

Passed by both Houses



New South Wales

Workers Compensation Legislation Amendment Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Workers Compensation Legislation Amendment Bill 2001

Act No , 2001

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 and other matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Workers Compensation Legislation Amendment Act 2001*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) A proclamation under this section may appoint a particular time on a day as the time for commencement on that day.
- (3) An amendment made by Schedule 3 (Amendments relating to lump sum compensation) cannot be commenced until guidelines have been made under section 376 of the *Workplace Injury Management and Workers Compensation Act 1998* (as inserted by this Act) with respect to the assessment of the degree of permanent impairment of an injured worker as a result of an injury.

3 Amendments

Each Act specified in Schedules 1–6 is amended as set out in those Schedules.

Schedule 1 Amendments relating to commutation procedures

(Section 3)

Workers Compensation Act 1987 No 70

- [1] Section 35 Maximum weekly payment**
Omit “under section 51” from section 35 (3).
- [2] Section 37 Weekly payment during total incapacity—after first 26 weeks**
Omit “under section 51” from section 37 (6B).
- [3] Section 40 Weekly payments during partial incapacity—general**
Omit “under section 51” from section 40 (7).
- [4] Section 45 Reduction of weekly payments to qualify for other benefits**
Omit “under section 51” from section 45 (3).
Insert instead “under this Act”.
- [5] Section 51 Exit payments by commutation of weekly payments**
Omit the section.
- [6] Part 3, Division 9**
Insert after Division 8 of Part 3:

Division 9 Commutation of compensation

87D Definition

In this Division:

commutation agreement means an agreement to commute a liability to a lump sum, as provided by section 87F.

87E Compensation that may be commuted

- (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):
 - (a) weekly payments of compensation,
 - (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.
- (2) Such a liability cannot be commuted to a lump sum by an order or award of the Commission (but this subsection does not affect the operation of section 87G).

87F Commutation by agreement

- (1) A liability may be commuted to a lump sum with the agreement of the worker.
- (2) A commutation agreement must not be entered into unless (before the agreement is entered into):
 - (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
 - (b) the worker has confirmed in writing that the worker has been given and understands the advice referred to in paragraph (a).
- (3) A commutation agreement (including an agreement purporting to be a commutation agreement) is not subject to review or challenge in proceedings before the Commission or a court.
- (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.

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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.

Note. Section 87G provides for the commutation of a liability when the worker is legally incapacitated.

- (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.
- (7) The amount payable under an agreement is payable within 7 days after the agreement is registered or within such longer period as the agreement may provide. 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.
- (8) As part of a commutation agreement, a worker may agree that payment of a lump sum removes any liability to make a payment under Division 4 of Part 3 (or section 16 of the former Act) in respect of the injury concerned. This Division applies to the agreement for payment of that lump sum as if it were an agreement to commute the liability to pay that compensation to a lump sum. Payment of the lump sum removes any liability to which the agreement of the worker relates.

87G Commutation when worker legally incapacitated

- (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 the Commission made having regard to:
- (a) any dispute as to liability to pay compensation under this Act, and
 - (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
 - (c) the worker's diminished ability to compete in an open labour market, and
 - (d) other benefits that the worker may be entitled to from any other source.

- (2) The Commission 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.
- (3) Payment of the lump sum to which a liability has been commuted under this section removes the liability.
- (4) A determination under this section may include a determination as to the payment of a lump sum to remove any liability to make a payment under Division 4 of Part 3 in respect of the injury concerned. Payment of that lump sum removes any liability to which the determination relates.

87H Registration of commutation agreements

- (1) A party to a commutation agreement may apply to the Registrar for registration of the agreement by the Registrar.

Note. Section 87F (6) provides that a commutation agreement is of no effect unless and until it is registered.

- (2) The Registrar must refuse to register a commutation agreement unless satisfied that the requirements of section 87F (2) have been complied with in respect of the agreement.
- (3) Before registering a commutation agreement, the Registrar may (on the application of a party to the agreement or of the Registrar's own motion) refer the agreement for review by the Commission. The Registrar is not to register the agreement if the Commission recommends that the agreement not be registered.
- (4) The Commission reviewing a commutation agreement may recommend to the Registrar that the agreement not be registered if the Commission considers that the agreement is inaccurate or that the lump sum to which a liability has been commuted by the agreement is inadequate.
- (5) In reviewing a commutation agreement, the Commission may have regard to the following matters:
 - (a) any dispute as to liability to pay compensation under the Workers Compensation Acts,
 - (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,

- (c) the worker's diminished ability to compete in an open labour market,
 - (d) other benefits that the worker may be entitled to from any other source.
- (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.
 - (7) This section has effect despite section 234 of the 1998 Act (No contracting out).
 - (8) This section does not prevent a commutation agreement containing provision as to the payment of costs.

87I Payment

- (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) A lump sum may be paid to the Public Guardian for the benefit of the worker if:
 - (a) the worker agrees, in the case of a lump sum agreed to by the worker, or
 - (b) the Commission so orders, in the case of a lump sum determined by the Commission.
- (3) The annual report of the Authority is to include a statement as to trends in the commutation of liabilities under this Act.

87J Other commutation agreements invalid

- (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.
- (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.
- (3) This section does not affect the operation of section 66A (Registration of agreements for compensation).

87K Commutation payment taken to be payment of compensation

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.

[7] Section 146

Omit the section. Insert instead:

146 Commutation of weekly payments from Scheme

- (1) Division 9 of Part 3 applies to the commutation of a liability under the Scheme.
- (2) A liability under the Scheme may not be commuted to a lump sum with the agreement of the worker unless the Authority:
 - (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
 - (b) has taken into account any submissions so made to the Authority.
- (3) Subsection (2) does not apply if the worker has been unable, after due search and inquiry, to identify the relevant employer.
- (4) In the case of commutation by determination of the Commission under section 87G (Commutation when worker legally incapacitated), the Commission may on the application of the employer, if the Commission thinks fit, refuse to make such a determination in respect of a liability under the Scheme.

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- (5) The making of such an application by the employer in no way fetters the discretion of the Commission 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.
 - (6) The Authority may apply for registration of a commutation agreement under section 87H as a party to the agreement.

[8] Section 151N Contributory negligence—generally

Omit “under section 51 if the person concerned were eligible to be paid a lump sum under that section” from section 151N (2).

Insert instead “under Division 9 of Part 3 if the person concerned were eligible to be paid a lump sum under that Division”.

[9] Section 221 Payments from Contribution Fund

Omit “under section 51” from section 221 (12).

Insert instead “under Division 9 of Part 3”.

[10] Schedule 6 Savings, transitional and other provisions

Insert after Part 2 of Schedule 6:

Part 2A Provisions relating to compensation generally

1 Commutation—Workers Compensation Legislation Amendment Act 2001

- (1) This clause applies on and from the repeal of section 51 by the *Workers Compensation Legislation Amendment Act 2001*.
- (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.
- (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.

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Schedule 1 Amendments relating to commutation procedures

- (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 or under section 14 of the 1926 Act.
- (5) Section 87F (Commutation by agreement) extends to an agreement made before the commencement of that section.

Schedule 2 Amendments relating to assistance for injured workers

(Section 3)

2.1 Workers Compensation Act 1987 No 70

[1] Section 192A Claims administration manual

Insert after section 192A (3):

- (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.

[2] Section 192A (4)

Insert “the WorkCover Guidelines,” after “claims manual,”.

[3] Section 192A (4A)

Insert after section 192A (4):

- (4A) An insurer who fails to comply with a direction under subsection (4) is guilty of an offence.

Maximum penalty: 50 penalty units.

2.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 42B

Insert after section 42A:

42B Claims assistance

- (1) The Authority may provide assistance (*claims assistance*) to injured workers and employers in connection with claims for compensation and work injury damages.

- (2) In particular the Authority may establish an advisory service to provide claims assistance.
- (3) The Authority may provide funds to fund the provision of claims assistance by organisations representing employers or employees, including by means of the establishment of an advisory service to provide claims assistance.
- (4) Funds may only be provided within a period of 1 year after the commencement of this section (*the initial period*). However, funds may be provided for a period of 2 years following the expiry of the initial period (*the additional period*) if, before the expiry of the initial period, both Houses of Parliament pass a resolution approving the provision of funds during the additional period.
- (5) Before the Authority first provides any funds under this section, the Authority is to:
 - (a) advertise in a newspaper circulating in New South Wales for expressions of interest from organisations to provide claims assistance, and
 - (b) publish in the Gazette the name of each organisation to which the Authority intends to provide funds, the amount of funding to be provided and a description of the claims assistance that the organisation is to provide.
- (6) Within 1 month after the expiry of the initial period, a statement is to be laid before each House of Parliament setting out:
 - (a) the name of each organisation to which funds have been provided under this section, and
 - (b) the amount paid to each organisation, and
 - (c) a description of the claims assistance provided by the organisation.

[2] Section 45A

Insert after section 45:

45A Injury management consultants

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

[3] Section 59 Regulations

Omit section 59 (c) and (d).

Schedule 3 Amendments relating to lump sum compensation

(Section 3)

3.1 Workers Compensation Act 1987 No 70

[1] Sections 65 and 66

Omit sections 65 and 66. Insert instead:

65 Determination of degree of permanent impairment

- (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.
- (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.

Note. The injuries are to be compensated together, not as separate injuries. Section 322 of the 1998 Act requires the impairments that result from those injuries to be assessed together. Physical injuries and psychological/psychiatric injuries are not assessed together. See section 65A.

- (3) If there is a dispute about the degree of permanent impairment of an injured worker, the Commission may not award permanent impairment compensation or pain and suffering compensation unless the degree of permanent impairment has been assessed by an approved medical specialist.
- (4) The Commission 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 an approved medical specialist.

65A Special provisions for psychological and psychiatric injury

- (1) No compensation is payable under this Division in respect of permanent impairment that results from a secondary psychological injury.

Note. This does not prevent a secondary psychological injury from being compensated under section 67 as pain and suffering resulting from permanent impairment (but only if that permanent impairment results from a physical injury or a primary psychological injury).

- (2) In assessing the degree of permanent impairment that results from a physical injury or primary psychological injury, no regard is to be had to any impairment or symptoms resulting from a secondary psychological injury.

- (3) Compensation payable under this Division in respect of permanent impairment that results from a primary psychological injury is not payable unless the degree of permanent impairment resulting from the primary psychological injury is greater than the degree of permanent impairment prescribed by the regulations for the purposes of this section.

Note. If more than one psychological injury arises out of the same incident, section 322 of the 1998 Act requires the injuries to be assessed together as one injury to determine the degree of permanent impairment.

- (4) If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation under this Division in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply:

- (a) the degree of permanent impairment that results from the primary psychological injury is to be assessed separately from the degree of permanent impairment that results from the physical injury (despite section 65 (2)),
- (b) the worker is entitled to receive compensation under this Division for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker under this Division (and is not entitled to receive compensation under this Division for impairment resulting from the other injury),

- (c) the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission.

Note. If there is more than one physical injury those injuries will still be assessed together as one injury under section 322 of the 1998 Act, but separately from any psychological injury. Similarly, if there is more than one psychological injury those psychological injuries will be assessed together as one injury, but separately from any physical injury.

- (5) In this section:

primary psychological injury means a psychological injury that is not a secondary psychological injury.

psychological injury includes psychiatric injury.

secondary psychological injury means a psychological injury to the extent that it arises as a consequence of, or secondary to, a physical injury.

66 Entitlement to compensation for permanent impairment

- (1) A worker who receives an injury that results in permanent impairment is entitled to receive from the worker's employer compensation for that permanent impairment as provided by this section. Permanent impairment compensation is in addition to any other compensation under this Act.
- (2) The amount of the permanent impairment compensation that is payable is to be calculated as prescribed by the regulations, on the basis of the degree of permanent impairment that results from the injury.

[2] Section 66A Registration of agreements for compensation

Omit section 66A (1). Insert instead:

- (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 Registrar. Once the agreement is registered the worker is not entitled to receive any additional compensation in respect of the impairment under an award of the Commission.

[3] Section 66A (2)

Omit "the Compensation Court". Insert instead "the Commission".

[4] Section 66A (3)–(4A)

Omit the subsections. Insert instead:

- (3) Any party to an agreement may apply to the Registrar for registration of the agreement.
- (4) The Registrar may refuse to register an agreement if the Registrar considers that the agreement is inaccurate or that the agreed amount of compensation is inadequate.
- (4A) The Registrar must refuse to register an agreement unless satisfied that the worker received independent legal advice about the agreement before the worker entered into the agreement.

[5] Section 66A (7)

Omit the subsection. Insert instead:

- (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.

[6] Section 66A (8)

Omit the subsection.

[7] Section 66B

Omit the section. Insert instead:

66B No proceedings to enter up award on agreement for compensation

- (1) When a worker agrees to receive an amount of permanent impairment compensation or pain and suffering compensation, the Commission 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.
- (2) The regulations may prescribe exceptions to this section.

- (3) The regulations may make provision for or with respect to:
- (a) requiring an application referring a matter to the Commission 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 the Commission, and
 - (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.

[8] Section 67 Compensation for pain and suffering

Omit section 67 (1), (1A) and (2). Insert instead:

- (1) A worker who receives an injury that results in a degree of permanent impairment greater than that prescribed by the regulations for the purposes of this section 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.

Note. Section 65A provides that pain and suffering compensation for permanent impairment arising from psychological injury is not payable unless the injury is a primary psychological injury (as defined in that section) and the degree of permanent impairment arising from the injury is greater than the degree of permanent impairment prescribed by the regulations for the purposes of that section.

- (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.

[9] Section 67 (3)

Omit "loss or losses". Insert instead "permanent impairment".

[10] Section 67 (4)

Omit "the Compensation Court". Insert instead "the Commission".

[11] Section 67 (7)

Omit “loss”. Insert instead “permanent impairment”.

[12] Section 67A Special provisions for HIV/AIDS

Omit section 67A (1). Insert instead:

- (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.
- (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%.

[13] Section 67A (4)

Omit the subsection. Insert instead:

- (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).

[14] Section 68 Proportionate loss of use

Omit the section.

[15] Section 68A Deduction for previous injury or pre-existing condition or abnormality

Omit the section.

[16] Section 68B

Omit the section. Insert instead:

68B Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22

- (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 323 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).
- (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 323 of the 1998 Act applies to that compensation subject to the following:
 - (a) there is to be no deduction under section 323 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,
 - (b) for the purposes of paragraph (a), *previous relevant employment* 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 liable if the requirement to contribute were not limited to employers who employed the worker during a particular period),
 - (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.

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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 323 of the 1998 Act applies to that compensation subject to the following:
- (a) there is to be no deduction under section 323 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,
 - (b) for the purposes of paragraph (a), *previous relevant employment* 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),
 - (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) When determining the compensation payable by an employer in a case in which section 17 applies (loss or further loss of hearing), section 323 of the 1998 Act applies to that compensation subject to the following:
- (a) there is to be no deduction under section 323 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,
 - (b) for the purposes of paragraph (a), *previous relevant employment* 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).

[17] Section 69 Addition to Table of further compensable injuries

Omit the section.

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

Omit section 69A (1)–(4). Insert instead:

- (1) In assessing, for the purpose of the determination of permanent impairment compensation, the degree of permanent impairment resulting from loss of hearing (the *present loss*) 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%.
- (2) The worker's *total hearing loss* is the aggregate of the present loss and all previous losses of hearing due to boilermakers deafness.
- (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%).
- (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):
 - (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 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.
 - (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.

- (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%).

[19] Section 69A (7)

Omit “no compensation is payable under section 66”.

Insert instead “no permanent impairment compensation is payable”.

[20] Section 69B Employer’s responsibility to pay for hearing loss tests

Omit “pay compensation under section 66 for a loss of hearing” from section 69B (1).

Insert instead “pay permanent impairment compensation in respect of a loss of hearing”.

[21] Section 72 Reference of matters to medical panel

Omit the section.

[22] Section 73

Omit the section. Insert instead:

73 Reimbursement for costs of medical certificate and examination

- (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:
- (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
 - (b) the worker has given the employer a copy of the certificate.

(2) In this section:

permanent impairment medical certificate means a report or certificate of a medical practitioner that certifies:

- (a) that a worker has received an injury resulting in permanent impairment, and
- (b) the degree of permanent impairment (assessed as provided by this Act) resulting from the injury.

[23] Part 3, Division 4, Table

Omit the Table to Division 4 of Part 3.

3.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 111 Interest on agreed payment of lump sum compensation

Omit “compensation under section 66 or 67 of the 1987 Act” from section 111 (1).

Insert instead “permanent impairment compensation or pain and suffering compensation”.

[2] Section 131 Definitions

Insert in alphabetical order in section 131 (1):

hearing loss claim means:

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

[3] Section 131 (1)

Omit paragraph (a) of the definition of *protected claim*. Insert instead:

- (a) a hearing loss claim, and

[4] Section 134 Consequences of prohibited conduct for recovery of fees by agents

Omit “claim under section 66 of the 1987 Act for loss of hearing” from section 134 (3).

Insert instead “hearing loss claim”.

[5] Section 134 (3)

Omit “subsequent claim for further loss of hearing”.

Insert instead “subsequent hearing loss claim in respect of further loss of hearing”.

[6] Section 135 Consequences of prohibited conduct for lawyers

Omit “claim under section 66 of the 1987 Act for loss of hearing” from section 135 (4).

Insert instead “hearing loss claim”.

[7] Section 135 (4)

Omit “subsequent claim for further loss of hearing”.

Insert instead “subsequent hearing loss claim in respect of further loss of hearing”.

Schedule 4 Amendments relating to new claims procedures

(Section 3)

4.1 Workers Compensation Act 1987 No 70

[1] Section 151D Time limit for commencement of court proceedings against employer for damages

Insert as section 151D (1):

- (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 *Workers Compensation Legislation Amendment Act 2001*), time does not run for the purposes of this section from the time that a claim has been referred to the Commission for assessment and until 2 months after a certificate as to the assessment or exemption from assessment is issued.

[2] Schedule 6 Savings, transitional and other provisions, Part 18 Special provision relating to coal miners

Insert at the end of Part 18:

3 2001 amendments not applicable to coal miners

- (1) Subject to this clause, the amendments made by the 2001 amending Act do not apply to or in respect of coal miners and this Act and the 1998 Act (and the regulations under those Acts) apply to and in respect of coal miners as if the 2001 amending Act had not been enacted.
- (2) Subclause (1) does not apply in respect of the amendments made by Schedule 2.2 [2] and [3] to the 2001 amending Act.
- (3) The regulations may make provision for or with respect to the following matters in connection with a claim for compensation in respect of an injury received by a coal miner:

- (a) requiring or providing for the conciliation, mediation or other review of a claim, or any dispute in connection with a claim, before the commencement of court proceedings in connection with the claim or dispute,
- (b) any matter for or in respect of which provision is made by Divisions 3–5 of Part 2 of Chapter 4 of the 1998 Act (whether or not provision so made is inconsistent with any provision of those Divisions),
- (c) disapplying or modifying the application of any provision or provisions of Divisions 3–5 of Part 2 of Chapter 4 of the 1998 Act.

(4) In this clause:

coal miners means workers employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

the 2001 amending Act means the *Workers Compensation Legislation Amendment Act 2001*.

[3] Schedule 6 Part 18C

Insert after Part 18B of Schedule 6:

Part 18C Provisions consequent on enactment of Workers Compensation Legislation Amendment Act 2001

1 Definitions

In this Part:

existing claim and *new claim* have the same meaning as in Chapter 7 of the 1998 Act.

the 2001 amending Act means the *Workers Compensation Legislation Amendment Act 2001*.

2 Operation of amendments generally

- (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.

- (2) This clause is subject to this Part and to any regulations under this Schedule.

3 Amendments to lump sum compensation provisions

- (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) except for the amendments to section 66A (subject to such modifications to that section as may be prescribed by the regulations, for the purposes of the application of those amendments in respect of such an injury).
- (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 a previously non-compensable impairment. This subclause does not limit the operation of section 323 of the 1998 Act or section 68B of the 1987 Act.
- (3) A *previously non-compensable impairment* is loss or impairment 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 loss or impairment that is of a kind for which no compensation was payable under that Division before that commencement.
- (4) No contribution or payment of apportioned share 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 or payment would otherwise be required relates to a previously non-compensable impairment.

4 Transitional provision for disputes concerning lump sum compensation claims

- (1) In the case of a new claim in respect of an injury received before the commencement of the amendments made by Schedule 3 to the 2001 amending Act, compensation under Division 4 of Part 3 (as in force before the commencement of this clause) may not be awarded by the Commission if there is

an impairment dispute unless the dispute has been assessed by an approved medical specialist under Part 7 of Chapter 7 of the 1998 Act.

- (2) An opinion certified in a medical assessment certificate pursuant to the medical assessment of an impairment dispute is conclusively presumed to be correct as to the matters in dispute in any proceedings in respect of the claim for compensation concerned.
- (3) For the purposes of this clause, Part 7 of Chapter 7 of the 1998 Act extends (with such modifications as may be prescribed by the regulations) to the assessment of an impairment dispute as if it were a medical dispute under that Part.
- (4) In this clause, *impairment dispute* means a dispute about whether a loss or impairment exists and, if so, the nature and extent of the loss or impairment.

5 Regulations to transfer existing claims to new procedures

- (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.
- (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.
- (3) Regulations under this clause may include provisions of a savings or transitional nature consequent on the operation of any such regulations.
- (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.

6 Special provisions for transferred claims

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:

- (a) an order or award of the Compensation Court in respect of the claim is taken to be an order or award of the Commission,
- (b) such other modifications as may be prescribed by the regulations.

7 False claims and recovery of overpayments

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.

8 New procedures for making a claim

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.

9 Seniority of Compensation Court judges appointed to District Court

A judge of the Compensation Court who is appointed as a judge of the District Court is to have seniority, rank and precedence as a judge of the District Court as if the date of his or her commission as a judge of the District Court were the date of his or her commission as a judge of the Compensation Court.

[4] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of clause 1 (1):

Workers Compensation Legislation Amendment Act 2001

4.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definition of *compensation* from section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

approved medical specialist has the meaning given by section 319.

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

claim means a claim for compensation or work injury damages.

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

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

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

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

Deputy President means a Deputy President of the Commission.

doctor means a medical practitioner.

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

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

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

medical certificate means a certificate given by a medical practitioner.

medical dispute has the meaning given by section 319.

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

motor accident damages means damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

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

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

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

President means the President of the Commission.

Presidential member means the President or a Deputy President.

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

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

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

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

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

Workers Compensation Acts means this Act and the 1987 Act.

[3] Section 30 Functions of Council

Insert after section 30 (1) (d):

- (d1) to provide advice to the Minister on proposals for WorkCover Guidelines and regulations under the workers compensation legislation,

[4] Section 30 (1A)

Insert after section 30 (1):

- (1A) Before a WorkCover Guideline, or a regulation (whether made under this Act or the 1987 Act) is published in the Gazette, a copy of the Guideline or the regulation must be provided to the Council.

[5] Section 35 Payments into and from Fund

Insert after section 35 (2) (e):

- (e1) the costs of operation of the Commission including the remuneration (and allowances) of the members and of the staff of the Commission, and the remuneration of approved medical specialists,

[6] Section 60A

Insert before section 61:

60A Application of Division

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

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

[7] Sections 67 (False claims) and 68 (Order for refund of overpayments of compensation)

Omit the sections.

[8] Section 75A

Insert before section 76:

75A Division applies only to existing claims

This Division applies only in respect of existing claims.

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

[9] Section 91A

Insert before section 92:

91A Division applies only to existing claims

This Division applies only in respect of existing claims.

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

[10] Section 100A

Insert before section 101:

100A Division applies only to existing claims

This Division applies only in respect of existing claims.

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

[11] Chapter 4, Part 2, Division 6, heading

Omit the heading to Division 6 of Part 2 of Chapter 4. Insert instead:

Division 6 Proceedings before Commission or the Compensation Court

[12] Section 105

Omit the section. Insert instead:

105 Jurisdiction of Commission and Compensation Court

- (1) Subject to this Act, the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under this Act in respect of any new claim.

- (2) The Commission does not have that jurisdiction in respect of matters arising under Part 5 (Common law remedies) of the 1987 Act except for the purposes of and in connection with the assessment of a work injury damages claim under Part 6 of Chapter 7.
- (3) Subject to this Act and the *Compensation Court Act 1984*, the Compensation Court has 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.
- (4) References in this Act to the Commission 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.

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

[13] Section 111A

Insert before section 112:

111A Costs provisions apply only to existing claims

Sections 112–116 apply only in respect of existing claims.

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

[14] Section 118A

Insert before section 119:

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

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

[15] Sections 235C and 235D

Insert after section 235B:

235C False claims

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

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

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

235D Order for refund of overpayments of compensation

- (1) This section applies to a payment to a person, purportedly made pursuant to an obligation arising under this Act, to which the person is not entitled under this Act. Such a payment is referred to in this section as an *overpayment*.

- (2) If the Authority is satisfied that a person has received an overpayment as a result or partly as a result of an act that constitutes a contravention of section 235A or 235C (whether or not the person has been proceeded against or convicted for an offence in respect of the contravention), the Authority may order the person to refund the amount of the overpayment to the person who made the payment.
- (3) Any such refund may, in accordance with the terms of the Authority's order, be deducted from future payments of compensation, but not if it is payable under an award of the Commission.
- (4) An order under this section is enforceable as a civil debt and may be recovered as such in any court of competent jurisdiction by the person to whom the order requires payment to be made.
- (5) This section does not limit any other right of recovery that a person may have against another person in respect of any overpayment to that other person.
- (6) A person against whom an order is made under this section may apply for a review of the order by the Commission.

[16] Section 248A

Insert after section 248:

248A Review of Act

- (1) The Independent Pricing and Regulatory Tribunal is to conduct a review of the amendments made by the *Workers Compensation Legislation Amendment Act 2001* to determine whether the policy objectives of those amendments remain valid and whether the terms of the Workers Compensation Acts remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to the *Workers Compensation Legislation Amendment Act 2001*, and the Independent Pricing and Regulatory Tribunal is to use its best endeavours to ensure that it is completed by 31 December 2002.

- (3) Within 1 month of the completion of the review, the Independent Pricing and Regulatory Tribunal is to:
 - (a) cause a statement setting out the results of the review to be provided to the Minister to be laid before each House of Parliament, and
 - (b) give a copy of the review to the Council.
- (4) The Council is to cause a statement setting out its views, if any, on the review to be provided to the Minister to be laid before each House of Parliament within 1 month after the Council receives the copy of the review.
- (5) If a House of Parliament is not sitting when a statement is sought to be laid before the House, the statement is to be presented to the Clerk of the House concerned.
- (6) The statement:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a statement published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day on the House after receipt of the statement by the Clerk.

[17] Chapter 7

Insert as Chapter 7:

Chapter 7 New claims procedures

Part 1 Preliminary

250 Interpretation

(1) In this Chapter:

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

existing claim means:

- (a) 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
- (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.

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.

insurer means a licensed insurer, specialised insurer or self-insurer, under this Act or the 1987 Act, or a former licensed insurer.

new claim means any claim that is not an existing claim.

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

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

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

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

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

- (2) In the definition of *work injury damages* in subsection (1), a reference to a worker's employer includes a reference to:
 - (a) a person who is vicariously liable for the acts of the employer, and
 - (b) a person for whose acts the employer is vicariously liable.
- (3) A claim served on an insurer in accordance with the WorkCover Guidelines or forwarded to an insurer by the employer is taken to have been made on the insurer (and to have been so made when it was made on the employer).

251 Application of Chapter

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

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

Part 2 Giving notice of injury and making a claim

Division 1 Notice of injury

252 Application of Division

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

253 Interpretation

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

254 Notice of injury must be given to employer

- (1) Neither compensation nor work injury damages are recoverable by an injured worker unless notice of the injury is given to the employer as soon as possible after the injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury.
- (2) The failure to give notice of injury as required by this section (or any defect or inaccuracy in a notice of injury) is not a bar to the recovery of compensation or work injury damages if in proceedings to recover the compensation or damages it is found that there are special circumstances as provided by this section.
- (3) Each of the following constitutes special circumstances:
 - (a) the person against whom the proceedings are taken has not been prejudiced in respect of the proceedings by the failure to give notice of injury or by the defect or inaccuracy in the notice,
 - (b) the failure to give notice of injury, or the defect or inaccuracy in the notice, was occasioned by ignorance, mistake, absence from the State or other reasonable cause,
 - (c) the person against whom the proceedings are taken had knowledge of the injury from any source at or about the time when the injury happened,
 - (d) the injury has been reported by the employer to the Authority in accordance with this Act.
- (4) In addition, if the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, office or shop, each of the following constitutes special circumstances:
 - (a) the summary referred to in section 231 has not been posted up in accordance with that section or the employer has otherwise contravened that section,
 - (b) the injury has been reported by or on behalf of the employer to an inspector of mines or an inspector under the *Occupational Health and Safety Act 2000*,
 - (c) the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop.

255 How notice of injury is given

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

256 Register of injuries

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

- (5) If subsection (1) is contravened, the manager of the mine or quarry, or the occupier of the construction site, factory, workshop, office or shop, is guilty of an offence.

Maximum penalty: 50 penalty units.

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

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

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

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

258 Offence

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

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

Division 2 Making a claim for compensation or damages

259 Application of Division

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

260 How a claim is made

- (1) A claim must be made in accordance with the applicable requirements of the WorkCover Guidelines.
- (2) The WorkCover Guidelines may make provision for or with respect to the following matters in connection with the making of a claim:
 - (a) the form in which a claim is to be made,
 - (b) the manner in which a claim is to be made,
 - (c) the means by which a claim may be made,
 - (d) the information that a claim is to contain,
 - (e) requiring specified documents and other material to accompany or form part of a claim,
 - (f) such other matters as may be prescribed by the regulations.
- (3) Without limiting this section, the WorkCover Guidelines can require that a claim be accompanied by a form of authority signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or 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.

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

261 Time within which claim for compensation must be made

- (1) Compensation cannot be recovered unless a claim for the compensation has been made within 6 months after the injury or accident happened or, in the case of death, within 6 months after the date of death.
- (2) If a claim for compensation was made by an injured worker within the period required by this section, this section does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker's claim related.

- (3) For the purposes of this section, a person is considered to have made a claim for compensation when the person makes any claim for compensation in respect of the injury or death concerned, even if the person's claim did not relate to the particular compensation in question.
- (4) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either:
 - (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or
 - (b) the claim is not made within that 3 years but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.
- (5) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if the insurer concerned determines to accept the claim outside that period. An insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.
- (6) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of this section taken to have been received when the worker first became so aware.
- (7) If death results from an injury and a person who is entitled to claim compensation in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of this section to a claim by that person, taken to be the date that the person became so aware.
- (8) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries), a claim is for the purposes of this section taken to have been made when a claim is made on any one of those persons.

- (9) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of this section as the making of a claim for compensation in respect of the injury.

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

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

263 Lump sum compensation claims to be made at same time

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

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

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

Maximum penalty: 50 penalty units.

- (2) An employer who receives a request from the employer's insurer for specified information in respect of a claim or notified injury, or documentation in respect of a claim or notified injury, must, within 7 days after receipt of the request, furnish the insurer with such of the specified information or documentation as is in the employer's possession or reasonably obtainable by the employer.

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

- (5) In this section:

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

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

Part 3 Dealing with claims

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

265 Application of Division

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

266 Meaning of initial notification of injury

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

267 Duty to commence weekly payments following initial notification of injury

- (1) Provisional weekly payments of compensation by an insurer are to commence within 7 days after initial notification to the insurer of an injury to a worker, unless the insurer has a reasonable excuse for not commencing those weekly payments.
- (2) A person does not have a reasonable excuse for not commencing those weekly payments unless the person has an excuse that the WorkCover Guidelines provide is a reasonable excuse.
- (3) The payment of provisional weekly payments of compensation under this section is on the basis of the provisional acceptance of liability by the insurer for a period of up to 12 weeks determined by the insurer having regard to the nature of the injury and the period of incapacity.
- (4) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act.
- (5) An insurer who fails to commence weekly payments of compensation as required by this section is guilty of an offence.

Maximum penalty: 50 penalty units.

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

If an insurer does not commence weekly payments of compensation because the insurer has a reasonable excuse for not doing so, the insurer must within 7 days after receiving the 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:

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

Maximum penalty: 50 penalty units.

269 Notice to be given of commencement of weekly payments

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

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

270 Obligations of worker to provide authorisations and medical evidence

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

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

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

Note. Section 74 requires notice of a dispute to be given.

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

272 Recovery by insurer

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

273 Provision for recovery of excess for provisional payments

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

Division 2 Claims for weekly payments

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

- (1) Within 21 days after a claim for weekly payments is made the person on whom the claim is made must determine the claim by:

- (a) accepting liability and commencing weekly payments, or
- (b) disputing liability.

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

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

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

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

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

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

- (1) If the claim for weekly payments is the first notification that an insurer has received of the injury to the worker, section 267 (Duty to commence weekly payments following initial notification of injury) applies to require the commencement of provisional weekly payments of compensation within 7 days after the claim is made.
- (2) The provisional acceptance of liability pursuant to the commencement of provisional weekly payments of compensation under that section operates to extend the period within which the claim must be determined for the purposes of this Division until the end of the period for which liability has been provisionally accepted.

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

276 Continuation of provisional payments started before claim made

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

277 Provision for recovery of excess for provisional payments

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

278 Early acceptance of liability not prevented

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

Division 3 Claims for medical expenses

279 Liability to be accepted within 21 days

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

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

- (2) An employer is not required to determine a claim as provided by this section if:
 - (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

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

280 Provisional acceptance of liability

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

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

281 Liability to be accepted and settlement offer made

- (1) The person on whom a claim for lump sum compensation or work injury damages is made must, within the time required by this section, determine the claim by:
 - (a) accepting liability and making a reasonable offer of settlement to the claimant, or
 - (b) disputing liability.
 - (2) A claim must be so determined:
 - (a) within 1 month after the degree of permanent impairment first becomes fully ascertainable, as agreed by the parties or as determined by an approved medical specialist, or
 - (b) within 2 months after the claimant has provided to the insurer all relevant particulars about the claim,whichever is the later.
- Note.** Section 283 makes failure to comply with this section an offence. Section 74 requires notice of a dispute to be given. If an offer of settlement is not made as required by this section, the claim can be referred for assessment as soon as the time for making the offer has expired.
- (3) An offer of settlement is to specify an amount of compensation or damages or a manner of determining an amount of compensation or damages.
 - (4) If an offer of settlement is made on the basis that the insurer accepts only partial liability for the claim, the offer is to include details sufficient to ascertain the extent to which liability is accepted.
 - (5) An employer is not required to determine a claim as provided by this section if:
 - (a) the employer has duly forwarded the claim to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and

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

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

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

282 Relevant particulars about a claim

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

- (3) The insurer is not entitled to delay the determination of a claim under this Division on the ground that any particulars about the claim are insufficient unless the insurer requested further relevant particulars within 2 weeks after the claimant provided particulars.
- (4) In this section, *injury* is not limited by the meaning given by section 4.

Division 5 Enforcement of claims obligations

283 Offence of failing to determine a claim for compensation

- (1) A person who fails to determine a claim as and when required by this Part is guilty of an offence unless the person has a reasonable excuse for the failure.
Maximum penalty: 50 penalty units.
- (2) A person does not have a reasonable excuse for a failure for the purposes of this section unless the person has an excuse that the WorkCover Guidelines provide is a reasonable excuse.
- (3) A person who has or anticipates having a reasonable excuse for the purposes of this section must notify the claimant in writing as soon as practicable.

284 Insurer liable to pay fee if claim goes to assessment

- (1) If it appears to the Registrar that an insurer has:
 - (a) failed without reasonable excuse to determine a claim as and when required by this Part, or
 - (b) referred a matter that the insurer knows is not a genuine dispute for the purpose of delaying, without good cause, the determination of a claim,and the claim concerned is referred to the Commission for determination of a dispute or for assessment, the Registrar is to direct the insurer to pay the administration fee provided for by this section.
- (2) The administration fee is a fee of \$250 or such other amount as may be prescribed by the regulations and is payable to the Authority for payment into the WorkCover Authority Fund.

- (3) The administration fee is not to be paid out of the statutory fund of the insurer.
- (4) An administration fee payable under this section is recoverable as a debt due to the Authority.
- (5) A person does not have a reasonable excuse for a failure to determine a claim as and when required by this Part unless the person has an excuse that the WorkCover Guidelines provide is a reasonable excuse.
- (6) The Registrar is to notify the Authority of a direction under this section.

285 Offence of referring non-genuine disputes

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

Maximum penalty: 50 penalty units.

286 Partial acceptance of liability

- (1) Liability for compensation can be partially accepted and partially disputed and references in this Part to accepting liability and disputing liability are to be interpreted accordingly.
- (2) A person who accepts liability for compensation on the basis of the partial acceptance of liability (including acceptance on a provisional basis) must, when notifying the claimant of the partial acceptance of liability, include details sufficient to ascertain the extent to which liability is accepted.

Part 4 Compensation dispute determination

287 Disputes to which Part applies

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.

288 Referral of disputes to Commission

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

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

289 Restrictions as to when a dispute can be referred to the Commission

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

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

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

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

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

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

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

- (c) fails to determine the claim as and when required by this Act.

Note. The determination of a claim requires the making of a reasonable offer of settlement (if liability is wholly or partly accepted). Failure to make a reasonable offer of settlement constitutes a failure to determine the claim.

- (4) A dispute about a claim for compensation under Division 5 (Compensation for property damage) of Part 3 of the 1987 Act cannot be referred for determination by the Commission until:
 - (a) 28 days after the claim for compensation is made, or
 - (b) the person on whom the claim is made disputes liability for the claim (wholly or in part),whichever happens first.

290 Information exchange between parties

- (1) When a dispute is referred for determination by the Commission, each party to the dispute must provide to the other party and to the Registrar, as and when required to do so by the Rules, such information and documents as the Rules require.
- (2) A party to a dispute who fails without reasonable excuse to comply with a requirement of this section is guilty of an offence.
Maximum penalty: 50 penalty units.
- (3) Any document that a party to a dispute has failed to provide in contravention of this section is not admissible on behalf of the party in proceedings on the dispute before the Commission.
- (4) Subsections (2) and (3) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 131) at the relevant time.
- (5) The regulations may provide for exceptions to subsection (3). In particular, the regulations may authorise the Commission to permit the admission in proceedings before the Commission in specified circumstances of a document that would otherwise be not admissible under that subsection.

- (6) If the Registrar is satisfied that an applicant has failed without reasonable excuse to comply with a requirement of this section, the Registrar may do any one or more of the following:
- (a) refer the matter to the Authority,
 - (b) note the matter in a certificate issued by the Registrar in respect of the dispute (together with details of the documents to which the failure relates),
 - (c) order that a specified amount or proportion of the costs that would otherwise be recoverable by the party in connection with the referral of the matter to the Commission are not recoverable.

291 Duties of insurer when dispute referred to Commission

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

292 Expedited assessment

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

293 Medical assessment

- (1) When a dispute referred for determination by the Commission concerns a medical dispute within the meaning of Part 7, the Registrar may refer the medical dispute for medical assessment under Part 7, and defer determination of the dispute by the Commission pending the outcome of that medical assessment.
- (2) If the dispute concerns the degree of permanent impairment of an injured worker, the Registrar must refer that aspect of the dispute for assessment under Part 7 and defer determination of the dispute by the Commission pending the outcome of that medical assessment.

294 Certificate of Commission's determination

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

Part 5 Expedited assessment

Division 1 Preliminary

295 Disputes to which Part applies

This Part applies to a dispute referred to the Commission that concerns:

- (a) weekly payments of compensation or medical expenses compensation, or
- (b) failure by an insurer, employer or worker to comply with a requirement imposed by or under Chapter 3 (Workplace injury management).

296 Exercise of functions of Registrar

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

**Division 2 Disputes concerning weekly payments or
medical expenses**

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

- (1) When a dispute to which this Part applies concerns weekly payments of compensation or medical expenses compensation, the Registrar can direct the person on whom the claim is made to pay the compensation concerned. Such a direction is referred to in this Part as an *interim payment direction*.
- (2) An interim payment direction for payment of medical expenses compensation cannot be for an amount of more than \$5,000 or such other amount as may be prescribed by the regulations.
- (3) The Registrar is to presume that an interim payment direction for weekly payments of compensation is warranted unless it appears to the Registrar that:
 - (a) the claim concerned has minimal prospects of success, or
 - (b) the worker has returned to work, or
 - (c) the injury was not reported by the worker as required by section 44 (Early notification of workplace injury), or
 - (d) insufficient medical evidence is available concerning the period of incapacity of the worker, or
 - (e) circumstances exist that are prescribed by the regulations as circumstances in which it is not to be presumed that such a direction is warranted.
- (4) If an injury management plan for the worker is in place or the insurer has accepted that the worker has received an injury (as defined in this Act), the Registrar is to presume that an interim payment direction for medical expenses compensation is warranted if satisfied that the treatment or service to which the compensation relates is reasonably necessary:
 - (a) to prevent deterioration of the worker's condition, or
 - (b) to promote an early return to work, or
 - (c) to relieve significant pain or discomfort, or

(d) for such other reason as may be prescribed by the regulations.

- (5) Subsections (3) and (4) do not limit the circumstances in which an interim payment direction can be given.
- (6) An interim payment direction can be given subject to conditions.
- (7) A further interim payment direction or directions can be given after the expiry of any earlier direction.

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

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

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

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

299 Revocation of interim payment direction

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

300 Offence of failure to comply with interim payment direction

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

Maximum penalty: 50 penalty units.

301 Effect of payment under interim payment direction

- (1) The payment of compensation in accordance with an interim payment direction is not an admission of liability by the insurer or employer.

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

302 Rules relating to interim payment directions

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

303 Commission can give interim payment direction

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

304 Recovery of payments

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

- (a) the worker or other person who received those payments is not required to refund those payments unless the Commission otherwise orders under paragraph (b),
- (b) if the Commission is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, the Commission may order the worker or other person concerned to refund the whole or a specified part of those payments,
- (c) the Commission may (instead of making an order for a refund) order any other person whom it determines was liable for the whole or any part of those payments to reimburse the person who made those payments,
- (d) those payments are to be excluded from any determination of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.

Division 3 Disputes about non-compliance with Chapter 3

305 Disputes to which Division applies

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

306 Ways in which dispute can be dealt with

The Registrar may deal with the dispute:

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

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

307 Registrar can recommend certain action

- (1) The Registrar can deal with the dispute by recommending that a party to the dispute take specified action, being action that the Registrar considers necessary or desirable to remedy the failure with which the dispute is concerned.
- (2) If the dispute concerns failure to comply with an obligation imposed by an injury management plan, the Registrar can recommend compliance with the injury management plan subject to such modifications as the Registrar considers appropriate.

- (3) If the dispute concerns the provision of suitable employment for the worker, the Registrar is to have regard to the requirements of section 49 in making a recommendation with respect to the provision of suitable employment.

308 Compliance with recommendations of Registrar

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

Maximum penalty: 50 penalty units.

- (2) If a worker's failure to comply with the Registrar's recommendation constitutes a failure to comply with this section, the worker has no entitlement to weekly payments of compensation during any period that the failure to comply with the recommendation continues.
- (3) If an employer's failure to comply with the Registrar's recommendation constitutes a failure to comply with this section, the employer's insurer is entitled to recover from the employer (despite the terms of the relevant policy of insurance) the amount of weekly payments of compensation paid by the insurer in respect of any period that failure to comply with the recommendation continues.

309 Employers—representation and admissions

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

310 Referral of dispute to Commission

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

Part 6 Special provisions for claims for work injury damages

311 Interpretation

(1) In this Part:

claimant means a claimant for work injury damages.

party to an assessment under this Part means the claimant, employer or insurer in respect of the claim referred for assessment.

specify an amount of damages includes specify a manner of determining the amount of damages.

(2) A reference in this Part to an assessment of a claim includes a reference to the result of the assessment.

312 Application of Part

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.

313 Part does not prevent settlement of claim

Nothing in this Part prevents a claim from being settled at any time.

314 Referral of claim for assessment

(1) A claim for work injury damages may be referred by the claimant to the Commission for assessment under this Part.

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

(2) A claim cannot be referred for assessment under this Part if the claim is of a kind that under WorkCover Guidelines or the regulations is exempt from assessment under this Part.

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- (3) The Registrar is responsible for making arrangements as to the Arbitrator who is to assess any particular claim or class of claims.

315 Restrictions as to when claim can be referred for assessment

A dispute about a claim for work injury damages cannot be referred for assessment by the Commission unless:

- (a) the person on whom the claim is made wholly disputes liability for the claim, or
- (b) the person on whom the claim is made has made an offer of settlement to the claimant pursuant to the determination of the claim as and when required by this Act and 2 months have elapsed since the offer was made, or
- (c) the person on whom the claim is made fails to determine the claim as and when required by this Act.

Note. The determination of a claim requires the making of a reasonable offer of settlement (if liability is wholly or partly accepted). Failure to make a reasonable offer of settlement constitutes a failure to determine the claim.

316 Assessment of claims

- (1) The Commission is, in respect of a claim referred to the Commission for assessment, to make an assessment of:
 - (a) the issue of liability for the claim (unless the insurer has accepted liability), and
 - (b) the amount of damages for that liability.
- (2) The assessment is to specify an amount of damages.
- (3) The Commission 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.
- (4) The Commission is to attach a brief statement to the certificate, setting out the Commission's reasons for the assessment.
- (5) If the Registrar is satisfied that a certificate as to an assessment or a statement attached to the certificate contains an obvious error, the Registrar may issue, or approve of an Arbitrator issuing, a replacement certificate or statement to correct the error.

317 Status of assessments

- (1) An assessment under this Part of the issue of liability for a claim is not binding on any party to the assessment.
- (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 the certificate as to the assessment if:
 - (a) the person accepts that liability under the claim, and
 - (b) the claimant accepts that amount of damages in settlement of the claim within 21 days after the certificate of assessment is issued.

318 Forum for court proceedings

Proceedings in respect of a claim for work injury damages may be taken in any court of competent jurisdiction.

Part 7 Medical assessment

319 Definitions

In this Act:

approved medical specialist means a medical practitioner appointed under this Part as an approved medical specialist.

medical dispute means a dispute between a claimant and the person on whom a claim is made as to:

- (a) the worker's condition (including the worker's prognosis, the aetiology of the condition, and treatment proposed or provided), or
- (b) the worker's fitness for employment.

320 Appointment of approved medical specialists

- (1) The President is, in accordance with criteria developed by the Minister in consultation with the Council, to appoint medical practitioners to be approved medical specialists for the purposes of this Part.

- (2) The terms of any such appointment may restrict an approved medical specialist to medical disputes of a specified kind.
- (3) The President is to ensure that, as far as reasonably practicable, arrangements are in place to facilitate the taking place of assessments under this Part in the regional areas of the State.
- (4) The Authority may arrange for the provision of training and information to approved medical specialists to promote accurate and consistent assessments under this Part.

321 Referral of medical dispute for assessment

- (1) A medical dispute may be referred for assessment under this Part by a court, the Commission or the Registrar, either of their own motion or at the request of a party to the dispute. The Registrar is to give the parties notice of the referral.
- (2) The parties to the dispute may agree on the approved medical specialist who is to assess the dispute but if the parties have not agreed within 7 days after the dispute is referred, the Registrar is to choose the approved medical specialist who is to assess the dispute.

322 Assessment of impairment

- (1) The assessment of the degree of permanent impairment of an injured worker for the purposes of the Workers Compensation Acts is to be made in accordance with WorkCover Guidelines issued for that purpose.
- (2) Impairments that result from the same injury are to be assessed together to assess the degree of permanent impairment of the injured worker.
- (3) Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured worker.

Note. Section 65A of the 1987 Act provides for impairment arising from psychological/psychiatric injuries to be assessed separately from impairment arising from physical injury.

- (4) An approved medical specialist may decline to make an assessment of the degree of permanent impairment of an injured worker until the approved medical specialist is satisfied that the impairment is permanent. Proceedings before the Commission may be adjourned until the assessment is made.

323 Deduction for previous injury or pre-existing condition or abnormality

- (1) In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the impairment that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act) or that is due to any pre-existing condition or abnormality.
- (2) If the extent of a deduction under this section (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence.

Note. So if the degree of permanent impairment is assessed as 30% and subsection (2) operates to require a 10% reduction in that impairment to be assumed, the degree of permanent impairment is reduced from 30% to 27% (a reduction of 10%).

- (3) The reference in subsection (2) to medical evidence is a reference to medical evidence accepted or preferred by the approved medical specialist in connection with the medical assessment of the matter.
- (4) The WorkCover Guidelines may make provision for or with respect to the determination of the deduction required by this section.
- (5) 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.

Note. Section 68B of the 1987 Act makes provision for how this section applies for the purpose of calculating workers compensation lump sum benefits for permanent impairment and associated pain and suffering in cases to which section 15, 16, 17 or 22 of the 1987 Act applies.

324 Powers of approved medical specialist on assessment

- (1) The approved medical specialist assessing a medical dispute may:
 - (a) consult with any medical practitioner or other health care professional who is treating or has treated the worker, and
 - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of assessing a medical dispute referred to him or her, and
 - (c) require the worker to submit himself or herself for examination by the approved medical specialist.
- (2) If a worker refuses to submit himself or herself for examination by the approved medical specialist if required to do so, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation with respect to the injury, or
 - (b) the worker's right to weekly payments,is suspended until the examination has taken place.
- (3) This section extends to the assessment of a medical dispute in the course of an appeal or further assessment under this Part. An approved medical specialist who is a member of the Appeal Panel hearing the appeal or who is assessing the matter by way of further assessment has all the powers of an approved medical specialist under this section on an assessment of a medical dispute.

325 Medical assessment certificate

- (1) The approved medical specialist to whom a medical dispute is referred is to give a certificate (a *medical assessment certificate*) as to the matters referred for assessment.
- (2) A medical assessment certificate is to be in a form approved by the Registrar and is to:
 - (a) set out details of the matters referred for assessment, and
 - (b) certify as to the approved medical specialist's opinion with respect to those matters, and

- (c) set out the approved medical specialist's reasons for that opinion, and
 - (d) set out the facts on which that opinion is based.
- (3) If the Registrar is satisfied that a medical assessment certificate contains an obvious error, the Registrar may issue, or approve of the approved medical specialist issuing, a replacement medical assessment certificate to correct the error.

326 Status of medical assessments

- (1) An opinion certified in a medical assessment certificate pursuant to a medical assessment under this Part is conclusively presumed to be correct as to the following matters in any proceedings before the Commission with which the certificate is concerned:
- (a) the degree of permanent impairment of the worker as a result of an injury,
 - (b) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality,
 - (c) the nature and extent of loss of hearing suffered by a worker,
 - (d) whether impairment is permanent.
- (2) As to any other matter, the opinion certified is evidence (but not conclusive evidence) in any such proceedings.

327 Appeal against medical assessment

- (1) A party to a medical dispute may appeal against a medical assessment under this Part, but only in respect of a matter that is appealable under this section and only on the grounds for appeal under this section.
- (2) A matter is appealable under this section if it is a matter as to which the opinion of an approved medical specialist certified in a medical assessment certificate under this Part is conclusively presumed to be correct in proceedings before the Commission.
- (3) The grounds for appeal under this section are any of the following grounds:

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- (a) deterioration of the worker's condition that results in an increase in the degree of permanent impairment,
 - (b) availability of additional relevant information (being evidence that was not available to the appellant before the medical assessment appealed against or that could not reasonably have been obtained by the appellant before that medical assessment),
 - (c) the assessment was made on the basis of incorrect criteria,
 - (d) the medical assessment certificate contains a demonstrable error.
- (4) An appeal is to be made by application to the Registrar. The appeal is not to proceed unless it appears to the Registrar that at least one of the grounds for appeal specified in subsection (3) exists.
- (5) If the appeal is on a ground referred to in subsection (3) (c) or (d), the appeal must be made within 28 days after the medical assessment appealed against, unless the Registrar is satisfied that special circumstances justify an increase in the period for an appeal.
- (6) If the appeal is on a ground referred to in subsection (3) (a) or (b), the Registrar may refer the medical assessment for further assessment under section 329 as an alternative to an appeal against the assessment.
- (7) There is to be no appeal against a medical assessment once the dispute concerned has been the subject of determination by the Commission or agreement registered under section 66A of the 1987 Act.

328 Procedure on appeal

- (1) An appeal against a medical assessment is to be heard by an Appeal Panel constituted by 2 approved medical specialists and 1 Arbitrator, chosen by the Registrar.
- (2) The appeal is to be by way of review of the original medical assessment. The WorkCover Guidelines may provide for the procedure on an appeal.

- (3) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal unless the evidence was not available to the appellant before that medical assessment or could not reasonably have been obtained by the appellant before that medical assessment.
- (4) When attending an Appeal Panel for the purposes of an assessment, an injured worker is entitled to be accompanied by a person (whether or not a legal adviser or agent) to act as the injured worker's advocate and assist him or her to present his or her case to the Appeal Panel.
- (5) The Appeal Panel may confirm the certificate of assessment given in connection with the medical assessment appealed against, or may revoke that certificate and issue a new certificate as to the matters concerned. Section 326 applies to any such new certificate.
- (6) The decision of a majority of the members of an Appeal Panel is the decision of the Appeal Panel.

329 Referral of matter for further medical assessment

- (1) A matter referred for assessment under this Part may be referred again on one or more further occasions for assessment in accordance with this Part, but only by:
 - (a) the Registrar as an alternative to an appeal against the assessment as provided by section 327, or
 - (b) the Commission.
- (2) A certificate as to a matter referred again for further assessment prevails over any previous certificate as to the matter to the extent of any inconsistency.

330 Costs of medical assessment

- (1) The costs of medical assessments under this Part (including the remuneration of approved medical specialists) are payable by the employer or insurer, except as otherwise provided by the regulations. The Authority may, for the purposes of meeting those costs, impose fees for the carrying out of medical assessments or make other arrangements for meeting those costs.

- (2) If a worker is required to submit himself or herself for examination pursuant to this Part, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided:
 - (a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and
 - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.
- (3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.
- (4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of section 64 of the 1987 Act.
- (5) A reference in this section to a medical assessment includes a reference to a further medical assessment and an appeal against a medical assessment.

331 Guidelines

Medical assessments, appeals and further assessments under this Part are subject to relevant provisions of the WorkCover Guidelines relating to the procedures for the referral of matters for assessment or appeal, the procedure on appeals and the procedure for assessments.

Part 8 Costs

Division 1 Preliminary

332 Definitions

(1) In this Part:

agent means a person who acts as agent for a person in connection with a claim.

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

costs includes:

- (a) costs actually incurred or to be incurred by a person claiming compensation or work injury damages, and
- (b) if liability for a claim is admitted without recourse to the Commission or court—the reasonable expenses incurred by a person in pursuing the person's claim, and
- (c) costs incurred in relation to any proceedings in respect of a claim, and
- (d) costs incidental to an application for referral of a medical dispute for medical assessment, and
- (e) costs incidental to an application for registration of an agreement under section 66A of the 1987 Act or an agreement to commute liability to a lump sum, and
- (f) such other costs as may be prescribed by the regulations.

court includes a court arbitrator or arbitrators.

medical report includes medical certificate and medical opinion.

(2) Expressions used in this Division have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*, except as provided by this section.

Note. Under the *Legal Profession Act 1987*, **costs** includes barristers' and solicitors' fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

333 Costs to which Part applies

This Part applies to and in respect of costs payable on a party and party basis, on a practitioner and client basis or on any other basis, unless this Part or the regulations otherwise provides.

334 Legal Profession Act

This Part and any regulations under this Part prevail to the extent of any inconsistency with the *Legal Profession Act 1987* (in particular section 196 of that Act) and the regulations under that Act.

335 Assessment of costs

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 *Legal Profession Act 1987*).

336 Exclusion of matters from this Part

The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Part.

Division 2 Fixing of maximum costs and fees

337 Maximum lawyer and agent costs

- (1) The regulations may make provision for or with respect to the following:
 - (a) fixing maximum costs for legal services or agent services provided to a claimant, an employer or an insurer in or in connection with any workers compensation matter or work injury damages matter,
 - (b) fixing maximum costs for matters that are not legal services or agent services but are related to a claim for compensation or work injury damages (for example, expenses for witnesses or medical reports).

- (2) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.
- (3) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (4) An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (5) This section does not entitle a legal practitioner to recover costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.

338 Costs of obtaining medical and other reports

To the extent that the regulations so provide, a legal practitioner or agent is not entitled to be paid or recover the cost of obtaining a medical report or other report obtained for use in connection with a workers compensation matter or work injury damages assessment.

339 Maximum fees payable to health service providers

- (1) The Authority may, by order published in the Gazette, fix maximum fees for the provision by health service providers of the following services:
 - (a) provision of any report for use in connection with a claim for compensation or work injury damages,
 - (b) appearance as a witness in proceedings before the Commission or a court in connection with a claim for compensation or work injury damages.
- (2) An order under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.
- (3) A health service provider is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.

- (4) In this section:

health service provider means a person who provides a health service as defined in the *Health Care Complaints Act 1993*.

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

340 Application of Division

This Division applies to costs payable by a party in or in relation to:

- (a) a claim for compensation, or
- (b) the assessment by the Commission of a claim for work injury damages.

341 Costs to be determined by Commission

- (1) Costs to which this Division applies are in the discretion of the Commission.
- (2) The Commission has full power to determine by whom, to whom and to what extent costs are to be paid.
- (3) The Commission may order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* (or in relevant regulations under Division 4 of this Part) or on an indemnity basis.
- (4) The Commission may not order the payment of costs by a claimant unless the Commission is satisfied that the claim was frivolous or vexatious, fraudulent or made without proper justification.

Note. A claimant can be ordered to pay the costs of an unsuccessful appeal. See section 345.

- (5) If the Commission is satisfied that a part only of a claim was frivolous or vexatious, fraudulent or made without proper justification, the Commission may order the claimant to pay the costs relating to that part of the claim.
- (6) Any party to a claim may apply to the Commission for an award of costs.

342 Costs unreasonably incurred

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

- (4) The Commission may by order exempt any costs or a proportion of any costs from the operation of this section if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.

343 Restrictions on recovery of practitioner/client costs

- (1) The legal representative or agent of a person in respect of a claim made or to be made by the person:
 - (a) is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission, and
 - (b) is not entitled to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation unless those costs are awarded by the Commission.
- (2) Any such award of costs may be made on the application either of the person or of the legal representative or agent concerned.
- (3) This section prevails to the extent of any inconsistency with Part 11 of the *Legal Profession Act 1987*.
- (4) A person must not:
 - (a) claim a lien that the person is not entitled to claim because of this section, or
 - (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of this section.

Maximum penalty: 50 penalty units.

- (5) A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of this section is entitled to recover the amount paid as a debt in a court of competent jurisdiction.

344 Liability of legal practitioner for client's costs in certain cases

- (1) The Commission may, at any stage of a matter, make one or more of the following orders in respect of a legal practitioner whose serious neglect, serious incompetence or serious misconduct delays, or contributes to delaying, the matter:
 - (a) an order disallowing the whole or any part of the costs between the legal practitioner and his or her client,
 - (b) an order directing the legal practitioner to repay to his or her client the whole or any part of the costs that the client has been ordered to pay to any other party,
 - (c) an order directing the legal practitioner to indemnify any party other than his or her client against the whole or any part of the costs payable by the party indemnified.
- (2) The Commission may refer a matter to a costs assessor for inquiry and report before making such an order.
- (3) The Commission may order that notice of such an order against a legal practitioner is to be given to the legal practitioner's client in a specified manner.
- (4) A legal practitioner is not entitled to demand, recover or accept from his or her client any part of the amount for which the legal practitioner is directed by the Commission to indemnify a party pursuant to such an order.
- (5) This section does not limit any other provision of this Part.

345 Costs penalties where appeal unsuccessful

- (1) On an appeal from the Commission constituted by an Arbitrator to the Commission constituted by a Presidential member:
 - (a) if the appellant is the claimant and is unsuccessful on the appeal, the Commission must not make an order for the payment of the appellant's costs on the appeal by any other party to the appeal, or

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- (b) if the appellant is an insurer (other than a licensed insurer that maintains a statutory fund under the 1987 Act) and is unsuccessful on the appeal, the Commission may order the insurer to pay to the Authority for payment into the WorkCover Authority Fund an administration fee of \$1,000 or such other amount as may be prescribed by the regulations.
- (2) If the appellant in any such appeal is a licensed insurer that maintains a statutory fund under the 1987 Act and is unsuccessful on the appeal:
- (a) the insurer's costs on the appeal, and
- (b) the costs of any other party to the appeal that the insurer is ordered to pay,
- are not to be paid out of the statutory fund.
- (3) If an appeal concerns lump sum compensation, weekly payments of compensation or medical expenses compensation, the appellant is considered to be unsuccessful on the appeal unless the decision on appeal results in a change in favour of the appellant in the amount awarded or ordered to be paid in the decision appealed against of at least \$5,000 (or such other amount as may be prescribed by the regulations) and at least 20% of the amount awarded or ordered to be paid.
- (4) An administration fee that an insurer is ordered to pay is recoverable as a debt due to the Authority.
- (5) The Registrar is to notify the Authority of an order to an insurer under this section to pay an administration fee.

346 Claims assessment fees

- (1) In this section, *claims assessment fees* means fees payable in connection with an assessment of a claim for work injury damages under Part 6.
- (2) The regulations may make provision for or with respect to claims assessment fees.
- (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.

- (4) Claims assessment fees are payable into the WorkCover Authority Fund.

Division 4 Costs assessment

347 Regulations for costs assessment

- (1) The regulations may make provision for or with respect to:
- (a) the assessment or taxation of costs payable to a legal practitioner or agent in connection with a claim for compensation or work injury damages, and
 - (b) matters associated with the assessment or taxation of those costs.
- (2) In particular, the regulations may make provision for or with respect to any matter for or in connection with which provision is made by Division 6 (Assessment of costs) of Part 11 of the *Legal Profession Act 1987*.
- (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 *Legal Profession Act 1987*.
- (4) Without limiting this section, the regulations may make provision for or with respect to the assessment of costs by the Commission.

348 Regulations displace Legal Profession Act provisions

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 *Legal Profession Act 1987*.

Part 9 Proceedings before Commission

349 Arrangement of business

The arrangement of the business of the Commission is to be as determined by the Registrar, subject to the regulations.

350 Decisions of Commission

- (1) Except as otherwise provided by this Act, a decision of the Commission under the Workers Compensation Acts is final and binding on the parties and is not subject to appeal or review.
- (2) A decision of or proceeding before the Commission is not:
 - (a) to be vitiated because of any informality or want of form, or
 - (b) liable to be challenged, appealed against, reviewed, quashed or called into question by any court.
- (3) The Commission may reconsider any matter that has been dealt with by the Commission and rescind, alter or amend any decision previously made or given by the Commission.

351 Reference of question of law on compensation claim to Commission constituted by Presidential member

- (1) A question of law arising in proceedings before the Commission constituted by an Arbitrator may, with the leave of the President, be referred by the Arbitrator for the opinion of the Commission constituted by the President.
- (2) The reference of a question under this section may be made on the application of a party to the proceedings or of the Arbitrator's own motion.
- (3) The President is not to grant leave for the referral of a question of law under this section unless satisfied that the question involves a novel or complex question of law.
- (4) If the President refuses to grant leave for the referral of a question of law under this section, the President must state his or her reasons in writing to the parties for the refusal.
- (5) Despite the reference of a question under this section, the Commission constituted by an Arbitrator may make an award in the matter in which the question arose unless the question is the question of whether the Commission may exercise functions under this Act in relation to a matter.

- (6) On the determination of a question referred to the Commission under this section:
 - (a) if an award has not been made in the matter in which the question arose, an award may be made that is not inconsistent with the opinion of the Commission on the question, or
 - (b) if an award has been made in the matter in which the question arose, the award must be varied in such a way as will make it consistent with the opinion of the Commission on the question.
- (7) The reference of a question of law under this section may be by stating a case on a question of law.

352 Appeal against decision of Commission constituted by Arbitrator

- (1) A party to a dispute in connection with a claim for compensation may, with leave of the Commission constituted by a Presidential member, appeal to the Commission as so constituted against a decision in respect of the dispute by the Commission constituted by an Arbitrator.
- (2) The Commission is not to grant leave to appeal unless the amount of compensation at issue on the appeal is both:
 - (a) at least \$5,000 (or such other amount as may be prescribed by the regulations), and
 - (b) at least 20% of the amount awarded in the decision appealed against.
- (3) If the Commission refuses to grant leave to appeal, the Commission must state reasons for the refusal in writing to the parties.
- (4) An appeal can only be made within 28 days after the making of the decision appealed against.
- (5) An appeal under this section is to be by way of review of the decision appealed against.
- (6) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against may not be given on an appeal to the Commission except with the leave of the Commission.

- (7) On appeal, the decision may be confirmed or may be revoked and a new decision made in its place.
- (8) In this section, *decision* includes an award, interim award, order, determination, ruling and direction.

353 Appeal against decision of Commission constituted by Presidential member

- (1) If a party to any proceedings before the Commission constituted by a Presidential member is aggrieved by a decision of the Presidential member in point of law, the party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the Commission constituted by a Presidential member for determination by the Commission in accordance with any decision of the Court and may make such other order in relation to the appeal as the Court thinks fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the Commission and on all the parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made only with leave of the Court of Appeal:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal where the amount of compensation in dispute is less than \$20,000 (or such other amount as may be prescribed by the regulations).
- (5) In this section, *decision* includes an award, interim award, order, determination, ruling, opinion and direction.

354 Procedure before Commission

- (1) Proceedings in any matter before the Commission are to be conducted with as little formality and technicality as the proper consideration of the matter permits.
- (2) The Commission is not bound by the rules of evidence but may inform itself on any matter in such manner as the Commission thinks appropriate and as the proper consideration of the matter before the Commission permits.

- (3) The Commission is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (4) Proceedings need not be conducted by formal hearing and may be conducted by way of a conference between the parties, including a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.
- (5) Subject to any general directions of the President, the Commission may hold a conference with all relevant parties in attendance and with relevant experts in attendance, or a separate conference in private with any of them.
- (6) If the Commission is satisfied that sufficient information has been supplied to it in connection with proceedings, the Commission may exercise functions under this Act without holding any conference or formal hearing.
- (7) An assessment or determination is to be made by the Commission having regard to such information as is conveniently available to the Commission, even if one or more of the parties to the assessment or determination proceedings does not co-operate or ceases to co-operate.
- (8) In proceedings before a court with respect to a claim for work injury damages (other than proceedings under section 235A or 235C or under the *Crimes Act 1900* with respect to fraud), evidence of a statement made in proceedings before the Commission is not admissible unless the person who made the statement agrees to the evidence being admitted.

355 Arbitrator to attempt conciliation

The Commission constituted by an Arbitrator is not to make an award or otherwise determine a dispute referred to the Commission for determination without first using the Arbitrator's best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.

356 Representation before Commission

- (1) A person who is a party to proceedings before the Commission is entitled to be represented by a legal practitioner or by an agent.

- (2) The Commission may refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
- (3) In proceedings in respect of a claim, the Commission may refuse to permit an insurer to be represented by a legal practitioner if the claimant is not represented by a legal practitioner.
- (4) A party to proceedings before the Commission is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to communicate adequately at any conference or hearing.
- (5) The Commission must take into account any written submission prepared by a legal practitioner acting for a party to proceedings and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at any conference or hearing in the proceedings).
- (6) In this section, *agent* means:
 - (a) an officer of an industrial organisation of employers or employees registered under the *Industrial Relations Act 1996*, or
 - (b) an officer of an association of employers or employees registered under the *Workplace Relations Act 1996* of the Commonwealth, or
 - (c) a person employed by a licensed insurer or former licensed insurer or by a self-insurer, or
 - (d) a person employed by a solicitor, solicitor corporation or incorporated legal practice.

357 Power of Commission to require information

- (1) The Commission may give a direction in writing to any person (whether or not a party to a dispute before the Commission) requiring the person:
 - (a) to produce, at a time and place specified in the direction, specified documents in the possession of the person, or
 - (b) to furnish specified information within a time specified in the direction.

- (2) The direction may require the documents to be produced or the information to be furnished:
 - (a) to the Commission or to another party to a dispute before the Commission, in the case of a direction given to a party to the dispute, or
 - (b) to the Commission in the case of a direction given to a person who is not a party to a dispute before the Commission.
- (3) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.
- (4) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Commission or a court have the document or information admitted in the proceedings.
- (5) The Commission may exercise powers under this section at the request of a party to a dispute before the Commission or of the Commission's own motion.
- (6) The Registrar has and may exercise any power of the Commission under this section.
- (7) The regulations may make provision for or with respect to any of the following matters:
 - (a) exempting specified kinds of documents or information from the operation of this section,
 - (b) specifying cases and circumstances in which the Commission is required to exercise the Commission's powers under this section.

358 Power of Commission to provide documents and information to a party

- (1) When documents or information relevant to proceedings before the Commission are produced or furnished to the Commission by a party to the proceedings or another person (whether or not pursuant to a requirement under this Act), the Commission may produce or furnish the documents or information to:

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- (a) any other party to the proceedings, or
 - (b) any other party's legal representative, or
 - (c) a medical practitioner (including an approved medical specialist).
- (2) The Commission may, when furnishing or producing information or documents to a legal practitioner or medical practitioner, direct that the person must not cause or permit disclosure of the information, or the information in the documents, to another party.
- (3) A legal practitioner or medical practitioner must not contravene the Commission's direction under this section.
- Maximum penalty: 50 penalty units.
- (4) The regulations may make provision for or with respect to any of the following matters:
- (a) exempting specified kinds of documents or information from the operation of this section,
 - (b) specifying cases and circumstances in which the Commission is required to exercise the Commission's powers under this section,
 - (c) specifying circumstances in which documents or information produced or furnished to the Commission may not be produced or furnished by the Commission to another party to the proceedings or to a legal practitioner or medical practitioner.

359 Summons to appear at conference or hearing

- (1) The Registrar may issue a summons requiring the attendance of a person at any conference or hearing before the Commission in connection with proceedings before the Commission.
 - (2) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.
- Maximum penalty: 50 penalty units.
- (3) In this section, *conference* includes a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.

360 Powers of Commission to require evidence

- (1) The Commission may require any person appearing before the Commission:
 - (a) to give evidence on oath or affirmation (and may, for that purpose, administer an oath or affirmation), and
 - (b) to answer any relevant question put to the person.
- (2) A person must not without reasonable excuse refuse or fail to comply with a requirement duly made under this section.

Maximum penalty: 50 penalty units.
- (3) A person is not obliged to answer a question under this section if the answer to that question would tend to incriminate the person of an offence.

361 Protection of legal practitioners, witnesses and others

- (1) A practising legal practitioner or other person appearing before the Commission on behalf of a party has the same protection and immunity as a practising legal practitioner has in appearing for a party in proceedings in the District Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection, and is subject to the same liabilities, as a witness in proceedings in the Supreme Court.

362 Recovery of amounts ordered to be paid

- (1) For the purposes of the recovery of any amount ordered to be paid by the Commission (including costs, but not including a civil or other penalty), the amount is to be certified by the Registrar.
- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of the Registrar under this section that is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, operates as such a judgment.

363 Control and direction of members of Commission

The members of the Commission other than the Arbitrators are, in the exercise of their functions, subject to the general control and direction of the President.

364 Rules of the Commission

- (1) The Minister may from time to time by order make Rules of the Commission for or with respect to any aspect of procedures to be followed in connection with the jurisdiction or functions of the Commission, including provision for or with respect to:
 - (a) the manner of referring claims or disputes for assessment or determination by the Commission, and
 - (b) the documentation that is to accompany such a reference of a claim or dispute for assessment or determination, and
 - (c) the manner of presenting documents and information to the Commission by the parties, including time limits for the presentation of the documents and information, and
 - (d) the making of assessments and determinations by the Commission, and
 - (e) the manner of specifying an amount of damages or compensation, and
 - (f) default awards and orders, and
 - (g) the extension or abridgment of any period referred to in this Part, and
 - (h) all matters of practice and procedure in proceedings before the Commission, and
 - (i) the issue of a seal for the Commission and the use and effect of the seal.
- (2) Rules of the Commission may be made so as to apply differently according to such factors as may be specified in the Rules.
- (3) On or before 1 July in each year (commencing 2002) or as soon as practicable after each such date, the Minister is to cause the Rules of the Commission, as in force for the time being, to be laid before both Houses of Parliament.

- (4) Rules of the Commission are not a statutory rule for the purposes of the *Interpretation Act 1987*.

365 Publication of decisions and inspection of registers of agreements

- (1) The Commission may cause details of its decisions and determinations under the Workers Compensation Acts to be published.
- (2) The Commissioner may make the following available for public inspection by employers, insurers, workers, the Authority, and their legal representatives, and by such other persons or classes of persons as may be prescribed by the regulations:
- (a) a summary of the details of commutation agreements registered under section 87H of the 1987 Act,
 - (b) a summary of the details of agreements registered under section 66A of the 1987 Act.

Part 10 Administration

Division 1 Workers Compensation Commission

366 Establishment of Commission

- (1) The Workers Compensation Commission of New South Wales is established by this Act.
- (2) The Commission has and may exercise such functions as are conferred or imposed on it by or under the Workers Compensation Acts or any other Act.

367 Objectives of Commission

- (1) The Commission has the following objectives:
- (a) to provide a fair and cost effective system for the resolution of disputes under the Workers Compensation Acts,
 - (b) to reduce administrative costs across the workers compensation system,

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- (c) to provide a timely service ensuring that workers' entitlements are paid promptly,
 - (d) to create a registry and dispute resolution service that meets worker and employer expectations in relation to accessibility, approachability and professionalism,
 - (e) to provide an independent dispute resolution service that is effective in settling matters and leads to durable agreements between the parties in accordance with the Workers Compensation Acts,
 - (f) to establish effective communication and liaison with interested parties concerning the role of the Commission.
- (2) In exercising their functions, the members of the Commission must have regard to the Commission's objectives.

368 Members of Commission

- (1) The Commission consists of the following members:
 - (a) a President,
 - (b) two Deputy Presidents,
 - (c) a Registrar,
 - (d) Arbitrators.
- (2) The members of the Commission other than the Arbitrators are to be appointed by the Minister.
- (3) The Arbitrators are to be appointed by the President.
- (4) The instrument of appointment of a member is to specify whether a member has been appointed as:
 - (a) the President, or
 - (b) a Deputy President, or
 - (c) the Registrar, or
 - (d) an Arbitrator.

369 Qualifications for appointment

- (1) A person is eligible to be appointed as President only if the person is a Judge of a court of record.

- (2) A person is eligible to be appointed as Deputy President only if the person:
 - (a) is or has been a judicial officer (within the meaning of the *Judicial Officers Act 1986*), or
 - (b) is a legal practitioner of at least 5 years' standing.
- (3) A person is eligible to be appointed as the Registrar or as an Arbitrator only if the person:
 - (a) is a legal practitioner, or
 - (b) has such qualifications, skills or experience as may be determined by the Minister.
- (4) The appointment of a person who is not a legal practitioner as an Arbitrator may be made on terms that limit the person to dealing with matters of a particular type or types.

370 Functions of members

A member of the Commission has and may exercise the functions conferred or imposed on the member by or under this or any other Act.

371 Functions of Registrar

- (1) The Registrar has and may exercise all the functions of an Arbitrator.
- (2) The Registrar can delegate to any member or member of staff of the Commission any of the Registrar's functions under the Workers Compensation Act, except this power of delegation.

372 Control and direction of Arbitrators

Arbitrators are, in the exercise of their functions, subject to the general control and direction of the Registrar.

373 Provisions concerning members

Schedule 5 has effect with respect to the members of the Commission.

374 Staff and facilities

- (1) Such staff as may be necessary for the Commission to exercise its functions are to be employed under Part 2 of the *Public Sector Management Act 1988* as staff of the Commission.
- (2) Those staff are, in the exercise of their functions, subject to the general control and direction of the Registrar.
- (3) This section does not affect the exercise of the functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to those staff.
- (4) The Authority or such other Department of the Government as the regulations may specify is to provide for the Commission:
 - (a) facilities (including registry facilities), and
 - (b) any additional staff that may be necessary.

375 Constitution of Commission for particular proceedings

- (1) For the purposes of any proceedings, the Commission is to be constituted by an Arbitrator except as provided by this section.
- (2) The Registrar may give directions as to which Arbitrator is to constitute the Commission for the purposes of any particular proceedings or class of proceedings.
- (3) For the purposes of any proceedings on an appeal against a decision of the Commission constituted by an Arbitrator, the Commission is to be constituted by a Presidential member.

Division 2 WorkCover guidelines

376 Issue of guidelines

- (1) The Authority may issue guidelines with respect to the following:
 - (a) the assessment of the degree of permanent impairment of an injured worker as a result of an injury,
 - (b) the giving of interim payment directions by the Registrar under Part 5,

- (c) such other matters as a provision of the Workers Compensation Acts provides may be the subject of WorkCover Guidelines.
- (2) The Minister may issue guidelines with respect to the procedure for assessment under Part 7 (Medical assessment).
- (3) The Authority may amend, revoke or replace WorkCover Guidelines made by the Authority, and the Minister may amend, revoke or replace WorkCover Guidelines made by the Minister.
- (4) WorkCover Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (5) WorkCover Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (6) The regulations may make provision for or with respect to any matter for which the WorkCover Guidelines can provide.

377 Special requirements relating to WorkCover Guidelines relating to impairment

- (1) This section applies to WorkCover Guidelines that relate to the assessment of the degree of permanent impairment of an injured worker as a result of an injury.
- (2) Those Guidelines must be developed in consultation with relevant medical colleges, including the Royal Australasian College of Physicians, the Royal Australasian College of Surgeons, the Australian Orthopaedic Association and other relevant colleges and associations.
- (3) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to those Guidelines in the same way as those sections apply to statutory rules.

[18] Schedule 5

Insert after Schedule 4:

Schedule 5 Provisions relating to members of Commission

(Section 373)

1 Definition

In this Schedule, *judicial office* means the office of:

- (a) Magistrate, or
- (b) Judge of the District Court, or
- (c) Judicial Member of the Industrial Relations Commission, or
- (d) Judge of the Land and Environment Court, or
- (e) Judge of the Supreme Court.

2 Terms of appointment

- (1) Subject to this Act, a member of the Commission holds office for such period as is specified in the instrument of the member's appointment.
- (2) The term of an appointment must not exceed 7 years in the case of a Presidential member or 5 years in the case of any other member.
- (3) A member is eligible for reappointment.

3 Protection and immunities of member

A member of the Commission has, in the performance of functions performed as a member, the same protection and immunities as a Judge of the District Court.

4 Remuneration

A member of the Commission is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a member of the Commission as the Minister may from time to time determine in respect of the member.

5 Provisions where judicial officer is holding office as member

- (1) The appointment of a person who is the holder of a judicial office as a member, or service by a person who is the holder of a judicial office as a member, does not affect:
 - (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as a member is, for all purposes, taken to be service as the holder of that judicial office.

6 Vacancy in office

- (1) The office of a member of the Commission becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or

- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) in the case of the Registrar, ceases to hold any qualification required for the appointment of the Registrar, or
 - (i) is removed from office under this clause.
- (2) The Minister may remove a member of the Commission (other than an Arbitrator) from office for incapacity, incompetence or misbehaviour.
 - (3) The President may at any time remove an Arbitrator from office.

7 Acting President

- (1) If the President is absent from duty, the most senior Deputy President is to be Acting President unless the Minister makes an appointment under subclause (2).
- (2) The Minister may appoint a Deputy President or other member to be Acting President during the absence of the President from duty.
- (3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (4) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.
- (5) In this clause, *absence from duty* includes a vacancy in the office of President.

8 Seniority

- (1) The members of the Commission have seniority according to the following order of precedence:
 - (a) the President,

- (b) Deputy Presidents according to the days on which their appointments took effect or, if the appointments of 2 of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
 - (c) Registrar,
 - (d) other members according to the days on which their appointments took effect.
- (2) If a person is re-appointed under this Act, the person's seniority is to be determined as if there had been no break in the person's service.

9 Leave

- (1) The entitlement of a member of the Commission to annual and other leave is to be as stated in the instrument of the member's appointment.
- (2) A member may be granted leave:
- (a) in the case of the President—by the Minister, and
 - (b) in any other case—by the President.

10 Superannuation and leave—preservation of rights

- (1) In this clause:
- eligible member* means a member of the Commission who, immediately before holding that office, was a public servant or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.
- superannuation scheme* means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and that is established by or under an Act.
- (2) An eligible member:
- (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and
 - (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme, as if he or she had continued to be such a contributor during service as a member of the Commission.

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- (3) Service by the eligible member as a member of the Commission is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
 - (4) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
 - (5) This clause ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
 - (6) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
 - (7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

11 Effect of other Acts

- (1) The *Public Sector Management Act 1988* (except Part 8) does not apply to the appointment of a member of the Commission and the member is not, as a member of the Commission, subject to that Act.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member of the Commission or from accepting and retaining any remuneration payable to the person under this Act as a part-time member of the Commission.

12 Oaths

The Minister may require oaths to be taken by the President and any Deputy President of the Commission.

4.3 Compensation Court Act 1984 No 89

Section 18

Omit the section. Insert instead:

18 Costs under other Acts

Section 112 of the *Workplace Injury Management and Workers Compensation Act 1998* extends to any proceedings in the Court (not just proceedings under that Act) and in its application to proceedings under any other Act is not limited by section 111A (Costs provisions apply only to existing claims) of that Act.

4.4 Defamation Act 1974 No 18

Schedule 2 Proceedings of public concern and official and public documents and records

Omit “conciliation officer or conciliator” from item 2 (17) and 3 (6) wherever occurring.

Insert instead “conciliation officer, conciliator or member of the Commission”.

Schedule 5 Miscellaneous amendments

(Section 3)

5.1 Workers Compensation Act 1987 No 70

[1] Section 52 Termination of weekly payments on retiring age

Omit “occurring after the first anniversary of the date on which the injury happened” from section 52 (2) (b).

Insert instead “occurring more than 12 months after the first occasion of incapacity for work resulting from the injury”.

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

Omit “(2) or” from section 61 (9).

[3] Section 173B

Insert after section 173A:

173B Redetermination of premium and payment of interest

- (1) The regulations may make provision for or with respect to the following:
 - (a) the adjustment of the premium (*the original premium*) payable for the issue or renewal of a policy of insurance, on the basis of a change in relevant wage details,
 - (b) requiring the provision of updated information by employers for the purpose of effecting any such adjustment,
 - (c) requiring the payment of any amount that becomes due as a result of any such adjustment of premium,
 - (d) requiring the payment of interest on any such amount (including providing for interest) to be payable from the time of payment of the original premium or an instalment of the original premium.

- (2) In this section, *relevant wage details* means the information as to wages payable or paid to workers on the basis of which the amount of the premium payable for the issue or renewal of a policy of insurance is determined.

Note. A change in relevant wage details occurs when:

- (a) an employer changes the employer's estimate of the wages that will be payable to workers during a period, or
- (b) the wages actually paid to workers during a period is different to the amount of wages estimated to be payable during that period.

[4] Section 174 Records relating to wages, contracts etc to be kept and supplied

Insert at the end of section 174 (5):

, or

- (c) to make available, at such time and at such place as is specified in the order, for inspection by a specified person authorised by the Authority, records of a specified kind in the possession of the employer that are relevant to the calculation of premiums payable under policies of insurance or to the determination of whether the employer or another employer is required to obtain a policy of insurance or has paid the correct premium for a policy of insurance.

[5] Section 174 (5A)

Insert after section 174 (5):

- (5A) The Authority may provide information supplied to the Authority by an employer under subsection (5) (a) to any insurer for the purpose of assisting the insurer to determine whether the correct premium has been paid under a policy of insurance issued by the insurer.

[6] Section 174 (6A)–(8)

Omit the subsections. Insert instead:

- (6A) The Authority may order that a person make available, at a time and place specified in the order, for inspection by a person authorised by the Authority or (at the request of the insurer) by an insurer, any records in the person's possession relating to

any contract (however described) under which the person has made payments to any other person (whether or not an individual) for the performance of work by that other person during such period (not exceeding 7 years after the work was performed) as is specified in the order. The order need not name or otherwise identify the person to whom those payments have been made.

- (6B) An order under subsection (6A) may be made only for the purpose of establishing whether a person is required to obtain a policy of insurance under this Act or for the purpose of determining whether the correct premium has been paid under a policy of insurance.
- (7) A person authorised under subsection (5) (b), (5) (c), (6) or (6A) may inspect the records in accordance with the terms of the order and make copies of, or take extracts from, those records.
- (8) A person on whom an order is served under this section:
 - (a) must comply with the order, and
 - (b) must not wilfully obstruct or delay an authorised person when exercising any power under subsection (7).

5.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 29 Membership and procedure of Council

Insert after section 29 (1) (i):

- (j) 2 other persons appointed by the Minister.

[2] Section 74A

Insert after section 74:

74A Duty of insurer to pay compensation promptly

- (1) An insurer who admits liability to pay compensation must pay that compensation promptly following the admission of liability.

- (2) If the Authority is satisfied that an insurer has failed to comply with this section, the Authority may by notice in writing to the insurer direct the insurer to pay the compensation concerned within a period specified in the direction.
- (3) An insurer must comply with such a direction.
Maximum penalty: 50 penalty units.

[3] Section 230A Premium Discount Schemes

Insert after section 230A (7):

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

[4] Section 238AA

Insert after section 238A:

238AA Power to obtain information, documents and evidence

- (1) An authorised officer may, by notice in writing served on a person who is, on reasonable grounds, believed by the authorised officer to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of this Act or the 1987 Act require the person to do any one or more of the following things:
 - (a) to give an authorised officer, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to an authorised officer, in accordance with the notice, any such documents,
 - (c) to appear before an authorised officer at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.
- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.

- (3) An authorised officer may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
- (4) An authorised officer may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an authorised officer to be a true copy.
- (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
- (6) Until a certified copy of a document is provided under subsection (4), the authorised officer who has possession of the document must, at such times and places as the authorised officer thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.
- (7) In the section, *authorised officer* means an officer of the Authority authorised by the Authority for the purposes of this section.

[5] Schedule 2 Provisions relating to Council, clause 10 Quorum

Omit “9 members”. Insert instead “10 members”.

Schedule 6 Consequential amendments

(Section 3)

6.1 Workers Compensation Act 1987 No 70

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

Omit “court proceedings” from section 11A (8) (b).
Insert instead “proceedings before the Commission”.

[2] Section 15 Diseases of gradual process—employer liable, date of injury etc

Omit “determined by the Compensation Court” from section 15 (2).
Insert instead “determined by the Commission”.

[3] Section 15 (2A)

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”.
Insert instead “The Commission 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 Commission considers just and equitable”.

[4] Section 15 (4)

Omit “loss or impairment”. Insert instead “permanent impairment”.

[5] Section 16 Aggravation etc of diseases—employer liable, date of injury etc

Omit “determined by the Compensation Court” from section 16 (2).
Insert instead “determined by the Commission”.

[6] Section 16 (2A)

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”.

Insert instead “The Commission 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 Commission considers just and equitable”.

[7] Section 16 (3)

Omit “loss or impairment”. Insert instead “permanent impairment”.

[8] Section 17 Loss of hearing—special provisions

Omit section 17 (1) (f). Insert instead:

- (f) where the Commission 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 Commission 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 Commission considers appropriate and the Authority is to pay out that amount accordingly,

[9] Section 20 Principal liable to pay compensation to workers employed by contractors in certain cases

Omit “settled by the Compensation Court” from section 20 (4).

Insert instead “determined by the Commission”.

[10] Section 22 Compensation to be apportioned where more than one injury

Omit “the Compensation Court determines” from section 22 (1).

Insert instead “the Commission determines”.

[11] Section 22 (1) (b)

Omit “a loss”. Insert instead “a permanent impairment”.

[12] Section 22 (3) and (4)

Omit “apportioned by the Compensation Court” wherever occurring.
Insert instead “apportioned by the Commission”.

[13] Section 22 (5)

Omit the subsection. Insert instead:

- (5) The Commission may, on the application of any insurer or employer concerned or of the Authority, determine a dispute as to whether:
 - (a) liability to pay compensation under this Act should be apportioned under this section, or
 - (b) any such liability should be apportioned under this section in respect of different injuries.

The determination of the Commission 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.

[14] Section 22A Further provisions concerning apportionment of liability under section 22

Omit “the Court considers” from section 22A (1) (a) and (b) wherever occurring.
Insert instead “the Commission considers”.

[15] Section 22A (4)

Omit “the Compensation Court may order”.
Insert instead “the Commission may order”.

[16] Section 22A (5) (a) and (b)

Omit “the Court considers” wherever occurring.
Insert instead “the Commission considers”.

[17] Section 22B Determination as to which injury gave rise to compensation liability

Omit “The Compensation Court may” from section 22B (1).

Insert instead “The Commission may”.

[18] Section 22C Certain injuries not to be dealt with under sections 15 and 16

Omit “unless the Compensation Court otherwise orders” from section 22C (5).

Insert instead “unless the Commission otherwise orders”.

[19] Section 26 Death of worker leaving partial dependants

Omit “approved by the Compensation Court” from section 26 (b).

Insert instead “approved by the Commission”.

[20] Section 26 (c)

Omit “approval by the Compensation Court”.

Insert instead “approval by the Commission”.

[21] Section 26 (c)

Omit “determined by the Compensation Court”.

Insert instead “determined by the Commission”.

[22] Section 29 Apportionment of payments between dependants

Omit section 29 (1)–(5). Insert instead:

- (1) The compensation payable under this Division to each dependant of a deceased worker may be apportioned by the Commission or by the Public Trustee.
- (2) Application for apportionment may be made by or on behalf of a person entitled to the compensation:
 - (a) to the Public Trustee, or
 - (b) to the Commission (whether or not an application has been made to the Public Trustee or the Public Trustee has made a decision).

- (3) The Public Trustee may decline to deal with an application for apportionment and advise the parties to apply to the Commission.
- (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 the Commission.
- (5) A decision by the Public Trustee to apportion compensation under this Division is subject to any decision made by the Commission with respect to the matter.

[23] Section 30

Omit the section. Insert instead:

30 Review of apportionment among dependants

- (1) The Commission 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.
- (2) Application for a variation may be made by or on behalf of the person entitled to compensation to the Commission or the Public Trustee.
- (3) The Public Trustee may apply to the Commission for any such variation of a previous apportionment made by the Public Trustee or by the Commission.
- (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 the Commission.
- (5) The Public Trustee is not to vary an apportionment made by the Commission.

[24] Section 31 Payment in respect of dependent children

Omit “unless the Compensation Court otherwise orders” from section 31 (1).

Insert instead “unless the Commission otherwise orders”.

[25] Section 31 (2)

Omit “the Compensation Court makes an order”.

Insert instead “the Commission makes an order”.

[26] Section 37 Weekly payment during total incapacity—after first 26 weeks

Omit “if the Compensation Court is satisfied” from section 37 (6).

Insert instead “if the Commission is satisfied”.

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

Omit “before the Compensation Court” from section 38A (4).

Insert instead “before the Commission”.

[28] Section 38A (4) (b)

Omit “determination of the matter by the Compensation Court or a conciliator”.

Insert instead “determination of the matter by the Commission”.

[29] Section 38A (6)

Omit “An order of the Compensation Court”.

Insert instead “An order of the Commission”.

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

Omit “satisfaction of the Compensation Court” from section 39 (1) (c).

Insert instead “satisfaction of the Commission”.

[31] Section 39 (1) (d)

Omit “the Compensation Court’s order”.

Insert instead “the Commission’s order”.

[32] Section 39 (2)

Omit “An order of the Compensation Court”.

Insert instead “An order of the Commission”.

[33] Section 39 (3)

Omit “The Compensation Court may”.
Insert instead “The Commission may”.

[34] Section 39 (6)

Omit the subsection. Insert instead:

- (6) The Registrar may make any order that the Commission may make under this section if the matter must be determined for the purposes of any interim payment direction by the Registrar.

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

Omit “The Compensation Court may determine any dispute about the operation of this subsection and (subject to any order of the Court) a conciliator dealing with the dispute may give a direction or make a recommendation about that matter” from section 40 (4).

Insert instead “The Commission may determine any dispute about the operation of this subsection”.

[36] Section 45 Reduction etc of weekly payments to qualify for other benefits

Omit “The Compensation Court may” from section 45 (1).
Insert instead “The Commission may”.

[37] Section 46 Reduction of weekly payments to prevent dual benefits

Omit “The Compensation Court may” from section 46 (1).
Insert instead “The Commission may”.

[38] Section 52A Discontinuation of weekly payments for partial incapacity after 2 years

Omit “proceedings before the Compensation Court” from section 52A (8) (b).

Insert instead “proceedings before the Commission”.

[39] Section 53 Weekly payments—residence outside the Commonwealth

Omit “unless a medical referee or medical panel certifies, or the Compensation Court determines” from section 53 (1).

Insert instead “unless an approved medical specialist certifies, or the Commission determines”.

[40] Section 55 Review of weekly payments

Omit “reviewed by the Compensation Court” from section 55 (1).

Insert instead “reviewed by the Commission”.

[41] Section 55 (2) (b)

Omit “settled by the Compensation Court”.

Insert instead “determined by the Commission”.

[42] Section 55 (2A)

Omit “the Compensation Court’s order on the review, the Compensation Court may order”.

Insert instead “the Commission’s order on the review, the Commission may order”.

[43] Section 55A Award of compensation may be for fixed period

Omit “The Compensation Court may”.

Insert instead “The Commission may”.

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

Omit “The Compensation Court may” from section 56 (1).

Insert instead “The Commission may”.

[45] Section 56 (2)

Omit “order of the Compensation Court”.

Insert instead “order of the Commission”.

[46] Section 56 (3)

Omit the subsection. Insert instead:

- (3) This section applies to an interim payment direction by the Registrar for weekly payments of compensation in the same way as it applies to an award by the Commission for any such payments.

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

Omit section 57 (3). Insert instead:

- (3) This section applies even though the weekly payments of compensation are payable under an interim payment direction by the Registrar.

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

Omit “the Compensation Court may order” from section 58 (1).
Insert instead “the Commission may order”.

[49] Section 58 (1)

Omit “the Court considers”. Insert instead “the Commission considers”.

[50] Section 58 (2)

Omit “the Compensation Court’s order”.
Insert instead “the Commission’s order”.

[51] Section 58 (3)

Omit the subsection. Insert instead:

- (3) This section applies even though the weekly payments of compensation are payable under an interim payment direction by the Registrar.

[52] Section 58 (4)

Omit “the Compensation Court may make such orders as it”.
Insert instead “the Commission may make such orders as the Commission”.

[53] Section 58 (6)

Omit “any order that it is satisfied the Compensation Court could make”.
Insert instead “any order that it is satisfied the Commission could make”.

[54] Section 58 (7) (a)

Omit “an award of the Compensation Court”.
Insert instead “an award of the Commission”.

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

Omit section 61 (4A). Insert instead:

- (4A) If proceedings relating to the worker’s claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, the provision of medical or related treatment for the worker, such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.

[56] Section 62 Rates applicable for hospital treatment

Omit section 62 (6A). Insert instead:

- (6A) If proceedings relating to the worker’s claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, the provision of hospital treatment for the worker, such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.

[57] Section 63 Rates applicable for ambulance service

Omit section 63 (2A). Insert instead:

- (2A) If proceedings relating to the worker’s claim for compensation are before the Commission 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

Commission. If no such proceedings are before the Commission, such an allowance may be awarded by the Authority on application made in respect of the worker from time to time.

[58] Section 63A Rates applicable for occupational rehabilitation services

Omit “any order of the Compensation Court” from section 63A (4).
Insert instead “any order of the Commission”.

[59] Section 76 Maximum rate for damage to artificial limbs, spectacles

Omit section 76 (3). Insert instead:

- (3) If proceedings relating to the worker’s claim for compensation are before the Commission 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 Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.

[60] Section 77 Maximum rate for damage to clothing

Omit section 77 (3). Insert instead:

- (3) If proceedings relating to the worker’s claim for compensation are before the Commission and those proceedings relate to, or include matters relating to, damage to the worker’s clothing, such a direction may be given by the Commission. If no such proceedings are before the Commission, such a direction may be given by the Authority on application made in respect of the worker from time to time.

[61] Section 83 Manner of payment of compensation

Omit section 83 (6). Insert instead:

- (6) The Commission may authorise the payment of compensation in a particular case in such other manner as the Commission thinks fit.

[62] Section 85 Payments to Public Trustee for benefit of beneficiary

Omit “unless the Compensation Court otherwise orders” from section 85 (1) (b).

Insert instead “unless the Commission otherwise orders”.

[63] Section 85 (1) (c)

Omit “the Compensation Court directs”.

Insert instead “the Commission directs”.

[64] Section 85 (1) (d)

Omit “the Compensation Court orders”.

Insert instead “the Commission orders”.

[65] Section 85 (6)

Omit “The Compensation Court may”.

Insert instead “The Commission may”.

[66] Section 85A

Omit the section. Insert instead:

85A Payment of benefits to beneficiaries

(1) Despite section 85, the Commission may authorise the payment of compensation referred to in section 85 (1):

- (a) to the person who is entitled to the compensation, or
- (b) to such other person, for the benefit of the person entitled to the compensation, as the Commission thinks fit.

(2) Any such payment is to be made in the manner authorised by the Commission.

[67] Section 87B Reduction of compensation under this Act

Omit “an award of the Compensation Court” from section 87B (5).

Insert instead “an award of the Commission”.

[68] Section 143 Determination of claim by Authority

Omit section 143 (4).

[69] Section 144 Appeal against Authority's decision on claim

Omit "apply to the Compensation Court" from section 144 (1).
Insert instead "apply to the Commission".

[70] Section 144 (3)

Omit the subsection. Insert instead:

- (3) The Commission may hear and determine any such application and may make such orders in relation to the application as the Commission thinks fit.

[71] Section 145 Employer or insurer to reimburse Authority

Omit "apply to the Compensation Court" from section 145 (3).
Insert instead "apply to the Commission".

[72] Section 145 (4)

Omit the subsection. Insert instead:

- (4) The Commission may hear any such application and may:
 - (a) make such determination in relation to the application, and
 - (b) make such awards or orders as to the payment of compensation under this Act to or in respect of the injured worker concerned,as the Commission thinks fit.

[73] Section 145 (7)

Omit the subsection. Insert instead:

- (7) An order by the Commission that the Authority is to be reimbursed by a person named in the determination concerned may be enforced under section 362 of the 1998 Act.

[74] Section 145A Recovery from directors of corporations liable to reimburse Authority

Omit “an order of the Compensation Court” from section 145A (2).
Insert instead “an order of the Commission”.

[75] Section 147 Miscellaneous provisions

Omit “The Compensation Court may adjourn” from section 147 (2).
Insert instead “The Commission may adjourn”.

[76] Section 147 (3)

Omit “by order of the Compensation Court”.
Insert instead “by order of the Commission”.

[77] Section 147 (4)

Omit the subsection. Insert instead:

- (4) In any proceedings before the Commission under this Division, the Authority or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Commission 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.

[78] Section 151A Election—damages or “Table of Disabilities” compensation

Insert after section 151A (3) (a):

- (a1) by referring a claim for those damages for assessment under Part 6 of Chapter 7 of the 1998 Act (in which case the person ceases to be entitled to recover permanent loss compensation in respect of the injury),
or

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

Omit the paragraph. Insert instead:

- (b) by commencing proceedings in the Commission to recover that permanent loss compensation 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).

[80] Section 151A (3A)

Omit “Compensation Court” wherever occurring.
Insert instead “Commission”.

[81] Section 151Z Recovery against both employer and stranger

Omit “by the Compensation Court” from section 151Z (1) (f).
Insert instead “by the Commission”.

[82] Section 162 Death of employer

Omit “The Compensation Court may” from section 162 (1).
Insert instead “The Commission may”.

[83] Section 162 (2)

Omit “Where the Compensation Court makes a declaration under subsection (1), the Compensation Court may make an award”.
Insert instead “Where the Commission makes a declaration under subsection (1), the Commission may make an award”.

6.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definitions of *conciliation certificate*, *conciliator*, *medical referee*, *medical panel* and *Principal Conciliator* from section 4 (1).

[2] Section 71 Duty of claimant to co-operate

Omit “court proceedings” wherever occurring from section 71 (3).
Insert instead “proceedings before the Commission”.

[3] Section 73 Insurer to provide copies of reports to worker

Omit “before a conciliator or the Compensation Court” from section 73 (3) (b).
Insert instead “before the Commission”.

[4] Section 74 Insurers to give notice and reasons when liability disputed

Omit “conciliation by a conciliator” wherever occurring from section 74 (2) (b) and (c).
Insert instead “determination by the Commission”.

[5] Section 75 Report about delays and the incurring of unreasonable costs by insurers

Omit “A Judge or commissioner of the Compensation Court or a conciliator may make a report” from section 75 (1).
Insert instead “The Registrar or another member of the Commission may make a report”.

[6] Section 75 (1) (d)

Omit “proceedings before the Compensation Court”.
Insert instead “proceedings before the Commission”.

[7] Section 106 Authority may intervene in proceedings

Omit “proceedings before the Compensation Court” from section 106 (1).
Insert instead “proceedings before the Commission”.

[8] Section 107 Applications to be heard together

Omit “applied to the Compensation Court” from section 107 (1).
Insert instead “applied to the Commission”.

[9] Section 107 (2)

Omit “or the rules of the Compensation Court”.

[10] Section 108 Interim awards

Omit section 108 (2) and (3). Insert instead:

- (2) Where this section applies, the Commission may:
 - (a) if the Commission is satisfied that compensation is payable (but is not yet able to finally determine that compensation is payable, the amount of the compensation, the appropriate apportionment of liability for the compensation or the person liable to pay the compensation), make such interim awards as the Commission thinks fit:
 - (i) for compensation by an insurer or self-insurer, or
 - (ii) for indemnity by an insurer, or
 - (iii) for payment under the Uninsured Liability and Indemnity Scheme,and make such interim orders as the Commission thinks fit for contribution on the part of an insurer, employer or principal or other person or under the Uninsured Liability and Indemnity Scheme, and
 - (b) make such final awards and orders as the Commission thinks fit with respect to any of the matters the subject of an interim award or order under paragraph (a), and
 - (c) if the Commission makes a final award or order, make such orders as the Commission thinks fit with respect to adjustments to be made between persons against whom orders have been made under paragraphs (a) and (b) or between any such persons and the Uninsured Liability and Indemnity Scheme.
- (3) If the Commission subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Commission:
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and

- (b) orders the worker or other person to refund those payments or a specified part of those payments.

[11] Section 109 Interest before order for payment

Omit section 109 (1). Insert instead:

- (1) In any proceedings before the Commission, the Commission may order that there is to be included, in any sum to be paid, interest at such rate as the Commission thinks fit on the whole or any part of the sum for the whole or any part of the period before the sum is payable, subject to the limitations imposed by this section.

[12] Section 109 (2) (c)

Omit the paragraph. Insert instead:

- (c) on any compensation payable under this Act for any period during which proceedings before the Commission were adjourned on the application of the claimant for the compensation or pursuant to section 102.

[13] Section 110 Interest after order for payment

Omit section 110 (1). Insert instead:

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

[14] Section 110 (2) (a)

Omit “the Court”. Insert instead “the Commission”.

[15] Section 110 (3) (b)

Omit “the Court”. Insert instead “the Commission”.

[16] Section 111 Interest on agreed payment of lump sum compensation

Omit “the Compensation Court” from section 111 (1).
Insert instead “the Commission”.

[17] Section 117 Admissibility of statements by injured workers

Omit “proceedings before the Compensation Court” from section 117 (1).
Insert instead “proceedings before the Commission”.

[18] Section 117 (2)

Omit the subsection.

[19] Section 119 Medical examination of workers at direction of employer

Omit “proceedings on such a dispute before a conciliator or the Compensation Court” from section 119 (6) (b).
Insert instead “proceedings on such a dispute before the Commission”.

[20] Section 120 Medical examination of worker at direction of Commission

Omit section 120 (1). Insert instead:

- (1) The Commission or the Authority may, at any time or from time to time, require any worker:
 - (a) who claims compensation under this Act, or
 - (b) who is in receipt of weekly payments of compensation under this Act,to submit himself or herself for examination by an approved medical specialist on a date and at a place arranged by the Registrar.

[21] Section 125 Reimbursement of worker for loss of wages and expenses associated with medical examination

Omit section 125 (2). Insert instead:

- (2) A worker required to submit himself or herself for examination by an approved medical specialist is not entitled to recover any amount if:
 - (a) the matter was referred on the application of the worker, and
 - (b) the Commission finds that the application was unreasonable or unnecessary.

[22] Section 125 (5)

Omit the subsection.

[23] Section 127

Omit the section. Insert instead:

127 Admissibility of medical reports

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

[24] Section 134 Consequences of prohibited conduct for recovery of fees by agents

Omit “or by proceedings in the Compensation Court” from section 134 (4).

- [25] Section 135 Consequences of prohibited conduct for lawyers**
Omit “or by proceedings in the Compensation Court” from section 135 (5).
- [26] Section 136 Lawyers and agents can be requested to certify as to prohibited conduct**
Insert “or Commission” after “court” wherever occurring in section 136 (3).
- [27] Section 137 Power to restrict or ban recovery of costs by agents who engage in prohibited conduct**
Omit “or 116 (5)” from section 137 (2) (a). Insert instead “or 343 (4)”.
- [28] Section 138 Power to restrict or ban recovery of costs by solicitors**
Omit “or 116 (5)” from section 138 (2) (a). Insert instead “or 343 (4)”.
- [29] Section 139 Power to restrict or ban agents who engage in prohibited conduct**
Omit “or 116 (5)” from section 139 (2) (a). Insert instead “or 343 (4)”.
- [30] Section 140 Past conduct included in assessing persistent conduct**
Omit “or 116 (5)” wherever occurring. Insert instead “or 343 (4)”.
- [31] Section 141 Duty of claimants to comply with requests for information about agents and lawyers**
Omit “court proceedings” from section 141 (1).
Insert instead “proceedings before the Commission”.
- [32] Section 154 Death of employer**
Omit “The Compensation Court” from section 154 (1).
Insert instead “The Commission”.

[33] Section 154 (2)

Omit “Where the Compensation Court makes a declaration under subsection (1), the Compensation Court may make an award of compensation”.

Insert instead “Where the Commission makes a declaration under subsection (1), the Commission may make an award of compensation”.

[34] Section 223 Determination of claim by Authority

Omit section 223 (4).

[35] Section 224 Appeal against Authority’s decision on claim

Omit “apply to the Compensation Court” from section 224 (1).

Insert instead “apply to the Commission”.

[36] Section 224 (3)

Omit the subsection. Insert instead:

- (3) The Commission may determine any such application and may make such orders in relation to the application as the Commission thinks fit.

[37] Section 225 Employer or insurer to reimburse Authority

Omit “apply to the Compensation Court” from section 225 (3).

Insert instead “apply to the Commission”.

[38] Section 225 (4)

Omit the subsection. Insert instead:

- (4) The Commission may:
 - (a) make such determination in relation to the application, and
 - (b) make such awards and orders as to the payment of compensation under this Act to or in respect of the injured worker concerned,as the Commission thinks fit.

[39] Section 225 (7)

Omit the subsection. Insert instead:

- (7) An order by the Commission that the Authority is to be reimbursed by a person named in the determination concerned may be enforced under section 362.

[40] Section 226 Recovery from directors of corporations liable to reimburse Authority

Omit “an order of the Compensation Court” from section 226 (2).

Insert instead “an order of the Commission”.

[41] Section 227

Omit the section. Insert instead:

227 Commutation of weekly payments from scheme

- (1) Division 9 of Part 3 of the 1987 Act applies to the commutation of a liability under the Scheme.
- (2) A liability under the Scheme may not be commuted to a lump sum with the agreement of the worker unless the Authority:
 - (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
 - (b) has taken into account any submissions so made to the Authority.
- (3) Subsection (2) does not apply if the worker has been unable, after due search and inquiry, to identify the relevant employer.
- (4) In the case of commutation by determination of the Commission under section 87G (Commutation where worker legally incapacitated) of the 1987 Act, the Commission may on the application of the employer, if the Commission thinks fit, refuse to make such a determination in respect of a liability under the Scheme.

- (5) The making of such an application by the employer in no way fetters the discretion of the Commission 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.
- (6) The Authority may apply for registration of a commutation agreement under section 87H of the 1987 Act as a party to the agreement.

[42] Section 228 Miscellaneous provisions

Omit “The Compensation Court may adjourn” from section 228 (2).
Insert instead “The Commission may adjourn”.

[43] Section 228 (3)

Omit “by order of the Compensation Court”.
Insert instead “by order of the Commission”.

[44] Section 228 (4)

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 the Commission under this Part, the Authority or its representative (being a barrister, solicitor, officer of the Authority or other person) may appear before the Commission”.

[45] Section 239 Authority may obtain documents from court registry or Registrar

Insert “or the Registrar” after “the Compensation Court Registry” in section 239 (1) (b).

[46] Section 239 (1)

Insert “or kept in the custody or control of the Registrar” after “available at the Compensation Court Registry”.

[47] Section 239 (2)

Omit “The Registrar of the Compensation Court is”.

Insert instead “The Registrar of the Compensation Court and the Registrar of the Commission are”.

[48] Section 239 (3)

Omit the subsection. Insert instead:

- (3) The Commission may, in respect of any information obtained by the Authority from the Registrar under this section, order that the information is not to be used in any proceedings, or any specified proceedings, before the Commission.

[49] Section 239 (4)

Insert “or by the Registrar of the Commission” after “the Compensation Court Registry”.

[50] Section 247 Time for instituting proceedings

Omit “the Compensation Court determines the claim” from section 247 (3) (b).

Insert instead “the Commission determines the claim”.

[51] Schedule 1 Deemed employment of workers

Omit “the Compensation Court determines” wherever occurring from clauses 3 (5), 4 (3), 5 (2) and 15 (4) of Schedule 1.

Insert instead “the Commission determines”.

[52] Schedule 1, clauses 9 (3) (b), 13 (2) (b) and 16 (2) (b)

Omit “the Compensation Court considers” wherever occurring.

Insert instead “the Commission considers”.

[53] Schedule 6 Provisions relating to appointed conciliators

Omit the Schedule.

6.3 Workers Compensation Legislation Amendment Act 2000 No 87

Schedule 9 Amendments relating to liability involving multiple managed fund insurers

Omit “and conciliation” from the definition of *proceedings* in section 22D (12) as inserted by Schedule 9 [4].