

WORKERS COMPENSATION BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

- Coal Mines Regulation (Workers Compensation) Amendment Bill 1987;
- Compensation Court (Amendment) Bill 1987;
- Construction Safety (Workers Compensation) Amendment Bill 1987;
- Dangerous Goods (Workers Compensation) Amendment Bill 1987;
- Defamation (Workers Compensation) Amendment Bill 1987;
- Factories, Shops and Industries (Workers Compensation) Amendment Bill 1987;
- Industrial Arbitration (Workers Compensation) Amendment Bill 1987;
- Mines Inspection (Workers Compensation) Amendment Bill 1987;
- Miscellaneous Acts (Workers Compensation) Amendment Bill 1987;
- Occupational Health and Safety (Workers Compensation) Amendment Bill 1987;
- Police Regulation (Superannuation) (Workers Compensation) Amendment Bill 1987;
- Public Health (Workers Compensation) Amendment Bill 1987;
- Workers Compensation (Bush Fire, Emergency and Rescue Services) Bill 1987;
- Workers' Compensation (Dust Diseases) Amendment Bill 1987.

The object of this Bill is to reform workers' compensation in New South Wales. For that purpose the Workers' Compensation Act 1926 is to be repealed and replaced with a new Act.

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The principal reforms effected by the new Act are as follows:

(a) *Weekly benefits for incapacitated workers—*

- (i) Weekly benefits for total incapacity are to be retained at the current award rate during the first 26 weeks of incapacity but a maximum limit of \$500 per week (indexed) is to be imposed.
- (ii) The maximum rates of weekly benefits for total incapacity fixed by the Act after the first 26 weeks of incapacity are to be increased for incapacitated workers with dependants (the existing rate of \$36.40 per week for a dependent spouse is to be increased to \$42 per week (indexed) and the existing rate of \$18.20 per week for each dependent child is to be increased to an amount between \$30–\$45 per week (indexed) depending on the number of children).
- (iii) Weekly benefits for partially incapacitated workers are to be fixed at the pre-injury earnings of the worker (subject to the \$500 per week upper limit) less post-injury actual or possible earnings.
- (iv) Weekly benefits for partially incapacitated workers who have not been provided with suitable employment by their employers are to be payable as if the workers were totally incapacitated but only for a maximum period of 34 weeks (unlike the situation under section 11 (2) of the existing Act which is not limited). During the 34 weeks period the worker will be required to be seeking suitable employment and either undergoing approved rehabilitation training or establishing that suitable employment is not available because of the injury.

(b) *Death benefits—*

- (i) The lump sum payable to the dependants of a worker who dies as a result of a work-related injury is to be increased from \$62,200 to \$80,000 (indexed).
- (ii) The weekly payment in respect of each dependent child of any such worker is to be increased from \$31.10 per week to \$45 per week (indexed).

(c) *Lump sums for permanent injuries—*

- (i) The existing "Table of Maims" is to be revised to provide a greater range of permanent injuries for which a lump sum benefit is payable—the amount for each injury is to be expressed as a specified percentage of \$80,000 (indexed). Additional permanent injuries for which compensation will be payable include impairment of the back, neck and pelvis and incurable loss of mental powers involving inability to work.
- (ii) A further benefit is to be payable for actual pain and suffering resulting from a permanent injury which is mentioned in the "Table of Maims" and for which compensation of at least 10 per cent of \$80,000 is payable. The maximum amount payable for pain and suffering is set at \$40,000 (indexed).

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- (d) *Redemptions of weekly benefits*—The right to redeem the whole or any part of future weekly benefits by a lump sum is to be replaced by a right to commute. The right to commute is restricted to workers aged 55 years or over, and in specially approved circumstances by the Board or in accordance with the regulations.
 - (e) *Journey claims*—Compensation for journey claims is retained but clarified to ensure that any interruption or deviation is not covered unless it is established that it did not materially add to the risk of injury.
 - (f) *Medical, rehabilitation and related expenses*—Compensation will be payable for certain modifications required to an injured worker's house or vehicle or for other special expenses prescribed by the regulations.
 - (g) *Abolition of certain common law remedies*—The recovery of damages at common law from an employer (including fellow workers) is to be abolished if the employer is liable to pay workers compensation benefits.
 - (h) *Date of commencement*—Generally the proposed reforms do not affect compensation or damages for injuries received before the commencement of the reforms.
 - (i) *Dispute resolution*—
 - (i) The workers compensation commissioners are to be given unlimited jurisdiction. Complex or other matters may be transferred to the Compensation Court in addition to matters on appeal.
 - (ii) Review officers are to be employed under the Public Service Act 1979 to conciliate on disputes and in certain cases to give directions for payment of weekly compensation if there is no genuine dispute.
 - (iii) Provision is to be made to require prompt payment of claims for weekly payments of compensation and for reference to a review officer of any dispute as to the liability to pay or continue to pay any such compensation.
 - (j) *Rehabilitation*—Special provision is to be made to promote the rehabilitation of injured workers and, in particular, to require employers to prepare rehabilitation programmes for injuries at workplaces.
 - (k) *Insurance arrangements*—Existing insurers are to be replaced by specially licensed corporations operating a system of statutory funds similar to life insurance companies. Provision for premiums adjustment is to be made to ensure the adequacy of the statutory funds to meet future claims.
 - (l) *Occupational health and safety*—Measures to promote occupational health and safety (including increased penalties for offences) are contained in the cognate Bills.
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PART 1—PRELIMINARY

This Part contains general provisions relating to the proposed Act, being those providing for—

- (a) the short title of the proposed Act (clause 1);
- (b) the commencement of the proposed Act on a day or days to be appointed by the Governor-in-Council (clause 2);
- (c) the definition of certain expressions for the purposes of the proposed Act (clause 3); and
- (d) a definition of “injury” (clause 4).

The Part also contains provisions—

- (a) giving effect to Schedule 1 (circumstances in which certain persons are deemed to be workers) (clause 5);
- (b) binding the Crown (clause 6);
- (c) stating that the proposed Act does not affect certain other Acts relating to workers compensation (clause 7); and
- (d) for the establishment of a Workers Compensation Review Committee (clause 8).

PART 2—COMPENSATION—LIABILITY

This Part deals with the liability to pay compensation under the proposed Act. The Part generally continues the substantive requirements of the existing Act. It contains provisions—

- (a) stating generally a worker’s entitlement (or, in the case of the death of a worker, the worker’s dependants’ entitlement) to receive compensation from the worker’s employer in the event of injury (clause 9);
- (b) specifying the circumstances in which a worker is entitled to compensation for an injury received while journeying to or from work or during recesses (clauses 10 and 11);
- (c) relating to injuries to union representatives while on union business (clause 12);
- (d) for the payment of compensation in respect of injuries received outside New South Wales (clause 13);
- (e) relating to the effect of the worker’s conduct on the entitlement to compensation (clause 14);
- (f) with respect to determining, where the injury is a disease, the time of injury and the employers or insurers who are liable to pay compensation (clauses 15–18);
- (g) deeming certain diseases (such as brucellosis) to be work related diseases in certain circumstances (clause 19);
- (h) relating to the respective liabilities of principals and contractors where work is carried out under contract (clause 20);

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- (i) for the payment of compensation to sailors on certain ships (clause 21);
- (j) for the apportionment of compensation where there is more than one injury (clause 22); and
- (k) enabling the payment of compensation even though the claimant is under 18 or resides outside New South Wales or the employment contract was illegal (clauses 23 and 24).

PART 3—COMPENSATION—BENEFITS

DIVISION 1—*Compensation payable on death*

This Division deals with the compensation payable where death results from an injury. Generally, the amounts payable are—

- (a) if the worker leaves dependants who were wholly dependent on the worker—\$80,000, plus \$45 per week in respect of each dependant child (clause 25);
- (b) if the dependants were partially dependent—the whole, or a proportionate part, of the amount referred to in paragraph (a) (a commissioner to determine the amount in the case of a dispute) (clause 26);
- (c) if there are no dependants—reasonable funeral expenses not exceeding a prescribed amount (clause 27); and
- (d) the reasonable cost of transporting the body where necessary (clause 28).

The Division also contains provisions—

- (a) for apportionment of payments between dependants (clause 29);
- (b) for review of such apportionments where there is a change in circumstances (clause 30);
- (c) as to the method of payment of compensation in respect of dependent children (clause 31); and
- (d) as to payment to legal personal representatives where there are no dependants (clause 32).

DIVISION 2—*Weekly compensation by way of income support*

This Division deals with the weekly compensation payable where an injured worker is totally or partially incapacitated for work.

Clause 33 provides that the compensation payable in respect of a totally or partially incapacitated worker shall include a weekly payment.

The Division contains provisions—

- (a) defining the “first 26 weeks of incapacity” for the purposes of the Division (clause 34);
- (b) prescribing the maximum weekly payment as \$500 (clause 35);

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- (c) stating that the weekly payment for the first 26 weeks shall be the amount of the worker's current weekly wage rate (clause 36);
- (d) stating that the weekly payment after the first 26 weeks in respect of a totally incapacitated worker shall be 90 per cent of the worker's average weekly earnings, subject to an upper limit of \$159 per week, a lower limit of \$126.40 per week, and special limits in the case of low wage earners. Additional amounts of \$42 per week are payable in respect of dependent wives or husbands and amounts ranging from \$30 per week to \$45 per week for dependent children (clause 37);
- (e) for treating partially incapacitated workers as totally incapacitated (for a maximum period of 34 weeks) if the employer fails to provide suitable employment and the worker, in certain specified circumstances, is seeking suitable employment or has either undertaken approved rehabilitation training or establishes that suitable employment is not available because of the injury (clause 38);
- (f) for treating certain incapacitated workers who are fit for employment of a kind not commonly available for persons in the workers' circumstances as totally incapacitated (the "odd-lot" rule) (clause 39);
- (g) stating that the weekly payment after the first 26 weeks in respect of a partially incapacitated worker shall be an amount not exceeding the difference between—
 - (i) the worker's pre-injury earnings or \$500, whichever is the lesser; and
 - (ii) the average weekly amount which the worker is earning or is able to earn, subject to certain limitations (clause 40);
- (h) for the calculation of compensation for periods of less than a week (clause 41);
- (i) defining "current weekly wage rate" for the purposes of the Division (clause 42);
- (j) for the computation of "earnings" and "average weekly earnings" for the purposes of the Act (clause 43);
- (k) for the increase of weekly payments of workers who reach 21 (clause 44);
- (l) for the reduction or discontinuance of weekly payments to enable certain pensions, allowances or other benefits under the Commonwealth Social Security Act 1947 or other laws to be payable (clause 45);
- (m) for the reduction of weekly payments so as to prevent dual benefits of the same kind being payable by an employer (clause 46);
- (n) deeming workers who cannot engage in particular employment without substantial risk of further injury to be incapacitated for that employment (clause 47);
- (o) in respect of the payment of compensation where the worker had an existing incapacity at the time of the injury (clause 48);
- (p) for the payment of compensation despite entitlement to holiday or long service leave pay (clause 49);
- (q) for the adjustment of compensation where there is an entitlement to sick leave pay (clause 50);

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- (r) enabling the commutation of weekly payments to a lump sum where a worker has reached the age of 55 years or in certain other prescribed circumstances, subject to certain limitations (clause 51);
- (s) in respect of the termination of weekly payments on a worker reaching normal retiring age (clause 52);
- (t) for the termination, unless the injury is permanent, of weekly payments on a worker ceasing to reside in Australia (clause 53);
- (u) with respect to requiring an employer to give notice to a worker before terminating weekly payments in certain circumstances (clause 54);
- (v) for the review (and the termination, reduction or increase, as necessary) of weekly payments by a commissioner (at the request of an employer, a worker or the Board) (clause 55);
- (w) enabling a commissioner to require a worker to supply medical certificates as to incapacity for work (clause 56);
- (x) requiring a worker to notify any person paying compensation of the worker's return to work or of any change in employment that affects the worker's earnings (clause 57); and
- (y) enabling a commissioner to order a refund of compensation overpaid as a result of a return to work by a worker or a change in the worker's earnings (clause 58).

DIVISION 3—Compensation for medical, hospital and rehabilitation expenses etc.

This Division (clauses 59–64) continues (subject to the additional benefits mentioned earlier) the substance of the provisions of section 10 of the former Act relating to the amounts of compensation payable in respect of medical or related treatment, hospital treatment, ambulance services, rehabilitation treatment etc. for injured workers.

DIVISION 4—Compensation for non-economic loss

This Division sets out the lump sums payable to an injured worker in respect of the loss of, or permanent loss of the use of, a thing such as a limb or other part of the body. The Division also prescribes an additional amount in respect of pain and suffering arising from the loss.

The Division contains provisions—

- (a) defining terms used in the Division (clause 65);
- (b) stating that a worker who has suffered a loss mentioned in the Table to the Division (“the Table of Maims”) is entitled to compensation equal to such percentage of \$80,000 as is set out opposite the loss in that Table. If there is more than one injury, the total compensation cannot exceed \$80,000 (clause 66);

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- (c) stating that an amount not exceeding \$40,000 is payable by way of compensation for pain and suffering resulting from a loss, except where the loss is a loss in respect of which less than 10 per cent of the maximum amount under proposed section 66 is payable. The compensation payable is to be reasonably proportionate to the degree and duration of the pain and suffering (clause 67);
- (d) for the determination of compensation payable where the loss is of a proportion of a thing mentioned in the Table of Maims (clause 68);
- (e) enabling the amendment, by regulation, of the Table of Maims (clause 69); and
- (f) relating to ascertaining the percentage of diminution of hearing in boilermaker's deafness and like cases; calculating the compensation payable in respect of further losses resulting from an earlier injury; the reference of certain losses to medical panels for determination of specified matters; and reimbursement of costs of medical certificates etc. (clauses 70-73).

DIVISION 5—Compensation for property damage

This Division (clauses 74-78) continues the substance of the provisions of sections 10A and 10B of the former Act relating to compensation payable in respect of damage to artificial limbs, clothing etc., resulting from a work-related accident.

DIVISION 6—Indexation of amounts of benefits

This Division (clauses 79-82) provides for the indexation of the maximum amounts of compensation payable under the proposed Act. Provision is made for the adjustment of the amounts on 1 April and 1 October in each year in accordance with movements in the award rates of pay index.

DIVISION 7—Payment of benefits

This Division (clauses 83-87) deals with the manner of payment, and investment by the Board, of compensation under the proposed Act. Provision is also made for the payment of weekly compensation at fortnightly or shorter intervals (clause 84).

PART 4—COMPENSATION—CLAIMS AND PROCEEDINGS

DIVISION 1—Notice of injury and claims for compensation

This Division (clauses 88-94) deals with the giving of notice of injuries etc. and making claims for compensation. Provision has been made for prescribing the form of claim and the documents to accompany the claim (clause 92).

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DIVISION 2—*Review officers*

This Division provides for the employment of review officers under the Public Service Act 1979 (clause 95) and contains provisions—

- (a) stating that they shall exercise their functions in respect of disputes assigned to them under the proposed Act subject to the general control of the Senior Commissioner (clause 96);
- (b) with respect to the assignment to review officers of disputes concerning payment of compensation and the conciliation of disputes (clauses 97 and 98);
- (c) precluding legal representation in a dispute before a review officer unless the parties and the review officer agree to such representation (clause 99); and
- (d) stating that a statement made during proceedings before a review officer is not admissible in proceedings before the Compensation Court or a commissioner unless the person who made the statement agrees (clause 100).

DIVISION 3—*Special provisions with respect to weekly payments of compensation*

This Division deals with the time of commencement of weekly payments, and with disputes as to the payment, or continuation of the payment, of weekly payments.

The Division contains provisions—

- (a) defining terms used in the Division (clause 101);
- (b) requiring weekly payments to commence as soon as practicable (but not later than 31 days) after a claim is made (if liability is disputed, the dispute may be referred to a review officer) (clause 102);
- (c) making it an offence not to commence weekly payments as required (clause 103);
- (d) enabling a review officer to direct payment of weekly payments if, after failing to reach agreement by conciliation, the review officer is satisfied that there is no genuine dispute (clause 104);
- (e) with respect to the effect etc., of directions given by a review officer (clause 105); and
- (f) making it an offence to fail to comply with a direction by a review officer (clause 106).

DIVISION 4—*Proceedings before commissioners and the Compensation Court*

This Division (clauses 107–126) deals with proceedings before the commissioners and the Compensation Court. Commissioners are given jurisdiction in all matters but provision is made for the referral of matters to the Court. Existing rights of appeal to the Court are retained. The provisions relating to the procedure and decisions of the commissioners are similar to those contained in the Compensation Court Act 1984 in relation to the Court.

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DIVISION 5—*Medical examinations and disputes*

This Division (clauses 127–137) deals with the appointment of medical referees and medical panels, the examination of injured workers by medical practitioners, the referral of matters to medical referees or medical panels and the admission of medical certificates and reports in proceedings for compensation. Except for the power of the Board to refer injured workers for examination, this Division does not make any significant changes to the provisions of the former Act.

The Compensation Court, a commissioner, a review officer or the State Compensation Board may at any time or from time to time require a worker claiming compensation or in receipt of weekly payments to submit himself or herself for examination by a medical referee or medical panel (clause 130).

DIVISION 6—*Uninsured Liability and Indemnity Scheme*

This Division (clauses 138–148) continues the Uninsured Liability and Indemnity Scheme. Under the Scheme, workers may be paid compensation if their employers are not insured or cannot be identified.

PART 5—COMMON LAW REMEDIES

This Part (in clause 149) abolishes common law actions against employers, fellow workers etc., in respect of injuries for which compensation is payable under the proposed Act by employers.

The Part (in clauses 150 and 151) continues the substance (with necessary adjustments because of the operation of proposed section 149) of the provisions of sections 64, 64A and 65 of the former Act relating to remedies against an employer and a third person, where both are liable, and the abolition of the doctrine of common employment.

PART 6—REHABILITATION OF INJURED WORKERS

This Part deals with the rehabilitation of injured workers and contains provisions—

- (a) for the establishment by employers of rehabilitation programmes (clause 152);
- (b) for the institution and administration by the State Compensation Board of vocational re-education and rehabilitation schemes (clause 153); and
- (c) for the appointment and duties of rehabilitation counsellors (clause 154).

PART 7—INSURANCE

DIVISION 1—*Insurance policies*

This Division requires employers (other than self-insurers) to take out policies of insurance for their liability under the proposed Act (clause 155) and makes certain provisions in relation to that insurance.

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The Division includes provisions—

- (a) for the recovery of double premiums from employers not obtaining insurance (clause 156);
- (b) making it an offence for a licensed insurer to refuse insurance (clause 157);
- (c) continuing the substance of provisions of section 18 of the former Act relating to the insurance of trainees under the Australian Traineeship System, and the provisions which are to be contained in policies of insurance generally (clauses 158 and 159);
- (d) requiring employers (with certain exceptions) to pay to insurers the first \$500 of any claim under a policy (clause 160); and
- (e) continuing the substance of provisions of sections 18A and 49A of the former Act (and of certain regulations under that Act) relating to the inspection of policies, the awarding of compensation where an employer has died (or, being a company, has ceased to exist), the keeping by insurers of records of policies, and offences in respect of policies (clauses 161–164).

DIVISION 2—*Insurance premiums*

This Division (clauses 165–175) continues the substance of provisions of the former Act relating to the calculation and payment of insurance premiums. The Insurance Premiums Committee is retained with authority to make insurance premiums orders setting rates of premiums for policies of insurance.

DIVISION 3—*Licensing of insurers*

This Division (clause 176) provides for the cancellation of all licences of existing insurers (except specialised insurers, as defined, and the G.I.O.) as from the date the Division commences.

The Division also contains provisions relating to applications for new licences and licensing generally (clauses 177–192).

This Division provides—

- (a) for the cancellation of policies following their assignment to other insurers (clause 185);
- (b) limiting arrangements by Commonwealth insurers under which they incur liabilities of licensed insurers (clause 187);
- (c) with respect to re-insurance arrangements (clause 188); and
- (d) enabling the Supreme Court to deal with insurers or former insurers unable to meet their liabilities (clause 191).

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DIVISION 4—*Statutory funds of licensed insurers*

This Division (clauses 193–209) provides that new licensed insurers will operate a system of statutory funds similar to life insurance companies. Provision for premium adjustment is made to ensure the adequacy of the statutory funds to meet future claims.

DIVISION 5—*Self-insurers*

This Division (clauses 210–216) continues the substance of provisions of the former Act relating to employers undertaking their own insurance (and becoming self-insurers for the purposes of the Act). Provision is made for the making of applications to, and the determination of applications by, the Board.

DIVISION 6—*Insurers' Contribution Fund*

This Division (clauses 217–224) continues the Insurers' Contribution Fund.

DIVISION 7—*Insurers' Guarantee Fund*

This Division (clauses 225–239) continues the Insurers' Guarantee Fund to meet the liabilities of any insurer that may become insolvent.

PART 8—WORKERS COMPENSATION COMMISSIONERS

This Part deals with the appointment of workers compensation commissioners and contains provisions—

- (a) specifying the qualifications of commissioners and providing that, except as expressly provided, they are not subject to the control of the Compensation Court (clause 240);
- (b) for the appointment of a Senior Commissioner (clause 241);
- (c) with respect to the sittings and arrangement of business of commissioners (clauses 242 and 243);
- (d) for the delegation of the Senior Commissioner's functions (clause 244);
- (e) for the employment of staff (clause 245);
- (f) enabling commissioners to have access to Compensation Court documents and Judges of the Court to have a similar power in respect of commissioners' documents (clause 246); and
- (g) with respect to protection from personal liability in the exercise of the commissioners' functions (clause 247).

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PART 9—STATE COMPENSATION BOARD

DIVISION 1—*Constitution of Board*

This Division (clauses 248–253) continues the substance of provisions of sections 31 and 33–35 of the former Act relating to the constitution etc. of the State Compensation Board.

DIVISION 2—*Functions of Board*

This Division (clauses 254–257) continues the substance of provisions of the former Act relating to the functions of the Board.

The Division also includes provisions—

- (a) requiring the Board, from information supplied to it and from its own inquiries, to monitor entitlements to, and payments of, compensation (clause 256); and
- (b) giving the Board a right to be heard in any proceedings before the Compensation Court or a commissioner under the proposed Act (clause 257).

DIVISION 3—*State Compensation Board Fund*

This Division (clauses 258–261) establishes a State Compensation Board Fund on the same lines as the fund established under section 41 of the former Act for the purposes of that Act. The Division continues the requirement for insurers to make contributions to the Fund from receipts of premiums.

DIVISION 4—*Miscellaneous*

This Division (clauses 262–268) continues in relation to the Board the substance of certain miscellaneous provisions applicable to the Board as established under the former Act.

PART 10—MISCELLANEOUS

This Part (clauses 269–280) contains the miscellaneous provisions.

The Part also contains provisions—

- (a) giving effect to a Schedule of Acts to be repealed (clause 281); and
- (b) giving effect to a Schedule of savings, transitional and other provisions (clause 282).

SCHEDULES

Schedule 1 sets out the circumstances in which certain persons are deemed to be workers for the purposes of the proposed Act (continuing, in substance, certain provisions of section 6 of the former Act).

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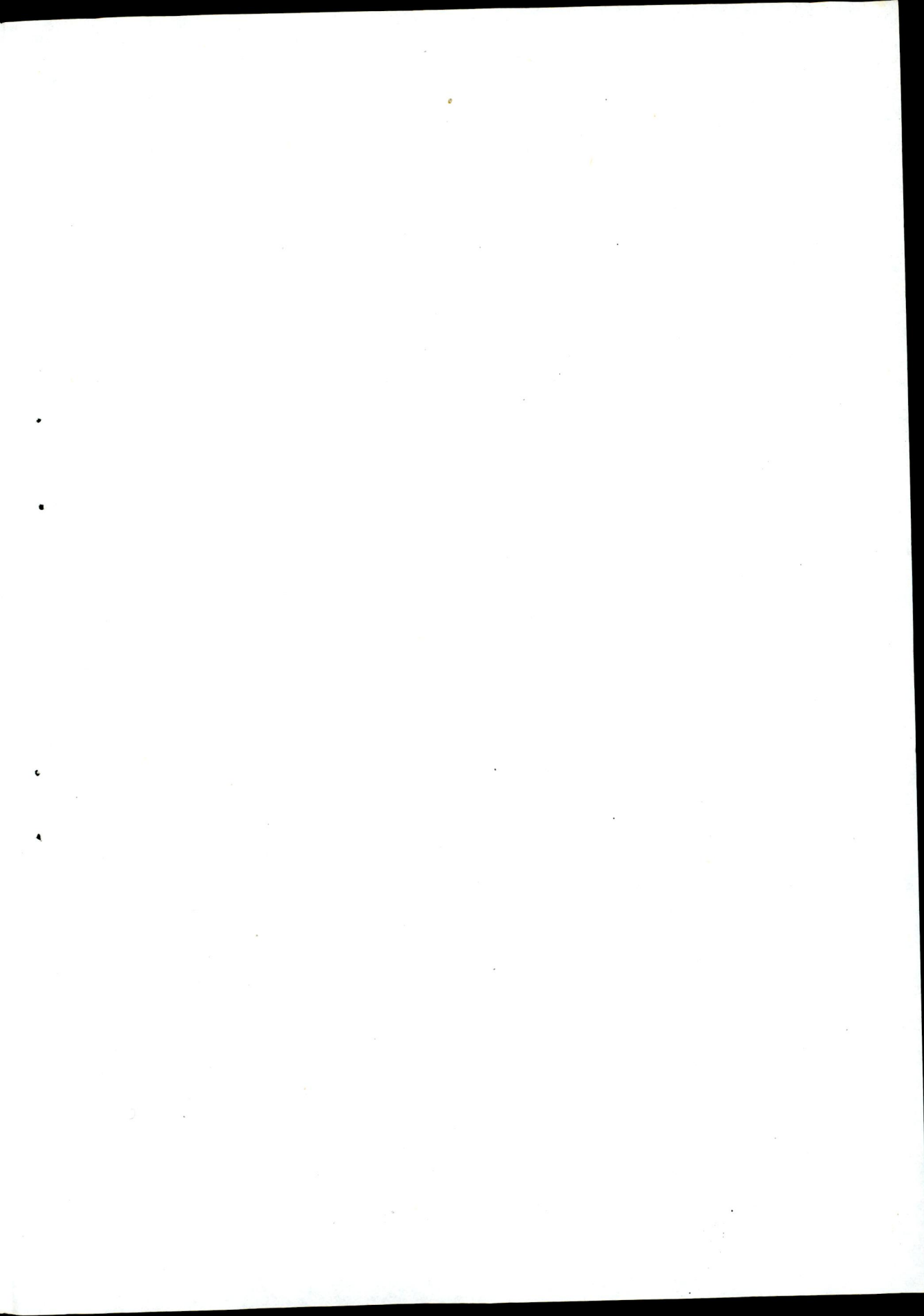
Schedule 2 contains the provisions relating to the remuneration, term of office etc., of commissioners.

Schedule 3 contains the provisions relating to the members of the State Compensation Board.

Schedule 4 contains the provisions relating to the procedure of the State Compensation Board.

Schedule 5 specifies the Acts or parts of Acts to be repealed by the proposed Act.

Schedule 6 contains savings, transitional and other provisions. Generally the effect of the provisions is that the proposed reforms will not affect compensation or damages for injuries received before the commencement of the reforms. The Schedule also includes provisions to maintain at existing rates the weekly compensation payments for injured coal miners. The Schedule authorises the making of savings and transitional regulations.



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WORKERS COMPENSATION BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to provide for the compensation and rehabilitation of workers in respect of work related injuries; to repeal the Workers' Compensation Act 1926 and certain other Acts; and for other purposes.

See also Coal Mines Regulation (Workers Compensation) Amendment Bill 1987; Compensation Court (Amendment) Bill 1987; Construction Safety (Workers Compensation) Amendment Bill 1987; Dangerous Goods (Workers Compensation) Amendment Bill 1987; Defamation (Workers Compensation) Amendment Bill 1987; Factories, Shops and Industries (Workers Compensation) Amendment Bill 1987; Industrial Arbitration (Workers Compensation) Amendment Bill 1987; Mines Inspection (Workers Compensation) Amendment Bill 1987; Miscellaneous Acts (Workers Compensation) Amendment Bill 1987; Occupational Health and Safety (Workers Compensation) Amendment Bill 1987; Police Regulation (Superannuation) (Workers Compensation) Amendment Bill 1987; Public Health (Workers Compensation) Amendment Bill 1987; Workers Compensation (Bush Fire, Emergency and Rescue Services) Bill 1987; Workers' Compensation (Dust Diseases) Amendment Bill 1987.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the "Workers Compensation Act 1987".

Commencement

- 10 2. (1) Sections 1 and 2 and Parts 19 and 20 of Schedule 6 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

- 15 **Interpretation** (cf. former s. 6 (1), (2), (13))

3. (1) In this Act—

"Board" or "State Compensation Board" means the State Compensation Board constituted under this Act;

20 "commissioner" means a workers compensation commissioner appointed under Part 8 and, in relation to any proceedings or other matter, means the commissioner to whom the hearing of the proceedings or the dealing with the matter is for the time being allocated under this Act;

"compensation" includes any monetary benefit under this Act;

25 "Compensation Court" means the Compensation Court of New South Wales constituted under the Compensation Court Act 1984;

"Contribution Fund" means the Insurers' Contribution Fund established under section 218;

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

- 5 (a) a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker;
- (b) a divorced spouse of the worker so dependent; and
- 10 (c) a person so dependent who, although not legally married to the worker, lived with the worker as the worker’s husband or wife on a permanent and genuine domestic basis;

“employer” includes—

- (a) any body of persons, corporate or unincorporate;
- (b) the legal personal representative of a deceased employer;
- 15 (c) a Government employer; and
- (d) a former employer;

“financial year” means a year commencing 1 July;

“former Act” means the Workers’ Compensation Act 1926;

20 “former licensed insurer” means a person (not being a licensed insurer) who—

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

25 “Government employer” means the Crown or any department, person or body exercising executive or administrative functions on behalf of the Government of the State, and includes—

- (a) a college within the meaning of the Colleges of Advanced Education Act 1975;
- 30 (b) an area health service constituted under the Area Health Services Act 1986;
- (c) a hospital, separate institution or associated organisation included in the Second, Third or Fourth Schedule to the Public Hospitals Act 1929; and

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- (d) an employer prescribed by the regulations;
- “Government Insurance Office” means the Government Insurance Office of New South Wales;
- 5 “Government worker” means a worker whose employer is a Government employer;
- “Guarantee Fund” means the Insurers’ Guarantee Fund established under section 227;
- “incapacity” includes a disfigurement that is sufficient to affect the earning capacity of a worker or a worker’s opportunities for employment;
- 10 “injury” is defined by section 4;
- “insurance” includes indemnity;
- “Insurance Premiums Committee” means the Insurance Premiums Committee constituted under section 165;
- “insurance premiums order” means an order in force under section 168;
- 15 “licensed insurer” means an insurer who is the holder of a licence granted under Division 3 of Part 7 and in force;
- “medical panel” means a medical panel constituted under section 128;
- “medical referee” means a medical referee appointed under section 127;
- 20 “member of a family” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister;
- “policy of insurance” means a policy of insurance which an employer obtains under section 155 or under section 18 (1) of the former Act;
- 25 “Premiums Adjustment Fund” means the Premiums Adjustment Fund established under section 203;
- “records” includes books, accounts, minutes, registers, deeds, documents and any other sources of information compiled, recorded or stored in written form, on microfilm, by electronic process or in any other manner;
- 30 “regulations” means regulations made under this Act;
- “related corporation” has the same meaning it has in the Companies (New South Wales) Code;
- “review officer” means a review officer appointed under section 95;

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“self-insurer” means an employer who is the holder of a licence granted under Division 5 of Part 7 and in force;

“Senior Commissioner” means the Senior Workers Compensation Commissioner appointed under Part 8;

5 “specialised insurer” means an insurer or proposed insurer—

(a) whose business is, or is intended to be, specialised insurance for a particular industry or for employers of a particular class or particular classes; and

10 (b) who is declared by the regulations to be a specialised insurer for the purposes of this Act;

“State Compensation Board Fund” means the State Compensation Board Fund established under section 259;

“Uninsured Liability and Indemnity Scheme” means the scheme established under section 139;

15 “weekly payment”, in relation to compensation, means a weekly payment of compensation under Division 2 of Part 3 in respect of a period of total or partial incapacity for work;

20 “worker” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, or is oral or in writing, but does not include—

25 (a) a member of the police force (not being a member of the police force who has made the election referred to in section 1B of the Police Regulation (Superannuation) Act 1906);

(b) a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer’s trade or business;

30 (c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer’s ordinary working hours, so far as the employment on those duties is concerned, if the officer’s remuneration from the association does not exceed \$700 per year; or

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(d) except as provided by Schedule 1, a registered player of a sporting organisation (within the meaning of the Sporting Injuries Insurance Act 1978) while—

5 (i) participating in an authorised activity (within the meaning of that Act) of that organisation;

(ii) engaged in training or preparing himself or herself with a view to so participating; or

10 (iii) engaged on any daily or periodic journey or other journey in connection with the registered player so participating or the registered player being so engaged,

if, under the contract pursuant to which the registered player does any of the things referred to in subparagraph (i), (ii) or (iii), the registered player is not entitled to remuneration other than for the doing of those things.

15 (2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

20 (3) The exercise of the functions of a public or local authority shall, for the purposes of this Act, be treated as its trade or business.

(4) The operations of a racing or recreation club shall, for the purposes of this Act, be treated as its trade or business.

25 **Definition of “injury”** (cf. former s. 6 (1))

4. In this Act—

“injury”—

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

30 (b) includes—

(i) a disease which is contracted by a worker in the course of employment and to which the employment was a contributing factor; and

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- (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration; and
- 5 (c) does not include (except in the case of a worker employed in or about a mine to which the Coal Mines Regulation Act 1982 applies) a dust disease, as defined by the Workers' Compensation (Dust Diseases) Act 1942, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined.

10 **Deemed employment of workers** (cf. former s. 6 (3A)–(14E))

5. Schedule 1 has effect.

Act binds Crown

6. (1) This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, in all its other
15 capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Certain Acts not affected (cf. former s. 5)

7. Nothing in this Act affects the operation of the following Acts:

- 20 Workmen's Compensation (Broken Hill) Act 1920;
Workers' Compensation (Dust Diseases) Act 1942;
Workers' Compensation (Brucellosis) Act 1979;
Workers Compensation (Bush Fire, Emergency and Rescue Services) Act
1987.

25 **Workers Compensation Review Committee**

8. (1) The Minister shall, as soon as practicable after the commencement of this section, appoint a Workers Compensation Review Committee.

- (2) The Committee shall review the operation of this Act and, from time
30 to time as the Minister may direct, report to the Minister on the efficiency and effectiveness of the workers compensation arrangements under this Act.

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(3) The persons appointed to the Committee by the Minister shall include—

- (a) a person nominated by the Minister as chairperson of the Committee;
- 5 (b) a person nominated by the Labor Council of New South Wales;
- (c) a representative of employers nominated by such organisations representing employers as the Minister may determine;
- (d) the Chief Executive Officer of the Board; and
- 10 (e) the Co-ordinator of Occupational Health, Safety and Rehabilitation Services, Department of Industrial Relations and Employment.

(4) The Committee may, with the approval of the Minister, establish subcommittees in respect of different industries or otherwise for the purpose of assisting it to exercise its functions.

15 (5) It does not matter that all or any of the members of a subcommittee are not members of the Committee.

(6) A member of the Committee may, with the approval of the Minister, appoint a person as deputy member to act for the member during the member's absence from a meeting of the Committee or a subcommittee.

20 (7) The procedure for the calling of meetings of the Committee or a subcommittee and for the conduct of business at those meetings shall, subject to any direction of the Minister, be as determined by the Committee or subcommittee.

25 (8) A member of the Committee or a subcommittee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

PART 2

COMPENSATION—LIABILITY

Liability of employers for injuries received by workers—general (cf. former s. 7 (1) (a))

30 9. (1) A worker who has received an injury (and, in the case of the death of the worker, his or her dependants) shall receive compensation from the worker's employer in accordance with this Act.

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(2) Compensation is payable whether the injury was received by the worker at or away from the worker's place of employment.

Journey claims (cf. former s. 7 (1) (b)–(d), (f), (g))

5 **10. (1)** A personal injury received by a worker on any journey to which this section applies is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

(2) Subsection (1) does not apply if—

- (a) the injury was received during or after any interruption of, or deviation from, any such journey; and
- 10 (b) the interruption or deviation was made for a reason unconnected with the worker's employment or the purpose of the journey,

unless, in the circumstances of the case, the risk of injury was not materially increased because of the interruption or deviation.

(3) The journeys to which this section applies are as follows:

- 15 (a) the daily or other periodic journeys between the worker's place of abode and place of employment;
- (b) the daily or other periodic journeys between the worker's place of abode, or place of employment, and any educational institution which the worker is required by the terms of the worker's
- 20 employment, or is expected by the worker's employer, to attend;
- (c) a journey between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of obtaining a medical certificate or receiving medical, surgical or hospital advice, attention or treatment or of receiving
- 25 payment of compensation in connection with any injury for which the worker is entitled to receive compensation;
- (d) a journey between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of having, undergoing or obtaining any consultation, examination or prescription referred to in section 74 (3);
- 30 (e) a journey between any camp or place—
 - (i) where the worker is required by the terms of the worker's employment, or is expected by the worker's employer, to reside temporarily; or

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(ii) where it is reasonably necessary or convenient that the worker reside temporarily for any purpose of the worker's employment, and the worker's place of abode when not so residing;

5 (f) a journey between the worker's place of abode and a place of pick-up referred to in clause 14 of Schedule 1;

(g) a journey between the worker's place of abode and place of employment, where the journey is made for the purpose of receiving payment of any wages or other money—

10 (i) due to the worker under the terms of his or her employment; and

15 (ii) which, pursuant to the terms of his or her employment or any agreement or arrangement between the worker and his or her employer, are available or are reasonably expected by the worker to be available for collection by the worker at the place of employment.

(4) For the purposes of this section, a journey from a worker's place of abode commences at, and a journey to a worker's place of abode ends at—

(a) if the place of abode is a flat or home unit in a residential flat building or home unit building—

20 (i) that exit of the flat or home unit by which the worker left on the journey from the worker's place of abode; or

25 (ii) that entrance of the flat or home unit by which the worker entered or would but for injury have or may have entered the worker's place of abode at the end of the journey to the place of abode,

as the case may be; and

(b) in every other case where the worker's place of abode is or is within a building or structure—

30 (i) that exit of the building or structure by which the worker departed on the journey from the worker's place of abode; or

(ii) that entrance of the building or structure by which the worker entered or would but for injury have or may have entered the worker's place of abode at the end of the journey to the place of abode,

35 as the case may be.

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(5) For the purposes of this section, if a worker is journeying from the worker's place of employment with one employer to the worker's place of employment with another employer, the worker shall be deemed to be journeying from his or her place of abode to his or her place of employment
5 with that other employer.

(6) In this section—

“educational institution” means—

- (a) a trade, technical or other training school; or
- 10 (b) a university or other college or school providing secondary or tertiary education;

“night”, in the case of a worker employed on shift work, night work or overtime, has a meaning appropriate to the circumstances of the worker's employment;

“place of abode” includes—

- 15 (a) the place where the worker has spent the night preceding a journey and from which the worker is journeying; and
- (b) the place to which the worker is journeying with the intention of there spending the night following a journey.

Recess claims (cf. former s. 7 (1) (e))

20 **11.** If a worker on any day on which the worker has attended at the worker's place of employment pursuant to the worker's contract of service or apprenticeship—

- (a) is temporarily absent from that place on that day during any ordinary recess or authorised absence;
- 25 (b) does not during that absence voluntarily subject himself or herself to any abnormal risk of injury; and
- (c) receives a personal injury during that absence,

the injury is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

*Workers Compensation 1987***Claims by trade union representatives (cf. former s. 7 (1) (h))****12. If—**

- 5 (a) a worker is an accredited representative of a trade union of employees, or other organisation of employees, of which any person employed by the worker's employer is a member;
- (b) with the consent of or at the request of that employer or pursuant to an industrial award or agreement, the worker is carrying out his or her duties as such a representative (whether at the worker's place of employment or elsewhere) or is on an associated journey; and
- 10 (c) the worker receives a personal injury while carrying out those duties or on that journey,

the injury is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

Injuries received outside New South Wales (cf. former s. 7 (1A), (1B))**15 13. (1) If—**

- (a) an employer has a place of employment in New South Wales, or is for the time being present in New South Wales, and there employs a worker; and
- 20 (b) any such worker while outside New South Wales receives an injury under circumstances which, had the injury been received in New South Wales, would entitle the worker to compensation in accordance with this Act,

the injury is an injury to which this Act applies, and compensation is payable accordingly.

25 (2) Compensation is not payable under this section to the extent to which in respect of any such injury the worker has (and in the case of the death of the worker, his or her dependants have)—

- 30 (a) received workers compensation under the laws of any country, any State (other than New South Wales), the Commonwealth or any Territory of the Commonwealth; or
- (b) obtained judgment against the worker's employer independently of this Act.

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(3) If the worker receives compensation under this section in respect of any such injury and subsequently in respect of the injury receives workers compensation under the laws of any country, any State (other than New South Wales), the Commonwealth or any Territory of the Commonwealth or obtains judgment against the worker's employer independently of this Act, the employer is entitled to recover from the worker an amount equal to the lesser of the following amounts:

- (a) the amount of compensation paid by the employer under this section;
- 10 (b) the amount of workers compensation received by the worker or of the judgment obtained by the worker otherwise than under this Act.

Conduct of worker etc. (cf. former s. 7 (2), (3))

14. (1) Compensation is payable in respect of any injury resulting in the death or serious and permanent disablement of a worker, notwithstanding that the worker was, at the time when the injury was received—

- (a) acting in contravention of any statutory or other regulation applicable to the worker's employment, or of any orders given by or on behalf of the employer; or
 - (b) acting without instructions from the worker's employer,
- 20 if the act was done by the worker for the purposes of and in connection with the employer's trade or business.

(2) If it is proved that an injury to a worker is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that injury, unless the injury results in death or serious and permanent disablement.

(3) Compensation is not payable in respect of any injury to or death of a worker caused by an intentional self-inflicted injury.

Diseases of gradual process—employer liable, date of injury etc. (cf. former ss. 7 (4), (4C), (5), 16 (1A))

30 15. (1) If an injury is a disease which is of such a nature as to be contracted by a gradual process—

- (a) the injury shall, for the purposes of this Act, be deemed to have happened—
 - (i) at the time of the worker's death or incapacity; or

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(ii) if death or incapacity has not resulted from the injury—at the time the worker makes a claim for compensation with respect to the injury; and

5 (b) compensation is payable by the employer in whose employment the worker is or who last employed the worker.

(2) Any employers who, during the 12 months preceding a worker's death or incapacity or the date of the claim (as the case requires), employed the worker in any employment to the nature of which the disease was due shall be liable to make to the employer by whom compensation is payable such 10 contributions as, in default of agreement, may be determined by a commissioner.

(3) Total or partial loss of sight which is of gradual onset shall for the purposes of subsection (1) be deemed to be a disease and to be of such nature as to be contracted by gradual process.

15 (4) In this section, a reference to an injury includes a reference to a loss or impairment for which compensation is payable under Division 4 of Part 3.

(5) This section does not apply to an injury to which section 17 applies.

20 **Aggravation etc. of diseases—employer liable, date of injury etc.** (cf. former ss. 7 (4A), (5), 16 (1A))

16. (1) If an injury consists in the aggravation, acceleration, exacerbation or deterioration of a disease—

(a) the injury shall, for the purposes of this Act, be deemed to have happened—

25 (i) at the time of the worker's death or incapacity; or

(ii) if death or incapacity has not resulted from the injury—at the time the worker makes a claim for compensation with respect to the injury; and

30 (b) if the worker's employment with 2 or more employers has been a contributing factor to the aggravation, acceleration, exacerbation or deterioration— compensation is payable by the employer who last employed the worker in that employment.

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(2) Any employers who, during the 12 months preceding a worker's death or incapacity or the date of the claim (as the case requires), employed the worker in any such employment shall be liable to make to the employer by whom compensation is payable such contributions as, in default of agreement, may be determined by a commissioner.

(3) In this section, a reference to an injury includes a reference to a loss or impairment for which compensation is payable under Division 4 of Part 3.

(4) This section does not apply to an injury to which section 17 applies.

10 Loss of hearing—special provisions (cf. former s. 7 (4B), (4BB))

17. (1) If an injury is a loss, or further loss, of hearing which is of such a nature as to be caused by a gradual process, the following provisions have effect:

- 15 (a) for the purposes of this Act, the injury shall be deemed to have happened—
- (i) where the worker was, at the time when he or she gave notice of the injury, employed in an employment to the nature of which the injury was due—at the time when the notice was given; or
 - 20 (ii) where the worker was not so employed at the time when he or she gave notice of the injury—on the last day on which the worker was employed in an employment to the nature of which the injury was due before he or she gave the notice;
- 25 (b) the provisions of section 88 (1) shall apply to or in respect of the injury as if the words “as soon as practicable after the injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury” were omitted therefrom;
- (c) compensation is payable by—
- 30 (i) where the worker was employed by an employer in an employment to the nature of which the injury was due at the time he or she gave notice of the injury—that employer; or
 - (ii) where the worker was not so employed—the last employer by whom the worker was employed in an employment to the nature of which the injury was due before he or she gave the notice;
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- 5 (d) an employer (not being an employer referred to in paragraph (c) (i) or (ii)) by whom the worker was employed in an employment to the nature of which the injury was due during the relevant period (as defined in paragraph (e)) shall be liable to make to an employer referred to in paragraph (c) (i) or (ii) a contribution which bears to the amount of compensation payable the same proportion as the period of that employment during the relevant period bears to the total period of employment of that worker in an employment to the nature of which the injury was due during the relevant period;
- 10 (e) in paragraph (d), the “relevant period” means—
- (i) where the worker has not had a prior injury (being a loss of hearing or a further loss of hearing)—in relation to an injury, the period of 5 years immediately preceding the date when a notice is given in respect of the injury;
- 15 (ii) where the worker has had one or more prior injuries (being losses of hearing or further losses of hearing) which or all of which, as the case may be, are deemed under this Act to have happened at a time more than 5 years before the date when a notice is given in respect of a further injury—in relation to the further injury, the period of 5 years immediately preceding the date when that notice was given; and
- 20 (iii) where the worker has had not more than one, or more than one, prior injury (being a loss of hearing or a further loss of hearing) which or the last of which, as the case may be, is deemed under this Act to have happened at a time during the 5 years immediately preceding the date when a notice is given in respect of a further injury—in relation to the further injury, the period between the time when that prior injury is deemed to have happened and the date when that notice was given;
- 25 (f) where a commissioner is satisfied that a contribution required to be made under paragraph (d) cannot be recovered by an employer referred to in paragraph (c) (i) or (ii), the commissioner may direct the Board to pay to that employer out of the Uninsured Liability and Indemnity Scheme such amount, not exceeding the amount of the contribution, as the commissioner considers appropriate and the Board shall pay out that amount accordingly;
- 30 (g) where there is a dispute as to the amount of a contribution required to be made under paragraph (d), that dispute shall be deemed to be a matter or question arising under this Act.
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(2) Without limiting the generality of subsection (1), the condition known as “boilermaker’s deafness” and any deafness of a similar origin shall, for the purposes of that subsection, be deemed to be losses of hearing which are of such a nature as to be caused by a gradual process.

5 Special insurance provisions relating to occupational diseases etc. (cf. former s. 18 (6A)–(6C))

18. (1) Where an employer has become liable under this Act to pay compensation to a worker in respect of an injury referred to in section 15 or 16, then, for the purpose of determining whether any insurer or which
10 of 2 or more insurers is liable under a policy of insurance in respect of that compensation, the liability of the employer shall, despite those sections, be deemed to have arisen immediately before the worker ceased to be employed by the employer.

(2) Where—

15 (a) an employer (in this subsection referred to as “the contributor”) has become liable under this Act to make a contribution to another employer towards compensation payable by that other employer in respect of an injury to a worker (being an injury referred to in section 15, 16 or 17); and

20 (b) on the last day of the period in respect of which the contributor was liable to make the contribution, the contributor was maintaining in force a policy of insurance,

the insurer under that policy is—

25 (c) directly liable, with the contributor, to pay the contribution to the employer who is liable to pay the compensation; and

(d) liable to indemnify the contributor to the extent that the contributor pays the contribution.

Diseases deemed work related etc. (cf. former s. 7 (4D), (4E))

30 19. (1) If a worker, during a time when the worker is engaged in employment of a kind prescribed by the regulations as an employment to which this subsection applies, contracts a disease prescribed by the regulations as a disease that is related to employment of that kind, then for the purposes of this Act, unless the contrary is established—

35 (a) the disease shall be deemed to have been contracted by the worker in the course of the employment in which the worker was so engaged; and

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(b) that employment shall be deemed to have been a contributing factor to the disease.

(2) For the purposes of this Act, the disease brucellosis, Q fever or leptospirosis shall be deemed to have been contracted by a worker if the
5 result of any medical test—

(a) which complies with such requirements as are prescribed by the regulations in relation to that disease; and

(b) which was carried out for the purpose of determining whether that worker has contracted that disease,

10 is a result prescribed by the regulations in respect of that disease.

Principal liable to pay compensation to contractors in certain cases (cf. former s. 6 (3))

20. (1) If any person (in this section referred to as “the principal”) in the course of or for the purposes of the person’s trade or business, contracts
15 with any other person (in this section referred to as “the contractor”) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal is, if the contractor does not have a policy of insurance or is not a self-insurer at the time a worker employed in the execution of the work receives an injury, liable to pay any
20 compensation under this Act which the principal would have been liable to pay if that worker had been immediately employed by the principal.

(2) If compensation is claimed from or proceedings are taken against the principal in respect of any such injury, then, in the application of this Act, reference to the principal shall be substituted for reference to the employer,
25 except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed.

(3) Notwithstanding subsection (1), where the contract relates to threshing, chaff-cutting, ploughing or other agricultural work, and the
30 contractor provides and uses machinery driven by mechanical power for the purposes of that work, the contractor (and no other person) shall be liable under this Act to pay compensation to any worker employed by the contractor on that work.

(4) If the principal is liable to pay compensation under this section, the
35 principal is entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by a commissioner.

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(5) Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal.

5 (6) This section does not apply in any case where the injury occurred elsewhere than on, in or about premises on which the principal has undertaken to execute the work or which otherwise are under the principal's control or management, but nothing in the foregoing affects the liability of the contractor under any other provision of this Act.

(7) This section does not render the owner of a farm liable to pay 10 compensation as principal in respect of any worker employed by a share farmer.

(8) If—

15 (a) a principal under a contract referred to in subsection (1) is, at the time of an injury to a worker employed in the execution of the work under the contract, insured under a policy of insurance in respect of workers other than the workers employed in the execution of the work under the contract;

(b) compensation payable by the principal under subsection (1) in respect of the injury is paid by the principal's insurer; and

20 (c) the principal has not, in respect of the policy, paid to the insurer a premium in respect of the principal's liability under subsection (1), the principal is liable to pay to the insurer, in addition to the premium payable or paid in respect of the policy, a premium calculated having regard to—

25 (d) the insurance premiums order in force as at the commencement of the policy; and

(e) the wages paid to the workers employed in the execution of the work under the contract during the term of the policy.

30 (9) A principal under a contract referred to in subsection (1) is not, under subsection (8), liable to pay in respect of a policy of insurance more than one additional premium in respect of the workers employed in the execution of the work under the contract.

35 (10) In the event of a disagreement between a principal and insurer as to whether or not an additional premium is payable under subsection (8) or as to the amount of an additional premium payable under that subsection, the Board may, on the request of either party, determine the matter.

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(11) A determination by the Board under subsection (10) shall have effect according to its tenor and shall not be subject to review or appeal.

Sailors (cf. former s. 46)

21. (1) This Act applies to and in respect of an injury to a worker who
5 is a sailor employed on—

- (a) a New South Wales ship; or
- (b) a ship whose first port of departure and whose destination are in New South Wales.

(2) The application of this Act to and in respect of an injury to a sailor,
10 as provided by this section, shall be subject to the following modifications:

- (a) the notice of injury and the claim for compensation may (except where the person injured is a master) be served on the master of the ship as if the master were the employer, but if the injury happened or the incapacity commenced on board the ship it shall not be
15 necessary to give any notice of the injury;
- (b) in the case of the death of the sailor, the claim for compensation may be made within 6 months after the news of the death has been received by the claimant;
- (c) in the case of the death of the sailor, leaving no dependants, no
20 compensation shall be payable if the owner of the ship is, under any law in force in this State, liable to pay the expenses of burial;
- (d) the weekly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force in this State, liable to defray the expenses of maintenance of the injured
25 sailor;
- (e) any sum payable by way of compensation shall be paid in full despite any limitation of liability in any other law (including any Imperial Act).

(3) In this section—

30 “New South Wales ship” means any ship which is—

- (a) registered in this State;
- (b) owned by a body incorporated in this State or having its principal office or place of business in this State or in the possession of any such body by virtue of a charter;

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- (c) owned by any person or body corporate whose chief office or place of business in respect of the management of the ship is in this State, or in the possession of any such person or body corporate by virtue of a charter; or
- 5 (d) owned by the Crown in right of this State, or in the possession of the Crown in right of this State by virtue of a charter;
- “sailor” includes master, officer, apprentice, pilot and any other person employed or engaged in any capacity on board a ship;
- 10 “ship” includes a vessel of any description used in navigation that is not ordinarily propelled by oars.

Compensation to be apportioned where more than one injury (cf. former s. 7A)

22. (1) If the death or incapacity of a worker results from more than one injury, liability to pay compensation under this Act shall, in default of
15 agreement, be apportioned in such manner as a commissioner determines.

(2) If a liability to make a payment under Division 3 or 4 of Part 3 results from more than one injury to a worker, liability to make the payment shall, in default of agreement, be apportioned in such manner as a commissioner determines.

20 (3) The power under subsection (1) to apportion liability to pay weekly payments of compensation to a worker who is partially incapacitated for work extends to the apportionment of liability for any additional amount that is payable because the worker is compensated under this Act as if totally incapacitated.

25 (4) A person who is liable to pay compensation under this Act is not entitled in any proceedings under this Act to a reduction in that liability by apportionment on account of the existence of any other person who is also liable to pay any part of that compensation unless that other person is a party to the proceedings.

30 **Age or residence not relevant to liability** (cf. former ss. 53D, 72)

23. Compensation under this Act is payable to a person, and proceedings for the recovery of compensation under this Act may be instituted by a person, even though—

- (a) the person is under the age of 18 years; or
- 35 (b) the person resides, or at any time resided, outside New South Wales.

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Illegal employment (cf. former s. 53i)

24. If, in any proceedings for the recovery of compensation under this Act, it appears that the contract of service or apprenticeship under which the injured person was engaged at the time when the injury happened was
5 illegal, the matter may be dealt with as if the injured person had at that time been a worker under a valid contract of service or apprenticeship.

PART 3**COMPENSATION—BENEFITS****DIVISION 1—*Compensation payable on death*****10 Death of worker leaving dependants** (cf. former s. 8 (1))

25. (1) If death results from an injury, and the worker leaves any dependants wholly dependent for support on the worker, the amount of compensation payable by the employer under this Act shall be—

(a) the amount of \$80,000; and

15 (b) in addition, an amount of \$45 per week in respect of—

(i) each dependent child of the worker under the age of 16 years;
and

(ii) each dependent child of the worker being a student over the age of 16 years but under the age of 21 years.

20 (2) Payments in respect of a dependent child under subsection (1) (b) shall continue—

(a) except as provided by paragraph (b)—until the child dies or reaches the age of 16 years, whichever first occurs; or

25 (b) in the case of a dependent child who is a student at the time of the worker's death or after reaching the age of 16 years—until the child dies, reaches the age of 21 years or ceases to be a student, whichever first occurs.

(3) The amount of any weekly payments, or other compensation payable under this Act, shall not be deducted from the amounts referred to in
30 subsection (1) (a) or (b).

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(4) Where by the operation of Division 6 the amount of \$80,000 is adjusted, the compensation payable under subsection (1) (a) is the amount in force at the date of death.

(5) In this section—

- 5 “child of the worker” means a child or stepchild of the worker and includes a person to whom the worker stood in the place of a parent;
- “dependent child of the worker” means a child of the worker who was wholly or partly dependent for support on the worker;
- 10 “student” means a person receiving full-time education at a school, college or university.

Death of worker leaving partial dependants (cf. former s. 8 (2))

26. If death results from an injury and the worker does not leave any dependants wholly dependent upon the worker for support, but leaves dependants in part so dependent, the compensation payable by the employer
15 under this Act shall be—

- (a) if the employer so agrees—the amount that would have been payable under section 25 if those dependants had been wholly dependent on the worker;
- 20 (b) if agreement is reached for the payment of an amount less than the amount provided by paragraph (a) and the amount agreed on is approved by a commissioner as reasonable and proportionate to the injury to those dependants—the amount so approved; or
- 25 (c) in default of agreement as to the amount to be paid or in default of approval by a commissioner for payment of an agreed amount under paragraph (b)—such amount (not exceeding the amount provided by paragraph (a)) as is determined by a commissioner to be reasonable and proportionate to the injury to those dependants.

Death of worker leaving no dependants—funeral expenses (cf. former s. 8 (4))

27. If death results from an injury and the worker leaves no dependants,
30 the compensation payable by the employer under this Act shall be the payment of reasonable funeral expenses not exceeding—

- (a) \$1,425; or
- (b) where some other amount has been prescribed by the regulations—that other amount.

*Workers Compensation 1987***Expenses of transporting body** (cf. former s. 8 (4A))

28. If compensation is payable under this Division and the usual place of residence of the worker was, at the time of the worker's death, in Australia, the employer shall pay additional compensation equal to the
5 reasonable cost of transporting the body of the worker to—

- (a) what would, in the circumstances, be an appropriate place for its preparation for burial or cremation; or
- (b) that usual place of residence,

whichever is the lesser cost.

10 Apportionment of payments between dependants (cf. former s. 59)

29. (1) The compensation payable under this Division to each dependant of a deceased worker may be apportioned by a commissioner or by the Board.

(2) Application for apportionment may be made by or on behalf of a
15 person entitled to the compensation—

- (a) to the Board; or
- (b) to a commissioner (whether or not an application has been made to the Board or the Board has made a decision).

(3) The Board may decline to deal with an application for apportionment
20 and advise the parties to apply to a commissioner.

(4) The Board shall not deal with an application for apportionment of compensation if an application for apportionment of the same compensation is before a commissioner.

(5) A decision by the Board to apportion compensation under this
25 Division is subject to any decision made by a commissioner with respect to the matter.

(6) If there are both total and partial dependants of a deceased worker, the compensation may be apportioned partly to the total and partly to the partial dependants.

30 (7) If a dependant dies—

- (a) before a claim under this Division is made; or
- (b) if a claim has been made, before an agreement or award has been arrived at or made,

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the legal personal representative of the dependant has no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the worker.

- 5 (8) The regulations may make provision for or with respect to the publication of applications for apportionment and any other matter connected with apportionment.

Review of apportionment among dependants (cf. former s. 61)

- 10 30. (1) A commissioner or the Board 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 a commissioner or the Board.

- 15 (3) The Board may apply to a commissioner for any such variation of a previous apportionment made by the Board or by a commissioner.

(4) The Board shall not deal with an application for variation of any previous apportionment if an application for variation of the same previous apportionment is before a commissioner.

(5) The Board shall not vary an apportionment made by a commissioner.

20 **Payment in respect of dependent children (cf. former s. 8 (1A))**

31. (1) Compensation payable under section 25 (1) (b) in respect of a dependent child of a deceased worker shall, unless a commissioner otherwise orders—

25 (a) if the worker left a widow or widower—be paid to the widow or widower; or

30 (b) if the worker leaves no widow or widower or if the worker leaves a widow or widower but the widow or widower dies—be paid to the Board for the benefit of the dependent child or to any person (approved by the Board) having the care or custody of the dependent child.

(2) If a commissioner makes an order under subsection (1), the compensation is payable in accordance with the order.

*Workers Compensation 1987***Payment where no dependants (cf. former s. 57 (4))**

32. If a deceased worker leaves no dependants, compensation payable under this Division shall be paid to the worker's legal personal representative or, if there is no such representative, to the person to whom the payment of the expenses for which the compensation is payable is due.

*DIVISION 2—Weekly compensation by way of income support***Weekly compensation during total or partial incapacity for work (cf. former s. 9 (1))**

33. If total or partial incapacity for work results from an injury, the compensation payable by the employer under this Act to the injured worker shall include a weekly payment during the incapacity.

Definition of "first 26 weeks of incapacity"

34. (1) For the purposes of this Division, the first 26 weeks of incapacity, in relation to a worker, is the period of incapacity for work (whether total or partial, or both) not exceeding 26 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity.

(2) A reference in subsection (1) to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.

Maximum weekly payment

35. The maximum weekly payment of compensation to an injured worker in respect of any period of total or partial incapacity for work shall not in any case exceed \$500.

25 Weekly payment during total incapacity—first 26 weeks (cf. former s. 9 (1) (a))

36. (1) The weekly payment of compensation to an injured worker in respect of any period of total incapacity for work during the first 26 weeks of incapacity shall be the amount of the worker's current weekly wage rate.

30 (2) In this section—

"current weekly wage rate", in relation to a worker, means the worker's current weekly wage rate determined from time to time in accordance with section 42.

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Weekly payment during total incapacity—after first 26 weeks (cf. former s. 9 (1), (4))

37. (1) The weekly payment of compensation to an injured worker in respect of any period of total incapacity for work (not being a period during the first 26 weeks of incapacity) shall be—

(a) 90 per cent of the worker's average weekly earnings, except that—

(i) the payment shall not exceed \$159 per week;

(ii) in the case of a worker who is over 21 years of age at the time of payment—the payment shall not be less than \$126.40 per week; and

(iii) in the case of a worker whose average weekly earnings do not exceed \$114.90 per week—the payment shall be 100 per cent of those earnings or \$103.40, whichever is the lesser amount;

(b) in addition, \$42 per week in respect of—

(i) a dependent wife or dependent husband of the worker; or

(ii) if there is no dependent wife or dependent husband at any time during which weekly payments are payable—any one dependent defacto spouse or other family member of the worker; and

(c) in addition—

(i) in respect of the dependent children of the worker, the following amounts per week:

	<i>No. of dependent children</i>	<i>Additional amount per week</i>
25	1 dependent child	\$30
	2 dependent children	\$67
	3 dependent children	\$111
	4 dependent children	\$156
	5 or more dependent children	\$156 plus \$45 for each child in excess of 4

(ii) if there are no dependent children at any time during which weekly payments are payable—in respect of the dependent brothers and sisters of the worker, the same amounts per week as are payable under subparagraph (i) in respect of dependent children of the worker.

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(2) The total weekly payment under subsection (1) shall not exceed the worker's current weekly wage rate determined from time to time in accordance with section 42.

5 (3) A weekly payment made under this section in respect of a dependent wife, husband, defacto spouse or other family member, child, brother or sister is payable only during the period of dependency.

10 (4) For the purposes of this section, a person is a dependent wife, husband, defacto spouse or other family member, child, brother or sister in relation to a worker if the person is totally or mainly dependent for support on the worker at the date compensation becomes payable to the worker or (whether married to the worker or born before or after that date) becomes so dependent after that date.

(5) A person is not precluded from being totally or mainly dependent for support on a worker merely because—

15 (a) in the case of a child—a payment is made in respect of the child under the Social Security Act 1947 of the Commonwealth; or

(b) in the case of a defacto spouse or other family member—the worker pays wages to the person for the performance of domestic services for the worker.

20 (6) A husband, wife or defacto spouse or other family member of the worker who, at the time of the injury to the worker—

(a) was employed; and

(b) was not totally or mainly dependent for support on the worker merely because of earnings from that employment,

25 shall be regarded as being so dependent at the time of the injury if a commissioner is satisfied that the person left that employment for the purpose of caring for the worker.

(7) In this section—

30 “average weekly earnings”, in relation to a worker, means the average weekly earnings determined in accordance with section 43, during the period of 12 months before the injury or, if the worker has been employed with the employer concerned for less than 12 months, during that lesser period;

35 “brother” or “sister”, in relation to a worker, means a brother or sister of the worker who is—

(a) under the age of 16 years; or

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(b) a student,

but does not include a person in respect of whom a weekly payment is being made under subsection (1) (b) (ii);

“child”, in relation to a worker, means—

- 5 (a) child or stepchild of the worker who is under the age of 16 years;
- (b) a person under the age of 16 years to whom the worker stands in the place of a parent; or
- (c) a student who is a child or stepchild of the worker or is a person to whom the worker stands in the place of a parent;
- 10 “defacto spouse or other family member”, in relation to a worker, means a person who—
- (a) although not legally married to the worker, lives with the worker as the worker’s husband or wife on a permanent and genuine domestic basis;
- 15 (b) is the worker’s father, mother, grandfather, grandmother, step-father, stepmother, grandson, granddaughter, brother, sister, half-brother or half-sister and is over the age of 16 years; or
- (c) is over the age of 21 years and is caring for any child of the worker;
- 20 “student” means a person of or over the age of 16 years but under the age of 21 years who is receiving full-time education at a school, college or university.

Partially incapacitated workers compensated as if totally incapacitated (cf. former s. 11 (2))

25 **38. (1) If—**

- (a) a worker is partially incapacitated for work as a result of an injury; and
- (b) the worker’s employer fails to provide suitable employment for the worker during the partial incapacity for work,

30 the worker shall be compensated in accordance with this section during the partial incapacity for work (but only for a maximum period of 34 weeks).

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(2) The worker shall be compensated as if the worker's incapacity for work were total during the following periods of the worker's partial incapacity for work:

- 5 (a) a period (not exceeding 4 weeks immediately after the employer first failed to provide suitable employment during that partial incapacity) during which the worker is seeking suitable employment;
- (b) a period (not exceeding 26 weeks) during which the worker is receiving approved rehabilitation training;
- 10 (c) a period (not exceeding 4 weeks immediately after the completion of any such training) during which the worker is seeking suitable employment.

(3) If any period during which a worker is being compensated under this section as if totally incapacitated (not being a period referred to in subsection (4)) is after the first 26 weeks of incapacity, compensation is
15 payable at the rate prescribed by this Act for the first 26 weeks of incapacity.

(4) If, after the expiration of the period referred to in subsection (2) (a), the worker has not obtained suitable employment wholly or mainly because of the injury, the worker shall be compensated as if the worker's incapacity for work were total during a period not exceeding 30 weeks of the worker's
20 partial incapacity for work if—

- (a) the worker continues to seek suitable employment;
- (b) the worker proves to the satisfaction of a commissioner that suitable employment for which the worker is fit is not reasonably available to the worker;
- 25 (c) payment is made in accordance with the commissioner's order and the regulations; and
- (d) the worker requests to be so compensated under this subsection.

(5) Any period during which a worker is compensated under subsection (4) as if totally incapacitated reduces, by an equivalent amount, the period
30 during which the worker would otherwise be entitled to compensation under subsection (2) (b) or (c).

(6) A review officer may make any order that a commissioner may make under subsection (4) if the matter must be determined for the purposes of any direction by the review officer.

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(7) Compensation is payable in accordance with this section in respect of a period even though—

- (a) the period does not commence until after the period referred to in subsection (2) (a); or
- 5 (b) the period comprises a number of separate periods, but compensation is not payable in accordance with this section after the expiration of 2 years from the date the employer first failed to provide the worker with suitable employment (or such longer period as the Board may approve in a particular case).

10 (8) A worker is not entitled to be compensated in accordance with this section during any period when—

- (a) the employer provides the worker with, or the worker obtains, suitable employment;
- 15 (b) the worker has been re-instated to the worker's former employment under Part XV of the Industrial Arbitration Act 1940; or
- (c) an insurer liable to indemnify the employer for payment of the compensation (or the Board in any case in which the Board is liable to pay the compensation) provides, or arranges for, suitable employment for the worker.

20 (9) A worker shall not be compensated under this section as if totally incapacitated because the worker is receiving approved rehabilitation training if it is not reasonably necessary for the worker to undergo that training to secure suitable employment.

25 (10) An employer does not fail to provide suitable employment for a worker during any period unless—

- (a) the worker has requested the employer to provide employment;
- (b) the worker has supplied the employer with a medical certificate in accordance with the regulations with respect to the worker's partial incapacity for work; and
- 30 (c) the worker is ready, willing and able to accept an offer of suitable employment from the employer during the period when compensation is claimed under this section.

(11) A worker shall not be treated as seeking suitable employment for the purposes of this section if the worker—

- 35 (a) has unreasonably refused an offer of suitable employment;

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- (b) has not taken all reasonable steps to obtain suitable employment;
- (c) has unreasonably refused to have an assessment made of the worker's employment prospects; or
- 5 (d) has unreasonably refused an offer to receive approved rehabilitation training.

(12) The Board may, as a condition of approval of approved rehabilitation training in respect of a particular worker, require the worker to undertake or seek some reasonable employment during the period of training and, in any such case, the amount of any remuneration received
10 by the worker shall be deducted from the compensation otherwise payable under this section.

(13) If a worker ceases to be entitled to additional weekly payments of compensation under this section, the additional payments may, with the Board's approval, be terminated without any prescribed period of notice
15 under this Act.

(14) In this section—

“approved rehabilitation training” means vocational re-education or other rehabilitation treatment or training—

- (a) approved by the Board—
- 20 (i) in the case of a general approval—with the concurrence of the Secretary of the Department of Health; or
- (ii) in the case of a particular approval—having regard to any guidelines recommended by the Secretary of that Department; and
- 25 (b) undertaken in accordance with such conditions as the Board may impose in giving that approval (including conditions relating to the times for, and duration of, attendances);

“employer”, in relation to a worker who is partially incapacitated for work, means the employer of the worker liable to pay compensation
30 in respect of the incapacity or, if there are 2 or more such employers, the employer so liable who last employed the worker.

Incapacity treated as total—“odd-lot” rule (cf. former s. 12)

39. (1) If—

- 35 (a) a worker is fit for employment of a kind not commonly available for a person in the worker's circumstances; and

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- (b) but for this section, the worker would be entitled to be compensated under this Division as totally incapacitated for work,
the worker is not entitled to be so compensated unless—
- (c) the worker proves to the satisfaction of a commissioner that the
5 worker has taken all reasonable steps to obtain (but has failed to obtain) suitable employment; and
- (d) payment is made in accordance with the commissioner's order.
- (2) An order of a commissioner under this section may be limited to such period, and be subject to such conditions, as may be specified in the order.
- 10 (3) A worker shall not be treated as having taken all reasonable steps to obtain suitable employment for the purposes of this section if the worker—
- (a) has unreasonably refused an offer of suitable employment;
- (b) has unreasonably refused an offer of suitable vocational re-education or other rehabilitation treatment or training; or
- 15 (c) has unreasonably refused to have an assessment made of the worker's employment prospects.
- (4) The "odd-lot" rule and any other rule for determining whether a worker is totally or partially incapacitated for work is subject to the provisions of this section.
- 20 (5) This section does not affect the operation of section 38 or 55.
- (6) A review officer may make any order that a commissioner may make under this section if the matter must be determined for the purposes of any direction by the review officer.

Weekly payment during partial incapacity (cf. former ss. 9, 11)

- 25 **40. (1)** The weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work shall be an amount not exceeding the difference between—
- (a) the weekly amount which the worker would probably have been
30 earning as a worker but for the injury and had the worker continued to be employed in the same or some comparable employment (but not exceeding \$500); and
- (b) the average weekly amount which the worker is earning, or is able to earn in some suitable employment, from time to time after the injury (but not exceeding \$500),

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but shall bear such relation to the amount of that difference as may appear proper in the circumstances of the case.

(2) In any case where a calculation is made under subsection (1) on the basis of the average weekly amount that a worker is able to earn in some
5 suitable employment—

(a) that amount shall, subject to the regulations, be determined by reference to the current weekly wage rate for some suitable employment (but not exceeding \$500); and

10 (b) the amount which the worker would probably have been earning but for the injury shall, subject to the regulations, be determined by reference to the worker's current weekly wage rate for the pre-injury employment (but not exceeding \$500).

(3) The weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work shall not exceed the weekly
15 payment that would be payable to the worker if it were a period of total incapacity for work.

(4) This section does not apply to any period of partial incapacity for work during which the worker is compensated under this Act as if the worker's incapacity for work were total.

20 (5) Subsection (3) does not apply to any period of partial incapacity for work referred to in section 38 (2) (a) (being a period occurring after the first 26 weeks of incapacity) during which the worker would (but for the worker obtaining suitable employment) have been compensated under this Act as if the worker's incapacity for work were total.

25 **Incapacity for period less than 1 week** (cf. former s. 9 (1) (a))

41. A weekly payment of compensation for total or partial incapacity for work in respect of a period of less than 1 week shall be reduced by the same proportion as normal working time during that part of the week bears to the worker's full normal working week.

*Workers Compensation 1987***Current weekly wage rate** (cf. former s. 9 (8)–(13))

42. (1) Subject to this section, a reference in this Division to the current weekly wage rate of a worker, being a worker who is incapacitated for work and who, immediately before being incapacitated—

- 5 (a) was remunerated under an award fixing or providing for the fixing of a rate for a weekly or longer period (not being a worker who belongs to a class of workers prescribed by the regulations for the purposes of paragraph (c))—is, at any time during the incapacity, a
10 reference to the rate of remuneration under that award at that time for 1 week in respect of the work being performed by the worker immediately before being incapacitated;
- (b) was an employee of the Crown or of an employer constituted by an Act and was remunerated, pursuant to a determination made by the
15 Crown or made under the Public Service Act 1979 or under the provisions of any other Act, being a determination fixing or providing for the fixing of a rate for a weekly or longer period—is, at any time during that incapacity, a reference to the rate of remuneration under that determination at that time for 1 week in
20 respect of the work being performed by the worker immediately before being incapacitated;
- (c) belonged to a class of workers prescribed by the regulations for the purposes of this paragraph—is a reference to a rate calculated in accordance with a formula (or calculated in any other manner) prescribed by the regulations in respect of that class of workers for
25 the purposes of this paragraph; or
- (d) was not a worker or an employee to whom paragraph (a), (b) or (c) applies—is a reference to—
- (i) the rate of \$276.92 per week; or
- 30 (ii) where some other rate is prescribed by the regulations for the purposes of this paragraph— that other rate.

(2) If a regulation made for the purposes of subsection (1) (c) or (5) (b) contains a reference to an award or a provision of an award and the award or provision, in so far as it relates to a particular worker, is subsequently varied or replaced, the reference shall, on and from the date of the variation
35 or replacement, be deemed, in relation to that worker, to be a reference to—

- (a) the award or provision as so varied; or
- (b) the award or provision which replaced that award or provision,

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as the case may be.

(3) For the purposes of subsection (1) (a), if a worker is not remunerated in respect of the work performed by the worker under an award fixing or providing for the fixing of a rate for a weekly or longer period but—

- 5 (a) there is such an award under which the worker would be entitled to be remunerated if the worker performed that work under a contract of service—the worker shall be deemed to be remunerated in respect of that work under that lastmentioned award; or
- 10 (b) although paragraph (a) does not apply, there is an award fixing or providing for the fixing of a rate for a weekly or longer period which, having regard to the nature of that work, it would be fair and reasonable to apply to and in respect of that work—the worker shall be deemed to be remunerated in respect of that work under that lastmentioned award.

15 (4) Subject to subsections (6) and (7), if the amount of a part-time worker's current weekly wage rate, as determined under subsection (1), exceeds the worker's average weekly earnings referred to in section 37, a reference in this Division to that worker's current weekly wage rate is a reference to those average weekly earnings.

20 (5) In subsection (4), the reference to a part-time worker—

- (a) includes a reference to a worker belonging to a class of workers prescribed by the regulations for the purposes of this paragraph; and
- (b) does not include a reference to a worker belonging to a class of workers prescribed by the regulations for the purposes of this paragraph.
- 25

(6) In determining a worker's current weekly wage rate in accordance with subsection (1) (a) or (b) or (4), any amount paid or payable to the worker—

- (a) in respect of shift work, overtime or other penalty rates;
- 30 (b) under the terms of the worker's employment in excess of the ordinary rate fixed by any award for the work performed by the worker; or
- (c) to cover special expenses incurred by the worker because of the nature of the worker's employment,

35 shall be disregarded.

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(7) A reference in this Division to the current weekly wage rate of a worker, being a worker who—

- 5 (a) at the time of the worker's injury, was employed under 2 or more contracts of service under which the worker worked at one time for one employer and at another time for another employer; and
- (b) is incapacitated from performing work under any 2 or more of those contracts,

is a reference—

- 10 (c) except as provided in paragraph (d)—to the sum of the current weekly wage rates applicable to the worker under subsection (1) or (4) as a worker employed by each of the employers by whom the worker was employed under the contracts referred to in paragraph (b); or
- 15 (d) where the total of the worker's ordinary weekly hours of work under the contracts referred to in paragraph (b) exceeded 40—to an amount that bears to the sum referred to in paragraph (c) the same proportion as 40 bears to that total,

and the current weekly wage rate of such a worker, as determined under this section, shall be deemed to be the worker's current weekly wage rate as
20 a worker in the employment of the employer for whom the worker was working at the time of the worker's injury to the exclusion of any other employers.

(8) In this section—

“award” means—

- 25 (a) an award in force under the Industrial Arbitration Act 1940 or under the Apprenticeship Act 1981 or an award or industrial agreement, within the meaning of the Conciliation and Arbitration Act 1904 of the Commonwealth, that is in force;
- 30 (b) an industrial agreement in force under the Industrial Arbitration Act 1940 or an apprenticeship agreement for the time being in force under the Apprenticeship Act 1981;
- 35 (c) an agreement made under the Public Service Act 1979 or an agreement with respect to wages or salaries entered into under the provisions of any other Act by an employer constituted by that other Act with any association or organisation representing any group or class of employees; or

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(d) an award made by the Coal Industry Tribunal under the Coal Industry Act 1946,

and includes any such award, industrial agreement or other agreement as from time to time amended.

5 **Computation of average weekly earnings** (cf. former s. 14)

43. (1) For the purposes of the provisions of this Act relating to "earnings" and "average weekly earnings" of a worker, the following rules shall be observed:

- 10 (a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated, except that if, because of the shortness of the time during which the worker has been in the employment of the employer or the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average weekly amount which, during the 12 months previous to the injury, was being earned—
- 15 (i) by a person in the same grade, employed at the same work, by the same employer; or
- 20 (ii) if there is no person so employed, by a person in the same grade employed in the same class of employment, and in the same district.
- 25 (b) If the worker has entered into concurrent contracts of service with 2 or more employers under which he or she worked at one time for one such employer, and at another time for another such employer, the worker's average weekly earnings shall be computed as if the worker's earnings under all such contracts were earnings in the employment of the employer for whom the worker was working at the time of the injury.
- 30 (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury, uninterrupted by absence from work due to illness, strikes, lockouts, bad weather or any other unavoidable cause.
- 35 (d) If the employer has been accustomed to pay to the worker a sum to cover any special expenses incurred by the worker because of the nature of the employment, the sum so paid shall not be reckoned as part of the earnings.

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- 5 (e) The average weekly earnings of a casual worker, that is to say a worker whose contracts of service are mainly contracts for separate periods each of which is of not more than 5 working days in the same industry, shall be computed as if the worker's earnings under all his or her contracts of service, for a period of 12 months preceding the injury or any shorter period during which the worker may have been engaged in the industry, were earnings in the employment of the employer for whom the worker was working at the time of the injury.
- 10 (f) If a worker is a worker to whom paragraph (e) applies or has been absent from work by reason of illness, strikes, lockouts, bad weather, intermittency of employment, slackness of trade or any other reasonable cause, the average weekly earnings of the worker shall, notwithstanding the foregoing provisions of this section—
- 15 (i) in the case of a worker who is 21 years of age or over, be deemed to be not less than the full wage for a full normal working week of that worker or the basic wage, whichever is the greater; and
- 20 (ii) in the case of any other worker, be deemed to be not less than the full wage for a full normal working week of that worker.
- (2) An employer shall, at the request of the employer's injured worker, supply to the worker, in writing—
- 25 (a) such details of the relevant award and such classification details as will enable the worker to determine his or her current weekly wage rate for the purposes of this Act;
- (b) such details of the earnings of the worker as will enable the worker to determine his or her weekly earnings for the purposes of this Act; or
- 30 (c) such details of the earnings of at least 2 persons employed by the employer at the same or a comparable grade and work as the worker as will enable the worker to determine, for the purposes of section 55, the amount which the worker would probably have been earning if the worker had remained uninjured and continued to be employed in the same or some comparable employment.

35 Penalty: \$2,000.

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(3) In this section, "basic wage" means the basic wage for adult males or adult females, as the case may require, being the basic wage in force, within the meaning of Part V of the Industrial Arbitration Act 1940, at the time of the computation.

5 Incapacitated worker reaching 21 years of age—special provision (cf. former s. 9 (4A))

44. If—

- (a) a worker in receipt of weekly payments of compensation was under 21 years of age at the date of the injury;
- 10 (b) the worker reaches the age of 21 years; and
- (c) the worker's average weekly earnings are less than the weekly sum which the worker would probably have been earning on reaching 21 years of age if the worker had remained uninjured,

the weekly payment of compensation shall be increased to such amount as
15 would have been payable if the average weekly earnings had been equivalent to that weekly sum.

Reduction etc. of weekly payments to qualify for other benefits

45. (1) A commissioner may, on the determination of an application for any weekly payment of compensation or on a review under this Act of any
20 weekly payment of compensation, order that the weekly payment—

- (a) is not payable; or
- (b) is reduced to a specified amount or in a specified manner,

if the worker, or any spouse or other person related to the worker, would as a result be qualified to receive any pension, allowance or other benefit
25 under the Social Security Act 1947 of the Commonwealth or under any other Act or law.

(2) Any such order has effect according to its tenor.

(3) Any such order does not have effect for the purposes of determining (if applicable) the lump sum payable on the commutation of a weekly
30 payment under section 51 or the redemption of a weekly payment under section 15 of the former Act (as applied by Schedule 6 to this Act).

*Workers Compensation 1987***Reduction of weekly payments to prevent dual benefits (cf. former s. 13)**

46. (1) A commissioner may, on the determination of an application for any weekly payment of compensation or on a review under this Act of any weekly payment of compensation, order that the weekly payment be reduced
5 to prevent dual benefits of the same kind being payable by the employer during and in respect of the incapacity for work.

(2) Any such order shall have effect according to its tenor.

(3) This section does not affect the operation of section 49 or 50.

Incapacity deemed to exist in certain cases (cf. former s. 12A)

10 47. A worker who, as a result of injury, is unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment shall be deemed to be incapacitated for employment of that kind.

Compensation payable despite existing incapacity (cf. former s. 7 (2A))

15 48. (1) Compensation is payable under this Division in respect of an injury which, but for existing incapacity, would have resulted in total or partial incapacity for work of the worker.

(2) Any such compensation is payable as if total or partial incapacity for work had in fact resulted from the injury.

20 (3) In this section—

“existing incapacity” means total incapacity for work by disease or other cause—

(a) not entitling the worker to compensation under this Act; and

25 (b) existing at the time when the total or partial incapacity for work would otherwise have resulted from the injury.

Weekly compensation payable despite holiday pay etc. (cf. former s. 7 (2B))

49. (1) Compensation is payable under this Division to a worker in respect of any period of incapacity for work even though the worker has received or is entitled to receive in respect of the period any payment,
30 allowance or benefit for holidays, annual holidays or long service leave under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment.

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(2) The amount of compensation so payable is the amount which would have been payable to the worker had the worker not received or been entitled to receive in respect of the period any such payment, allowance or benefit.

5 **Weekly compensation and sick leave** (cf. former s. 7 (2c))

50. (1) Compensation is payable to a worker in respect of a period of incapacity for work even though the worker has received or is entitled to receive in respect of that period any wages for sick leave under any Act (Commonwealth or State), award or industrial agreement under any such
10 Act or contract of employment.

(2) If a worker is paid compensation by the employer in respect of any period of incapacity for work in respect of which the employer is, or but for this section would be, liable under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of
15 employment to pay to the worker any wages for sick leave—

(a) that liability shall, to the extent of the compensation so paid, be deemed to have been satisfied by that payment notwithstanding the terms of that Act, award, agreement or contract; and

20 (b) the amount of that compensation shall, for the purposes of subsections (4) and (5), be deemed to have been paid as compensation and not as wages.

(3) If a worker, in respect of any period of incapacity for work in respect of which the employer is liable to pay compensation to the worker, is paid wages for sick leave by the employer and either an award is made afterwards
25 for the payment of compensation to the worker in respect of that period or the employer agrees afterwards that compensation be paid to the worker in respect of that period—

30 (a) the employer's liability to pay compensation in respect of that period shall, to the extent of the wages paid, be deemed to have been satisfied by that payment; and

(b) the wages shall, to the extent of the compensation, be deemed for the purposes of subsections (4) and (5) to have been paid as compensation and not as wages.

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(4) If a worker is paid any compensation in respect of a period of incapacity for work, the worker shall, in respect of any entitlement to sick leave, or wages for sick leave, accruing after the expiration of that period—

5 (a) if the worker has not also been paid wages for sick leave in respect of that period—be deemed not to have been entitled to or granted, or to have received, any sick leave or wages for sick leave in respect of that period; or

10 (b) if the worker has also been paid wages for sick leave in respect of that period—be deemed not to have been entitled to or granted, or not to have received, sick leave or wages for sick leave in respect of the whole of that period, but only in respect of a lesser period calculated as provided by subsection (5).

15 (5) The lesser period referred to in subsection (4) is a period which bears to the period of incapacity of the worker the same proportion as the wages paid to the worker in respect of the period of incapacity bear to the total amount of the wages and compensation paid to the worker in respect of the period of incapacity.

(6) In this section—

20 “compensation” means weekly payments of compensation under this Division;

“wages” means wages, salary, allowance or other payment.

Commutation in certain cases of weekly payments (cf. former s. 15)

51. (1) This section applies—

25 (a) to a liability to make a weekly payment (for a period not exceeding 5 years) to a worker who has reached the age of 55 years, but only to the extent of 40 per cent of the weekly payment;

(b) to a liability to make a weekly payment of such a class and to such an extent as may be prescribed by the regulations; and

30 (c) to a liability to make a weekly payment to a particular worker (and to the extent) approved by the Board in special circumstances such as the following:

(i) the worker requires a lump sum to establish an income-producing business;

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(ii) the worker requires a lump sum to enable the worker to move from the area in which he or she lives and there are substantial economic or compassionate grounds for doing so;

5 (iii) the lump sum would otherwise be likely to assist substantially in the rehabilitation of the worker because of the special circumstances of the case.

(2) A liability in respect of any weekly payment of compensation to which this section applies may, with the consent of the worker, be commuted (either in whole or in part) to a lump sum, determined by a commissioner,
10 having regard to—

(a) any dispute as to liability to pay compensation under this Act;

(b) the injury, the age of the worker, and the occupation of the worker at the time of the occurrence of the injury; and

15 (c) the worker's diminished ability to compete in an open labour market.

(3) If—

(a) a commissioner determines any such lump sum;

20 (b) the worker agrees that payment of the lump sum should remove any liability to make a payment under Division 3 or 4 in respect of the injury; and

(c) the terms of any relevant regulations or approval of the Board under subsection (1) have been complied with,

payment of the lump sum removes any liability to which the agreement of the worker relates.

25 (4) The consent or agreement of a worker to a commutation under this section may be dispensed with if, in the opinion of the commissioner—

(a) the worker is unable, by reason of infirmity of mind or body, properly to consent or agree to the commutation; and

(b) the commutation would be in the best interests of the worker.

30 (5) An agreement as to the commutation of a payment to a lump sum shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the payment is payable from any liability under this Act unless the sum has been determined by a commissioner in accordance with this Act.

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(6) A lump sum may by agreement or order of a commissioner be paid to the Board for the benefit of the worker.

Termination of weekly payments on retiring age (cf. former s. 60A)

52. (1) In this section—

5 “retiring age”, in relation to a person, means the age at which the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the Social Security Act 1947 of the Commonwealth.

(2) If a person—

10 (a) receives an injury before reaching the retiring age—a weekly payment of compensation shall not be made in respect of any resulting period of incapacity for work occurring after the first anniversary of the date on which that person reaches the retiring age; or

15 (b) receives an injury on or after reaching the retiring age—a weekly payment of compensation shall not be made in respect of any resulting period of incapacity for work occurring after the first anniversary of the date on which the injury happened.

20 (3) This section has effect notwithstanding anything to the contrary in this Division.

(4) This section does not apply to injuries received before 30 June 1985.

Weekly payments—residence outside Commonwealth (cf. former s. 54)

25 53. (1) If a worker receiving, or entitled to receive, a weekly payment of compensation under an award ceases to reside in Australia, the worker shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee or medical panel certifies, or a commissioner determines, that the incapacity for work resulting from the injury is likely to be of a permanent nature.

30 (2) If the incapacity is so certified or determined to be of a permanent nature, the worker is entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as the worker establishes, in such manner and at such intervals as the Board may require, the worker’s identity and the continuance of the incapacity in respect of which the weekly payment is payable.

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Notice required before termination of payment of weekly compensation (cf. former s. 54A)

54. (1) If a worker—

- 5 (a) has received weekly payments of compensation for a continuous period of at least 12 weeks; and
- (b) has provided the worker's employer, or the employer's insurer, with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity,

10 the person paying the compensation shall not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified without giving the worker the prescribed period of notice of intention to discontinue payment of the compensation or to reduce the amount of the compensation.

Penalty: \$5,000.

15 (2) If the payment of compensation to a worker is discontinued, or the amount of compensation is reduced, by a person in circumstances involving the commission by that person of an offence under subsection (1), the worker may, whether or not that person has been prosecuted for the offence, recover from the person an amount of compensation that—

- 20 (a) if no period of notice has been given—is equal to the amount of compensation, or additional compensation, that would have been payable during the prescribed period of notice if payment of the compensation had not been discontinued or if the amount of compensation had not been reduced; or
- 25 (b) if less than the prescribed period of notice has been given—is equal to the amount of compensation that would have been payable during the balance of the prescribed period of notice if payment of the compensation had not been discontinued or if the amount of the compensation had not been reduced.

30 (3) The prescribed period of notice referred to in this section is—

- (a) if the worker has been receiving weekly payments of compensation for a continuous period of at least 12 weeks but less than 1 year—2 weeks; or
- 35 (b) if the worker has been receiving weekly payments of compensation for a continuous period of 1 year or more—6 weeks.

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(4) The notice referred to in this section shall—

- (a) be given to the worker personally or by post; and
- (b) if the regulations so require, be in such form as may be prescribed by the regulations.

5 (5) This section is subject to section 58.

Review of weekly payments (cf. former s. 60)

55. (1) Any weekly payment of compensation may, because of a change of circumstances, be reviewed by a commissioner at the request of the employer or the worker or of the Board.

10 (2) On any such review—

(a) the weekly payment may be ended, reduced or increased (but subject to the provisions of this Division relating to the amount of the weekly payment); and

15 (b) the amount of the weekly payment (if any) shall, in default of agreement, be settled by a commissioner.

(3) On any such review, the amount of any weekly payment payable in respect of an injury may be increased to such an amount as would have been awarded if the worker had, at the time of the injury, been earning the wage or salary which the worker would probably have been earning, at the
20 date of the review, if the worker had remained uninjured and continued to be employed in the same or some comparable employment.

(4) A review under this section shall be given such priority as is reasonably practicable, and any necessary directions may be given to expedite the hearing of the matter.

25 (5) A commissioner may review a weekly payment of compensation even though it is made under an award of the Compensation Court (whether before or after the commencement of this section).

Award of compensation may be subject to supply of medical certificates etc.

30 56. (1) A commissioner may, as a condition of any award for weekly payments of compensation, require the worker to supply to the employer or other specified person from time to time medical certificates relating to the incapacity for work to which the award relates.

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(2) Subject to any further order of a commissioner, if any such certificate is not supplied in accordance with the terms of the award, weekly payments of compensation under the award may be suspended until the certificate is supplied.

- 5 (3) This section applies to a direction by a review officer for weekly payments of compensation in the same way as it applies to an award by a commissioner for any such payments.

Worker to notify return to work etc. with other employer

10 57. (1) A worker who is in receipt of weekly payments of compensation shall forthwith notify the person making those payments of—

- (a) the worker's commencing employment with some other person or in the worker's own business; and
- (b) any change in that employment that affects the worker's earnings.

Penalty: \$2,000.

15 (2) A worker is not guilty of an offence under this section if the worker satisfies the court that the person to whom the matter was to be notified failed to inform the worker of the obligation to notify that matter.

(3) This section applies even though the weekly payments of compensation are payable under an award or a direction of a review officer.

20 Refund of weekly payments paid after return to work etc.

58. (1) If, because of a worker's return to employment or a change in employment that affects the worker's earnings—

- (a) the worker is not entitled under this Act to any weekly payments of compensation that have been paid to the worker; or
- 25 (b) the amount of any weekly payments of compensation that have been paid to the worker exceed the amount to which the worker is entitled under this Act,

30 a commissioner may order the worker to refund to the person who made the payments any amount to which the worker is not entitled in respect of payments during any period not exceeding 2 years from the date of payment.

(2) Any such refund may, in accordance with the terms of the commissioner's order, be deducted from future weekly payments of compensation to the worker or be recovered as a debt in a court of competent jurisdiction.

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(3) This section applies even though the weekly payments of compensation are payable under an award or a direction of a review officer.

DIVISION 3—*Compensation for medical, hospital and rehabilitation expenses etc.*

5 **Interpretation** (cf. former s. 10 (2))

59. In this Division—

“ambulance service” includes any conveyance of an injured worker to or from a medical practitioner or hospital;

10 “approved”, in relation to a person, body, place or treatment, means designated by the Minister, by order published in the Gazette with the concurrence of the Minister for Health, as an approved person, body, place or treatment, respectively;

“dental prosthetist” has the same meaning it has in the Dental Technicians Registration Act 1975;

15 “hospital treatment” means treatment (including treatment by way of rehabilitation) at any hospital or at any rehabilitation centre conducted by a hospital and includes—

(a) the maintenance of the worker as a patient at the hospital or rehabilitation centre;

20 (b) the provision or supply by the hospital, at the hospital or rehabilitation centre, of nursing attendance, medicines, medical or surgical supplies, or other curative apparatus; and

(c) any other ancillary service,

but does not include ambulance service;

25 “medical or related treatment” includes—

(a) treatment by a medical practitioner, a registered dentist, a dental prosthetist, a registered physiotherapist, a registered chiropractor or osteopath, a masseur, a remedial medical gymnast or a speech therapist;

30 (b) therapeutic treatment given by direction of a medical practitioner;

(c) treatment by way of rehabilitation given by an approved person or body or at an approved place;

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(d) the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles;

5 (e) any nursing, medicines, medical or surgical supplies or curative apparatus, supplied or provided for the worker otherwise than as hospital treatment;

(f) care (other than nursing care) of a worker in the worker's home directed by a medical practitioner having regard to the nature of the worker's incapacity;

10 (g) the modification of a worker's home or vehicle directed by a medical practitioner having regard to the nature of the worker's incapacity; and

(h) treatment or other thing prescribed by the regulations as medical or related treatment,

but does not include ambulance service or hospital treatment;

15 "medical practitioner" means a duly registered medical practitioner under the Medical Practitioners Act 1938 or under any law of another State or a Territory of the Commonwealth;

"public hospital" means—

20 (a) a hospital under the control of an area health service constituted under the Area Health Services Act 1986;

(b) a hospital specified in the Second or Fifth Schedule to the Public Hospitals Act 1929;

(c) a separate institution specified in the Third Schedule to the Public Hospitals Act 1929;

25 (d) a hospital or other institution (whether in this State or in another State or a Territory of the Commonwealth) that—

(i) is prescribed by the regulations; or

(ii) belongs to a class of hospitals or institutions prescribed by the regulations,

30 for the purposes of this definition;

"treatment by way of rehabilitation" means—

(a) treatment of a kind that is normally afforded at rehabilitation centres conducted by public hospitals; or

(b) an approved treatment.

*Workers Compensation 1987***Compensation for cost of medical, hospital and rehabilitation treatment etc.**
(cf. former s. 10 (1), (1A), (7))

60. (1) If as a result of an injury received by a worker—

5 (a) it is reasonably necessary that any medical or related treatment or any hospital treatment be given, or any ambulance service be provided, to the worker; or

(b) it is appropriate that any such treatment, being treatment by way of rehabilitation, be given to the worker,

10 the worker's employer shall be liable to pay, in addition to any other compensation under this Act, the cost of that treatment or service and the travel expenses specified in subsection (2).

(2) If it is necessary for a worker to travel in order to receive any treatment referred to in subsection (1) (except treatment excluded from this subsection by the regulations), the travel expenses that, pursuant to that
15 subsection, the employer is liable to pay are—

(a) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred by the worker in obtaining the treatment; and

20 (b) if the worker is not reasonably able to travel unescorted—the amount of the fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort provided to enable the worker to be given the treatment.

(3) The fact that a worker is a contributor to a medical, hospital or other benefit fund and is therefore entitled to medical or related treatment, to
25 hospital treatment or to ambulance service either at some special rate or free or entitled to a refund, shall not affect the liability of an employer under this section.

Rates applicable for medical or related treatment (cf. former s. 10 (4), (5A))

30 **61. (1)** The amount for which an employer is liable in respect of the medical or related treatment of a worker is such amount as is reasonably appropriate to the treatment given, having regard to the reasonable necessity for the treatment and the customary charge made in the community for the treatment to persons other than workers.

35 (2) The maximum amount for which an employer is liable for any particular medical or related treatment shall not exceed such sum (if any) as may be prescribed by the regulations in respect of that treatment.

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(3) The maximum amount for which an employer is liable for medical or related treatment given to a worker in respect of the same injury (whether the treatment is given at different stages of the injury or not) is—

(a) \$10,000; or

5 (b) where some greater amount has been prescribed by the regulations—
that greater amount.

(4) On application made from time to time by or on behalf of the worker concerned, a commissioner may, subject to the regulations, direct that the employer is liable for a further amount to that prescribed by subsection (3).

10 (5) The amount for which an employer is liable for the care of a worker
as referred to in paragraph (f) of the definition of “medical or related
treatment” in section 59 is (subject to any maximum amount under this
section) the reasonable cost of providing that care having regard to the
extent to which care might be expected to be provided by the worker’s
15 spouse or other person residing with the worker.

(6) The amount for which an employer is liable for the modification of
a worker’s home or vehicle as referred to in paragraph (g) of the definition
of “medical or related treatment” in section 59 is the reasonable cost of
carrying out those modifications.

20 (7) Except as otherwise provided by the regulations, the maximum
amount under subsection (3) does not apply to any liability of an employer
referred to in subsection (6).

(8) Any amount for which an employer is liable under this Division in
respect of medical or related treatment may be recovered from the employer
25 by the person who gave the treatment.

Rates applicable for hospital treatment (cf. former s. 10 (2A), (3))

62. (1) The amount for which an employer is liable in respect of
hospital treatment of a worker at a hospital (other than a public hospital)
is the cost to the hospital of the hospital treatment, calculated as prescribed
30 by the regulations.

(2) The amount for which an employer is liable in respect of hospital
treatment of a worker at a public hospital is—

(a) in the case of treatment as an in-patient—the daily average cost to
that hospital, for each day or part of a day, of the hospital treatment
35 of in-patients; or

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(b) in the case of treatment otherwise than as an in-patient—the average cost to that hospital, for each separate treatment, of the hospital treatment of patients otherwise than as in-patients,
 as estimated by the Minister for Health and last notified in the Gazette by
 5 that Minister.

(3) The estimated costs referred to in subsection (2) shall, in respect of any public hospital, be based, wherever practicable, on the costs incurred by that hospital for the year which ended on 30 June next preceding any date on which it is proposed to notify the costs in respect of that hospital.

10 (4) Where, at a public hospital, a person receives (otherwise than as an in-patient) treatments of different kinds or at different places, each treatment shall, for the purposes of subsection (2) (b), be counted as a separate treatment.

(5) The maximum amount for which an employer is liable for hospital
 15 treatment given to a worker in respect of the same injury (whether the treatment is afforded at different stages of the injury or not) is—

(a) \$10,000; or

(b) where some greater amount has been prescribed by the regulations—
 that greater amount.

20 (6) On application made from time to time by or on behalf of a worker, a commissioner may, subject to the regulations, direct that the worker's employer is liable for a further amount to that prescribed by subsection (5).

(7) A hospital, or a duly authorised officer of the hospital, may recover
 25 from the employer any amount for which the employer is liable under this Division in respect of hospital treatment given by that hospital.

(8) A regulation under subsection (1) shall not be made without the concurrence of the Minister for Health.

Rates applicable for ambulance service (cf. former s. 10 (5))

30 **63. (1)** The maximum amount for which an employer is liable for any ambulance service provided to a worker is—

(a) \$5,000; or

(b) where some greater amount has been prescribed by the regulations—
 that greater amount.

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(2) A commissioner may, subject to the regulations, allow an additional amount to that prescribed by subsection (1) on account of the distance travelled in any particular case.

5 (3) Any amount for which an employer is liable under this Division in respect of any ambulance service may be recovered from the employer by the person providing the ambulance service.

Rates applicable for car travel associated with treatment (cf. former s. 10 (1B))

10 64. If the cost referred to in section 60 (2) (a) or the amount referred to in section 60 (2) (b) includes the cost of, or an amount for, travel by private motor vehicle, that cost or amount shall be calculated at—

(a) the rate of 28 cents per kilometre; or

(b) where some other rate has been prescribed by the regulations—that other rate.

DIVISION 4—*Compensation for non-economic loss*

15 **Interpretation** (cf. former s. 16 (4), (5))

65. (1) In this Division—

“loss”, in relation to a thing, means—

(a) the loss of that thing; or

(b) the permanent loss of the use, or of the efficient use, of that thing.

20 (2) In this Division, a reference to a loss mentioned in the Table to this Division includes a reference to—

(a) the permanent impairment of the back, neck or pelvis or any other permanent impairment added to the Table; and

(b) severe facial disfigurement.

25 **Compensation for permanent injuries** (cf. former s. 16)

30 66. (1) A worker who has suffered the loss of a thing mentioned in the Table to this Division as the result of an injury is entitled to receive from the worker's employer by way of compensation for the loss, in addition to any other compensation under this Act, the amount equal to the percentage of \$80,000 set out opposite to that loss in that Table.

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(2) A worker who has suffered more than one of the losses mentioned in the Table to this Division as a result of the same injury is not entitled to receive as compensation under this section more than \$80,000 in respect of those losses.

- 5 (3) Where by the operation of Division 6 the amount of \$80,000 is adjusted, the compensation payable under this section shall be calculated by reference to the requisite percentage of the amount in force at the date of injury.

Compensation for pain and suffering

10 67. (1) A worker who has suffered a loss mentioned in the Table to this Division (or 2 or more of any such losses as a result of the same injury) is entitled to receive from the worker's employer by way of compensation for pain and suffering resulting from the loss or all those losses, in addition to any other compensation under this Act, an amount not exceeding \$40,000.

- 15 (2) This section does not apply if the compensation paid or payable under section 66 for the loss or all those losses is less than 10 per cent of the maximum amount from time to time referred to in that section.

(3) The maximum amount of compensation under this section is payable only in a most extreme case and the amount payable in any other case shall
20 be reasonably proportionate to that maximum amount having regard to the degree and duration of pain and suffering and the severity of the loss or losses.

(4) The amount of compensation payable under this section in any particular case shall, in default of agreement, be determined by a
25 commissioner.

(5) Compensation under this section is not payable after the death of the worker concerned.

(6) Where by the operation of Division 6 the amount of \$40,000 is adjusted, the compensation payable under this section shall be calculated
30 by reference to the amount in force at the date of injury.

(7) In this section—

“pain and suffering” does not include loss of expectation of life, loss of amenities or enjoyment of life or anything of which the injured worker is not aware.

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Proportionate loss of use (cf. former s. 16 (5))

5 **68. (1)** If a loss suffered by a worker consists of the loss of a proportion (but not all) of a thing mentioned in the Table to this Division, a percentage of the compensation payable for the total loss of the thing equal to the percentage lost by the worker is payable as compensation under this section.

(2) For the purpose of determining the extent of a loss of a thing, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance shall be disregarded.

10 (3) The amount of compensation payable in any particular case shall, in default of agreement, be determined by a commissioner.

Addition to Table of further compensable injuries

69. The regulations may amend the Table to this Division—

15 (a) by adding specified losses and by fixing in relation to each such additional loss a percentage of the maximum amount that is payable in respect of the loss; and

(b) by prescribing, as a note to that Table, provisions relating to the application of this Division to any such additional loss, including provisions—

20 (i) as to the application of this Division to any such additional loss suffered before a description of the loss is added to the Table; and

(ii) for the referral of any matter to a medical referee or medical panel.

Loss of hearing due to age (cf. former s. 16 (5B))

25 **70. (1)** In ascertaining, for the purposes of this Division, the percentage of the diminution of hearing in respect of boilermaker's deafness, or any deafness of a similar origin, of a worker who is over the prescribed age, it shall be conclusively presumed that the worker's loss of hearing is, to the extent of the prescribed number of decibels for each complete year of the
30 worker's age in excess of the prescribed age, to be attributed to presbycusis.

(2) For the purposes of this section—

(a) the prescribed age is 50 years or, where some other age is prescribed by the regulations, the age so prescribed; and

35 (b) the prescribed number of decibels is one-half or, where some other number is prescribed by the regulations, the number so prescribed.

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(3) The regulations may prescribe different numbers of decibels in respect of different methods of ascertaining the extent of diminution of hearing, and any number so prescribed may be or include a fraction.

(4) Nothing in this section applies in a case of total loss of hearing of 5 either ear.

Further losses of function—occupational diseases (cf. former s. 16 (5A))

71. (1) If—

(a) compensation has been paid under this Division (or section 16 of the former Act) for a loss, being—

- 10 (i) the loss of a proportion (but not all) of a thing; and
 (ii) an occupational disease; and

(b) the worker suffers a further loss of that thing,

15 compensation is payable under this Division for the further loss, but only the proportion of that further loss of the thing shall be taken into account in calculating the compensation payable.

(2) Any such further losses may be taken into account for the purpose of determining whether compensation is payable for pain and suffering because of the operation of section 67 (2).

(3) In this section—

20 “occupational disease” means—

(a) loss of hearing due to boilermaker’s deafness or any deafness of a similar origin;

(b) total or partial loss of sight which is of gradual onset; or

25 (c) any disease which is of such a nature as to be contracted by a gradual process.

Reference of matters to medical panel etc. (cf. former s. 16 (1AA), (1B) (b)–(e))

72. (1) If the loss suffered by a worker is—

(a) a loss, or a further loss, of hearing due to boilermaker’s deafness or any deafness of similar origin; and

30 (b) the extent of the loss, or further loss, is disputed,

the worker must apply under section 131 for reference of the matter to a medical panel.

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(2) A commissioner or the Compensation Court shall, at the request of a person claiming to be entitled to compensation for severe facial disfigurement, refer to a medical panel for determination the question of whether severe facial disfigurement exists and, if so, what percentage of the maximum amount of compensation is reasonably proportionate to the degree of disfigurement.

(3) The decision of the medical panel in any such case of severe facial disfigurement is final and conclusive.

(4) A commissioner or the Compensation Court shall, at the request of a person claiming to be entitled to compensation for any of the following losses or impairments, refer to a medical panel for determination the question of whether the loss or impairment exists and, if so, the nature and extent of the loss or impairment:

- (a) the loss of the sense of taste or smell;
- (b) the loss of sexual organs;
- (c) the incurable loss of mental powers involving a total inability to work;
- (d) the permanent impairment of the back, neck or pelvis;
- (e) any loss or impairment added to the Table to this Division by the regulations.

(5) A medical panel shall report its findings on the question referred to in subsection (4) to the commissioner or the Compensation Court and the applicant and may include in its report such further information and such expressions of opinion as, in its opinion, are or may be relevant to the assessment of compensation.

Reimbursement for cost of medical certificate and examination (cf. former s. 16 (1c))

73. (1) In this section—

“medical certificate” means a certificate of a medical practitioner which certifies—

- (a) that a worker’s loss is a loss mentioned in the Table to this Division; or
- (b) the extent of the loss for the purpose of determining the amount of compensation payable for the loss.

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(2) The obtaining of a medical certificate and any examination required for the certificate shall be deemed to be a medical or related treatment for the purposes of Division 3 if the worker has given the employer a copy of the certificate.

5

TABLE
COMPENSATION FOR PERMANENT INJURIES

	Nature of injury	Percentage of maximum amount payable
	Speech loss—	
10	Loss of power of speech	60
	Sensory loss—	
	Loss of sense of smell	17
	Loss of sense of taste	17
	Hearing loss—	
	Loss of hearing of both ears	65
15	Loss of hearing of one ear	20
	Loss of vision—	
	Loss of sight of both eyes	100
	Loss of sight of an only eye	100
	Loss of sight of one eye, together with serious diminution of the sight of the other eye	75
20	Loss of sight of one eye	40
	Loss of binocular vision (where not otherwise compensable under this Table)	40
	Loss of eyeball (in addition to compensation for loss of sight of the eye)	22
	Arm injuries—	
	Loss of right arm at or above elbow	80
25	Loss of right arm below elbow	75
	Loss of left arm at or above elbow	75
	Loss of left arm below elbow	70
	Hand injuries—	
	Loss of right hand	70

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	Loss of left hand	65
	Loss of thumb of right hand	30
	Loss of thumb of left hand	26
	Loss of a joint of the thumb	16
5	Loss of forefinger of the right hand	21
	Loss of forefinger of the left hand	18
	Loss of 2 joints of forefinger of the right hand ..	16
	Loss of 2 joints of forefinger of the left hand ...	12
	Loss of the first joint of forefinger of right hand	10
10	Loss of the first joint of forefinger of left hand ..	9
	Loss of middle finger of either hand	12
	Loss of 2 joints of middle finger of either hand	10
	Loss of the first joint of middle finger of either hand	6
	Loss of little or ring finger of either hand	11
15	Loss of 2 joints of little or ring finger of either hand	9
	Loss of the first joint of little or ring finger of either hand	6
Leg injuries—		
	Loss of either leg at or above the knee	75
20	Loss of either leg below the knee	70
Foot injuries—		
	Loss of a foot	65
	Loss of great toe of either foot	22
	Loss of a joint of the great toe of either foot ...	10
	Loss of any other toe	6
25	Loss of any joint of any other toe	2
Loss of sexual organs etc.—		
	Loss of sexual organs	47
	Loss of both breasts	47
30	Loss of one breast	30
Loss of mental powers—		
	Incurable loss of mental powers resulting in total inability to work	100
Permanent impairment of back, neck, pelvis—		
	Permanent impairment of the back	0-60

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Permanent impairment of the neck	0-40
Permanent impairment of the pelvis	0-15

Disfigurement—

Severe facial disfigurement (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0-26
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5 NOTES:

- 10 (a) Where a range of percentages is provided by the Table, the maximum percentage is payable only in a most extreme case and the percentage payable in any other case shall be reasonably proportionate to that maximum percentage having regard to the severity of the matter. The amount payable in any particular case shall, in default of agreement, be determined in accordance with this Act by a commissioner.
- 15 (b) Loss of left arm, left hand or fingers of left hand may be compensated as if loss of right arm, right hand or fingers of right hand if the left arm or hand is the worker's dominant limb.
- 20 (c) If a loss (not being the impairment of the back, neck or pelvis) may be compensated by a combination of items in the Table or by a proportionate loss of a single item, the loss shall be compensated by a proportionate loss of a single item (e.g. loss of 2 or more fingers to be compensated as a proportionate loss of the use of the hand).
- (d) Loss of a hand includes the loss of the thumb and other fingers of the hand.
- (e) Loss of an only arm, leg, foot or hand shall be treated as the loss of both arms, legs, feet or hands.
- 25 (f) In the case of loss of sexual organs (subject to the maximum percentage of 47 per cent and without limiting compensation for other losses of sexual organs)—
- 30 (i) the percentage payable for loss of the penis is 47 per cent;
- (ii) the percentage payable for loss of 1 testicle is 10 per cent; and
- (iii) the percentage payable for loss of 2 testicles or an only testicle is 47 per cent.

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- (g) In the case of the impairment of the back, neck or pelvis, compensation is payable only in respect of the degree of permanent impairment suffered as a result of the injury concerned and as if any impairment existing before that injury did not exist.

5 **DIVISION 5—*Compensation for property damage*****Damage to artificial limbs etc. (cf. former s. 10A (1), (2), (3))**

74. (1) A worker—

- (a) who has met with an accident arising out of or in the course of the worker's employment; and
- 10 (b) whose crutches, artificial members, eyes or teeth, other artificial aids, or spectacles, are damaged as a result of the accident,

is entitled to receive, by way of compensation from the worker's employer, the reasonable cost of repairing or, if necessary, replacing the articles so damaged.

15 (2) Nothing in this section—

- (a) affects the liability of an employer under Division 3; or
- (b) entitles a worker to payments under this section as well as under Division 3 in respect of the same damage.

20 (3) For the purposes of this section, the cost of repairing or replacing any article includes—

- (a) any fees and charges paid by the worker to medical practitioners, dentists or other qualified persons for such services by way of consultations, examinations or prescriptions as are reasonably rendered in connection with the repairing or replacing of the article;
- 25 and
- (b) the amount of any wages lost by the worker by reason of the worker's attendance at any place for the purpose of having, undergoing or obtaining any such consultation, examination or prescription.

Damage to clothing (cf. former s. 10B (1))

30 75. A worker—

- (a) who has met with an accident arising out of or in the course of the worker's employment; and
- (b) whose clothing has, as a result of the accident, been damaged,

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is entitled to receive, by way of compensation from the worker's employer, the reasonable cost of repairing or, if necessary, replacing the articles of clothing so damaged.

Maximum rate for damage to artificial limbs, spectacles (cf. former s. 10A
5 (1))

76. (1) The maximum amount for which an employer is liable under section 74 in respect of damage resulting from an accident is—

- (a) \$500; or
- 10 (b) where some greater amount has been prescribed by the regulations—
that greater amount.

(2) On application made from time to time by or on behalf of the worker concerned, a commissioner may, subject to the regulations, direct that the employer is liable for a further amount to that prescribed by subsection (1).

Maximum rate for damage to clothing (cf. former s. 10B (1))

15 77. (1) The maximum amount for which an employer is liable under section 75 in respect of damage resulting from an accident is—

- (a) \$300; or
- (b) where some greater amount has been prescribed by the regulations—
that greater amount.

20 (2) On application made from time to time by or on behalf of the worker concerned, a commissioner may, subject to the regulations, direct that the employer is liable for a further amount to that prescribed by subsection (1).

Miscellaneous provisions (cf. former ss. 10A (1A), (1B), 10B (2), (3))

25 78. (1) If it is proved that any damage for which compensation would otherwise be payable to a worker under this Division is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that damage.

(2) Compensation is not payable under this Division in respect of any damage caused intentionally by the worker concerned.

30 (3) The provisions of Part 5 (Common Law Remedies) apply to damage to which this Division applies in the same way as they apply to injuries.

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(4) For the purposes of this Division, an accident arises out of or in the course of employment if—

- (a) the accident occurred on a journey to which section 10 applies; and
- (b) the worker received an injury in that accident for which compensation is, because of that section, payable or, if the worker had been injured in that accident, compensation would have been so payable.

DIVISION 6—*Indexation of amounts of benefits*

Interpretation (cf. former s. 9A (1))

10 79. In this Division—

“adjustable amount” means each of the amounts of money specified in sections 25, 35, 37, 40, 66 and 67 (without regard to any adjustment under this Division);

“adjustment date” means 1 April or 1 October in each year;

15 “base index number” means 220;

“latest index number”, in relation to an adjustment date, means—

(a) where—

20 (i) the adjustment date is 1 April in any year—the index number, relating to adult males in New South Wales, for the preceding month of December; or

(ii) the adjustment date is 1 October in any year—the index number, relating to adult males in New South Wales, for the preceding month of June,

25 shown in the first preliminary table in the award rates of pay indexes, Australia, being the table entitled “Wage and salary earners: indexes of weekly award rates of pay States and Territories”, published by the Australian Statistician; or

30 (b) where there is, under paragraph (a), no latest index number in relation to an adjustment date—such number as may be prescribed by the regulations in respect of that date.

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Adjustment of amounts of benefits according to award rate of pay index (cf. former s. 9A (2), (4))

80. On and from each adjustment date and until immediately before the next following adjustment date, a reference in this Act to an adjustable amount shall be construed as a reference to an amount calculated as follows:

$$\text{Adjustable amount} \times \frac{\text{latest index number}}{\text{base index number}}$$

Rounding off (cf. former s. 9A (2A), (3))

81. (1) If a reference to an adjustable amount (being \$80,000 or \$40,000) as construed in accordance with section 80 would, but for this section—

- (a) be expressed as including an amount in cents—that amount in cents shall be disregarded; or
- 15 (b) be expressed as including a whole number of dollars that is not divisible by 50 without remainder—that number of dollars shall be reckoned as the next higher whole number of dollars that is divisible by 50 without remainder.

(2) If a reference to any other adjustable amount as construed in accordance with section 80 would, but for this section, be expressed as including an amount in cents that is not a whole number of cents divisible by 10 without remainder, that amount—

- (a) shall be disregarded if it is less than 5 cents;
- 25 (b) shall, if it is a whole number of cents divisible by 5 without remainder, be reckoned as the next higher whole number of cents that is divisible by 10 without remainder; or
- (c) shall, if it is not referred to in paragraph (a) or (b), be reckoned as the nearest whole number of cents that is divisible by 10 without remainder.

Publication of adjusted amounts (cf. former s. 9A (4))

30 82. On or before each adjustment date, the Board shall, by notice published in the Gazette, declare the amount at which each adjustable amount is to be construed in accordance with this Division on and from that adjustment date until immediately before the next following adjustment date.

*Workers Compensation 1987*DIVISION 7—*Payment of benefits***Manner of payment of compensation** (cf. former ss. 17, 56 (1))

83. (1) Compensation payable under this Act to a worker shall be paid—

- 5 (a) in cash;
 (b) by cheque; or
 (c) by means of direct credit to an account maintained with a financial institution by the worker (either alone or jointly or in common with another person).

10 (2) Payment in cash shall be made by delivery to the worker at the employer's usual place of payment of wages or at any other place agreed on between the employer and the worker.

(3) Payment by cheque shall be made—

- (a) by delivery to the worker at any such place; or
 15 (b) by means of a letter containing the cheque sent by post to the worker's address.

(4) A payment of compensation by post shall be deemed to have been made when the letter is posted, but the liability to make the payment is not satisfied until the worker receives the payment.

20 (5) Payment made by means of direct credit to an account shall be made only if the worker agrees to payment being made in that manner.

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

25 (7) This section does not apply to compensation paid to the Board under this Act.

(8) In this section—

“account” includes a deposit account and a withdrawable share account;

“financial institution” means—

- (a) a bank;
 30 (b) a building society; or
 (c) a credit union;

“worker” includes any person to whom compensation is payable under this Act.

*Workers Compensation 1987***Times for payment of weekly compensation**

84. (1) A weekly payment of compensation is payable—

- (a) at the employer's usual times of payment of wages to the worker;
- (b) at fortnightly or other shorter intervals; or
- 5 (c) at such other intervals as are agreed on between the employer and the worker.

(2) In this section—

“weekly payment of compensation” includes compensation payable under section 25 (1) (b) in respect of a dependent child of a deceased worker.

10 Payments to Board for benefit of beneficiaries (cf. former ss. 15 (3), 57, 58, 61)

85. (1) The following compensation shall be paid to the Board for the benefit of the persons entitled to the compensation:

- 15 (a) compensation payable in respect of the death of a worker (unless paid to a particular person in accordance with this Act or an award);
- (b) compensation payable to a person who is mentally ill (unless a commissioner otherwise orders);
- (c) compensation payable to a worker under the age of 18 years if the
20 worker agrees or a commissioner directs that the compensation be paid to the Board;
- (d) a lump sum commutation payment which the worker agrees or a commissioner orders to be paid to the Board.

(2) Any money so paid to the Board may be invested, applied, paid out or otherwise dealt with by the Board in such manner as the Board thinks
25 fit for the benefit of the persons entitled to the money.

(3) If a widow or widower (over 18 years of age and not mentally ill) is the only person entitled to compensation paid to the Board in respect of the death of a worker, the compensation shall be paid out to the widow or widower in one or more lump sums determined by the Board.

30 (4) A reference in subsection (3) to the widow or widower of a deceased worker includes a reference to a dependant of the worker who, although not legally married to the worker, lived with the worker as the worker's wife or husband on a permanent and genuine domestic basis.

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(5) In the case of a lump sum commutation payment, the Board shall exercise its powers under this section in accordance with the agreement or order under which it was paid to the Board.

(6) A commissioner may, for any sufficient cause, vary the manner in which the Board invests, applies, pays out or otherwise deals with money under this section.

(7) The Board may apply for any such variation.

(8) The receipt of the Board is sufficient discharge in respect of any money paid to the Board under this section.

10 **Money may be invested as part of common fund** (cf. former s. 62)

86. (1) A power conferred on the Board by this Division (other than this section) to invest money for the benefit of a person includes a power to invest the money as the Board thinks fit as part of a common fund comprising—

- 15 (a) all money that, immediately before the commencement of this section, was part of the common fund under section 62 of the former Act;
- (b) any money that has been or is to be invested by the Board pursuant to this Division for the benefit of a person; and
- 20 (c) such of the money paid to the Income Suspense Account referred to in subsection (2) as is not required for immediate payment as provided by this section.

(2) Income earned from the investment of the common fund shall be credited to an Income Suspense Account from which shall be paid—

- 25 (a) interest, at such times and at such rate or rates as the Board determines, on each of the amounts referred to in subsection (1) that together constitute the common fund; and
- (b) the amounts referred to in subsection (3) (a).

(3) The Board shall pay to the credit of an Investment Guarantee
30 Account—

- (a) such amounts from the Income Suspense Account as the Board thinks fit; and
- (b) any capital profit made upon realisation of any investment made from the common fund.

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(4) The Board may apply the funds in the Investment Guarantee Account—

- 5 (a) in payment to the credit of the common fund of an amount equivalent to the amount of any loss suffered upon realisation of an investment made from the common fund;
- (b) in payment of any costs incurred in protecting investments made from the common fund; and
- (c) in payment of such other charges and expenses relating to the operation of the common fund as the Board thinks fit.

10 (5) The Board may realise any investment made from the common fund and the proceeds of the realisation shall, unless otherwise dealt with under this section, form part of the common fund.

15 (6) The Board may withdraw from the common fund any amount that it was authorised to invest for the benefit of a person, or any part of that amount, and may apply or otherwise deal with the amount withdrawn as it thinks fit for the benefit of that person.

(7) After an amount has been withdrawn under subsection (6), interest under subsection (2) shall not be paid on that amount.

Unclaimed money (cf. former s. 62B)

20 87. (1) If—

- (a) any money paid at any time to the Board has been invested by the Board for the benefit of a person entitled to the money under this Act or the former Act; and
- 25 (b) the whereabouts of the beneficiary has not been known to the Board during any succeeding period of 10 years,

the Board may pay the money, together with accrued income from the investment of the money, to the credit of the State Compensation Board Fund.

30 (2) Money so credited to the State Compensation Board Fund, together with accrued interest, shall—

- (a) be paid out on the application of any person who would have been entitled to have it paid out if it had not been credited to that Fund; and

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- (b) at the request of the person for whose benefit it was invested before being credited to that Fund, or the legal personal representative of that person—again be so invested.

PART 4

5 COMPENSATION—CLAIMS AND PROCEEDINGS

DIVISION 1—*Notice of injury etc. and claims for compensation***Notice of injury to be given to employer** (cf. former ss. 43 (4), 53 (1))

88. (1) Compensation may not be recovered under this Act unless notice of the injury has been given to the employer as soon as practicable after the
10 injury happened and before the worker has voluntarily left the employment in which the worker was at the time of the injury.

(2) Notwithstanding subsection (1), the absence of, or any defect or inaccuracy in, any such notice is not a bar to the recovery of compensation if it is found in proceedings to recover that compensation—

- 15 (a) that the person against whom the proceedings are taken has not been prejudiced in respect of the proceedings;
- (b) that the absence of, or defect or inaccuracy in, the notice was occasioned by ignorance, mistake, absence from the State or other reasonable cause;
- 20 (c) that the person against whom the proceedings are taken had knowledge of the injury from any source at or about the time when the injury happened;
- (d) where the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, office or shop—
- 25 (i) that the summary referred to in section 269 has not been posted up in accordance with that section or the employer has otherwise contravened that section;
- (ii) that the injury has been reported by or on behalf of the
30 employer to an inspector of mines or factories, shops and industries; or
- (iii) that the injury has been treated in a first aid room at the mine, quarry, factory, workshop, office or shop; or

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

Provisions relating to giving of notice of injury (cf. former ss. 7 (4B) (a), 53 (2)–(8))

- 5 **89. (1)** A notice of injury shall state—
- (a) the name and address of the person injured;
 - (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.
- 10 **(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 shall be deemed to have been given to an employer—
- 15 (a) if it is given to any person designated for the purpose by the employer; or
- (b) if it is given to any person under whose supervision the worker is employed.
- (5) A written notice of injury may be served by delivering it, or by sending it by post to, the residence or any place of business of the person on whom it is to be served.
- 20 **(6)** If the regulations so require (and notwithstanding anything to the contrary in this section), a notice of injury shall be given in the manner, and contain the particulars, prescribed by the regulations.

Register of injuries (cf. former s. 53 (4))

- 25 **90. (1)** There shall be kept at every mine, quarry, factory, workshop, office or shop in some readily accessible place a register of injuries.
- (2) A worker employed at any such mine, quarry, factory, workshop, office or shop, or any person acting on the worker's behalf, may enter in the register of injuries particulars of any injury received by the worker.
- 30 **(3)** The regulations may prescribe the form of a register of injuries and the particulars to be entered in the register.

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(4) If particulars of an injury are duly entered in a register of injuries as soon as practicable 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, 5 or the occupier of the factory, workshop, office or shop, is guilty of an offence and liable to a penalty not exceeding \$2,000.

Notice of incapacity, medical etc. treatment and damage to property (cf. former ss. 10 (6) (a), 10A (1B), 10B (3), 53 (7))

91. (1) Sections 88–90 apply with respect to—

- 10 (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;
- 15 (b) the giving of notice of any medical or related treatment, hospital treatment or ambulance service to which Division 3 of Part 3 applies; and
- (c) the giving of notice of any damage to property to which Division 5 of Part 3 applies,

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

(2) The particulars required to be given in any such notice are (subject 20 to the regulations) reasonable particulars of the incapacity, of the treatment or service or of the damage to property.

Making of claim for compensation (cf. former ss. 10A (1B), 10B (3), 53 (1))

92. (1) A claim for compensation shall be—

- (a) in writing;
- 25 (b) in such form as may be prescribed by the regulations or approved by the Board;
- (c) accompanied by such medical certificates or other documents as may be prescribed by the regulations; and
- (d) made in such manner as may be prescribed by the regulations.

30 (2) Compensation may not be recovered under this Act unless a claim for the compensation has been made within 6 months after the injury or accident happened or, in the case of death, within 6 months of the date of death.

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(3) If a claim for compensation and a medical certificate or other document are not given or served at the same time, the claim for compensation shall be deemed not to have been made until the day on which the remaining document is given or served.

- 5 (4) The failure to make a claim in accordance with subsection (1) or within the period referred to in subsection (2) 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.

Action by employer in respect of claims (cf. former s. 18BA)

- 10 93. (1) An employer (not being a self-insurer)—
- (a) who receives a claim for compensation or any other documentation in respect of such a claim—shall, within 7 days after receipt of the claim or documentation, forward it to the insurer who the employer believes is liable to indemnify the employer in respect of the claim;
 - 15 (b) who receives a request from that insurer for further specified information in respect of the claim or documentation—shall, within 7 days after receipt of the request, furnish that insurer with such of the specified information as is in the employer's possession or reasonably obtainable by the employer; or
 - 20 (c) who has received compensation money under this Act from an insurer—shall, as soon as practicable, pay the money to the person entitled to the compensation.

Penalty: \$5,000.

- (2) A person is not guilty of an offence for a failure to comply with any 25 provision of subsection (1) if there was a reasonable excuse for that failure.

Reports to Board by insurers concerning injuries, incapacity etc. (cf. former ss. 44, 52A)

94. (1) An insurer shall notify the Board, in accordance with the regulations, of—
- 30 (a) any injury of which the insurer is aware received by a worker—
 - (i) employed by an employer indemnified by the insurer under a policy of insurance; or
 - (ii) in the case of a self-insurer—employed by the insurer;

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- (b) the particulars relating to the injury and the worker that are relevant to any claim for compensation under this Act in respect of the injury (including such particulars as are prescribed by the regulations);
- 5 (c) the particulars of any incapacity for work which the insurer knows to exceed 12 weeks (including such particulars as are prescribed by the regulations); and
- (d) such further particulars relating to the injury, incapacity or worker as may be prescribed by the regulations or as the Board, by notice to the insurer, requires.
- 10 Penalty: \$2,000.

(2) In this section—

“insurer” means licensed insurer, former licensed insurer or self-insurer.

DIVISION 2—*Review officers***Review officers—appointment** (cf. former s. 38A)

- 15 **95.** Suitably qualified persons may be employed under the Public Service Act 1979 as review officers for the purposes of this Act.

Functions of review officers**96. (1)** A review officer shall—

- 20 (a) exercise the functions of a review officer under this Act in respect of any dispute assigned to the review officer under this Act; and
- (b) exercise such additional functions as may be directed from time to time by the Senior Commissioner.

(2) A review officer is, in the exercise of the review officer’s functions, subject to the general control and direction of the Senior Commissioner.

- 25 (3) This section does not affect the exercise of the functions of the appropriate Department Head under the Public Service Act 1979 with respect to review officers.

- 30 (4) A review officer is not subject to control and direction by the appropriate Department Head or any other public servant with regard to proceedings on any dispute assigned to the review officer and the appropriate Department Head or other public servant shall not overrule or interfere with any decision of the review officer in respect of any such dispute.

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(5) No matter or thing done by a review officer in the exercise of the review officer's functions shall, if the matter or thing was done in good faith, subject the review officer personally to any action, liability, claim or demand.

5 Assignment of disputes to review officers

97. (1) Any dispute with respect to the payment of compensation to a worker or other person may be assigned to a review officer—

(a) by the Senior Commissioner; or

10 (b) subject to any direction of the Senior Commissioner, by the commissioner to whom the matter has been allocated.

(2) A dispute may be assigned to a review officer whether or not an application has been made to a commissioner to determine the matter.

15 (3) Any party to a dispute that may be assigned to a review officer may, in accordance with the regulations, request that the dispute be assigned to a review officer for conciliation.

Review officer to conciliate in disputes (cf. former s. 38)

98. A review officer shall, in connection with a dispute assigned to the review officer, make all reasonable efforts to conciliate and bring the parties to agreement.

20 Proceedings before review officers

99. (1) A person who is a party to any dispute before a review officer is not entitled to be represented by a barrister or solicitor at any conference or other proceeding held with or before the review officer to resolve the dispute.

25 (2) A review officer and all the parties to a dispute may agree to a party being represented by a barrister or solicitor at any such conference or other proceeding.

(3) A review officer may exercise the review officer's functions under this Act—

30 (a) without holding any formal hearing, conference or other proceeding; and

(b) without giving the parties to a dispute an opportunity to make submissions to the review officer with respect to the dispute.

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(4) A person shall not, in connection with a dispute before a review officer, make a statement to the review officer that the person knows to be false or misleading in a material particular.

Penalty: \$5,000.

5 (5) The regulations may make provision for or with respect to the exercise of a review officer's functions under this Act.

Communications before review officer privileged

100. In proceedings before the Compensation Court or a commissioner, evidence of a statement made during any conference or other proceeding held with or before a review officer to resolve a dispute is not admissible unless the person who made the statement agrees to the evidence being admitted.

DIVISION 3—*Special provisions with respect to weekly payments of compensation*

15 **Interpretation**

101. (1) In this Division—

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

20 (2) In this Division, a reference to a person on whom a claim for a weekly payment of compensation is made includes a reference to an insurer to whom the claim has been forwarded under section 93.

Claim for weekly payments—commencement of payments (cf. former s. 53A)

25 102. (1) Weekly payments of compensation shall commence as soon as practicable (but not later than 31 days) after the claim for compensation is duly made.

(2) If liability for weekly payments of compensation is disputed, the dispute may be referred to a review officer by the person on whom the claim is made.

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(3) A dispute is referred to a review officer by forwarding to the clerk to the commissioners—

5 (a) a copy of the claim and any relevant documentation relating to the claim in the person's possession or reasonably obtainable by the person; and

(b) a statement as to the matters in dispute.

(4) If the person on whom a claim is made—

(a) disputes liability to make the weekly payments or the extent of that liability; and

10 (b) refers the dispute to a review officer before the expiration of 31 days after the claim for compensation is duly made,

the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) is suspended pending a direction by a review officer or a determination by a commissioner or the
15 Compensation Court.

(5) A dispute referred to a review officer under this section shall be assigned to such review officer as the Senior Commissioner determines.

(6) This section ceases to apply if the claim for compensation is withdrawn.

20 **Offences—commencement of weekly payments**

103. (1) A person on whom a claim for weekly payments of compensation is made shall not fail to commence those payments within the time required by section 102.

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

(3) An employer has such a reasonable excuse if—

(a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim; and

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

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(4) A person on whom a claim for weekly payments of compensation is made shall not delay referring a dispute under section 102, or refer a matter which the person knows is not a genuine dispute, for the purpose of delaying, without good cause, the commencement of weekly payments of
5 compensation.

Penalty: \$5,000.

Direction by review officer to pay or continue to pay weekly compensation

10 **104. (1)** This section applies where a review officer to whom a dispute has been assigned is unable to bring the parties to agreement by conciliation, being a dispute relating to—

- (a) a claim for weekly payments of compensation; or
- (b) the continuation of weekly payments of compensation.

15 **(2)** If the review officer is satisfied that there is no genuine dispute with respect to the whole or any part of the claim or continued claim for weekly payments, the review officer may direct—

- (a) the person on whom the claim was made; or
- (b) the person who discontinued the weekly payments,

to pay or continue to pay compensation in accordance with the direction.

20 **(3)** If the review officer is satisfied that there is a genuine dispute with respect to the whole or any part of the claim or continued claim for weekly payments, the review officer shall notify the person who made the claim, or who was receiving weekly payments, of that fact and that an application may be made to a commissioner to determine the matter.

Provisions relating to directions by review officers

25 **105. (1)** A direction (or further direction) of a review officer under section 104 shall (subject to this section) continue in force until the expiration of such period (not exceeding 12 weeks after it is given) as is specified in the direction.

30 **(2)** Nothing in this section prevents a review officer from giving a further direction (or further directions) for payment of compensation on or after any earlier direction ceases to be in force.

(3) A review officer is not authorised to direct payment of weekly payments during any period before the direction is given.

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(4) A review officer is not authorised to give a direction in respect of a weekly payment of compensation if an application has been lodged for a determination of the matter by a commissioner, unless the Senior Commissioner or the commissioner hearing the matter has referred the dispute to the review officer for conciliation and direction (if appropriate).

(5) A direction of a review officer may be given subject to such conditions as are specified in the direction.

(6) A direction given by a review officer may be revoked or amended by the review officer or any other review officer.

(7) A commissioner may, on the application of a person who is liable to make weekly payments in accordance with a direction of a review officer, revoke the direction if the commissioner considers that the payment should not commence until an application for the compensation is made and determined.

(8) If the Compensation Court or a commissioner subsequently determines that a person is not liable under this Act to make the weekly payments of compensation that have been paid in accordance with a direction of a review officer, the person who made the payments is not entitled to recover those payments.

(9) Subsection (8) does not affect the recovery of weekly payments under section 58.

Offence—failure to comply with directions of review officer

106. A person shall comply with a direction of a review officer that is given to the person under section 104.

25 Penalty: \$5,000.

*DIVISION 4—Proceedings before commissioners and the Compensation Court***Jurisdiction and functions of commissioners (cf. former ss. 42K and 53G)**

107. (1) The commissioners have (subject to this Act and the Compensation Court Act 1984) exclusive jurisdiction to examine, hear and determine all matters arising under this Act.

(2) A commissioner shall have and may exercise—

(a) the jurisdiction conferred on the commissioners by subsection (1);
and

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(b) any other jurisdiction or any function conferred or imposed on a commissioner by or under this or any other Act.

(3) A commissioner may (in accordance with the terms of reference) deal with any matter or do any thing referred to the commissioner by a Judge of the Compensation Court under section 16 of the Compensation Court Act 1984.

Lodgment of applications etc. for determination of claims or other matters (cf. former s. 42L)

10 **108.** The regulations may make provision for or with respect to the form and manner of lodgment of any application—

- (a) for determination of any claim for compensation under this Act; or
- (b) for determination of any other matter arising under this Act.

Transfer of proceedings to Compensation Court by Senior Commissioner

15 **109. (1)** The Senior Commissioner may transfer to the Compensation Court for hearing and determination any matter before the commissioners.

(2) A matter may be transferred administratively without a hearing being held.

20 (3) A commissioner or a party to any proceedings before a commissioner may request the Senior Commissioner to transfer under subsection (1) any matter before the commissioner to the Compensation Court.

(4) On the transfer to it of any such matter, the Compensation Court has jurisdiction to hear and determine the matter.

25 (5) The Compensation Court, when hearing and determining the matter, shall have and may exercise such of the functions of a commissioner under this Act or any other Act as are necessary or appropriate for the purpose of hearing and determining that matter.

(6) Sections 113–120 do not apply to proceedings before the Compensation Court on any matter transferred under this section.

Appeals to Compensation Court from commissioners (cf. former s. 42Q)

30 **110. (1)** If a party to any proceedings before a commissioner is aggrieved by an award of the commissioner in point of law, that party may appeal to the Compensation Court.

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(2) If, in any proceedings before a commissioner, the commissioner has misused a statutory discretion, any party to those proceedings may appeal to the Compensation Court.

(3) Regulations may be made for or with respect to prescribing further
5 grounds on which appeals may be made to the Compensation Court with respect to proceedings before commissioners.

(4) There shall be no re-hearing or new hearing of proceedings the subject of appeal under this section.

(5) An appeal shall not be made under subsection (2) without the leave
10 of the Compensation Court.

(6) The Compensation Court may, on the hearing of any appeal made to it under this section—

(a) remit the matter to the Senior Commissioner for determination by
15 a commissioner in accordance with any decision of the Compensation Court; or

(b) make such other order in relation to the appeal as the Compensation Court sees fit.

(7) In this section, “award” includes interim award, order, decision, determination, ruling and direction.

20 **References of questions of law to Compensation Court by a commissioner** (cf. former s. 42R)

111. (1) A commissioner may—

(a) of the commissioner’s own motion; or

(b) on application by the parties, or any one of them,

25 refer for the opinion of the Compensation Court any question of law arising in proceedings before the commissioner.

(2) Notwithstanding the reference of a question to the Compensation Court by a commissioner under this section (not being the question of
30 whether the commissioner may exercise powers under this Act in relation to a matter), the commissioner may make an award in the matter in which the question arose.

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(3) Upon the determination by the Compensation Court of a question referred to it under this section—

- 5 (a) if the commissioner has not made an award in the matter in which the question arose, the commissioner may make an award not inconsistent with the opinion of the Compensation Court; or
- (b) if the commissioner has made an award in the matter in which the question arose, the commissioner shall vary that award in such a way as will make it consistent with the opinion of the Compensation Court.

10 **Interim awards** (cf. former s. 7B)

112. (1) This section applies where—

- (a) there is a dispute between employers or insurers, or between an employer and an insurer, as to whether incapacity or death resulted from more than one injury;
- 15 (b) an employer has at any time or from time to time been a self-insurer under this Act or the former Act and at another time or at other times has obtained a policy of insurance from an insurer, and a dispute arises as to whether an insurer is liable to indemnify the employer in respect of compensation payable under this Act for a particular injury;
- 20 (c) an insurer is, pursuant to section 144 (2) (b), joined as a party to proceedings; or
- (d) a person is, by the operation of this Act, deemed to be a worker employed by more than one principal or other person, and there is a dispute as to which principal or other person is liable to pay compensation under this Act.
- 25

(2) Where this section applies, a commissioner may—

- 30 (a) if the commissioner is satisfied that compensation is payable (but is not yet able to finally determine that compensation is payable, the amount of the compensation or the person liable to pay the compensation), make such interim awards as the commissioner thinks fit—
- (i) for compensation;
- (ii) for indemnity by an insurer or self-insurer; or

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(iii) for payment under the Uninsured Liability and Indemnity Scheme,

and make such interim orders as the commissioner thinks fit for contribution on the part of an insurer, employer or principal or other person
5 or under the Uninsured Liability and Indemnity Scheme;

(b) make such final awards and orders as the commissioner thinks fit with respect to any of the matters the subject of an interim award or order under paragraph (a); and

10 (c) if the commissioner makes a final award or order, make such orders as the commissioner thinks fit with respect to adjustments to be made between persons against whom orders have been made under paragraphs (a) and (b) or between any such persons and the Uninsured Liability and Indemnity Scheme.

15 (3) A final award or order of a commissioner may not provide for the repayment of any money by a worker or other person to whom compensation has been paid under an interim award.

Procedure before commissioners (cf. former s. 42M)

20 113. (1) Proceedings in any matter before a commissioner shall be conducted with as little formality and technicality as the proper consideration of the matter permits.

(2) In proceedings in any matter before a commissioner, the commissioner is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as the commissioner thinks appropriate and as the proper consideration of the matter before the
25 commissioner permits.

(3) A commissioner may—

(a) conduct proceedings in public or private as the commissioner thinks fit; and

(b) adjourn proceedings to any time or place.

30 (4) A party to any proceedings before a commissioner may be represented—

(a) by a barrister or solicitor; or

(b) if the regulations so provide—by an agent of a class prescribed by the regulations.

*Workers Compensation 1987***Pre-hearing conferences, arbitration and conciliation** (cf. former s. 42P)

114. (1) Regulations may be made for or with respect to arranging and conducting pre-hearing conferences in respect of proceedings before commissioners.

5 **(2)** A commissioner is not disqualified from hearing a matter merely because the commissioner held a pre-hearing conference in connection with the matter.

10 **(3)** Where proceedings are pending before a commissioner, the commissioner may refer the proceedings, or any matter arising from the proceedings, for arbitration by an arbitrator or for conciliation by a review officer.

(4) The procedure for appointing arbitrators for the purpose of subsection (3), and for arranging or conducting arbitration proceedings, shall be in accordance with the regulations.

15 **(5)** Regulations may be made requiring commissioners to refer proceedings or matters arising from proceedings for arbitration by an arbitrator, or for conciliation by a review officer, following a request by the parties or in such other circumstances as may be prescribed by the regulations.

20 **Powers of commissioners in connection with proceedings** (cf. s. 15 (2), (3) Compensation Court Act 1984)

115. (1) A commissioner may, in accordance with the regulations—

25 (a) issue a summons requiring the attendance of witnesses or the production of documents in connection with proceedings before the commissioner;

 (b) require any person appearing before the commissioner to give evidence on oath or affirmation (and may, for that purpose, administer an oath or affirmation); and

30 (c) require any person appearing before the commissioner to answer any relevant question put to the person.

(2) A person shall not, without reasonable excuse—

 (a) refuse or fail to comply with a summons duly served on the person under this section; or

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(b) refuse or fail to comply with a requirement duly made under this section.

Penalty: \$10,000.

(3) A person is not obliged—

5 (a) to answer a question under this section if the answer to that question would tend to incriminate that person of an offence; or

(b) to produce any document or other thing if it or its contents would tend to incriminate that person of an offence.

10 (4) A person shall not in any proceedings before a commissioner misbehave, wilfully insult the commissioner or interrupt the proceedings.

Penalty: \$5,000.

(5) A summons under this section may be issued by the clerk to the commissioners.

Decisions of commissioners (cf. s. 17 Compensation Court Act 1984)

15 **116. (1)** A decision of a commissioner in any matter shall be made on the real merits and justice of the case.

(2) A commissioner is not bound to follow strict legal precedent.

20 (3) Subject to section 110 of this Act and Part IV of the Compensation Court Act 1984, a decision of or proceeding before a commissioner shall not—

(a) be vitiated because of any informality or want of form; or

(b) be liable to be challenged, appealed against, reviewed, quashed or called into question by any court.

25 17 (4) Notwithstanding anything to the contrary in this section or section 17 of the Compensation Court Act 1984, a commissioner may—

(a) reconsider any matter that has been dealt with by a commissioner; and

(b) rescind, alter or amend any decision previously made or given by a commissioner.

30 (5) In this section—

“decision” includes—

(a) an award, order, determination, ruling and direction; and

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(b) a decision made before the commencement of this section.

Interest before order for payment (cf. s. 19 (1) Compensation Court Act 1984)

117. (1) In any proceedings before a commissioner, the commissioner may order that there shall be included, in any sum to be paid, interest at
5 such rate as the commissioner thinks fit on the whole or any part of the sum for the whole or any part of the period between the date when the cause of action arose and the date when the sum is payable.

(2) This section does not—

- (a) authorise the giving of interest on interest; or
10 (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise.

Interest after order for payment (cf. former s. 19 (2) Compensation Court Act 1984)

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

(2) Interest payable under subsection (1) in respect of any sum ordered to be paid shall—

- 20 (a) be calculated as from the date when the order was made or from such later date as a commissioner in any particular case fixes;
(b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act 1970; and
25 (c) form part of the sum ordered to be paid, but not so as to require the payment of interest upon interest.

(3) Notwithstanding subsection (1) or (2), where—

- (a) the amount of any sum ordered to be paid is paid in full within 21 days after the sum becomes payable; or
30 (b) the amount of costs ascertained by taxation or otherwise is paid in full within 21 days after that amount is so ascertained,

interest shall, unless a commissioner otherwise orders in any particular case, not be payable on the amount so paid.

*Workers Compensation 1987***Enforcement of awards and orders** (cf. s. 23 Compensation Court Act 1984)

119. (1) If an award or order of a commissioner for the payment of money has been entered up or made in favour of any person and provision is not made in this or any other Act for the recovery of that money, the
5 clerk to the commissioners—

- (a) on the application of the person or the person's solicitor or agent shall issue and deliver to the person, solicitor or agent a certificate in or to the effect of the form prescribed by the regulations; and
- 10 (b) shall make a minute or memorandum of the issue or delivery of the certificate against the entry of the award or order.

(2) A person to whom such a certificate has been issued and delivered may file, or cause to be filed, the certificate with the registrar under the District Court Act 1973 at the proclaimed place under that Act which is nearest the debtor's place of residence or business.

15 (3) A registrar under the District Court Act 1973 with whom a certificate has been filed by a person under subsection (2) shall enter judgment for the person for the amount of the certificate together with—

- (a) the fees paid for the certificate to the clerk to the commissioners; and
- 20 (b) the fees paid for filing the certificate and entering judgment.

Fees and costs awarded by commissioners (cf. s. 42s former Act and s. 18 Compensation Court Act 1984)

120. (1) Subject to this section and section 121, a commissioner may in any matter—

- 25 (a) make such order as to payment of fees and costs as the commissioner thinks just; and
- (b) assess the amount of those fees and costs.

(2) Without affecting the generality of subsection (1), a commissioner may, in such circumstances as may be specified in the regulations, order the
30 payment of fees or costs by legal representatives.

(3) Fees and costs included—

- (a) in an order made by a commissioner for the payment of costs by a party to proceedings; or
- (b) in an award made under section 122,

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shall not exceed the fees and costs calculated in accordance with the scale of fees and costs prescribed by the regulations.

(4) Fees and costs referred to in subsection (3) may be taxed under and in accordance with—

- 5 (a) if the regulations so require, the regulations; or
- (b) the rules of the Compensation Court (and for that purpose a reference in those rules to that Court or a Judge of that Court shall be construed as a reference to a commissioner).

Orders for payment of costs (cf. s. 53H (1) former Act and s. 18 (3) Compensation Court Act 1984)

10 **121. (1)** A commissioner or the Compensation Court shall not order the payment of fees and costs by—

- (a) an applicant for compensation under this Act; or
- 15 (b) an appellant (not being an employer or an insurer or the Board) against an award or order or a determination, ruling, direction or decision under this Act,

unless the commissioner or the Compensation Court is satisfied that the application or appeal was frivolous or vexatious or was made fraudulently or without proper justification.

20 **(2)** An order by a commissioner or the Compensation Court for payment of costs may include—

- (a) the fees and costs actually incurred or to be incurred by a worker;
- 25 (b) if an employer denies liability but later admits liability without recourse to a commissioner or the Compensation Court—the reasonable expenses incurred by the worker in pursuing the worker's claim; and
- (c) costs incurred in relation to any proceedings under this Act (including proceedings before a review officer).

Solicitor/client costs in compensation proceedings (cf. former s. 56 (2)–(4))

30 **122. (1)** The solicitor or agent of a person claiming compensation under this Act is not entitled—

- (a) to recover from the person any costs in respect of any proceedings under this Act (including proceedings before review officers or on appeal to the Compensation Court); or

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- (b) to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation, except such sum as may be awarded by the Compensation Court or a commissioner.
- 5 (2) Any such award may be made on the application either of the person claiming compensation or the person's solicitor or agent.
- (3) Any sum so awarded shall be subject to taxation by a registrar of the Compensation Court and to the scale of costs prescribed by—
- 10 (a) in the case of an award of the Compensation Court—the rules of that Court; or
- (b) in the case of an award of a commissioner—the regulations.

Applications to be heard together etc. (cf. former ss. 53C, 66 (1A) (g))

123. (1) A person who has applied to a commissioner for a determination of a claim for compensation under this Act against 2 or more
15 persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any such applications heard together.

(2) The regulations may make provision for or with respect to providing that, where more than one employer or more than one insurer is or may be
20 involved in an application for compensation or any other matter under this Act—

- (a) such one of the employers or such one of the insurers as may be determined in accordance with the regulations; or
- (b) (as prescribed by the regulations) the Board or other person,
25 shall represent the employers or insurers in any proceedings relating to the application.

Admissibility of statements by injured workers (cf. former s. 53B)

124. (1) If a worker after receiving an injury makes any statement in writing in relation to that injury to the worker's employer or to an insurer
30 or to any person acting on behalf of the employer or insurer, the statement shall not be admitted in evidence if tendered or used by the employer or insurer in any proceedings before the Compensation Court or a commissioner unless the employer or insurer has, at least 14 days before the hearing, furnished to the worker or to the worker's solicitor or agent a
35 copy in writing of the statement.

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(2) In this section—

“employer”, in relation to a worker, includes a principal referred to in section 20 who is liable to pay compensation to the worker;

“insurer” means licensed insurer or former licensed insurer.

5 Registration of certain persons providing interpreting etc. services (cf. former s. 56A)

125. (1) On and from the commencement date prescribed by the regulations for the purposes of this section, a person who—

10 (a) for fee or reward, acts as interpreter for a worker in connection with a claim for compensation under this Act, whether or not the claim is eventually made and whether or not the person also provides a related service; or

(b) holds himself or herself out as being available to do so;

15 is guilty of an offence against this Act and liable to a penalty not exceeding \$2,000 if the person is not registered under this section.

(2) A person who acts as interpreter for a worker shall be deemed to act for fee or reward if the fee or reward—

(a) is payable or given by some person on behalf of the worker;

20 (b) is payable or given to some person who employs, or is nominated by, the person acting as interpreter; or

(c) is payable or given for any related service provided to the worker by the person acting as interpreter.

(3) This section does not apply to a person who acts as interpreter—

25 (a) if the person is a solicitor, barrister, medical practitioner or other person prescribed by the regulations; or

(b) if the person is engaged by, and the person’s services are paid for by—

(i) the Board;

(ii) the Ethnic Affairs Commission;

30 (iii) an employer or insurer;

(iv) an industrial union of employees or employers; or

(v) any other person or body prescribed by the regulations.

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- (4) The regulations may make provision for or with respect to—
- (a) applications for registration under this section and the disposal of any such applications;
 - (b) the fees to be paid by applicants for registration;
 - 5 (c) the qualifications, experience, fitness and character of applicants for registration;
 - (d) the duration of registration;
 - (e) the conditions to which any registration is subject (including conditions regulating any related service provided by the registered
10 person);
 - (f) the cancellation or suspension of registration; and
 - (g) any other matter in connection with registration under this section.
- (5) The regulations under this section shall provide for a right of appeal against a decision of the Board—
- 15 (a) to refuse to register a person under this section;
 - (b) to cancel or suspend any such registration; or
 - (c) to attach any condition to any such registration.
- (6) The regulations may make provision for or with respect to the maximum amount that may be charged by a person who is registered or
20 required to be registered under this section—
- (a) for acting as interpreter as referred to in subsection (1); and
 - (b) for any related service provided to the worker concerned.
- (7) A person who acts as interpreter in contravention of subsection (1) is not entitled to charge or recover any fee for so acting or for any related
25 service provided to the worker concerned.
- (8) A reference in this section—
- (a) to a person acting as interpreter includes a reference to a person who translates documents into another language; or
 - 30 (b) to a related service includes a reference to the services of an agent or advisor.

*Workers Compensation 1987***Regulations on practice and procedure etc.** (cf. former s. 42T)

126. (1) The regulations may make provision for or with respect to—

- (a) all matters of practice and procedure in proceedings before commissioners; and
- 5 (b) the issue of a seal for the commissioners and the use and effect of the seal.

(2) Without affecting the generality of subsection (1), regulations may be made for or with respect to any matter in respect of which rules of Court under the Compensation Court Act 1984 may be made.

10 **DIVISION 5—*Medical examinations and disputes*****Medical referees** (cf. former s. 50 (1), (2), (5))

127. (1) The Board may, on the recommendation of the Secretary of the Department of Health, appoint medical practitioners (including medical practitioners residing outside the State) to be medical referees for the
15 purposes of this Act.

(2) The regulations may make provision for or with respect to the fixing or determining of the remuneration and expenses payable to medical referees.

20 (3) The remuneration of, and other expenses incurred by such medical referees shall, subject to the regulations, be paid by the Board out of the State Compensation Board Fund.

25 (4) If a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or worker, or by an insurer interested in that case, the medical referee is not qualified to act as medical referee in that case.

Medical panels (cf. former s. 50 (3), (4))

128. (1) There shall be such medical panels as are necessary for the purposes of this Act.

30 (2) A medical panel shall be constituted in respect of any particular matter, or class of matters, by 2 or more medical referees nominated by the Board or by the superintendent of medical panels on the Board's behalf.

(3) The Board may appoint a medical referee as a superintendent of medical panels.

*Workers Compensation 1987***Medical examination of workers at direction of employer** (cf. former s. 51 (1)-(3))

129. (1) A worker who has given notice of an injury shall, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.

(2) A worker receiving weekly payments of compensation under this Act shall, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.

10 (3) If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination—

(a) the worker's right to recover compensation under this Act with respect to the injury; or

(b) the worker's right to the weekly payments,

15 is suspended until the examination has taken place.

(4) A worker shall not be required to submit himself or herself for examination by a medical practitioner under this section otherwise than in accordance with the regulations or at more frequent intervals than may be prescribed by the regulations.

20 **Medical examination of worker at direction of Court, commissioner, review officer or Board** (cf. former s. 51 (8A))

130. (1) The Compensation Court, a commissioner, a review officer or the Board may, at any time or from time to time, require any worker—

(a) who claims compensation under this Act; or

25 (b) who is in receipt of weekly payments of compensation under this Act,

to submit himself or herself for examination by a medical referee or medical panel on a date and at a place arranged by the Board.

30 (2) If a worker refuses to submit himself or herself for any such examination or in any way obstructs the examination—

(a) the worker's right to recover compensation under this Act with respect to the injury; or

(b) the worker's right to weekly payments,

is suspended until the examination has taken place.

*Workers Compensation 1987***Reference of medical disputes to referee or panel on application of worker or employer (cf. former s. 51 (4)–(7), (10))**

131. (1) In this section—

5 “medical dispute” means a disagreement between a worker and the employer as to—

- (a) the worker’s condition; or
- (b) the worker’s fitness for employment.

(2) If a medical dispute arises after—

- 10 (a) a worker has submitted himself or herself for examination by a medical practitioner in accordance with a requirement of the employer under section 129 or has been examined by a medical practitioner selected by the worker; and
- (b) the employer or worker (as the case may be) has furnished the other with a copy of the medical practitioner’s report of the examination,

15 the Board may, on the application of either the worker or the employer, refer the medical dispute to which the application relates to a medical referee or medical panel.

(3) The Board may refuse to refer any such medical dispute to a medical referee or medical panel if the medical practitioner’s report was not
20 furnished to the other party within 7 days after it was received from the medical practitioner or within such longer period as the Board, in the circumstances of the case, considers justified.

(4) The medical referee or medical panel to whom a medical dispute is so referred shall, in accordance with the regulations, give a certificate as to—

- 25 (a) the worker’s condition; or
- (b) the worker’s fitness for employment (specifying, where necessary, the kind of employment for which the worker is fit).

(5) Any such certificate of a medical panel shall be conclusive evidence as to the matters certified, except in relation to the following:

- 30 (a) the fitness of the worker for employment;
- (b) the question of whether any of the following losses or impairments exist and, if so, the nature and extent of the loss or impairment:
 - (i) the loss of the sense of taste or smell;
 - (ii) the loss of sexual organs;

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- (iii) the incurable loss of mental powers resulting in a total inability to work;
- (iv) the impairment of the back, neck or pelvis;
- 5 (v) any loss or impairment added to the Table to Division 4 of Part 3 by the regulations.

(6) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical referee or medical panel to whom the medical dispute has been referred, or in any way obstructs the examination—

- 10 (a) the worker's right to recover compensation under this Act with respect to the injury; or
- (b) the worker's right to weekly payments,

is suspended until the examination has taken place.

- 15 (7) If there is a disagreement between a worker and the employer as to whether or to what extent the incapacity of the worker is due to the injury, this section shall (subject to the regulations) apply as if the question were one as to the condition of the worker.

(8) The regulations may make provision for or with respect to—

- (a) applications and certificates under this section; and
- 20 (b) the application of this section for the purposes of subsection (7).

Submission by Court, commissioner etc. of matters to medical referee or panel for report (cf. ss. 38 (2) (c), (4), 51 (8) former Act and s. 20 (1) (c) Compensation Court Act 1984)

- 25 **132. (1)** The Compensation Court, a commissioner or a review officer may refer to a medical referee or medical panel for report any matter which appears to be relevant to any question arising in proceedings before that Court, commissioner or review officer.

(2) The Board may refer to a medical referee or medical panel for report any matter which appears to be relevant to the exercise of its functions.

- 30 (3) A medical referee or medical panel shall submit a report to the Compensation Court, the commissioner, the review officer or the Board in accordance with the terms of a reference under this section.

*Workers Compensation 1987***Reimbursement of worker for loss of wages and expenses associated with medical examination (cf. former s. 51 (11)-(14))**

133. (1) If a worker is required to submit himself or herself for examination pursuant to this Division, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided—

(a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination; and

10 (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.

(2) A worker required to submit himself or herself to examination by a medical referee or medical panel is not entitled to recover any amount if—

(a) the matter was referred on the application of the worker; and

15 (b) the Compensation Court or a commissioner finds that the application was unreasonable or unnecessary.

(3) If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.

(4) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost shall be calculated at such rate as is prescribed for the purposes of section 64.

Copies of certain medical reports to be supplied to worker (cf. former s. 53E (1))

134. (1) In this section—

30 "insurer" means a licensed insurer or a former licensed insurer;

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

35 (a) a medical practitioner by whom the worker has been referred to another medical practitioner for treatment or tests related to the injury;

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- (b) a medical practitioner who has treated the injury; or
- (c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the injury.

5 (2) If—

- (a) an employer or insurer has in his or her possession a copy of a medical report relating to an injured worker; and
- (b) the worker's claim is disputed,

the employer or insurer shall, at the request of the worker and within the
10 period of 10 days after that request, supply the worker with a copy of the report.

Penalty: \$2,000.

Admissibility of medical reports (cf. former s. 53E (2)–(4))

15 **135. (1)** A medical report is admissible in evidence in proceedings before the Compensation Court or a commissioner.

(2) Subsection (1) is subject to any provision of the rules of the Compensation Court or the regulations relating to the giving of notice of the admission in evidence of the medical report.

20 (3) A medical practitioner whose medical report is, pursuant to subsection (1), admissible in evidence, may be required, in accordance with the rules of the Compensation Court or the regulations, to attend and be cross-examined on the contents of the report, subject to the costs of his or her attendance being met by the party who requires the medical practitioner to attend.

25 (4) In proceedings relating to the making of an interim award, a medical practitioner whose medical report is, pursuant to subsection (1), admissible in evidence may not be required to attend and be cross-examined on the contents of the report without the leave of the Compensation Court or a commissioner given in any case where that Court or commissioner is
30 satisfied there is a real issue as to whether the worker is entitled to receive compensation from any of the parties.

(5) In this section, “medical report” means any written report of a medical practitioner relating to the worker, but does not include a certificate or report to which section 136 applies.

*Workers Compensation 1987***Admissibility of certificates and reports of medical referees and medical panels**
(cf. s. 20 (2) Compensation Court Act 1984)

136. (1) A certificate or report given by a medical referee or medical panel is admissible in evidence in any proceedings before the Compensation Court or a commissioner.

(2) A medical referee is competent to give evidence as to matters in a certificate or report given by the referee or by a medical panel of which the referee was a member, but the referee may not be compelled to give any such evidence.

10 Rules of Court and regulations with respect to medical evidence

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

- 15 (a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence);
- (b) the disclosure of medical reports to medical referees and medical panels; and
- 20 (c) limiting the number of medical witnesses that may be called by any party.

*DIVISION 6—Uninsured Liability and Indemnity Scheme***Interpretation** (cf. former s. 18C (35))

138. In this Division—

25 “employer”, in relation to a worker, includes a principal within the meaning of section 20 who is liable to pay compensation to the worker;

“Scheme” means the Uninsured Liability and Indemnity Scheme;

“the relevant time”, in relation to an injured worker, means the time of the happening of that worker’s injury.

The Scheme (cf. former s. 18C (1))

30 139. There is constituted a scheme called the “Uninsured Liability and Indemnity Scheme”, which shall be administered by the Board.

*Workers Compensation 1987***Persons eligible to make claims** (cf. former s. 18c (2)–(6))

140. (1) A claim may be made under the Scheme by any person who considers he or she has a claim for compensation under this Act against an employer in respect of an injury to a worker, if the employer—

- 5 (a) had not obtained, or was not maintaining in force, a policy of insurance for the full amount of the employer's liability under this Act in respect of the injured worker at the relevant time; or
- (b) having been a self-insurer at the relevant time, has ceased to undertake liability to pay compensation to the employer's own workers and has withdrawn, in accordance with this Act, the deposit
10 lodged by the employer with the Treasurer.

(2) A claim may be made under the Scheme if the person claiming the compensation has been unable, after due search and inquiry, to identify the relevant employer.

- 15 (3) If a payment is made by the Board in respect of a claim under subsection (2) and the employer is subsequently identified, the Board may recover the amount paid from the employer or the employer's insurer in the manner provided by this Division.

- (4) A claim shall not be made under the Scheme if the person claiming
20 the compensation is entitled under section 20 to claim compensation against a principal within the meaning of section 20.

- (5) If a person is entitled to claim compensation against a principal within the meaning of section 20 and the principal was not maintaining in force a policy of insurance for the full amount of the principal's liability
25 under this Act at the relevant time—

- (a) the person may make to the Board a claim for compensation under the Scheme; and
- (b) the Board may deal with any such claim as it thinks fit.

Making of claims under Scheme (cf. former s. 18c (7)–(9))

- 30 **141. (1)** Claims under the Scheme shall be made in the form and manner for the time being determined by the Board.

(2) The Board may, by notice, require an employer to furnish to the Board within the period (being not less than 7 days) specified in the notice any information described in the notice which—

- 35 (a) is available to the employer; and

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(b) is required by the Board in order for it to deal with a claim under the Scheme.

(3) An employer shall comply with a notice given under subsection (2).

Penalty: \$2,000.

5 (4) In this section—

“employer” includes any person whom the Board has reason to suspect is an employer.

Publication of claims etc. (cf. former s. 18c (10)–(13))

10 142. (1) The Board may, before considering a claim under the Scheme, publish a notice of the claim in such manner as the Board considers appropriate.

15 (2) If notice of a claim is so published, any person who, without reasonable cause, fails to notify the Board within the time specified in the notice that the person is the insurer of the liability under this Act of any person who is an employer within the meaning of this Division in respect of the claimant, or who fails to supply the Board with any information it has which may be material to the matter—

20 (a) is liable to reimburse the State Compensation Board Fund such amount as the Board has paid out in respect of the claim and any costs incurred in connection with the claim; and

(b) is guilty of an offence and liable to a penalty not exceeding \$10,000.

25 (3) If, in respect of a claim under the Scheme, a licensed insurer with whom the Board considers the injured worker’s employer had a relevant policy of insurance at the relevant time is located, the following provisions apply:

(a) the Board shall supply the insurer with all relevant details of the claim;

(b) the insurer shall, within 14 days of being advised of the claim, either accept or deny liability to indemnify the employer;

30 (c) if the insurer accepts liability to indemnify the employer, the Board shall—

(i) inform the claimant of the existence of the insurance; and

(ii) transfer the claim documents to the insurer;

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- (d) if the insurer denies liability to indemnify the employer, or does not either accept or deny liability to indemnify the employer within 14 days of being advised of the claim, the Board shall deal with the claim in the manner provided by this Division.

5 Determination of claim by Board (cf. former s. 18C (14)–(16))

143. (1) From the State Compensation Board Fund the Board may, in respect of a claim under the Scheme—

- (a) pay compensation in accordance with this Act, with or without admission of liability; or
- 10 (b) make ex gratia payments.
- (2) The Board may refuse to satisfy a claim under the Scheme.
- (3) If the Board does not, wholly or in part, satisfy a claim under the Scheme, it shall, within 14 days of making the relevant decision, advise the claimant of its decision and the reasons for its decision.
- 15 (4) A dispute between the Board and a claimant may be assigned under this Act to a review officer for conciliation, but the Board is not bound by any decision of the review officer.

Appeal against Board's decision on claim (cf. former s. 18C (17)–(20))

20 **144. (1)** A claimant under the Scheme who is dissatisfied with a decision of the Board in respect of the claim may apply to a commissioner for a determination of the claim.

- (2) If such an application is made—
- (a) the applicant shall name the employer by whom the applicant alleges compensation is payable and the Board as respondents to the proceedings; and
- 25 (b) the Board may, by service of a notice on any person who, in the opinion of the Board, may be liable to pay to the applicant compensation under this Act (or may have insured that liability), join that person as a party to the proceedings.
- 30 (3) A commissioner may hear and determine any such application and may make such orders in relation to the application as the commissioner thinks fit.
- (4) Where an order under subsection (3) directs the doing of anything by the Board or any other person, the Board or that person, as the case may
- 35 be, shall comply with that direction.

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(5) An order under subsection (3) may provide for the reimbursement of the State Compensation Board Fund under section 145.

Employer or insurer to reimburse Board (cf. former s. 18C (21)–(26))

145. (1) The Board may serve on a person who, in the opinion of the Board, was—

(a) in respect of an injured worker to or in respect of whom a payment has been made under the Scheme, an employer at the relevant time; or

(b) an insurer under this Act of such an employer,

10 a notice requiring that person, within a period specified in the notice, to reimburse the State Compensation Board Fund an amount (not being an amount exceeding the amount of the payment made) specified in the notice.

(2) The Board may, by instrument in writing, waive the liability of an employer under subsection (1) to reimburse the State Compensation Board Fund an amount, if the Board, in respect of the amount, is satisfied that—

(a) the amount is beyond the capacity of the employer to pay;

(b) the employer could not reasonably have been expected to regard himself or herself as an employer at the relevant time;

20 (c) the employer, not being a corporation, is bankrupt and the liability under this section is not provable in the bankruptcy;

(d) the employer, being a corporation, is being wound up and the liability under this section is not provable in the winding up;

(e) the employer, being a corporation, has been dissolved; or

25 (f) it would not be commercially feasible for the Board to attempt to recover the amount.

(3) A person on whom a notice has been served under subsection (1) in respect of an injured worker may, within the period specified in the notice, apply to a commissioner for a determination as to the person's liability under this Act.

30 (4) A commissioner 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,

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as the commissioner thinks fit.

(5) In any proceedings under subsection (4), a certificate executed by the Board and certifying that—

- 5 (a) the payments specified in the certificate were paid to or in respect of an injured worker named in the certificate; and
- (b) a person named in the certificate was, in the opinion of the Board, liable at the relevant time to pay to or in respect of the injured worker compensation under this Act,

is (without proof of its execution by the Board) admissible in evidence in 10 any proceedings and is evidence of the matters stated in the certificate.

(6) The Board may recover an amount—

- (a) specified in a notice served under subsection (1), being a notice in respect of which an application has not been made under subsection (3); or
- 15 (b) ordered by a commissioner, in a determination under subsection (4) (a), to be reimbursed to the State Compensation Board Fund by a person named in the determination,

from the person to whom the notice was given or the person named in the determination, as the case may be, as a debt in a court of competent 20 jurisdiction.

Commutation of weekly payments from Scheme (cf. former s. 18C (27)–(29))

146. (1) Section 51 applies to the commutation of a liability under the Scheme.

25 (2) On the application of an employer, a commissioner may, if the commissioner thinks fit, refuse to determine a lump sum payment in respect of any such liability, but the making of such an application in no way fetters the discretion of the commissioner to make the determination, and a commutation made in consequence of the determination is binding on the employer whether or not the employer has made such an application.

30 **Miscellaneous provisions** (cf. former ss. 18C (30)–(34), 18D)

147. (1) If—

- (a) a claim under the Scheme has been made and the employer does not appear and defend the application for an award of compensation;

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(b) an award of compensation has, prior to the making of the claim, been obtained in default of appearance by the employer, or by consent of the worker and the employer; or

(c) the Board for any reason thinks fit,

5 the Board may cause to be made such inquiries as it thinks fit to determine the genuineness of the grounds on which the award is sought or was based.

(2) A commissioner may adjourn an application referred to in subsection (1) or, if an award has been made, may reopen the proceedings and order some fit person to take and defend the proceedings in substitution for the
10 employer, and for those purposes all the rights of the employer shall be subrogated to that person.

(3) A lump sum payable to a claimant under the Scheme may by agreement with the Board, or by order of a commissioner, be paid to the Board to be invested, applied, paid out or otherwise dealt with as agreed
15 upon or ordered or, subject to any such agreement or order, as provided by section 85.

(4) At any hearing of an application to a commissioner under this Division, the Board or its representative (being a barrister, solicitor, officer of the Board or other person) may appear before a commissioner and
20 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.

(5) The provisions of sections 335, 371, 401 and 402 of the Companies
25 (New South Wales) Code shall not preclude a person from applying for an award of compensation or proceeding with such an application without the leave of the Supreme Court.

(6) Any award of compensation made pursuant to an application authorised by this section shall have effect only for the purposes of this
30 Division and not otherwise, despite any such provisions of the Companies (New South Wales) Code.

Regulations

148. The regulations may provide for the application (with such modifications as may be prescribed) of the provisions of this Act with
35 respect to any matter arising under this Division.

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PART 5

COMMON LAW REMEDIES

Abolition of common law remedies against employer, fellow workers etc.

5 **149. (1)** A worker is not entitled to recover damages, otherwise than under this Act—

- (a) from the worker's employer;
- (b) from any person who is vicariously liable for the acts or omissions of that employer; or
- 10 (c) from any person for whose acts or omissions that employer is vicariously liable,

in respect of an injury to the worker for which compensation is payable under this Act by that employer.

(2) If a worker dies as a result of an injury to the worker, a person is not entitled to recover damages (whether under the Compensation to Relatives Act 1897 or under any other Act or law), otherwise than under this Act—

- (a) from the worker's employer;
- (b) from any person who is vicariously liable for the acts or omissions of that employer; or
- 20 (c) from any person for whose acts or omissions that employer is vicariously liable,

in respect of the death if compensation is payable under this Act by that employer.

(3) A reference in this section to compensation payable under this Act includes a reference to compensation that would be payable under this Act 25 if a claim for that compensation is duly made.

(4) In this section—

“damages” includes any form of monetary compensation, but does not include—

- 30 (a) compensation payable under the Transport Accidents Compensation Act 1987 or damages payable out of the Third-party Fund under the Motor Vehicles (Third Party Insurance) Act 1942;
- (b) any sum ordered or directed to be paid under the Crimes Act 1900 by way of compensation for an injury;

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- (c) any sum required or authorised to be paid under an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940;
- 5 (d) any sum payable under a superannuation scheme or any life or other insurance policy; or
- (e) damages of a class which is excluded by the regulations from this section.

Remedies against both employer and stranger (cf. former ss. 64, 64A)

10 **150. (1)** If the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the worker's employer to pay damages in respect of the injury, the following provisions have effect:

- 15 (a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for payment of that compensation, but is not entitled to retain both damages and compensation;
- 20 (b) if the worker recovers firstly compensation and secondly those damages, the worker is liable to repay out of those damages the amount of compensation which a person has paid in respect of the worker's injury under this Act, and the worker is not entitled to any further compensation;
- (c) if the worker firstly recovers those damages the worker is not entitled to recover compensation under this Act;
- 25 (d) if the worker has recovered compensation under this Act, the person by whom the compensation was paid shall be entitled to be indemnified by the person so liable to pay those damages;
- 30 (e) if any payment is made under the indemnity and, at the time of the payment, the worker has not obtained judgment for damages against the person paying under the indemnity, the payment shall, to the extent of its amount, be a defence to proceedings by the worker against that person for damages;
- (f) all questions relating to matters arising under this section shall, in default of agreement, be settled by action or, with the consent of the parties, by a commissioner.

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(2) If, in respect of an injury to a worker for which compensation is payable under this Act—

- (a) the worker takes proceedings independently of this Act to recover damages from a person other than the worker's employer; and
- 5 (b) but for section 149, the worker would also have been entitled to recover damages independently of this Act from that employer,

the following provisions have effect:

- 10 (c) the person is not entitled to recover from that employer as a joint tortfeasor or otherwise any contribution for damages recovered from the person by the worker in the proceedings referred to in paragraph (a);
- (d) the damages that may be recovered from the person by the worker in proceedings referred to in paragraph (a) shall be reduced by the amount of the contribution that (but for paragraph (c)) the court determines that the person would otherwise have been entitled to recover from that employer as a joint tortfeasor or otherwise;
- 15 (e) where the compensation paid in respect of the injury under this Act exceeds the amount of that contribution—the indemnity referred to in subsection (1) (d) is for the amount of the excess only;
- 20 (f) where the compensation paid in respect of the injury under this Act does not exceed the amount of that contribution—subsection (1) (d) does not apply.

(3) In this section, a reference to the employer of a worker includes a reference to—

- 25 (a) a person who is vicariously liable for the acts or omissions of that employer; and
- (b) a person for whose acts or omissions that employer is vicariously liable.

(4) This section applies to proceedings taken independently of this Act by a person to whom compensation is payable under this Act in respect of the death of a worker as a result of an injury.

(5) If a worker is obliged under subsection (1) (b) to repay any money out of damages recovered by the worker, the worker is not liable to repay the money out of any damages payable after the date of judgment by way of periodic or other payments for loss of future earnings or earning capacity or for future expenses.

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(6) If any sum is ordered or directed to be paid under the Crimes Act 1900 by way of compensation for any injury to a worker, the sum paid shall be deducted from any compensation payable under this Act in respect of the injury to the worker or other person to whom the sum is paid.

5 (7) A reference in this section to compensation payable under this Act includes a reference to compensation that would be payable under this Act if a claim for that compensation is duly made.

(8) In this section—

10 “damages” includes any form of monetary compensation, but does not include—

(a) any sum ordered or directed under the Crimes Act 1900 to be paid by way of compensation for an injury;

15 (b) any sum required or authorised to be paid under an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940;

(c) any sum payable under a superannuation scheme or any life or other insurance policy; or

(d) damages of a class which is excluded by the regulations from this section.

20 **Abolition of doctrine of common employment** (cf. former s. 65)

151. (1) It is not a defence to an employer who is sued in respect of any personal injury caused by the negligence of a person employed by the employer that the person so employed was, at the time the personal injury was caused, in common employment with the person injured.

25 (2) This section is subject to sections 149 and 150.

(3) This section applies to every case in which the relation of employer and employee exists, whether the contract of employment is made before or after the commencement of this section, and whether or not the employment is one to which the other provisions of this Act apply.

30 (4) In this section—

“employer” includes the Crown but does not include any person who by any provision of this Act is deemed to be an employer;

“personal injury” includes—

(a) death;

- (b) any disease; and
 - (c) any impairment of the physical or mental condition of a person.
-

PART 6

REHABILITATION OF INJURED WORKERS

5 **Rehabilitation programmes to be established by employers**

152. (1) An employer shall, in accordance with the regulations, establish a general rehabilitation programme with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer.

- 10 (2) Any such rehabilitation programme shall, subject to the regulations—
- (a) comply with any guidelines determined jointly by the Board, the Occupational Health, Safety and Rehabilitation Council of New South Wales and the Secretary of the Department of Health;
 - 15 (b) be developed by the employer in consultation with the workers concerned and any industrial union of employees representing those workers; and
 - (c) be in writing and be displayed or notified at places of work.
- (3) The regulations—
- 20 (a) may require any such rehabilitation programme to be approved by the Board or other person or body;
 - (b) may exempt specified classes of employers from this section;
 - (c) may provide for the accreditation (with the concurrence of the Secretary of the Department of Health) of providers of rehabilitation services for the purposes of any such rehabilitation programme and may require employers to use the services of accredited providers in
25 connection with the programme;
 - (d) may create offences with respect to any failure to comply with this section or with any such rehabilitation programme;
 - 30 (e) may provide that any action of an employer in connection with any such rehabilitation programme does not constitute an admission of liability to pay compensation; and

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- (f) may make other provisions that are necessary or convenient for the purposes of giving effect to this section.

Vocational re-education etc. provided by Board (cf. former ss. 37 (3) (g), 52)

5 **153. (1)** The Board may institute, administer or co-ordinate vocational re-education and rehabilitation schemes for injured workers.

(2) The Board may draw from the State Compensation Board Fund such amounts as may be necessary or desirable for the purposes of the vocational re-education and rehabilitation of injured workers.

10 (3) Without limiting the generality of subsection (2), the Board may draw from the State Compensation Board Fund such amounts as the Board considers appropriate—

15 (a) to provide financial incentives to employers who offer employment to injured workers unable to find suitable employment and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers; or

(b) to provide financial incentives to employers who retain or re-employ their injured workers and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers.

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

Rehabilitation counsellors (cf. former s. 53F)

25 **154. (1)** The Board may appoint officers of the Board to be rehabilitation counsellors.

(2) A rehabilitation counsellor shall, as directed by the Board—

- 30 (a) assist in devising and co-ordinating rehabilitation programmes;
- (b) monitor the progress of injured workers who are involved in rehabilitation programmes; and
- (c) consult with employers with a view to expediting the return to work of injured workers.

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(3) Evidence of any communication between a worker and an officer of the Board, acting in the officer's capacity as a rehabilitation counsellor, is not admissible in any proceedings before the Compensation Court or a commissioner unless, during the course of the proceedings, the worker
5 consents to the evidence being so admitted.

(4) A rehabilitation counsellor may inspect the place of employment of an injured worker for the purpose of exercising the functions of the rehabilitation counsellor.

(5) A person shall not obstruct or hinder any such inspection.

10 Penalty (subsection (5)): \$2,000.

PART 7

INSURANCE

15

DIVISION 1—*Insurance policies***Compulsory insurance for employers** (cf. former s. 18 (1), (5), (6))

155. (1) An employer (other than a self-insurer) shall obtain from a licensed insurer, and maintain in force, a policy of insurance that complies with this Division for the full amount of the employer's liability under this
20 Act in respect of all workers employed by the employer.

Penalty: \$20,000.

(2) Where several persons may become liable in respect of an injury to the same worker—

- 25 (a) it shall be sufficient to obtain a joint policy of insurance in respect of that liability; and
- (b) the premium chargeable in respect of the policy shall not exceed the current rates for insurance of an employer's liability in respect of workers engaged in the same industry, trade or business.

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(3) In any proceedings for an offence against subsection (1), proof—

(a) that an employer, not being a self-insurer, who has been served pursuant to section 161 (1) with a notice requiring the employer to produce for inspection a policy of insurance obtained by the employer and in force at a specified date or between specified dates has not so produced any such policy so in force; and

(b) that the time stated in the notice for production has expired,

shall be sufficient evidence, unless the contrary is proved, that at that date or between those dates the employer had failed to comply with subsection (1).

Recovery of double premiums from employer not obtaining policy of insurance

156. (1) If an employer fails to obtain or maintain in force a policy of insurance as required by section 155 (1) in respect of any period, the Board may recover from the employer in a court of competent jurisdiction as a debt due to the Board a sum equal to twice the amount of the premium that would have been payable for the issue of a policy of insurance to the employer in respect of that period.

(2) The Board may recover any such sum from an employer whether or not the employer has been proceeded against or been convicted for an offence against section 155 (1) in respect of the employer's failure to obtain or maintain in force the policy of insurance.

(3) Any such sum recovered by the Board shall be paid into the State Compensation Board Fund.

(4) A certificate executed by the Board and certifying that a sum specified in the certificate is the sum equal to twice the amount of premium that would have been payable for the issue of a policy of insurance to an employer so specified in respect of a period so specified is (without proof of its execution by the Board) admissible in any proceedings and is evidence of the matters specified in the certificate.

30 **Insurers not to refuse insurance** (cf. former s. 18 (2))

157. (1) A licensed insurer shall not, except with the consent of the Board, refuse to issue a policy of insurance to any employer or to renew a policy of insurance issued to an employer.

(2) Without affecting the generality of subsection (1), the Board may consent to any such refusal in order that the licensed insurer does not contravene any condition of the licence.

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(3) This section does not apply—

(a) to a specialised insurer; or

(b) in any case where the employer has not complied with any conditions prescribed by this Act or the regulations in respect of the issue or renewal of the policy of insurance.

Penalty: \$10,000.

Insurance for trainees (cf. former s. 18 (2A)–(2K))

158. (1) In this section—

“trainee” means—

(a) a person who is a trainee under a traineeship approved by the Commerce and Industry Training Council of New South Wales for the purposes of the Australian Traineeship System; and

(b) if the Chairperson of that Council or a delegate of the Chairperson has determined that a person should be regarded as a trainee for the purposes of this section during a specified period before the time when an application for approval by that Council of a traineeship for the purposes of the Australian Traineeship System in respect of that person is dealt with—that person during that period.

(2) Section 155 does not require an employer to obtain a policy of insurance in respect of a trainee.

(3) The employer of a trainee shall be deemed to hold a policy of insurance with the Government Insurance Office for the full amount of the employer’s liability under this Act in respect of that trainee.

(4) A policy of insurance deemed by this section to be held by an employer shall contain such provisions as are prescribed by the regulations.

(5) A licensed insurer (other than the Government Insurance Office) is not subject to any liability in respect of a trainee to the extent that the employer of the trainee is indemnified under a policy of insurance deemed by this section to be held by the employer.

(6) Except as otherwise provided by this Act, a reference in this Act (other than in this section and section 159) to a policy of insurance includes a reference to a policy of insurance deemed by this section to be held by an employer.

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(7) The regulations may provide that any provision of this Act (other than this section) or the regulations—

- (a) shall apply with such modifications as are prescribed; or
- (b) shall not apply,

5 to or in respect of—

- (c) a trainee;
- (d) the employer or a person deemed to be the employer (including an employer who is a self-insurer) of a trainee;
- (e) the insurer of an employer of a trainee;
- 10 (f) a policy of insurance deemed by this section to be held by an employer;
- (g) a policy of insurance held by the employer of a trainee; or
- (h) the Government Insurance Office in its role of deemed insurer under this section,

15 and that provision shall apply, or not apply, accordingly.

(8) There shall be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly) in such sums and at such times as the Treasurer directs any amount necessary to reimburse the Government Insurance Office for payments in respect of any liability under
20 a policy of insurance deemed by this section to be held by an employer and for any associated administrative or other expenses.

(9) The regulations may require an employer to supply to a prescribed person or body, at the prescribed times or within prescribed periods, such information with respect to trainees employed or formerly employed by the
25 employer as may be set out in the regulations.

Provisions of policies of insurance (cf. former s. 18 (3) (a), (a1), (3A), (3B), (3C))

30 **159. (1)** A policy of insurance shall, in so far as it relates to any liability under this Act, contain only such provisions as are prescribed by the regulations, but (subject to the regulations) may contain such other provisions relating to any liability at common law or under any Act or Commonwealth Act as are appropriate to any particular case.

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- (2) A policy of insurance shall provide that—
- (a) the insurer as well as the employer is directly liable to any worker insured under the policy and, in the event of the worker's death, to the dependants or other persons to pay the compensation under this Act for which the employer is liable; and
 - (b) the insurer is bound by and subject to any judgment, order, decision or award given or made against the employer of any such worker in respect of the injury for which the compensation or amount is payable.
- (3) A policy of insurance issued to a person shall, in addition to containing any other provisions required under this section, contain such provisions as are prescribed by the regulations for or in relation to—
- (a) the insurance of the person, in the event of the person being, or becoming, a principal under a contract as referred to in section 20 (1), against a liability arising under section 20;
 - (b) providing that the insurer, as well as the person, shall, while that person is a principal under a contract as referred to in section 20 (1), be directly liable to pay to a worker employed by a contractor under that contract and, in the event of the worker's death, the dependants or other persons, the compensation for which that person is liable under section 20 (1); and
 - (c) providing that the insurer is bound by, and subject to, any judgment, order, decision or award given or made against the person in respect of any liability arising under section 20.
- (4) A policy of insurance obtained by an employer in respect of workers in any trade or business shall, notwithstanding anything contained in that policy, apply to and have effect in respect of all workers employed by the employer in that trade or business.
- (5) A liability, under a policy of insurance, of an insurer to a worker under a provision inserted in the policy under subsection (2) or (3) is enforceable as if the worker were a party to the policy.
- (6) A contravention of subsection (1), (2) or (3) does not annul a policy of insurance or affect the liability of the insurer to the person insured under the policy.
- (7) A licensed insurer shall not issue a policy of insurance in contravention of subsection (1), (2) or (3).

Penalty (subsection (7)): \$5,000.

*Workers Compensation 1987***Recovery of \$500 excess from employer (cf. former s. 18 (3) (a2))**

160. (1) In this section—

5 “small business employer”, in relation to a policy of insurance, means an employer who, under the policy, is liable to pay premiums not exceeding such amount as is prescribed by the regulations (the calculation of that liability being determined in the manner so prescribed).

10 (2) An employer (not being a small business employer) shall repay to the insurer under a policy of insurance obtained by the employer the first \$500 of each claim paid under the policy.

(3) A small business employer and the insurer under a policy of insurance obtained by the employer may agree that the employer repay to the insurer the first \$500 (or such lesser amount as is agreed upon) of each claim paid under the policy.

15 (4) If the amount of any claim paid under a policy of insurance is less than \$500 or any such lesser agreed amount, the amount repayable under this section is the amount paid under the policy.

(5) An amount repayable under this section may be recovered by the insurer as a debt in a court of competent jurisdiction.

20 (6) The following policies of insurance are exempt from this section:

- (a) policies of insurance issued or renewed by the Government Insurance Office in respect of Government workers;
- (b) policies of insurance in respect of domestic or similar workers;
- 25 (c) policies of insurance of any class exempted from this section by the regulations.

Inspection of policies (cf. former s.18A)

161. (1) The Board or a person authorised by the Board may, by notice in writing, require an employer—

- 30 (a) to produce for inspection the policy of insurance obtained by the employer and in force at such date or between such dates (whether before or after the commencement of this section) as the notice specifies; and
- (b) to supply such particulars in relation to the policy as the Board or person may deem necessary.

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(2) A worker who has received an injury, or has met with an accident, in circumstances giving rise to a claim for compensation under this Act, or a solicitor for the time being authorised by the worker to act on behalf of the worker in relation to the claim, or a representative of a union to which
 5 the worker belongs, may, by notice in writing, require the employer to make available for inspection a policy of insurance in force in respect of the worker at the time (whether before or after the commencement of this section) when the injury was received or the accident happened.

(3) A person on whom a notice is served under subsection (1) or (2) shall
 10 comply with the notice.

Penalty: \$2,000.

(4) An employer who obtains a policy of insurance shall retain the policy in his or her possession in good order and condition until—

15 (a) there are no longer any workers in respect of whom the policy is in force; or

(b) the policy is at least 7 years old,
 whichever occurs later.

Penalty: \$2,000.

(5) In this section—

20 “employer”, in relation to a worker, includes a principal within the meaning of section 20 who is liable to pay compensation to the worker;

“representative” means the secretary of a union or an officer for the time being authorised under section 129A of the Industrial Arbitration Act 1940 to exercise powers under that section;

25 “union” means industrial union of employees registered under the Industrial Arbitration Act 1940.

Death of employer (cf. former s. 49A)

162. (1) A commissioner may, on application by a worker and if satisfied as to the matter sought to be declared, declare that an employer
 30 has entered into a contract with an insurer, named in the declaration, in respect of any liability under this Act to that worker and that the employer—

35 (a) being a natural person, has died, or is permanently resident outside the Commonwealth of Australia and its Territories, or cannot after due inquiry and search be found;

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- (b) being a corporation (other than a company which has commenced to be wound up), has ceased to exist;
- (c) being a company, corporation, society, association or other body (other than a company which has commenced to be wound up), was at the time when it commenced to employ the worker incorporated outside the Commonwealth of Australia and its Territories and registered as a foreign company under the laws of any State or Territory of the Commonwealth of Australia and is not at the time of the declaration so registered under any such law; or
- (d) being a company, has commenced to be wound up after entering into the contract with the insurer.

(2) Where a commissioner makes a declaration under subsection (1), the commissioner may make an award of compensation for an injury to the worker (being, in the case referred to in subsection (1) (d), an injury that took place before the commencement of the winding up of the employer) and such an award shall, for the purposes of section 159, be deemed to be an award against an employer of the worker with whom the insurer referred to in the declaration entered into a contract with respect to any liability under this Act to that worker.

20 Records relating to policies and claims etc. to be kept by insurers and self-insurers (cf. former s. 18A (2A)-(2C))

163. (1) A licensed insurer shall keep a register of all policies of insurance issued or renewed by the insurer containing the following particulars in respect of each policy:

- (a) the name and address of the policy holder;
- (b) the number of the policy;
- (c) any premium rate classification under an insurance premiums order;
- (d) the date of issue or renewal of the policy;
- (e) such other particulars as may be prescribed by the regulations.

(2) A person who ceases to be a licensed insurer shall deliver the register to the Board.

(3) An insurer shall retain in good order and condition for at least 7 years all the insurer's records that relate to the issue, renewal or discontinuance of policies of insurance and the receipt, administration and payment of claims under this Act.

(4) In subsection (3)—

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“insurer” means licensed insurer, former licensed insurer or self-insurer.

Penalty: \$2,000.

Employer—offences relating to policies of insurance (cf. former cl. 2 of General Regulations)

- 5 **164.** An employer shall not—
- (a) supply any information to a licensed insurer which the employer knows is false or misleading in a material particular with the object of procuring the issue or renewal of a policy of insurance; or
 - 10 (b) wilfully fail to observe any of the terms of a policy of insurance obtained by the employer.

Penalty: \$10,000.

DIVISION 2—*Insurance premiums*

Insurance Premiums Committee (cf. former s. 30A (1)–(16))

- 15 **165.** (1) There shall be a committee to be called the Insurance Premiums Committee.
- (2) The Committee shall have and may exercise the functions conferred or imposed on the Committee by this Act, the Workers’ Compensation (Dust Diseases) Act 1942 or any other Act.
 - 20 (3) The Committee shall consist of 6 members of whom—
 - (a) 5 shall be the members of the State Compensation Board; and
 - (b) 1 shall be a public servant appointed by the Governor on the nomination of the Minister.
 - (4) The Chairperson of the State Compensation Board shall be the

25 Chairperson of the Committee.
 - (5) Schedule 3 (Provisions relating to members of the Board) applies to and in respect of the member of the Committee appointed under subsection (3) (b) in the same way as it applies to and in respect of a part-time member of the State Compensation Board.
 - 30 (6) Schedule 4 (Procedure of the Board) applies to and in respect of the Committee and the members of the Committee in the same way as it applies to and in respect of the State Compensation Board and the members of that Board.

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(7) The Chairperson of the Committee may sign any notice or other document for and on behalf of the Committee.

(8) A decision or proceeding of the Committee shall not—

(a) be invalid by reason of any informality or want of form; or

5 (b) be liable to be challenged, appealed against, reviewed, quashed or called into question by any court.

(9) The Committee may—

(a) with the approval of the Minister; and

10 (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

Investigations by Insurance Premiums Committee (cf. former s. 30A (17)–(22))

15 **166. (1)** The Insurance Premiums Committee may hold such investigations as it thinks fit for the purpose of the exercise of its functions.

(2) The Insurance Premiums Committee shall, when so directed by the Minister, investigate and supply to the Minister a report and recommendation with respect to any matter relevant to the insurance of
20 employers under this Act which may be referred to the Committee by the Minister.

(3) For the purposes of any investigation by the Insurance Premiums Committee, a licensed insurer, former licensed insurer or self-insurer shall, when required by the Chairperson of that Committee so to do and on
25 reasonable notice—

(a) produce to any person nominated for the purpose by the Chairperson any records reasonably required for the purposes of the investigation; and

30 (b) permit that person to inspect them and to take copies of them or extracts from them.

Penalty (subsection (3)): \$2,000.

*Workers Compensation 1987***Delegation by Insurance Premiums Committee** (cf. former s. 30AA)

167. (1) The Insurance Premiums Committee may, with the consent of the Minister, delegate to—

- (a) a person; or
- 5 (b) a committee (whether or not comprising members of that Committee),

the exercise of any of its functions, other than this power of delegation.

(2) A delegation—

- (a) shall be in writing;
- 10 (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Insurance Premiums Committee.

(3) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

- 15 **(4)** A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Insurance Premiums Committee.

(5) A delegation does not prevent the exercise of a function by the Insurance Premiums Committee.

- 20 **(6)** A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

(7) In subsection (6), a reference to a delegate includes a reference to the chairperson of a committee to which the exercise of a function is delegated under this section.

25 Insurance premiums order (cf. former s. 30AB)

168. (1) The Governor may, by an order made on the recommendation of the Insurance Premiums Committee and published in the Gazette, fix the manner in which the premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance shall be
30 calculated, whether by reference to annual rates or otherwise.

(2) An insurance premiums order shall—

- (a) take effect on and from the date of its publication in the Gazette or a later date specified in the order; and

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(b) apply to and in respect of policies of insurance which are to be or have been issued or renewed so as to take effect while the order is in force.

(3) An insurance premiums order may—

5 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

10 or may do any combination of those things.

(4) The following policies of insurance are exempt from insurance premiums orders:

(a) policies of insurance issued or renewed by the Government Insurance Office in respect of Government workers;

15 (b) policies of insurance deemed to be held by an employer under section 158 in respect of trainees;

(c) policies of insurance of any class exempted by the regulations from orders under this section.

20 **Premiums to be calculated in accordance with insurance premiums order** (cf. former s. 30AC)

169. (1) The premium payable by an employer (or a person who proposes to become an employer) for a policy of insurance to which an insurance premiums order applies shall be calculated in the manner fixed by the order.

25 (2) An insurer breaches an insurance premiums order if the insurer demands or receives—

(a) for the issue of a policy of insurance to which the order applies; or

(b) for the renewal of any such policy,

30 an amount which is, or amounts the sum of which is, different from a premium, which is payable in accordance with subsection (1) by the employer (or the person who proposes to become an employer) to whom the policy relates.

(3) An insurer who wilfully breaches an insurance premiums order is guilty of an offence and liable to a penalty not exceeding \$10,000.

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Action by employer where insurer breaches insurance premiums order (cf. former s. 18AA)

5 **170. (1)** If an employer claims that an insurer has, in demanding a premium (or any part of a premium) for the issue of a policy of insurance to the employer or for the renewal of such a policy, breached an insurance premiums order, the employer may apply to the Board for a determination as to the premium to be charged for the issue or renewal of the policy.

(2) Any such application shall be made—

10 (a) in the case of the issue of a policy of insurance—within 1 month after the date of the demand for the premium as referred to in subsection (1); or

(b) in the case of the renewal of a policy of insurance—before or within 1 month after—

15 (i) the date of expiry of the period for which premiums have been paid in respect of the policy; or

(ii) the date of the demand for the premium as referred to in subsection (1),

whichever is the later,

20 or within such further period as the Board may, in special circumstances, approve in relation to that application.

(3) When any such application is made, the Board—

(a) shall notify the insurer of the making of the application;

(b) shall consider the application and may have regard to such oral or written evidence or representations as it thinks fit;

25 (c) shall dismiss the application, if—

(i) the policy is not a policy to which the insurance premiums order applies; or

30 (ii) the Board is of the opinion that the premium to which the application relates is payable by the employer in accordance with the insurance premiums order,

or shall, in any other case, determine in respect of the issue or renewal of the policy a premium which is payable by the employer in accordance with the insurance premiums order; and

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(d) shall, in such manner as it thinks fit, inform the employer and the insurer of its dismissal of the application or its determination, as the case may require.

(4) Where—

5 (a) the Board makes a determination; and

(b) the employer has already paid to the insurer the premium to which the application relates,

the employer may recover from the insurer, in a court of competent jurisdiction as a debt due to the employer, so much of the premium paid
10 as exceeds the premium determined by the Board.

(5) Where—

(a) the Board makes a determination;

(b) the insurer does not within 1 month after the date of the decision of the Board—

15 (i) in the case of the issue of a policy of insurance—issue to the employer a policy of insurance having effect for such period (not exceeding 1 year) and from such date as the Board determines; or

20 (ii) in the case of the renewal of a policy of insurance—effect the renewal of the policy for such period (not exceeding 1 year) as the Board determines from the date of expiry referred to in subsection (2) (b),

at the premium determined by the Board; and

25 (c) the employer does not otherwise agree or request, the insurer shall be deemed to have issued to the employer a policy of insurance at the premium so determined and having effect for the period and from the date referred to in paragraph (b) (i) or (ii).

30 (6) The insurer shall forthwith supply to the employer a document setting out the provisions of a policy of insurance deemed by subsection (5) to be issued to the employer.

Penalty: \$2,000.

(7) In this section, a reference to an employer includes a reference to a person who proposes to become an employer.

35 (8) Without limiting its powers of delegation, the Board may delegate its functions under this section to a commissioner or any other person.

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(9) A delegate (not being a commissioner) has the same powers as a commissioner under section 115 for the purpose of exercising the delegated function.

Payment of premiums by instalments (cf. former s. 18 (7B))

- 5 **171.** If the regulations so provide, an employer may elect to pay the premiums under a policy of insurance by instalments, at such times and of such amounts as may be prescribed by the regulations.

Recovery of unpaid premiums (cf. former s. 18 (7C))

172. (1) Where—

- 10 (a) an employer has not elected under section 171 to pay a premium by instalments and fails to pay the full amount of the premium within 1 month after service on the employer of a notice that payment of the premium is due;
- 15 (b) an employer who has elected under section 171 to pay a premium by instalments fails to pay an instalment by the due date; or
- (c) an employer has failed to pay an adjustment of premium within 1 month after service on the employer of a notice that payment of the amount of the adjustment is due,

- 20 the full amount of the premium (in the case referred to in paragraph (a)), the balance of the premium unpaid or, where no instalment has been paid, the full amount of the premium (in the case referred to in paragraph (b)) or the amount of the adjustment (in the case referred to in paragraph (c)) bears interest until payment at the rate of 15 per cent per annum compounded quarterly (or, where some other rate of interest is prescribed,
- 25 that other rate) and is recoverable with interest as a debt in a court of competent jurisdiction.

(2) The payment of interest under this section may be waived by the insurer concerned, but only with the approval of the Board.

- 30 (3) In proceedings under this section for the recovery of any unpaid premium with interest, the court may, if satisfied that a notice for payment was delayed because of delay of the employer in providing returns to the insurer, for the purpose of assessing the premiums, treat the notice as having been served on an earlier date.

*Workers Compensation 1987***Furnishing information for calculation of premiums** (cf. former ss. 18 (7), (7A), 66 (1A) (a)–(c))

173. (1) The regulations may make provision for or with respect to—

- 5 (a) requiring the supply of information relevant to the calculation of the premiums payable under policies of insurance (whether to be supplied before or after the issue or renewal of any such policy); and
- 10 (b) requiring any such information to be verified by statutory declaration or be accompanied by a certificate from an accountant registered under the Public Accountants Registration Act 1945, a registered tax agent, a registered company auditor or any other person.

(2) Regulations under this section may require information to be supplied to or by employers, licensed insurers or former licensed insurers.

Records relating to wages etc. to be kept and supplied by employers (cf. former ss. 18 (8) (a)–(c), 44 (5))

15 174. (1) An employer shall keep correct records of—

- (a) all wages paid to workers employed by the employer;
- (b) the trade, occupation or calling of each such worker; and
- (c) such other matters relating to those wages as may be prescribed by the regulations.

20 (2) An employer shall retain any such record in good order and condition for at least 7 years after the last entry was made in the record.

(3) If the regulations so provide, any such record shall be kept in such manner as may be specified in the regulations.

25 (4) Any such record may be combined with any record of wages required to be kept by an employer by or under any other Act.

(5) The Board may order an employer to do either or both of the following:

- 30 (a) to supply to the Board, within the time specified in the order, a full and correct statement of the information required to be recorded by the employer under subsection (1) during a period so specified (being a period during which the record is required to be kept under this section); or

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(b) 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 Board, the records required to be kept by the employer under this section during a period so specified (being a period during which the record is required to be kept under this section).

(6) The Board may, by an order under subsection (5), require information to be supplied to, or made available for inspection by, an insurer who has issued a policy of insurance to the employer and who requests the Board to make the order for the purpose of determining whether the correct premium has been paid under the policy.

(7) A person authorised under subsection (5) (b) or (6) may inspect the records in accordance with the terms of the order and make copies of, or take extracts from, those records.

(8) An employer on whom an order under subsection (5) is served—

(a) shall comply with the order; and

(b) shall not wilfully obstruct or delay an authorised person when exercising any power under subsection (7).

(9) In this section—

“insurer” means a licensed insurer or a former licensed insurer;

“wages”, in relation to a worker—

(a) includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors, payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money’s worth given to the worker under a contract of service or apprenticeship;

(b) includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by the Board; and

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(c) does not include—

- (i) any sum that the employer has been accustomed to pay to the worker to cover any special expenses incurred by the worker because of the nature of the employment;
- 5 (ii) any allowance to reimburse costs arising out of an obligation incurred under a contract;
- (iii) any amount expended on behalf of the worker;
- (iv) directors' fees;
- (v) compensation under this Act; or
- 10 (vi) any payment for long service leave, a lump sum payment instead of long service leave or any payment under the Building and Construction Industry Long Service Payments Act 1986.

Penalty: \$5,000.

15 Employers evading payment of correct premiums (cf. former s. 18 (8) (d)–(h))

175. (1) The Board may, on application by an insurer who has issued a policy of insurance to an employer (whether or not the policy is still in force), order the employer to pay to the insurer such amount as the Board may, having regard to the information obtained under section 174 or
20 otherwise, find to be due and payable as a premium or balance of premium in respect of the policy of insurance or any renewal of that policy.

(2) Interest at the rate for the time being in force under section 172 is payable in respect of an amount ordered to be paid under subsection (1) as from the date it first became due to be paid.

25 (3) An amount ordered to be paid under subsection (1), together with any interest payable under subsection (2), may be recovered as a debt in a court of competent jurisdiction by the insurer in whose favour the order was made.

(4) If the Board finds that—

- 30 (a) an employer has provided an insurer with information which was false or misleading in a material particular; and
- (b) the insurer, relying on that information, has calculated a premium for the issue or renewal of a policy of insurance which is less by a certain amount than the premium would otherwise have been,

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the Board may recover from the employer in a court of competent jurisdiction as a debt due to the Board, a sum equal to twice that amount, half of which sum shall be paid by the Board to the insurer and the other half into the State Compensation Board Fund.

- 5 **(5)** A certificate executed by the Board and certifying that an amount specified in the certificate is payable under subsection (1), (2) or (4) by a person so specified is (without proof of its execution by the Board) admissible in any proceedings and is evidence of the matters specified in the certificate.
- 10 **(6)** Without limiting its powers of delegation, the Board may delegate its functions under subsection (1) to a commissioner or any other person.
- (7)** A delegate (not being a commissioner) has the same powers as a commissioner under section 115 for the purpose of exercising the delegated function.
- 15 **(8)** In this section—
 “insurer” means a licensed insurer or a former licensed insurer.

DIVISION 3—*Licensing of insurers*

Cancellation of licences of existing insurers (except specialised insurers and GIO)

- 20 **176. (1)** In this section—
 “commencement date” means the date on which this Division commences;
 “specialised insurer” means an insurer who is a specialised insurer on the commencement date and whose licence under section 27 of the former
 25 Act is in force immediately before that date.
- (2)** All licences granted under section 27 of the former Act before the commencement date (other than the licence of a specialised insurer or the Government Insurance Office) are cancelled by force of this section on the commencement date.
- 30 **(3)** A licence granted under section 27 of the former Act to a specialised insurer or the Government Insurance Office shall, on and from the commencement date, be deemed to be a licence granted under this Division.
- (4)** A cancellation of a licence under this section does not affect any right, obligation or liability acquired, accrued or incurred under a policy of
 35 insurance issued by the former licensee.

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(5) This section does not affect any powers that the Board may have under any other provision of this Act.

Applications for licences (cf. former ss. 27 (1), 30c (3))

177. (1) An application for a licence under this Division may be made
5 to the Board by—

- (a) any corporation incorporated in New South Wales; or
- (b) a specialised insurer.

(2) An application shall be in such form and accompanied by such documents—

- 10 (a) as may be prescribed by the regulations; and
- (b) subject to any such regulations, as may be determined by the Board.

(3) Without affecting the generality of subsection (2), the form of application may require particulars of—

- 15 (a) the places at which the business of the applicant is to be carried on; and
- (b) in the case of an applicant that is a company—the shareholders, directors and secretary of the company.

(4) The Board may, before determining an application for a licence, require the applicant to advertise or give other notice of the application.

20 **Determination of application for licence** (cf. former s. 27 (1))

178. (1) The Board shall consider each application for a licence under this Division and may, in its discretion—

- (a) grant a licence to the applicant; or
- (b) refuse the application.

25 (2) The Board may, in determining an application for a licence, take into consideration—

- (a) the suitability of the applicant;
- (b) in the case of a corporation—
 - 30 (i) the paid up share capital of the applicant; and
 - (ii) the memorandum and articles of association of the applicant;
- (c) the orderly run-off of claims for compensation under the former Act;

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- (d) the efficiency of the workers compensation system generally; and
- (e) such other matters as the Board thinks fit.

(3) For the purposes of subsection (2) (b), the Board may approve of a model memorandum and articles of association for corporations applying
5 for a licence.

(4) Without affecting the generality of subsection (1), the Board may refuse an application for a licence from a corporation that is authorised by its memorandum and articles of association to carry on any business other than workers compensation business in New South Wales.

10 (5) Without affecting the generality of subsection (1), the Board may refuse an application for a licence from a corporation that is related to other corporations (within the meaning of the Companies (New South Wales) Code)—

15 (a) where any of those other corporations was previously licensed under section 27 of the former Act—if the directors of the applicant corporation do not include the directors of that other corporation; or

20 (b) where none of those other corporations was previously so licensed—if the directors of the applicant corporation do not include the directors of a related corporation that controls the composition of the board of directors of the applicant corporation.

Offence—unlicensed insurers (cf. former ss. 30D, 30E)

179. (1) A person (other than a licensed insurer) shall not issue or renew policies of insurance.

25 Penalty: \$10,000.

(2) A contravention of subsection (1), or of a condition to which a licence is subject under this Division, does not annul a policy of insurance issued or renewed by an insurer or affect the liability of the insurer to the person insured under the policy.

30 **Duration of licences** (cf. former s. 27 (1))

180. (1) A licence granted under this Division continues in force until—

- (a) the expiration of the period (if any) specified in the licence during which it is to be in force; or
- (b) the licence is, pursuant to this Division, cancelled, whichever first
35 occurs.

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(2) A licence is not in force while it is suspended pursuant to this Division.

Conditions of licences (cf. former ss. 27 (1) and 29C)

5 181. (1) A licence granted to an insurer under this Division is subject to—

- (a) such conditions as may be prescribed by this Act or the regulations; and
- (b) such conditions (not inconsistent with this Act or the regulations) as may be imposed by the Board—

- 10 (i) on the granting of the licence; or
- (ii) at any time during the currency of the licence.

(2) The Board may, by notice served on a licensed insurer, impose conditions (or further conditions) to which the licence is to be subject or vary any conditions imposed on the licence by the Board.

15 (3) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.

(4) A licensed insurer shall comply with any condition to which the licence is subject.

Penalty: \$10,000.

20 (5) The Board may not impose a condition on the licence of the Government Insurance Office without the concurrence of the Minister administering the Government Insurance Act 1927.

Matters that may be regulated by conditions of licences

25 182. (1) Without limiting the generality of section 181, the conditions to which a licence granted under this Division may be subject include conditions for or with respect to—

- (a) requiring the licensed insurer to undertake a specified amount of workers compensation insurance or of workers compensation insurance of a specified kind;
- 30 (b) preventing an insurer from undertaking more than a specified amount of workers compensation insurance or of workers compensation insurance of a specified kind; or

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- (c) requiring a charge or other security to be taken by the Board in respect of the assets of an insurer for the purpose of securing the payment of the insurer's liabilities (including contingent liabilities) for the payment of compensation under this Act.
- 5 (2) Conditions may be imposed on a licence—
- (a) for the purpose of promoting an equitable distribution of high risk insurance business among licensed insurers;
- (b) for the purpose of ensuring compliance with the obligations of the licensed insurer;
- 10 (c) for the purpose of preserving premiums paid for policies of insurance;
- (d) for the purpose of the efficiency of the workers compensation system generally; or
- (e) for any other purpose of the same or of a different kind or nature
15 that is not inconsistent with this Act.
- (3) An amount of workers compensation insurance may be prescribed in a condition of a licence by specifying a level of premium income or in any other manner.

Cancellation or suspension of licences (cf. former ss. 29–29C)

- 20 **183. (1)** The Board may cancel or suspend a licence granted under this Division by notice served on the licensed insurer.
- (2) The Board may cancel or suspend a licence for any reason it thinks fit and is not required to give the reasons for its decision.
- (3) Without affecting the generality of subsection (2), the Board may
25 cancel or suspend a licence for reasons that relate to the workers compensation system generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer.
- (4) The Board shall, as far as practicable, give a licensed insurer whose licence it proposes to cancel or suspend an opportunity to make
30 representations on the matter.
- (5) The Board shall not cancel or suspend the licence of the Government Insurance Office.
- (6) A licence surrendered by a licensed insurer is cancelled if and when the Board approves of the surrender.

*Workers Compensation 1987***Cancellation of policies following cancellation or suspension of insurer's licence (cf. former s. 30F)**

184. (1) In this section—

“insurer” means a former licensed insurer;

5 “period” means, in relation to a policy of insurance—

(a) the period in respect of which the insurer has by the terms of the policy; or

(b) if the policy has been renewed, the further period in respect of which the insurer has, by the terms of the renewal,

10 accepted liability to indemnify, in respect of any matters, the employer who obtained the policy;

“prescribed day” means—

(a) except as provided by paragraph (b), the day on which the licence of the insurer ceases to be in force; or

15 (b) in the case of a policy of insurance issued by an insurer whose licence is cancelled under section 176—the day that is 12 months after the date the licence of the insurer is cancelled under that section.

(2) This section applies where the licence of an insurer ceases to be in
20 force (including where a licence is cancelled under section 176).

(3) In any case where this section applies, the employer who obtained a policy of insurance may, by notice in writing given on or after the prescribed day to the insurer from whom the employer obtained the policy, cancel the policy as from a date and time specified in the notice.

25 (4) In any case where this section applies, the insurer who issued a policy of insurance shall, within 14 days after the prescribed day, post to the employer who obtained the policy, at the address of the employer last known to the insurer, a notice of cancellation of the policy.

Penalty: \$2,000.

30 (5) Such a notice of cancellation by the insurer must state that the cancellation of the policy of insurance will take effect at 4 p.m. on a date specified in the notice (being a date that is the twenty-eighth day after the day on which the notice is posted), and the effect of the notice is to cancel the policy accordingly.

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- (6) The Board may, by notice to an insurer, or by order, and in relation to all the policies or any policies or classes of policies issued by the insurer, shorten or extend the time prescribed by subsection (4) or advance or defer the date to be stated in a notice pursuant to subsection (5), or both.
- 5 (7) The power conferred by subsection (6) to extend a time prescribed by subsection (4) may be exercised before or after that time has expired.
- (8) In any case where this section applies, the Board may, by notice to the insurer and employer, cancel a policy of insurance as from a date and time specified in the notice.
- 10 (9) The premium for the issue or renewal of a policy of insurance cancelled under this section shall, notwithstanding any agreement to the contrary, be reduced in the proportion which so much of the period of the policy as is after the day on which the cancellation has effect bears to the whole period of the policy.
- 15 (10) If an employer has paid to an insurer by way of premium for the issue or renewal of a policy of insurance a greater amount than the reduced premium referred to in subsection (9), the insurer shall forthwith repay the excess amount to the employer.
- Penalty: \$2,000.
- 20 (11) An employer may recover in a court of competent jurisdiction as a debt any amount which is required by subsection (10) to be repaid to the employer.
- (12) An insurer shall, if so required in writing by the Board, supply to the Board in writing and within a time specified by the Board such
25 particulars as the Board may require in respect of—
- (a) policies of insurance issued by the insurer, the periods of which were current at the time that the insurer's licence ceased to be in force; and
- (b) the employers to whom the policies were issued.
- 30 Penalty: \$2,000.
- (13) The effect of the cancellation of a policy of insurance under this section is to terminate the period of the policy but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.

*Workers Compensation 1987***Cancellation of policies following their assignment to other insurers**

185. (1) In this section—

“insurer” means a licensed insurer, other than a specialised licensed insurer;

5 “period” means, in relation to a policy of insurance—

(a) the period in respect of which the insurer has by the terms of the policy; or

(b) if the policy has been renewed, the further period in respect of which the insurer has, by the terms of the renewal,

10 accepted liability to indemnify, in respect of any matters, the employer who obtained the policy.

(2) The Board may assign the policies of insurance of an insurer (other than the Government Insurance Office) to another insurer if the Board is satisfied that it is necessary to do so to ensure compliance with any
15 conditions to which a licence is subject.

(3) Policies may be assigned under this section by notice served by the Board on the insurers concerned.

(4) On the service of any such notice—

20 (a) the policies of insurance to which it relates are cancelled as from the date and time specified in the notice; and

(b) the insurer to whom those policies are assigned shall be deemed (as from the time and date of cancellation) to have issued policies of insurance on the same terms as, and for the balance of the periods of, those policies.

25 (5) On the cancellation of a policy of insurance under subsection (4) (a), the insurer whose policy is cancelled shall pay to the insurer to whom the policy is assigned—

30 (a) the same proportion of the premium paid or to be paid in respect of the policy as the balance of the period of the policy bears to the whole period of the policy; and

(b) such additional amount as the Board directs relating to the income from investment and the management fee with respect to the premium.

(6) Any amount payable under subsection (5) to an insurer may be
35 recovered by the insurer as a debt in a court of competent jurisdiction.

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(7) The effect of the cancellation of a policy of insurance under this section is to terminate the period of the policy, but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.

5 Records and evidence relating to licences (cf. former s. 30c (1), (2))

186. (1) The Board shall keep records in relation to all licences granted by the Board under this Division, including particulars of—

- (a) the granting, refusal, duration, conditions, cancellation and suspension of licences; and
- 10 (b) such other matters relating to licences as the Board thinks fit.

(2) A certificate executed by the Board and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without proof of its execution by
15 the Board and without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

Liabilities on Commonwealth insurers—special condition

187. (1) In this section—

20 “Commonwealth insurer” means a company authorised to carry on insurance business under the Insurance Act 1973 of the Commonwealth or a company registered under the Life Insurance Act 1945 of the Commonwealth;

25 “licensed insurer” includes an insurer formerly licensed under this Division.

(2) It is a condition of a licence granted under this Division that the licensed insurer will not, without the approval of the Board and the concurrence of the Treasurer of the Commonwealth, enter into a contract or arrangement whereby a Commonwealth insurer is or may become liable
30 to pay any money to or on behalf of the licensed insurer.

(3) A contract or an arrangement is not invalid merely because it has been entered into in contravention of subsection (2).

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(4) The Supreme Court may, on the application of the Board or the Treasurer of the Commonwealth, declare invalid a contract or agreement entered into in contravention of subsection (2) if satisfied that the declaration will not prejudice the rights arising out of the contract or arrangement of any person who entered into the contract or arrangement in good faith and without knowledge of the contravention.

(5) Subsection (2) does not apply to the Government Insurance Office.

Re-insurance—special condition

188. (1) It is a condition of a licence granted under this Division that the licensed insurer will not, without the approval of the Board, enter into a contract or an arrangement for re-insurance in respect of liabilities under policies of insurance issued or renewed by the licensed insurer.

(2) The Board may give any such approval subject to conditions, including a condition requiring a joint contract or arrangement for re-insurance with other licensed insurers.

(3) A contract or an arrangement for re-insurance is not invalid merely because it has been entered into in contravention of subsection (1).

(4) Subsection (1) does not apply to a specialised licensed insurer .

Information and records as to business etc. to be supplied to Board by insurers
(cf. former ss. 28, 30B)

189. (1) In this section—

“insurer” means a licensed insurer, a former licensed insurer or a self-insurer.

(2) The Board may require an insurer—

(a) to disclose to the Board specified information relating to the business and financial position of the insurer or of any corporation which is a related corporation; or

(b) to forward to the Board, or make available for inspection, specified records, or copies or extracts from specified records, kept by the insurer or by any corporation which is a related corporation.

(3) A requirement under this section—

(a) shall be made in writing and served on the insurer; and

(b) shall specify the manner in which and the time within which the requirement is to be complied with.

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(4) The manner in which a requirement is to be complied with may include the supply to the Board of a certificate by an accountant registered under the Public Accountants Registration Act 1945, a registered tax agent, a registered company auditor or an actuary approved by the Board as to the correctness of any specified information or specified records (or copies of or extracts from specified records).

(5) Unless the insurer satisfies the court that it is not within its power to comply with the requirement, an insurer who fails to comply with the requirement is guilty of an offence and liable to a penalty not exceeding \$10,000.

Notification to Board of certain defaults in relation to insurers (cf. former s. 28 (1) (b))

190. (1) In this section—

“insurer” means a licensed insurer, a former licensed insurer or a self-insurer.

(2) An insurer (being a corporation) shall notify the Board in writing of any of the following events or things within 21 days after the event or thing happens (whether within or outside the State):

- (a) any default by the licensee or a related corporation in the payment of principal or interest under any debenture issued by the licensee or corporation;
- (b) the appointment of a liquidator, receiver or manager of the property of the licensee or a related corporation;
- (c) that the licensee or a related corporation has resolved by special resolution that it be wound up voluntarily or by a court;
- (d) that a person claiming to be a creditor by assignment or otherwise of the licensee or a related corporation for a sum exceeding \$1,000 then due has served on the licensee or corporation by leaving at its registered office a demand requiring the licensee or corporation to pay the sum so claimed to be due, and the licensee or corporation has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor;
- (e) the return unsatisfied in whole or part of execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the licensee or a related corporation;

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- (f) the receipt by the licensee or a related corporation or the giving, or causing to be given, by the licensee or corporation, of any Part A, B, C or D statement as defined for the purposes of the Companies (Acquisition of Shares) (New South Wales) Code;
- 5 (g) the making of an order by any court for the winding-up of the licensee or a related corporation;
- (h) the receipt by the licensee or a related corporation of any notice of an application for an order by any court for the winding-up of the licensee or corporation.
- 10 Penalty: \$10,000.

Power of Supreme Court to deal with insurers or former insurers unable to meet liabilities etc.

- 15 **191. (1)** The Supreme Court may, on the application of the Board, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of—
- (a) the holders of policies of insurance issued or renewed by a licensed insurer or a former licensed insurer (whether before or after the commencement of this section); and
- (b) the workers to whom those policies apply.
- 20 **(2)** The Supreme Court may make such an order if it is satisfied that the licensed insurer or former licensed insurer—
- (a) is not able to meet the insurer's liabilities under the policies of insurance or may not be able to do so; or
- 25 (b) has acted or may act in a manner that is prejudicial to the interests of the holders of the policies of insurance or the workers to whom those policies apply.
- (3)** Without limiting the generality of subsection (1), the Supreme Court may make the following orders:
- 30 (a) an order regulating the administration and payment of claims under the policies of insurance;
- (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer or former licensed insurer;

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- (c) if the licensed insurer or former licensed insurer is a corporation—
an order requiring it to discharge its liabilities under the policies of
insurance out of the assets of the corporation and the assets of any
related corporation;
- 5 (d) if the licensed insurer or former licensed insurer is a corporation—
an order appointing a receiver or receiver and manager, having such
powers as the Supreme Court orders, of the property or of part of
the property of the corporation or of any related corporation.
- (4) If an application is made to the Supreme Court for an order under
10 subsection (1), the Supreme Court may, if in its opinion it is desirable to
do so, before considering the application, grant an interim order, being an
order of the kind applied for that is expressed to have effect pending the
determination of the application.
- (5) If an application is made to the Supreme Court for an order under
15 subsection (1), the Supreme Court shall not require the Board or any other
person, as a condition of granting an interim order, to give any undertaking
as to damages.
- (6) If the Supreme Court has made an order under this section, the
Supreme Court may, on application by the Board or by any person affected
20 by the order, make a further order rescinding or varying the firstmentioned
order.
- (7) A person shall not contravene, whether by act or omission, an order
made by the Supreme Court under this section that is applicable to the
person.
- 25 Penalty: \$2,000 or imprisonment for 6 months, or both.
- (8) The Supreme Court shall not exercise its powers under this section
in respect of a corporation which is in the course of being wound up.
- (9) The powers of the Supreme Court under this section are in addition
to any other powers of the Supreme Court.
- 30 (10) This section does not apply to the Government Insurance Office or
to policies of insurance issued or renewed by it.

Exclusion of insurance brokers, agents or intermediaries (cf. former s. 18
(9A))

- 35 **192. (1)** A licensed insurer shall not pay any amount by way of
commission or other remuneration to an insurance broker, agent or
intermediary in relation to the issue or renewal of a policy of insurance.

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(2) A licensed insurer shall send any cover note, policy of insurance or renewal notice (or any notice under any policy of insurance) direct to the employer concerned and not to an insurance broker, agent or intermediary.

5 (3) An employer shall pay any premium under a policy of insurance direct to the licensed insurer and not to an insurance broker, agent or intermediary.

(4) Subsections (2) and (3) do not apply in any case specified in the regulations or approved by the Board.

(5) This section does not apply to a specialised licensed insurer.

10 Penalty: \$5,000.

DIVISION 4—*Statutory funds of licensed insurers*

Interpretation

193. In this Division—

“financial year”, in relation to an insurer—

- 15 (a) includes the period after 4 p.m. on the day preceding the first day of the financial year; and
- (b) does not include the period after 4 p.m. on the last day of the financial year;

20 “insurer” means a licensed insurer (other than a specialised licensed insurer), and includes a person—

- (a) who has, since the commencement of this Division, been such a licensed insurer; and
- (b) who continues to have liabilities under policies of insurance previously issued or renewed by the person;

25 “periodic actuarial investigation” means an investigation under section 204;

“policy of insurance” does not include—

- (a) a policy of insurance issued or renewed by the Government Insurance Office in respect of Government workers;
- 30 (b) a policy of insurance deemed to be held by an employer under section 158 in respect of trainees; and

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(c) a policy of insurance of any class exempted by the regulations from this Division;

5 “premium income”, in relation to the contribution payable by a licensed insurer under section 208 in respect of a financial year, means the amount the licensed insurer receives, whether during or after that financial year, as premiums in respect of policies of insurance issued or renewed by the licensed insurer during that financial year and—

(a) includes any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year; and

10 (b) does not include any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year;

“statutory fund”, in relation to an insurer, means a statutory fund maintained by the insurer under section 195.

Application to GIO

15 **194.** The provisions of this Division apply to the Government Insurance Office, subject to the Government Insurance Act 1927 and to such exceptions and modifications as may be approved by the Minister administering that Act.

Establishment of statutory funds.

20 **195. (1)** An insurer shall, in accordance with this Division, establish and maintain statutory funds in respect of the issue or renewal of policies of insurance by the insurer.

(2) An insurer shall establish and maintain the following statutory funds:

25 (a) a separate statutory fund in respect of policies of insurance issued or renewed during each financial year;

(b) a statutory fund in respect of policies of insurance assigned to the insurer under clause 10 of Part 15 of Schedule 6.

30 (3) The Board may, by notice served on an insurer, require the insurer to establish and maintain separate statutory funds in respect of such classes of policies of insurance as may be specified by the Board instead of the separate statutory funds specified in subsection (2).

35 (4) The Board may, by notice served on an insurer, authorise the insurer to close a statutory fund and transfer the assets and liabilities of the statutory fund, and the policies of insurance to which they relate, to another statutory fund of the insurer.

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Assets of statutory funds

196. The following amounts shall be carried to, and become the assets of, a statutory fund of an insurer:

- 5 (a) premiums received by the insurer for policies of insurance in respect of which the statutory fund is maintained;
- (b) other amounts paid to the insurer in connection with any such policy of insurance, including—
 - 10 (i) any amount paid by the Board under section 175 (Employers evading payment of correct premiums);
 - (ii) any interest paid by an employer for the late payment of a premium;
 - (iii) any amount repaid by an employer pursuant to section 160 (Recovery of \$500 excess from employers);
 - 15 (iv) any money recovered under section 150 of this Act or section 64 of the former Act; and
 - (v) any money recovered under a re-insurance contract or arrangement;
- (c) income (including realised and unrealised capital gains) arising from the investment of the assets of the statutory fund;
- 20 (d) any money required to be paid into the statutory fund in accordance with directions given by the Board for the pooling of premiums under section 205 or the distribution of any surplus under section 206;
- 25 (e) any money transferred to the statutory fund from the Premiums Adjustment Fund under section 207;
- (f) any other money authorised to be paid into the statutory fund by or under this Act or the regulations or by the Board.

Application of statutory funds

197. The assets of a statutory fund of an insurer may be applied for the following purposes only:

- (a) meeting claims under the policies of insurance in respect of which the statutory fund is maintained;

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- (b) the payment of direct expenses associated with any such claims (not being expenses of a class excluded by the regulations from this paragraph);
- 5 (c) the payment to the insurer or to persons employed by or acting for the insurer of management expenses relating to the statutory fund (not exceeding such amount as the Board may from time to time determine);
- 10 (d) the provision of rebates to employers by the insurer for overpayment of premiums for policies of insurance in respect of which the statutory fund is maintained;
- (e) the transfer of money in the statutory fund in accordance with directions given by the Board for the pooling of premiums under section 205;
- 15 (f) the payments required for any contract or arrangement for re-insurance in respect of liabilities under the policies of insurance in respect of which the statutory fund is maintained;
- (g) meeting any income tax liabilities in respect of the income of the statutory fund;
- 20 (h) meeting the costs of any periodic actuarial investigation of the statutory fund;
- (i) making any other payment authorised by or under this Act or the regulations or by the Board.

Investment of statutory funds

25 **198. (1)** The assets of a statutory fund maintained by an insurer may be invested (subject to this Division and to any directions given to the insurer by the Board) in such manner as the insurer thinks fit.

(2) Without affecting the generality of subsection (1), the Board may direct an insurer to do either or both of the following:

- 30 (a) to invest only in specified securities or not to invest in specified securities;
- (b) to invest a specified percentage of the assets of any statutory fund in specified securities.

35 **(3)** The assets of a statutory fund maintained by an insurer shall not be invested in or lent to a related corporation or a person who is associated with the insurer (within the meaning of the Companies (New South Wales) Code).

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(4) The assets of all or any of the statutory funds of an insurer may be invested as a common fund, and shall be so invested if the Board by notice served on the insurer so directs.

Protection of assets of statutory funds

5 **199.** (1) The assets of statutory funds maintained by an insurer shall be kept distinct and separate from all other assets of the insurer.

(2) The assets of a statutory fund shall not be mortgaged or charged otherwise than to secure a bank overdraft.

10 (3) A transaction is not invalid merely because it has been entered into in contravention of subsection (2).

(4) The Supreme Court may, on the application of the Board, declare invalid a transaction entered into in contravention of subsection (2) if satisfied that the declaration will not prejudice the rights arising out of the transaction of any person who entered into the transaction in good faith and
15 without knowledge of the contravention.

(5) In this section a reference to a mortgage or charge includes a reference to an agreement to execute or give a mortgage or charge, whether on demand or otherwise.

Directors of licensee companies under trustee duty

20 **200.** (1) A director of a company (being an insurer) is under the same liability, in the event of a contravention of sections 196, 197, 198 and 199 in respect of a statutory fund, as the director would be if—

(a) the director had been a trustee under a trust for the execution of the provisions of those sections; and

25 (b) the appropriate policy holders had been beneficiaries of such a trust.

(2) This section does not apply if the director proves that—

(a) the contravention occurred without the knowledge of the director;

(b) the director was not in a position to influence the conduct of the insurer in relation to the contravention; or

30 (c) the director, being in such a position, used all due diligence to prevent the contravention.

(3) The Board may institute proceedings under this section on behalf of the appropriate policy holders.

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(4) In this section a reference to the director of a company includes any person who, for the purposes of the Companies (New South Wales) Code, is deemed to be a director of the company.

Accounts, returns etc.

- 5 **201. (1)** An insurer shall keep such accounting and other records in relation to the business or financial position of the insurer (including records in relation to each statutory fund of the insurer)—
- (a) as may be prescribed by the regulations; and
- 10 (b) subject to the regulations, as may be directed by the Board by notice served on the insurer.
- (2)** The regulations may prescribe the manner in which financial transactions are to be accounted for in any such records.
- (3)** An insurer shall lodge with the Board returns in relation to the business or financial position of the insurer (including returns in relation to
- 15 each statutory fund of the insurer) in such form, containing such particulars and accompanied by such documents—
- (a) as may be prescribed by the regulations; and
- (b) subject to the regulations, as may be directed by the Board by notice served on the insurer.
- 20 **(4)** Returns shall be lodged—
- (a) within 6 weeks after each 31 March, 30 June, 30 September and 31 December or at such other times as are prescribed by the regulations; and
- (b) at such other times as the Board, by notice served on the insurer,
- 25 directs.
- (5)** The regulations may require returns, and documents accompanying returns, to be certified by an auditor.
- (6)** In this section—
- 30 "accounting records" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

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Audit of accounting records relating to statutory funds

202. (1) The Board may appoint an appropriately qualified person to audit or inspect, and report to the Board on, the accounting and other records relating to the business or financial position of an insurer (including
5 the records in relation to the statutory funds of an insurer).

(2) A person so appointed by the Board is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the insurer.

(3) An insurer shall provide all reasonable assistance for the exercise of
10 those functions.

(4) A person shall not wilfully obstruct or delay a person exercising a function under this section.

(5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person
15 makes orally or in writing in the course of the exercise of those functions.

(6) In this section, "accounting records" has the same meaning it has in section 201.

Establishment of Premiums Adjustment Fund

203. (1) There is established a fund to be known as the "Premiums
20 Adjustment Fund".

(2) There shall be paid into the Premiums Adjustment Fund—

(a) all contributions paid to the Board under section 208; and

(b) all income accruing from the investment or re-investment of money in that Fund, or otherwise accruing to that Fund.

25 (3) There shall be paid from the Premiums Adjustment Fund such amounts as may be authorised by this Division or the regulations to be paid out of that Fund.

(4) The Premiums Adjustment Fund shall, subject to this Act, be under the direction, control and management of the Board.

30 (5) The Board may invest and re-invest any money in the Premiums Adjustment Fund in any one or more of the following investments or securities:

(a) in any Commonwealth or New South Wales Government security;

(b) on loan on the security of land in New South Wales or elsewhere;

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- (c) on deposit with any bank approved by the Treasurer;
- (d) in securities of public authorities in New South Wales;
- (e) in any other manner—
 - (i) approved by the Treasurer; or
 - 5 (ii) determined by the Board in accordance with such directions as may be given to the Board by the Treasurer.

(6) The Board may, at any time, realise, hypothecate or otherwise dispose of any such investments or securities.

Periodic actuarial investigation of statutory funds

10 **204.** (1) An insurer shall, in respect of each statutory fund of the insurer—

- (a) at least once in each period of 3 years or such other period as may be prescribed by the regulations; and
- 15 (b) if the Board by notice served on the insurer so directs, within the time specified in the notice,

cause an actuary (approved by the Board) to make an investigation of the financial position of the statutory fund (including a valuation of its liabilities) and to supply to the insurer a written report of the results of the investigation.

20 (2) An insurer shall lodge with the Board the report by the actuary of the results of each periodic actuarial investigation.

(3) Any such report shall be lodged within such time, and prepared in such manner, as may be prescribed by the regulations or (subject to any regulations) as may be determined by the Board and notified to the insurer.

25 (4) The value placed on the aggregate liabilities of a statutory fund shall be calculated on the basis of valuation prescribed by the regulations or (subject to any regulation) the basis of valuation determined by the Board and notified to the insurer.

30 (5) In determining the financial position of a statutory fund for the purposes of this Division, the Board may rely on a periodic actuarial investigation and any report lodged under this section or may make its own investigation into the matter.

*Workers Compensation 1987***Pooling of premiums between statutory funds of an insurer or between insurers**

205. (1) The Board may, after a periodic actuarial investigation of all the statutory funds of insurers in respect of a particular financial year or of a particular class of policies of insurance, give the necessary directions—

- 5 (a) for the transfer of amounts between one statutory fund of an insurer and another statutory fund of the insurer; or
- (b) for the transfer of amounts between the statutory funds of one insurer and the statutory funds of another insurer,

for the purpose of pooling premiums in accordance with this section.

10 (2) The Board shall, as far as is practicable, ensure that in giving directions for the pooling of premiums under this section—

- (a) transfers are made to the statutory funds the subject of the investigation that are in deficit (but not so as to place those funds into surplus);
- 15 (b) transfers are made from the statutory funds the subject of the investigation that are in surplus (but not so as to place those funds into deficit);
- (c) transfers that are made to those statutory funds the subject of the investigation that are in deficit are made to all those funds in an equitable manner having regard to the size of the deficit in each such
- 20 fund; and
- (d) transfers that are made from those statutory funds the subject of the investigation that are in surplus are made from all those funds in an equitable manner having regard to the size of the surplus in each
- 25 such fund.

(3) A direction under this section shall be given by notice served on the insurer concerned and shall specify the date for compliance with the direction.

(4) An insurer shall comply with any direction given to the insurer under

30 this section.

(5) If a direction is given under this section for the transfer of any amount from a statutory fund of one insurer to a statutory fund of another insurer—

- 35 (a) the amount shall be paid to the Board for the purpose of its being carried to the relevant statutory fund; and

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- (b) if it is not so paid, the amount may be recovered by the Board as a debt in a court of competent jurisdiction.

Distribution of surplus remaining after pooling of premiums

206. (1) If, after the pooling of premiums under section 205, there is an overall surplus among the statutory funds the subject of the periodic actuarial investigation, the Board may give the necessary directions for the distribution of the surplus, or any part of it, in accordance with this section.

(2) A surplus may be distributed—

10 (a) by way of profits, to the insurers whose statutory funds the subject of the investigation were in surplus before the pooling of premiums; and

(b) for the benefit of policy holders, to the current or future statutory funds of the insurers whose statutory funds the subject of the investigation were in surplus before the pooling of premiums;

15 (c) to the State Compensation Board Fund; and

(d) to the Premiums Adjustment Fund.

(3) Any part of a surplus distributed to insurers by way of profits or for the benefit of policy holders shall be distributed to all eligible insurers in an equitable manner having regard to their contribution to the surplus.

20 (4) A direction under this section shall be given by notice served on the insurer concerned and shall specify the date for compliance with the direction.

(5) An insurer shall comply with any direction given to the insurer under this section.

25 (6) If a direction is given under this section for the transfer of any amount from a statutory fund of one insurer to a statutory fund of another insurer or to the State Compensation Board Fund or Premiums Adjustment Fund—

30 (a) the amount shall be paid to the Board for the purpose of its being carried to the relevant fund; and

(b) if it is not so paid, the amount may be recovered by the Board as a debt in a court of competent jurisdiction.

*Workers Compensation 1987***Funding of deficit remaining after pooling premiums—transfers from Premiums Adjustment Fund and other statutory funds**

5 207. (1) If, after the pooling of premiums under section 205, there is an overall deficit among the statutory funds the subject of the periodic actuarial investigation, the Board—

10 (a) shall from time to time transfer (if necessary) from the Premiums Adjustment Fund to any statutory fund in deficit such amounts as the Board considers appropriate to ensure that there is no default in the payment of claims and other liabilities from the statutory fund; and

(b) shall determine the additional amount (if any) required to be contributed to the Premiums Adjustment Fund and notify the Minister accordingly.

15 (2) An insurer who has a statutory fund in deficit may transfer an amount to the statutory fund from another statutory fund of the insurer if—

(a) the Board is satisfied that it is necessary to do so because—

20 (i) the insurer might otherwise default in the payment of a claim or other liability from the statutory fund; and

(ii) the maximum amount that is reasonable and equitable has been transferred from the Premiums Adjustment Fund to the statutory fund; and

(b) the Board approves the transfer by notice in writing to the insurer.

25 (3) If an amount is transferred under subsection (2) the amount transferred remains (until repaid or offset by a direction of the Board under this Division to transfer any amount between statutory funds) an asset of the statutory fund from which it is transferred and a liability of the statutory fund to which it is transferred.

Contributions by licensed insurers to Premiums Adjustment Fund—“catch-up premiums”

30 208. (1) Each licensed insurer shall pay the contributions prescribed by this section to the Board for payment into the Premiums Adjustment Fund.

(2) The contribution to be paid by a licensed insurer in respect of each financial year for which the regulations require a contribution to be made is an amount equal to the percentage (prescribed by the regulations) of the premium income of the licensed insurer in respect of that financial year.
35

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(3) A contribution is payable at such times and in respect of premium income received during such periods as may be prescribed by the regulations.

(4) If a contribution payable by a licensed insurer has not been paid within the time prescribed by or under this section, the amount of the contribution together with interest calculated at the rate of 15 per cent per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Board as a debt in any court of competent jurisdiction.

10 (5) A certificate executed by the Board certifying that an amount specified in the certificate was the premium income received by a licensed insurer so specified in respect of a financial year so specified is (without proof of its execution by the Board) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.

15 (6) More than one percentage may be prescribed for different portions of a financial year for the purposes of subsection (2).

Offences for contravention of this Division

20 209. An insurer who contravenes, whether by act or omission, any requirement imposed on the insurer by or under this Division is guilty of an offence and liable to a penalty not exceeding \$10,000.

DIVISION 5—*Self-insurers***Application for licence (cf. former s. 18 (1A))**

210. (1) An application for a licence under this Division may be made to the Board by any employer.

25 (2) An application shall be in such form and accompanied by such documents—

(a) as may be prescribed by the regulations; and

(b) subject to any such regulations, as may be determined by the Board.

30 (3) The Board may, before determining an application for a licence, require the applicant to advertise or give other notice of the application.

*Workers Compensation 1987***Determination of application for licence (cf. former s. 18 (1A))**

211. (1) The Board shall consider each application for a licence under this Division and may, in its discretion—

- (a) grant a licence to the applicant; or
- 5 (b) refuse the application.

(2) The Board may, in determining an application for a licence, take into consideration—

- (a) the suitability of the applicant;
- 10 (b) the financial ability of the applicant to undertake the liabilities under this Act;
- (c) the efficiency of the workers compensation system generally; and
- (d) such other matters as the Board thinks fit.

Provisions relating to licences (cf. former ss. 18 (1A)–(1C))

212. The following provisions of Division 3 (Licensing of insurers) apply 15 to and in respect of licences granted under this Division in the same way as they apply to licences granted under Division 3:

- (a) section 180 (Duration of licences);
- (b) section 181 (Conditions of licences);
- (c) section 182 (Matters that may be regulated by conditions of licences);
- 20 (d) section 183 (Cancellation or suspension of licences);
- (e) section 186 (Records and evidence relating to licences).

Deposit required for self-insurers (cf. former s. 20)

213. (1) A self-insurer shall deposit with the Treasurer—

- 25 (a) on the grant of a licence under this Division to the self-insurer—an amount of money determined by the Board in respect of the self-insurer; and
- (b) at such other time or times as the Board may direct by notice to the self-insurer—such additional amount or amounts of money determined by the Board in respect of the self-insurer.

30 Penalty: \$10,000.

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(2) The Board may from time to time authorise the Treasurer to refund to a self-insurer any part of the deposit of a self-insurer.

(3) A deposit is not payable by—

(a) a Government employer; or

5 (b) any other employer approved by the Board.

Investments of deposits (cf. former s. 21)

10 **214. (1)** Every amount of money deposited with the Treasurer by a self-insurer under this Division shall be invested and re-invested from time to time as occasion requires in any manner for the time being authorised for the investment of trust funds.

(2) The interest on any such investment shall be paid to the self-insurer depositing the sum of money.

(3) The investment and redemption shall be at par.

Alternative method of giving security (cf. former s. 22)

15 **215. (1)** The obligation imposed by this Division on a self-insurer to deposit with the Treasurer any specified amount of money may be satisfied in whole or in part by the deposit by the self-insurer of securities of equal value issued or guaranteed by the State or the Commonwealth.

20 (2) The value of any such securities shall, for the purposes of this section, be deemed to be their face value.

(3) If the market value of any such securities is at any time below par, the Treasurer may require the self-insurer to deposit further securities to such an amount that the total market value of all the securities deposited by the self-insurer equals the amount of the deposit required to be made by
25 the self-insurer.

(4) A self-insurer who does not comply with a requirement under subsection (3) is in breach of section 213.

30 (5) Every security so deposited with the Treasurer shall (unless it is negotiable) bear or be accompanied by an assignment in blank executed by the self-insurer making the deposit.

(6) A reference in this Division to the amount of money required to be deposited with the Treasurer shall be deemed to include a reference to any securities substituted in whole or in part for that amount under the authority of this section.

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(7) The Treasurer may convert any such securities into money by sale, hypothecation or otherwise for the purpose of satisfying under section 216 any final judgments against the self-insurer making the deposit.

Application of deposit (cf. former ss. 24, 25A)

5 **216. (1)** The Treasurer shall hold every amount of money deposited under this Division on trust for the payment and satisfaction of all final judgments given against the self-insurer making the deposit in respect of its liabilities under this Act, being judgments that are not otherwise satisfied.

10 (2) An amount of money deposited with the Treasurer under this Division is not liable to be attached or levied on or made subject to any debts of or claims against the self-insurer making the deposit, except as provided by subsection (1).

15 (3) A person who has deposited an amount of money with the Treasurer under this Division is, if the person ceases to be a self-insurer, entitled to a refund of the amount so deposited and standing to the person's credit with the Treasurer—

(a) on the expiration of 3 months after service on the Treasurer of a written request for the refund; and

20 (b) on satisfying the Treasurer that all accrued, continuing, future and contingent liabilities of the person under this Act in respect of workers employed by the person while a licensed insurer have been discharged or adequately provided for.

DIVISION 6—*Insurers' Contribution Fund***Interpretation** (cf. former s. 30G)

25 **217.** In this Division—

“compensation” includes an amount payable by an insurer to an employer pursuant to an obligation to indemnify the employer for compensation paid by the employer;

“financial year”, in relation to an insurer—

30 (a) includes the period after 4 p.m. on the day preceding the first day of the financial year; and

(b) does not include the period after 4 p.m. on the last day of the financial year;

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“insurer” means a licensed insurer or a former licensed insurer, but does not include—

- (a) the Joint Coal Board;
- 5 (b) any company referred to in The Standard Insurance Company Limited and Certain Other Insurance Companies Act 1963 or the Riverina Insurance Company Limited and Another Insurance Company Act 1971;
- (c) Northumberland Insurance Company Limited;
- (d) Associated General Contractors Insurance Company Limited;
- 10 (e) Bishopsgate Insurance Australia Limited;
- (f) an insolvent insurer within the meaning of Division 7;
- (g) a self-insurer; or
- (h) a prescribed person;

15 “policy” means a policy of insurance, but does not include a policy of insurance deemed to have been issued to an employer under section 158 in respect of trainees;

20 “premium income”, in relation to the contribution payable by an insurer under section 220 in respect of a financial year, means the amount the insurer receives, whether during or after that financial year, as premiums in respect of policies (other than policies issued by the Government Insurance Office in respect of Government workers) issued or renewed by the insurer during that financial year and—

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

Establishment of Insurers’ Contribution Fund (cf. former s. 30H)

218. (1) There is established a fund to be known as the “Insurers’ Contribution Fund”.

30 (2) The Contribution Fund shall, subject to this Act, be under the direction, control and management of the Board.

(3) The Board may invest and re-invest any money in the Contribution Fund in any one or more of the following investments or securities:

- (a) in any Commonwealth or New South Wales Government security;

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- (b) on loan on the security of land in New South Wales or elsewhere;
- (c) on deposit with any bank approved by the Treasurer;
- (d) in securities of public authorities in New South Wales;
- (e) in any other manner—

- 5 (i) approved by the Treasurer; or
- (ii) determined by the Board in accordance with such directions as
 may be given to the Board by the Treasurer.

(4) The Board may, at any time, realise, hypothecate or otherwise dispose
of any such investments or securities as the Board may from time to time
10 determine.

Payments into the Contribution Fund (cf. former s. 30i)

219. The Board shall pay into the Contribution Fund—

- (a) all contributions and other amounts paid to the Board under this
Division (except under section 221 (11)); and
- 15 (b) all income accruing from the investment or re-investment of money
in the Contribution Fund or otherwise accruing to the Contribution
Fund.

Contributions by insurers (cf. former s. 30j)

20 220. (1) Each insurer shall pay the contributions prescribed by this
section to the Board for payment into the Contribution Fund.

(2) The contribution to be paid by an insurer in respect of each financial
year is an amount equal to the percentage (prescribed by the regulations) of
the premium income of the insurer in respect of that financial year.

(3) A contribution is payable at such times and in respect of premium
25 income received during such periods as may be prescribed by the
regulations.

(4) If a contribution payable by an insurer has not been paid within the
time prescribed by or under this section—

- 30 (a) the insurer is guilty of an offence and liable to a penalty not
exceeding \$10,000; and

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(b) the amount of that contribution together with interest calculated at the rate of 15 per cent per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Board as a debt in any court of competent jurisdiction.

5 (5) A certificate executed by the Board certifying that an amount specified in the certificate was the premium income received by an insurer so specified in respect of a financial year so specified is (without proof of its execution by the Board) admissible in any proceedings for the purposes of this section and is evidence of the matters specified in the certificate.

10 (6) More than one percentage may be prescribed for different portions of a financial year for the purposes of subsection (2).

Payments from the Contribution Fund (cf. former s. 30K)

221. (1) In this section—

15 “insurer” means an insurer who was previously licensed under section 27 of the former Act.

(2) There shall be payable from the Contribution Fund to an insurer—

20 (a) the difference between the weekly compensation payable and paid by the insurer (whether before or after the commencement of this Division but excluding any additional weekly compensation payable and paid by the insurer under any amendment made by the Workers’ Compensation (Rates) Amendment Act 1977) pursuant to a policy in respect of an injury received by a worker before 1 May 1975 and the weekly compensation that would have been so payable by him in respect of that injury if the Workers’ Compensation (Amendment) Act 1975 and the Workers’ Compensation (Rates) Amendment Act 1977 had not been enacted; and

30 (b) the prescribed proportion of any lump sum paid by the insurer (whether before or after the commencement of this Division but before the date of assent to the Workers’ Compensation (Rates) Amendment Act 1977) pursuant to a policy, in redemption in whole or in part of the liability to pay weekly compensation in respect of an injury received by the worker before 1 May 1975.

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(3) There shall be payable from the Contribution Fund to an insurer—

- 5 (a) the difference between the weekly compensation payable and paid by the insurer after the date of assent to the Workers' Compensation (Rates) Amendment Act 1977 pursuant to a policy in respect of an injury received by a worker before that date and the weekly compensation that would have been payable by the insurer in respect of that injury if that Act had not been enacted; and
- 10 (b) the prescribed proportion of any lump sum paid by the insurer after the date of assent to the Workers' Compensation (Rates) Amendment Act 1977 pursuant to a policy, in redemption wholly or in part of the liability to pay weekly compensation in respect of an injury received by a worker before 1 May 1975; and
- 15 (c) the prescribed proportion of any lump sum paid by the insurer after the date of assent to the Workers' Compensation (Rates) Amendment Act 1977 pursuant to a policy, in redemption wholly or in part of the liability to pay weekly compensation in respect of an injury received by a worker on or after 1 May 1975 and before that date of assent.

(4) There shall be payable from the Contribution Fund to an insurer—

- 20 (a) the difference between—
- 25 (i) the weekly compensation payable and paid by the insurer (whether before or after the commencement of this Division) on or after 1 April 1978 pursuant to a policy in respect of an injury received by a worker on or after 9 December 1977 (but before the commencement of this Division); and
- 30 (ii) where, after the occurrence of the injury, there have been any increases under section 9A of the former Act or under Schedule 6 to this Act in the rate of that weekly compensation—the weekly compensation that would have been so payable by the insurer in respect of that injury if there had been no such increases after the occurrence of the injury; and

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- (b) where a lump sum has been paid by the insurer (whether before or after the commencement of this Division) pursuant to a policy, in redemption wholly or in part of the liability to pay weekly compensation in respect of an injury received by a worker on or after 9 December 1977 (but before the commencement of this Division) and there have been any increases under section 9A of the former Act or Schedule 6 to this Act in the rate of that weekly compensation between the occurrence of the injury and payment of the lump sum—the prescribed proportion of the lump sum.
- 5
- (5) The prescribed proportion referred to in subsection (2) (b) is—
- 10
- (a) except as provided in paragraph (b)—the proportion agreed upon between the insurer referred to in that subsection and the Board; or
- (b) in the absence of agreement—the proportion that the difference between—
- 15
- (i) the rate of weekly compensation that was payable, immediately before the redemption, in respect of the injury; and
- (ii) the rate of weekly compensation that would then have been so payable if the Workers' Compensation (Amendment) Act 1975 had not been enacted,
- 20
- bears to the rate of weekly compensation then so payable.
- (6) The prescribed proportion referred to in subsection (3) (b) is—
- (a) except as provided in paragraph (b)—the proportion agreed upon between the insurer referred to in that subsection and the Board; or
- (b) in the absence of agreement—the proportion that the difference between—
- 25
- (i) the rate of weekly compensation that was payable, immediately before the redemption, in respect of the injury; and
- (ii) the rate of weekly compensation that would then have been so payable if the Workers' Compensation (Amendment) Act 1975 and the Workers' Compensation (Rates) Amendment Act 1977 had not been enacted,
- 30
- bears to the rate of weekly compensation referred to in subparagraph (i).
- (7) The prescribed proportion referred to in subsection (3) (c) is—
- 35
- (a) except as provided in paragraph (b)—the proportion agreed upon between the insurer referred to in that subsection and the Board; or

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(b) in the absence of agreement—the proportion that the difference between—

(i) the rate of weekly compensation that was payable, immediately before the redemption, in respect of the injury; and

5 (ii) the rate of weekly compensation that would then have been so payable if the Workers' Compensation (Rates) Amendment Act 1977 had not been enacted,

bears to the rate of weekly compensation referred to in subparagraph (i).

10 (8) The prescribed proportion referred to in subsection (4) (b) is—

(a) except as provided in paragraph (b)—the proportion agreed upon between the insurer referred to in that subsection and the Board; or

(b) in the absence of agreement—the proportion that the difference between—

15 (i) the rate of weekly compensation that was payable, immediately before the redemption, in respect of the injury; and

(ii) the rate of weekly compensation that would then have been so payable if there had been no increases therein under section 9A of the former Act or Schedule 6 to this Act after the occurrence of the injury,

20

bears to the rate of weekly compensation referred to in subparagraph (i).

(9) Payments under subsection (2), (3) or (4) shall be made at such times or intervals as are prescribed in respect of subsection (2), (3) or (4), as the case may be, or, in the absence of prescription, at such times or intervals as the Board determines.

25

(10) No amount shall be paid—

(a) under subsection (2) (a), (3) (a) or (4) (a)—in respect of compensation paid for any period of total or partial incapacity from an injury if the period was within 6 months after the happening of the injury;

30

(b) under this section—in respect of any compensation paid or payable by the Government Insurance Office for an injury received by a Government worker; or

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(c) under this section (subsection (11) excepted)—in respect of any costs or expenses incurred or payable by an insurer in connection with—

(i) claims for compensation; or

5 (ii) claims for payments under this Division or under Part IIIA of the former Act.

(11) The Board is entitled—

(a) to be re-imbursed, from the Contribution Fund, the costs of administration of that Fund; and

10 (b) to be indemnified, from that Fund, against all costs, expenses and liabilities that it may incur in or in connection with the exercise or purported exercise of its functions under this Division or under Part IIIA of the former Act.

Repayments to the Contribution Fund (cf. former s. 30L)

15 **222. (1)** If an insurer who has received any payment (in this subsection referred to as “the prescribed refund”) from the Contribution Fund in respect of any compensation paid by the insurer (whether before or after the commencement of this Division) receives from another person the whole or any part of the compensation the insurer has paid, the insurer shall forthwith repay to the Board for payment into that Fund—

20 (a) if the insurer has received the whole of that compensation—the whole of the prescribed refund; or

(b) if the insurer has received a part only of that compensation—so much of the prescribed refund as bears to the whole of that refund the same proportion as that part of that compensation bears to the whole of that compensation.

25

(2) Any amount payable by an insurer to the Board under subsection (1) may be recovered by the Board as a debt in any court of competent jurisdiction.

Provisions affecting Government employers (cf. former s. 30M)

30 **223. (1)** If a Government employer—

(a) was, on the commencement of this Division, the holder of a policy issued by the Government Insurance Office; and

(b) obtains, on a subsequent day, a policy from another insurer, or becomes a self-insurer,

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that employer is liable to pay to that Office any amount which, if the employer had not been a Government employer, would have been payable from the Contribution Fund to that Office in respect of compensation payable on or after that subsequent day to a worker employed by that
5 employer.

(2) An amount which an employer is liable to pay under subsection (1) may be recovered by the Government Insurance Office from the employer as a debt in any court of competent jurisdiction.

Miscellaneous provisions (cf. former s. 30N)

10 **224. (1)** For the purposes of this Division, the Board may assume, but is not required to assume, that compensation paid by an insurer and appearing to the Board to have been paid pursuant to an obligation was so paid.

(2) The Board, in its capacity as the body having the direction, control
15 and management of the Contribution Fund, is entitled to be a party to any application for the determination of any lump sum under this Act if the whole or any part of the lump sum is to be or may be payable from that Fund.

DIVISION 7—Insurers' Guarantee Fund

20 **Interpretation** (cf. former s. 30o)

225. (1) In this Division—

“financial year”, in relation to an insurer other than a self-insurer—

(a) includes the period after 4 p.m. on the day preceding the first day of the financial year; and

25 (b) does not include the period after 4 p.m. on the last day of the financial year;

“insolvent insurer” means an insurer to which an order of the Minister in force under section 226 relates;

30 “insurer” means a licensed insurer, a former licensed insurer or a self-insurer, but does not include an insolvent insurer;

“policy of insurance issued by an insolvent insurer” means—

(a) a policy of insurance issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer; or

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- 5 (b) a policy of insurance, issued by a person other than an insolvent insurer, in respect of which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement whereby the insolvent insurer is (or would but for its dissolution be) liable to indemnify the person against liability of the person under the policy.

(2) In this Division, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.

- 10 (3) So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer shall have and may exercise outside New South Wales the functions conferred or imposed on the liquidator by this Division, in addition to having and exercising those functions within New South Wales.

15 **Insolvent insurers** (cf. former s. 30P)

226. If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Division.

20 **Insurers' Guarantee Fund** (cf. former s. 30Q)

227. (1) There is established a fund to be known as the "Insurers' Guarantee Fund".

(2) There shall be paid into the Guarantee Fund—

- 25 (a) the contributions required by section 228 or the regulations to be paid by insurers;
- (b) all income accruing from the investment or re-investment of money in the Guarantee Fund or otherwise accruing to the Guarantee Fund;
- 30 (c) any amounts received by the Government Insurance Office in the exercise of the rights, or the discharge of the obligations, referred to in section 231 (3) (other than an amount required by section 222 (Repayments to the Contribution Fund) to be paid into the Contribution Fund);
- 35 (d) any amounts payable to the Government Insurance Office pursuant to section 221 (Payments from the Contribution Fund) as a result of the application of that section, in accordance with section 233 (2), to a payment made by the Government Insurance Office;

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- (e) any amounts payable to the Government Insurance Office pursuant to section 235; and
- (f) any amounts authorised by the regulations to be paid into the Guarantee Fund from the funds of the Government Insurance Office.
- 5 (3) There shall be paid out of the Guarantee Fund such amounts as may be authorised by this Division or the regulations to be paid out of that Fund.
- (4) The Guarantee Fund shall, subject to this Act, be under the direction, control and management of the Government Insurance Office.
- (5) Subject to such directions, if any, as may be given from time to time
10 by the Treasurer, the Government Insurance Office may invest and re-invest or otherwise use or employ the Guarantee Fund in such investments as may be determined from time to time by that Office, and any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by that Office.

15 **Contributions to Guarantee Fund** (cf. former s. 30R)

228. (1) The Government Insurance Office may, in respect of any financial year prescribed by the regulations, determine the amount to be contributed to the Guarantee Fund in respect of that year, being an amount which the Government Insurance Office considers is necessary—

- 20 (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insolvent insurers; and
- (b) to provide for the payment of any other amounts to be paid under this Division from the Guarantee Fund during that financial year.

- 25 (2) Where the Government Insurance Office determines an amount under subsection (1) in respect of a financial year prescribed for the purposes of that subsection, each insurer (other than a former licensed insurer) shall pay to the Government Insurance Office for payment into the Guarantee Fund an appropriate contribution calculated in accordance with the following
30 formula:

$$\frac{A}{B} \times C$$

where—

“A” is the amount which the insurer is required by or under this Act to contribute to the State Compensation Board Fund;

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“B” is the total amount required by or under this Act to be contributed by all insurers (other than former licensed insurers) to the State Compensation Board Fund in respect of that financial year; and

5 “C” is the amount determined pursuant to subsection (1) in respect of that financial year.

(3) A contribution is payable at such times and in respect of such periods as may be prescribed.

(4) If a contribution is not paid within the time specified by the Government Insurance Office in a notice to an insurer requiring the insurer
10 to pay the contribution—

(a) the insurer is guilty of an offence and liable to a penalty not exceeding \$10,000; and

(b) the contribution may be recovered by the Government Insurance Office as a debt in any court of competent jurisdiction.

15 (5) In any proceedings under this section, a certificate executed by the Board as to the amount of the appropriate contribution payable, under this section, by the insurer, and as to the time within which the contribution was required to be paid, as specified by the Government Insurance Office, is (without proof of its execution by the Board) admissible in any
20 proceedings and is evidence of the facts stated in the certificate.

Liquidator to notify GIO of claims (cf. former s. 30s)

229. The liquidator of an insolvent insurer shall, on receiving any claim relating to any policy of insurance issued by the insolvent insurer, forward the claim to the Government Insurance Office.

25 Penalty: \$2,000.

Delivery of documents etc. to GIO (cf. former s. 30T)

230. The liquidator of an insolvent insurer shall, whenever requested to do so by the Government Insurance Office—

30 (a) deliver to the Government Insurance Office all documents relating to policies of insurance issued by the insolvent insurer and all claims, judgments or awards made in respect of any such policies in the liquidator’s possession; and

35 (b) supply to the Government Insurance Office all information in the liquidator’s possession relating to any such policies or any such claims, judgments or awards.

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Penalty: \$2,000.

Appointment of GIO as agent and attorney of employer and worker (cf. former s. 30U)

5 **231. (1)** The Government Insurance Office is by this section appointed the agent and attorney of an employer and a worker insured under a policy of insurance issued by an insolvent insurer.

(2) As agent and attorney of such an employer, the Government Insurance Office may exercise the rights and discharge the obligations of the employer—

- 10 (a) for the purpose of dealing with and finalising any claim against which the employer is indemnified under the policy of insurance;
- (b) for the purpose of satisfying any such claim or any judgment or award against which the employer is indemnified under the policy of insurance; and
- 15 (c) for any other purpose prescribed by the regulations.

(3) As agent and attorney of such an employer or a worker, the Government Insurance Office may exercise the rights of the employer or worker in connection with the policy of insurance—

- 20 (a) for the purpose of proving in the winding up of the insolvent insurer and receiving any dividends or other money payable to the employer or worker in the winding up;
- (b) for the purpose of recovering any money which the employer or worker is entitled to recover under section 150 of this Act or section 64 of the former Act;
- 25 (c) for the purpose of recovering any money which the employer or worker is entitled under the policy of insurance to recover from the person who issued the policy, being a policy referred to in paragraph (b) of the definition of “policy of insurance issued by an insolvent insurer” in section 225; and
- 30 (d) for any other purpose prescribed by the regulations.

(4) The Government Insurance Office may exercise rights and discharge obligations as agent in the name of the employer or worker concerned, or in its own name.

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- (5) All rights vested in an insurer and all obligations imposed on an insurer, being rights or obligations—
- (a) arising from or relating to a policy of insurance issued by an insolvent insurer to an employer; and
 - 5 (b) which may or shall be exercised or discharged for the purpose of—
 - (i) dealing with and finalising any claim; or
 - (ii) satisfying any claim, judgment or award, against which the employer is indemnified under the policy,
- are vested in or imposed on the employer.
- 10 (6) Subsection (5) shall not be construed so as to vest in or impose on an employer, or to affect in any other way—
- (a) a right of an insurer to be indemnified by a reinsurer or an obligation of an insurer to indemnify an employer; or
 - (b) any other prescribed right or obligation.
- 15 (7) If the Government Insurance Office is, under this section, empowered to exercise any rights, or to discharge any obligations, of an employer or a worker as agent and attorney, the employer or worker is not entitled, without the consent of the Government Insurance Office, to exercise those rights or discharge those obligations.
- 20 (8) The appointment effected by this section may be revoked only by an Act.

Payments to employer or liquidator (cf. former s. 30v)

232. (1) Where an employer insured under a policy of insurance issued by an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Division or before or after the commencement of this Division) any claim, judgment or award in respect of which the employer has not been indemnified under that policy, the Government Insurance Office, as manager of the Guarantee Fund, may pay from the Guarantee Fund to the employer an amount equal to the whole or any part of the amount paid by the employer in satisfaction of the claim, judgment or award.
- 25
- 30

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(2) Where the liquidator of an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Division or before or after the commencement of this Division) any claim, judgment or award in respect of which an employer is entitled to be indemnified under a policy of insurance issued by the insolvent insurer, the Government Insurance Office, as manager of the Guarantee Fund, may pay from the Guarantee Fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim, judgment or award.

10 (3) Where—

(a) a payment is made under subsection (1) to an employer in respect of a claim, judgment or award, the Government Insurance Office shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer; or

15 (b) a payment is made under subsection (2) to the liquidator of an insolvent insurer in respect of a claim by or on behalf of any person or a judgment or award for the benefit of any person, the Government Insurance Office shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer of the person in respect of whom the payment is made.

20 (4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Government Insurance Office and neither those subsections operate nor the exercise of any of those powers operates so as to confer, directly or indirectly, any right on any person to whom a payment is or may be made under those subsections or on any other person.

Operation of certain provisions (cf. former s. 30w)

30 233. (1) Section 93 applies in relation to an employer insured under a policy of insurance issued by an insolvent insurer (or who would be so insured if the insolvent insurer had not been dissolved) as if the Government Insurance Office were the insurer liable to indemnify the employer under the policy.

35 (2) Section 221 (Payments from the Contribution Fund) applies to and in respect of a payment made by the Government Insurance Office (as agent and attorney of an employer) pursuant to a policy of insurance issued by an insolvent insurer in the same way as it would apply to and in respect of the payment had it been made by the Government Insurance Office as the insurer under the policy.

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(3) Where the Government Insurance Office receives as agent and attorney of an employer a payment from the Contribution Fund in accordance with section 221 (Payments from the Contribution Fund), section 222 (Repayments to the Contribution Fund) applies to and in respect of that payment as if the Government Insurance Office were an insurer which had received that payment in respect of compensation paid by it.

(4) Sections 124 and 134 apply in relation to a claim being dealt with by the Government Insurance Office as agent and attorney of an employer insured under a policy of insurance issued by an insolvent insurer as if a reference in those sections to an insurer included a reference to the Government Insurance Office.

(5) The regulations may make provision, not inconsistent with this Division, for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of this Act (including the provisions referred to in subsections (1)–(4)) in relation to the dealing with or finalising of claims, or the satisfying of judgments or awards, by the Government Insurance Office as agent and attorney of an employer insured under a policy of insurance issued by an insolvent insurer.

Application of Guarantee Fund (cf. former s. 30x)

20 **234. (1)** Out of the Guarantee Fund, the Government Insurance Office as manager of that Fund—

(a) shall pay the amount of any claim, judgment or award arising from or relating to any policy of insurance issued by an insolvent insurer, being a claim, judgment or award that it proposes to satisfy as agent and attorney of an employer, and any other amounts required by this Division to be paid from that Fund; and

(b) is entitled—

(i) to be paid the costs of administration of the Guarantee Fund; and

(ii) to be indemnified against all payments made by it and all costs and expenses that it may incur in or in connection with the exercise of its functions under this Division.

(2) Where a payment is made by the Government Insurance Office as agent and attorney of an employer, being a payment authorised by this Division, the Government Insurance Office shall not be entitled to recover the amount of that payment from the employer.

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Recovery of amounts under contracts or arrangements for reinsurance (cf. former s. 30y)

235. To the extent that any amounts are paid out of the Guarantee Fund in respect of a claim, judgment or award pursuant to section 234 (including the costs of the Government Insurance Office), the Government Insurance Office shall, where an insolvent insurer (if it had provided indemnity to that extent under a policy of insurance) would have been entitled to recover any sum under a contract or arrangement for reinsurance, be entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Government Insurance Office to recover from the reinsurer and pay into the Guarantee Fund the amount due under that contract or arrangement.

Payments of workers compensation when insolvent insurer dissolved (cf. former s. 30z)

15 236. (1) When an insolvent insurer has been dissolved, the payments of compensation under judgments or awards relating to policies of insurance issued by the insolvent insurer which would, but for the dissolution taking place, be payable by the insolvent insurer shall continue and be paid out of the Guarantee Fund by the Government Insurance Office.

20 (2) When an insolvent insurer has been dissolved, a person who would have had, but for the dissolution of the insolvent insurer, an entitlement to payment of any amount arising from or relating to any policy of insurance issued by the insolvent insurer (being a policy in respect of which the insolvent insurer is the insurer) shall be entitled to payment of that amount
25 out of the Guarantee Fund.

(3) A person referred to in subsection (2) may make a claim against the Government Insurance Office, as manager of the Guarantee Fund, in respect of an entitlement to payment of an amount under that subsection.

30 (4) The Government Insurance Office, as manager of the Guarantee Fund, is entitled to deal with and finalise a claim made under subsection (3) in relation to a policy of insurance issued by an insolvent insurer to the same extent as it would have been entitled to do so if the insolvent insurer had not been dissolved.

*Workers Compensation 1987***Inspection of documents etc. by person authorised by Minister (cf. former s. 30ZA)**

237. The liquidator of an insolvent insurer shall, whenever requested to do so by a person authorised by the Minister, make any documents relating to policies of insurance issued by the insolvent insurer and any claims, judgments or awards made in respect of any such policies in the liquidator's possession available for inspection by that person.

Penalty: \$2,000.

Board may take certain legal proceedings (cf. former s. 30ZB)

10 238. (1) If—

- (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding up;
- 15 (b) the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Division or not, is challenged, reviewed or called into question in proceedings before any court; or
- (c) any other matter that concerns or may affect the operation of this Division is raised in proceedings before any court,

20 the Board may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

25 (2) In any case in which the Attorney General might take proceedings on the relation or on behalf or for the benefit of a person who is (or who would but for the dissolution of the insolvent insurer be) entitled, under a policy of insurance issued by an insolvent insurer, to be indemnified against a claim, judgment or award arising from or relating to the policy, being
30 proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Division, any Act or any rule of law, the Board shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.

(3) The Board is entitled to be paid, out of the Guarantee Fund, all the
35 costs and expenses incurred by the Board in exercising the powers conferred by this section.

*Workers Compensation 1987***Regulations** (cf. former s. 30zc)

239. The regulations may make provision for or with respect to—
- (a) requiring insurers (including former licensed insurers) to make contributions or further contributions to the Guarantee Fund;
 - 5 (b) the manner and method of determining any such contributions or further contributions;
 - (c) varying in specified circumstances the periods with respect to which contributions are to be determined, or the method by which contributions are to be calculated, under section 228;
 - 10 (d) the payment, and proceedings for the recovery, of contributions; and
 - (e) the circumstances and the manner in which contributions of insurers and other amounts standing to the credit of the Guarantee Fund may be repaid and otherwise distributed to insurers and the liquidators of insolvent insurers.

15

PART 8

WORKERS COMPENSATION COMMISSIONERS

Appointment of commissioners (cf. former s. 42j)

240. (1) The Governor may appoint qualified persons to be workers compensation commissioners.
- 20 (2) A person is qualified to be appointed as a commissioner if the person has not reached the age of 65 years and—
- (a) has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government; or
 - 25 (b) has, not less than 5 years previously, obtained a degree of a university or an educational qualification of a similar standard, after studies in the field of law, economics or industrial relations or some other field of study considered by the Governor to have substantial relevance to the duties of a commissioner,
- 30 and if the person is, in the opinion of the Governor, by reason of the person's qualifications, experience and standing in the community, a fit and proper person to discharge the duties of a commissioner.

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(3) Except where otherwise expressly provided by this or any other Act, a commissioner is not, in the exercise of the commissioner's jurisdiction and functions, subject to the control or direction of the Compensation Court.

(4) Schedule 2 has effect with respect to the commissioners.

5 Appointment of Senior Commissioner (cf. former s. 42J)

241. (1) Of the persons appointed as commissioners, one shall, by the person's instrument of appointment or a subsequent instrument executed by the Governor, be appointed as Senior Workers Compensation Commissioner.

10 **(2)** Where a person is appointed as Senior Workers Compensation Commissioner, any previous appointment of a person as Senior Workers Compensation Commissioner shall cease to have effect.

Sittings of commissioners (cf. former s. 42N)

15 **242.** Subject to the regulations, commissioners shall sit at such places and times as the Senior Commissioner may direct.

Arrangement of business of commissioners (cf. former s. 42O)

243. The Senior Commissioner is responsible for making, and may make, arrangements as to the commissioner who is to hear a particular matter or class of matters.

20 Delegation by Senior Commissioner

244. (1) The Senior Commissioner may delegate to a commissioner or review officer the exercise of any of the Senior Commissioner's functions, other than—

25 (a) the function of hearing any matter before the Senior Commissioner;
or

(b) this power of delegation.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

30 (c) may be revoked, wholly or partly, by the Senior Commissioner.

(3) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

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(4) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Senior Commissioner.

(5) A delegation does not prevent the exercise of a function by the Senior Commissioner.

- 5 (6) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Staff and facilities for commissioners etc. (cf. former s. 37 (9))

245. (1) A clerk to the commissioners and such other staff as may be
10 necessary for the commissioners and review officers to exercise their functions shall be employed under the Public Service Act 1979.

(2) The clerk to the commissioners and that other staff are, in the exercise of their functions, subject to the general control and direction of the Senior Commissioner.

- 15 (3) This section does not affect the exercise of the functions of the appropriate Department Head under the Public Service Act 1979 with respect to the clerk to the commissioners and that other staff.

(4) The Board shall provide for the commissioners and review officers—

- (a) facilities (including registry facilities); and
20 (b) any additional staff that may be necessary.

Access to Court documents etc.

246. (1) A commissioner or the clerk to the commissioners (or a person authorised by a commissioner or that clerk) shall be entitled to—

- (a) take away, inspect or copy documents or extracts of documents; or
25 (b) obtain from the Compensation Court Registry copies of, or extracts from, documents,

maintained or available at the Compensation Court Registry.

(2) A Judge of the Compensation Court or the Registrar of that Court (or a person authorised by a Judge or that Registrar) shall be entitled to—

- 30 (a) take away, inspect or copy documents or extracts of documents; or
(b) obtain from the registry office of the commissioners copies of, or extracts from, documents,

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maintained or available at the registry office of the commissioners.

Protection from liability

247. No matter or thing done by a commissioner in the exercise of any of the commissioner's functions shall, if the matter or thing was done in good faith, subject the commissioner personally to any action, liability, claim or demand.

PART 9

STATE COMPENSATION BOARD

DIVISION 1—*Constitution of Board*10 **The Board** (cf. former s. 31 (1), (2))

248. (1) There is constituted by this Act a corporation under the corporate name of the "State Compensation Board".

(2) The Board—

- 15 (a) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown; and
- (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

Members of the Board (cf. former ss. 31 (3)–(5), 32)

20 249. (1) The Board shall consist of 5 members who shall be appointed by the Governor.

(2) Of the members—

- 25 (a) 1 shall, in and by the instrument by which the member is appointed, be appointed as a full-time member and Chief Executive Officer of the Board;
- (b) 2 shall, in and by the instruments by which the members are appointed, be appointed as full-time members of the Board; and
- (c) 2 shall, in and by the instruments by which the members are appointed, be appointed as part-time members of the Board.

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(3) Of the persons appointed as the full-time members of the Board referred to in subsection (2) (b)—

(a) 1 shall be a person nominated by the Minister to represent the interests of employees; and

5 (b) 1 shall be a person nominated by the Minister to represent the interests of employers.

(4) A person appointed as a full-time member of the Board referred to in subsection (2) (b) shall be a person who, in the Minister's opinion, has a background and experience in one or more of the following fields:

10 (a) rehabilitation;

(b) industrial relations;

(c) law;

(d) accounting;

(e) commerce;

15 (f) finance.

(5) Of the persons appointed as the part-time members of the Board referred to in subsection (2) (c)—

(a) 1 shall be a person nominated by the Minister to represent the interests of insurers; and

20 (b) 1 shall be a person selected by the Minister from a panel of not less than 5 persons whose names are submitted by the Labor Council of New South Wales to represent the interests of employees.

25 (6) If, in respect of a proposed appointment, a panel of names required to be submitted for the purposes of subsection (5) (b) is not submitted to the Minister within a time specified by the Minister, the Minister may nominate a person for the purposes of subsection (5) (b).

Chairperson (cf. former s. 33)

250. (1) The Chief Executive Officer shall be the Chairperson of the Board.

30 (2) The Chairperson may be referred to as the Chairman or Chairwoman.

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Provisions relating to the members and the procedure of the Board (cf. former s. 34)

251. (1) Schedule 3 has effect with respect to the members of the Board.

(2) Schedule 4 has effect with respect to the procedure of the Board.

5 Functions of Chief Executive Officer (cf. former s. 35)

252. The Chief Executive Officer—

(a) shall be responsible for the management of the affairs of the Board subject to and in accordance with any directions given by the Board; and

10 (b) shall have and may exercise such other functions as are conferred or imposed on the Chief Executive Officer by or under this or any other Act.

Secretary and other staff of the Board (cf. former s. 36)

253. (1) A Secretary of the Board and such other staff as may be
15 necessary to enable the Board to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Secretary of the Board shall have, and may exercise, during—

(a) any temporary absence of the Chief Executive Officer; or

(b) any vacancy in the office of Chief Executive Officer,

20 the functions of the Chief Executive Officer, including the Chief Executive Officer's function as member and Chairperson of the Board or as member or chairperson of any other board or of any committee.

(3) Anything done by the Secretary of the Board in the exercise of any of the functions conferred on the Secretary by subsection (2) shall be deemed
25 to have been done by the Chief Executive Officer.

(4) The Board may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

30 arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

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(5) The Board may—

- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

5 employ such casual staff as may be required by the Board in exercising its functions.

(6) The Public Service Act 1979 does not apply to or in respect of the employment of casual staff under subsection (5) and a person is not, as a member of that casual staff, subject to that Act.

10 (7) The Board may engage persons having suitable qualifications and experience as consultants to the Board.

(8) For the purposes of this Act, a person who is employed for the purposes of subsection (1) or (5) or whose services are made use of under subsection (4) is an officer of the Board.

15 **DIVISION 2—*Functions of Board***

Functions (cf. former ss. 37, 39, 44 (4))

254. (1) The Board shall have and may exercise such functions as are conferred or imposed on it by or under this or any other Act.

20 (2) The Board may, in relation to workers' compensation or any other form of compensation in respect of which the Compensation Court, the commissioners or the Board exercises or exercise functions or for or in relation to the preventing or minimising of accidents, injuries, losses of functions or diseases in respect of which compensation may be payable—

- (a) carry out research;
- 25 (b) collect and publish statistics;
- (c) monitor the operation of any statutory system for compensating injured persons;
- (d) make reports and recommendations to the Minister on such matters as the Minister requests or as the Board considers appropriate;
- 30 (e) provide advisory services, including financial advice;

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- (f) provide funds for or in relation to—
- (i) measures for the prevention or minimisation of accidents, injuries, losses of functions or diseases; and
 - (ii) safety education;
- 5 (g) provide information in languages other than the English language;
- (h) arrange interpreter services for the Board, the Compensation Court, the commissioners and review officers;
- (i) provide a law reporting service; and
- (j) provide and administer a legal aid service.
- 10 (3) The Board may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions.
- (4) The Board, for the purpose of exercising its functions, shall be entitled to—
- 15 (a) take away, inspect or copy documents or extracts of documents; or
- (b) obtain from the Compensation Court Registry or the registry office of the commissioners copies of, or extracts from, documents,
- maintained or available at the Compensation Court Registry or the registry office of the commissioners.
- 20 (5) The Compensation Court or a commissioner may, in respect of any information obtained by the Board from the Compensation Court or the commissioners for the purposes of this section, order that that information shall not be used in any proceedings, or in any specified proceedings, before the Compensation Court or the commissioners.
- 25 (6) The Board shall liaise with such organisations or bodies, representatives of groups, members of professions, departments of government or statutory bodies (in each case, whether in or of New South Wales or elsewhere) as may assist the Board to exercise its functions.
- (7) The Board shall supply to workers and employers information as to
- 30 their rights and liabilities in respect of injuries sustained by workers in connection with their employment.
- (8) The Board may supply to persons, classes of persons or the public generally other information relating to—
- (a) rights and liabilities with respect to compensation; and

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- (b) the functions and operations of the Board, the Compensation Court, the commissioners and review officers.

(9) The regulations may make provision for or with respect to the provision or administration of a legal aid service in relation to workers compensation or any other form of compensation in respect of which the Board exercises functions.

Co-ordination of functions of Board and Department of Industrial Relations and Employment (cf. former s. 31A)

10 255. (1) The Secretary of the Department of Industrial Relations and Employment may, with the concurrence of the Minister, make arrangements for the co-ordination or integration of the exercise of the functions of the Board (other than functions under Division 3) with the activities of the Department of Industrial Relations and Employment.

15 (2) The Board may act in conformity with any arrangements referred to in this section, and (without affecting section 248 (2) (b)) shall do so if the Minister so directs.

Board to monitor compensation payments

20 256. The Board shall, from information supplied to it under this Act and from its own inquiries, monitor entitlements to and payments of compensation under this Act.

Board may intervene in proceedings

25 257. (1) The Board has a right to be heard in any proceedings before the Compensation Court or a commissioner under this Act.

(2) The Board may, for that purpose, be represented by a barrister or solicitor or an officer of the Board or by any other person.

(3) In any such proceedings the Board may apply for any order for which any party may apply in those proceedings.

*Workers Compensation 1987*DIVISION 3—*State Compensation Board Fund***Interpretation**

258. In this Division—

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

10 (a) includes any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year; and

(b) does not include any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year;

15 “financial year”, in relation to an insurer—

(a) includes the period after 4 p.m. on the day preceding the first day of the financial year; and

(b) does not include the period after 4 p.m. on the last day of the financial year;

20 “Fund” means the State Compensation Board Fund established under this Division;

“insurer” means a licensed insurer or a former licensed insurer;

25 “premium income”, in relation to the contribution payable by an insurer under this Division for a financial year, means the amount the insurer receives, whether during or after that financial year, as premiums in respect of policies of insurance issued or renewed by the insurer during that financial year and—

(a) includes any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year; and

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

Establishment of State Compensation Board Fund (cf. former s. 41 (1)–(3A))

259. (1) There is established a fund, to be known as the “State Compensation Board Fund”, belonging to and vested in the Board.

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(2) There shall be paid into the Fund—

- (a) money contributed by insurers and self-insurers under this Division;
- (b) money required to be paid into the Fund by or under this or any other Act; and
- 5 (c) all other money received by the Board and not otherwise appropriated.

(3) There shall be paid from the Fund all money—

- (a) required for the remuneration, fees and allowances payable to the members, Secretary and other officers of the Board;
- 10 (b) required for the remuneration, fees and allowances payable to the commissioners and review officers and for any other costs of providing staff and facilities for the commissioners and review officers;
- 15 (c) required by the Minister administering the Compensation Court Act 1984 for the remuneration, fees and allowances payable to—
 - (i) the Judges, officers and staff of the Compensation Court; and
 - (ii) arbitrators appointed under the Compensation Court Act 1984, and any other costs of operation of the Compensation Court (including the provision of court accommodation and Judges' chambers);
- 20 (d) required for costs of the operations of the Workers Compensation Review Committee;
- 25 (e) which the Board thinks proper should be applied towards or in connection with enabling persons to take or defend or be a party to proceedings before the Compensation Court or the commissioners, whether or not those proceedings are taken under this Act;
- (f) required for carrying out the provisions of this Act or for the exercise by the Board of its functions under this Act where moneys are not otherwise provided for that purpose; and
- 30 (g) required to be paid from the Fund by or under this or any other Act.

(4) The Board may invest any money in the Fund in any manner for the time being authorised for the investment of trust funds.

*Workers Compensation 1987***Assessment by Board of amount to be contributed to Fund** (cf. former s. 41 (4))

260. The Board shall, as soon as practicable in respect of each financial year—

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

Contributions to Fund by insurers and self-insurers (cf. former s. 41 (5)–(13))

25 **261. (1)** Each insurer and self-insurer shall pay the contributions prescribed by this section to the Board for payment into the Fund.

(2) The contribution to be paid by an insurer in respect of each financial year is an amount equal to the percentage (determined by the Board in accordance with this section) of the premium income of the insurer in respect of that financial year.

30 (3) The contribution to be paid by a self-insurer, in respect of each financial year (being a financial year during the whole or part of which the person was a self-insurer) is an amount equal to the percentage (determined by the Board in accordance with this section) of the deemed premium income of the self-insurer during the relevant period when the person was
35 a self-insurer.

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(4) The percentage determined by the Board pursuant to subsections (2) and (3)—

5 (a) shall be such as, in the opinion of the Board, will be sufficient to yield the total amount to be contributed to the Fund by insurers and self-insurers in respect of the relevant financial year as determined pursuant to section 260; and

(b) shall be the same percentage for all insurers and for all self-insurers.

10 (5) A contribution by an insurer is payable at such times and in respect of premium income received during such periods as may be determined by the Board and notified to the insurer.

(6) A contribution by a self-insurer is payable in such instalments and at such times as may be determined by the Board and notified to the self-insurer.

15 (7) If a contribution payable by an insurer or a self-insurer has not been paid within the time prescribed by or under this section—

(a) the insurer or self-insurer is guilty of an offence and liable to a penalty not exceeding \$10,000; and

20 (b) the amount of that contribution together with interest calculated at the rate of 15 per cent per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Board as a debt in any court of competent jurisdiction.

(8) Subject to subsection (4), more than one percentage may be determined by the Board for different portions of a financial year for the purposes of subsection (2) or (3).

25 (9) A certificate executed by the Board as to the amount of a contribution payable under this section by an insurer or self-insurer specified in the certificate and the due date for payment is (without proof of its execution by the Board) admissible in proceedings under this section and is evidence of the matters specified in the certificate.

30 (10) The obligation of a person (being a self-insurer) to make a contribution under this section in respect of any period during which the person was a self-insurer does not cease merely because the person subsequently ceases to be a self-insurer.

*Workers Compensation 1987*DIVISION 4—*Miscellaneous***Delegation** (cf. former s. 42C)

262. (1) The Board may delegate to any person the exercise of any of its functions, other than this power of delegation.

5 (2) The Chief Executive Officer of the Board may delegate to any person the exercise of any of the functions delegated to the Chief Executive Officer, unless the Board otherwise provides in its instrument of delegation to the Chief Executive Officer.

(3) A delegation—

10 (a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Board or the Chief Executive Officer, as the case requires.

15 (4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Board.

(6) A delegation does not prevent the exercise of a function by the Board or the Chief Executive Officer.

20 (7) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

25 (8) In subsection (7), a reference to a delegate includes a reference to the chairperson of a committee to which the exercise of a function is delegated under this section.

Financial year (cf. former s. 42B)

263. The financial year of the Board shall be the year commencing on 1 July.

References to Board (cf. former s. 42E)

30 264. In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the "State Compensation Board" or the "Compensation Board" shall be construed as a reference to the State Compensation Board constituted by this Act.

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Service of process (cf. former s. 42F)

265. Any notice, summons, writ or other process required to be served on the Board may be served—

- (a) by leaving it; or
- 5 (b) in the case of a notice, by posting it addressed to the Board, at its office or, if it has more than one office, at one of its offices.

Authentication of certain documents (cf. former s. 42G)

266. Every summons, process, demand, order, certificate, notice, statement, direction and document requiring authentication by the Board
10 may be sufficiently authenticated without the seal of the Board if signed by the Chief Executive Officer or by an officer of the Board authorised to do so by the Chief Executive Officer.

Recovery of charges etc. by Board (cf. former s. 42H)

267. In any case where no express provision is made for the recovery of
15 any charge, fee or money due to the Board, or to the Crown, in respect of any of the activities of the Board under the provisions of this or any other Act or of any instrument made under this or any other Act, the charge, fee or money may be recovered by the Board as a debt in a court of competent jurisdiction.

20 Proof of certain matters not required (cf. former s. 42I)

268. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Board;
 - (b) any resolution of the Board;
 - 25 (c) the appointment of, or the holding of office by, any member of the Board; or
 - (d) the presence or nature of a quorum at any meeting of the Board.
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PART 10

MISCELLANEOUS

Posting summary of Act (cf. former s. 43 (1)–(3))

5 **269. (1)** There shall be kept constantly posted up in some conspicuous place at or near every mine, quarry, factory, workshop, office or shop, and on every ship to which this Act applies, where it may be conveniently read by a person employed there—

10 (a) a summary (in or to the effect of the prescribed form) of the requirements of this Act with regard to the giving of notice of injuries and the making of claims;

(b) if the employer has obtained a policy of insurance in respect of the persons employed there and the policy is for the time being in force—a statement setting out the name and address of the insurer from whom the policy was obtained and stating that insurance under
15 this Act has been effected with that insurer;

(c) if the employer is a self-insurer—a statement that the employer is a licensed self-insurer under this Act; and

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

20 (2) If the summary or statement is damaged, obliterated or destroyed, it shall be renewed as soon as possible.

(3) If this section is contravened, the manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, or the master of the ship, as the case requires, is guilty of an offence against this Act and liable to a penalty not exceeding \$2,000.

25 **Worker's right to information (cf. former s. 18B)**

270. (1) A worker may request the employer of the worker to supply the following information:

(a) the employer's name and address for the service of documents for the purposes of this Act; and

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

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

35 (a) refuse to supply any such information; or

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

Penalty: \$2,000.

(3) In this section—

- 5 “employer”, in relation to a worker, includes a principal within the meaning of section 20 who is liable to pay compensation to the worker.

No contribution from workers (cf. former s. 48)

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

Penalty: \$10,000.

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

15 **No contracting out** (cf. former s. 45)

272. This Act applies notwithstanding any contract to the contrary.

Non-assignability of compensation (cf. former s. 55)

273. (1) Compensation under this Act or the former Act—

- (a) is not capable of being assigned, charged or attached; and
20 (b) does not pass to any other person by operation of law, nor shall any claim be set off against that compensation.

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

- 25 (a) the satisfaction of an obligation by the worker to maintain another person pursuant to an order of a court of competent jurisdiction; or
(b) the passing of accrued vested rights of a deceased worker to the legal personal representative.

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Powers of entry and inspection by officers of Board (cf. former ss. 18A (1B)–(1E), (2D), (2E), 30B)

274. (1) In this section—

5 “authorised officer” means an officer of the Board authorised by the Board for the purposes of this section;

“insurer” means a licensed insurer, former licensed insurer or self-insurer, and includes any insurance broker or commission agent engaged in workers compensation insurance business;

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

(2) An authorised officer may—

15 (a) on production of his or her authority, enter at any reasonable hour any premises (not being a dwelling-house) used, or that the authorised officer reasonably suspects to be used, by an employer or insurer for the storage or custody of any record;

(b) on production of his or her authority, enter at any reasonable hour any premises (not being a dwelling-house) in or on which the authorised officer knows, or reasonably suspects, an employer, worker or insurer to be;

20 (c) remain in or on premises while exercising any power conferred by this section;

(d) require an employer, insurer or any other person in or on those premises to produce any such record that is in his or her possession or under his or her control and is capable of being produced;

25 (e) require an employer, insurer or any other person having possession or control of any such record that is not written, or is not written in the English language, or is not decipherable on sight, to produce a statement, written in the English language and decipherable on sight, of the information contained in the record;

30 (f) inspect, or make copies of or extracts from, a record produced pursuant to paragraph (d) or a statement produced pursuant to paragraph (e), or retain such a statement; and

(g) require an employer, insurer or any other person in or on those premises to answer questions relating to—

35 (i) an injury to, or incapacity of, a worker;

(ii) the business or financial position of an insurer; or

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(iii) the observance of this Act or the regulations.

(3) A person shall not—

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

15 Penalty: \$5,000.

(4) A person may not refuse to answer a question under subsection (2) on the ground that it might tend to incriminate the person, but neither the question nor the answer is admissible in any civil or criminal proceedings against the person other than proceedings for an offence under this section.

20 **Service of notices** (cf. former s. 66E)

275. A notice required or authorised to be given to, or served on, a person by or under this Act shall be in writing and shall be given to, or served on, that person—

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

Disclosure of information (cf. former s. 66F)

276. A person shall not disclose any information obtained in connection with the administration or execution of this Act (or the former Act) unless
30 that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;

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- (b) in connection with the administration or execution of this Act (or the former Act);
- (c) for the purposes of any legal proceedings arising out of this Act (or the former Act) or of any report of any such proceedings;
- 5 (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Penalty: \$5,000 or imprisonment for 2 years.

Offences by corporations (cf. former s. 68 (3))

- 10 **277. (1)** If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- 15 **(2)** A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the
20 regulations.

Proceedings for offences (cf. former s. 68)

- 278. (1)** Proceedings for an offence against this Act or the regulations shall be dealt with summarily—
- (a) before a Local Court constituted by a Magistrate sitting alone;
 - 25 (b) before an industrial magistrate; or
 - (c) before the Industrial Commission of New South Wales.
- (2)** The maximum penalty that may be imposed in those proceedings by a Local Court or an industrial magistrate is \$10,000 or the maximum penalty provided in respect of the offence, whichever is the lesser.
- 30 **(3)** The maximum penalty that may be imposed in those proceedings by the Industrial Commission of New South Wales is the maximum penalty provided in respect of the offence.

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Time for instituting proceedings (cf. former s. 18 (5))

279. (1) Proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

5 (2) Any such proceedings may be instituted by (but not only by) the Board.

Regulations (cf. former s. 66)

280. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or
10 permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$2,000.

(3) A provision of a regulation may—

- 15 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

20 or may do any combination of those things.

(4) A regulation prescribing a maximum amount in respect of any compensation payable under this Act for any service or thing may provide that the maximum amount applies to a service or thing after the date the regulation takes effect in respect of an injury received or accident occurring
25 before that date as well as to a service or thing in respect of an injury received or accident happening after that date.

Repeals

281. Each Act specified in Schedule 5 is, to the extent indicated, repealed.

30 Savings, transitional and other provisions

282. Schedule 6 has effect.

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SCHEDULE 1
DEEMED EMPLOYMENT OF WORKERS

(Sec. 5)

Workers lent or on hire (cf. former s. 6 (1), def. "employer")

- 5 1. If the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker while the worker is working for that other person.

Outworkers and other contractors (cf. former s. 6 (3A))

- 10 2. (1) Where a contract—
- (a) to perform any work exceeding \$10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor's own name, or under a business or firm name); or
- (b) to perform any work as an outworker,
- 15 is made with the contractor, who neither sublets the contract nor employs workers, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the person who made the contract with the contractor.

(2) In this clause—

- 20 "outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale—
- (a) in the person's own home; or
- (b) on other premises not under the control or management of the person who gave out the materials or articles.

Rural work (cf. former ss. 6 (5) (a), (c), 7 (5B), 43A, 53 (8))

- 25 3. (1) This clause applies to the following work:
- (a) The work of supplying timber, if the timber is obtained, or is to be obtained, from trees felled, or to be felled, by a contractor (whether the trees are the property of the principal or the contractor or any other person).
- 30 (b) The work of felling or ringbarking trees, or cutting scrub, or hauling or loading timber.
- (c) The work of clearing land of stumps or logs.
- (d) The work of cutting sugar cane.
- (e) The work of erecting, constructing or demolishing or assisting in the erection, construction or demolition of—
- 35 (i) fences; or
- (ii) yards or enclosures for horses, cattle, sheep or other animals, on farms, orchards, vineyards or agricultural or pastoral holdings.

*Workers Compensation 1987*SCHEDULE 1—*continued*DEEMED EMPLOYMENT OF WORKERS—*continued*

- (f) All classes of work normally carried out or performed by derrick operators in or in connection with the transport of sugar cane to a mill.
- (g) Any other class of work prescribed by the regulations.
- (2) If—
- 5 (a) any person (in this clause referred to as “the principal”) in the course of, or for the purposes of, the person’s trade or business enters into a contract, agreement or arrangement with any other person (in this clause referred to as “the contractor”) under which the contractor agrees to carry out work to which this clause applies; and
- 10 (b) the contractor—
- (i) does not either sublet any part of the work to be carried out, or employ a worker; or
- (ii) (although either subletting part of the work or employing a worker) actually performs some part of the work himself or herself,
- 15 the contractor and any worker so employed by the contractor shall, for the purposes of this Act, be deemed to be workers employed by the principal, and a worker so employed by the contractor shall, for the purposes of this Act, other than this clause, be deemed not to be a worker employed by the contractor.
- (3) If the principal has given or offered the contractor the option to or the opportunity
- 20 to so supply timber if the contractor so desires, then, for the purposes of this clause, the contractor shall be deemed to have agreed to supply timber.
- (4) This clause does not apply to or in respect of a contract, agreement or arrangement to haul or load timber if the timber has been subjected to a manufacturing process as defined by the Factories, Shops and Industries Act 1962 in a factory as defined by that
- 25 Act.
- (5) All the principals by whom a person is deemed to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, a commissioner determines.
- 30 (6) For the purposes of this Act, a notice of injury given by a person employed by the contractor shall be deemed to be given to the employer if it is given either to the contractor or the principal.
- (7) The contractor shall, on request, inform a person employed by the contractor of the name and address of the principal.
- 35 (8) In this clause—
- “timber” includes sleepers, piles, poles and logs.

*Workers Compensation 1987*SCHEDULE 1—*continued*DEEMED EMPLOYMENT OF WORKERS—*continued***Timbergetters** (cf. former ss. 6 (5) (b), (c), 7 (5B))

4. (1) If any person (in this clause referred to as “the principal”) advertises or otherwise notifies that he or she will accept timber delivered or supplied in accordance with the advertisement or notification, any person who gives notice to the principal that
5 he or she will deliver or supply the timber or any part of the timber shall, for the purposes of this Act, be deemed to be a worker employed by the principal.

(2) Notice of intention to deliver or supply timber—

(a) shall indicate the nature of the actual work to be undertaken; and

(b) shall be given prior to injury.

10 (3) All the principals by whom a person is deemed to be employed under this clause at the time of an injury to the person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, a commissioner determines.

(4) In this clause—

15 “timber” includes sleepers, piles, poles and logs.

Salespersons etc. (cf. former ss. 6 (6), 7 (5A))

5. (1) A salesperson, canvasser, collector or other person paid wholly or partly by commission shall, for the purposes of this Act, be deemed to be a worker in the
20 employment of the person by whom the commission is payable, unless the commission is received for or in connection with work incidental to a trade or business regularly carried on by the salesperson, canvasser, collector or other person or by a firm of which he or she is a member.

(2) All the employers who engaged any such salesperson, canvasser, collector or other
25 person at the time of an injury to the salesperson, canvasser, collector or other person are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, a commissioner determines.

Tributer (cf. former s. 6 (6A))

6. A tributer working in connection with any mine (as defined by the Mining Act
30 1973 or the Coal Mining Act 1973) and also any workers employed by any such tributer shall, for the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer.

Mine employees (cf. former s. 6 (9))

7. Any person usually employed about a mine or in connection with the operations
35 of a mine whose remuneration is provided wholly or partly by the workers employed at the mine shall, for the purposes of this Act, be deemed to be a worker employed by the person by or for whom the mine is being worked.

*Workers Compensation 1987*SCHEDULE 1—*continued*DEEMED EMPLOYMENT OF WORKERS—*continued***Mines rescue personnel** (cf. former s. 6 (9A), (9B))

8. (1) For the purposes of this Act—

(a) a person—

5 (i) acting with a permanent rescue corps under the Mines Rescue Act 1925 when summoned to do so; or

(ii) attending training with such a permanent rescue corps when required to do so,

10 as referred to in section 14 (2) of that Act shall, while so acting or so attending, be deemed to be a worker employed by the district committee for the district in which is situated the central rescue station at which the rescue corps is established; and

(b) a place at which such a person so acts or so attends training shall be deemed to be a place at which the person is employed.

15 (2) A person referred to in subclause (1) (a) who receives an injury in the course of journeying between the place from which the person was summoned as referred to in section 14 (2) of the Mines Rescue Act 1925 and a place referred to in subclause (1) (b), shall, if the journeying was exclusively and genuinely for a purpose referred to in subclause (1) (a) (i) or (ii), receive compensation in accordance with this Act from the district committee deemed, under subclause (1) (a), to be the person's employer.

20 **Jockeys and harness racing drivers** (cf. former s. 6 (10))

9. (1) A person who—

(a) is engaged to ride a horse for fee or reward at a meeting for horse racing conducted or held by a racing club or association;

25 (b) drives a horse at a meeting for harness racing conducted or held by a racing club or association and at which betting is allowed; or

(c) is engaged in riding work in connection with horse racing (but not harness racing) on the racecourse or other premises of a racing club or association,

shall, for the purposes of this Act, be deemed to be a worker employed by the racing club or association.

30 (2) Subclause (1) does not apply to a racing club or association having its headquarters in a town with a population not exceeding 3,000 people if—

(a) the meetings of the racing club or association are conducted or held within a radius of 8 kilometres from the town; and

35 (b) the profits derived from the operations of the racing club or association are applied for charitable purposes.

*Workers Compensation 1987*SCHEDULE 1—*continued*DEEMED EMPLOYMENT OF WORKERS—*continued*

(3) For the purpose of assessing the compensation payable to a person to whom this clause applies, the “average weekly earnings” of the person shall—

(a) be calculated in such manner (if any) as may be prescribed by the regulations; or

5 (b) if the person was not working under a contract of service—be calculated in such manner as a commissioner considers to be reasonable in the circumstances.

(4) The regulations may make provision for or with respect to the exemption of any class of persons from the operation of subclause (1) (b).

Driver of hire-vehicle or hire-vessel—contract of bailment (cf. former s. 6 (11))

10 10. A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, shall for the purposes of this Act be deemed to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.

Caddies and others employed through club (cf. former s. 6 (12))

15 11. A person (not being a person excluded from being a worker by reason of paragraph (d) of the definition of “worker” in section 3 (1))—

(a) whose employment is of a casual nature;

(b) who is employed otherwise than for the purposes of his or her employer’s trade or business;

20 (c) who is employed for the purposes of any game or recreation; and

(d) who is engaged or paid through a club,

shall, for the purposes of this Act, be deemed to be a worker employed by the club.

Shearers’ cooks and others (cf. former s. 6 (14))

25 12. Any person employed in connection with a pastoral or agricultural occupation, as cook, cook’s help or hut-keeper, whose remuneration is provided wholly or partly by the employees in any such occupation shall, for the purposes of this Act, be deemed to be a worker employed by the person by or for whom the work in any such occupation is undertaken.

Fire fighters in fire districts (cf. former s. 6 (14A))

30 13. (1) A person who (without remuneration or reward) voluntarily and without obligation engages in fighting a bush fire in any fire district constituted under the Fire Brigades Act 1909 with the consent of or under the authority and supervision of or in co-operation with—

(a) any volunteer fire brigade within the meaning of that Act; or

35 (b) any member of a permanent fire brigade or officer of the Board of Fire Commissioners of New South Wales,

*Workers Compensation 1987*SCHEDULE 1—*continued*DEEMED EMPLOYMENT OF WORKERS—*continued*

shall, for the purposes of this Act, be deemed to be a worker employed by the Board of Fire Commissioners of New South Wales.

(2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the "average weekly earnings" of the person shall—

- 5 (a) if the person was working under a contract of service immediately before fighting the bush fire—be computed according to the earnings of the person under that contract of employment; or
- (b) if the person was not working under a contract of service immediately before fighting the bush fire—be such amount as a commissioner considers to be
10 reasonable in the circumstances.

(3) In this clause—

"bush fire" means a fire burning in grass, bush, scrub or timber and any fire arising from such a fire;

- 15 "fighting", in relation to a bush fire, includes any reasonable act or operation performed by the person concerned at or about the scene of or in connection with a bush fire, which is necessary for, directed towards or incidental to the control or suppression of the fire or the prevention of the spread of the fire, or in any other way necessarily associated with the fire.

Workers at place of pick-up (cf. former s. 6 (14B))

- 20 14. Where any person is ordinarily engaged in any employment in connection with which persons customarily attend certain prearranged places at which employers select and engage persons for employment, any such person shall—

- (a) while in attendance at any such place of pick-up for the purpose of being so selected;
- 25 (b) while travelling thereto from his or her place of abode; or
- (c) where the person is not so selected, while travelling from such place of pick-up to his or her place of abode,

be deemed to be a worker employed by the employer who last employed the person in his or her customary employment.

30 **Boxers, wrestlers, entertainers etc.** (cf. former s. 6 (14C))

15. (1) A person engaged for fee or reward to take part—

- (a) as a boxer, wrestler or referee in any public boxing or wrestling contest in a stadium or place to which the public is admitted on payment of a fee or charge;
- 35 (b) as a boxer, wrestler or referee in any boxing or wrestling contest in or on the premises of a club registered under the Registered Clubs Act 1976;

*Workers Compensation 1987*SCHEDULE 1—*continued*DEEMED EMPLOYMENT OF WORKERS—*continued*

- (c) as an entertainer in any public performance in a place of public entertainment to which the public is admitted on payment of a fee or charge; or
- (d) as an entertainer in any performance in or on the premises of a club registered under the Registered Clubs Act 1976,
- 5 shall, for the purposes of this Act, be deemed to be a worker employed by the person conducting or holding the contest or public or other performance.
- (2) A person who takes part in a genuine amateur contest or performance conducted or held by a charity registered under the Charitable Collections Act 1934 or which is exempted from registration by or under that Act, shall not, for the purposes of this clause,
- 10 be deemed to be engaged for fee or reward only because a trophy or certificate is offered or awarded as a prize in the contest or performance.
- (3) A person excluded from being a worker because of paragraph (d) of the definition of "worker" in section 3 (1) shall be deemed not to be a person referred to in subclause (1) (b) or (c).
- 15 **Voluntary ambulance workers** (cf. former s. 6 (14D))
16. (1) A person who (without remuneration or reward) voluntarily and without obligation engages in any ambulance work with the consent of or under the authority and supervision of or in co-operation with the Health Administration Corporation constituted by the Health Administration Act 1982 shall, for the purposes of this Act,
- 20 be deemed to be a worker employed by that Corporation.
- (2) For the purposes of assessing the compensation payable to a person to whom this clause applies, the "average weekly earnings" of the person shall—
- (a) if the person was working under a contract of service immediately before engaging in the ambulance work—be computed according to the earnings of the person
- 25 under that contract of employment;
- (b) if the person was not working under a contract of service immediately before engaging in the ambulance work—be such amount as a commissioner considers to be reasonable in the circumstances.
- (3) In this clause, "ambulance work" means work in or in connection with the
- 30 rendering of first aid to, or the transport of, sick or injured persons.
- Ministers of religion** (cf. former s. 6 (14E))
17. (1) The regulations may declare that persons within a specified class are ministers of religion of a specified religious body or organisation.
- (2) A person within such a class shall, for the purposes of this Act, be deemed to be
- 35 a worker employed by a person specified in the order as the employer of persons within that class.
- (3) A regulation relating to a religious body or organisation shall not be made except at the request of that body or organisation.

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(4) An order under section 6 (14E) of the former Act and in force immediately before the commencement of this clause shall have effect as if it were a regulation under this clause (but may be revoked by any such regulation).

SCHEDULE 2

(cf. former Sch. 3)

(Sec. 240)

COMMISSIONERS

Term of office etc.

1. (1) A commissioner shall, subject to this Schedule, hold office—
- 10 (a) if the commissioner was appointed before reaching the age of 59 years—until the commissioner reaches the age of 60 years; or
- (b) in any other case—for a period (not exceeding 12 months) specified in the instrument of appointment.
- (2) Subject to subclause (3), the Governor may, before the expiration of a
- 15 commissioner's term of office, extend from time to time that term for a period or periods each not exceeding 12 months.
- (3) A commissioner shall not hold office after reaching the age of 65 years.
- (4) A commissioner shall devote the whole of his or her time to the duties of the office of commissioner.

20 Remuneration

2. A commissioner is entitled to be paid—
- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- 25 (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the commissioner.

Application of Public Service Act 1979

3. The Public Service Act 1979 does not apply to or in respect of the appointment of a commissioner and, subject to this Schedule, a commissioner is not, as a commissioner, subject to that Act.

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 SCHEDULE 2—*continued*
 COMMISSIONERS—*continued*
Leave

4. (1) A commissioner is entitled to such leave as may be—
- (a) prescribed; or
 - (b) specified in respect of the commissioner in the commissioner's instrument of appointment.
- 5 (2) Leave may be prescribed or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

Oath of office

5. The Oaths Act 1900 applies to and in respect of a commissioner in the same way as it applies to and in respect of a Magistrate.

Removal from office

6. The Governor may remove a commissioner from office for misbehaviour or incompetence.

Vacation of office

7. A commissioner shall be deemed to have vacated office if the commissioner—
- (a) dies;
 - (b) resigns the office by instrument in writing addressed to the Minister;
 - (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (d) is removed from office by the Governor under clause 6.

Preservation of rights of commissioner if previously public servant etc.

8. (1) Subject to subclause (2) and to the terms of appointment, where a commissioner was, immediately before being appointed as a commissioner—
- (a) an officer of the Public Service;
 - (b) a contributor to a superannuation scheme;
 - (c) an officer employed by a statutory body; or
 - (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,
- he or she—
- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

*Workers Compensation 1987*SCHEDULE 2—*continued*COMMISSIONERS—*continued*

- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a commissioner; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- 5 as if he or she had continued to be such an officer, contributor or person during his or her service as a commissioner, and—
- (h) his or her service as a commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that
- 10 entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.
- 15 (2) If a commissioner would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme—
- (a) he or she shall not be so entitled upon becoming (whether upon appointment as a commissioner or at any later time while holding office as a commissioner) a
- 20 contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Government of New South Wales in any case where he or she becomes a contributor to any such other superannuation scheme.
- 25 (3) Subclause (2) does not prevent the payment to a commissioner upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.
- (4) A commissioner is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.
- 30 **Commissioner entitled to re-appointment in former employment in certain cases**
9. A person who—
- (a) ceases to be a commissioner, otherwise than by being removed from office;
- (b) was, immediately before being appointed as a commissioner—
- (i) an officer of the Public Service; or
- 35 (ii) an officer or employee of a statutory body; and

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SCHEDULE 2—*continued*COMMISSIONERS—*continued*

- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which
5 the person held immediately before being appointed as a commissioner.

Declaration of statutory bodies

10 10. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Acting commissioners

- 10 11. (1) The Governor may appoint a person to be an acting commissioner for a time not exceeding 12 months to be specified in the instrument of appointment.

(2) Acting commissioners shall, for the time and subject to the conditions or limitations specified in the instruments of their appointments, have and may exercise the functions of commissioners and shall, for the purposes of this or any other Act, be
15 deemed to be commissioners.

(3) An acting commissioner is entitled to be paid—

(a) such remuneration as the Governor may determine; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the acting commissioner.

- 20 (4) The Public Service Act 1979 does not apply to or in respect of the appointment of acting commissioners, and acting commissioners are not, in their capacity as such, subject to that Act during their terms of office.

Interpretation

12. In this Schedule—

- 25 “statutory body” means any body declared under clause 10 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

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SCHEDULE 3

(cf. former Sch. 1)

(Sec. 251 (1))

PROVISIONS RELATING TO THE MEMBERS OF THE BOARD

5 Interpretation

1. In this Schedule—

“full-time member” means a member referred to in section 249 (2) (a) or (b);

“part-time member” means a member referred to in section 249 (2) (c).

Age of members

- 10 2. A person of or above the age of 65 years is not eligible to be appointed as a member or to act in the office of a member.

Acting members

- 15 3. (1) Subject to section 249, the Governor may, from time to time, appoint a person to act in the office of a member, other than in the office of the member who is the Chief Executive Officer, during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

(2) The Governor may remove any person from any office to which the person was appointed under subclause (1).

- 20 (3) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause a vacancy in the office of a member shall be deemed to be an absence from office of the member.

Terms of office

- 25 4. (1) Subject to this Schedule, a member shall hold office—

(a) in the case of a full-time member—for such period not exceeding 7 years; or

(b) in the case of a part-time member—for such period not exceeding 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

- 30 (2) A full-time member shall devote the whole of his or her time to the duties of the office of member, except as permitted by this Act or except with the consent of the Minister.

(3) A full-time member is entitled to such leave as may be—

(a) prescribed; or

- 35 (b) specified in respect of the member in the member's instrument of appointment.

*Workers Compensation 1987*SCHEDULE 3—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(4) Leave may be prescribed or specified as referred to in subclause (3) by reference to the leave entitlement of the holder of any other office or class of office.

Remuneration

5. (1) A full-time member is entitled to be paid—
- 5 (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.
- 10

Filling of vacancy in office of member

6. If the office of a member becomes vacant a person shall, subject to this Act, be appointed to fill the vacancy.

15 Casual vacancies

7. (1) A member shall be deemed to have vacated office if the member—
- (a) dies;
- (b) being a full-time member, absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- 20 (c) being a part-time member, absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- 25 (d) 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;
- 30 (e) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 35 (f) is convicted in New South Wales of an offence which is punishable by imprisonment or penal servitude for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

*Workers Compensation 1987*SCHEDULE 3—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(g) being a full-time member, engages in any paid employment outside the duties of office of member, except with the consent of the Minister;

(h) resigns the office by instrument in writing addressed to the Minister;

(i) reaches the age of 65 years;

5 (j) is retired from office by the Governor under subclause (2); or

(k) is removed from office by the Governor under subclause (3), (4) or (5).

(2) A full-time member may be retired from office by the Governor after reaching the age of 60 years and before reaching the age of 65 years and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal
10 determines.

(3) The Governor may remove a full-time member from office for incapacity, incompetence or misbehaviour.

(4) The Governor may remove a part-time member from office.

(5) Without affecting the generality of subclauses (3) and (4), the Governor may
15 remove from office a member who contravenes the provisions of clause 8.

Disclosure of pecuniary interests

8. (1) A member who has a direct or an indirect pecuniary interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or

20 (b) in a thing being done or about to be done by the Board,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member—

(a) is a member, or is in the employment, of a specified company or other body;

25 (b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after
30 the date of the disclosure.

(3) The Board shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

*Workers Compensation 1987*SCHEDULE 3—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

- 5 (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter; or
- (b) exercise any functions under this or any other Act with respect to that thing, as the case may require.

(5) Even though a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

10

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only of the member's function as a representative of employees, employers or insurers, as the case may be.

Effect of Public Service Act 1979

15 9. The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

Preservation of rights of full-time member if previously public servant etc.

10. (1) In this clause—

20 “statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of appointment, where a full-time member was, immediately before being appointed—

25

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- 30 (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee, he or she—

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

35 (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a member; and

*Workers Compensation 1987*SCHEDULE 3—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time member, and—

5 (h) his or her service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and

10 (i) he or she shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.

15 (3) If a full-time member would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme—

(a) he or she shall not be so entitled upon becoming (whether upon appointment as a member or at any later time while holding office as a member) a contributor to any other superannuation scheme; and

20 (b) the provisions of subclause (2) (i) cease to apply to or in respect of him or her and the Government of New South Wales in any case where he or she becomes a contributor to any such other superannuation scheme.

25 (4) Subclause (3) does not prevent the payment to a full-time member upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) A full-time member is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

Full-time member entitled to re-appointment in former employment in certain cases

30 11. (1) In this clause, "statutory body" means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

(2) A person who—

(a) ceases to be a full-time member by reason of the expiration of the period for which the person was appointed or by reason of resignation;

(b) was, immediately before being appointed as a member—

35 (i) an officer of the Public Service; or

(ii) an officer or employee of a statutory body; and

*Workers Compensation 1987*SCHEDULE 3—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a member.

Declaration of statutory bodies

12. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Liability of members etc.

10 13. No matter or thing done by the Board and no matter or thing done by any member or by any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 4

15 (cf. former Sch. 2)

(Sec. 251 (2))

PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD

General procedure

20 1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Schedule and the regulations, be as determined by the Board.

Quorum

2. The quorum for a meeting of the Board is 3 members, of whom one must be the Chairperson.

25 **Presiding member**

3. (1) The Chairperson shall preside at a meeting of the Board.

(2) The Chairperson has, in the event of an equality of votes, in addition to a deliberative vote a second or casting vote.

Voting

30 4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present shall be the decision of the Board.

*Workers Compensation 1987*SCHEDULE 4—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD—*continued***Minutes**

5. (1) The Board shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

(2) Minutes recorded under subclause (1) in respect of a meeting shall, when duly read and confirmed at the next meeting of the Board, be signed by the Chairperson at that next meeting.

SCHEDULE 5

(Sec. 281)

REPEALS

- 10 Workmen's Compensation Act 1916 No. 71—the whole Act
 Workmen's Compensation (Amendment) Act 1920 No. 45—the whole Act
 Workers' Compensation Act 1926 No. 15—the whole Act
 Workers' Compensation (Amendment) Act 1929 No. 36—the whole Act
 Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act
 15 (Amendment) Act 1942 No. 13—the whole Act
 Workers' Compensation (Amendment) Act 1945 No. 20—the whole Act
 Workers' Compensation (Amendment) Act 1948 No. 40—the whole Act
 Bush Fires Act 1949 No. 31—section 58 (2)
 Workers' Compensation (Amendment) Act 1951 No. 20—the whole Act
 20 Workers' Compensation (Further Amendment) Act 1951 No. 25—the whole Act
 Workers' Compensation (Amendment) Act 1953 No. 21—the whole Act
 Judges' Pensions Act 1953 No. 41—section 13 (4)
 Workers' Compensation (Amendment) Act 1957 No. 22—the whole Act
 Workers' Compensation (Further Amendment) Act 1960 No. 58—the whole Act
 25 Workers' Compensation (Amendment) Act 1964 No. 66—the whole Act
 Industrial Arbitration (Basic Wage) Amendment Act 1967 No. 86—section 5 (4)
 Workers' Compensation (Amendment) Act 1967 No. 97—the whole Act
 Workers' Compensation (Dust Diseases) Amendment Act 1967 No. 98—the whole Act
 Bush Fires (Amendment) Act 1970 No. 25—section 4 (3)
 30 Supreme Court Act 1970 No. 52—so much of the First Schedule as amends Act No. 66,
 1964 and so much of the Second Schedule as amends Act No. 15, 1926
 Minors (Property and Contracts) Act 1970 No. 60—so much of the First Schedule as
 amends Act No. 15, 1926
 Workers' Compensation (Amendment) Act 1970 No. 67—the whole Act
 35 Workers' Compensation (Amendment) Act 1971 No. 77—the whole Act
 Workers' Compensation (Insurance) Act 1973 No. 18—the whole Act
 Workers' Compensation (Amendment) Act 1975 No. 44—the whole Act
 Workers' Compensation (Further Amendment) Act 1975 No. 104—the whole Act

*Workers Compensation 1987*SCHEDULE 5—*continued*REPEALS—*continued*

- Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—so much of Schedule 5 as amends Act No. 15, 1926
- Ambulance Services Act 1976 No. 72—so much of Schedule 2 as amends Act No. 15, 1926
- 5 Children (Equality of Status) Act 1976 No. 97—so much of Schedule 1 as amends Act No. 15, 1926
- Workers' Compensation (Further Amendment) Act 1977 No. 37—the whole Act
- Workers' Compensation (Rates) Amendment Act 1977 No. 124—the whole Act
- Workers' Compensation (Amendment) Act 1978 No. 27—the whole Act
- 10 Workers' Compensation (Amendment) Act 1980 No. 79—the whole Act
- Workers' Compensation (Rates) Amendment Act 1980 No. 188—the whole Act
- Workers' Compensation (Amendment) Act 1981 No. 73—the whole Act
- Miscellaneous Acts (Coal Mines Regulation) Repeal and Amendment Act 1982 No. 69—so much of Schedule 2 as amends Act No. 15, 1926
- 15 Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 1 as amends Act No. 15, 1926
- Workers' Compensation (Senior Police) Amendment Act 1984 No. 84—the whole Act
- Workers' Compensation (Amendment) Act 1984 No. 90—the whole Act
- Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 86, 1967 and Act No. 60, 1970
- 20 Workers' Compensation (Amendment) Act 1985 No. 91—the whole Act
- Statute Law (Miscellaneous Provisions) Act 1986 No. 16— Schedule 22 and so much of Schedule 23 as amends Act No. 15, 1926
- Miscellaneous Acts (Area Health Services) Amendment Act 1986 No. 53—so much of Schedule 1 as amends Act No. 15, 1926
- 25 Workers' Compensation (Amendment) Act 1986 No. 75—the whole Act
- Workers' Compensation (Further Amendment) Act 1986 No. 176—the whole Act
- Miscellaneous Acts (Water Administration) Amendment Act 1986 No. 205—so much of Schedule 2 as amends Act No. 15, 1926
- 30 Statute Law (Miscellaneous Provisions) Act (No. 2) 1986 No. 218—Schedule 45 and so much of Schedule 47 as amends Act No. 16, 1986

Workers Compensation 1987

SCHEDULE 6

(Sec. 282)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PART 1

5

PRELIMINARY

Interpretation

1. In this Schedule—

“cognate Acts” means the Coal Mines Regulation (Workers Compensation) Amendment Act 1987; Compensation Court (Amendment) Act 1987; Construction Safety (Workers Compensation) Amendment Act 1987; Dangerous Goods (Workers Compensation) Amendment Act 1987; Defamation (Workers Compensation) Amendment Act 1987; Factories, Shops and Industries (Workers Compensation) Amendment Act 1987; Industrial Arbitration (Workers Compensation) Amendment Act 1987; Mines Inspection (Workers Compensation) Amendment Act 1987; Miscellaneous Acts (Workers Compensation) Amendment Act 1987; Occupational Health and Safety (Workers Compensation) Amendment Act 1987; Police Regulation (Superannuation) (Workers Compensation) Amendment Act 1987; Public Health (Workers Compensation) Amendment Act 1987; Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987; Workers Compensation (Dust Diseases) Amendment Act 1987.

PART 2

PROVISIONS RELATING TO LIABILITY FOR COMPENSATION

Application of Act irrespective of date of injury

1. Subject to this Schedule, Part 2 of this Act applies whether the injury was received before or after the commencement of that Part.

Journey claims—changes not to apply to existing injuries

2. In the case of a personal injury received by a worker before the commencement of section 10 of this Act on a journey to which that section applies, liability for the payment of compensation shall be determined in accordance with the provisions of section 7 (1) of the former Act instead of that section.

PART 3

PROVISIONS RELATING TO COMPENSATION PAYABLE ON DEATH

Application of Act irrespective of date of death

1. Subject to this Schedule, Division 1 of Part 3 of this Act applies whether the death occurred before or after the commencement of that Division.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Amount of compensation—former Act applies in the case of deaths resulting from injuries received before commencement of Act**

2. (1) The amount of compensation payable under Division 1 of Part 3 of this Act shall, if the death results from an injury received before the commencement of that
5 Division, be the amount (if any) payable under the former Act.
- (2) If the worker dies after the commencement of Division 1 of Part 3 of this Act as a result of such an injury, the amount payable under section 8 (1) (a) of the former Act shall be \$62,200.
- (3) A weekly payment of compensation in respect of a dependent child of a worker
10 who dies as a result of such an injury shall, if it is payable after the commencement of Division 1 of Part 3 of this Act—
- (a) be payable under that Division; and
- (b) be determined as if the amount payable in respect of a dependent child who is wholly dependent for support on the worker is \$31.10 per week.
- 15 (4) Division 6 of Part 3 of this Act (Indexation of amounts of benefits) applies as if the amounts of \$62,200 and \$31.10 were adjustable amounts.
- (5) An agreement or determination under section 8 (2) of the former Act with respect to any such weekly payment applies for the purpose of section 26 of this Act (Death of worker leaving partial dependants).
- 20 (6) If the death of a worker results from both an injury received before the commencement of Division 1 of Part 3 of this Act and an injury received after that commencement, the worker shall, for the purposes of this clause, be treated as having died as a result of the injury received after that commencement.

Apportionment between dependants

- 25 3. Sections 29 and 30 of this Act apply to compensation payable under section 8 of the former Act and to any previous apportionment under section 59 of the former Act.

PART 4

PROVISIONS RELATING TO WEEKLY PAYMENTS OF COMPENSATION

Application of Act irrespective of date of injury

- 30 1. Subject to this Schedule, Division 2 of Part 3 of this Act applies whether the injury was received before or after the commencement of that Division.

Definition of “first 26 weeks of incapacity”

- 35 2. For the purposes of section 34 of this Act, a period of incapacity for work shall be taken into account in determining the first 26 weeks of incapacity of a worker even though it occurred before the commencement of that section.

P

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Previous incapacity—former Act to apply**

3. The amount of the weekly payment of compensation in respect of any period of total or partial incapacity for work which occurred before the commencement of Division 2 of Part 3 of this Act shall be the amount (if any) payable under the former Act.

5 Former Act applies to weekly payments continuing after commencement in respect of existing injuries (other than re-opened claims)

4. (1) A weekly payment of compensation payable under Division 2 of Part 3 of this Act in respect of any period of incapacity for work occurring after the commencement of that Division shall, if it resulted from an injury received before that commencement, be determined as follows:

(a) section 35 (Maximum weekly payment) does not apply;

(b) section 37 (Weekly payment during total incapacity—after first 26 weeks) applies as if—

15 (i) the amount of \$36.40 per week were payable in respect of a dependent wife or husband or dependent defacto spouse or other family member of the worker under section 37 (1) (b); and

(ii) the amount of \$18.20 per week were payable in respect of each dependent child or dependent brother or sister of the worker under section 37 (1) (c);

20 (c) section 11 (1) of the former Act applies instead of section 40 of this Act (but the maximum weekly payment for partial incapacity for work shall not exceed the amount payable under this clause for total incapacity for work);

(d) section 12 of the former Act applies instead of section 39 of this Act (except that a reference to the Court shall be construed as a reference to a commissioner);

(e) section 13 of the former Act applies instead of section 46 of this Act.

25 (2) Division 6 of Part 3 of this Act (Indexation of amounts of benefits) applies as if the amounts of \$36.40 and \$18.20 were adjustable amounts.

30 (3) This clause does not apply unless the worker was, immediately before the commencement of Division 2 of Part 3 of this Act, entitled to weekly payments of compensation under the former Act in respect of incapacity for work resulting from the injury.

(4) Once a worker ceases to be entitled to weekly payments of compensation under this clause, the clause does not apply to any subsequent period of incapacity for work resulting from the same injury.

35 (5) If a period of incapacity for work resulted both from injury received before the commencement of Division 2 of Part 3 of this Act and an injury received after that commencement, the incapacity shall, for the purposes of this clause and clause 4, be treated as having resulted from the injury received after that commencement.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Continuation of operation of section 11 (2) of former Act**

5 (1) Section 11 (2) of the former Act applies (instead of section 38 of this Act) for the purpose of determining the weekly payment of compensation in respect of any period of incapacity for work occurring after the commencement of Division 2 of Part 3 of this Act and resulting from an injury received before that commencement.

(2) This clause does not apply unless the worker was, immediately before the commencement of Division 2 of Part 3 of this Act—

- (a) entitled to weekly payments of compensation under section 11 (2) of the former Act in respect of incapacity for work resulting from the injury; or
- 10 (b) was not so entitled because the worker was being provided with suitable employment by the employer.

(3) Once the worker ceases to be entitled to weekly payments of compensation under section 11 (2) of the former Act as applied under this clause (otherwise than by reason of the employer providing suitable employment), this clause does not apply to any 15 subsequent period of incapacity for work resulting from the same injury.

(4) In this clause a reference to suitable employment provided by an employer includes a reference to suitable employment arranged by the insurer or the Board.

(5) Section 38 of this Act applies on and after section 11 (2) of the former Act ceases to apply to a worker under this clause but in the application of section 38 a reference 20 to section 38 (7) to the period of 2 years after the employer first failed to provide the worker with suitable employment shall be construed as a reference to the period of 2 years after the date when section 11 (2) of the former Act ceases to apply to the worker.

Redemptions under former Act for existing injuries

25 6. (1) Section 15 of the former Act continues to apply to a liability in respect of a weekly payment of compensation for a period of incapacity for work resulting from an injury received before the commencement of Division 2 of Part 3 of this Act (being a period of incapacity for work to which clause 3 applies).

(2) For the purposes of subclause (1), a reference in section 15 of the former Act to the Court shall, after the commencement of Division 2 of Part 3 of this Act, be construed 30 as a reference to a commissioner.

(3) Section 15 (1A) of the former Act also applies to a liability under Division 3 or 4 of Part 3 of this Act.

(4) Section 18C (27)–(29) of the former Act continues to apply to a liability referred to in subclause (1).

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 5

PROVISIONS RELATING TO COMPENSATION FOR MEDICAL, HOSPITAL
AND REHABILITATION EXPENSES**Application of Act irrespective of date of treatment or service**

- 5 1. Subject to this Schedule, Division 3 of Part 3 of this Act applies whether the medical or related treatment or the hospital treatment was given, or the ambulance service was provided, before or after the commencement of that Division.

Maximum amounts for previous treatment and service

- 10 2. Notwithstanding clause 1, the maximum amount prescribed in respect of any compensation payable under Division 3 of Part 3 of this Act shall, if the treatment was given or the service provided before the commencement of that Division, be the relevant maximum amount in force under the former Act.

New items of treatment or service

- 15 3. Any treatment which was given or service provided before the commencement of Division 3 of Part 3 of this Act and for which compensation was not payable under the former Act does not (because of clause 1) become a treatment or service for which compensation is payable under this Act.

Associated travel expenses

- 20 4. A reference in clauses 1–3 to any treatment or service includes a reference to travel expenses referred to in section 60 (2) of this Act that are associated with any such treatment or service.

Approvals under s. 10 of former Act continued

- 25 5. An approval under section 10 of the former Act and in force immediately before the repeal of that section shall be deemed to be an approval under Division 3 of Part 3 of this Act.

Maximum private hospital charges—pending regulation

- 30 6. Until the regulations otherwise provide, the amount for which an employer is liable in respect of hospital treatment of a worker at a hospital (other than a public hospital) shall be calculated for the purposes of section 62 (1) of this Act as follows:
- (a) for each day or part of a day that the worker is an in-patient of the hospital—
\$185;

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (b) in respect of each treatment as an in-patient which necessitates the use of the hospital theatre—the amount specified in Column 2 opposite the period of that use specified in Column 1:

	<i>Column 1</i>	<i>Column 2</i>
5	1–15 minutes	\$90
	16–30 minutes	\$180
	31–45 minutes	\$220
	46–60 minutes	\$280
	Over 60 minutes	\$300

- 10 (c) for each x-ray photograph taken at the hospital as an in-patient—\$40;
- (d) in respect of treatment as an out-patient—\$2 per treatment (but not exceeding \$14 per week);
- (e) for each treatment as an out-patient which necessitates the use of the hospital theatre—\$13;
- 15 (f) for each x-ray photograph taken at the hospital as an out-patient—\$5.

Public hospital rates of treatment

7. (1) The notification in the Gazette by the Minister for Health under section 10 (3) (b1) of the former Act (being the last notification before the commencement of Division 3 of Part 3 of this Act) shall, on that commencement, be deemed to have been notified under section 62 (2) (a) of this Act (Rates applicable for public hospital treatment as in-patient).
- 20 (2) The notification in the Gazette by the Minister for Health under section 10 (3) (b2) of the former Act (being the last notification before the commencement of Division 3 of Part 3 of this Act) shall, on that commencement, be deemed to have been notified under section 62 (2) (b) of this Act (Rates applicable for public hospital treatment as out-patient).
- 25

PART 6

PROVISIONS RELATING TO COMPENSATION FOR NON-ECONOMIC LOSS
(TABLE OF MAIMS)30 **Act applies irrespective of date of injury**

1. Subject to this Schedule, Division 4 of Part 3 of this Act applies whether the injury was received before or after the commencement of that Division.

Pain and suffering—does not apply to existing injuries

- 35 2. Clause 1 does not apply to section 67 of this Act (Compensation for pain and suffering) and that section applies only to pain and suffering in respect of injuries received after the commencement of Division 4 of Part 3 of this Act.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Compensation for loss not payable if awarded or paid under former Act—occupational diseases**

3. Compensation is not payable to a worker who has suffered a loss of a thing mentioned in the Table to Division 4 of Part 3 of this Act (being an occupational disease within the meaning of section 71 of this Act) if compensation for the loss was awarded to the worker, or the worker received or agreed to receive compensation for the loss, in accordance with section 16 of the former Act.

Compensation for loss (except occupational diseases) payable under former Act for existing injury

- 10 4. The amount of compensation payable to a worker who has suffered a loss of a thing mentioned in the Table to Division 4 of Part 3 of this Act (not being an occupational disease within the meaning of section 71 of this Act) shall be determined in accordance with section 16 of the former Act instead of Division 4 of Part 3 of this Act if the loss resulted from an injury received before the commencement of that Division.

15 Compensation not payable in respect of new item if it resulted from existing injury

5. Compensation is not payable to a worker who has suffered a loss or impairment of a thing mentioned in the Table to Division 4 of Part 3 of this Act if—

- (a) it resulted from an injury received before the commencement of that Division; and
- 20 (b) it is not a loss or impairment for which compensation was payable under section 16 of the former Act.

Interpretation

6. If a loss mentioned in the Table to Division 4 of Part 3 of this Act resulted both from an injury received before the commencement of that Division and an injury received after that commencement, the loss shall, for the purposes of this Part and this Schedule, be treated as having resulted from the injury received after that commencement.

PART 7

PROVISIONS RELATING TO COMPENSATION FOR PROPERTY DAMAGE

30 Application of Act irrespective of date of accident

1. Subject to this Schedule, Division 5 of Part 3 of this Act applies whether the accident happened before or after the commencement of that Division.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Maximum amount for previous damage**

2. Notwithstanding clause 1, the maximum amount prescribed in respect of any compensation payable under Division 5 of Part 3 of this Act shall, if the accident happened before the commencement of that Division, be the relevant maximum amount
5 in force under the former Act.

PART 8

PROVISIONS RELATING TO PAYMENT OF BENEFITS

Application of Act irrespective of date compensation first became payable etc.

1. Subject to this Schedule, Division 7 of Part 3 of this Act applies whether the
10 compensation first became payable before or after the commencement of that Division.

Accounts in common fund

2. The Income Suspense Account and the Investment Guarantee Account established under section 62 of the former Act shall be maintained by the Board for the purposes of section 86 of this Act.

15

PART 9

PROVISIONS RELATING TO NOTICE OF INJURY AND CLAIMS FOR
COMPENSATION**Act to apply irrespective of date of injury etc.**

1. Subject to this Schedule, Division 1 of Part 4 of this Act applies whether the injury
20 was received or the accident happened before or after the commencement of that Division.

Saving of existing notices and claims

2. (1) A notice of injury, incapacity, damage to property or otherwise duly given under a provision of the former Act shall, after the commencement of Division 1 of Part
25 4 of this Act, be deemed to have been duly given under the corresponding provision of this Act.

- (2) A claim for compensation duly made under the former Act shall, after that commencement, be deemed to have been duly made under this Act.

Register of injuries

3. A register of injuries kept under section 53 (4) of the former Act shall, after the
30 commencement of Division 1 of Part 4, be deemed to have been kept under section 90 of this Act.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Claims forwarded to insurers**

4. A claim for compensation (or other documentation) forwarded by an employer to an insurer under section 18BA of the former Act shall, after the commencement of Division 1 of Part 4 of this Act, be deemed to have been forwarded under section 93 of this Act.

PART 10

PROVISIONS RELATING TO REVIEW OFFICERS AND WEEKLY PAYMENTS OF COMPENSATION

Existing disputes may be assigned to review officer

- 10 1. A dispute may be assigned to a review officer even though it relates to a matter arising before the commencement of Division 2 of Part 4 of this Act.

Review officer may direct payment in respect of existing disputes

2. Sections 104–106 of this Act apply even though the dispute concerned relates to a matter arising before the commencement of those sections.

15 Provisions relating to commencement of weekly payments not to apply to existing claims

3. Sections 102 and 103 of this Act do not apply to any claim for weekly payments made before the commencement of those sections.

PART 11

20 PROVISIONS RELATING TO PROCEEDINGS BEFORE COMMISSIONERS AND THE COMPENSATION COURT

Act to apply irrespective of date proceedings commenced

1. (1) Subject to this Schedule, Division 4 of Part 4 of this Act applies whether the proceedings were commenced before or after the commencement of that Division.
- 25 (2) The Compensation Court Act 1984, as amended by the Compensation Court (Amendment) Act 1987, applies whether the proceedings were commenced before or after the commencement of those amendments.

Pending proceedings

- 30 2. (1) Any proceedings pending before the Compensation Court under the former Act immediately before the commencement of Division 4 of Part 4 of this Act shall be deemed to be proceedings that were transferred to that Court under section 109 of this Act.
- (2) Any proceedings pending before a commissioner under the former Act immediately before the commencement of Division 4 of Part 4 of this Act shall be deemed to have been allocated to the commissioner under this Act.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(3) Any application for determination of a claim or other matter that was lodged under the former Act and that had not been allocated immediately before the commencement of Division 4 of Part 4 of this Act shall be dealt with as an application under this Act.

- 5 (4) An appeal or reference to the Compensation Court under the former Act that is pending immediately before the commencement of Division 4 of Part 4 of this Act shall be deemed to be an appeal or reference under this Act.

PART 12

PROVISIONS RELATING TO MEDICAL EXAMINATIONS AND DISPUTES

Medical referees and panels

- 10 1. (1) A medical referee appointed under section 50 of the former Act and holding office immediately before the commencement of section 127 of this Act shall be deemed to have been appointed under section 127 of this Act.

- 15 (2) A medical panel constituted under section 50 of the former Act and which has not completed its work immediately before the commencement of section 128 of this Act shall be deemed to have been constituted under section 128 of this Act.

Directions for medical examinations

- 20 2. A direction to a worker to submit himself or herself for examination under section 51 of the former Act shall, if the examination has not taken place on the commencement of Division 5 of Part 4 of this Act, be deemed to be a direction under the corresponding provision of that Division.

Referral to medical referee or medical panel

- 25 3. A referral of any matter to a medical referee or medical panel under a provision of the former Act shall, if a report on the matter has not been made before the commencement of Division 5 of Part 4 of this Act, be deemed to be a referral under the corresponding provision of this Act.

Existing certificate

4. A certificate or report given by a medical referee or medical panel before the commencement of Division 5 of Part 4 of this Act shall, after that commencement, be deemed to have been given under the corresponding provision of this Act.

30 Compensation for costs of medical examination etc.

5. Section 133 of this Act applies to medical examinations required under section 51 of the former Act.

Application of sections 134 and 135 (medical reports)

- 35 6. Sections 134 and 135 of this Act apply to medical reports made before as well as to medical reports made after the commencement of those sections.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 13

PROVISIONS RELATING TO UNINSURED LIABILITY AND INDEMNITY
SCHEME**Interpretation**

- 5 1. In this Part, "Scheme" means the Uninsured Liability and Indemnity Scheme.

Pending claims under former Act

2. A claim under the Scheme under section 18C of the former Act and pending on the commencement of Division 6 of Part 4 of this Act shall be dealt with under this Act.

10 **Claims allowed under former Act**

3. The Board shall pay (or continue to pay) out of the State Compensation Board Fund any claim under the Scheme that the Board is liable to pay under section 18C of the former Act.

Reimbursement of Board for former claims

- 15 4. The liability of a person to reimburse the fund established under section 41 of the former Act in respect of a claim under the Scheme under section 18C of the former Act shall be deemed to be a liability to reimburse the State Compensation Board Fund under Division 6 of Part 4 of this Act.

PART 14

20 PROVISIONS RELATING TO COMMON LAW REMEDIES

Abolition of common law actions not to apply to existing injuries

1. (1) Sections 149 and 150 do not apply to a cause of action in respect of—
- (a) an injury received by a worker before the commencement of those sections; or
 - (b) the death of a worker resulting from or caused by such an injury.
- 25 (2) In the case of any such cause of action, the provisions of sections 63, 64 and 64A of the former Act continue to apply.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 15

PROVISIONS RELATING TO INSURANCE

Form of policies of insurance under former regulations

1. Until the regulations under section 159 of this Act otherwise provide, the only provisions which a policy of insurance may contain are the provisions contained in the form of policy prescribed, immediately before the commencement of section 159 of this Act, by the regulations under the former Act.

Definitions of small employer for purposes of \$500 excess recoverable from employer

2. (1) Until the regulations otherwise provide, a small business employer, for the purposes of section 160 of this Act, is an employer who is liable under all relevant policies of insurance to pay premiums which in total do not exceed \$2,000.

(2) For the purposes of subclause (1), a relevant policy of insurance is—

- (a) the policy under which the claim is made; and
 (b) any other policy that is issued for the same period or for a part of the period to which the policy referred to in paragraph (a) applies.

Exemptions from \$500 excess to operate from 30 June 1985

3. The following policies of insurance shall be deemed always to have been exempt from section 18 (3) (a2) of the former Act:

- (a) policies of insurance issued or renewed by the Government Insurance Office in respect of Government workers;
 (b) policies of insurance in respect of domestic or similar workers.

Register of policies kept by insurers

4. The register kept by an insurer under section 18A (2A) of the former Act shall, after the commencement of section 163 of this Act, be deemed to be part of the register required to be kept by the insurer under section 163 of this Act.

Insurance Premiums Committee

5. (1) The Insurance Premiums Committee constituted under the former Act is the same committee as the Insurance Premiums Committee constituted under this Act.

(2) A person who was, immediately before the commencement of section 165 of this Act, a member of the Insurance Premiums Committee shall, after that commencement, be deemed to have been appointed to that Committee under this Act.

Insurance premiums order

6. An order under section 30AB of the former Act shall, after the commencement of section 168 of this Act, be deemed to be an insurance premiums order for the purposes of this Act.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Payment of premiums by instalments**

7. Until the regulations under section 171 of this Act otherwise provide, premiums under a policy of insurance may be paid by instalments in accordance with the provisions of section 18 (7B) of the former Act.

5 Employers' wages records etc.

8. The records kept by an employer under section 18 (8) of the former Act shall, after the commencement of section 174 of this Act, be deemed to be part of the records required to be kept by the employer under section 174 of this Act.

Employers evading correct premiums

10 9. Section 175 applies to policies of insurance issued under section 18 of the former Act.

Policies issued or renewed since 31.12.86 to be assigned to new licensed insurers

10. (1) This clause applies to policies of insurance—

15 (a) issued or renewed by insurers licensed under section 27 of the former Act at or after 4 p.m. on 31 December 1986; and

(b) the subject of a re-insurance agreement with the Government Insurance Office.

20 (2) On the commencement of Division 3 of Part 7 of this Act, policies of insurance to which this clause applies shall be assigned in accordance with the relevant re-insurance agreement to such licensed insurer under Division 3 of Part 7 of this Act as is determined by the Board.

(3) If a former licensed insurer has a subsidiary licensed under Division 3 of Part 7 of this Act on the commencement of that Division, the policies of insurance issued or renewed by the former licensed insurer shall be assigned to that subsidiary.

25 (4) Any money payable under the re-insurance agreement by a former licensed insurer to an insurer to whom its policies of insurance are assigned or to the Board may be recovered as a debt in a court of competent jurisdiction.

(5) An assignment of an insurance policy under this clause—

(a) transfers the rights, obligations and liabilities under the policy of the former licensed insurer to the licensed insurer to which the policy is assigned; and

30 (b) does not otherwise affect the rights, obligations or liabilities acquired, accrued or incurred under the policy.

(6) For the purposes of this Act, any such assigned policies shall be deemed to have been issued or renewed by the licensed insurer to which they are assigned.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Continuation of licences of self-insurers**

11. A licence granted, or deemed to be granted, under section 18 (1A) of the former Act and in force immediately before the commencement of Division 5 of Part 7 of this Act, shall be deemed, on and from that commencement, to have been granted under
5 Division 5 of Part 7 of this Act.

Deposits of self-insurers

12. Any amount deposited by an employer with the Treasurer under section 20 of the former Act shall, on and from the commencement of section 213 of this Act, be deemed to have been deposited under section 213 of this Act.

10 Insurers' Contribution Fund continued

13. (1) On the commencement of Division 6 of Part 7 of this Act, the Insurers' Contribution Fund established under section 30H of the former Act shall become the Insurers' Contribution Fund established under section 218 of this Act.

- 15 (2) Nothing in this Act or the cognate Acts affects any contribution required to be made to that Fund under Part IIIA of the former Act and that Part continues to apply in respect of any such contribution.

- (3) The first contribution required to be paid into that Fund after the commencement of Division 6 of Part 7 shall be the contribution in respect of the financial year commencing on 1 July 1987.

- 20 (4) An injury received by a worker after the commencement of that Division, but for which an employer is indemnified under a policy issued before 30 June 1987, shall be deemed to have been received before that commencement for the purposes of section 221 (4).

25 Contributions to Insurers' Contribution Fund—premiums received after 30 June 1985 on policies issued before that date

14. If—

- (a) an insurer receives premiums after 30 June 1985 in respect of policies of insurance issued before that date; and
30 (b) the amount of contributions previously paid by the insurer under section 30J of the former Act (as in force before the commencement of Schedule 2 (2) to the Workers' Compensation (Further Amendment) Act 1986) was calculated without taking those premiums into account;

35 the insurer is liable to pay the additional amount of contribution that would have been payable under that section (as so in force) had those premiums been taken into account, except that in respect of those premiums—

- (c) the additional contribution shall be deemed to be payable at the rate of 7 per cent of the deemed premium income of the insurer (as defined by section 30G of the former Act as so in force);

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (d) that deemed premium income shall be deemed to be calculated at the rates fixed under the former Act as at 29 June 1985; and
- (e) the additional contribution shall be deemed to be payable at such times as the Board may determine.

5

PART 16

PROVISIONS RELATING TO COMMISSIONERS

Commissioners to continue in office

1. A person who, immediately before the commencement of section 240 of this Act, held office as a commissioner of the Compensation Court under section 42J (1) of the former Act shall, on and from that commencement, be deemed to have been appointed as a workers compensation commissioner under section 240 of this Act.

Senior Commissioner to continue in office

2. A person who, immediately before the commencement of section 241 of this Act, held office as Senior Commissioner under section 42J (3) of the former Act, shall, on and from that commencement, be deemed to have been appointed as Senior Workers Compensation Commissioner under section 241 of this Act.

Construction of references

3. A reference in any Act (other than this Act), statutory instrument or any other instrument to—
- 20 (a) a commissioner of the Compensation Court shall, on and from the commencement of section 240 of this Act, be construed as a reference to a workers compensation commissioner; or
- 25 (b) the Senior Commissioner of the Compensation Court shall, on and from the commencement of section 241 of this Act, be construed as a reference to the Senior Workers Compensation Commissioner.

PART 17

PROVISIONS RELATING TO THE BOARD

State Compensation Board—members and staff not affected

- 30 1. (1) The State Compensation Board constituted under this Act is a continuation of, and the same legal entity as, the State Compensation Board constituted under the former Act.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (2) This Act and the cognate Acts do not affect—
- (a) the appointment of a member of the State Compensation Board who was holding office under section 31 of the former Act immediately before the commencement of Division 1 of Part 9 of this Act; or
- 5 (b) the appointment of the Secretary or other officer of the Board who was employed under section 36 of the former Act immediately before the commencement of that Division.

State Compensation Board Fund

2. (1) On the commencement of Division 3 of Part 9, the fund established under
10 section 41 of the former Act shall become the State Compensation Board Fund.
- (2) Nothing in this Act or the cognate Acts affects any contribution required to be made to the fund established under section 41 of the former Act immediately before the commencement of Division 3 of Part 9 of this Act, and that section continues to apply in respect of any such contribution.
- 15 (3) The first contribution required to be paid into the State Compensation Board Fund after the commencement of Division 3 of Part 9 of this Act shall be the contribution in respect of the financial year commencing on 1 July 1987.

PART 18

SPECIAL PROVISION RELATING TO COAL MINERS

20 **Continuation of weekly compensation payments under former Act**

1. (1) In the case of a worker employed in or about a mine to which the Coal Mines Regulation Act 1982 applies, the provisions of clauses 3 (1) and (2) and 4 (1) of Part 4 of this Schedule apply as if any period of incapacity for work of the worker occurred as the result of an injury received before the commencement of Division 2 of Part 3 of this
25 Act.
- (2) In the case of a worker employed in or about a mine to which the Coal Mines Regulation Act 1982 applies, the provisions of clause 5 of Part 4 of this Schedule apply as if any liability in respect of weekly payments of compensation resulted from an injury received before the commencement of Division 2 of Part 3 of this Act.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 19

MISCELLANEOUS PROVISIONS

Repeal of former Acts on different dates

1. Different days may be appointed for the commencement of section 281 of this Act (Repeals) in its application to Schedule 5 for the purpose of repealing different Acts (or different provisions of the same Act) on different days.

Commencement of certain licensing provisions on date of assent

2. Division 3 of Part 7 of this Act, except section 179 (Offence—unlicensed insurers), has effect as if it had commenced on the date of assent to this Act for the purposes of the making and determination of any application for a licence under that Division.

Savings for amending Acts etc.

3. The repeal by this Act of any enactment does not affect any amendment or validation made by the enactment.

PART 20

15 SAVINGS AND TRANSITIONAL REGULATIONS

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the cognate Acts.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- 25 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.
- 30 (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

*Workers Compensation 1987*SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(5) Subject to subclause (6), the power to make regulations under subclause (1) extends to authorise the making of regulations whereby the provisions of this Act, the cognate Acts or the Acts amended by the cognate Acts, or any of them, are deemed to be amended in the manner set forth in the regulations.

- 5 (6) Regulations made pursuant to subclause (5)—
- (a) may only be made for or with respect to matters for or with respect to which this Act and the cognate Acts make provision;
 - (b) shall have no effect in so far as they would, but for this paragraph, have the effect of amending (directly or indirectly) this subclause; and
- 10 (c) shall, unless sooner revoked or otherwise ceasing to have effect, be deemed to be revoked on 31 December 1987,

and no such regulation may be made or published after that date.

