section 68B	5
Omit the section. Insert instead:	6
68B Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22	7
	8
(1) When determining the compensation payable in respect of permanent impairment for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 319 of the 1998 Act for any proportion of the impairment that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the impairment that is due to any other injury or that is due to any pre-existing condition or abnormality).	9
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(2) When determining the compensation payable by an employer in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process), section 319 of the 1998 Act applies to that compensation subject to the following:	18
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(a) there is to be no deduction under section 319 of the 1998 Act for any proportion of the permanent impairment that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division (as in force at any time) or section 16 of the former Act has been paid or is payable,	22
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(b) for the purposes of paragraph (a), <i>previous relevant employment</i> is employment to the nature of which the disease was due by a previous employer who is liable under section 15 to contribute in respect of the compensation being determined (or who would be so	29
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liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),	1
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(c) in the case of permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.	4
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(3) When determining the compensation payable by an employer in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease), section 319 of the 1998 Act applies to that compensation subject to the following:	8
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(a) there is to be no deduction under section 319 of the 1998 Act for any proportion of the impairment that is due to the worker's employment in previous relevant employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division (as in force at any time) or section 16 of the former Act has been paid or is payable,	13
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(b) for the purposes of paragraph (a), <i>previous relevant employment</i> is employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration by a previous employer who is liable under section 16 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),	20
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(c) in the case of permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.	29
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(4) When determining the compensation payable by an employer in a case in which section 17 applies (loss or further loss of hearing), section 319 of the 1998 Act applies to that compensation subject to the following:	33
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(a) there is to be no deduction under section 319 of the 1998 Act for any proportion of the impairment that is due to the worker's employment in previous relevant	37
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	employment (as defined in paragraph (b)) except any such proportion for which compensation under this Division (as in force at any time) or section 16 of the former Act has been paid or is payable,	1 2 3 4
	(b) for the purposes of paragraph (a), <i>previous relevant employment</i> is employment to the nature of which the disease was due by a previous employer who is liable under section 17 to contribute in respect of the compensation being determined (or who would be so liable if the requirement to contribute were not limited to employers who employed the worker during a particular period).	5 6 7 8 9 10 11 12
[17]	Section 69 Addition to Table of further compensable injuries	13
	Omit the section.	14
[18]	Section 69A No compensation for less than 6% hearing loss	15
	Omit section 69A (1)–(4). Insert instead:	16
	(1) In assessing, for the purpose of the determination of permanent impairment compensation, the degree of permanent impairment resulting from loss of hearing (the <i>present loss</i>) due to boilermakers deafness regard must not be had to any hearing loss due to boilermakers deafness unless the worker's total hearing loss due to boilermakers deafness is at least 6%.	17 18 19 20 21 22
	(2) The worker's <i>total hearing loss</i> is the aggregate of the present loss and all previous losses of hearing due to boilermakers deafness.	23 24 25
	(3) The fact that compensation is not payable in respect of a loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss, and does not affect the operation of section 17 in respect of that loss (if and when the worker's total hearing loss reaches 6%).	26 27 28 29 30
	(4) An example of the operation of this section is as follows (assume that all hearing losses mentioned are due to boilermakers deafness and that no other injury is involved):	31 32 33
	(a) A worker suffers a hearing loss of 4% (the first hearing loss that the worker has suffered). No permanent impairment compensation is payable in respect of the	34 35 36

	loss because it is less than 6% and cannot be taken into account to assess the degree of permanent impairment, though notice of injury can be given or a claim can be made for the hearing loss.	1 2 3 4
	(b) The worker suffers a further hearing loss of 4%, bringing the total loss to 8%. The total loss has now passed the 6% threshold and compensation is payable on the basis of the full 8%. Compensation in respect of the initial 4% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for that initial hearing loss.	5 6 7 8 9 10 11
	(c) The worker suffers a further hearing loss of 5%. The worker is entitled in the usual way to compensation in respect of the 5% further loss because the 6% threshold has already been passed (the total loss is now 13%).	12 13 14 15
[19]	Section 69A (7)	16
	Omit “no compensation is payable under section 66”.	17
	Insert instead “no permanent impairment compensation is payable”.	18
[20]	Section 69B Employer’s responsibility to pay for hearing loss tests	19
	Omit “pay compensation under section 66 for a loss of hearing” from section 69B (1).	20 21
	Insert instead “pay permanent impairment compensation in respect of a loss of hearing”.	22 23
[21]	Section 72 Reference of matters to medical panel	24
	Omit the section.	25
[22]	Section 73	26
	Omit the section. Insert instead:	27
	73 Reimbursement for costs of medical certificate and examination	28
	(1) The obtaining of a permanent impairment medical certificate and any examination required for the certificate are taken to be a medical or related treatment for the purposes of Division 3 if:	29 30 31

(a)	the medical practitioner has completed such training as the Authority may require in respect of the assessment of the degree of permanent impairment as provided by this Act, and	1 2 3 4
(b)	the worker has given the employer a copy of the certificate.	5 6
(2)	In this section:	7
	<i>permanent impairment medical certificate</i> means a report or certificate of a medical practitioner that certifies:	8 9
(a)	that a worker has received an injury resulting in permanent impairment, and	10 11
(b)	the degree of permanent impairment (assessed as provided by this Act) resulting from the injury.	12 13
[23]	Part 3, Division 4, Table	14
	Omit the Table to Division 4 of Part 3.	15
3.2	Workplace Injury Management and Workers Compensation Act 1998 No 86	16 17
[1]	Section 111 Interest on agreed payment of lump sum compensation	18
	Omit “compensation under section 66 or 67 of the 1987 Act” from section 111 (1).	19 20
	Insert instead “permanent impairment compensation or pain and suffering compensation”.	21 22
[2]	Section 131 Definitions	23
	Insert in alphabetical order in section 131 (1):	24
	<i>hearing loss claim</i> means:	25
(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	26 27 28
(b)	a claim for permanent impairment compensation in respect of loss of hearing due to boilermakers deafness or any deafness of similar origin.	29 30 31

[3] Section 131 (1)	1
Omit paragraph (a) of the definition of <i>protected claim</i> .	2
Insert instead:	3
(a) a hearing loss claim, and	4
[4] Section 134 Consequences of prohibited conduct for recovery of fees by agents	5
	6
Omit “claim under section 66 of the 1987 Act for loss of hearing” from section 134 (3).	7
Insert instead “hearing loss claim”.	8
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[5] Section 134 (3)	10
Omit “subsequent claim for further loss of hearing”.	11
Insert instead “subsequent hearing loss claim in respect of further loss of hearing”.	12
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[6] Section 135 Consequences of prohibited conduct for lawyers	14
	15
Omit “claim under section 66 of the 1987 Act for loss of hearing” from section 135 (4).	16
Insert instead “hearing loss claim”.	17
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[7] Section 135 (4)	18
Omit “subsequent claim for further loss of hearing”.	19
Insert instead “subsequent hearing loss claim in respect of further loss of hearing”.	20
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Schedule 4	Amendments relating to common law damages	1
		2
	(Section 3)	3
	Workers Compensation Act 1987 No 70	4
[1]	Section 151G Damages for non-economic loss	5
	Insert as section 151G (1):	6
	(1) No damages are to be awarded for non-economic loss unless the degree of permanent impairment of the worker as a result of the injury is greater than 25%. The degree of permanent impairment is to be assessed as provided by Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.	7 8 9 10 11
[2]	Section 151G (4) and (5)	12
	Omit the subsections.	13
[3]	Section 151G (7)	14
	Omit the subsection. Insert instead:	15
	(7) Division 6 of Part 3 (Indexation of amounts of benefits) applies as if the amount of \$204,000 were an adjustable amount and were referred to in section 81 (1).	16 17 18
[4]	Section 151H	19
	Omit the section. Insert instead:	20
	151H Damages for economic loss	21
	No damages are to be awarded for economic loss unless the injury results in the death of the worker or in a degree of permanent impairment that is greater than 25%. The degree of permanent impairment is to be assessed as provided by Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.	22 23 24 25 26

151HA	Assessment of impairment required—threshold dispute	1
(1)	If there is a dispute about whether the degree of permanent impairment of an injured worker is sufficient for an award of damages for economic loss or non-economic loss, the court may not award any such damages unless the degree of permanent impairment has been assessed by a medical assessor under Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.	2 3 4 5 6 7 8
(2)	The court may, at any stage in proceedings for an award of damages for economic loss or non-economic loss, refer the matter for assessment of the degree of permanent impairment under Part 7 of Chapter 7 of the 1998 Act.	9 10 11 12
(3)	A medical assessor may decline to make an assessment under Part 7 of Chapter 7 of the 1998 Act of the degree of permanent impairment of an injured person until the assessor is satisfied that the injury has stabilised. Court proceedings with respect to any such matter may be adjourned until the assessment is made.	13 14 15 16 17
(4)	Nothing in this section prevents the degree of impairment being re-assessed under Part 7 of Chapter 7 of the 1998 Act, or a claim from being settled at any time.	18 19 20

Schedule 5	Amendments relating to new claims procedures	1
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	(Section 3)	3
5.1	Workers Compensation Act 1987 No 70	4
[1]	Section 151B Effect of recovery of damages from employer on payment of compensation	5
		6
	Insert after section 151B (4):	7
	(5) Subsections (2)–(4) do not apply in respect of damages awarded under section 151G or 151H as amended by the <i>Workers Compensation Legislation Amendment Act 2001</i> .	8
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[2]	Section 151D Time limit for commencement of court proceedings against employer for damages	11
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	Insert as section 151D (1):	13
	(1) In the case of proceedings for damages in respect of an injury received on or after the commencement of this subsection (as inserted by the <i>Workers Compensation Legislation Amendment Act 2001</i>), time does not run for the purposes of this section from the time that a claim has been referred to a Commissioner for assessment and until 2 months after a certificate as to the assessment or exemption from assessment is issued.	14
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[3] Schedule 6 Savings, transitional and other provisions	1
Insert after Part 18B of Schedule 6:	2
Part 18C Provisions consequent on enactment of Workers Compensation Legislation Amendment Act 2001	3
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	5
1 Definitions	6
In this Part:	7
<i>existing claim</i> and <i>new claim</i> have the same meaning as in Chapter 7 of the 1998 Act.	8
<i>the 2001 amending Act</i> means the <i>Workers Compensation Legislation Amendment Act 2001</i> .	9
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2 Operation of amendments generally	12
(1) The Workers Compensation Acts apply to and in respect of an existing claim as if Schedules 2–6 to the 2001 amending Act had not been enacted.	13
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(2) This clause is subject to this Part and to any regulations under this Schedule.	16
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3 Amendments to lump sum compensation provisions	18
(1) The amendments made by Schedule 3 to the 2001 amending Act do not apply in respect of an injury received before the commencement of the amendments (even if the injury is the subject of a claim made after the commencement of the amendments).	19
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(2) There is to be a reduction in the compensation payable under Division 4 of Part 3 (as amended by the 2001 amending Act) for any proportion of the permanent impairment concerned that is due to a previously non-compensable loss.	24
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- (3) A *previously non-compensable loss* is a loss that is due to something that occurred before the commencement of the amendments to Division 4 of Part 3 made by the 2001 amending Act, being a loss that is of a kind for which no compensation was payable under that Division at the time of the occurrence. 1
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- (4) No contribution in respect of compensation under Division 4 of Part 3 (as amended by the 2001 amending Act) is required under section 15, 16, 17 or 22 to the extent that the employment or injury in respect of which contribution would otherwise be required relates to a previously non-compensable loss. 7
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- 4 Amendments relating to common law damages** 13
- (1) The amendments made by Schedule 4 to the 2001 amending Act do not apply in respect of an injury received before the commencement of the amendments (even if the injury is the subject of a claim made after the commencement of the amendments). 14
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- (2) The substitution of section 151G (7) by the 2001 amending Act does not affect the previous operation of that subsection in respect of the amount referred to in section 151G (3), or the amounts referred to in section 151G (4) and (5) before their repeal. 19
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- 5 Regulations to transfer existing claims to new procedures** 24
- (1) The regulations may make provision for or with respect to requiring a class or classes of existing claims to be treated as new claims for the purposes of the Workers Compensation Acts. 25
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- (2) Those claims (*transferred claims*) then cease to be existing claims and become new claims for the purposes of the Workers Compensation Acts, subject to this Part and the regulations. 29
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- (3) Regulations under this clause may include provisions of a savings or transitional nature consequent on the operation of any such regulations. 32
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(4)	The power to make regulations under subclause (3) extends to authorise the making of regulations whereby provisions of the Workers Compensation Acts are taken to be amended in the manner set forth in the regulations.	1 2 3 4
6	Special provisions for transferred claims	5
	The provisions of the Workers Compensation Acts apply to and in respect of a transferred claim as a new claim subject to the following modifications:	6 7 8
(a)	proceedings pending before the Compensation Court in respect of the claim when the claim becomes a transferred claim are to continue to be dealt with and determined by the Compensation Court as if the claim continued to be an existing claim,	9 10 11 12 13
(b)	an order or award of the Compensation Court in respect of the claim is taken to be an order or award of a Commissioner,	14 15 16
(c)	such other modifications as may be prescribed by the regulations.	17 18
7	False claims and recovery of overpayments	19
	Sections 67 and 68 of the 1998 Act continue to apply as in force before their repeal to and in respect of a statement made by a person before their repeal.	20 21 22
8	New procedures for making a claim	23
	Sections 259–264 of the 1998 Act extend to the making of a claim after the commencement of those sections even if the claim is an existing claim.	24 25 26
[4]	Schedule 6 Part 20 Savings and transitional regulations	27
	Insert at the end of clause 1 (1):	28
	<i>Workers Compensation Legislation Amendment Act 2001</i>	29

5.2 Workplace Injury Management and Workers Compensation Act 1998 No 86	1
	2
[1] Section 4 Definitions	3
Omit the definition of <i>compensation</i> from section 4 (1).	4
[2] Section 4 (1)	5
Insert in alphabetical order:	6
<i>claim</i> means a claim for compensation or work injury damages.	7
<i>claimant</i> means a person who makes or is entitled to make a claim.	8
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<i>Commissioner</i> means a Workers Compensation Commissioner appointed or employed under this Act and includes the Principal Commissioner.	10
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<i>compensation</i> means compensation under the Workers Compensation Acts, and includes any monetary benefit under those Acts.	13
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<i>damages assessment</i> means an assessment under Part 6 of Chapter 7 of a claim for work injury damages.	16
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<i>death benefit compensation</i> means compensation under Division 1 (Compensation payable on death) of Part 3 of the 1987 Act.	18
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<i>Director</i> means the Director of the Claims Assessment Service, appointed as provided by section 364 (Director of the Service).	21
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<i>existing claim</i> has the same meaning as in Chapter 7 (New claims procedures).	23
	24
<i>lump sum compensation</i> means compensation under Division 4 (Compensation for non-economic loss) of Part 3 of the 1987 Act.	25
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<i>medical assessment</i> means assessment of a medical dispute by a medical assessor under Part 7 of Chapter 7.	28
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<i>medical expenses compensation</i> means compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of the 1987 Act.	30
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motor accident damages means damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies. 1
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new claim has the same meaning as in Chapter 7 (New claims procedures). 4
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pain and suffering compensation means compensation for pain and suffering under section 67 of the 1987 Act. 6
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permanent impairment compensation means compensation for permanent impairment under section 66 of the 1987 Act. 8
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Principal Commissioner means the Principal Workers Compensation Commissioner appointed under this Act. 10
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Principal Medical Assessor means the Principal Medical Assessor appointed under this Act. 12
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work injury means an injury in respect of which compensation is payable. 14
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work injury damages has the same meaning as in Chapter 7 (New claims procedures). 16
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WorkCover Guidelines means guidelines issued under section 373 (Issue of guidelines). 18
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Workers Compensation Acts means this Act and the 1987 Act. 20

[3] Section 35 Payments into and from Fund 21

Insert after section 35 (2) (e): 22

(e1) the costs of operation of the Claims Assessment Service including the remuneration (and allowances) of the Commissioners and the Director and other staff of the Service, 23
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[4] Section 60A 27

Insert before section 61: 28

60A Application of Division 29

(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*). 30
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(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 <i>Workers Compensation Legislation Amendment Act 2001</i>).	1 2 3
	Note. Chapter 7 (New claims procedure) provides for notice of injury and making of claims in all other cases.	4 5
[5]	Sections 67 (False claims) and 68 Order for refund of overpayments of compensation	6 7
	Omit the sections.	8
[6]	Section 75A	9
	Insert before section 76:	10
	75A Division applies only to existing claims	11
	This Division applies only in respect of existing claims.	12
	Note. Conciliation is not applicable to new claims. See Chapter 7 (New claims procedure).	13 14
[7]	Section 91A	15
	Insert before section 92:	16
	91A Division applies only to existing claims	17
	This Division applies only in respect of existing claims.	18
	Note. Chapter 7 (New claims procedure) provides for weekly payments in the case of new claims.	19 20
[8]	Section 100A	21
	Insert before section 101:	22
	100A Division applies only to existing claims	23
	This Division applies only in respect of existing claims.	24
	Note. Chapter 7 (New claims procedure) provides for restrictions on commencing court proceedings in the case of new claims.	25 26

[9] Chapter 4, Part 2, Division 6, heading	1
Omit the heading to Division 6 of Part 2 of Chapter 4. Insert instead:	2
Division 6 Proceedings before Commissioners or the Compensation Court	3 4
[10] Section 105	5
Omit the section. Insert instead:	6
105 Jurisdiction of Commissioners and Compensation Court	7
(1) Subject to this Act, the Commissioners have exclusive jurisdiction to examine, hear and determine all matters arising under this Act in respect of any new claim.	8 9 10
(2) The Commissioners do 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 assessment of a work injury damages claim under Part 6 of Chapter 7.	11 12 13 14 15
(3) Subject to this Act and the <i>Compensation Court Act 1984</i> , the Compensation Court has:	16 17
(a) exclusive jurisdiction to examine, hear and determine all matters arising under this Act (except Part 5 of the 1987 Act) in respect of any existing claim, and	18 19 20
(b) the jurisdiction conferred on the Compensation Court by section 348 (Reference of question of law on compensation claim to Compensation Court).	21 22 23
(4) References in this Act to a Commissioner are, for the purposes of giving effect to subsection (3), to be read as references to the Compensation Court to the extent that the reference is in respect of an existing claim.	24 25 26 27

[11] Section 111A	1
Insert before section 112:	2
111A Costs provisions apply only to existing claims	3
Sections 112–116 apply only in respect of existing claims.	4
Note. Chapter 7 (New claims procedures) provides for costs in respect of new claims.	5 6
[12] Section 118A	7
Insert before section 119:	8
118A Application of certain provisions of Division only to existing claims	9 10
Sections 121–124 and 128–130 apply only in respect of existing claims.	11 12
[13] Sections 235C and 235D	13
Insert after section 235B:	14
235C False claims	15
(1) A person must not make a statement knowing that it is false or misleading in a material particular:	16 17
(a) in a claim made by the person, or	18
(b) in a medical certificate or other document that relates to a claim, or	19 20
(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).	21 22 23 24
Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.	25 26
(2) This section does not apply to statements:	27
(a) made in documents filed, or information furnished, in proceedings before a court or a Commissioner, or	28 29

- (b) 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. 1
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- (3) This section applies to a statement even though it has been verified by statutory declaration. 5
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- 235D Order for refund of overpayments of compensation 7**
- (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*. 8
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- (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. 12
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- (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 a Commissioner. 19
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- (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. 23
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- (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. 27
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- (6) A person against whom an order is made under this section may apply for a review of the order by a Commissioner. 30
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[14] Chapter 7	1
Insert as Chapter 7:	2
Chapter 7 New claims procedures	3
Part 1 Preliminary	4
250 Interpretation	5
(1) In this Chapter:	6
<i>damages</i> has the same meaning as in Part 5 (Common law remedies) of the 1987 Act.	7
<i>existing claim</i> means:	8
(a) a claim for compensation made before the commencement of this section or a claim that is related to such a claim (whether or not the related claim is made before the commencement of this section), or	9
(b) a claim for work injury damages made in respect of an injury received before the commencement of this section or in respect of the death of a worker resulting from or caused by such an injury.	10
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.	11
<i>insurer</i> means a licensed insurer or self-insurer.	12
<i>new claim</i> means any claim that is not an existing claim.	13
<i>related claims</i> 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.	14
<i>work injury damages</i> means damages recoverable from a worker's employer in respect of:	15
(a) an injury to the worker caused by the negligence or other tort of the employer, or	16
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(b)	the death of the worker resulting from or caused by an injury caused by the negligence or other tort of the employer,	1 2 3
	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.	4 5 6
(2)	In the definition of <i>work injury damages</i> in subsection (1), a reference to a worker's employer includes a reference to:	7 8
(a)	a person who is vicariously liable for the acts of the employer, and	9 10
(b)	a person for whose acts the employer is vicariously liable.	11 12
(3)	A claim served on an insurer in accordance with the WorkCover Guidelines or forwarded to an insurer by the employer is taken to have been made on the insurer (and to have been so made when it was served on or forwarded to the insurer).	13 14 15 16 17
251	Application of Chapter	18
	Except as otherwise specifically provided in this Chapter, this Chapter applies to and in respect of new claims only.	19 20
	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.	21 22 23
	Part 2 Giving notice of injury and making a claim	24
	Division 1 Notice of injury	25
252	Application of Division	26
	This Division applies only in respect of injuries received after the commencement of this section.	27 28
253	Interpretation	29
	Words and expressions used in this Part have the same meaning as in Part 5 (Common law remedies) of the 1987 Act.	30 31

254	Notice of injury must be given to employer	1
(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 3 4 5 6
(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.	7 8 9 10 11
(3)	Each of the following constitutes special circumstances:	12
(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, or	13 14 15 16
(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, or	17 18 19 20
(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, or	21 22 23
(d)	the injury has been reported by the employer to the Authority in accordance with this Act.	24 25
(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:	26 27 28
(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,	29 30 31
(b)	the injury has been reported by or on behalf of the employer to an inspector of mines or an inspector under the <i>Occupational Health and Safety Act 2000</i> ,	32 33 34
(c)	the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop.	35 36

255	How notice of injury is given	1
(1)	A notice of injury must state:	2
(a)	the name and address of the person injured, and	3
(b)	the cause of the injury (in ordinary language), and	4
(c)	the date on which the injury happened.	5
(2)	A notice of injury may be given orally or in writing.	6
(3)	If there is more than one employer, a notice of injury may be given to any one of those employers.	7 8
(4)	A notice of injury is taken to have been given to an employer:	9
(a)	if it is given to any person designated for the purpose by the employer, or	10 11
(b)	if it is given to any person under whose supervision the worker is employed.	12 13
(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.	14 15 16
(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.	17 18 19 20
256	Register of injuries	21
(1)	A register of injuries must be kept in some readily accessible place at every mine, quarry, factory, workshop, office or shop.	22 23
(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.	24 25 26 27
(3)	The regulations may prescribe the form of a register of injuries and the particulars to be entered in the register.	28 29
(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.	30 31 32

(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.	1 2 3
Maximum penalty: 50 penalty units.	4
257 Notice of incapacity, medical etc treatment and damage to property	5 6
(1) The provisions of this Part apply with respect to:	7
(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	8 9 10
(b) the giving of notice of any medical or related treatment, hospital treatment, occupational rehabilitation service or ambulance service to which Division 3 of Part 3 of the 1987 Act applies, and	11 12 13 14
(c) the giving of notice of any damage to property to which Division 5 of Part 3 of the 1987 Act applies,	15 16
in the same way as those provisions apply to notice of injury.	17
(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.	18 19 20 21
258 Offence	22
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.	23 24 25
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	26 27

Division 2	Making a claim for compensation or damages	1 2
259	Application of Division	3
(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).	4 5 6
(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.	7 8 9 10
260	How a claim is made	11
(1)	A claim must be made in accordance with the applicable requirements of the WorkCover Guidelines.	12 13
(2)	The WorkCover Guidelines may make provision for or with respect to the following matters in connection with the making of a claim:	14 15 16
(a)	the form in which a claim is to be made,	17
(b)	the manner in which a claim is to be made,	18
(c)	the means by which a claim may be made,	19
(d)	the information that a claim is to contain,	20
(e)	requiring specified documents and other material to accompany or form part of a claim,	21 22
(f)	such other matters as may be prescribed by the regulations.	23 24
(3)	Without limiting this section, the WorkCover Guidelines can require that a claim be accompanied by a form of authority signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational 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.	25 26 27 28 29 30 31 32
(4)	The WorkCover Guidelines can also provide for any of the following matters in connection with the making of a claim:	33 34

(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),	1 2 3 4
(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,	5 6 7
(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.	8 9 10 11
(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.	12 13 14 15
(6)	Except to the extent that the WorkCover Guidelines otherwise provide, an insurer can waive a requirement of those Guidelines with respect to the making of a claim on the insurer.	16 17 18
(7)	The WorkCover Guidelines can require an insurer to notify a worker of any failure by the worker to comply with a requirement of those Guidelines with respect to the making of a claim, and can provide for the waiver of any such failure by the worker if the insurer fails to give the required notification.	19 20 21 22 23
261	Time within which claim for compensation must be made	24
(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.	25 26 27 28
(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.	29 30 31 32 33

- (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. 1
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- (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: 6
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 - (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 10
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 - (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. 13
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- (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. 16
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- (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. 23
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- (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. 27
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- (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. 33
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262	Time within which claim for work injury damages must be made	1
	Court proceedings for the recovery of work injury damages cannot be commenced until a claim for the damages has been made.	2 3 4
263	Lump sum compensation claims to be made at same time	5
	(1) All claims for permanent impairment compensation or pain and suffering compensation in respect of an injury must, as far as practicable, be made at the same time.	6 7 8
	(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.	9 10 11 12 13 14
264	Action by employer in respect of claims	15
	(1) An employer (not being a self-insurer):	16
	(a) who receives a claim or any other documentation in respect of 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	17 18 19 20 21
	(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	22 23 24 25 26 27
	(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.	28 29 30
	Maximum penalty: 50 penalty units.	31
	(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.	32 33 34

Part 3	Dealing with claims	1
Division 1	Special provisions for commencement of weekly payments after initial notification of injury	2
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265	Application of Division	5
	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).	6
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266	Meaning of initial notification of injury	10
	In this Part, <i>initial notification</i> to an insurer of an injury to a worker means the first notification of the injury that is given to the insurer, in the manner and form required by the WorkCover Guidelines, by the worker or the employer or by some other person (for example, a medical practitioner) acting for or on behalf of the worker or the employer.	11
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267	Duty to commence weekly payments following initial notification of injury	17
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	(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.	19
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	(2) The WorkCover Guidelines may provide for what does or does not constitute a reasonable excuse for the purposes of this section.	23
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	(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.	26
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	(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.	31
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(5)	An insurer who fails to commence weekly payments of compensation as required by this section is guilty of an offence.	1
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	Maximum penalty: 50 penalty units.	3
268	Insurer must notify worker of reasonable excuse for not commencing weekly payments	4
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	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 early 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:	6
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	(a) details of that reasonable excuse, and	12
	(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	13
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	(c) details of how that claim can be made.	16
	Maximum penalty: 50 penalty units.	17
269	Notice to be given of commencement of weekly payments	18
	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:	19
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	(a) weekly payments of compensation to the worker have commenced on the basis of provisional acceptance of liability by the insurer, and	22
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	(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	25
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	(c) the insurer will develop an injury management plan for the worker (if required to do so by Chapter 3), and	29
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	(d) the worker is entitled to make a claim for compensation (and include details of how that claim can be made).	31
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270	Obligations of worker to provide authorisations and medical evidence	1
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(1)	An insurer who commences weekly payments of compensation under this Division may require the worker to provide the insurer with:	3
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(a)	a medical certificate certifying as to the worker's incapacity for work, and	6
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(b)	a form of authority signed by the worker authorising a provider of medical or related treatment, hospital treatment or occupational 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.	8
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(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.	15
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271	Liability to make weekly payments not affected by making of claim	19
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(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.	21
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	Note. Section 74 requires notice of a dispute to be given.	25
(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.	26
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272	Recovery by insurer	30
(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.	31
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(2)	Any amount so recoverable is taken to have been payable by the other insurer or other employer as compensation to the injured worker.	1 2 3
273	Provision for recovery of excess for provisional payments	4
	Section 160 (Recovery of excess from employer) of the 1987 Act and section 152 of this Act apply to and in respect of the payment of provisional weekly payments of compensation under this Division as if the payment were payable under a weekly compensation claim as referred to in those sections.	5 6 7 8 9
274	Division does not apply to self-insurers	10
	This Division does not apply to self-insurers but this does not prevent a self-insurer commencing weekly payments of compensation before a claim is made.	11 12 13
Division 2	Claims for weekly payments	14
275	Liability to be accepted and weekly payments commenced within 21 days	15 16
(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:	17 18 19
(a)	accepting liability and commencing weekly payments, or	20 21
(b)	disputing liability.	22
	Note. Section 284 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given.	23 24
(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.	25 26 27 28

(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.	1 2 3 4
	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.	5 6 7
(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.	8 9 10 11
(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.	12 13 14
(6)	An employer is not required to determine a claim as provided by this section if:	15 16
	(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	17 18 19
	(b) the employer has complied with all reasonable requests of the insurer with respect to the claim.	20 21
	Note. A claim forwarded to the insurer is taken to have been made on the insurer.	22 23
276	Duty to commence provisional weekly payments if claim is first notification of injury	24 25
(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.	26 27 28 29 30 31
(2)	The provisional acceptance of liability pursuant to the commencement of provisional weekly payments of	32 33

compensation under that section operates to extend the period	1
within which the claim must be determined for the purposes of	2
this Division until the end of the period for which liability has	3
been provisionally accepted.	4
Note. This allows the insurer more time to determine liability while	5
providing for the commencement of weekly payments on the basis of the	6
provisional acceptance of liability.	7
277 Continuation of provisional payments started before claim made	8
(1) If an insurer is already making provisional weekly payments	9
when the claim for weekly payments is made (on the basis of	10
the provisional acceptance of liability before the claim was	11
made), the period within which liability for weekly payments	12
must be determined is extended to the end of the period for	13
which liability has been provisionally accepted.	14
(2) If the period for which liability has been provisionally accepted	15
ends before the end of the period within which liability for	16
weekly payments must be determined, the insurer may continue	17
to make weekly payments on the basis of the provisional	18
acceptance of liability until the end of that period.	19
278 Provision for recovery of excess for provisional payments	20
Section 160 (Recovery of excess from employer) of the 1987	21
Act and section 152 of this Act apply to and in respect of the	22
payment of provisional weekly payments of compensation	23
under this Division as if the payment were payable under a	24
weekly compensation claim as referred to in those sections.	25
279 Early acceptance of liability not prevented	26
This Division does not prevent the acceptance of liability and	27
the commencement of weekly payments before the end of the	28
provisional liability period.	29

Division 3	Claims for medical expenses	1
280	Liability to be accepted within 21 days	2
(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.	3 4 5
	Note. Section 284 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given.	6 7
(2)	An employer is not required to determine a claim as provided by this section if:	8 9
(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	10 11 12
(b)	the employer has complied with all reasonable requests of the insurer with respect to the claim.	13 14
	Note. A claim forwarded to the insurer is taken to have been made on the insurer.	15 16
281	Provisional acceptance of liability	17
(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 \$1,000 or such other amount as may be prescribed by the regulations.	18 19 20 21
(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.	22 23 24
Division 4	Claims for lump sum compensation and work injury damages	25 26
282	Liability to be accepted and settlement offer made	27
(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:	28 29 30
(a)	accepting liability and making a reasonable offer of settlement to the claimant, or	31 32

(b)	disputing liability.	1
(2)	A claim must be so determined:	2
(a)	within 1 month after the injury has stabilised, as agreed by the parties or as determined by a medical assessor, or	3 4
(b)	within 2 months after the claimant has provided to the insurer all relevant particulars about the claim,	5 6
	whichever is the later.	7
	Note. Section 284 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given. If an offer of settlement is not made as required by this section, the claim can be referred for assessment as soon as the time for making the offer has expired.	8 9 10 11
(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.	12 13 14
(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.	15 16 17 18
(5)	An employer is not required to determine a claim as provided by this section if:	19 20
(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	21 22 23
(b)	the employer has complied with all reasonable requests of the insurer with respect to the claim.	24 25
	Note. A claim forwarded to the insurer is taken to have been made on the insurer.	26 27
(6)	This section does not apply to a claim in respect of the death of a person.	28 29
283	Relevant particulars about a claim	30
(1)	The <i>relevant particulars about a claim</i> 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:	31 32 33 34
(a)	the injury received by the claimant, and	35
(b)	all impairments arising from the injury, and	36

(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), and	1 2 3 4 5
(d)	in the case of a claim for work injury damages, any economic losses and other losses that are being claimed as damages, and	6 7 8
(e)	information relevant to a determination of whether or not the injury has stabilised, and	9 10
(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, and	11 12 13
(g)	such other matters as the WorkCover Guidelines may require.	14 15
(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.	16 17 18 19 20
(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.	21 22 23 24 25
(4)	In this section, <i>injury</i> is not limited by the meaning given by section 4.	26 27
Division 5	Enforcement of claims obligations	28
284	Offence of failing to determine a claim for compensation	29
(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.	30 31 32
	Maximum penalty: 50 penalty units.	33

(2) The WorkCover Guidelines may provide for what does or does not constitute a reasonable excuse for the purposes of this section.	1 2 3
(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.	4 5 6
285 Insurer liable to pay fee if claim goes to assessment	7
(1) If it appears to the Director that an insurer has failed without reasonable excuse to determine a claim as and when required by this Part and the claim concerned is referred to a Commissioner for determination of a dispute or for assessment, the Director may direct the insurer to pay the administration fee provided for by this section. The WorkCover Guidelines may provide for what does or does not constitute a reasonable excuse for the purposes of this section.	8 9 10 11 12 13 14 15
(2) The administration fee is a fee of \$250 or such other amount as may be prescribed by the regulations and is payable to the Authority for payment into the WorkCover Authority Fund.	16 17 18
(3) The administration fee is not to be paid out of the statutory fund of the insurer.	19 20
(4) An administration fee payable under this section is recoverable as a debt due to the Authority.	21 22
286 Offence of referring non-genuine disputes	23
A person on whom a claim is made is guilty of an offence if the person refers a matter that the person knows is not a genuine dispute for the purpose of delaying, without good cause, the determination of the claim.	24 25 26 27
Maximum penalty: 50 penalty units.	28
287 Partial acceptance of liability	29
(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.	30 31 32

- (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

288 Disputes to which Part applies

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.

289 Referral of disputes to Commissioner for determination

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

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

- (2) The Director can defer referring a dispute for determination pending the outcome of a medical assessment in connection with the dispute.

290 Restrictions as to when a dispute can be referred for determination

- (1) A dispute about a claim for weekly payments cannot be referred for determination by a Commissioner 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.	1 2
	Note. The determination of a claim requires the commencement of weekly payments of compensation. The failure to commence weekly payments without having disputed liability constitutes a failure to determine the claim.	3 4 5 6
(2)	A dispute about a claim for medical expenses compensation cannot be referred for determination by a Commissioner unless the person on whom the claim is made:	7 8 9
(a)	disputes liability for the claim (wholly or in part), or	10
(b)	fails to determine the claim as and when required by this Act.	11 12
(3)	A dispute about a claim for lump sum compensation cannot be referred for determination by a Commissioner unless the person on whom the claim is made:	13 14 15
(a)	wholly disputes liability for the claim, or	16
(b)	made an offer of settlement to the claimant pursuant to the determination of the claim as and when required by this Act and 2 months have elapsed since the offer was made, or	17 18 19 20
(c)	fails to determine the claim as and when required by this Act.	21 22
	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.	23 24 25 26
(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 a Commissioner until:	27 28 29
(a)	28 days after the claim for compensation is made, or	30
(b)	the person on whom the claim is made disputes liability for the claim (wholly or in part),	31 32
	whichever happens first.	33
291	Deferral of determination pending negotiations or medical assessment	34 35
(1)	A Commissioner may defer determination of a dispute pending the outcome of negotiations between the parties.	36 37

(2)	A Commissioner may defer determination of a dispute pending the outcome of a medical assessment in connection with the dispute.	1 2 3
292	Certificate of determination	4
(1)	The Commissioner must as soon as practicable after the determination of a dispute by the Commissioner issue the parties to the dispute with a certificate as to the determination.	5 6 7
(2)	The Commissioner is to attach a brief statement to the certificate setting out the Commissioner's reasons for the determination.	8 9 10
(3)	If the Principal Commissioner is satisfied that a certificate as to a determination or a statement attached to the certificate contains an obvious error, the Principal Commissioner may issue, or approve of the Commissioner issuing, a replacement certificate or statement to correct the error.	11 12 13 14 15
Part 5 Interim payment directions		16
293	Directions for interim payment of weekly payments or medical expenses compensation	17 18
(1)	When a dispute referred to the Director for determination by a Commissioner concerns failure to pay weekly payments of compensation or medical expenses compensation, the Director 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 <i>interim payment direction</i> .	19 20 21 22 23 24
(2)	The Director is to presume that an interim payment direction for weekly payments of compensation is warranted unless it appears to the Director that:	25 26 27
(a)	the claim concerned has minimal prospects of success, or	28 29
(b)	the worker has returned to work, or	30
(c)	the injury was not reported by the worker as required by section 44 (Early notification of workplace injury), or	31 32
(d)	insufficient medical evidence is available concerning the period of incapacity of the worker.	33 34

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| (3) | The Director is not to give an interim payment direction with respect to medical expenses compensation unless satisfied that the claim for that compensation has reasonable prospects of success and that the treatment or service to which the compensation relates is reasonably necessary: | 1
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| (a) | to prevent deterioration of the worker's condition, or | 6 |
| (b) | to promote an early return to work, or | 7 |
| (c) | to relieve significant pain or discomfort, or | 8 |
| (d) | for such other reason as may be prescribed by the regulations. | 9
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| (4) | An interim payment direction can be given subject to conditions. | 11
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| (5) | A further interim payment direction or directions can be given after the expiry of any earlier direction. | 13
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| 294 | Period for which interim payment of weekly payments can be directed | 15
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| (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. | 17
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| | Note. The 12-week limit applies to each direction or further direction. | 21 |
| (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. | 22
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| 295 | Review of interim payment direction by Principal Commissioner | 25 |
| (1) | The Principal Commissioner may, on the application of the person on whom a claim is made, review an interim payment direction given to the person. | 26
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| (2) | On such a review, the Principal Commissioner can exercise any function of the Director with respect to the interim payment direction. | 29
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| (3) | Except as provided by this section, the exercise of any function of the Director under this Part is not subject to appeal or review. | 32
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296	Revocation of interim payment direction	1
	(1) The Director can revoke an interim payment direction at any time.	2 3
	(2) When an interim payment direction is revoked, the obligation to make payments under the direction ceases.	4 5
	(3) The revocation of an interim payment direction does not affect the requirement to make payments before the revocation.	6 7
297	Offence of failure to comply with interim payment direction	8
	A person who fails to comply with an interim payment direction is guilty of an offence.	9 10
	Maximum penalty: 50 penalty units.	11
298	Effect of payment under interim payment direction	12
	(1) The payment of compensation in accordance with an interim payment direction is not an admission of liability by the insurer or employer.	13 14 15
	(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.	16 17 18 19 20
299	Guidelines relating to interim payment directions	21
	The giving of interim payment directions by the Director is subject to relevant provisions of WorkCover Guidelines relating to those directions.	22 23 24
300	Commissioner can give interim payment direction	25
	A Commissioner has and may exercise any function of the Director under this Part, in connection with a dispute referred to the Commissioner for determination.	26 27 28
301	Recovery of payments	29
	If a Commissioner 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:	30 31 32 33

(a)	the worker or other person who received those payments is not required to refund those payments unless the Commissioner otherwise orders under paragraph (b),	1 2 3 4
(b)	if the Commissioner is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, the Commissioner may order the worker or other person concerned to refund the whole or a specified part of those payments,	5 6 7 8 9
(c)	the Commissioner may order that the Uninsured Liability and Indemnity Scheme bear the liability for the refund of the whole or a specified part of those payments (unless an order is made under paragraph (b) for a refund),	10 11 12 13 14
(d)	the Commissioner 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,	15 16 17 18
(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.	19 20 21 22
Part 6 Special provisions for claims for work injury damages		23 24
Division 1	Preliminary	25
302	Interpretation	26
(1)	In this Part:	27
	<i>claimant</i> means a claimant for work injury damages.	28
	<i>party</i> to an assessment under this Part means the claimant, employer or insurer in respect of the claim referred for assessment.	29 30 31
	<i>specify</i> an amount of damages includes specify a manner of determining the amount of damages.	32 33

(2)	A reference in this Part to referring a claim for assessment under this Part includes a reference to referring a claim for a certificate of exemption from assessment under this Part.	1 2 3
(3)	A reference in this Part to an assessment of a claim includes a reference to the result of the assessment.	4 5
303	Application of Part	6
	This Part applies to a claim for work injury damages whether or not the person on whom the claim is made admits or denies liability.	7 8 9
304	Part does not prevent settlement of claim	10
	Nothing in this Part prevents a claim from being settled at any time.	11 12
Division 2	Assessment of claim	13
305	Referral of claim for assessment	14
(1)	A claim for work injury damages may be referred to the Director by the claimant for assessment under this Part.	15 16
	Note. A medical dispute concerning the claim can also be referred for assessment under Part 7 (Medical assessment).	17 18
(2)	The Director is responsible for making arrangements as to the Commissioner who is to assess any particular claim or class of claims.	19 20 21
	Note. Court proceedings in respect of a claim cannot be commenced unless the claim has been assessed under this Part (or is exempt from assessment). See sections 307 and 311.	22 23 24
306	Restrictions as to when claim can be referred for assessment	25
	A dispute about a claim for work injury damages cannot be referred for assessment by a Commissioner unless:	26 27
(a)	the person on whom the claim is made wholly disputes liability for the claim, or	28 29

(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 this Act and 2 months have elapsed since the offer was made, or	1 2 3 4 5
(c)	the person on whom the claim is made fails to determine the claim as and when required by this Act.	6 7
	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.	8 9 10 11
307	Claims exempt from assessment	12
(1)	A claim is exempt from assessment under this Part if the claim is of a kind that is exempt under WorkCover Guidelines or the regulations.	13 14 15
(2)	If a claim is exempt from assessment under this Part, the Director must, as soon as practicable, issue the claimant and the person on whom the claim is made with a certificate to that effect (enabling court proceedings to be commenced in respect of the claim concerned).	16 17 18 19 20
308	Assessment of claims	21
(1)	The Commissioner is, in respect of a claim referred to the Commissioner for assessment, to make an assessment of:	22 23
(a)	the issue of liability for the claim (unless the insurer has accepted liability), and	24 25
(b)	the amount of damages for that liability.	26
(2)	The assessment is to specify an amount of damages.	27
(3)	The Commissioner must as soon as practicable after an assessment issue the claimant and the person on whom the claim is made with a certificate as to the assessment.	28 29 30
(4)	The Commissioner is to attach a brief statement to the certificate, setting out the Commissioner's reasons for the assessment.	31 32 33

(5)	If the Principal Commissioner is satisfied that a certificate as to an assessment or a statement attached to the certificate contains an obvious error, the Principal Commissioner may issue, or approve of the Commissioner issuing, a replacement certificate or statement to correct the error.	1 2 3 4 5
309	Status of assessments	6
(1)	An assessment under this Part of the issue of liability for a claim is not binding on any party to the assessment.	7 8
(2)	An assessment under this Part of the amount of damages for liability under a claim is binding on the person on whom the claim is made, and the person must pay to the claimant the amount of damages specified in certificate as to the assessment if:	9 10 11 12 13
(a)	the person accepts that liability under the claim, and	14
(b)	the claimant accepts that amount of damages in settlement of the claim within 21 days after the certificate of assessment is issued.	15 16 17
	Note. If the amount of damages is not accepted by the claimant within that period, section 339 (Costs where claims assessment made) makes provision with respect to liability for legal costs incurred after the certificate of assessment was issued.	18 19 20 21
(3)	Subsection (2) does not apply to a self-insurer.	22
Division 3	Court proceedings	23
310	Forum for court proceedings	24
	Proceedings in respect of a claim for work injury damages may be taken in any court of competent jurisdiction.	25 26
311	Claims assessment or exemption pre-condition for commencement of court proceedings	27 28
	A claimant is not entitled to commence court proceedings against another person in respect of a claim for work injury damages unless:	29 30 31
(a)	the Director has issued a certificate in respect of the claim under section 307 (Claims exempt from assessment), or	32 33 34

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- (b) a Commissioner has issued a certificate in respect of the claim under section 308 (Assessment of claims). 1
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- 312 Matter to be remitted for further claims assessment where significant new evidence produced in court proceedings** 3
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- (1) This section applies to court proceedings in respect of a claim for work injury damages for which a Commissioner has issued a certificate under section 308. 5
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- (2) If significant evidence is adduced in the court proceedings that was not made available to the Commissioner, the court is required to adjourn the proceedings until: 8
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- (a) the party who has adduced the evidence has referred the matter for further assessment under Division 2, and 11
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- (b) a Commissioner has issued a further certificate under section 308 in respect of the claim. 13
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- (3) For the purposes of this section, *significant evidence* is evidence that the court considers may have materially affected the assessment made by the Commissioner if it had been made available to the Commissioner when the initial claims assessment was made (whether or not it was available at that time). 15
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- Note.** See section 339 (Costs where claims assessment made) for cost penalty where the new evidence was available at the time of the original claims assessment. 21
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- 313 Disclosure of offers or assessment by Commissioner** 24
- (1) This section applies to: 25
- (a) the amount of an offer of settlement under section 282 (Liability to be accepted and settlement offer made) in connection with a claim for work injury damages, or 26
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- (b) the amount of an assessment of damages by a Commissioner under Division 2. 29
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- (2) Except as prescribed by the regulations, any such amount is not to be specified in any pleading, affidavit or other document filed in or in connection with court proceedings, 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. 31
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Part 7 Medical assessment

314 Definitions

In this Part:

medical assessor means a person appointed under this Part to make an assessment under this Part.

medical dispute means a dispute between a claimant and the person on whom a claim is made about any of the following matters or an issue concerning any of the following matters arising in proceedings before a court or in connection with the assessment or determination of a dispute or claim by a Commissioner:

- (a) whether the treatment provided or to be provided to the worker was or is reasonable and necessary in the circumstances,
- (b) whether any such treatment relates to the injury concerned,
- (c) whether an injury has stabilised,
- (d) the degree of permanent impairment of the worker as a result of the injury concerned,
- (e) the degree of impairment of the earning capacity of the worker as result of the injury concerned,
- (f) whether any proportion of permanent impairment is due to any previous injury or pre-existing abnormality or condition,
- (g) the extent of a loss of hearing suffered by a worker,
- (h) the suitability of particular employment for a partially incapacitated worker,
- (i) whether an incapacity or impairment is a result of an injury,
- (j) whether employment is a significant contributing factor to an injury,
- (k) any other medical question or matter referred to the Director by a Commissioner for determination by a medical assessor.

315	Appointment of medical assessors	1
(1)	The Director is to appoint medical practitioners and other suitably qualified persons to be medical assessors for the purposes of this Part. Such an appointment requires the concurrence of the General Manager of the Authority.	2 3 4 5
(2)	The terms of any such appointment may restrict a medical assessor to medical disputes of a specified kind.	6 7
(3)	The Director is to ensure that, as far as reasonably practicable, arrangements are in place to facilitate the taking place of assessments under this Part in the regional areas of the State.	8 9 10
316	Principal Medical Assessor	11
(1)	Of the persons appointed as medical assessors, one is, by the person's instrument of appointment or a subsequent instrument executed by the Director, to be appointed as Principal Medical Assessor.	12 13 14 15
(2)	When a person is appointed as Principal Medical Assessor, any previous appointment of a person as Principal Medical Assessor ceases to have effect.	16 17 18
(3)	The Principal Medical Assessor can delegate to any medical assessor any of the Principal Medical Assessor's functions under this Act, except this power of delegation.	19 20 21
317	Medical assessment procedures	22
(1)	A medical dispute may be referred for assessment under this Part by a court or a Commissioner, or by a party to the dispute.	23 24
(2)	The request for a referral is to be made to the Director.	25
(3)	The Director is to arrange for any such request that is duly made to be referred to one or more medical assessors.	26 27
(4)	The medical assessor or assessors to whom a medical dispute is referred is or are to give a certificate (a <i>medical assessment certificate</i>) as to the matters referred for assessment.	28 29 30
(5)	A medical assessment certificate is to set out the reasons for any finding by the medical assessor or assessors as to any matter certified in the certificate.	31 32 33

(6) If the Principal Medical Assessor is satisfied that a medical assessment certificate contains an obvious error, the Principal Medical Assessor may issue, or approve of the medical assessor issuing, a replacement medical assessment certificate to correct the error.	1 2 3 4 5
318 Assessment of impairment	6
(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:	7 8 9
(a) WorkCover Guidelines issued for that purpose, or	10
(b) if there are no such guidelines in force—the American Medical Association’s Guides to the Evaluation of Permanent Impairment, Fourth Edition.	11 12 13
(2) In assessing the degree of permanent impairment, regard must not be had to any psychiatric or psychological injury, impairment or symptoms, unless (in the case of a claim for work injury damages) the assessment of the degree of permanent impairment is made solely with respect to the result of a psychological or psychiatric injury.	14 15 16 17 18 19
(3) Impairments that result from the same injury are to be assessed together to assess the degree of permanent impairment of the injured worker.	20 21 22
(4) 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.	23 24 25
(5) A medical assessor may decline to make an assessment of the degree of permanent impairment of an injured worker until the assessor is satisfied that the injury has stabilised. Court proceedings or proceedings before a Commissioner may be adjourned until the assessment is made.	26 27 28 29 30
319 Deduction for previous injury or pre-existing condition or abnormality	31 32
(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	33 34 35

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- 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. 1
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- (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 5% unless this assumption is at odds with the available evidence. 4
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- Note.** So if the degree of permanent impairment is assessed as 25% and subsection (2) operates to require a 5% reduction, the degree of permanent impairment is reduced to 20%. 10
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- (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. 13
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- (4) The WorkCover Guidelines may make provision for or with respect to the determination of the deduction required by this section. 17
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- (5) Section 70 (Loss of hearing due to age) of the 1987 Act applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis. 20
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- 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. 23
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- 320 Status of medical assessments—compensation claims** 27
- (1) A medical assessment certificate is conclusive evidence as to the matters certified in any proceedings before a Commissioner in respect of a compensation claim with which the certificate is concerned. 28
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- (2) In any proceedings before a Commissioner, the Commissioner may (despite the conclusiveness of the certificate) reject a certificate as to all or any of the matters certified in it, on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the Commissioner is satisfied that admission of the certificate as to the matter or matters concerned would cause substantial injustice to that party. 32
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- (3) If a certificate is so rejected as to any matter, the Commissioner is to refer that matter again for assessment under this Part and adjourn the proceedings until a further medical assessment certificate is given and admitted in evidence in the proceedings. 1
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- (4) The Commissioner may not substitute the Commissioner's own determination as to any matter certified by the certificate. 5
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- 321 Status of medical assessments—work injury damages claims 7**
- (1) A medical assessment certificate is conclusive evidence as to the following matters in any court proceedings or in any assessment by a Commissioner in respect of a work injury damages claim with which the certificate is concerned: 8
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 - (a) whether the degree of permanent impairment of the injured worker is greater than 25%, 12
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 - (b) whether any treatment already provided to the injured worker was reasonable and necessary in the circumstances, 14
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 - (c) whether an injury has stabilised. 17
- (2) The certificate is evidence (but not conclusive evidence) as to the other matters certified in any court proceedings or in any assessment by a Commissioner in respect of the claim concerned. 18
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- (3) In court proceedings, the court may (despite anything to the contrary in this section) reject a certificate as to all or any of the matters certified in it, on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the court is satisfied that admission of the certificate as to the matter or matters concerned would cause substantial injustice to that party. 22
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- (4) If the certificate is so rejected as to any matter, the court is to refer that matter again for assessment under this Part and adjourn the proceedings until a further medical assessment certificate is given and admitted in evidence in the proceedings. 29
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- (5) However, if a certificate as to whether or not the degree of permanent impairment of the injured worker is greater than 25% is so rejected, the court may, if it considers it appropriate, substitute a determination of the court as to the degree of permanent impairment of the injured worker (assessed by the 33
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court in accordance with the relevant provisions of this Part)	1
instead of referring that matter again for assessment under this	2
Part.	3
(6) Except as provided by subsection (5), a court may not	4
substitute its own determination as to any matter in respect of	5
which the medical assessment certificate is conclusive	6
evidence.	7
(7) This section:	8
(a) does not prevent a court from referring a matter again	9
for assessment under this Part (as provided for by	10
section 322 (Referral of matter for further medical	11
assessment)), and	12
(b) does not require a court to refer a matter again for	13
assessment under this Part if the matter is not a matter	14
in respect of which a medical assessment certificate is	15
conclusive evidence.	16
322 Referral of matter for further medical assessment	17
(1) A matter referred for assessment under this Part may be	18
referred again on one or more further occasions in accordance	19
with this Part:	20
(a) by the Director on the application of any party to the	21
medical dispute, but only on the grounds of the	22
deterioration of the injury or additional relevant	23
information about the injury, or	24
(b) by a court or Commissioner.	25
(2) A certificate as to a matter referred again for assessment	26
prevails over any previous certificate as to the matter to the	27
extent of any inconsistency.	28
323 Review of medical assessment by review panel	29
(1) A party to a medical dispute may apply to the Principal	30
Medical Assessor to refer a medical assessment under this Part	31
by a single medical assessor to a review panel of medical	32
assessors for review.	33
(2) An application for the referral of a medical assessment to a	34
review panel may only be made on the grounds that the	35
assessment was incorrect in a material respect.	36

(3)	The Director is to arrange for any such application to be referred to a panel of at least 3 medical assessors, but only if the Director is satisfied that there is reasonable cause to suspect that the medical assessment was incorrect in a material respect having regard to the particulars set out in the application.	1 2 3 4 5
(4)	The review panel may confirm the certificate of assessment of the single medical assessor, or revoke that certificate and issue a new certificate as to the matters concerned.	6 7 8
(5)	Sections 320 and 321 apply to any such new certificate.	9
324	Costs of medical assessment	10
(1)	The costs of medical assessments under this Part are payable by the employer or insurer, except as otherwise provided by the regulations.	11 12 13
(2)	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.	14 15 16
(3)	The costs of medical assessments under this Part include the remuneration of medical assessors and the reasonable and necessary costs and expenses of travel and accommodation incurred by the injured worker, and by a parent or other carer of the worker in order to accompany the injured worker, in attending the medical assessor or assessors for the purposes of the assessment.	17 18 19 20 21 22 23
(4)	A reference in this section to medical assessment includes a reference to the review of medical assessments.	24 25
325	WorkCover monitoring and oversight	26
(1)	Medical assessments under this Part are subject to relevant provisions of WorkCover Guidelines relating to the procedures for the referral of disputes for assessment or review of assessments and the procedure for assessment.	27 28 29 30
(2)	The Authority may arrange for the provision of training and information to medical assessors to promote accurate and consistent medical assessments under this Part.	31 32 33

Part 8 Costs	1
Division 1 Preliminary	2
326 Definitions	3
(1) In this Part:	4
<i>agent</i> means a person who acts as agent for a person in connection with a claim.	5 6
<i>agent service</i> means any service performed by a person in the person's capacity as an agent.	7 8
<i>costs</i> includes:	9
(a) costs actually incurred or to be incurred by a person claiming compensation or work injury damages, and	10 11
(b) if liability for a claim is admitted without recourse to a Commissioner or court—the reasonable expenses incurred by a person in pursuing the person's claim, and	12 13 14
(c) costs incurred in relation to any proceedings in respect of a claim, and	15 16
(d) costs incidental to an application for referral of a medical dispute for medical assessment, and	17 18
(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	19 20 21
(f) such other costs as may be prescribed by the regulations.	22 23
<i>court</i> includes a court arbitrator or arbitrators.	24
<i>medical report</i> includes medical certificate and medical opinion.	25 26
(2) Expressions used in this Division have the same meaning as in Part 11 (Legal fees and other costs) of the <i>Legal Profession Act 1987</i> , except as provided by this section.	27 28 29
Note. Under the <i>Legal Profession Act 1987</i> , "costs" includes barristers' and solicitors' fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).	30 31 32

327	Costs to which Part applies	1
	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 otherwise provides.	2 3 4
328	Legal Profession Act	5
	This Part and any regulations under this Part prevail to the extent of any inconsistency with the <i>Legal Profession Act 1987</i> (in particular section 196 of that Act) and the regulations under that Act.	6 7 8 9
329	Assessment of costs	10
	An assessment of any costs is to be made so as to give effect to the provisions of this Part (whether or not the assessment is made under Division 6 of Part 11 of the <i>Legal Profession Act 1987</i>).	11 12 13 14
330	Exclusion of matters from this Part	15
	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.	16 17 18
Division 2	Fixing of maximum costs and fees	19
331	Maximum lawyer and agent costs	20
	(1) The regulations may make provision for or with respect to the following:	21 22
	(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,	23 24 25 26
	(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).	27 28 29 30

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| (2) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the <i>Legal Profession Act 1987</i> . | 1
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| (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
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| (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. | 8
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| (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. | 12
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| 332 Costs of obtaining unused medical reports not recoverable | 15 |
| (1) The regulations may provide that a legal practitioner or agent is, to the extent provided by the regulations, not entitled to be paid or recover the cost of obtaining a medical report that was obtained for use in connection with a workers compensation matter or work injury damages assessment, but not used for the purpose for which it was obtained. | 16
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| (2) 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. | 22
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| 333 Maximum fees payable to medical practitioners | 25 |
| (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by medical practitioners of the following services: | 26
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| (a) provision of any medical report for use in connection with a claim for compensation or work injury damages, | 29
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| (b) appearance as a witness in proceedings before a Commissioner or court in connection with a claim for compensation or work injury damages. | 31
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| (2) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the <i>Legal Profession Act 1987</i> . | 34
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(3)	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.	1 2 3
Division 3	Special provisions for costs in compensation and damages assessment matters	4 5 6
334	Application of Division	7
	This Division applies to costs payable by a party in or in relation to:	8 9
	(a) a claim for compensation, or	10
	(b) the assessment by a Commissioner of a claim for work injury damages.	11 12
335	Costs to be determined by Commissioners	13
(1)	Costs to which this Division applies are in the discretion of a Commissioner.	14 15
(2)	A Commissioner has full power to determine by whom, to whom and to what extent costs are to be paid.	16 17
(3)	A Commissioner may order costs to be assessed on the basis set out in Division 6 of Part 11 of the <i>Legal Profession Act 1987</i> (or in relevant regulations under Division 5 of this Part) or on an indemnity basis.	18 19 20 21
(4)	A Commissioner may not order the payment of costs by a claimant unless the Commissioner is satisfied that the claim was frivolous or vexatious, fraudulent or made without proper justification.	22 23 24 25
(5)	If a Commissioner is satisfied that a part only of a claim was frivolous or vexatious, fraudulent or made without proper justification, the Commissioner may order the claimant to pay the costs relating to that part of the claim.	26 27 28 29
(6)	Any party to a claim may apply to a Commissioner for an award of costs.	30 31

336	Costs unreasonably incurred	1
(1)	If a Commissioner is satisfied that any costs on a claim were unreasonably incurred, the Commissioner is to order that those costs are to be treated as unreasonably incurred for the purposes of this section and the Commissioner is not to make an order for payment of those costs by any other party to the claim.	2 3 4 5 6 7
(2)	Costs incurred by a party to a claim are considered to have been unreasonably incurred for the purposes of this section only if they were incurred by the party:	8 9 10
(a)	after a reasonable offer of settlement of the claim was made to the party, or	11 12
(b)	after the party has failed without reasonable excuse to comply with a written request from another party to the claim to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or	13 14 15 16 17 18
(c)	in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a medical assessment certificate of a medical assessor that has been admitted in evidence in proceedings is evidence and the Commissioner is of the opinion that the application was frivolous or vexatious.	19 20 21 22 23 24
(3)	A legal practitioner representing a party to proceedings before a Commissioner is not entitled to recover from the party any costs that a Commissioner has ordered are to be treated as unreasonably incurred.	25 26 27 28
(4)	A Commissioner may by order exempt any costs or a proportion of any costs from the operation of this section if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.	29 30 31 32 33 34 35

337	Restrictions on recovery of practitioner/client costs	1
(1)	The legal representative or agent of a person in respect of a claim made or to be made by the person:	2
		3
(a)	is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by a Commissioner, and	4
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(b)	is not entitled to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation unless those costs are awarded by a Commissioner.	7
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(2)	Any such award of costs may be made on the application either of the person or of the legal representative or agent concerned.	11
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(3)	This section prevails to the extent of any inconsistency with Part 11 of the <i>Legal Profession Act 1987</i> .	13
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(4)	A person must not:	15
(a)	claim a lien that the person is not entitled to claim because of this section, or	16
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(b)	deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of this section.	18
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	Maximum penalty: 50 penalty units.	21
(5)	A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of this section is entitled to recover the amount paid as a debt in a court of competent jurisdiction.	22
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338	Liability of legal practitioner for client's costs in certain cases	26
(1)	A Commissioner 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:	27
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(a)	disallow the whole or any part of the costs between the legal practitioner and his or her client,	31
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(b)	direct 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,	33
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(c)	direct 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.	1 2 3
(2)	A Commissioner may refer a matter to a costs assessor for inquiry and report before making such an order.	4 5
(3)	A Commissioner 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.	6 7 8
(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 a Commissioner to indemnify a party pursuant to such an order.	9 10 11 12
(5)	This section does not limit any other provision of this Part.	13
Division 4	Special provisions for costs in work injury damages matters	14 15
339	Costs where claims assessment made	16
(1)	This section applies if an assessment is made under Part 6 of the amount of damages for liability under a claim for work injury damages.	17 18 19
(2)	If the claimant does not accept that amount of damages in settlement of the claim within 21 days after the certificate of assessment is issued, then the following provisions have effect with respect to liability for costs incurred, in or in relation to proceedings on the claim, after the certificate of assessment was issued:	20 21 22 23 24 25
(a)	the person on whom the claim is made is liable to pay the costs if:	26 27
(i)	the amount of court awarded damages in respect of the claim exceeds the amount of damages specified in the certificate of assessment by at least \$2,000 or 20% (whichever is the greater), or	28 29 30 31 32

- (ii) the amount of court awarded damages in respect of the claim exceeds the amount of damages specified in the certificate of assessment by at least \$200,000, 1
 - (b) the claimant is liable to pay the costs if the amount of court awarded damages in respect of the claim does not exceed the amount of damages specified in the certificate of assessment, but the maximum amount that a claimant is liable to pay for the insurer's or employer's costs is \$25,000 (or such other amount as is determined by the Authority by order published in the Gazette), 2
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 - (c) except as provided by paragraph (a) or (b), the person on whom the claim is made and the claimant are liable to pay their own costs. 12
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- (3) This subsection applies if court proceedings are adjourned under section 312 (2) for further claims assessment because a party to the proceedings has adduced significant evidence in the proceedings that was available to the party at the time of the original claims assessment but was not made available to the Commissioner. In any such case, the court is to take the failure of the party to make that evidence available to the Commissioner into account and may require the party to pay a greater share of the costs incurred after the initial certificate of assessment was issued and until a further certificate of assessment is issued in connection with the claim. 15
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- (4) The regulations may make provision for or with respect to the manner in which amounts referred to in this section are to be adjusted (to take account of inflation and other matters) for the purposes of enabling the comparisons provided for in this section to be made. 26
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- (5) In this section: 31
 - costs* means costs payable on a party and party basis in relation to a work injury damages claim, including court fees prescribed under section 342. 32
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 - court awarded damages* means all damages of any kind awarded by a court in respect of a claim for work injury damages (without the addition of interest) after taking into account any deduction or reduction in accordance with Part 5 of the 1987 Act. 35
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340	Costs where court proceedings and no claims assessment	1
(1)	This section applies where a claim for work injury damages is determined by court proceedings (including court arbitration) and an assessment has not been made under Part 6 of the amount of damages for liability under the claim.	2 3 4 5
(2)	The rules of court concerning offers of compromise apply to any such offer in those proceedings.	6 7
(3)	The costs payable on a party and party basis are, subject to the rules of court, to follow the event, and are to include the court fees prescribed under section 342.	8 9 10
341	Other matters relating to costs	11
(1)	Any order of a court as to costs payable by a party in or in relation to proceedings on a claim for work injury damages is to be made consistently with the relevant provisions of or made under this Part. However, the court may make an order that departs from those provisions in an exceptional case and for the avoidance of substantial injustice.	12 13 14 15 16 17
(2)	Subject to the regulations and rules of court where relevant, if costs are awarded to a claimant by reference to the amount recovered by the claimant, that amount is to be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with or by reference to Part 5 of the 1987 Act.	18 19 20 21 22 23
342	Court fees	24
(1)	In this section: <i>court fees</i> means court fees payable in respect of a claim determined by a court that was not the subject of an assessment of the amount of damages under Part 6.	25 26 27 28
(2)	The regulations may make provision for or with respect to court fees payable in connection with a claim for work injury damages.	29 30 31
(3)	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.	32 33 34
(4)	Court fees are payable into the Consolidated Fund.	35

343	Claims assessment fees	1
(1)	In this section:	2
	<i>claims assessment fees</i> means fees payable in connection with an assessment of a claim for work injury damages under Part 6.	3 4
(2)	The regulations may make provision for or with respect to claims assessment fees.	5 6
(3)	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.	7 8 9
(4)	Claims assessment fees are payable into the WorkCover Authority Fund.	10 11
Division 5	Costs assessment	12
344	Regulations for costs assessment	13
(1)	The regulations may make provision for or with respect to:	14
(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	15 16 17
(b)	matters associated with the assessment or taxation of those costs.	18 19
(2)	In particular, the regulations may make provision for or with respect to any matter for or in connection with which provision is made by Division 6 (Assessment of costs) of Part 11 of the <i>Legal Profession Act 1987</i> .	20 21 22 23
(3)	Regulations for the purposes of this Division may adopt, with or without modification, any of the provisions of Division 6 (Assessment of costs) of Part 11 of the <i>Legal Profession Act 1987</i> .	24 25 26 27
345	Regulations displace Legal Profession Act provisions	28
	To the extent that regulations under this Division make provision for the costs payable to a legal practitioner, those regulations displace the provisions of the <i>Legal Profession Act 1987</i> .	29 30 31 32

Part 9 Proceedings before Commissioners	1
346 Arrangement of business	2
The Director is responsible for making arrangements as to the	3
Commissioner who is to determine a particular matter or class	4
of matters.	5
347 Decisions of Commissioners	6
(1) Except as otherwise provided by this Act, a decision of a	7
Commissioner under the Workers Compensation Acts is final	8
and binding on the parties and is not subject to appeal or	9
review.	10
(2) A decision of or proceeding before a Commissioner is not:	11
(a) to be vitiated because of any informality or want of	12
form, or	13
(b) liable to be challenged, appealed against, reviewed,	14
quashed or called into question by any court.	15
(3) A Commissioner may reconsider any matter that has been dealt	16
with by a Commissioner and rescind, alter or amend any	17
decision previously made or given by a Commissioner.	18
(4) This section does not prevent the review of a decision of a	19
Commissioner on grounds of denial of procedural fairness.	20
(5) In this section:	21
<i>Commissioner</i> does not include the Principal Commissioner.	22
<i>decision</i> includes an assessment, award, order, determination,	23
ruling and direction.	24
348 Reference of question of law on compensation claim to	25
 Compensation Court	26
(1) The Director may, of the Director's own motion or on the	27
application of a party to the claim, refer for the opinion of the	28
Compensation Court any question of law arising in connection	29
with a claim for compensation. The Director may not refer a	30
question after a Commissioner has made an award in the matter	31
concerned.	32

- (2) A Commissioner may, with the approval of the Director, refer for the opinion of the Compensation Court any question of law arising in proceedings before the Commissioner in connection with a claim for compensation. 1
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- (3) The reference of a question under this section by a Commissioner may be made on the application of a party to the proceedings or of the Commissioner's own motion. 5
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- (4) The Director is not to refer or approve of the reference of a question of law under this section unless satisfied that the question involves a novel or complex question of law. 8
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- (5) If the Director refuses to approve of the reference of a question of law under this section, the Director must state his or her reasons in writing to the parties for the refusal. 11
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- (6) Despite the reference of a question under this section, a Commissioner may make an award in the matter in which the question arose unless the question is the question of whether the Commissioner may exercise functions under this Act in relation to a matter. 14
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- (7) On the determination by the Compensation Court of a question referred to it under this section: 19
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 - (a) if the Commissioner has not made an award in the matter in which the question arose, the Commissioner may make an award not inconsistent with the opinion of the Compensation Court, or 21
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 - (b) if the Commissioner has made an award in the matter in which the question arose, the Commissioner must vary that award in such a way as will make it consistent with the opinion of the Compensation Court. 25
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- (8) The reference of a question of law under this section may be by stating a case on a question of law. 29
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- 349 Review of decisions of Commissioners** 31
- (1) A party to a dispute or assessment under this Act may apply to the Principal Commissioner for review of a decision of a Commissioner in respect of the dispute or assessment. 32
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- (2) An application for review can only be made within 28 days after the Commissioner's decision. 35
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(3) An application for review may only be made on the grounds that the decision was incorrect in a material respect.	1 2
(4) The Principal Commissioner is to arrange for the application to be referred for review, but only if the Principal Commissioner is satisfied that there is reasonable cause to suspect that the decision was incorrect in a material respect having regard to the particulars set out in the application.	3 4 5 6 7
(5) The review is to be conducted by the Principal Commissioner or by another Commissioner nominated by the Principal Commissioner for the purpose.	8 9 10
(6) On a review, the decision may be confirmed or may be revoked and a new decision made in its place.	11 12
(7) The Principal Commissioner may, in connection with a review under this section, state a case on a question of law for decision by the Compensation Court.	13 14 15
(8) In this section: <i>decision</i> includes an assessment, award, order, determination, ruling and direction.	16 17 18
350 Procedure before Commissioners	19
(1) Proceedings in any matter before a Commissioner are to be conducted with as little formality and technicality as the proper consideration of the matter permits.	20 21 22
(2) A Commissioner is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as the Commissioner thinks appropriate and as the proper consideration of the matter before the Commissioner permits.	23 24 25 26
(3) A Commissioner is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.	27 28 29
(4) Proceedings need not be conducted by formal hearing and may be conducted by way of a conference between the parties, including a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.	30 31 32 33 34

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| (5) | Subject to any general directions of the Principal Commissioner, a Commissioner may hold a conference with all relevant parties in attendance and with relevant experts in attendance, or a separate conference in private with any of them. | 1
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| (6) | If a Commissioner is satisfied that sufficient information has been supplied to him or her in connection with proceedings, the Commissioner may exercise functions under this Act without holding any conference or formal hearing. | 6
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| (7) | An assessment or determination is to be made by a Commissioner having regard to such information as is conveniently available to the Commissioner, even if one or more of the parties to the assessment does not co-operate or ceases to co-operate. | 10
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| (8) | In proceedings before a court with respect to a claim (other than proceedings under section 235A or 235C or under the <i>Crimes Act 1900</i> with respect to fraud), evidence of a statement made in proceedings before a Commissioner is not admissible unless the person who made the statement agrees to the evidence being admitted. | 15
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| 351 | Representation before Commissioner | 21 |
| (1) | A person who is a party to proceedings before a Commissioner is entitled to be represented by a legal practitioner or by an agent. | 22
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| (2) | The Commissioner may refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party. | 25
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| (3) | In proceedings in respect of a claim, the Commissioner may refuse to permit an insurer to be represented by a legal practitioner if the claimant is not represented by a legal practitioner. | 29
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| (4) | A party to proceedings before a Commissioner is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to communicate adequately at any conference or hearing. | 33
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- (5) A Commissioner must take into account any written submission prepared by a legal practitioner acting for a party to proceedings and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at any conference or hearing in the proceedings). 1
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- 352 Power of Commissioner to require information** 6
- (1) A Commissioner may give a direction in writing to a party to proceedings before a Commissioner or to any other person requiring the party or person: 7
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- (a) to produce, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the Commissioner considers relevant to the proceedings, or 10
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- (b) to furnish specified information within a time specified in the direction, being information that the Commissioner considers relevant to the proceedings. 14
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- (2) The direction may require the documents to be produced or the information to be furnished: 17
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- (a) to the Commissioner or to another party to the proceedings, in the case of a direction given to a party to the proceedings, or 19
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- (b) to the Commissioner in the case of a direction given to a person who is not a party to the proceedings. 22
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- (3) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence. 24
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- Maximum penalty: 50 penalty units. 27
- (4) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before a court have the document or information admitted in the proceedings. 28
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- (5) The regulations may make provision for or with respect to any of the following matters: 33
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- (a) exempting specified kinds of documents or information from the operation of this section, 35
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	(b) specifying cases and circumstances in which a Commissioner is required to exercise the Commissioner's powers under this section.	1 2 3
353	Power of Commissioner to provide documents and information to a party	4 5
	(1) When documents or information are produced or furnished to a Commissioner by a party to proceedings before a Commissioner (whether or not pursuant to a requirement under this Act), the Commissioner may produce or furnish the documents or information to:	6 7 8 9 10
	(a) any other party to the proceedings, or	11
	(b) any other party's legal representative, or	12
	(c) a medical practitioner, with the consent of any other party to the proceedings.	13 14
	(2) A Commissioner may, when furnishing or producing information or documents to a legal practitioner or medical practitioner, direct that the person must not cause or permit disclosure of the information, or the information in the documents, to another party.	15 16 17 18 19
	(3) A legal practitioner or medical practitioner must not contravene a Commissioner's direction under this section.	20 21
	Maximum penalty: 50 penalty units.	22
	(4) The regulations may make provision for or with respect to any of the following matters:	23 24
	(a) exempting specified kinds of documents or information from the operation of this section,	25 26
	(b) specifying cases and circumstances in which a Commissioner is required to exercise the Commissioner's powers under this section,	27 28 29
	(c) specifying circumstances in which documents or information produced or furnished to a Commissioner may not be produced or furnished by the Commissioner to another party to the proceedings or to a legal practitioner or medical practitioner.	30 31 32 33 34

354	Exchange of information before proceedings	1
(1)	A party (<i>the applicant</i>) to a dispute who refers the dispute for determination by a Commissioner must, at the time it is referred, provide the following material to the Principal Commissioner:	2
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(a)	a list identifying the documents on which the applicant proposes to rely in connection with the determination of the dispute,	6
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(b)	a list identifying all other documents that the applicant has that are relevant to the dispute,	9
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(c)	such other documents or information as the regulations may require the applicant to provide.	11
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(2)	The applicant must also provide that material to the other party (<i>the respondent</i>) to the dispute at or before the time the dispute is referred for determination.	13
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(3)	Within 7 days after the applicant provides that material to the respondent, the respondent must provide the following material to the applicant and to the Principal Commissioner:	16
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(a)	a list identifying the documents on which the respondent proposes to rely in connection with the determination of the dispute,	19
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(b)	a list identifying all other documents that the respondent has that are relevant to the dispute,	22
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(c)	such other documents or information as the regulations may require the respondent to provide.	24
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(4)	A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.	26
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	Maximum penalty: 50 penalty units.	29
(5)	A document that a party to a dispute has failed to identify in a list provided as required by this section (being a document that the person has when the list is required to be provided) is not admissible on behalf of the party in proceedings on such a dispute before a Commissioner.	30
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(6)	Subsections (4) and (5) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.	1 2 3 4
(7)	The regulations may provide for exceptions to subsection (5). In particular, the regulations may authorise a Commissioner to permit the admission in proceedings before the Commissioner in specified circumstances of a document that would otherwise be not admissible under that subsection.	5 6 7 8 9
(8)	If a Commissioner is satisfied that a party to a dispute has failed without reasonable excuse to comply with a requirement of this section, the Commissioner may:	10 11 12
(a)	refer the matter to the Authority, and	13
(b)	note the matter in a certificate issued by the Commissioner in respect of the dispute (together with details of the documents to which the failure relates).	14 15 16
	Note. Examples of the documents to which this section applies are medical reports, investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act.	17 18 19 20
355	Parties to dispute to provide copies of documents before proceedings	21 22
(1)	At least 7 days before proceedings before a Commissioner on a dispute, each party to the dispute must provide to the other party and to the Commissioner a copy of any documents on which the party proposes to rely in connection with the determination of the dispute.	23 24 25 26 27
(2)	A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.	28 29 30
	Maximum penalty: 50 penalty units.	31
(3)	Subsection (2) does not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.	32 33 34 35
(4)	Any document that a party has that is not provided by the party as required by this section is not admissible on behalf of the party in proceedings on such a dispute before a Commissioner.	36 37 38

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- (5) The regulations may provide for exceptions to subsection (4).
 In particular, the regulations may authorise a Commissioner to
 permit the admission in proceedings before the Commissioner
 in specified circumstances of a document that would otherwise
 be not admissible under that subsection.
- (6) If a Commissioner is satisfied that a party to a dispute has
 failed without reasonable excuse to comply with a requirement
 of this section, the Commissioner may:
- (a) refer the matter to the Authority, and
- (b) note the matter in a certificate issued by the
 Commissioner in respect of the dispute (together with
 details of the documents to which the failure relates).
- Note.** Examples of the documents to which this section applies are
 medical reports, investigators' reports, rehabilitation providers' reports and
 reports of assessments under section 40A (Assessment of incapacitated
 worker's ability to earn) of the 1987 Act.
- 356 Summons to appear at conference or hearing**
- (1) The Principal Commissioner may issue a summons requiring
 the attendance of a party to proceedings before a Commissioner
 at any conference or hearing in the proceedings before the
 Commissioner if the Principal Commissioner is satisfied that
 the party has failed without reasonable excuse to comply with
 a request by a Commissioner to attend a conference or hearing
 in the proceedings.
- (2) A person must not fail without reasonable excuse to comply
 with a summons served on the person under this section.
 Maximum penalty: 50 penalty units.
- 357 Powers of Commissioners to require evidence**
- (1) A Commissioner may require any person appearing before the
 Commissioner:
- (a) to give evidence on oath or affirmation (and may, for
 that purpose, administer an oath or affirmation), and
- (b) to answer any relevant question put to the person.
- (2) A person must not without reasonable excuse refuse or fail to
 comply with a requirement duly made under this section.
 Maximum penalty: 50 penalty units.

(3)	A person is not obliged to answer a question under this section if the answer to that question would tend to incriminate the person of an offence.	1 2 3
358	Protection of Commissioners	4
(1)	A matter or thing done or omitted to be done by a Commissioner in the exercise of the Commissioner's functions does not, if the matter or thing was done or omitted in good faith, subject the Commissioner personally to any action, liability, claim or demand.	5 6 7 8 9
(2)	A Commissioner is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a Commissioner.	10 11 12 13 14
359	Enforcement of awards and orders	15
(1)	If an award or order of a Commissioner for the payment of money has been entered up or made in favour of any person and provision is not made in this or any other Act for the recovery of that money, the Principal Commissioner must:	16 17 18 19
(a)	on the application of the person or their solicitor or agent, issue to the person, solicitor or agent a certificate in or to the effect of the form prescribed by the regulations, and	20 21 22 23
(b)	make a minute or memorandum of the issue of the certificate against the entry of the award or order.	24 25
(2)	A person to whom such a certificate has been issued may file, or cause to be filed, the certificate with the registrar under the <i>District Court Act 1973</i> at the proclaimed place under that Act that is nearest the debtor's place of residence or business.	26 27 28 29
(3)	A registrar under the <i>District Court Act 1973</i> with whom a certificate has been filed by a person under this section is to enter judgment for the person for the amount of the certificate together with:	30 31 32 33
(a)	the fees paid for the certificate to the Principal Commissioner, and	34 35

(b)	the fees paid for filing the certificate and entering judgment.	1 2
360	Control and direction of Commissioners	3
(1)	Commissioners are, in the exercise of their functions, subject to the general control and direction of the Director.	4 5
(2)	A Commissioner is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the Commissioner that affect the interests of the parties to proceedings, and the Authority or any public servant may not overrule or interfere with any such decision of the Commissioner in respect of any such proceedings.	6 7 8 9 10 11
(3)	Subsection (2) does not prevent the making of arrangements for the training of Commissioners, and does not prevent Commissioners from obtaining advice, to ensure consistently correct application of the provisions of the Workers Compensation Acts and the regulations under those Acts and of other relevant matters.	12 13 14 15 16 17
(4)	This section does not affect the exercise of the functions of the appropriate Department Head under the <i>Public Sector Management Act 1988</i> with respect to Commissioners who are public servants.	18 19 20 21
361	Regulations	22
	The regulations may make provision for or with respect to any aspect of procedures to be followed in connection with the jurisdiction or functions of Commissioners, including provision for or with respect to:	23 24 25 26
(a)	the manner of referring claims or disputes for assessment or determination by a Commissioner, and	27 28
(b)	the documentation that is to accompany such a reference of a claim or dispute for assessment or determination, and	29 30 31
(c)	the manner of presenting documents and information to a Commissioner by the parties, including time limits for the presentation of the documents and information, and	32 33 34
(d)	the making of assessments and determinations by Commissioners, and	35 36

(e)	the manner of specifying an amount of damages or compensation, and	1 2
(f)	the extension or abridgment of any period referred to in this Part, and	3 4
(g)	all matters of practice and procedure in proceedings before Commissioners, and	5 6
(h)	the issue of a seal for the Commissioners and the use and effect of the seal.	7 8
362	Authority monitoring and oversight	9
(1)	The assessment or determination of claims or disputes by Commissioners is subject to relevant provisions of WorkCover Guidelines relating to those matters.	10 11 12
(2)	The Authority may make arrangements for the provision of training and information to Commissioners to promote accurate and consistent assessments and determinations under the Workers Compensation Acts.	13 14 15 16
(3)	The Authority can make arrangements for the publication of the decisions of Commissioners.	17 18
Part 10	Administration	19
Division 1	Workers Compensation Claims Assessment Service	20 21
363	Establishment of Service	22
(1)	There is established by this Act a Workers Compensation Claims Assessment Service consisting of:	23 24
(a)	the Director, and	25
(b)	the Commissioners, and	26
(c)	the medical assessors, and	27
(d)	the members of the staff of the Service employed under Part 2 of the <i>Public Sector Management Act 1988</i> .	28 29

(2) The Service may be referred to as the Claims Assessment Service as an alternative to its full name of the Workers Compensation Claims Assessment Service.	1 2 3
364 Director of the Service	4
(1) A Director of the Claims Assessment Service may be appointed under Part 2 of the <i>Public Sector Management Act 1988</i> .	5 6
(2) The Director may delegate to any member of the staff of the Claims Assessment Service any function of the Director under the Workers Compensation Acts, except this power of delegation.	7 8 9 10
365 Staff and facilities	11
(1) Such staff as may be necessary for the Commissioners to exercise their functions are to be employed under Part 2 of the <i>Public Sector Management Act 1988</i> as staff of the Claims Assessment Service.	12 13 14 15
(2) Those staff are, in the exercise of their functions, subject to the general control and direction of the Director.	16 17
(3) This section does not affect the exercise of the functions of the appropriate Department Head under the <i>Public Sector Management Act 1988</i> with respect to those staff.	18 19 20
(4) The Authority or such other Department of the Government as the regulations may specify is to provide for the Claims Assessment Service:	21 22 23
(a) facilities (including registry facilities), and	24
(b) any additional staff that may be necessary.	25
Division 2 Commissioners	26
366 Appointment of Commissioners	27
(1) Persons may be employed under Part 2 of the <i>Public Sector Management Act 1988</i> as Workers Compensation Commissioners.	28 29 30

(2)	The Director may by order published in the Gazette appoint a member of the staff of the Claims Assessment Service as a Workers Compensation Commissioner.	1 2 3
(3)	The Director may by order published in the Gazette appoint other suitably qualified persons who are not public servants to be Workers Compensation Commissioners. Such an appointment requires the concurrence of the General Manager of the Authority.	4 5 6 7 8
(4)	Division 3 applies to Commissioners who are not public servants.	9 10
367	Principal Commissioner	11
(1)	Of the persons employed or appointed as Commissioners, one is, by the person’s instrument of appointment or a subsequent instrument executed by the Director, to be appointed as Principal Workers Compensation Commissioner.	12 13 14 15
(2)	When a person is appointed as Principal Commissioner, any previous appointment of a person as Principal Commissioner ceases to have effect.	16 17 18
(3)	The Principal Commissioner can delegate to any Commissioner any of the Principal Commissioner’s functions under this Act, except this power of delegation.	19 20 21
Division 3	Special provisions for non-public servant Commissioners	22 23
368	Definition of “appointed Commissioner”	24
	In this Division:	25
	<i>appointed Commissioner</i> means a Commissioner who is not a public servant.	26 27
369	Term of office	28
	Subject to this Act, an appointed Commissioner holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the Commissioner, but is eligible for re-appointment.	29 30 31 32

370	Remuneration	1
	An appointed Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a Commissioner as the Minister may from time to time determine in respect of the Commissioner.	2 3 4 5
371	Casual vacancies	6
	(1) An appointed Commissioner is taken to have vacated office if the Commissioner:	7 8
	(a) dies, or	9
	(b) completes a term of office and is not re-appointed, or	10
	(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	11 12 13 14 15
	(d) becomes a mentally incapacitated person, or	16
	(e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	17 18 19 20 21
	(f) resigns the office by instrument in writing addressed to the Director, or	22 23
	(g) is removed from office by the Director under subsection (2).	24 25
	(2) The Director may at any time remove an appointed Commissioner from office.	26 27
372	Effect of certain other Acts	28
	(1) If by or under any other Act provision is made:	29
	(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	30 31 32

(b)	prohibiting the person from engaging in employment outside the duties of that office,	1 2
	that provision does not operate to disqualify the person from holding that office and also the office of an appointed Commissioner or from accepting and retaining any remuneration payable to the person under this Act as an appointed Commissioner.	3 4 5 6 7
(2)	Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to an appointed Commissioner.	8 9
Division 4	WorkCover guidelines	10
373	Issue of guidelines	11
(1)	The Authority may issue guidelines (<i>WorkCover Guidelines</i>) with respect to the following:	12 13
(a)	the assessment of the degree of permanent impairment of an injured worker as a result of an injury,	14 15
(b)	the procedures for the referral of disputes for assessment or review of assessments, and the procedure for assessment, under Part 7 (Medical assessment),	16 17 18
(c)	the giving of interim payment directions by Commissioners under Part 5,	19 20
(d)	such other matters as a provision of the Workers Compensation Acts provides may be the subject of WorkCover Guidelines.	21 22 23
(2)	The Authority may amend, revoke or replace WorkCover Guidelines.	24 25
(3)	Before issuing, amending, revoking or replacing WorkCover Guidelines, the Authority is to consult with the Council.	26 27
(4)	WorkCover Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.	28 29 30

(5) WorkCover Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.	1 2 3 4 5
(6) The regulations may make provision for or with respect to any matter for which the WorkCover Guidelines can provide.	6 7
374 Special requirements relating to WorkCover Guidelines relating to impairment	8 9
(1) This section applies to WorkCover Guidelines that relate to the assessment of the degree of permanent impairment of an injured worker as a result of an injury.	10 11 12
(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 Royal Australian College of General Practitioners, the Australian Orthopaedic Association, the para-medical professional associations and other relevant colleges and associations.	13 14 15 16 17 18 19
(3) Those Guidelines are to be issued within 3 months after the commencement of this section.	20 21
(4) Those Guidelines may adopt the provisions of another publication only as in force at a time before the issue of the guidelines.	22 23 24
5.3 Compensation Court Act 1984 No 89	25
[1] Section 18	26
Omit the section. Insert instead:	27
18 Costs under other Acts	28
Section 112 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> extends to any proceedings in the Court (not just proceedings under that Act) and in its	29 30 31

application to proceedings under any other Act is not limited by section 111A (Costs provisions apply only to existing claims) of that Act.	1 2 3
[2] Section 18A	4
Insert after section 18:	5
18A Costs in stated cases under new claims provisions	6
(1) Divisions 2 (Fixing of maximum costs and fees) and 3 (Special provisions for costs in compensation and assessment matters) of Part 8 of Chapter 7 of the 1998 Act extend to costs in proceedings before the Compensation Court on a question of law or stated case referred to the Court for opinion or decision.	7 8 9 10 11
(2) Sections 335 (Costs to be determined by Commissioners) and 337 (Restrictions on recovery of practitioner/client costs) of the 1998 Act apply in respect of those costs as if a reference in those sections to a Commissioner were a reference to the Compensation Court.	12 13 14 15 16
5.4 Defamation Act 1974 No 18	17
Schedule 2 Proceedings of public concern and official and public documents and records	18 19
Omit “conciliation officer or conciliator” from item 2 (17) and 3 (6) wherever occurring.	20 21
Insert instead “conciliation officer, conciliator or Commissioner”.	22

Schedule 6	Consequential amendments	1
	(Section 3)	2
6.1	Workers Compensation Act 1987 No 70	3
[1]	Section 11A No compensation for psychological injury caused by reasonable actions of employer	4 5
	Omit “court proceedings” from section 11A (8) (b).	6
	Insert instead “proceedings before a Commissioner”.	7
[2]	Section 15 Diseases of gradual process—employer liable, date of injury etc	8 9
	Omit “determined by the Compensation Court” from section 15 (2).	10
	Insert instead “determined by a Commissioner”.	11
[3]	Section 15 (2A)	12
	Omit “The Compensation Court is to determine the contributions that a particular employer is liable to make on the basis of the following formula, or on such other basis as the Court considers just and equitable”.	13 14 15
	Insert instead “A Commissioner is to determine the contributions that a particular employer is liable to make on the basis of the following formula, or on such other basis as the Commissioner considers just and equitable”.	16 17 18
[4]	Section 15 (4)	19
	Omit “loss or impairment”. Insert instead “permanent impairment”.	20
[5]	Section 16 Aggravation etc of diseases—employer liable, date of injury etc	21 22
	Omit “determined by the Compensation Court” from section 16 (2).	23
	Insert instead “determined by a Commissioner”.	24

[6] Section 16 (2A)	1
Omit “The Compensation Court is to determine the contributions that a particular employer is liable to make on the basis of the following formula, or on such other basis as the Court considers just and equitable”.	2 3 4
Insert instead “A Commissioner is to determine the contributions that a particular employer is liable to make on the basis of the following formula, or on such other basis as the Commissioner considers just and equitable”.	5 6 7
[7] Section 16 (3)	8
Omit “loss or impairment”. Insert instead “permanent impairment”.	9
[8] Section 17 Loss of hearing—special provisions	10
Omit section 17 (1) (f).	11
Insert instead:	12
(f) where a Commissioner is satisfied that a contribution required to be made under paragraph (d) cannot be recovered by an employer referred to in paragraph (c) (i) or (ii), the Commissioner may direct the Authority to pay to that employer out of the Uninsured Liability and Indemnity Scheme such amount, not exceeding the amount of the contribution, as the Commissioner considers appropriate and the Authority is to pay out that amount accordingly,	13 14 15 16 17 18 19 20 21
[9] Section 20 Principal liable to pay compensation to workers employed by contractors in certain cases	22 23
Omit “settled by the Compensation Court” from section 20 (4).	24
Insert instead “determined by a Commissioner”.	25
[10] Section 22 Compensation to be apportioned where more than one injury	26 27
Omit “the Compensation Court determines” from section 22 (1).	28
Insert instead “a Commissioner determines”.	29
[11] Section 22 (1) (b)	30
Omit “a loss”. Insert instead “a permanent impairment”.	31

[12] Section 22 (3) and (4)	1
Omit “apportioned by the Compensation Court” wherever occurring.	2
Insert instead “apportioned by a Commissioner”.	3
[13] Section 22 (5)	4
Omit the subsection. Insert instead:	5
(5) A Commissioner may, on the application of any insurer or employer concerned or of the Authority, determine a dispute as to whether:	6
(a) liability to pay compensation under this Act should be apportioned under this section, or	7
(b) any such liability should be apportioned under this section in respect of different injuries.	8
The determination of the Commissioner has effect despite any agreement on apportionment if the application for determination was made by an employer (in the employer’s own right) or the Authority.	9
	10
	11
	12
	13
	14
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	16
[14] Section 22A Further provisions concerning apportionment of liability under section 22	17
	18
Omit “the Court considers” from section 22A (1) (a) and (b) wherever occurring.	19
Insert instead “the Commissioner considers”.	20
	21
[15] Section 22A (4)	22
Omit “the Compensation Court may order”. Insert instead “a Commissioner may order”.	23
	24
[16] Section 22A (5) (a) and (b)	25
Omit “the Court considers” wherever occurring.	26
Insert instead “the Commissioner considers”.	27

[17]	Section 22B Determination as to which injury gave rise to compensation liability	1 2
	Omit “The Compensation Court may” from section 22B (1).	3
	Insert instead “A Commissioner may”.	4
[18]	Section 22C Certain injuries not to be dealt with under sections 15 and 16	5 6
	Omit “unless the Compensation Court otherwise orders” from section 22C (5).	7 8
	Insert instead “unless a Commissioner otherwise orders”.	9
[19]	Section 26 Death of worker leaving partial dependants	10
	Omit “approved by the Compensation Court” from section 26 (b).	11
	Insert instead “approved by a Commissioner”.	12
[20]	Section 26 (c)	13
	Omit “approval by the Compensation Court”.	14
	Insert instead “approval by a Commissioner”.	15
[21]	Section 26 (c)	16
	Omit “determined by the Compensation Court”.	17
	Insert instead “determined by a Commissioner”.	18
[22]	Section 29 Apportionment of payments between dependants	19
	Omit section 29 (1)–(5). Insert instead:	20
	(1) The compensation payable under this Division to each dependant of a deceased worker may be apportioned by a Commissioner or by the Public Trustee.	21 22 23
	(2) Application for apportionment may be made by or on behalf of a person entitled to the compensation:	24 25
	(a) to the Public Trustee, or	26
	(b) to a Commissioner (whether or not an application has been made to the Public Trustee or the Public Trustee has made a decision).	27 28 29

(3) The Public Trustee may decline to deal with an application for apportionment and advise the parties to apply to a Commissioner.	1 2 3
(4) The Public Trustee is not to deal with an application for apportionment of compensation if an application for apportionment of the same compensation is before a Commissioner.	4 5 6 7
(5) A decision by the Public Trustee to apportion compensation under this Division is subject to any decision made by a Commissioner with respect to the matter.	8 9 10
[23] Section 30	11
Omit the section. Insert instead:	12
30 Review of apportionment among dependants	13
(1) A Commissioner or the Public Trustee may, on account of the variation of the circumstances of the various dependants or for any other sufficient cause, vary any previous apportionment among the dependants of a deceased worker of compensation under this Division.	14 15 16 17 18
(2) Application for a variation may be made by or on behalf of the person entitled to compensation to a Commissioner or the Public Trustee.	19 20 21
(3) The Public Trustee may apply to a Commissioner for any such variation of a previous apportionment made by the Public Trustee or by a Commissioner.	22 23 24
(4) The Public Trustee is not to deal with an application for variation of any previous apportionment if an application for variation of the same previous apportionment is before a Commissioner.	25 26 27 28
(5) The Public Trustee is not to vary an apportionment made by a Commissioner.	29 30
[24] Section 31 Payment in respect of dependent children	31
Omit “unless the Compensation Court otherwise orders” from section 31 (1).	32 33
Insert instead “unless a Commissioner otherwise orders”.	34

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Schedule 6 Consequential amendments

[25] Section 31 (2)	1
Omit “the Compensation Court makes an order”.	2
Insert instead “a Commissioner makes an order”.	3
[26] Section 37 Weekly payment during total incapacity—after first 26 weeks	4
Omit “if the Compensation Court is satisfied” from section 37 (6).	5
Insert instead “if a Commissioner is satisfied”.	6
[27] Section 38A Determination of whether worker seeking suitable employment	7
	8
Omit “before the Compensation Court” from section 38A (4).	9
Insert instead “before a Commissioner”.	10
[28] Section 38A (4) (b)	11
Omit “determination of the matter by the Compensation Court or a conciliator”.	12
Insert instead “determination of the matter by a Commissioner”.	13
	14
[29] Section 38A (6)	15
Omit “An order of the Compensation Court”.	16
Insert instead “An order of a Commissioner”.	17
[30] Section 39 Incapacity treated as total—“odd-lot” rule	18
Omit “satisfaction of the Compensation Court” from section 39 (1) (c).	19
Insert instead “satisfaction of a Commissioner”.	20
[31] Section 39 (1) (d)	21
Omit “the Compensation Court’s order”.	22
Insert instead “the Commissioner’s order”.	23
[32] Section 39 (2)	24
Omit “An order of the Compensation Court”.	25
Insert instead “An order of a Commissioner”.	26

[33]	Section 39 (3)	1
	Omit “The Compensation Court may”.	2
	Insert instead “A Commissioner may”.	3
[34]	Section 39 (6)	4
	Omit the subsection.	5
	Insert instead:	6
	(6) The Director may make any order that a Commissioner may	7
	make under this section if the matter must be determined for	8
	the purposes of any interim payment direction by the Director.	9
[35]	Section 40 Weekly payments during partial incapacity—general	10
	Omit “The Compensation Court may determine any dispute about the	11
	operation of this subsection and (subject to any order of the Court) a	12
	conciliator dealing with the dispute may give a direction or make a	13
	recommendation about that matter” from section 40 (4).	14
	Insert instead “A Commissioner may determine any dispute about the	15
	operation of this subsection”.	16
[36]	Section 45 Reduction etc of weekly payments to qualify for other	17
	benefits	18
	Omit “The Compensation Court may” from section 45 (1).	19
	Insert instead “A Commissioner may”.	20
[37]	Section 46 Reduction of weekly payments to prevent dual benefits	21
	Omit “The Compensation Court may” from section 46 (1).	22
	Insert instead “A Commissioner may”.	23
[38]	Section 52A Discontinuation of weekly payments for partial incapacity	24
	after 2 years	25
	Omit “proceedings before the Compensation Court” from section 52A	26
	(8) (b).	27
	Insert instead “proceedings before a Commissioner”.	28

[39] Section 53 Weekly payments—residence outside the Commonwealth	1
Omit “unless a medical referee or medical panel certifies, or the Compensation Court determines” from section 53 (1).	2
	3
Insert instead “unless a medical assessor certifies, or a Commissioner determines”.	4
	5
[40] Section 55 Review of weekly payments	6
Omit “reviewed by the Compensation Court” from section 55 (1).	7
Insert instead “reviewed by a Commissioner”.	8
[41] Section 55 (2) (b)	9
Omit “settled by the Compensation Court”.	10
Insert instead “determined by a Commissioner”.	11
[42] Section 55 (2A)	12
Omit “the Compensation Court’s order on the review, the Compensation Court may order”.	13
	14
Insert instead “the Commissioner’s order on the review, the Commissioner may order”.	15
	16
[43] Section 55A Award of compensation may be for fixed period	17
Omit “The Compensation Court may” from section 55A.	18
Insert instead “A Commissioner may”.	19
[44] Section 56 Award of compensation may be subject to supply of medical certificates etc	20
	21
Omit “The Compensation Court may” from section 56 (1).	22
Insert instead “A Commissioner may”.	23
[45] Section 56 (2)	24
Omit “order of the Compensation Court”.	25
Insert instead “order of a Commissioner”.	26

[46] Section 56 (3)	1
Omit the subsection.	2
Insert instead:	3
(3) This section applies to an interim payment direction by the Director for weekly payments of compensation in the same way as it applies to an award by a Commissioner for any such payments.	4 5 6 7
[47] Section 57 Worker to notify return to work etc with other employer	8
Omit section 57 (3).	9
Insert instead:	10
(3) This section applies even though the weekly payments of compensation are payable under an interim payment direction by the Director.	11 12 13
[48] Section 58 Refund of weekly payments paid after return to work etc	14
Omit “the Compensation Court may order” from section 58 (1).	15
Insert instead “a Commissioner may order”.	16
[49] Section 58 (1)	17
Omit “the Court considers”.	18
Insert instead “the Commissioner considers”.	19
[50] Section 58 (2)	20
Omit “the Compensation Court’s order”.	21
Insert instead “the Commissioner’s order”.	22
[51] Section 58 (3)	23
Omit the subsection.	24
Insert instead:	25
(3) This section applies even though the weekly payments of compensation are payable under an interim payment direction by the Director.	26 27 28

[52] Section 58 (4)	1
Omit “the Compensation Court may make such orders as it”.	2
Insert instead “a Commissioner may make such orders as the Commissioner”.	3
	4
[53] Section 58 (6)	5
Omit “any order that it is satisfied the Compensation Court could make”.	6
Insert instead “any order that it is satisfied a Commissioner could make”.	7
[54] Section 58 (7) (a)	8
Omit “an award of the Compensation Court”.	9
Insert instead “an award of a Commissioner”.	10
[55] Section 61 Rates applicable for medical or related treatment	11
Omit section 61 (4A). Insert instead:	12
(4A) If proceedings relating to the worker’s claim for compensation	13
are before a Commissioner and those proceedings relate to, or	14
include matters relating to, the provision of medical or related	15
treatment for the worker, such a direction may be given by the	16
Commissioner. If no such proceedings are before a	17
Commissioner, such a direction may be given by the Authority	18
on application made in respect of the worker from time to time.	19
[56] Section 62 Rates applicable for hospital treatment	20
Omit section 62 (6A). Insert instead:	21
(6A) If proceedings relating to the worker’s claim for compensation	22
are before a Commissioner and those proceedings relate to, or	23
include matters relating to, the provision of hospital treatment	24
for the worker, such a direction may be given by the	25
Commissioner. If no such proceedings are before a	26
Commissioner, such a direction may be given by the Authority	27
on application made in respect of the worker from time to time.	28

[57] Section 63 Rates applicable for ambulance service	1
Omit section 63 (2A). Insert instead:	2
(2A) If proceedings relating to the worker’s claim for compensation are before a Commissioner and those proceedings relate to, or include matters relating to, the provision of ambulance services for the worker, such an allowance may be awarded by the Commissioner. If no such proceedings are before a Commissioner, such an allowance may be awarded by the Authority on application made in respect of the worker from time to time.	3 4 5 6 7 8 9 10
[58] Section 63A Rates applicable for occupational rehabilitation services	11
Omit “any order of the Compensation Court” from section 63A (4). Insert instead “any order of a Commissioner”.	12 13
[59] Section 76 Maximum rate for damage to artificial limbs, spectacles	14
Omit section 76 (3). Insert instead:	15
(3) If proceedings relating to the worker’s claim for compensation are before a Commissioner and those proceedings relate to, or include matters relating to, damage to an item referred to in section 74 (1) (b), such a direction may be given by the Commissioner. If no such proceedings are before a Commissioner, such a direction may be given by the Authority on application made in respect of the worker from time to time.	16 17 18 19 20 21 22
[60] Section 77 Maximum rate for damage to clothing	23
Omit section 77 (3). Insert instead:	24
(3) If proceedings relating to the worker’s claim for compensation are before a Commissioner and those proceedings relate to, or include matters relating to, damage to the worker’s clothing, such a direction may be given by the Commissioner. If no such proceedings are before a Commissioner, such a direction may be given by the Authority on application made in respect of the worker from time to time.	25 26 27 28 29 30 31

[61] Section 83 Manner of payment of compensation	1
Omit section 83 (6). Insert instead:	2
(6) A Commissioner may authorise the payment of compensation in a particular case in such other manner as the Commissioner thinks fit.	3 4 5
[62] Section 85 Payments to Public Trustee for benefit of beneficiary	6
Omit “unless the Compensation Court otherwise orders” from section 85 (1) (b).	7 8
Insert instead “unless a Commissioner otherwise orders”.	9
[63] Section 85 (1) (c)	10
Omit “the Compensation Court directs”.	11
Insert instead “a Commissioner directs”.	12
[64] Section 85 (1) (d)	13
Omit “the Compensation Court orders”.	14
Insert instead “a Commissioner orders”.	15
[65] Section 85 (6)	16
Omit “The Compensation Court may”.	17
Insert instead “A Commissioner may”.	18
[66] Section 85A	19
Omit the section. Insert instead:	20
85A Payment of benefits to beneficiaries	21
(1) Despite section 85, a Commissioner may authorise the payment of compensation referred to in section 85 (1):	22 23
(a) to the person who is entitled to the compensation, or	24
(b) to such other person, for the benefit of the person entitled to the compensation, as the Commissioner thinks fit.	25 26 27

	(2) Any such payment is to be made in the manner authorised by the Commissioner.	1 2
[67]	Section 87B Reduction of compensation under this Act	3
	Omit “an award of the Compensation Court” from section 87B (5).	4
	Insert instead “an award of a Commissioner”.	5
[68]	Section 143 Determination of claim by Authority	6
	Omit section 143 (4).	7
[69]	Section 144 Appeal against Authority’s decision on claim	8
	Omit “apply to the Compensation Court” from section 144 (1).	9
	Insert instead “apply to a Commissioner”.	10
[70]	Section 144 (3)	11
	Omit the subsection. Insert instead:	12
	(3) A Commissioner may hear and determine any such application and may make such orders in relation to the application as the Commissioner thinks fit.	13 14 15
[71]	Section 145 Employer or insurer to reimburse Authority	16
	Omit “apply to the Compensation Court” from section 145 (3).	17
	Insert instead “apply to a Commissioner”.	18
[72]	Section 145 (4)	19
	Omit the subsection. Insert instead:	20
	(4) A Commissioner may hear any such application and may:	21
	(a) make such determination in relation to the application, and	22 23
	(b) make such awards or orders as to the payment of compensation under this Act to or in respect of the injured worker concerned,	24 25 26
	as the Commissioner thinks fit.	27

[73] Section 145 (7)	1
Omit the subsection. Insert instead:	2
(7) An order by a Commissioner that the Authority is to be reimbursed by a person named in the determination concerned may be enforced under section 359 of the 1998 Act.	3 4 5
[74] Section 145A Recovery from directors of corporations liable to reimburse Authority	6 7
Omit “an order of the Compensation Court” from section 145A (2). Insert instead “an order of a Commissioner”.	8 9
[75] Section 147 Miscellaneous provisions	10
Omit “The Compensation Court may adjourn” from section 147 (2). Insert instead “A Commissioner may adjourn”.	11 12
[76] Section 147 (3)	13
Omit “by order of the Compensation Court”. Insert instead “by order of a Commissioner”.	14 15
[77] Section 147 (4)	16
Omit the subsection. Insert instead:	17
(4) In any proceedings before a Commissioner under this Division, the Authority or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Commissioner and exercise in respect of any matters and questions arising out of the application the same powers, rights and authorities as an employer may exercise in respect of a claim between a worker and an employer under this Act.	18 19 20 21 22 23 24

[78] Section 151A Election—damages or “Table of Disabilities” compensation	1
	2
Insert after section 151A (3) (a):	3
(a1) by referring a claim for those damages for assessment under Part 6 of Chapter 7 of the 1998 Act or by applying for the issue of a certificate of exemption from assessment under that Part (in which case the person ceases to be entitled to recover permanent loss compensation in respect of the injury), or	4
	5
	6
	7
	8
	9
[79] Section 151A (3) (b)	10
Omit the paragraph. Insert instead:	11
(b) by referring a dispute with respect to that permanent loss compensation for determination by a Commissioner or by accepting payment of that permanent loss compensation (in which case the person ceases to be entitled to recover damages in respect of the injury).	12
	13
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[80] Section 151A (3A)	17
Omit “proceedings in the Compensation Court”.	18
Insert instead “proceedings before a Commissioner”	19
[81] Section 151Z Recovery against both employer and stranger	20
Omit “by the Compensation Court” from section 151Z (1) (f).	21
Insert instead “by a Commissioner”.	22
[82] Section 162 Death of employer	23
Omit “The Compensation Court may” from section 162 (1).	24
Insert instead “A Commissioner may”.	25
[83] Section 162 (2)	26
Omit “Where the Compensation Court makes a declaration under subsection (1), the Compensation Court may make an award”.	27
	28
Insert instead “Where a Commissioner makes a declaration under subsection (1), the Commissioner may make an award”.	29
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6.2	Workplace Injury Management and Workers Compensation Act 1998 No 86	1 2
[1]	Section 4 Definitions	3
	Omit the definitions of <i>conciliation certificate</i> , <i>conciliator</i> , <i>medical referee</i> , <i>medical panel</i> and <i>Principal Conciliator</i> from section 4 (1).	4 5
[2]	Section 71 Duty of claimant to co-operate	6
	Omit “court proceedings” wherever occurring from section 71 (3). Insert instead “proceedings before a Commissioner”.	7 8
[3]	Section 73 Insurer to provide copies of reports to worker	9
	Omit “before a conciliator or the Compensation Court” from section 73 (3) (b). Insert instead “before a Commissioner”.	10 11 12
[4]	Section 74 Insurers to give notice and reasons when liability disputed	13
	Omit “conciliation by a conciliator” wherever occurring from section 74 (2) (b) and (c). Insert instead “determination by a Commissioner”.	14 15 16
[5]	Section 75 Report about delays and the incurring of unreasonable costs by insurers	17 18
	Omit “A Judge or commissioner of the Compensation Court or a conciliator may make a report” from section 75 (1). Insert instead “The Director, the Principal Commissioner or a Commissioner may make a report”.	19 20 21 22
[6]	Section 75 (1) (d)	23
	Omit “proceedings before the Compensation Court”. Insert instead “proceedings before a Commissioner”.	24 25

[7] Section 106 Authority may intervene in proceedings	1
Omit “proceedings before the Compensation Court” from section 106 (1).	2
Insert instead “proceedings before a Commissioner”.	3
[8] Section 107 Applications to be heard together	4
Omit “applied to the Compensation Court” from section 107 (1).	5
Insert instead “applied to a Commissioner”.	6
[9] Section 107 (2)	7
Omit “or the rules of the Compensation Court”.	8
[10] Section 108 Interim awards	9
Omit section 108 (2) and (3).	10
Insert instead:	11
(2) Where this section applies, a Commissioner may:	12
(a) if the Commissioner 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 Commissioner thinks fit:	13
(i) for compensation by an insurer or self-insurer, or	14
(ii) for indemnity by an insurer, or	15
(iii) for payment under the Uninsured Liability and Indemnity Scheme,	16
and make such interim orders as the Commissioner thinks fit for contribution on the part of an insurer, employer or principal or other person or under the Uninsured Liability and Indemnity Scheme, and	17
(b) make such final awards and orders as the Commissioner thinks fit with respect to any of the matters the subject of an interim award or order under paragraph (a), and	18
(c) if the Commissioner makes a final award or order, make such orders as the Commissioner thinks fit with respect to adjustments to be made between persons against	19
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whom orders have been made under paragraphs (a) and (b) or between any such persons and the Uninsured Liability and Indemnity Scheme.	1 2 3
(3) If a Commissioner 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 Commissioner:	4 5 6 7 8
(a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and	9 10 11
(b) orders the worker or other person to refund those payments or a specified part of those payments.	12 13
[11] Section 109 Interest before order for payment	14
Omit section 109 (1). Insert instead:	15
(1) In any proceedings before a Commissioner, the Commissioner may order that there is to be included, in any sum to be paid, interest at such rate as the Commissioner 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.	16 17 18 19 20 21
[12] Section 109 (2) (c)	22
Omit the paragraph. Insert instead:	23
(c) on any compensation payable under this Act for any period during which proceedings before a Commissioner were adjourned on the application of the claimant for the compensation or pursuant to section 102.	24 25 26 27 28

[13] Section 110 Interest after order for payment	1
Omit section 110 (1).	2
Insert instead:	3
(1) Unless a Commissioner 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 a Commissioner as is from time to time unpaid.	4 5 6 7
[14] Section 110 (2) (a)	8
Omit “the Court”. Insert instead “the Commissioner”.	9
[15] Section 110 (3) (b)	10
Omit “the Court”. Insert instead “the Commissioner”.	11
[16] Section 111 Interest on agreed payment of lump sum compensation	12
Omit “the Compensation Court” from section 111 (1).	13
Insert instead “a Commissioner”.	14
[17] Section 117 Admissibility of statements by injured workers	15
Omit “proceedings before the Compensation Court” from section 117 (1).	16
Insert instead “proceedings before a Commissioner”.	17
[18] Section 117 (2)	18
Omit the subsection.	19
[19] Section 119 Medical examination of workers at direction of employer	20
Omit “proceedings on such a dispute before a conciliator or the Compensation Court” from section 119 (6) (b).	21 22
Insert instead “proceedings on such a dispute before a Commissioner”.	23

[20]	Section 120 Medical examination of worker at direction of Commissioner	1
		2
	Omit section 120 (1). Insert instead:	3
	(1) A Commissioner or the Authority may, at any time or from time to time, require any worker:	4
		5
	(a) who claims compensation under this Act, or	6
	(b) who is in receipt of weekly payments of compensation under this Act,	7
		8
	to submit himself or herself for examination by a medical assessor on a date and at a place arranged by the Director.	9
		10
[21]	Sections 121–124	11
	Omit the sections.	12
[22]	Section 125 Reimbursement of worker for loss of wages and expenses associated with medical examination	13
		14
	Omit section 125 (2).	15
	Insert instead:	16
	(2) A worker required to submit himself or herself for examination by a medical assessor is not entitled to recover any amount if:	17
		18
	(a) the matter was referred on the application of the worker, and	19
		20
	(b) a Commissioner finds that the application was unreasonable or unnecessary.	21
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[23]	Section 125 (5)	23
	Omit the subsection.	24
[24]	Section 127 Admissibility of medical reports	25
	Omit the section. Insert instead:	26
	127 Admissibility of medical reports	27
	(1) A medical report is admissible in proceedings before a Commissioner.	28
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<p>(2) Subsection (1) is subject to any provision of the regulations relating to the giving of notice of the admission of the medical report.</p> <p>(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.</p> <p>(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.</p> <p>(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 a Commissioner given in any case where the Commissioner is satisfied there is a real issue as to whether the worker is entitled to receive compensation from any of the parties.</p> <p>(6) In this section: <i>medical report</i> means any written report of a medical practitioner relating to the worker.</p> <p>[25] Sections 128–130 Omit the sections.</p> <p>[26] Section 134 Consequences of prohibited conduct for recovery of fees by agents Omit “or by proceedings in the Compensation Court” from section 134 (4).</p> <p>[27] Section 135 Consequences of prohibited conduct for lawyers Omit “or by proceedings in the Compensation Court” from section 135 (5).</p>	<p>1 2 3</p> <p>4 5 6 7</p> <p>8 9 10 11</p> <p>12 13 14 15 16 17 18 19</p> <p>20 21 22</p> <p>23</p> <p>24</p> <p>25 26</p> <p>27</p> <p>28</p> <p>29</p>
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Workers Compensation Legislation Amendment Bill 2001

Schedule 6 Consequential amendments

[28]	Section 136 Lawyers and agents can be requested to certify as to prohibited conduct	1 2
	Insert “or Commissioner” after “court” wherever occurring in section 136 (3).	3 4
[29]	Section 137 Power to restrict or ban recovery of costs by agents who engage in prohibited conduct	5 6
	Omit “or 116 (5)” from section 137 (2) (a). Insert instead “or 337 (4)”.	7
[30]	Section 138 Power to restrict or ban recovery of costs by solicitors	8
	Omit “or 116 (5)” from section 138 (2) (a). Insert instead “or 337 (4)”.	9
[31]	Section 139 Power to restrict or ban agents who engage in prohibited conduct	10 11
	Omit “or 116 (5)” from section 139 (2) (a). Insert instead “or 337 (4)”.	12
[32]	Section 140 Past conduct included in assessing persistent conduct	13
	Omit “or 116 (5)” wherever occurring. Insert instead “or 337 (4)”.	14
[33]	Section 141 Duty of claimants to comply with requests for information about agents and lawyers	15 16
	Omit “court proceedings” from section 141 (1).	17
	Insert instead “proceedings before a Commissioner”.	18
[34]	Section 154 Death of employer	19
	Omit “The Compensation Court” from section 154 (1).	20
	Insert instead “A Commissioner”.	21
[35]	Section 154 (2)	22
	Omit “Where the Compensation Court makes a declaration under subsection (1), the Compensation Court may make an award of compensation”.	23 24 25
	Insert instead “Where a Commissioner makes a declaration under subsection (1), the Commissioner may make an award of compensation”.	26 27

[36] Section 223 Determination of claim by Authority	1
Omit section 223 (4).	2
[37] Section 224 Appeal against Authority's decision on a claim	3
Omit "apply to the Compensation Court" from section 224 (1).	4
Insert instead "apply to a Commissioner".	5
[38] Section 224 (3)	6
Omit the subsection. Insert instead:	7
(3) A Commissioner may determine any such application and may make such orders in relation to the application as the Commissioner thinks fit.	8 9 10
[39] Section 225 Employer or insurer to reimburse Authority	11
Omit "apply to the Compensation Court" from section 225 (3).	12
Insert instead "apply to a Commissioner".	13
[40] Section 225 (4)	14
Omit the subsection. Insert instead:	15
(4) A Commissioner may:	16
(a) make such determination in relation to the application, and	17 18
(b) make such awards and orders as to the payment of compensation under this Act to or in respect of the injured worker concerned,	19 20 21
as the Commissioner thinks fit.	22
[41] Section 225 (7)	23
Omit the subsection. Insert instead:	24
(7) An order by a Commissioner that the Authority is to be reimbursed by a person named in the determination concerned may be enforced under section 359.	25 26 27

[42]	Section 226 Recovery from directors of corporations liable to reimburse Authority	1
		2
	Omit “an order of the Compensation Court” from section 226 (2).	3
	Insert instead “an order of a Commissioner”.	4
[43]	Section 227	5
	Omit the section. Insert instead:	6
	227 Commutation of weekly payments from scheme	7
	(1) Division 9 of Part 3 of the 1987 Act applies to the commutation of a liability under the Scheme.	8
		9
	(2) A liability under the Scheme may not be commuted to a lump sum with the agreement of the worker unless the Authority:	10
		11
	(a) has given the employer notice of the proposed agreement and has given the employer a reasonable opportunity to make submissions to the Authority with respect to the matter, and	12
		13
		14
		15
	(b) has taken into account any submissions so made to the Authority.	16
		17
	(3) Subsection (2) does not apply if the worker has been unable, after due search and inquiry, to identify the relevant employer.	18
		19
	(4) In the case of commutation by determination of a Commissioner under section 87G (Commutation where worker legally incapacitated) of the 1987 Act, the Commissioner may on the application of the employer, if the Commissioner thinks fit, refuse to make such a determination in respect of a liability under the Scheme.	20
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	(5) The making of such an application by the employer in no way fetters the discretion of the Commissioner to make the determination, and a commutation made in consequence of the determination is binding on the employer whether or not the employer has made such an application.	26
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(6) The Authority may apply for registration of a commutation agreement under section 87H of the 1987 Act as a party to the agreement.	1 2 3
[44] Section 228 Miscellaneous provisions	4
Omit “The Compensation Court may adjourn” from section 228 (2). Insert instead “A Commissioner may adjourn”	5 6
[45] Section 228 (3)	7
Omit “by order of the Compensation Court”. Insert instead “by order of a Commissioner”.	8 9
[46] Section 228 (4)	10
Omit “At any hearing of an application to the Compensation Court under this Part, the Authority or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Compensation Court”. Insert instead “Where an application is made to a Commissioner under this Part, the Authority or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Commissioner”.	11 12 13 14 15 16 17
[47] Section 239 Authority may obtain documents from court registry or Director	18 19
Insert “or the Director” after “the Compensation Court Registry” in section 239 (1) (b).	20 21
[48] Section 239 (1)	22
Insert “or kept in the custody or control of the Director” after “available at the Compensation Court Registry”.	23 24

[49] Section 239 (2)	1
Omit “The Registrar of the Compensation Court is”.	2
Insert instead “The Registrar of the Compensation Court and the Director are”.	3
	4
[50] Section 239 (3)	5
Omit the subsection. Insert instead:	6
(3) A Commissioner may, in respect of any information obtained	7
by the Authority from the Director under this section, order that	8
the information is not to be used in any proceedings, or any	9
specified proceedings, before a Commissioner.	10
[51] Section 239 (4)	11
Insert “or by the Director” after “the Compensation Court Registry”.	12
[52] Section 247 Time for instituting proceedings	13
Omit “the Compensation Court determines the claim” from section 247	14
(3) (b).	15
Insert instead “a Commissioner determines the claim”.	16
[53] Schedule 1 Deemed employment of workers	17
Omit “the Compensation Court determines” wherever occurring from	18
clauses 3 (5), 4 (3), 5 (2) and 15 (4) of Schedule 1.	19
Insert instead “a Commissioner determines”.	20
[54] Schedule 1, clauses 9 (3) (b), 13 (2) (b) and 16 (2) (b)	21
Omit “the Compensation Court considers” wherever occurring.	22
Insert instead “a Commissioner considers”.	23
[55] Schedule 6 Provisions relating to appointed conciliators	24
Omit the Schedule.	25

6.3 Workers Compensation Legislation Amendment Act 2000 No 87	1
Schedule 9 Amendments relating to liability involving multiple managed fund insurers	2 3
Omit “and conciliation” from the definition of <i>proceedings</i> in section 22D (12) as inserted by Schedule 9 [4].	4 5