

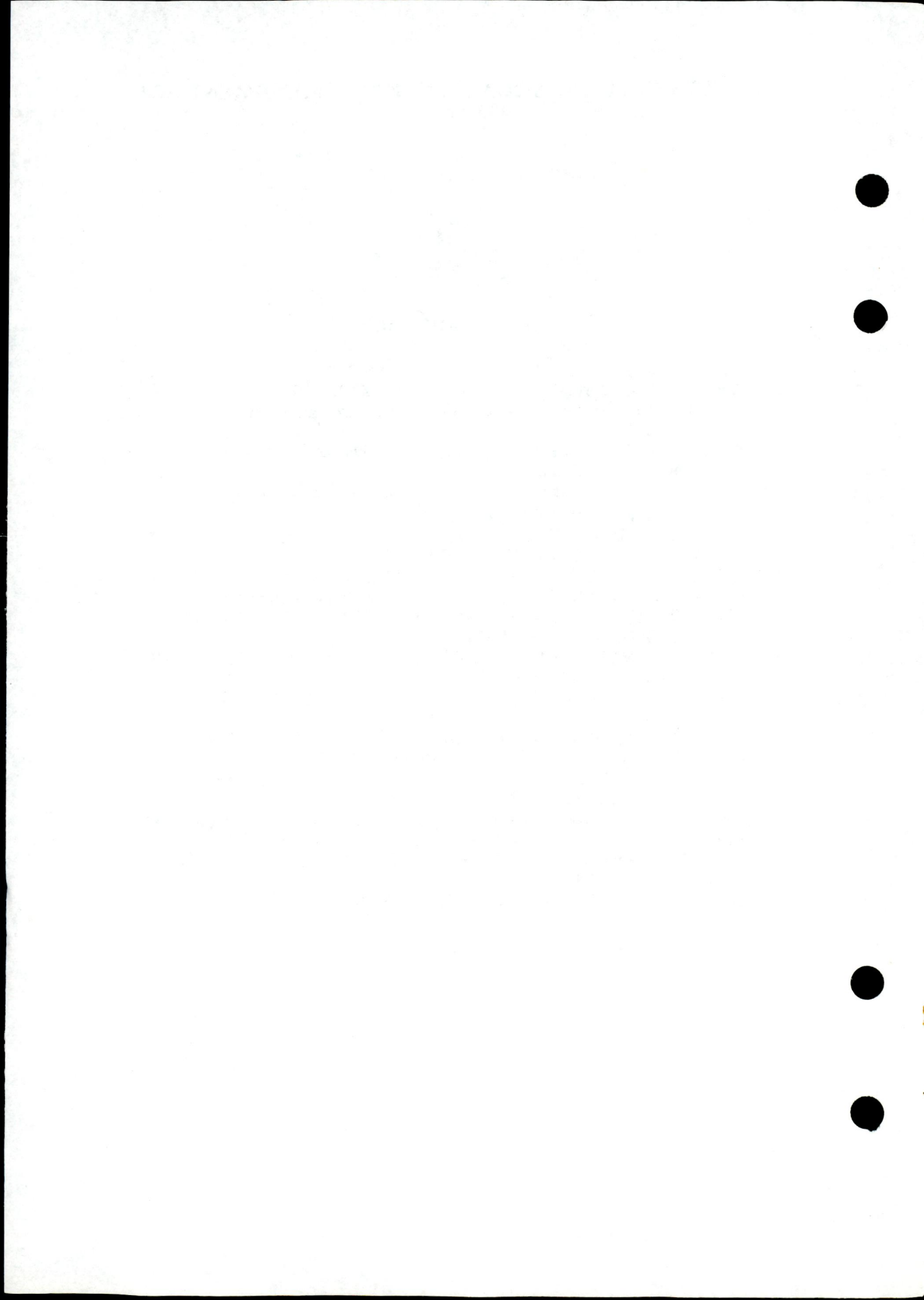
# WORKERS COMPENSATION (BENEFITS) AMENDMENT ACT 1989 No. 133

NEW SOUTH WALES



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**WORKERS COMPENSATION (BENEFITS) AMENDMENT ACT  
1989 No. 133**

**NEW SOUTH WALES**



**Act No. 133, 1989**

An Act to amend the Workers Compensation Act 1987 and certain other Acts in relation to common law rights, increases in benefits, journey claims, "top-up" arrangements, and for other purposes. [Assented to 5 September 1989]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Workers Compensation (Benefits) Amendment Act 1989.

**Commencement**

2. (1) Except as provided by this section, this Act commences on a day or days to be appointed by proclamation.

(2) Schedules 2 and 3 (and section 3 in its application to those Schedules) are to be taken to have commenced at 4 p.m. on 30 June 1989.

**Amendment of Workers Compensation Act 1987 No. 70**

3. The Workers Compensation Act 1987 is amended as set out in Schedules 1 - 8.

**Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No. 83**

4. The Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 is amended as set out in Schedule 9.

**Amendment of Workers' Compensation (Dust Diseases) Act 1942 No. 14**

5. The Workers' Compensation (Dust Diseases) Act 1942 is amended as set out in Schedule 10.

**Amendment of other Acts**

6. The Acts specified in Schedule 11 are amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS**

(Sec. 3)

(1) Part 5:

Omit the Part, insert instead:

**PART 5 - COMMON LAW REMEDIES**

**Division 1 - Preliminary**

**Definitions**

149. (1) In this Part:

"damages" includes:

- (a) any form of monetary compensation; and
- (b) without limiting paragraph (a), any amount paid under a compromise or settlement of a claim for damages (whether or not legal proceedings have been instituted),

but does not include:

- (c) compensation under this Act; or
- (d) additional or alternative compensation to which Division 8 of Part 3 applies; or
- (e) an award of compensation or direction for compensation under Part 3 or Part 6 of the Victims Compensation Act 1987; or
- (f) any sum required or authorised to be paid under an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940; or
- (g) any sum payable under a superannuation scheme or any life or other insurance policy; or
- (h) any amount paid in respect of costs incurred in connection with legal proceedings; or
- (i) damages of a class which is excluded by the regulations from this definition;

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

"non-economic loss" means:

- (a) pain and suffering; and
- (b) loss of amenities of life; and
- (c) loss of expectation of life; and
- (d) disfigurement.

(2) A reference in this Part to compensation payable under this Act includes a reference to compensation that would be payable under this Act if a claim for that compensation were duly made.

**References to worker's employer includes fellow workers etc.**

150. A reference in this Part to a worker's employer includes a reference to:

- (a) a person who is vicariously liable for the acts of the employer; and
- (b) a person for whose acts the employer is vicariously liable.

**Division 2 - Common law and other remedies generally**

**Common law and other liability preserved**

151. This Act does not affect any liability in respect of an injury to a worker that exists independently of this Act, except to the extent that this Act otherwise expressly provides.

**Election - damages or "Table of Maims" compensation**

151A. (1) In this section:

"damages" does not include damages to which Part 6 of the Motor Accidents Act 1988 applies;

"permanent loss compensation" means compensation under Division 4 of Part 3 (Compensation for non-economic loss).



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

(2) A person to whom compensation is payable under this Act in respect of an injury is not entitled to both:

- (a) permanent loss compensation in respect of the injury; and
- (b) damages in respect of the injury from the employer liable to pay that compensation,

but is required to elect whether to claim that permanent loss compensation or those damages.

(3) The person makes that election:

- (a) by commencing proceedings in a court to recover those damages or by accepting payment of those damages (in which case the person ceases to be entitled to permanent loss compensation in respect of the injury); or
- (b) by accepting payment of that permanent loss compensation (in which case the person ceases to be entitled to recover damages in respect of the injury).

(4) An election is irrevocable, except that an election to claim permanent loss compensation may be revoked with the leave of the court given in accordance with this section.

(5) If:

- (a) a person elects to claim permanent loss compensation in respect of an injury; and
- (b) after the election is made, the injury causes a further material deterioration in the person's medical condition that, had it existed at the time of the election, would have entitled the person to additional permanent loss compensation; and
- (c) at the time of the election, there was no reasonable cause to believe that the further deterioration would occur,

the person may, with the leave of the court and on such terms (if any) as the court thinks fit, revoke the election



**SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued***

and commence proceedings in the court for the recovery of damages in respect of the injury.

(6) If the election is revoked the permanent loss compensation paid is not required to be repaid, except out of the damages recovered in accordance with section 151B.

(7) If a liability to pay permanent loss compensation results from more than one injury to a worker, a reference in this section to permanent loss compensation is a reference to such part of that compensation as relates to the injury for which damages are recoverable.

**Effect of recovery of damages from employer on payment of compensation**

151B. (1) If a person recovers damages in respect of an injury from the employer liable to pay compensation under this Act:

- (a) the person then ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid); and
- (b) the amount of any compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded as a lump sum) and is to be paid to the person who paid the compensation.

(2) This section does not apply to a person who recovers damages for non-economic loss in respect of an injury if the person does not recover any damages for economic loss in respect of that injury because of the operation of section 151H (No damages for economic loss unless injury serious).

**6-months delay before commencement of court proceedings against employer for damages**

151C. (1) A person to whom compensation is payable under this Act is not entitled to commence court proceedings for damages in respect of the injury concerned

**SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued***

against the employer liable to pay that compensation until 6 months have elapsed since notice of the injury was given to the employer.

(2) Despite subsection (1), the person is entitled to commence court proceedings against the employer if either of the following occurs:

- (a) the employer denies all liability in respect of the injury;
- (b) the employer admits partial liability in respect of the injury but the person is dissatisfied with the extent to which liability is admitted.

**Time limit for commencement of court proceedings  
against employer for damages**

151D. (1) If a person to whom compensation is payable under this Act commences court proceedings for damages in respect of the injury concerned more than 18 months after the date on which the injury was received, the person must provide a full and satisfactory explanation to the court for the delay.

(2) A person to whom compensation is payable under this Act is not entitled to commence court proceedings for damages in respect of the injury concerned against the employer liable to pay that compensation more than 3 years after the date on which the injury was received, except with the leave of the court in which the proceedings are to be taken.

(3) The Limitation Act 1969 does not apply to or in respect of court proceedings to which this section applies.

**Division 3 - Modified common law damages**

**Application**

151E. (1) This Division applies to an award of damages in respect of:

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

- (a) an injury to a worker; or
- (b) the death of a worker resulting from or caused by an injury,

being an injury caused by the negligence or other tort of the worker's employer.

(2) This Division does not apply to an award of damages to which Part 6 of the Motor Accidents Act 1988 applies.

**General regulation of court awards**

151F. A court may not award damages to a person contrary to this Division.

**Damages for non-economic loss**

151G. (1) No damages are to be awarded for non-economic loss unless the injured worker's ability to lead a normal life is significantly impaired by the injury suffered by the worker.

(2) The amount of damages to be awarded for non-economic loss is to be a proportion, determined according to the severity of the non-economic loss, of the maximum amount which may be awarded.

(3) The maximum amount which may be awarded for non-economic loss is \$180,000, but the maximum amount may be awarded only in a most extreme case.

(4) If the amount of non-economic loss is assessed to be \$45,000 or less, no damages for non-economic loss are to be awarded.

(5) If the amount of non-economic loss is assessed to be between \$45,000 and \$60,000, the amount of damages to be awarded for non-economic loss is as follows:

$$\text{Damages} = [\text{Amount so assessed} - \$45,000] \times 4$$

(6) If the injury concerned was received before 4 p.m. on 30 June 1989:



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

- (a) the references to \$45,000 in subsections (4) and (5) are to be read as references to \$75,000; and
  - (b) the reference to \$60,000 in subsection (5) is to be read as a reference to \$100,000.
- (7) Division 6 of Part 3 (Indexation of amounts of benefits) applies as if the amounts of \$180,000, \$45,000 and \$60,000 were adjustable amounts.
- (8) If an amount mentioned in this section:
- (a) is adjusted by the operation of Division 6 of Part 3; or
  - (b) is adjusted by an amendment of this section,
- the damages awarded are to be assessed by reference to the amount in force at the date of injury.

**No damages for economic loss unless injury serious**

151H. (1) No damages are to be awarded for economic loss unless the injured worker has received a serious injury or dies as a result of the injury.

- (2) A serious injury is:
- (a) an injury for which the compensation otherwise payable under section 66 for the loss or losses resulting from that injury is, in the opinion of the court, not less than 33 per cent of the maximum amount from time to time referred to in section 66 (1); or
  - (b) an injury for which damages for non-economic loss of not less than \$60,000 are to be awarded in accordance with this Division (whether or not compensation is payable under section 66).
- (3) If the injury concerned was received before 4 p.m. on 30 June 1989:
- (a) the reference to 33 per cent in subsection (2) (a) is to be read as a reference to 60 per cent; and

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

(b) the reference to \$60,000 in subsection (2) (b) is to be read as a reference to \$100,000.

(4) Division 6 of Part 3 (Indexation of amounts of benefits) applies as if the amount of \$60,000 were an adjustable amount.

(5) For the purposes of determining whether an injury is a serious injury, the court has the powers under this Act of the Compensation Court relating to the reference of a matter to a medical referee or medical panel for report.

(6) If an amount mentioned in this section:

(a) is adjusted by the operation of Division 6 of Part 3;  
or

(b) is adjusted by an amendment of this section,

the damages awarded are to be assessed by reference to the amount in force at the date of the injury or death.

**Damages for economic loss - loss of past or future earnings etc.**

151I. (1) This section applies to an award of damages:

- (a) for past economic loss due to loss of earnings; or
- (b) for future economic loss due to the deprivation or impairment of earning capacity; or
- (c) for the loss of expectation of financial support.

(2) In the case of any such award, the court is to disregard the amount (if any) by which the injured or deceased worker's weekly earnings would (but for the injury or death) have exceeded the maximum amount of weekly payments of compensation under section 35.

(3) The maximum amount of weekly payments of compensation under section 35 for a future period is to be the amount that the court considers is likely to be the amount for that period having regard to the operation of Division 6 of Part 3 (Indexation of amounts of benefits).



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

(4) This section applies even though weekly payments of compensation to the worker concerned are not subject to the maximum amount prescribed under section 35.

**Damages for future economic loss - discount rate**

151J. (1) If an award of damages is to include compensation, assessed as a lump sum, in respect of damages for future economic loss which is referable to:

- (a) deprivation or impairment of earning capacity; or
- (b) the value of future services of a domestic nature or services relating to nursing and attendance; or
- (c) loss of expectation of financial support; or
- (d) a liability to incur expenditure in the future,

the present value of the future economic loss is to be qualified by adopting the prescribed discount rate.

(2) The prescribed discount rate is:

- (a) a discount rate of the percentage prescribed by the regulations; or
- (b) if no percentage is so prescribed, a discount rate of 5 per cent.

(3) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

**Damages for economic loss - maximum amount for provision of certain home care services**

151K. (1) An award of damages is not to include compensation for the value of services of a domestic nature or services relating to nursing and attendance which have been or are to be provided to the injured worker by a member of the same household or family as the injured worker, except in accordance with this section.

(2) No compensation is to be awarded unless the services are provided, or are to be provided, for not less

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

than 6 months and may be awarded only for services provided or to be provided after the 6-month period.

(3) No compensation is to be awarded if the services would have been provided to the injured worker even if the worker had not been injured.

(4) No compensation is to be awarded unless the services provided or to be provided are not less than 6 hours per week and compensation may be awarded only for services provided or to be provided after the first 6 hours.

(5) If the services provided or to be provided are not less than 40 hours per week, the amount of the compensation must not exceed:

(a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in New South Wales for:

(i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award - that quarter; or

(ii) in respect of the whole or any part of any other quarter - the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or

(b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

in such manner or by reference to such matters, or both, as may be prescribed.

(6) If the services provided or to be provided are less than 40 hours per week, the amount of the compensation must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (5) (a) or (b), as the case may be.

**Mitigation of damages**

151L. (1) In assessing damages, the court must consider the steps that have been taken, and that could reasonably have been or be taken, by the injured worker to mitigate those damages.

(2) In particular, the court must consider the following matters:

- (a) whether the injured worker has undergone appropriate medical treatment;
- (b) whether the injured worker has promptly sought suitable employment from the employer or, if necessary, suitable alternative employment;
- (c) whether the injured worker has duly co-operated in the procedures under the employer's general rehabilitation programme;
- (d) whether the injured worker has sought appropriate rehabilitation training.

(3) In any proceedings for damages, the person claiming damages has the onus of proving that all reasonable steps to mitigate damages have been taken by the injured worker.

(4) In any proceedings for damages, a written report by a person who provided medical or rehabilitation services to the injured worker is admissible as evidence of any such steps taken by that worker.



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

**Payment of interest**

151M. (1) Except as provided by this section, a court may not, in relation to an award of damages, order the payment of interest (and no interest is payable) on an amount of damages in respect of the period from the date of the death of or injury to the worker to the date of the award.

(2) A court may order the payment of interest:

(a) if the defendant has not taken such steps (if any) as may be reasonable and appropriate to assess the merits of the plaintiff's claim and liability of the defendant in respect of the claim; or

(b) if, where it would be appropriate to do so, the defendant has not made an offer of settlement; or

(c) if:

(i) the defendant has made an offer of settlement; and

(ii) the amount awarded by the court (without the addition of interest) is more than 20 per cent higher than the highest amount offered in settlement by the defendant; and

(iii) the court is satisfied that the highest amount offered by the defendant was not reasonable having regard to the information available to the defendant at the time the offer was made.

(3) Except as provided by this section, nothing in this section affects any other law relating to the payment of interest on an amount of damages.

**Contributory negligence - generally**

151N. (1) The common law and enacted law as to contributory negligence apply to awards of damages, except as provided by this section.

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

(2) Damages for deprivation or impairment of earning capacity are not to be reduced because of contributory negligence below the amount that the court estimates would have been payable by way of a commutation of weekly payments of compensation under section 51 if the person concerned were eligible to be paid a lump sum under that section.

(3) In an action for the award of damages founded on a breach of a statutory duty imposed on a defendant, contributory negligence on the part of the injured worker is not a complete defence, but the damages recoverable are to be reduced by such percentage as the court thinks just and equitable having regard to the person's share in the responsibility for the damages.

(4) Part 3 of the Law Reform (Miscellaneous Provisions) Act 1965 applies to an action for damages referred to in subsection (3).

(5) In an action for the award of damages under the Compensation to Relatives Act 1897, section 10 (4) of the Law Reform (Miscellaneous Provisions) Act 1965 does not apply so as to prevent the reduction of damages by the contributory negligence of the deceased person.

**Defence of voluntary assumption of risk**

151O. The defence of *volenti non fit injuria* is not available in an action for the award of damages but, where that defence would otherwise have been available, the amount of any damages is to be reduced to such extent as is just and equitable on the presumption that the injured or deceased person was negligent in failing to take sufficient care for his or her own safety.

**Damages for psychological or psychiatric injury**

151P. No damages for psychological or psychiatric injury are to be awarded in respect of an injury except in favour of:



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

- (a) the injured worker; or
- (b) a parent, spouse, brother, sister or child of the injured or deceased person who, as a consequence of the injury to the injured person or the death of the deceased person, has suffered a demonstrable psychological or psychiatric illness and not merely a normal emotional or cultural grief reaction.

**Structured settlements**

151Q. (1) This section applies to an award of damages if:

- (a) the plaintiff is to be awarded damages for the deprivation or impairment of earning capacity and the loss of weekly earning capacity at the date of the award exceeds the statutory weekly payments of workers compensation; or
- (b) the plaintiff or the defendant has requested that it should apply; or
- (c) the court considers that it should apply.

(2) In any award of damages to which this section applies, the court must:

- (a) separately determine the amount of damages for non-economic loss, the amount of damages for future economic loss and the amount of damages for past economic loss; and
- (b) order that any damages determined by the court for future economic loss are to be paid in accordance with such arrangements as the court determines or approves.

(3) If the plaintiff is to be awarded damages for the deprivation or impairment of earning capacity and the loss of weekly earning capacity at the date of the award exceeds the statutory weekly payments of workers compensation:

- (a) the arrangements for the payment of those damages must provide for the periodic payment of

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

- at least the statutory weekly payments of workers compensation; and
- (b) payments under those arrangements are to be made at intervals not exceeding 12 months during the period from the date of the award until the plaintiff's retiring age.
- (4) Subsection (3) does not apply:
- (a) if (but for the award of damages) the plaintiff would be eligible under section 51 to receive a lump sum by way of commutation of the liability in respect of weekly payments of workers compensation; or
  - (b) in any other case authorised by the regulations.
- (5) The Authority (but not the court) may give approvals under section 51 (1) (c) for the purposes of this section.
- (6) In making an order under this section, the court must have regard to:
- (a) the ability of the plaintiff to manage and invest any lump sum award of damages; and
  - (b) the need to ensure that expenses incurred by the plaintiff which are required to be met by the defendant:
    - (i) are not unreasonable having regard to the circumstances of the plaintiff; and
    - (ii) are properly verified; and
    - (iii) relate to the injury caused by the negligence or other tort of the defendant; and
  - (c) the principle that costs and expenses are only recoverable by the plaintiff from the defendant in relation to hospital, medical, pharmaceutical and rehabilitation services, services of a domestic nature and services relating to nursing and attendance if the provision of those services is likely to, or is reasonably likely to, advantage the plaintiff; and
  - (d) the views of the plaintiff and defendant in relation to the proposed order; and

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

(e) such other matters as the court thinks fit.

(7) In making an order under this section relating to damages for deprivation or impairment of earning capacity, the court may order that the damages be used to purchase an annuity for the plaintiff on such terms as the court thinks fit.

(8) A party to any arrangements determined or approved under this section may apply to the court at any time for an order varying or terminating the arrangements.

(9) The court may, on an application under subsection (8), make such order as it thinks fit having regard to the provisions of this section.

(10) The regulations may make provision for or with respect to any matter dealt with in this section and, in particular, may impose conditions or limitations on the orders that may be made under this section or otherwise regulate the making of those orders.

(11) In this section:

"retiring age" means the age at which the plaintiff would cease to be entitled to weekly payments of compensation under section 52;

"statutory weekly payments of workers compensation" means the amount of weekly payments of compensation referred to in section 37 (1) (a) (i) at the date of the award concerned.

**Exemplary or punitive damages**

151R. A court may not award exemplary or punitive damages to a person in an award of damages.

**Court to apportion damages etc.**

151S. (1) If a judgment is obtained for payment of damages to which this Division applies as well as for other damages, the court is required, as part of the judgment, to



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

declare what portion of the sum awarded by the judgment is damages to which this Division applies.

(2) In any such case the court is required to apportion any costs awarded.

**Costs**

151T. (1) Subject to the rules of court, if a court awards costs to a plaintiff by reference to the amount recovered by the plaintiff, that amount is to be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with this Division.

(2) The rules of court may make provision for or with respect to the determination and payment of costs otherwise than by taxation.

**Division 4 - Retrospective restoration of modified  
common law**

**Modified common law to apply from 30 June 1987**

151U. (1) This Part applies to a cause of action in respect of:

- (a) an injury received by a worker at or after 4 p.m. on 30 June 1987; or
- (b) the death of a worker resulting from or caused by such an injury.

(2) This Part has effect as if sections 149 and 150, as originally enacted, had never been enacted.

**Election provisions not to apply**

151V. (1) Section 151A (Election - damages or "Table of Maims" compensation) does not apply:

- (a) in respect of an injury received before 4 p.m. on 30 June 1989; or
- (b) in respect of an injury received at or after that time and before the commencement of section 151A (but

**SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued***

that section does apply in respect of any such injury if the person concerned accepts payment of permanent loss compensation after the commencement of that section).

(2) If a person commences proceedings to recover damages, or accepts payment of damages, in respect of an injury to which section 151A does not so apply:

- (a) the person is not entitled to any permanent loss compensation claimed but not yet received; and
- (b) the amount of any such compensation previously paid is to be deducted from those damages.

(3) In this section, "permanent loss compensation" has the same meaning it has in section 151A.

**Time limit for commencement of court proceedings extended**

151W. In the application of section 151D to an injury received before the commencement of that section, the injury is to be taken to have been received on that commencement.

**Insurance policies to cover retrospective claims**

151X. (1) A policy of insurance issued or renewed under this Act before the commencement of this section extends (and is to be taken to have always extended) to the employer's liability independently of this Act for which the employer is required to obtain a policy of insurance under section 155.

(2) Any liability to which a policy of insurance extends because of this section is also a liability to which any corresponding policy of re-insurance extends.

**Funding of self-insurers, government employers etc. for retrospective claims**

151Y. (1) This section applies to the following employers:



SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

- (a) self-insurers;
- (b) employers who obtained a policy of insurance from a specialised insurer;
- (c) Government employers who have obtained a policy of insurance from the Government Insurance Office;
- (d) employers who obtained a policy of insurance under the former Act for a period that extended beyond 4 p.m. on 30 June 1987 (not being a policy assigned to a licensed insurer under clause 10 of Part 15 of Schedule 6).

(2) The Authority may establish a special account within the Authority's Fund for the purposes of this section.

(3) The Authority may require licensed insurers and former licensed insurers to pay into the special account such amounts as the Authority requires in accordance with the following provisions:

- (a) payments are to be made from the statutory funds of the insurers referred to in Division 4 of Part 7;
- (b) payments are not to be made unless the Authority estimates, after a periodic actuarial investigation of those funds under that Division, that there is an overall surplus among those funds (and are not to be made so as to place any of those funds in deficit, as estimated by the Authority);
- (c) a direction is to be given by notice served on the insurers concerned;
- (d) amounts paid into the special account may be refunded for the purposes of making necessary adjustments.

(4) The Authority may recover as a debt in a court of competent jurisdiction any payment which an insurer does not pay in accordance with a direction under this section.

**SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued***

(5) The Authority may from the special account pay such amounts as it considers appropriate to fund the liability of employers for the relevant part of retrospective claims (being employers who, at the time of the injury giving rise to the claim, were employers to whom this section applies).

(6) For the purposes of this section:

- (a) retrospective claims are claims for damages to which those employers have become liable because of the enactment of the Workers Compensation (Benefits) Amendment Act 1989 in respect of injuries received by workers after 4 p.m. on 30 June 1987 and before 4 p.m. on 30 June 1989; and
- (b) the relevant part of a retrospective claim is that part that the Authority estimates represents the amount of damages (and associated expenses) in excess of the amount of workers compensation which was or would have been payable in respect of the injury concerned.

(7) The Authority is not obliged to fund a liability of an employer under this section and may impose conditions on the making of payments under this section.

(8) The Authority is not to fund an employer in respect of any liability for which the employer is already indemnified under a policy of insurance (or re-insurance) to which this Act does not apply.

(9) This section does not limit the liability of a specialised insurer, the Government Insurance Office or any other insurer under a policy of insurance to which section 151X applies.

**Division 5 - Miscellaneous provisions**

**Recovery against both employer and stranger**

151Z. (1) If the injury for which compensation is payable under this Act was caused under circumstances



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creating a liability in some person other than the worker's employer to pay damages in respect of the injury, the following provisions have effect:

- (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;
  - (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;
  - (d) if the worker has recovered compensation under this Act, the person by whom the compensation was paid is entitled to be indemnified by the person so liable to pay those damages;
  - (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 is, to the extent of its amount, a defence to proceedings by the worker against that person for damages;
  - (f) all questions relating to matters arising under this section are, in default of agreement, to be settled by action or, with the consent of the parties, by the Compensation Court.
- (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



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- (b) the worker also takes or is entitled to take proceedings independently of this Act to recover damages from that employer,  
the following provisions have effect:
  - (c) the damages that may be recovered from the person by the worker in proceedings referred to in paragraph (a) are to be reduced by the amount by which the contribution which the person would (but for this Part) be entitled to recover from the employer as a joint tortfeasor or otherwise exceeds the amount of the contribution recoverable;
  - (d) the amount of the contribution that the person is entitled to recover from the employer as a joint tortfeasor or otherwise is to be determined as if the whole of the damages were assessed in accordance with provisions of Division 3 as to the award of damages;
  - (e) if the worker does not take proceedings against that employer or does not accept satisfaction of the judgment against that employer, subsection (1) applies as if the worker had not been entitled to recover damages from that employer, except that:
    - (i) if the compensation paid by that employer exceeds the amount of the contribution that could be recovered from that employer as a joint tortfeasor or otherwise - the indemnity referred to in subsection (1) (d) is for the amount of the excess only; and
    - (ii) if the compensation paid by that employer does not exceed the amount of that contribution - subsection (1) (d) does not apply and the employer has, to the extent of the compensation so paid, a defence to an action for such a contribution.
- (3) This section applies to proceedings taken independently of this Act by a person to whom

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compensation is payable under this Act in respect of the death of a worker as a result of an injury.

(4) If a worker is liable 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 recovery by way of periodic or other payments for loss of future earnings or earning capacity or for future expenses.

**Abolition of doctrine of common employment**

151AA. (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.

(2) 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.

(3) 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; and
- (b) any disease; and
- (c) any impairment of the physical or mental condition of a person.

(2) Section 155 (**Compulsory insurance for employers**):

- (a) After "by the employer" in section 155 (1), insert "and for an unlimited amount in respect of the employer's liability

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independently of this Act (being a liability under a law of New South Wales) for any injury to any such worker".

(b) After section 155 (1), insert:

(1A) In subsection (1), "injury" includes a dust disease as defined in the Workers' Compensation (Dust Diseases) Act 1942 and the aggravation, acceleration, exacerbation or deterioration of a dust disease as so defined.

(3) Section 158 (**Insurance for trainees**):

After "that trainee" in section 158 (3), insert "and for an unlimited amount in respect of the employer's liability independently of this Act (being a liability under a law of New South Wales) for any injury (as defined in section 155 (1A)) to that trainee".

(4) Section 159 (**Provisions of policies of insurance**):

After "under this Act" in section 159 (2) (a), insert "or other amount independently of this Act".

(5) Schedule 6, Part 14 (**Provisions relating to common law remedies**):

Omit clause 1 (1), insert instead:

(1) Part 5 of the Act (except section 151AA) does not apply to a cause of action in respect of:

- (a) an injury received by a worker before 4 p.m. on 30 June 1987; or
- (b) the death of a worker resulting from or caused by such an injury.



**SCHEDULE 2 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INCREASED BENEFITS**

(Sec. 3)

(1) **Section 25 (Death of worker leaving dependants):**

Section 25 (1) (a):

Omit "\$80,000", insert instead "\$150,000".

(2) **Section 38 (Partially incapacitated unemployed workers compensated as if totally incapacitated):**

Omit section 38 (1) - (6), insert instead:

(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,

the worker is to be compensated in accordance with this section during the partial incapacity for work (but only for a maximum period of 52 weeks).

(2) In any such case, the worker is to be compensated as if the worker's incapacity for work were total during the following periods of the worker's partial incapacity for work:

(a) a period (not exceeding 52 weeks 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 44 weeks) during which the worker is receiving approved rehabilitation training;

(c) a period (not exceeding 4 weeks after the completion of any such training) during which the worker is seeking suitable employment.

SCHEDULE 2 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INCREASED BENEFITS - *continued*

(3) Compensation in accordance with this section is payable at the following rates:

- (a) for the first 4 weeks of the employment-seeking period referred to in subsection (2) (a) - the rate prescribed by this Act for the first 26 weeks of incapacity;
- (b) for the first 26 weeks of the approved rehabilitation training period referred to in subsection (2) (b) - the rate prescribed by this Act for the first 26 weeks of incapacity;
- (c) for any subsequent employment-seeking period (that is, between weeks 5 - 52 of the period referred to in subsection (2) (a)) - the relevant rate prescribed by this Act for the period of incapacity concerned;
- (d) for any subsequent approved rehabilitation training period (that is, between weeks 27 - 44 of the period referred to in subsection (2) (b)) - the rate prescribed by this Act for a period of incapacity after the first 26 weeks;
- (e) for any post-training employment-seeking period (that is, for the period referred to in subsection (2) (c)) - the rate prescribed by this Act for the first 26 weeks of incapacity.

(4) Any period during which a worker is compensated under subsection (2) (a) as if totally incapacitated (not being the first 4 weeks of that period) reduces, by an equivalent amount, the period during which the worker would otherwise be entitled to compensation under subsection (2) (b) or (c).

(3) Section 66 (**Compensation for permanent injuries**):

Section 66 (2):

Omit "\$80,000", insert instead "\$106,300".

**SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INDEXATION ETC. OF  
AMOUNTS OF BENEFITS**

(Sec. 3)

(1) **Section 25 (Death of worker leaving dependants):**

(a) **Section 25 (1) (b):**

Omit "\$45", insert instead "\$49.10".

(b) **Omit section 25 (4), insert instead:**

(4) If an amount mentioned in subsection (1) (a) at any time after the commencement of this Act:

(a) is adjusted by the operation of Division 6; or

(b) is adjusted by an amendment of this section,

the compensation payable under subsection (1) (a) is to be calculated by reference to the amount in force at the date of death.

(4A) If the death of a worker results both from an injury received before the adjustment of an amount mentioned in subsection (1) (a) and an injury received after that adjustment, the worker shall, for the purposes of subsection (1) (a), be treated as having died as a result of the injury received after that adjustment.

(2) **Section 35 (Maximum weekly payment):**

Omit "\$500", insert instead "\$545.70".

(3) **Section 37 (Weekly payment during total incapacity - after first 26 weeks):**

Omit "\$159", "\$126.40", "\$114.90", "\$103.40", "\$42", "\$30", "\$67", "\$111", "\$156" (where twice occurring) and "\$45", insert instead "\$173.50", "\$138", "\$125.40", "\$112.90", "\$45.80", "\$32.70", "\$73.10", "\$121.10", "\$170.30" and "\$49.10", respectively.



**SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO INDEXATION ETC. OF AMOUNTS OF BENEFITS - *continued***

**(4) Section 40 (Weekly payment during partial incapacity):**

Omit "\$500" wherever occurring, insert instead "\$545.70".

**(5) Section 65 (Interpretation):**

After section 65 (2), insert:

(3) If a loss mentioned in the Table to this Division resulted both from an injury received before the adjustment of an amount mentioned in section 66 or 67 and an injury received after that adjustment, the loss shall, for the purposes of those sections, be treated as having resulted from the injury received after that adjustment.

**(6) Section 66 (Compensation for permanent injuries):**

**(a) Section 66 (1):**

Omit "\$80,000", insert instead "\$87,350".

**(b) Omit section 66 (3), insert instead:**

(3) If an amount mentioned in this section at any time after the commencement of this Act:

(a) is adjusted by the operation of Division 6; or

(b) is adjusted by an amendment of this section,

the compensation payable under this section is to be calculated by reference to the requisite percentage of the amount in force at the date of injury.

**(7) Section 67 (Compensation for pain and suffering):**

**(a) Section 67 (1):**

Omit "\$40,000", insert instead "\$43,700".

**(b) Section 67 (2):**

Omit "that section", insert instead "section 66 (1)".

**(c) Omit section 67 (6), insert instead:**

(6) If an amount mentioned in this section at any time after the commencement of this Act:

**SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO INDEXATION ETC. OF AMOUNTS OF BENEFITS - *continued***

(a) is adjusted by the operation of Division 6; or  
(b) is adjusted by an amendment of this section,  
the compensation payable under this section is to be calculated by reference to the amount in force at the date of injury.

**(8) Section 79 (Definitions):**

Omit "\$220" from the definition of "base index number", insert instead "\$240.1".

**(9) Section 81 (Rounding off):**

Omit "\$80,000 or \$40,000" in section 81 (1), insert instead "\$150,000, \$106,300, \$87,350 or \$43,700".

**(10) Schedule 6 (Savings and transitional provisions):**

**(a) Part 3, clause 2:**

Omit "\$62,200" and "\$31.10" wherever occurring, insert instead "\$67,900" and "\$33.90", respectively.

**(b) Part 4, clause 4:**

Omit "\$36.40" and "\$18.20" wherever occurring, insert instead "\$39.70" and "\$19.90", respectively.

**SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO REHABILITATION**

(Sec. 3)

**(1) Section 38 (Partially incapacitated unemployed workers compensated as if totally incapacitated):**

**(a) Omit section 38 (7), insert instead:**

(7) Compensation is payable in accordance with this section in respect of a period even though the period comprises a number of separate periods.

(7A) However, 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

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

worker with suitable employment, or such longer period as the Authority or the Compensation Court may approve in a particular case.

(7B) The Authority or the Compensation Court may, in respect of such an approval, have regard to the following:

- (a) whether the worker unreasonably delayed seeking suitable employment or, if appropriate, approved rehabilitation training;
  - (b) the worker's efforts in seeking suitable employment or the worker's actual performance in any approved rehabilitation training.
- (b) Omit section 38 (10) (a), insert instead:
- (a) the worker has, as soon as reasonably practicable after the worker becomes partially incapacitated, requested the employer to provide suitable employment;

(c) After section 38 (10), insert:

(10A) A worker is not to be regarded as being ready, willing and able to accept an offer of suitable employment if the worker unreasonably refuses to co-operate in procedures connected with the provision or arrangement of suitable employment or rehabilitation training under the employer's rehabilitation programme (if any) established under section 152.

(10B) If:

- (a) a worker referred to in subsection (10) receives rehabilitation training under an arrangement where the employer has proposed or undertaken to provide employment which will be suitable for the worker on completion of the training concerned; and
  - (b) the employer does not pay an appropriate wage or salary to the worker for attendance at that training,
- the employer is to be regarded as having failed to provide suitable employment during that period of training.



SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

(10c) If an employer (not being a self-insurer) is dead in the case of a natural person, has been wound up in the case of a corporation or cannot be identified or found in either case, a reference in subsection (10) (a) or (b) to an employer is to be taken to be a reference to the insurer who is liable to indemnify the employer.

- (d) Omit section 38 (11) (a), insert instead:
  - (a) has unreasonably refused or failed to accept an offer of suitable employment from any person;
- (e) Omit section 38 (11) (d), insert instead:
  - (d) has unreasonably refused or failed to accept an offer of approved rehabilitation training from any person.
- (f) After section 38 (11), insert:
  - (11A) For the purposes of this section, a worker is (subject to the regulations) to be treated as seeking suitable employment:
    - (a) during any reasonable period when the worker is waiting for a response to a request for suitable employment made by the worker and received by the employer; and
    - (b) if the employer's response is that suitable employment may or will be provided at some future time - until that time arrives; and
    - (c) during any reasonable period between approval of rehabilitation training and the commencement of the training concerned.
- (g) Omit "may," in section 38 (12), insert instead "or the insurer or self-insurer concerned may, "
- (h) Omit section 38 (14), insert instead:
  - (14) The regulations may make provision for or with respect to:

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- (a) the seeking of suitable employment by workers; and
- (b) the procedures and forms for applications for approved rehabilitation training (including rehabilitation plans prepared by providers accredited under section 152, or other appropriate persons, for the purpose of such applications); and
- (c) the determination of eligibility for approved rehabilitation training; and
- (d) the conditions of approval by insurers or self-insurers in connection with approved rehabilitation training for particular workers; and
- (e) approvals by insurers or self-insurers in connection with approved rehabilitation training generally.

(2) Section 38A:

After section 38, insert:

**Definitions: section 38**

38A. For the purposes of section 38:

"approved rehabilitation training" means:

- (a) vocational or vocationally useful re-education or training which may be combined with rehabilitation treatment or other things authorised by the regulations; or
- (b) rehabilitation training of a prescribed class, which is approved by the Authority or by the Compensation Court (or by the insurer or self-insurer concerned) and is undertaken in accordance with such conditions as the Authority or the Compensation Court (or the insurer or self-insurer concerned) may impose in giving that approval;

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

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

"suitable employment", in relation to a worker,  
means employment in work for which the worker is  
suited, having regard to the following:

- (a) the nature of the worker's incapacity and pre-injury employment;
- (b) the worker's age, education, skills and work experience;
- (c) the worker's place of residence;
- (d) the details given in the medical certificate supplied by the worker;
- (e) the provisions of the employer's rehabilitation programme (if any) established under section 152 and any rehabilitation assessment of, or rehabilitation plan in respect of, the worker carried out or prepared by a provider accredited under that section or other appropriate person;
- (f) the length of time the worker has been seeking suitable employment;
- (g) any other relevant circumstances,  
and a reference in section 38 to suitable employment provided or offered by the worker's employer includes:
- (h) employment in respect of which:
  - (i) the numbers of hours each day or week that the worker performs work; or
  - (ii) the range of duties the worker performs, is suitably increased in stages (in accordance with a rehabilitation plan or otherwise); and
- (i) if the employer does not provide employment involving the performance of work duties - suitable training of a vocationally useful kind provided:
  - (i) by the employer at the workplace or elsewhere; or



SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- (ii) by any other person or body under arrangements approved by the employer, but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends the training concerned, but does not include:
  - (j) employment that is merely of a token nature and does not involve useful work having regard to the employer's trade or business; or
  - (k) employment that is demeaning in nature, having regard to paragraphs (a) and (b) and to the worker's other employment prospects.
- (3) Section 40 (**Weekly payment during partial incapacity**):
  - (a) After section 40 (1), insert:
    - (1A) A reference in this section to an injured worker's ability to earn in some suitable employment is a reference to the amount that the worker is able to earn in the general labour market reasonably accessible to the worker, and for the purpose of determining that amount regard may be had (subject to subsection (2)) to:
      - (a) the kind of employment for which the worker has received any approved rehabilitation training (as defined in section 38A); and
      - (b) suitable employment (as so defined) for the worker.
  - (b) Omit section 40 (5), insert instead:
    - (5) Subsection (3) does not apply to any period of partial incapacity for work occurring after the first 26 weeks of incapacity (being the first 4 weeks of the employment-seeking period referred to in section 38 (2) (a)) during which the worker would (but for the worker obtaining suitable employment with another employer) have been compensated under this Act as if the worker's incapacity for work were total.
    - (6) An injured worker who is partially incapacitated for work may be required by the employer to undergo an

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

assessment of the worker's ability to earn in some suitable employment.

(7) Any such assessment is at the cost of the person who requires it.

(8) Any such assessment is to comply with such guidelines as are prescribed by the regulations.

(9) If an injured worker fails, without reasonable excuse, to undergo any such assessment, the right to weekly compensation for partial incapacity for work is suspended while the failure continues.

(4) Section 59 (**Definitions**):

(a) Definitions of "approved" and "treatment by way of rehabilitation":

Omit the definitions.

(b) Definition of "medical or related treatment":

(i) Omit paragraph (c).

(ii) Omit "or hospital treatment", insert instead  
", hospital treatment or occupational rehabilitation service".

(c) After the definition of "medical practitioner", insert:

"occupational rehabilitation service" means any of the following services provided by or on behalf of a provider accredited under section 152 or by a person, or a person of a class, prescribed by the regulations:

(a) initial rehabilitation assessment;

(b) functional assessment;

(c) workplace assessment;

(d) job analysis;

(e) advice concerning job modification;

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ACT 1987 RELATING TO REHABILITATION - *continued*

- (f) rehabilitation counselling;
- (g) vocational assessment;
- (h) advice or assistance concerning job-seeking;
- (i) advice or assistance in arranging vocational re-education or training;
- (j) preparation of a rehabilitation plan;
- (k) any other service prescribed by the regulations, but does not include hospital treatment;

(5) Section 60:

Omit section 60, insert instead:

**Compensation for cost of medical or hospital treatment and rehabilitation etc.**

60. (1) If, as a result of an injury received by a worker, it is reasonably necessary that:

- (a) any medical or related treatment be given; or
- (b) any hospital treatment be given; or
- (c) any ambulance service be provided; or

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

(2) If it is necessary for a worker to travel in order to receive any such treatment or service (except any treatment or service excluded from this subsection by the regulations), the related travel expenses 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 or being provided with the service; and
- (b) if the worker is not reasonably able to travel unescorted - the amount of the fares, travelling



SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

expenses and maintenance necessarily and reasonably incurred by an escort provided to enable the worker to be given the treatment or provided with the service.

(3) Payments under this section are to be made as the costs are incurred, but only if properly verified.

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

(6) Section 63A:

After section 63, insert:

**Rates applicable for occupational rehabilitation service**

63A (1) The amount for which an employer is liable for any occupational rehabilitation service provided to or for the benefit of a worker is such amount as is reasonably appropriate to the service provided, having regard to the reasonable necessity for the service and any guidelines prescribed by the regulations.

(2) The maximum amount for which an employer is liable for any particular occupational rehabilitation service is such sum (if any) as may be prescribed by the regulations in respect of that service.

(3) The maximum amount for which an employer is liable for any occupational rehabilitation services provided to or for the benefit of a worker in respect of the same injury (whether the same or different kinds of services, but not services excluded from this subsection by the regulations) is:

(a) \$1,200; or

(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 or of the provider of the

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

services concerned, the Authority or other prescribed person may, subject to the regulations and any order of the Compensation Court, direct that the employer is liable for a further amount to that prescribed by subsection (3).

(5) The regulations may:

(a) exempt an employer from liability under this Division for occupational rehabilitation services unless the services are approved in the manner, or provided in the circumstances, specified in the regulations; and

(b) exempt a worker from liability to pay any amount for occupational rehabilitation services that exceeds the amount for which the employer is liable under this Division.

(6) Any amount for which an employer is liable under this Division in respect of occupational rehabilitation services may be recovered from the employer by the person who provided the service.

(7) Section 91 (**Notice of incapacity, medical etc. treatment and damage to property**):

After "hospital treatment", insert ", occupational rehabilitation service".

(8) Section 152 (**Rehabilitation programmes to be established by employers**):

(a) At the end of section 152 (3) (d), insert "and".

(b) Section 152 (3) (e):

Omit the paragraph.

(c) At the end of the section, insert:

(4) A group of 2 or more employers may establish a single general rehabilitation programme under this section for each member of the group if the employers are authorised to do so by the regulations.

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- (9) Section 154 (**Rehabilitation counsellors**):
- (a) Section 154 (3):  
Omit "the Compensation Court", insert instead "any court".
- (b) At the end of the section, insert:  
(6) A reference in this section to a rehabilitation counsellor includes a reference to any officer of the Authority who is authorised by the Authority to exercise the functions of a rehabilitation counsellor under this section.
- (10) Section 154A:  
After section 154, insert:  
**Rehabilitation etc. not admission of liability**  
154A. Anything done by an employer or insurer (whether under a general rehabilitation programme or otherwise) in connection with the following does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act:
- (a) the assessment of an injured worker for rehabilitation or for employment;
- (b) the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers.
- (11) Schedule 6 (**Savings, transitional and other provisions**):  
At the end of Part 5, insert:  
**Occupational rehabilitation services**  
8. The amendments made to Division 3 of Part 3 of this Act by Schedule 4 (4) - (7) to the Workers Compensation (Benefits) Amendment Act 1989:
- (a) do not apply to occupational rehabilitation services provided before the commencement of Schedule 4 (4) - (7) to that Act; and
- (b) do not affect compensation payable for medical or related treatment, or hospital treatment, given before that commencement.



**SCHEDULE 5 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO JOURNEYS**

(Sec. 3)

(1) Section 10 (**Journey claims - where compensation is payable**):

(a) Section 10 (3) (a), (e), (f), (g):

Omit the paragraphs, insert instead:

(a) a daily or other periodic journey between the worker's place of abode and place of employment if the risk of injury on that journey, compared with the risk of injury on the worker's normal daily or other periodic journey, is materially increased for a reason connected with the worker's employment (including the distance travelled, the time of day or night, the method of travel or the route of the journey);

(b) Section 10 (3) (b):

Omit "place of abode, or place of employment," insert instead "place of employment".

(c) Section 10 (3) (c), (d):

Omit "place of abode or" wherever occurring.

(d) After section 10 (3) (d), insert:

(e) any other journey of a class prescribed by the regulations.

(e) Omit section 10 (4), insert instead:

(4) A personal injury received by a worker on any daily or other periodic journey to or from the worker's place of abode is not, for the purposes of this Act, an injury arising out of or in the course of employment merely because:

(a) the journey was made to or from a place of employment; or

(b) the worker uses a vehicle owned or supplied by or on behalf of the employer.

**SCHEDULE 5 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO JOURNEYS - *continued***

(4A) A reference in subsection (3) (a) or (4) to a journey to or from the worker's place of employment includes a reference to a journey to or from:

- (a) an educational institution referred to in subsection (3) (b); or
- (b) any other place referred to in subsection (3) (c) or (d); or
- (c) a place of pick-up referred to in clause 14 of Schedule 1.

**(2) Schedule 6 (Savings and transitional provisions):**

**(a) Part 2, clause 2:**

Omit "that section applies", insert instead "that section applied before the amendments made to that section by Schedule 5 to the Workers Compensation (Benefits) Amendment Act 1989".

**(b) Part 2, clause 2:**

At the end of the clause, insert:

(2) In the case of a personal injury received by a worker after the commencement of section 10 of this Act and before the commencement of Schedule 5 to the Workers Compensation (Benefits) Amendment Act 1989 on a journey to which that section applied before the commencement of that Schedule, liability is to be determined in accordance with the provisions of that section as in force before the commencement of that Schedule.

**SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS**

(Sec. 3)

**(1) Section 92 (Making of claim for compensation):**

Omit section 92 (1) (d), insert instead:

- (d) made in the manner prescribed by section 92A.

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

(2) Sections 92A, 92B:

After section 92, insert:

**Manner of making claim for compensation**

92A. (1) The manner of making a claim for compensation is by serving the claim on the employer from whom the compensation is claimed.

(2) If there is more than one employer, a claim for compensation may be made by serving the claim on any one of those employers.

(3) A claim for compensation may be made by serving the claim on an insurer who has indemnified the employer in respect of the claim if:

- (a) the person making the claim has reason to believe that the employer may not forward the claim to the insurer in accordance with section 93 (1) (a); or
- (b) the employer has refused to receive the claim; or
- (c) the person making the claim cannot identify or find the employer; or
- (d) the employer (being a natural person) is dead; or
- (e) the employer (being a corporation) has been wound up.

(4) For the purposes of this clause, a claim for compensation is served on a person if:

- (a) it is given personally to the person; or
- (b) it is delivered or sent by post to the residence or any place of business of the person; or
- (c) it is served in any other manner authorised by sections 528, 529 and 530 of the Companies (New South Wales) Code.

**False claims etc.**

92B. (1) A person who makes a statement knowing that it is false or misleading in a material particular:

- (a) in a notice given by the person under this Division;  
or



SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

- (b) in a claim for compensation made by the person; or
- (c) in a medical certificate or other document that accompanies a claim for compensation; or
- (d) when furnishing information to any person concerning a claim for compensation (whether the information is furnished by the person who made the claim or not),

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) This section does not apply to statements:

- (a) verified by statutory declaration; or
- (b) made in documents filed, or information furnished, in court proceedings; or
- (c) made in a document that accompanies a claim for compensation (in any case in which the person who made the statement did not know that the document was to accompany the claim); or
- (d) made before the commencement of this section.

(3) Part 4, Division 1A:

Before section 94, insert:

**Division 1A - Administration by insurers of  
claims for compensation or damages**

**Definitions**

93A In this Division:

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

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

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

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

**Claims administration manual**

93B. (1) The Authority may prepare and publish a claims manual for use by insurers.

(2) In preparing the claims manual, the Authority is required to promote, as far as practicable:

- (a) the prompt processing of claims and payment of amounts duly claimed; and
- (b) the giving of information about workers' entitlements and about procedures for the making of claims and the resolution of disputes; and
- (c) the minimisation of the effect of injuries to workers by the making of prompt arrangements for rehabilitation; and
- (d) the proper investigation of liability for claims; and
- (e) the recovery of proper contributions in connection with claims from other insurers or persons.

(3) The claims manual may make provision (not inconsistent with this Act or the regulations) in connection with all matters relating to the administration of claims, including:

- (a) liaison between insurers and employers concerning rehabilitation assessment of injured workers; and
- (b) the provision or arrangement of suitable employment or rehabilitation training for partially incapacitated workers; and
- (c) the monitoring of employment-seeking activities or rehabilitation training by partially incapacitated workers; and
- (d) arrangements for the settlement of claims for damages.

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

(4) The Authority may give an insurer directions as to the procedure to be followed in the administration of any claim or class of claims in order to comply with the claims manual and this Act.

(5) It is a condition of the licence of an insurer under Part 7 that the insurer comply with any direction given to the insurer under this section.

**Duty of claimant to co-operate**

93c. (1) A claimant must co-operate fully in respect of the claim with the insurer liable under the claim.

(2) In particular, the claimant must comply with any reasonable request by the insurer to furnish specified information (in addition to the information furnished in the claim form).

(3) The duty under this section applies only until court proceedings are commenced in respect of the claim but if the claimant fails without reasonable excuse to comply with this section, court proceedings cannot be commenced in respect of the claim while the failure continues.

**Inspection of relevant claims information etc.**

93d. (1) The Authority may allow:

- (a) an insurer; or
- (b) such other persons or bodies as the Authority thinks appropriate,

to inspect information held by the Authority relating to claims or any other information held by the Authority that is prescribed by the regulations.

(2) Insurers are authorised to exchange information held by them relating to claims or any other information held by them that is prescribed by the regulations.



**SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued***

(3) In this section:

"claims" includes claims for compensation under the former Act, claims for compensation or other benefits under any other Act and potential claims;

"insurer" includes the Government Insurance Office and a licensed insurer under the Motor Accidents Act 1988.

(4) Section 94 (**Reports to Authority by insurers concerning injuries, incapacity etc.**):

Omit section 94 (2).

(5) Section 276 (**Disclosure of information**):

Section 276 (c1):

After section 276 (c), insert:

(c1) in accordance with section 93D (inspection of relevant claims information etc.);

**SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS ETC.**

(Sec. 3)

(1) Part 3, Division 8:

After Division 7 of Part 3, insert:

**Division 8 - Reduction of benefits  
where additional or alternative  
compensation payable**

**Additional or alternative compensation to which Division applies**

87A (1) This Division applies to additional or alternative compensation prescribed by the regulations.

(2) The regulations may prescribe any of the following as additional or alternative compensation:

(a) payments to workers or their dependants in respect of injuries or deaths under any specified or class of

SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS  
ETC. - *continued*

contract of employment, industrial agreement, award or other arrangement (including payments as a supplement or an alternative to the periodic or lump sum payments of compensation under this Act);

- (b) damages for breaches of section 52, 53<sup>B</sup> or 55<sup>A</sup> of the Trade Practices Act 1974 of the Commonwealth;
- (c) any other payments in respect of injuries or deaths for which compensation is payable under this Act.

(3) The regulations may prescribe additional or alternative compensation even though the arrangements under which it is paid were made before the commencement of this Division.

(4) For the purposes of this Division, compensation is paid to a worker or other person if it is paid for the benefit or at the direction of the worker or other person.

**Reduction of compensation under this Act**

87B. (1) If a person who is entitled to compensation under this Act has been paid additional or alternative compensation to which this Division applies, the amount of compensation payable under this Act is to be reduced by the amount of the additional or alternative compensation.

(2) If any such additional or alternative compensation is paid after compensation has been paid under this Act, the relevant amount of compensation paid under this Act is to be refunded.

(3) Any such refund may be deducted from any future payments of compensation under this Act or be recovered as a debt in a court of competent jurisdiction.

(4) A reduction, refund or deduction under this section is to be made in accordance with the regulations and is not to be made in any case excluded by the regulations.

SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS  
ETC. - *continued*

(5) This section applies even though the compensation under this Act is payable under an award of the Compensation Court.

**Employer etc. to notify claim or payment of additional or alternative compensation**

87c. (1) An employer (not being a self-insurer) or top-up insurer on whom a claim is made for additional or alternative compensation to which this Division applies (or who pays any such compensation) must, within 7 days after receipt of the claim or making the payment, notify the relevant workers compensation insurer of the details of the claim or payment.

(2) For the purposes of this section:

- (a) the relevant workers compensation insurer is the insurer who the employer believes is liable to indemnify the employer in respect of a claim under this Act for compensation for the injury to the worker concerned; and
- (b) a top-up insurer is a person who indemnifies an employer against liability for additional or alternative compensation.

(3) A person who contravenes this section is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) Section 168 (**Insurance premiums order**):

After section 168 (3), insert:

(3A) Without limiting the generality of subsection (3), an insurance premiums order may provide for the payment of increased premiums by employers who (under any specified or class of contract of employment, industrial agreement, award or other arrangement) are or may become liable to make payments to workers or their dependants in respect of injuries or deaths (including payments as a supplement or an alternative to the periodic or lump sum payments of compensation under this Act).



**SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987**

(Sec. 3)

(1) Section 3 (**Definitions**):

Omit the definition of "specialised insurer", insert instead:

"specialised insurer" means an insurer or  
proposed insurer declared by the regulations or by  
order of the Authority to be a specialised insurer;

(2) Section 8 (**Workers Compensation Review Committee**):

Omit the section.

(3) Section 43 (**Computation of average weekly earnings**):

Before "55" in section 43 (2) (c), insert "40 or".

(4) Section 62 (**Rates applicable for hospital treatment**):

(a) Section 62 (1):

Omit "(other than a public hospital)".

(b) Section 62 (2) - (4):

Omit the subsections.

(5) Section 64A:

After section 64, insert:

**Compensation for cost of interpreter services**

64A. (1) If it is reasonably necessary for a worker to obtain the assistance of an interpreter in connection with a claim for compensation under this Act, the worker's employer is liable to pay, in addition to any other compensation under this Act, the reasonable costs of any such assistance.

(2) The regulations may prescribe:

(a) guidelines for determining the amount payable under this section; and

(b) the maximum amount payable under this section.

(3) Payments under this section are to be made as the costs are incurred, but only if properly verified.

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

(4) The Authority may pay any such costs (whether or not liability to pay those costs has been determined) and recover the amount from any employer liable to pay them.

(5) This section applies only to the costs of assistance provided in respect of a claim made after the commencement of this section.

(6) Section 71 (**Further losses of function - occupational diseases**):  
After "has been paid" in section 71 (1) (a), insert "or becomes payable".

(7) Part 3, Division 4, Table (**Compensation for permanent injuries**):

Omit the following matter:

**Loss of mental powers -**

Incurable loss of mental powers resulting  
in total inability to work ..... 100

Insert instead the following matter:

**Brain damage:**

Permanent brain damage (being an injury  
which is not or is not wholly an injury  
otherwise compensable under this Table) ... 0 - 100

(8) Section 131 (**Reference of medical disputes to referee or panel on application of worker or employer**):

Omit section 131 (5) (b) (iii), insert instead:

(iii) permanent brain damage;

(9) Section 160 (**Recovery of \$500 excess from employer**):

After section 160 (4), insert:

(4A) For the purposes of this section, the amount of a claim paid under a policy is the total amount paid to or on behalf of the claimant in respect of the injury concerned, but does not include:

(a) any expenses of the insurer associated with the claim; or

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

- (b) any amount of a kind prescribed by the regulations.  
(4B) If liability for a claim is apportioned between 2 or more successive insurers of an employer, the amount repayable by the employer is to be similarly apportioned.
- (10) Sections 160 (6), 168 (4), 193 (definition of "policy of insurance"), 217 (definition of "premium income"):  
After "Government workers" wherever occurring, insert "who are declared by the Minister to be central Government workers by order served on the Government Insurance Office".
- (11) Section 172 (**Recovery of unpaid premiums**):  
After section 172 (3), insert:  
(4) The making of an application to the Authority under section 170 (determination of premium to be charged) does not affect the entitlement of an insurer under this section to recover the premium (or part of premium) concerned except to the extent that:  
(a) the Authority otherwise directs in a particular case;  
or  
(b) the regulations otherwise provide.
- (12) Section 189 (**Information and records as to business etc. to be supplied to Authority by insurers**):  
Omit "or a self-insurer" from the definition of "insurer" in section 189 (1), insert instead ", a self-insurer or a former self-insurer".
- (13) Section 203 (**Establishment of Premiums Adjustment Fund**):  
At the end of section 203 (2) (b), insert:  
; and  
(c) all other amounts authorised by this Division or the regulations to be paid into that Fund.
- (14) Section 205 (**Pooling of premiums between statutory funds of an insurer or between insurers**):



SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

Omit section 205 (5), insert instead:

(5) If a direction is given under this section for the transfer of any amount from a statutory fund:

- (a) the amount is to be paid to the Authority and credited to the Premiums Adjustment Fund before being carried to the statutory fund to which it is directed to be transferred; and
- (b) if it is not so paid, the amount may be recovered by the Authority as a debt in a court of competent jurisdiction.

(6) For the purposes of this section, the determination of whether a statutory fund is in surplus or deficit is to be made after such adjustments in its calculations as the Authority considers necessary for an equitable distribution of the effects of cross-subsidisation in premium-fixing, indexation of benefits, changes in benefits and the introduction of new benefits.

(15) Section 206 (**Distribution of surplus remaining after pooling of premiums**):

(a) Omit "by way of profits" wherever occurring, insert instead "by way of a performance bonus".

(b) Section 206 (2) (b):

After "premiums;", insert "and".

(c) Omit section 206 (6), insert instead:

(6) If a direction is given under this section for the transfer of any amount from a statutory fund:

- (a) the amount is to be paid to the Authority and credited to the Premiums Adjustment Fund before being carried to the statutory fund or other fund to which it is directed to be transferred; and
- (b) if it is not so paid, the amount may be recovered by the Authority as a debt in a court of competent jurisdiction.

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

(16) Section 215A:

After section 215, insert:

**Bank guarantee etc. as alternative to deposit**

215A. (1) It is sufficient compliance with a requirement of this Division to deposit an amount of money with the Treasurer if a bank guarantee of payment of the amount is provided on terms acceptable to the Authority.

(2) If a refund of part of a deposit is authorised under section 213 (2), the authorisation operates as authority for the Treasurer to give the appropriate partial release from a guarantee provided instead of a deposit.

(3) Any amount paid to the Treasurer pursuant to such a guarantee is to be regarded for the purposes of this Division as having been deposited with the Treasurer by the self-insurer concerned and is to be dealt with accordingly.

(4) In this section:

"guarantee" includes undertaking.

(17) Section 216 (**Application of deposit**):

From section 216 (3) (b), omit "licensed insurer", insert instead "self-insurer".

(18) Schedule 1 (**Deemed employment of workers**):

Omit "(b) or (c)" from clause 15 (3), insert instead "(c) or (d)".

(19) Schedule 6, Part 5 (**Savings and transitional provisions relating to hospital treatment etc**):

(a) Omit clause 6.

(b) Omit clause 7, insert instead:

**Public hospital rates of treatment**

7. (1) Until the regulations otherwise provide, the amount for which an employer is liable in respect of hospital treatment of a worker at a public hospital is (after the commencement of the 1989 Amending Act) the

**SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued***

amount prescribed under section 62 (2) - (4) as in force immediately before that commencement.

(2) A reference in this clause to the commencement of the 1989 Amending Act is a reference to the commencement of Schedule 8 (4) to the Workers Compensation (Benefits) Amendment Act 1989.

- (20) **Schedule 6, Part 15 (Savings and transitional provisions relating to insurance):**

After clause 14, insert:

**Policies issued or renewed before 4 p.m. on 30 June 1987**

15. (1) This clause applies to policies of insurance issued or renewed before 4 p.m. on 30 June 1987 by insurers licensed under section 27 of the former Act.

(2) A policy of insurance to which this clause applies extends (and is to be taken to have always extended) to any liability under this Act for injuries received before 4 p.m. on 30 June 1987.

(3) This clause applies despite the fact that the policy of insurance refers to liability under the Workers' Compensation Act 1926.

**Government workers insurance**

16. (1) In this clause, a reference to a relevant provision is a reference to section 160 (6), 168 (4), 193 (definition of "policy of insurance") or 217 (definition of "premium income").

(2) On the commencement of Schedule 8 (10) to the Workers Compensation (Benefits) Amendment Act 1989, the Minister is to be taken to have served an order on the Government Insurance Office under the relevant provisions declaring all Government workers (except workers whose employer is the Forestry Commission) to be central Government workers.



**SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued***

- (21) **Schedule 6, Part 20 (Savings and transitional regulations):**  
At the end of clause 1 (1), insert:  
the Workers Compensation (Benefits) Amendment  
Act 1989;

**SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION  
(BUSH FIRE, EMERGENCY AND RESCUE SERVICES) ACT  
1987**

(Sec. 4)

- (1) **Section 7 (Injuries to which Part applies):**  
(a) **Section 7 (2):**  
After "an official fire fighter", insert "(or a person of a  
prescribed class)".  
(b) **Section 7 (2):**  
After "the official fire fighter", insert "(or the person)".
- (2) **Section 10 (Compensation payable for injury or death):**  
After "hospital treatment" in section 10 (c), insert  
", occupational rehabilitation service".
- (3) **Section 11 (Provisions relating to compensation for injury or  
death):**  
(a) After section 11 (2), insert:  
(2A) If the fire fighter left no dependants, the amount of  
compensation payable under subsection (2) is to be 60 per  
cent of the amount prescribed by section 25 (1) (a) of the  
Principal Act (rounded off to the nearest dollar).  
(b) From section 11 (6) (b), omit "\$500", insert instead  
"\$545.70".
- (4) **Section 23 (Definitions):**  
(a) **Definition of "rescue association worker":**  
After paragraph (a) of the definition, insert:  
(a1) a surf life saver;

**SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION  
(BUSH FIRE, EMERGENCY AND RESCUE SERVICES)  
ACT 1987 - *continued***

(b) Definition of "surf life saver":

After the definition of "rescue association worker", insert:

"surf life saver" means a person who:

- (a) is an elected or appointed officer, or advisor, of the Surf Life Saving Association of Australia - New South Wales State Centre Incorporated; or
- (b) is an elected member of a management committee or of the executive of a branch affiliated with that Association, being a branch specified in the regulations; or
- (c) is a member of a club which is affiliated with a branch referred to in paragraph (b), being a club specified in the regulations; or
- (d) is prescribed by the regulations as being a surf life saver; or
- (e) is a member of a class of persons prescribed by the regulations as being surf life savers; or
- (f) in the opinion of the Authority, having regard to all the circumstances, should be regarded as being a surf life saver.

(5) Section 26 (**Compensation payable for injury or death**):

After "hospital treatment" in section 26 (c), insert  
", occupational rehabilitation service".

(6) Section 27 (**Provisions relating to compensation for injury or death**):

(a) After section 27 (2), insert:

(2A) If the worker left no dependants, the amount of compensation payable under subsection (2) is to be 60 per cent of the amount of compensation prescribed by section 25 (1) (a) of the Principal Act (rounded off to the nearest dollar).

(b) From section 27 (6) (b), omit "\$500" insert instead "\$545.70".

**SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION  
(BUSH FIRE, EMERGENCY AND RESCUE SERVICES)  
ACT 1987 - *continued***

- (7) **Section 32 (Application of Principal Act):**
- (a) From section 32 (1) (c), omit "except sections 38 and 52", insert instead "except section 52".
  - (b) After section 32 (1) (g), insert:
    - (g1) Division 8 of Part 3;
  - (c) Omit section 32 (1) (i), insert instead:
    - (i) sections 151 and 151z;
  - (d) At the end of section 32 (2) (b), insert:
    - ; and
    - (c) a reference to the Authority's Fund were a reference to the Bush Fire Fighters Compensation Fund or the Emergency and Rescue Workers Compensation Fund, as the case requires.

**SCHEDULE 10 - AMENDMENT OF WORKERS' COMPENSATION  
(DUST DISEASES) ACT 1942**

- (Sec. 5)
- (1) **Section 8 (Certificate of medical authority and rates of compensation):**
- (a) Section 8 (2) (d):

After "hospital treatment", insert "or occupational rehabilitation service".
  - (b) Section 8 (2B) (b) (i), (3) (d):

Omit "\$25,650" wherever occurring, insert instead "\$100,000".
  - (c) Section 8 (2B) (b) (ii):

Omit "\$89.10", insert instead "\$97.20".
  - (d) Section 8 (2B) (b) (iii):

Omit "\$31.10", insert instead "\$49.10".
  - (e) Section 8 (2F):

After section 8 (2E), insert:  
(2F) The amendments made to this section by Schedule 10 to the Workers Compensation (Benefits) Amendment Act 1989 apply.



SCHEDULE 10 - AMENDMENT OF WORKERS COMPENSATION  
(DUST DISEASES) ACT 1942 - *continued*

- (a) in the case of the amendments made to subsections (2B) (b) (i) and (3) (d), only in respect of the death of a person occurring on or after 1 July 1989; or
  - (b) in any other case, in respect of compensation that becomes payable on or after 1 July 1989 (whether the claim concerned arose before or after that date).
- (f) Section 8 (3) (b):  
After "request", insert ", but despite clause 4 of Part 4 of Schedule 6, section 37 applies without modification".
- (2) Section 11:  
After section 10, insert:  
**Effect of extending Act to other dust diseases: Baker v. Australian Asbestos Insulations Pty. Ltd. overruled**
11. (1) If the Schedule is amended (whether by Act or regulation) so as to include a disease as a dust disease within the meaning of this Act:
- (a) the amendment operates to extinguish an entitlement to compensation under the Principal Act in respect of that disease existing immediately before the amendment unless an application for compensation in respect of the entitlement is made before the amendment; and
  - (b) this Act is to be taken to have always applied to the dust disease.
- (2) Subsection (1) (a) does not operate to extinguish a person's entitlement to compensation if the person does not have an entitlement to compensation under this Act in respect of the matter concerned.
- (3) This section applies to an amendment made to the Schedule whether before or after this section commences (including that made by the Workers' Compensation (Dust Diseases) Amendment Act 1983) but not so as to affect an entitlement to compensation under the Principal Act for

**SCHEDULE 10 - AMENDMENT OF WORKERS COMPENSATION  
(DUST DISEASES) ACT 1942 - *continued***

which an application for compensation has been made before this section commences.

(4) In this section, a reference to the amendment of the Schedule includes a reference to the substitution of the Schedule.

**SCHEDULE 11 - AMENDMENT OF OTHER ACTS**

(Sec. 6)

**Workmen's Compensation (Broken Hill) Act 1920 No. 36:**

Schedule, Part 2 (Compensation Provisions):

(a) Clause 6 (1) (a):

Omit "38.30", "13.40", "13.40", "18.20", "18.20", "18.20", "13.40", insert instead respectively "41.80", "14.60", "14.60", "19.90", "19.90", "19.90", "14.60".

(b) Clause 6 (1) (b):

Omit "38.30", "27.80", "18.20", insert instead respectively "41.80", "30.30", "19.90".

(c) Clause 6 (1) (c):

Omit "38.30", insert instead "41.80".

(d) Clause 6A (b) (i):

Omit "120.70", insert instead "131.70".

(e) Clause 6A (b) (ii):

Omit "120.70", "8.60", insert instead respectively "131.70", "9.40".

(f) Clause 6A (b) (iii):

Omit "50.80", insert instead "55.40".

**Defamation Act 1974 No. 18**

Section 17<sup>BD</sup>:

SCHEDULE 11 - AMENDMENT OF OTHER ACTS - *continued*

Before section 17c, insert:

**Matters arising under Workers Compensation Act 1987**

17BD. (1) There is a defence of absolute privilege:

- (a) for a publication to or by an insurer for the purpose of any claim or any proceedings arising from any claim under the Workers Compensation Act 1987; and
- (b) for a publication by an insurer of a report of a decision or determination in respect of any such claim and of the reason for that decision or determination; and
- (c) for a publication of information under section 93D of the Workers Compensation Act 1987 by the Authority referred to in that section; and
- (d) for a publication to or by an insurer pursuant to an exchange of information authorised by section 93D (2) of the Workers Compensation Act 1987.

(2) In subsection (1), "insurer" and "claim" have the same meanings as in Division 1A of Part 4 of the Workers Compensation Act 1987 and in subsection (1) (d), "insurer" has the extended meaning it has in section 93D of that Act.

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[*Minister's second reading speech made in -  
Legislative Assembly on 1 August 1989  
Legislative Council on 3 August 1989 a.m.*]

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**WORKERS COMPENSATION (BENEFITS) AMENDMENT BILL  
1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Workers Compensation Act 1987:

- (a) to restore, retrospectively to 30 June 1987, common law rights to damages for serious work-related injuries;
- (b) to require injured workers to elect between the recovery of common law damages or the lump sum payments of workers compensation for so-called "Table of Maims" injuries;
- (c) to modify the damages otherwise recoverable in a common law action for a work-related injury by imposing monetary thresholds and maximum limits and by making other changes in line with those applying to awards of damages in motor vehicle accidents;
- (d) to increase (from 30 June 1989) workers compensation benefits for the dependants of deceased workers, for workers suffering serious permanent injuries and for partially incapacitated unemployed workers;
- (e) to make further provision with respect to the rehabilitation of injured workers (including the payment of additional rehabilitation expenses);
- (f) to exclude from the payment of workers compensation benefits injuries received on a worker's daily or other periodic journey to or from work (except in certain cases);
- (g) to make further provisions with respect to workers compensation claims (including the creation of special offences relating to false claims and the exchange of information among insurers);
- (h) to deal with so-called "top-up" arrangements (under which injured workers receive additional compensation) by enabling an appropriate reduction in

## *Workers Compensation (Benefits) Amendment 1989*

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workers compensation or by enabling the imposition of additional premiums for the insurance policies of employers who are a party to any such arrangement;

- (i) to extend the compensation scheme for voluntary bush-fire fighters to surf life savers;
  - (j) to increase the rates of workers compensation payable in the case of work-related dust diseases; and
  - (k) to make other miscellaneous changes.
- 

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation. However the amendments relating to benefit increases are to be taken to have commenced at 4 p.m. on 30 June 1989.

**Clause 3** is a formal provision that gives effect to the Schedules of amendments to the Workers Compensation Act 1987 (Schedules 1-8).

**Clause 4** is a formal provision that gives effect to the Schedule of amendments to the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 (Schedule 9).

**Clause 5** is a formal provision that gives effect to the Schedule of amendments to the Workers' Compensation (Dust Diseases) Act 1942 (Schedule 10).

**Clause 6** is a formal provision that gives effect to the Schedule of amendments to other Acts (Schedule 11).

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### **SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO COMMON LAW RIGHTS**

#### **Restoration of common law rights and modification of damages**

Schedule 1 (1) replaces Part 5 of the Act (which at present provides for the abolition of common law rights to damages for work-related injuries) with a new Part containing the following provisions relating to the restoration of common law rights and the modification of damages.

#### **Division 1 - Preliminary**

**Section 149** defines, for the purposes of the Part, "damages" and "non-economic loss".

**Section 150** ensures that the provisions of the Part relating to common law actions against employers apply equally to any such actions against fellow workers and others for whom the employer is vicariously liable etc.



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### **Division 2 - Common law and other remedies generally**

Section 151 preserves common law actions in negligence or other torts for work-related injuries.

Section 151A requires an injured worker to elect between the recovery of common law damages or the lump sum payment of workers compensation for so-called "Table of Maims" injuries. The election is made by commencing court proceedings for damages or by accepting the lump sum compensation payment.

Section 151B provides that a person who recovers damages must repay any previous workers compensation payments from the damages and is not entitled to any further workers compensation.

Section 151C provides for a 6 months delay before common law actions may be commenced.

Section 151D requires common law actions to be commenced within 3 years unless the leave of the court is obtained.

### **Division 3 - Modified common law damages**

Section 151E applies the Division to the award of damages for work-related injuries except for motor vehicle accidents which are dealt with under Part 6 of the Motor Accidents Act 1988.

Section 151F requires the court to comply with the Division in awarding damages to which the Division applies.

Section 151G deals with the assessment of damages for non-economic loss ("pain and suffering" etc.) generally in accordance with the Motor Accidents Act 1988, namely:

- (a) maximum damages to be \$180,000; and
- (b) no damages unless they exceed \$45,000; and
- (c) damages of between \$45,000 and \$60,000 to be reduced on a sliding scale.

In the case of retrospective claims the figure of "\$45,000" is increased to "\$75,000" and the figure of "\$60,000" is increased to "\$100,000".

Section 151H prevents the award of damages for economic loss (loss of earnings, medical expenses etc.) unless:

- (a) the worker has suffered a "Table of Maims" injury of at least 33% (or 60% for retrospective claims) of the maximum compensation under the "Table of Maims"; or
- (b) the worker has been awarded damages for non-economic loss of at least \$60,000 (or \$100,000 for retrospective claims); or
- (c) the worker dies as a result of the injury.

Section 151I limits the amount of damages for the loss of past or future earnings by imposing a limit of the maximum amount (from time to time) of workers compensation weekly payments (currently \$545.70 per week).



## *Workers Compensation (Benefits) Amendment 1989*

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**Section 151J** requires the application of a discount rate of 5 per cent (or of a subsequently prescribed percentage) in assessing lump sum damages for future economic loss.

**Section 151K** provides for the circumstances in which damages may be awarded for the cost of providing home care services to an injured worker and regulates the amount of any such damages.

**Section 151L** requires consideration to be given in assessing damages to the participation of the injured worker in rehabilitation or other measures that will mitigate damages.

**Section 151M** provides that interest on an award of damages is not to be ordered by a court as a matter of course but rather by way of penalty against a defendant who does not take such steps (if any) as may be reasonable and appropriate to effect settlement of the plaintiff's claim.

**Section 151N** requires a court to reduce a plaintiff's damages in accordance with the law of contributory negligence (including actions based on a breach of statutory duty), but prevents a reduction in damages for loss of future earnings below the amount otherwise payable by way of weekly payments of workers compensation.

**Section 151O** excludes the defence of voluntary assumption of risk and, instead, creates a presumption of negligence on the part of the injured worker for which damages may be reduced.

**Section 151P** limits the class of persons who may claim damages for psychological or psychiatric injury.

**Section 151Q** provides for structured settlements of damages awarded to a plaintiff. The section generally requires an arrangement to be made for periodic payment of at least that part of the loss of future earnings that is equivalent to the basic statutory weekly payment of workers compensation (currently \$173.50 per week).

**Section 151R** prohibits a court from awarding exemplary or punitive damages.

**Section 151S** requires a court to apportion damages in certain cases.

**Section 151T** enables the making of lump sum awards of costs and avoids the necessity for taxation of costs so awarded.

### **Division 4 - Retrospective restoration of modified common law**

**Section 151U** restores common law rights (as modified under Part 5) to injuries received after common law rights were abolished, namely, 30 June 1987.

**Section 151V** excludes, in the case of retrospective claims, the election between common law damages and "Table of Maims" compensation.

**Section 151W** modifies the time limit for commencement of retrospective common law claims.

**Section 151X** extends workers compensation insurance policies since 30 June 1987 so as to cover retrospective common law claims.

## *Workers Compensation (Benefits) Amendment 1989*

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Section 151Y provides for the funding of retrospective common law claims (in excess of the workers compensation entitlement) from premiums in the "managed" funds of workers compensation insurers. The employers whose liability will be so funded include self-insurers, Government employers and employers insured with specialised insurers.

### **Division 5 - Miscellaneous provisions**

Section 151Z makes the necessary provisions and adjustments to deal with common law actions against third-parties at fault (being third-parties who are solely at fault or are jointly at fault with the worker's employer).

Section 151AA continues a provision which abolishes the doctrine of common employment.

### **Other consequential changes**

Schedule 1 (2)-(4) require workers compensation insurance policies to cover employers for liability at common law etc.

Schedule 1 (5) makes a consequential amendment.

## **SCHEDULE 2 - AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO INCREASED BENEFITS**

### **Increased death benefit**

Schedule 2 (1) amends section 25 (death of worker leaving dependants) to increase the maximum amount payable to the dependants of a deceased worker from \$87,350 (the current indexed maximum amount) to \$150,000.

### **"Deemed" total incapacity payments extended to 52 weeks**

Schedule 2 (2) amends section 38 (partially incapacitated unemployed workers compensated as if totally incapacitated) to extend, from 34 to 52 weeks, the maximum period for which a partially incapacitated worker is entitled to receive compensation (by way of income support) as if totally incapacitated. That section applies, as at present, if the partially incapacitated worker's employer fails to provide suitable employment and the worker is either seeking employment or undergoing rehabilitation training.

### **Increased benefit for permanent injuries**

Schedule 2 (3) amends section 66 (compensation for permanent injuries) to increase the maximum amount payable to seriously injured workers (that is, workers who have suffered multiple losses specified in the so-called "Table of Maims") from \$87,350 (the current indexed maximum amount) to \$106,300.



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**SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INDEXATION ETC. OF  
AMOUNTS OF BENEFITS**

**Indexation changes**

Division 6 of Part 3 of the Principal Act at present provides for the indexation of amounts of certain benefits payable under that Part. That is, an adjustable amount (e.g. the maximum death benefit payable under section 25) is adjusted twice a year according to award rates of pay indexes. As a consequence of the increases made by Schedule 2 it is necessary to bring all the adjustable amounts in Part 3 in line with the current figures. Schedule 3 (1) (a), (2), (3), (4), (6) (a), (7) (a), (9) and (10) amend the relevant provisions.

Schedule 3 (8) amends the definition of "base index number" in section 79 to update the index used in calculating an adjustable amount for the purposes of the Act.

**Operation of increased benefits**

Schedule 3 (1) (b), (5), (6) (b) and (7) (c) generally provide that if an amount of compensation is adjusted either by indexation or by amending the section concerned, the compensation payable is the relevant amount in force at the date of the particular injury or death.

**SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION**

**Partially incapacitated workers**

Schedule 4 (1) amends section 38 (partially incapacitated unemployed workers compensated as if totally incapacitated) as follows:

Schedule 4 (1) (a) enables the WorkCover Authority or the Compensation Court to have regard to any delay on the part of a worker or to the worker's efforts in seeking suitable employment when the Authority or the Court approves a longer period than the 2 years from the date the employer first failed to provide suitable employment (being the period in which compensation under section 38 is payable).

Schedule 4 (1) (b) provides that a worker must request the employer to provide suitable employment as soon as practicable after becoming partially incapacitated.

Schedule 4 (1) (c)-(g) extends and clarifies the existing requirements on the part of both the worker and the employer in respect of determining entitlement to compensation under section 38.

Schedule 4 (1) (h) enables regulations to be made regarding approved rehabilitation training procedures etc. and for other related matters.

Schedule 4 (2) inserts section 38A (definitions : section 38) which contains definitions for the purposes of section 38. In particular, "suitable employment" is



## *Workers Compensation (Benefits) Amendment 1989*

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defined to take into account the rehabilitation of the worker as well as individual details.

### **"Suitable employment" - ordinary partial incapacity benefits**

Schedule 4 (3) amends section 40 (weekly payment for partial incapacity) to make further provision for determining what is suitable employment in respect of a worker and also to provide that a partially incapacitated worker may be required to undergo an assessment of the amount that the worker is able to earn in some suitable employment.

### **Compensation for rehabilitation expenses etc.**

Schedule 4 (4) amends section 59 (definitions) to insert a definition of "occupational rehabilitation service", being a wide range of services provided by an accredited provider of rehabilitation services or by a prescribed person or class of persons. These services are to be compensable as a separate rehabilitation expense.

Schedule 4 (5) substitutes section 60 (compensation for cost of medical or hospital treatment and rehabilitation etc.) to take into account occupational rehabilitation service as a separate category of compensation.

Schedule 4 (6) inserts section 63A (rates applicable for occupational rehabilitation service) to provide that the amount for which an employer is liable in respect of occupational rehabilitation service is such amount as is reasonably appropriate to the service provided. The overall maximum amount for which an employer is liable is to be \$1,200 or such greater amount as may be prescribed.

Schedule 4 (11) amends Schedule 6 (savings, transitional and other provisions) to provide that the above set of amendments do not apply to services provided before the commencement of the amendments and do not affect compensation payable for certain treatment before that commencement.

Schedule 4 (7) makes a consequential amendment.

### **Rehabilitation programmes**

Schedule 4 (8) amends section 152 (rehabilitation programmes to be established by employers) to enable a group of 2 or more employers to establish a single rehabilitation programme for each member of the group.

Schedule 4 (9) amends section 154 (rehabilitation counsellors) to provide that a rehabilitation counsellor can include an authorised officer of the Authority.

Schedule 4 (10) inserts section 154A (rehabilitation etc. not admission of liability) to provide that anything done by an employer or insurer in connection with the assessment of an injured worker for rehabilitation or for employment or with the provision or arrangement of rehabilitation services etc. does not constitute an admission of liability.

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**SCHEDULE 5 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO JOURNEYS**

**Compensation for injuries on journeys between worker's home and place of employment**

Schedule 5 (1) (a) amends section 10 (journey claims - where compensation is payable) to remove the general entitlement of workers to compensation for personal injury received on journeys between the worker's home and place of employment (or certain other related places). A personal injury received by a worker on a journey to or from the worker's home will (unless otherwise work-related) be taken to be work-related (and be compensated accordingly) only if the risk of injury (compared with the risk on the worker's normal journey) was materially increased for a reason connected with the worker's employment. Schedule 5 (1) (e) makes it clear that a personal injury received by a worker on any daily or other periodic journey to or from the worker's home is not work-related merely because the journey was made to or from the worker's place of employment or the worker uses a vehicle owned or supplied by the employer.

**Minor or consequential changes**

Schedule 5 (1) (d) enables the regulations to prescribe additional classes of journeys which will be covered.

Schedule 5 (1) (b) and (c) are consequential amendments.

Schedule 5 (2) amends Schedule 6 (savings, transitional and other provisions) to provide that the changes made to journey claims do not apply to injuries on journeys made before the changes take effect.

**SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS**

**Making of claims**

Schedule 6 (2) inserts section 92A (manner of making claim for compensation) which provides that a claim is to be made by serving it on the employer concerned or on the insurer who has indemnified the employer if, for example, the employer has refused to receive the claim or cannot be identified or found. Schedule 6 (1) consequentially amends section 92 (making of claim for compensation) because the manner in which claims are to be made is no longer to be as prescribed by the regulations.

**False claims**

Schedule 6 (2) also inserts section 92B (false claims etc.) which creates an offence (Penalty: \$5,000 or 12 months imprisonment, or both) of making a false or misleading statement in relation to a claim for compensation or the furnishing of information concerning a claim.



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### **Administration of claims for compensation etc.**

Schedule 6 (3) inserts Division 1A (administration of claims for compensation or damages by insurers) in Part 4. The Division contains section 93A (definitions) and the following sections:

Section 93B (claims administration manual) enables the WorkCover Authority to prepare and publish a claims manual for use by insurers. The manual may provide for procedures to be followed in the administration of claims, including liaison between insurers and employers concerning rehabilitation assessment of injured workers and arrangements for partially incapacitated workers. The Authority may also give an insurer directions as to the procedure to be followed and it will be a condition of the licence of the insurer under Part 7 of the Act that the direction is complied with.

Section 93C (duty of claimant to co-operate) requires a claimant to co-operate fully (only until court proceedings are commenced) in respect of a claim with the insurer who is liable. This may involve complying with a reasonable request to furnish specified information in addition to the claim form.

Section 93D (inspection of relevant claims information etc.) enables the WorkCover Authority to allow an insurer or other appropriate person to inspect claims information held by the Authority or other prescribed information. Insurers are also authorised to exchange claims information.

Schedule 6 (4) makes a consequential amendment.

Schedule 6 (5) amends section 276 (disclosure of information) to include disclosure of information in accordance with proposed section 93D as an exception to the existing offence of disclosing information obtained in connection with the administration etc. of the Act.

### **SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS ETC.**

#### **Reduction etc. of benefits if additional or alternative compensation payable**

Schedule 7 (1) inserts Division 8 (reduction of benefits where additional or alternative compensation payable) in Part 3. The Division contains the following sections:

Section 87A (additional or alternative compensation to which Division applies) provides that the Division applies to additional or alternative compensation prescribed by the regulations. This may include payments to injured workers and their dependants under a contract of employment, an award, the Trade Practices Act 1974 etc.

Section 87B (reduction of compensation under this Act) generally provides that if a person who is entitled to compensation under the Act has been paid additional or alternative compensation, then the amount of compensation payable under the Act is reduced by the amount of the additional or alternative compensation. If additional or alternative compensation is paid after



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compensation has been paid under the Act, the relevant amount paid under the Act must be refunded.

Section 87C (employer etc. to notify claim or payment of additional or alternative compensation) provides that an employer or "top-up" insurer on whom a claim is made for additional or alternative compensation (or who pays that compensation) must notify the relevant workers compensation insurer of the details of the claim or payment. It will be an offence (Penalty: \$2,000) to contravene the section.

**Increased insurance premiums**

Schedule 7 (2) amends section 168 (insurance premiums order) to enable an insurance premiums order to provide for the payment of increased premiums by employers who are or may become liable to make "top-up" payments to injured workers etc.

**SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987**

**Schedule 8 (1)** permits the extension of the categories of specialised insurer who are not part of the workers compensation managed fund system.

**Schedule 8 (2)** abolishes the Workers Compensation Review Committee appointed under section 8.

**Schedule 8 (3)** amends section 43 (computation of average weekly earnings) to clarify an existing obligation on the part of an employer to supply an injured worker with certain details in order to enable the worker to determine his or her average weekly earnings.

**Schedule 8 (4)** amends section 62 (rates applicable for hospital treatment) so that the amount for which an employer is liable in respect of public hospital treatment of a worker may be prescribed by regulation (as is the case with private hospitals).

**Schedule 8 (5)** makes the employer liable for the costs of interpreter services provided to an injured worker in connection with a claim for compensation.

**Schedule 8 (6)** amends section 71 to clarify a provision dealing with compensation for a further loss.

**Schedule 8 (7)** substitutes "loss of mental powers" with "brain damage" as an injury in the Table to Division 4 of Part 3 (compensation for permanent injuries). **Schedule 8 (8)** is a consequential amendment.

**Schedule 8 (9)** clarifies the requirement for the payment of the \$500 excess by employers.

**Schedule 8 (10)** enables Government employers who are not funded from the Consolidated Fund to be part of the same workers compensation insurance arrangements as other employers.

## *Workers Compensation (Benefits) Amendment 1989*

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Schedule 8 (11) and (12) make minor amendments concerning the recovery of unpaid premiums and the requirement of former self-insurers to supply certain information and records.

Schedule 8 (13) - (15) and (17) make minor or consequential amendments to various provisions relating to the statutory funds of licensed insurers (particularly in relation to the pooling of premiums) and to the application of money deposited by self-insurers with the Treasurer.

Schedule 8 (16) enables a self-insurer to satisfy the requirement to deposit money with the Treasurer by providing a bank guarantee or undertaking instead.

Schedule 8 (18) corrects a wrong cross-reference.

Schedule 8 (19) - (21) amends Schedule 6 (savings, transitional and other provisions) particularly in respect of the operation of the amendments made by Schedule 8 (4) and in respect of policies of insurance issued or renewed before 4 p.m. on 30 June 1987, and also to enable savings and transitional regulations to be made consequent on the enactment of the proposed Act.

### **SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION (BUSH FIRE, EMERGENCY AND RESCUE SERVICES) ACT 1987**

#### **Surf life savers to be compensated for injury etc.**

Schedule 9 (4) (a) amends section 23 (definitions) to bring surf life savers within the definition of "rescue association worker" and, in so doing, extends the operation of the Act to include surf life savers. Under Part 3 of the Act, if a rescue association worker suffers an injury arising out of or in the course of carrying out an authorised activity, the worker is entitled to receive compensation in accordance with the Workers Compensation Act 1987 (the "Principal Act").

Schedule 9 (4) (b) also amends section 23 to define "surf life saver" widely to include not only members of a club which is affiliated with a branch of the Surf Life Saving Association of Australia - New South Wales State Centre Incorporated, but elected or appointed officers, or advisors, of that Association.

#### **Extension of cover to "prescribed persons"**

Schedule 9 (1) amends section 7 (injuries to which Part applies) to extend the application of Part 2 (bush fire fighters compensation) to personal injury received by a person of a prescribed class arising out of or in the course of carrying out an associated operation or work or a relevant journey. That Part currently covers fire fighters and official fire fighters (i.e. captains etc. of bush fire brigades).

#### **Compensation payable for certain services**

Schedule 9 (2) amends section 10 (compensation payable for injury or death) to provide that a fire fighter is entitled to receive the benefits prescribed by Division 3 of Part 3 (compensation for medical, hospital and rehabilitation expenses etc.) of the Principal Act if an occupational rehabilitation service (as defined in section 59 of that Act) becomes necessary as a result of the fire fighter's injury.



## *Workers Compensation (Benefits) Amendment 1989*

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Schedule 9 (5) amends section 26 (compensation payable for injury or death) to make the same amendment in respect of an emergency service worker or a rescue association worker.

### **Death of fire fighter etc. leaving no dependants**

Schedule 9 (3) amends section 11 (provisions relating to compensation for injury or death) to provide that if a fire fighter has died as a result of an injury and has left no dependants, the amount of compensation (which is not payable in those circumstances under the Principal Act) is not increased by the increases proposed for the dependants of deceased workers.

Schedule 9 (6) amends section 27 (provisions relating to compensation for injury or death) to make the same amendment in respect of an emergency service worker or a rescue association worker who dies as a result of an injury and who leaves no dependants.

### **Minor consequential amendment**

Schedule 9 (7) amends section 32 (application of Principal Act) to further extend the application of certain provisions of the Principal Act.

## **SCHEDULE 10 - AMENDMENT OF WORKERS' COMPENSATION (DUST DISEASES) ACT 1942**

### **Increased rates of compensation etc.**

Schedule 10 (1) amends section 8 as follows:

- Schedule 10 (1) (a) provides for the payment of compensation (in accordance with the benefits set out in Division 3 of Part 3 of the Workers Compensation Act 1987 ("the Principal Act")) for any occupational rehabilitation service that is necessary as a result of a dust disease.
- Schedule 10 (1) (b)-(d) increases the maximum (i.e. lump sum) amount payable to the dependants of a deceased worker from \$25,650 to \$100,000, and increases the weekly payment to the dependants of a deceased worker from \$89.10 to \$97.20 for spouses and from \$31.10 to \$49.10 for each dependent child. An injured worker's weekly payments for incapacity are increased to the amount payable under the Principal Act.
- Schedule 10 (1) (e) provides that the increased rates only apply in respect of the death of a person on or after 1 July 1989 or in respect of compensation that becomes payable after that date.

### **Effect of changes in dust disease compensable under Act**

Schedule 10 (2) inserts section 11 (effect of extending Act to other dust diseases: *Baker v. Australian Asbestos Insulations Pty. Ltd.* overruled). If the Act is extended, the exclusion of the disease from the Workers Compensation Act 1987 is to be taken to apply to existing diseases for which claims have not yet been made under that Act.



*Workers Compensation (Benefits) Amendment 1989*

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**SCHEDULE 11 - AMENDMENT OF OTHER ACTS**

**Workmen's Compensation (Broken Hill) Act 1920**

The Act is amended to update references to rates of compensation as a result of the changes made to the indexation provisions of the Workers Compensation Act 1987.

**Defamation Act 1974**

The Act is amended to extend the defence of absolute privilege to certain publications to or by insurers and the WorkCover Authority in connection with claims and proceedings under the Workers Compensation Act 1987. A similar defence is provided in the case of publications under the Motor Accidents Act 1988.

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FIRST PRINT

**WORKERS COMPENSATION (BENEFITS) AMENDMENT BILL  
1989**

NEW SOUTH WALES



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**WORKERS COMPENSATION (BENEFITS) AMENDMENT BILL  
1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend the Workers Compensation Act 1987 and certain other Acts in relation to common law rights, increases in benefits, journey claims, "top-up" arrangements, and for other purposes.

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Workers Compensation (Benefits) Amendment Act 1989.

**Commencement**

2. (1) Except as provided by this section, this Act commences on a day or days to be appointed by proclamation.

(2) Schedules 2 and 3 (and section 3 in its application to those Schedules) are to be taken to have commenced at 4 p.m. on 30 June 1989.

**Amendment of Workers Compensation Act 1987 No. 70**

3. The Workers Compensation Act 1987 is amended as set out in Schedules 1 - 8.

**Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No. 83**

4. The Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 is amended as set out in Schedule 9.

**Amendment of Workers' Compensation (Dust Diseases) Act 1942 No. 14**

5. The Workers' Compensation (Dust Diseases) Act 1942 is amended as set out in Schedule 10.

**Amendment of other Acts**

6. The Acts specified in Schedule 11 are amended as set out in that Schedule.



**SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS**

(Sec. 3)

(1) Part 5:

Omit the Part, insert instead:

**PART 5 - COMMON LAW REMEDIES**

**Division 1 - Preliminary**

**Definitions**

149. (1) In this Part:

"damages" includes:

- (a) any form of monetary compensation; and
- (b) without limiting paragraph (a), any amount paid under a compromise or settlement of a claim for damages (whether or not legal proceedings have been instituted),

but does not include:

- (c) compensation under this Act; or
- (d) additional or alternative compensation to which Division 8 of Part 3 applies; or
- (e) an award of compensation or direction for compensation under Part 3 or Part 6 of the Victims Compensation Act 1987; or
- (f) any sum required or authorised to be paid under an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940; or
- (g) any sum payable under a superannuation scheme or any life or other insurance policy; or
- (h) any amount paid in respect of costs incurred in connection with legal proceedings; or
- (i) damages of a class which is excluded by the regulations from this definition;

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

"non-economic loss" means:

- (a) pain and suffering; and
- (b) loss of amenities of life; and
- (c) loss of expectation of life; and
- (d) disfigurement.

(2) A reference in this Part to compensation payable under this Act includes a reference to compensation that would be payable under this Act if a claim for that compensation were duly made.

**References to worker's employer includes fellow workers etc.**

150. A reference in this Part to a worker's employer includes a reference to:

- (a) a person who is vicariously liable for the acts of the employer; and
- (b) a person for whose acts the employer is vicariously liable.

**Division 2 - Common law and other remedies generally**

**Common law and other liability preserved**

151. This Act does not affect any liability in respect of an injury to a worker that exists independently of this Act, except to the extent that this Act otherwise expressly provides.

**Election - damages or "Table of Maims" compensation**

151A. (1) In this section:

"damages" does not include damages to which Part 6 of the Motor Accidents Act 1988 applies;

"permanent loss compensation" means compensation under Division 4 of Part 3 (Compensation for non-economic loss).

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO COMMON LAW RIGHTS - *continued*

(2) A person to whom compensation is payable under this Act in respect of an injury is not entitled to both:

- (a) permanent loss compensation in respect of the injury; and
- (b) damages in respect of the injury from the employer liable to pay that compensation,

but is required to elect whether to claim that permanent loss compensation or those damages.

(3) The person makes that election:

- (a) by commencing proceedings in a court to recover those damages or by accepting payment of those damages (in which case the person ceases to be entitled to permanent loss compensation in respect of the injury); or
- (b) by accepting payment of that permanent loss compensation (in which case the person ceases to be entitled to recover damages in respect of the injury).

(4) An election is irrevocable.

(5) If a liability to pay permanent loss compensation results from more than one injury to a worker, a reference in this section to permanent loss compensation is a reference to such part of that compensation as relates to the injury for which damages are recoverable.

**Effect of recovery of damages from employer on payment of compensation**

151B. (1) If a person recovers damages in respect of an injury from the employer liable to pay compensation under this Act:

- (a) the person then ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid); and



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- (b) the amount of any compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded as a lump sum) and is to be paid to the person who paid the compensation.

(2) This section does not apply to a person who recovers damages for non-economic loss in respect of an injury if the person does not recover any damages for economic loss in respect of that injury because of the operation of section 151H (No damages for economic loss unless injury serious).

**6-months delay before commencement of court proceedings against employer for damages**

151C. (1) A person to whom compensation is payable under this Act is not entitled to commence court proceedings for damages in respect of the injury concerned against the employer liable to pay that compensation until 6 months have elapsed since notice of the injury was given to the employer.

(2) Despite subsection (1), the person is entitled to commence court proceedings against the employer if either of the following occurs:

- (a) the employer denies all liability in respect of the injury;
- (b) the employer admits partial liability in respect of the injury but the person is dissatisfied with the extent to which liability is admitted.

**Time limit for commencement of court proceedings against employer for damages**

151D. (1) If a person to whom compensation is payable under this Act commences court proceedings for damages in respect of the injury concerned more than 18 months after the date on which the injury was received, the person must provide a full and satisfactory explanation to the court for the delay.

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(2) A person to whom compensation is payable under this Act is not entitled to commence court proceedings for damages in respect of the injury concerned against the employer liable to pay that compensation more than 3 years after the date on which the the injury was received, except with the leave of the court in which the proceedings are to be taken.

(3) The Limitation Act 1969 does not apply to or in respect of court proceedings to which this section applies.

**Division 3 - Modified common law damages**

**Application**

151E. (1) This Division applies to an award of damages in respect of:

- (a) an injury to a worker; or
- (b) the death of a worker resulting from or caused by an injury,

being an injury caused by the negligence or other tort of the worker's employer.

(2) This Division does not apply to an award of damages to which Part 6 of the Motor Accidents Act 1988 applies.

**General regulation of court awards**

151F. A court may not award damages to a person contrary to this Division.

**Damages for non-economic loss**

151G. (1) No damages are to be awarded for non-economic loss unless the injured worker's ability to lead a normal life is significantly impaired by the injury suffered by the worker.

(2) The amount of damages to be awarded for non-economic loss is to be a proportion, determined

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according to the severity of the non-economic loss, of the maximum amount which may be awarded.

(3) The maximum amount which may be awarded for non-economic loss is \$180,000, but the maximum amount may be awarded only in a most extreme case.

(4) If the amount of non-economic loss is assessed to be \$45,000 or less, no damages for non-economic loss are to be awarded.

(5) If the amount of non-economic loss is assessed to be between \$45,000 and \$60,000, the amount of damages to be awarded for non-economic loss is as follows:

$$\text{Damages} = [\text{Amount so assessed} - \$45,000] \times 4$$

(6) If the injury concerned was received before 4 p.m. on 30 June 1989:

- (a) the references to \$45,000 in subsections (4) and (5) are to be read as references to \$75,000; and
- (b) the reference to \$60,000 in subsection (5) is to be read as a reference to \$100,000.

(7) Division 6 of Part 3 (Indexation of amounts of benefits) applies as if the amounts of \$180,000, \$45,000 and \$60,000 were adjustable amounts.

(8) If an amount mentioned in this section:

- (a) is adjusted by the operation of Division 6 of Part 3;
- or

- (b) is adjusted by an amendment of this section,

the damages awarded are to be assessed by reference to the amount in force at the date of injury.

**No damages for economic loss unless injury serious**

151H. (1) No damages are to be awarded for economic loss unless the injured worker has received a serious injury or dies as a result of the injury.



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- (2) A serious injury is:
  - (a) an injury for which the compensation otherwise payable under section 66 for the loss or losses resulting from that injury is, in the opinion of the court, not less than 33 per cent of the maximum amount from time to time referred to in section 66 (1); or
  - (b) an injury for which damages for non-economic loss of not less than \$60,000 are to be awarded in accordance with this Division (whether or not compensation is payable under section 66).
- (3) If the injury concerned was received before 4 p.m. on 30 June 1989:
  - (a) the reference to 33 per cent in subsection (2) (a) is to be read as a reference to 60 per cent; and
  - (b) the reference to \$60,000 in subsection (2) (b) is to be read as a reference to \$100,000.
- (4) Division 6 of Part 3 (Indexation of amounts of benefits) applies as if the amount of \$60,000 were an adjustable amount.
- (5) For the purposes of determining whether an injury is a serious injury, the court has the powers under this Act of the Compensation Court relating to the reference of a matter to a medical referee or medical panel for report.
- (6) If an amount mentioned in this section:
  - (a) is adjusted by the operation of Division 6 of Part 3; or
  - (b) is adjusted by an amendment of this section,the damages awarded are to be assessed by reference to the amount in force at the date of the injury or death.

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**Damages for economic loss - loss of past or future earnings  
etc.**

151I. (1) This section applies to an award of damages:

- (a) for past economic loss due to loss of earnings; or
- (b) for future economic loss due to the deprivation or impairment of earning capacity; or
- (c) for the loss of expectation of financial support.

(2) In the case of any such award, the court is to disregard the amount (if any) by which the injured or deceased worker's weekly earnings would (but for the injury or death) have exceeded the maximum amount of weekly payments of compensation under section 35.

(3) The maximum amount of weekly payments of compensation under section 35 for a future period is to be the amount that the court considers is likely to be the amount for that period having regard to the operation of Division 6 of Part 3 (Indexation of amounts of benefits).

(4) This section applies even though weekly payments of compensation to the worker concerned are not subject to the maximum amount prescribed under section 35.

**Damages for future economic loss - discount rate**

151J. (1) If an award of damages is to include compensation, assessed as a lump sum, in respect of damages for future economic loss which is referable to:

- (a) deprivation or impairment of earning capacity; or
- (b) the value of future services of a domestic nature or services relating to nursing and attendance; or
- (c) loss of expectation of financial support; or
- (d) a liability to incur expenditure in the future,

the present value of the future economic loss is to be qualified by adopting the prescribed discount rate.

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- (2) The prescribed discount rate is:
- (a) a discount rate of the percentage prescribed by the regulations; or
  - (b) if no percentage is so prescribed, a discount rate of 5 per cent.

(3) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

**Damages for economic loss - maximum amount for provision of certain home care services**

151K. (1) An award of damages is not to include compensation for the value of services of a domestic nature or services relating to nursing and attendance which have been or are to be provided to the injured worker by a member of the same household or family as the injured worker, except in accordance with this section.

(2) No compensation is to be awarded unless the services are provided, or are to be provided, for not less than 6 months and may be awarded only for services provided or to be provided after the 6-month period.

(3) No compensation is to be awarded if the services would have been provided to the injured worker even if the worker had not been injured.

(4) No compensation is to be awarded unless the services provided or to be provided are not less than 6 hours per week and compensation may be awarded only for services provided or to be provided after the first 6 hours.

(5) If the services provided or to be provided are not less than 40 hours per week, the amount of the compensation must not exceed:

- (a) the amount per week comprising the amount estimated by the Australian Statistician as the



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average weekly total earnings of all employees in New South Wales for:

- (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award - that quarter; or
  - (ii) in respect of the whole or any part of any other quarter - the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or
- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

(6) If the services provided or to be provided are less than 40 hours per week, the amount of the compensation must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (5) (a) or (b), as the case may be.

**Mitigation of damages**

151L (1) In assessing damages, the court must consider the steps that have been taken, and that could reasonably have been or be taken, by the injured worker to mitigate those damages.

(2) In particular, the court must consider the following matters:

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- (a) whether the injured worker has undergone appropriate medical treatment;
- (b) whether the injured worker has promptly sought suitable employment from the employer or, if necessary, suitable alternative employment;
- (c) whether the injured worker has duly co-operated in the procedures under the employer's general rehabilitation programme;
- (d) whether the injured worker has sought appropriate rehabilitation training.

(3) In any proceedings for damages, the person claiming damages has the onus of proving that all reasonable steps to mitigate damages have been taken by the injured worker.

(4) In any proceedings for damages, a written report by a person who provided medical or rehabilitation services to the injured worker is admissible as evidence of any such steps taken by that worker.

**Payment of interest**

151M. (1) Except as provided by this section, a court may not, in relation to an award of damages, order the payment of interest (and no interest is payable) on an amount of damages in respect of the period from the date of the death of or injury to the worker to the date of the award.

- (2) A court may order the payment of interest:
  - (a) if the defendant has not taken such steps (if any) as may be reasonable and appropriate to assess the merits of the plaintiff's claim and liability of the defendant in respect of the claim; or
  - (b) if, where it would be appropriate to do so, the defendant has not made an offer of settlement; or

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- (c) if:
  - (i) the defendant has made an offer of settlement; and
  - (ii) the amount awarded by the court (without the addition of interest) is more than 20 per cent higher than the highest amount offered in settlement by the defendant; and
  - (iii) the court is satisfied that the highest amount offered by the defendant was not reasonable having regard to the information available to the defendant at the time the offer was made.

(3) Except as provided by this section, nothing in this section affects any other law relating to the payment of interest on an amount of damages.

**Contributory negligence - generally**

151N. (1) The common law and enacted law as to contributory negligence apply to awards of damages, except as provided by this section.

(2) Damages for deprivation or impairment of earning capacity are not to be reduced because of contributory negligence below the amount that the court estimates would have been payable by way of a commutation of weekly payments of compensation under section 51 if the person concerned were eligible to be paid a lump sum under that section.

(3) In an action for the award of damages founded on a breach of a statutory duty imposed on a defendant, contributory negligence on the part of the injured worker is not a complete defence, but the damages recoverable are to be reduced by such percentage as the court thinks just and equitable having regard to the person's share in the responsibility for the damages.



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(4) Part 3 of the Law Reform (Miscellaneous Provisions) Act 1965 applies to an action for damages referred to in subsection (3).

(5) In an action for the award of damages under the Compensation to Relatives Act 1897, section 10 (4) of the Law Reform (Miscellaneous Provisions) Act 1965 does not apply so as to prevent the reduction of damages by the contributory negligence of the deceased person.

**Defence of voluntary assumption of risk**

151O. The defence of *volenti non fit injuria* is not available in an action for the award of damages but, where that defence would otherwise have been available, the amount of any damages is to be reduced to such extent as is just and equitable on the presumption that the injured or deceased person was negligent in failing to take sufficient care for his or her own safety.

**Damages for psychological or psychiatric injury**

151P. No damages for psychological or psychiatric injury are to be awarded in respect of an injury except in favour of:

- (a) the injured worker; or
- (b) a parent, spouse, brother, sister or child of the injured or deceased person who, as a consequence of the injury to the injured person or the death of the deceased person, has suffered a demonstrable psychological or psychiatric illness and not merely a normal emotional or cultural grief reaction.

**Structured settlements**

151Q. (1) This section applies to an award of damages if:

- (a) the plaintiff is to be awarded damages for the deprivation or impairment of earning capacity and the loss of weekly earning capacity at the date of the

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- award exceeds the statutory weekly payments of workers compensation; or
- (b) the plaintiff or the defendant has requested that it should apply; or
  - (c) the court considers that it should apply.
- (2) In any award of damages to which this section applies, the court must:
- (a) separately determine the amount of damages for non-economic loss, the amount of damages for future economic loss and the amount of damages for past economic loss; and
  - (b) order that any damages determined by the court for future economic loss are to be paid in accordance with such arrangements as the court determines or approves.
- (3) If the plaintiff is to be awarded damages for the deprivation or impairment of earning capacity and the loss of weekly earning capacity at the date of the award exceeds the statutory weekly payments of workers compensation:
- (a) the arrangements for the payment of those damages must provide for the periodic payment of at least the statutory weekly payments of workers compensation; and
  - (b) payments under those arrangements are to be made at intervals not exceeding 12 months during the period from the date of the award until the plaintiff's retiring age.
- (4) Subsection (3) does not apply:
- (a) if (but for the award of damages) the plaintiff would be eligible under section 51 to receive a lump sum by way of commutation of the liability in respect of weekly payments of workers compensation; or
  - (b) in any other case authorised by the regulations.
- (5) The Authority (but not the court) may give approvals under section 51 (1) (c) for the purposes of this section.



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(6) In making an order under this section, the court must have regard to:

- (a) the ability of the plaintiff to manage and invest any lump sum award of damages; and
- (b) the need to ensure that expenses incurred by the plaintiff which are required to be met by the defendant:
  - (i) are not unreasonable having regard to the circumstances of the plaintiff; and
  - (ii) are properly verified; and
  - (iii) relate to the injury caused by the negligence or other tort of the defendant; and
- (c) the principle that costs and expenses are only recoverable by the plaintiff from the defendant in relation to hospital, medical, pharmaceutical and rehabilitation services, services of a domestic nature and services relating to nursing and attendance if the provision of those services is likely to, or is reasonably likely to, advantage the plaintiff; and
- (d) the views of the plaintiff and defendant in relation to the proposed order; and
- (e) such other matters as the court thinks fit.

(7) In making an order under this section relating to damages for deprivation or impairment of earning capacity, the court may order that the damages be used to purchase an annuity for the plaintiff on such terms as the court thinks fit.

(8) A party to any arrangements determined or approved under this section may apply to the court at any time for an order varying or terminating the arrangements.

(9) The court may, on an application under subsection (8), make such order as it thinks fit having regard to the provisions of this section.

(10) The regulations may make provision for or with respect to any matter dealt with in this section and, in



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particular, may impose conditions or limitations on the orders that may be made under this section or otherwise regulate the making of those orders.

(11) In this section:

"retiring age" means the age at which the plaintiff would cease to be entitled to weekly payments of compensation under section 52;

"statutory weekly payments of workers compensation" means the amount of weekly payments of compensation referred to in section 37 (1) (a) (i) at the date of the award concerned.

**Exemplary or punitive damages**

151R. A court may not award exemplary or punitive damages to a person in an award of damages.

**Court to apportion damages etc.**

151S. (1) If a judgment is obtained for payment of damages to which this Division applies as well as for other damages, the court is required, as part of the judgment, to declare what portion of the sum awarded by the judgment is damages to which this Division applies.

(2) In any such case the court is required to apportion any costs awarded.

**Costs**

151T. (1) Subject to the rules of court, if a court awards costs to a plaintiff by reference to the amount recovered by the plaintiff, that amount is to be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with this Division.

(2) The rules of court may make provision for or with respect to the determination and payment of costs otherwise than by taxation.

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**Division 4 - Retrospective restoration of modified  
common law**

**Modified common law to apply from 30 June 1987**

151U. (1) This Part applies to a cause of action in respect of:

- (a) an injury received by a worker at or after 4 p.m. on 30 June 1987; or
- (b) the death of a worker resulting from or caused by such an injury.

(2) This Part has effect as if sections 149 and 150, as originally enacted, had never been enacted.

**Election provisions not to apply**

151V. (1) Section 151A (Election - damages or "Table of Maims" compensation) does not apply:

- (a) in respect of an injury received before 4 p.m. on 30 June 1989; or
- (b) in respect of an injury received at or after that time and before the commencement of section 151A (but that section does apply in respect of any such injury if the person concerned accepts payment of permanent loss compensation after the commencement of that section).

(2) If a person commences proceedings to recover damages, or accepts payment of damages, in respect of an injury to which section 151A does not so apply:

- (a) the person is not entitled to any permanent loss compensation claimed but not yet received; and
- (b) the amount of any such compensation previously paid is to be deducted from those damages.

(3) In this section, "permanent loss compensation" has the same meaning it has in section 151A.

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**Time limit for commencement of court proceedings  
extended**

151W. In the application of section 151D to an injury received before the commencement of that section, the injury is to be taken to have been received on that commencement.

**Insurance policies to cover retrospective claims**

151X. (1) A policy of insurance issued or renewed under this Act before the commencement of this section extends (and is to be taken to have always extended) to the employer's liability independently of this Act for which the employer is required to obtain a policy of insurance under section 155.

(2) Any liability to which a policy of insurance extends because of this section is also a liability to which any corresponding policy of re-insurance extends.

**Funding of self-insurers, government employers etc. for  
retrospective claims**

151Y. (1) This section applies to the following employers:

- (a) self-insurers;
- (b) employers who obtained a policy of insurance from a specialised insurer;
- (c) Government employers who have obtained a policy of insurance from the Government Insurance Office;
- (d) employers who obtained a policy of insurance under the former Act for a period that extended beyond 4 p.m. on 30 June 1987 (not being a policy assigned to a licensed insurer under clause 10 of Part 15 of Schedule 6).

(2) The Authority may establish a special account within the Authority's Fund for the purposes of this section.



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(3) The Authority may require licensed insurers and former licensed insurers to pay into the special account such amounts as the Authority requires in accordance with the following provisions:

- (a) payments are to be made from the statutory funds of the insurers referred to in Division 4 of Part 7;
- (b) payments are not to be made unless the Authority estimates, after a periodic actuarial investigation of those funds under that Division, that there is an overall surplus among those funds (and are not to be made so as to place any of those funds in deficit, as estimated by the Authority);
- (c) a direction is to be given by notice served on the insurers concerned;
- (d) amounts paid into the special account may be refunded for the purposes of making necessary adjustments.

(4) The Authority may recover as a debt in a court of competent jurisdiction any payment which an insurer does not pay in accordance with a direction under this section.

(5) The Authority may from the special account pay such amounts as it considers appropriate to fund the liability of employers for the relevant part of retrospective claims (being employers who, at the time of the injury giving rise to the claim, were employers to whom this section applies).

(6) For the purposes of this section:

- (a) retrospective claims are claims for damages to which those employers have become liable because of the enactment of the Workers Compensation (Benefits) Amendment Act 1989 in respect of injuries received by workers after 4 p.m. on 30 June 1987 and before 4 p.m. on 30 June 1989; and
- (b) the relevant part of a retrospective claim is that part that the Authority estimates represents the amount of damages (and associated expenses) in excess of

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the amount of workers compensation which was or would have been payable in respect of the injury concerned.

(7) The Authority is not obliged to fund a liability of an employer under this section and may impose conditions on the making of payments under this section.

(8) The Authority is not to fund an employer in respect of any liability for which the employer is already indemnified under a policy of insurance (or re-insurance) to which this Act does not apply.

(9) This section does not limit the liability of a specialised insurer, the Government Insurance Office or any other insurer under a policy of insurance to which section 151X applies.

**Division 5 - Miscellaneous provisions**

**Recovery against both employer and stranger**

151Z (1) If the injury for which compensation is payable under this Act was caused under circumstances creating a liability in some person other than the worker's employer to pay damages in respect of the injury, the following provisions have effect:

- (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;
- (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;



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- (c) if the worker firstly recovers those damages the worker is not entitled to recover compensation under this Act;
  - (d) if the worker has recovered compensation under this Act, the person by whom the compensation was paid is entitled to be indemnified by the person so liable to pay those damages;
  - (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 is, to the extent of its amount, a defence to proceedings by the worker against that person for damages;
  - (f) all questions relating to matters arising under this section are, in default of agreement, to be settled by action or, with the consent of the parties, by the Compensation Court.
- (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
  - (b) the worker also takes or is entitled to take proceedings independently of this Act to recover damages from that employer,
- the following provisions have effect:
- (c) the damages that may be recovered from the person by the worker in proceedings referred to in paragraph (a) are to be reduced by the amount by which the contribution which the person would (but for this Part) be entitled to recover from the employer as a joint tortfeasor or otherwise exceeds the amount of the contribution recoverable;
  - (d) the amount of the contribution that the person is entitled to recover from the employer as a joint tortfeasor or otherwise is to be determined as if the



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whole of the damages were assessed in accordance with provisions of Division 3 as to the award of damages;

- (e) if the worker does not take proceedings against that employer or does not accept satisfaction of the judgment against that employer, subsection (1) applies as if the worker had not been entitled to recover damages from that employer, except that:
  - (i) if the compensation paid by that employer exceeds the amount of the contribution that could be recovered from that employer as a joint tortfeasor or otherwise - the indemnity referred to in subsection (1) (d) is for the amount of the excess only; and
  - (ii) if the compensation paid by that employer does not exceed the amount of that contribution - subsection (1) (d) does not apply and the employer has, to the extent of the compensation so paid, a defence to an action for such a contribution.

(3) 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.

(4) If a worker is liable 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 recovery by way of periodic or other payments for loss of future earnings or earning capacity or for future expenses.

**Abolition of doctrine of common employment**

151AA. (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

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was caused, in common employment with the person injured.

(2) 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.

(3) 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; and
- (b) any disease; and
- (c) any impairment of the physical or mental condition of a person.

(2) Section 155 (**Compulsory insurance for employers**):

(a) After "by the employer" in section 155 (1), insert "and for an unlimited amount in respect of the employer's liability independently of this Act (being a liability under a law of New South Wales) for any injury to any such worker".

(b) After section 155 (1), insert:

(1A) In subsection (1), "injury" includes a dust disease as defined in the Workers' Compensation (Dust Diseases) Act 1942 and the aggravation, acceleration, exacerbation or deterioration of a dust disease as so defined.

(3) Section 158 (**Insurance for trainees**):

After "that trainee" in section 158 (3), insert "and for an unlimited amount in respect of the employer's liability independently of this Act (being a liability under a law of

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New South Wales) for any injury (as defined in section 155 (1A)) to that trainee".

(4) **Section 159 (Provisions of policies of insurance):**

After "under this Act" in section 159 (2) (a), insert "or other amount independently of this Act".

(5) **Schedule 6, Part 14 (Provisions relating to common law remedies):**

Omit clause 1 (1), insert instead:

(1) Part 5 of the Act (except section 151AA) does not apply to a cause of action in respect of:

- (a) an injury received by a worker before 4 p.m. on 30 June 1987; or
- (b) the death of a worker resulting from or caused by such an injury.

**SCHEDULE 2 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INCREASED BENEFITS**

(Sec. 3)

(1) **Section 25 (Death of worker leaving dependants):**

Section 25 (1) (a):

Omit "\$80,000", insert instead "\$150,000".

(2) **Section 38 (Partially incapacitated unemployed workers compensated as if totally incapacitated):**

Omit section 38 (1) - (6), insert instead:

(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,



SCHEDULE 2 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INCREASED BENEFITS - *continued*

the worker is to be compensated in accordance with this section during the partial incapacity for work (but only for a maximum period of 52 weeks).

(2) In any such case, the worker is to be compensated as if the worker's incapacity for work were total during the following periods of the worker's partial incapacity for work:

- (a) a period (not exceeding 52 weeks 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 44 weeks) during which the worker is receiving approved rehabilitation training;
- (c) a period (not exceeding 4 weeks after the completion of any such training) during which the worker is seeking suitable employment.

(3) Compensation in accordance with this section is payable at the following rates:

- (a) for the first 4 weeks of the employment-seeking period referred to in subsection (2) (a) - the rate prescribed by this Act for the first 26 weeks of incapacity;
- (b) for the first 26 weeks of the approved rehabilitation training period referred to in subsection (2) (b) - the rate prescribed by this Act for the first 26 weeks of incapacity;
- (c) for any subsequent employment-seeking period (that is, between weeks 5 - 52 of the period referred to in subsection (2) (a)) - the relevant rate prescribed by this Act for the period of incapacity concerned;
- (d) for any subsequent approved rehabilitation training period (that is, between weeks 27 - 44 of the period referred to in subsection (2) (b)) - the rate prescribed by this Act for a period of incapacity after the first 26 weeks;

**SCHEDULE 2 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INCREASED BENEFITS - *continued***

- (e) for any post-training employment-seeking period (that is, for the period referred to in subsection (2) (c)) - the rate prescribed by this Act for the first 26 weeks of incapacity.

(4) Any period during which a worker is compensated under subsection (2) (a) as if totally incapacitated (not being the first 4 weeks of that period) reduces, by an equivalent amount, the period during which the worker would otherwise be entitled to compensation under subsection (2) (b) or (c).

**(3) Section 66 (Compensation for permanent injuries):**

Section 66 (2):

Omit "\$80,000", insert instead "\$106,300".

**SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INDEXATION ETC. OF  
AMOUNTS OF BENEFITS**

(Sec. 3)

**(1) Section 25 (Death of worker leaving dependants):**

- (a) Section 25 (1) (b):

Omit "\$45", insert instead "\$49.10".

- (b) Omit section 25 (4), insert instead:

(4) If an amount mentioned in subsection (1) (a) at any time after the commencement of this Act:

- (a) is adjusted by the operation of Division 6; or
- (b) is adjusted by an amendment of this section,

the compensation payable under subsection (1) (a) is to be calculated by reference to the amount in force at the date of death.

(4A) If the death of a worker results both from an injury received before the adjustment of an amount mentioned in subsection (1) (a) and an injury received after that adjustment, the worker shall, for the purposes of

SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INDEXATION ETC. OF AMOUNTS OF  
BENEFITS - *continued*

subsection (1) (a), be treated as having died as a result of the injury received after that adjustment.

(2) Section 35 (**Maximum weekly payment**):

Omit "\$500", insert instead "\$545.70".

(3) Section 37 (**Weekly payment during total incapacity - after first 26 weeks**):

Omit "\$159", "\$126.40", "\$114.90", "\$103.40", "\$42", "\$30", "\$67", "\$111", "\$156" (where twice occurring) and "\$45", insert instead "\$173.50", "\$138", "\$125.40", "\$112.90", "\$45.80", "\$32.70", "\$73.10", "\$121.10", "\$170.30" and "\$49.10", respectively.

(4) Section 40 (**Weekly payment during partial incapacity**):

Omit "\$500" wherever occurring, insert instead "\$545.70".

(5) Section 65 (**Interpretation**):

After section 65 (2), insert:

(3) If a loss mentioned in the Table to this Division resulted both from an injury received before the adjustment of an amount mentioned in section 66 or 67 and an injury received after that adjustment, the loss shall, for the purposes of those sections, be treated as having resulted from the injury received after that adjustment.

(6) Section 66 (**Compensation for permanent injuries**):

(a) Section 66 (1):

Omit "\$80,000", insert instead "\$87,350".

(b) Omit section 66 (3), insert instead:

(3) If an amount mentioned in this section at any time after the commencement of this Act:



SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INDEXATION ETC. OF AMOUNTS OF  
BENEFITS - *continued*

- (a) is adjusted by the operation of Division 6; or  
(b) is adjusted by an amendment of this section,  
the compensation payable under this section is to be  
calculated by reference to the requisite percentage of the  
amount in force at the date of injury.
- (7) Section 67 (**Compensation for pain and suffering**):
- (a) Section 67 (1):  
Omit "\$40,000", insert instead "\$43,700".
- (b) Section 67 (2):  
Omit "that section", insert instead "section 66 (1)".
- (c) Omit section 67 (6), insert instead:
- (6) If an amount mentioned in this section at any time  
after the commencement of this Act:
- (a) is adjusted by the operation of Division 6; or  
(b) is adjusted by an amendment of this section,  
the compensation payable under this section is to be  
calculated by reference to the amount in force at the date  
of injury.
- (8) Section 79 (**Definitions**):
- Omit "220" from the definition of "base index number",  
insert instead "240.1".
- (9) Section 81 (**Rounding off**):
- Omit "\$80,000 or \$40,000" in section 81 (1), insert instead  
"\$150,000, \$106,300, \$87,350 or \$43,700".
- (10) Schedule 6 (**Savings and transitional provisions**):
- (a) Part 3, clause 2:  
Omit "\$62,200" and "\$31.10" wherever occurring, insert  
instead "\$67,900" and "\$33.90", respectively.

SCHEDULE 3 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO INDEXATION ETC. OF AMOUNTS OF  
BENEFITS - *continued*

- (b) Part 4, clause 4:  
Omit "\$36.40" and "\$18.20" wherever occurring, insert  
instead "\$39.70" and "\$19.90", respectively.

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION

(Sec. 3)

- (1) Section 38 (**Partially incapacitated unemployed workers compensated as if totally incapacitated**):
- (a) Omit section 38 (7), insert instead:
- (7) Compensation is payable in accordance with this section in respect of a period even though the period comprises a number of separate periods.
- (7A) However, 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 Authority or the Compensation Court may approve in a particular case.
- (7B) The Authority or the Compensation Court may, in respect of such an approval, have regard to the following:
- (a) whether the worker unreasonably delayed seeking suitable employment or, if appropriate, approved rehabilitation training;
- (b) the worker's efforts in seeking suitable employment or the worker's actual performance in any approved rehabilitation training.
- (b) Omit section 38 (10) (a), insert instead:
- (a) the worker has, as soon as reasonably practicable after the worker becomes partially incapacitated, requested the employer to provide suitable employment;

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

(c) After section 38 (10), insert:

(10A) A worker is not to be regarded as being ready, willing and able to accept an offer of suitable employment if the worker unreasonably refuses to co-operate in procedures connected with the provision or arrangement of suitable employment or rehabilitation training under the employer's rehabilitation programme (if any) established under section 152.

(10B) If:

- (a) a worker referred to in subsection (10) receives rehabilitation training under an arrangement where the employer has proposed or undertaken to provide employment which will be suitable for the worker on completion of the training concerned; and
- (b) the employer does not pay an appropriate wage or salary to the worker for attendance at that training, the employer is to be regarded as having failed to provide suitable employment during that period of training.

(10c) If an employer (not being a self-insurer) is dead in the case of a natural person, has been wound up in the case of a corporation or cannot be identified or found in either case, a reference in subsection (10) (a) or (b) to an employer is to be taken to be a reference to the insurer who is liable to indemnify the employer.

(d) Omit section 38 (11) (a), insert instead:

- (a) has unreasonably refused or failed to accept an offer of suitable employment from any person;

(e) Omit section 38 (11) (d), insert instead:

- (d) has unreasonably refused or failed to accept an offer of approved rehabilitation training from any person.



SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- (f) After section 38 (11), insert:
  - (11A) For the purposes of this section, a worker is (subject to the regulations) to be treated as seeking suitable employment:
    - (a) during any reasonable period when the worker is waiting for a response to a request for suitable employment made by the worker and received by the employer; and
    - (b) if the employer's response is that suitable employment may or will be provided at some future time - until that time arrives; and
    - (c) during any reasonable period between approval of rehabilitation training and the commencement of the training concerned.
- (g) Omit "may," in section 38 (12), insert instead "or the insurer or self-insurer concerned may, "
- (h) Omit section 38 (14), insert instead:
  - (14) The regulations may make provision for or with respect to:
    - (a) the seeking of suitable employment by workers; and
    - (b) the procedures and forms for applications for approved rehabilitation training (including rehabilitation plans prepared by providers accredited under section 152, or other appropriate persons, for the purpose of such applications); and
    - (c) the determination of eligibility for approved rehabilitation training; and
    - (d) the conditions of approval by insurers or self-insurers in connection with approved rehabilitation training for particular workers; and
    - (e) approvals by insurers or self-insurers in connection with approved rehabilitation training generally.

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

(2) Section 38A:

After section 38, insert:

**Definitions: section 38**

38A. For the purposes of section 38:

"approved rehabilitation training" means:

- (a) vocational or vocationally useful re-education or training which may be combined with rehabilitation treatment or other things authorised by the regulations; or
- (b) rehabilitation training of a prescribed class, which is approved by the Authority or by the Compensation Court (or by the insurer or self-insurer concerned) and is undertaken in accordance with such conditions as the Authority or the Compensation Court (or the insurer or self-insurer concerned) may impose in giving that approval;

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

"suitable employment", in relation to a worker, means employment in work for which the worker is suited, having regard to the following:

- (a) the nature of the worker's incapacity and pre-injury employment;
- (b) the worker's age, education, skills and work experience;
- (c) the worker's place of residence;
- (d) the details given in the medical certificate supplied by the worker;
- (e) the provisions of the employer's rehabilitation programme (if any) established under section 152 and any rehabilitation assessment of, or

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- rehabilitation plan in respect of, the worker carried out or prepared by a provider accredited under that section or other appropriate person;
- (f) the length of time the worker has been seeking suitable employment;
  - (g) any other relevant circumstances,  
and a reference in section 38 to suitable employment provided or offered by the worker's employer includes:
  - (h) employment in respect of which:
    - (i) the numbers of hours each day or week that the worker performs work; or
    - (ii) the range of duties the worker performs, is suitably increased in stages (in accordance with a rehabilitation plan or otherwise); and
  - (i) if the employer does not provide employment involving the performance of work duties - suitable training of a vocationally useful kind provided:
    - (i) by the employer at the workplace or elsewhere; or
    - (ii) by any other person or body under arrangements approved by the employer, but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends the training concerned,  
but does not include:
  - (j) employment that is merely of a token nature and does not involve useful work having regard to the employer's trade or business; or
  - (k) employment that is demeaning in nature, having regard to paragraphs (a) and (b) and to the worker's other employment prospects.



SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- (3) Section 40 (**Weekly payment during partial incapacity**):
- (a) After section 40 (1), insert:
- (1A) A reference in this section to an injured worker's ability to earn in some suitable employment is a reference to the amount that the worker is able to earn in the general labour market reasonably accessible to the worker, and for the purpose of determining that amount regard may be had (subject to subsection (2)) to:
- (a) the kind of employment for which the worker has received any approved rehabilitation training (as defined in section 38A); and
- (b) suitable employment (as so defined) for the worker.
- (b) Omit section 40 (5), insert instead:
- (5) Subsection (3) does not apply to any period of partial incapacity for work occurring after the first 26 weeks of incapacity (being the first 4 weeks of the employment-seeking period referred to in section 38 (2) (a)) during which the worker would (but for the worker obtaining suitable employment with another employer) have been compensated under this Act as if the worker's incapacity for work were total.
- (6) An injured worker who is partially incapacitated for work may be required by the employer to undergo an assessment of the worker's ability to earn in some suitable employment.
- (7) Any such assessment is at the cost of the person who requires it.
- (8) Any such assessment is to comply with such guidelines as are prescribed by the regulations.
- (9) If an injured worker fails, without reasonable excuse, to undergo any such assessment, the right to weekly compensation for partial incapacity for work is suspended while the failure continues.

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

(4) Section 59 (**Definitions**):

- (a) Definitions of "approved" and "treatment by way of rehabilitation":

Omit the definitions.

- (b) Definition of "medical or related treatment":

(i) Omit paragraph (c).

(ii) Omit "or hospital treatment", insert instead  
", hospital treatment or occupational rehabilitation  
service".

- (c) After the definition of "medical practitioner", insert:

"occupational rehabilitation service" means any of the  
following services provided by or on behalf of a  
provider accredited under section 152 or by a person,  
or a person of a class, prescribed by the regulations:

- (a) initial rehabilitation assessment;
- (b) functional assessment;
- (c) workplace assessment;
- (d) job analysis;
- (e) advice concerning job modification;
- (f) rehabilitation counselling;
- (g) vocational assessment;
- (h) advice or assistance concerning job-seeking;
- (i) advice or assistance in arranging vocational  
re-education or training;
- (j) preparation of a rehabilitation plan;
- (k) any other service prescribed by the regulations,  
but does not include hospital treatment;

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

(5) Section 60:

Omit section 60, insert instead:

**Compensation for cost of medical or hospital treatment  
and rehabilitation etc.**

60. (1) If, as a result of an injury received by a worker, it is reasonably necessary that:

- (a) any medical or related treatment be given; or
- (b) any hospital treatment be given; or
- (c) any ambulance service be provided; or

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

(2) If it is necessary for a worker to travel in order to receive any such treatment or service (except any treatment or service excluded from this subsection by the regulations), the related travel expenses 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 or being provided with the service; and
- (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 or provided with the service.

(3) Payments under this section are to be made as the costs are incurred, but only if properly verified.

(4) The fact that a worker is a contributor to a medical, hospital or other benefit fund, and is therefore entitled to any treatment or service either at some special rate or free



SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

or entitled to a refund, does not affect the liability of an employer under this section.

(6) Section 63A:

After section 63, insert:

**Rates applicable for occupational rehabilitation service**

63A (1) The amount for which an employer is liable for any occupational rehabilitation service provided to or for the benefit of a worker is such amount as is reasonably appropriate to the service provided, having regard to the reasonable necessity for the service and any guidelines prescribed by the regulations.

(2) The maximum amount for which an employer is liable for any particular occupational rehabilitation service is such sum (if any) as may be prescribed by the regulations in respect of that service.

(3) The maximum amount for which an employer is liable for any occupational rehabilitation services provided to or for the benefit of a worker in respect of the same injury (whether the same or different kinds of services, but not services excluded from this subsection by the regulations) is:

(a) \$1,200; or

(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 or of the provider of the services concerned, the Authority or other prescribed person may, subject to the regulations and any order of the Compensation Court, direct that the employer is liable for a further amount to that prescribed by subsection (3).

(5) The regulations may:

(a) exempt an employer from liability under this Division for occupational rehabilitation services unless the services are approved in the manner, or

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

- provided in the circumstances, specified in the regulations; and
- (b) exempt a worker from liability to pay any amount for occupational rehabilitation services that exceeds the amount for which the employer is liable under this Division.
- (6) Any amount for which an employer is liable under this Division in respect of occupational rehabilitation services may be recovered from the employer by the person who provided the service.
- (7) Section 91 (**Notice of incapacity, medical etc. treatment and damage to property**):  
After "hospital treatment", insert ", occupational rehabilitation service".
- (8) Section 152 (**Rehabilitation programmes to be established by employers**):
- (a) At the end of section 152 (3) (d), insert "and".
- (b) Section 152 (3) (e):  
Omit the paragraph.
- (c) At the end of the section, insert:  
(4) A group of 2 or more employers may establish a single general rehabilitation programme under this section for each member of the group if the employers are authorised to do so by the regulations.
- (9) Section 154 (**Rehabilitation counsellors**):
- (a) Section 154 (3):  
Omit "the Compensation Court", insert instead "any court".
- (b) At the end of the section, insert:  
(6) A reference in this section to a rehabilitation counsellor includes a reference to any officer of the Authority who is authorised by the Authority to exercise the functions of a rehabilitation counsellor under this section.

SCHEDULE 4 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO REHABILITATION - *continued*

(10) Section 154A:

After section 154, insert:

**Rehabilitation etc. not admission of liability**

154A. Anything done by an employer or insurer (whether under a general rehabilitation programme or otherwise) in connection with the following does not constitute an admission of liability by the employer or insurer under this Act or independently of this Act:

- (a) the assessment of an injured worker for rehabilitation or for employment;
- (b) the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers.

(11) Schedule 6 (**Savings, transitional and other provisions**):

At the end of Part 5, insert:

**Occupational rehabilitation services**

8. The amendments made to Division 3 of Part 3 of this Act by Schedule 4 (4) - (7) to the Workers Compensation (Benefits) Amendment Act 1989:

- (a) do not apply to occupational rehabilitation services provided before the commencement of Schedule 4 (4) - (7) to that Act; and
- (b) do not affect compensation payable for medical or related treatment, or hospital treatment, given before that commencement.

SCHEDULE 5 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO JOURNEYS

(Sec. 3)

(1) Section 10 (**Journey claims - where compensation is payable**):

- (a) Section 10 (3) (a), (e), (f), (g):



SCHEDULE 5 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO JOURNEYS - *continued*

Omit the paragraphs, insert instead:

- (a) a daily or other periodic journey between the worker's place of abode and place of employment if the risk of injury on that journey, compared with the risk of injury on the worker's normal daily or other periodic journey, is materially increased for a reason connected with the worker's employment (including the distance travelled, the time of day or night, the method of travel or the route of the journey);
- (b) Section 10 (3) (b):  
Omit "place of abode, or place of employment", insert instead "place of employment".
- (c) Section 10 (3) (c), (d):  
Omit "place of abode or" wherever occurring.
- (d) After section 10 (3) (d), insert:
  - (e) any other journey of a class prescribed by the regulations.
- (e) Omit section 10 (4), insert instead:
  - (4) A personal injury received by a worker on any daily or other periodic journey to or from the worker's place of abode is not, for the purposes of this Act, an injury arising out of or in the course of employment merely because:
    - (a) the journey was made to or from a place of employment; or
    - (b) the worker uses a vehicle owned or supplied by or on behalf of the employer.
  - (4A) A reference in subsection (3) (a) or (4) to a journey to or from the worker's place of employment includes a reference to a journey to or from:
    - (a) an educational institution referred to in subsection (3) (b); or
    - (b) any other place referred to in subsection (3) (c) or (d); or

SCHEDULE 5 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO JOURNEYS - *continued*

- (c) a place of pick-up referred to in clause 14 of Schedule 1.
- (2) Schedule 6 (**Savings and transitional provisions**):
  - (a) Part 2, clause 2:

Omit "that section applies", insert instead "that section applied before the amendments made to that section by Schedule 5 to the Workers Compensation (Benefits) Amendment Act 1989".
  - (b) Part 2, clause 2:

At the end of the clause, insert:

(2) In the case of a personal injury received by a worker after the commencement of section 10 of this Act and before the commencement of Schedule 5 to the Workers Compensation (Benefits) Amendment Act 1989 on a journey to which that section applied before the commencement of that Schedule, liability is to be determined in accordance with the provisions of that section as in force before the commencement of that Schedule.

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS

(Sec. 3)

- (1) Section 92 (**Making of claim for compensation**):

Omit section 92 (1) (d), insert instead:

(d) made in the manner prescribed by section 92A.
- (2) Sections 92A, 92B:

After section 92, insert:

**Manner of making claim for compensation**

92A. (1) The manner of making a claim for compensation is by serving the claim on the employer from whom the compensation is claimed.

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

(2) If there is more than one employer, a claim for compensation may be made by serving the claim on any one of those employers.

(3) A claim for compensation may be made by serving the claim on an insurer who has indemnified the employer in respect of the claim if:

- (a) the person making the claim has reason to believe that the employer may not forward the claim to the insurer in accordance with section 93 (1) (a); or
- (b) the employer has refused to receive the claim; or
- (c) the person making the claim cannot identify or find the employer; or
- (d) the employer (being a natural person) is dead; or
- (e) the employer (being a corporation) has been wound up.

(4) For the purposes of this clause, a claim for compensation is served on a person if:

- (a) it is given personally to the person; or
- (b) it is delivered or sent by post to the residence or any place of business of the person; or
- (c) it is served in any other manner authorised by sections 528, 529 and 530 of the Companies (New South Wales) Code.

**False claims etc.**

92B. (1) A person who makes a statement knowing that it is false or misleading in a material particular:

- (a) in a notice given by the person under this Division; or
- (b) in a claim for compensation made by the person; or
- (c) in a medical certificate or other document that accompanies a claim for compensation; or
- (d) when furnishing information to any person concerning a claim for compensation (whether the



SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

information is furnished by the person who made  
the claim or not),

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for  
12 months, or both.

(2) This section does not apply to statements:

(a) verified by statutory declaration; or

(b) made in documents filed, or information furnished,  
in court proceedings; or

(c) made in a document that accompanies a claim for  
compensation (in any case in which the person who  
made the statement did not know that the  
document was to accompany the claim); or

(d) made before the commencement of this section.

(3) Part 4, Division 1A:

Before section 94, insert:

**Division 1A - Administration by insurers of  
claims for compensation or damages**

**Definitions**

93A. In this Division:

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

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

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

**Claims administration manual**

93B. (1) The Authority may prepare and publish a claims  
manual for use by insurers.

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

(2) In preparing the claims manual, the Authority is required to promote, as far as practicable:

- (a) the prompt processing of claims and payment of amounts duly claimed; and
- (b) the giving of information about workers' entitlements and about procedures for the making of claims and the resolution of disputes; and
- (c) the minimisation of the effect of injuries to workers by the making of prompt arrangements for rehabilitation; and
- (d) the proper investigation of liability for claims; and
- (e) the recovery of proper contributions in connection with claims from other insurers or persons.

(3) The claims manual may make provision (not inconsistent with this Act or the regulations) in connection with all matters relating to the administration of claims, including:

- (a) liaison between insurers and employers concerning rehabilitation assessment of injured workers; and
- (b) the provision or arrangement of suitable employment or rehabilitation training for partially incapacitated workers; and
- (c) the monitoring of employment-seeking activities or rehabilitation training by partially incapacitated workers; and
- (d) arrangements for the settlement of claims for damages.

(4) The Authority may give an insurer directions as to the procedure to be followed in the administration of any claim or class of claims in order to comply with the claims manual and this Act.

(5) It is a condition of the licence of an insurer under Part 7 that the insurer comply with any direction given to the insurer under this section.

SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

**Duty of claimant to co-operate**

93c. (1) A claimant must co-operate fully in respect of the claim with the insurer liable under the claim.

(2) In particular, the claimant must comply with any reasonable request by the insurer to furnish specified information (in addition to the information furnished in the claim form).

(3) The duty under this section applies only until court proceedings are commenced in respect of the claim but if the claimant fails without reasonable excuse to comply with this section, court proceedings cannot be commenced in respect of the claim while the failure continues.

**Inspection of relevant claims information etc.**

93d. (1) The Authority may allow:

- (a) an insurer; or
- (b) such other persons or bodies as the Authority thinks appropriate,

to inspect information held by the Authority relating to claims or any other information held by the Authority that is prescribed by the regulations.

(2) Insurers are authorised to exchange information held by them relating to claims or any other information held by them that is prescribed by the regulations.

(3) In this section:

"claims" includes claims for compensation under the former Act, claims for compensation or other benefits under any other Act and potential claims;

"insurer" includes the Government Insurance Office and a licensed insurer under the Motor Accidents Act 1988.



SCHEDULE 6 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO CLAIMS - *continued*

- (4) Section 94 (**Reports to Authority by insurers concerning injuries, incapacity etc.**):

Omit section 94 (2).

- (5) Section 276 (**Disclosure of information**):

Section 276 (cl):

After section 276 (c), insert:

- (cl) in accordance with section 93D (inspection of relevant claims information etc.);

SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS ETC.

(Sec. 3)

- (1) Part 3, Division 8:

After Division 7 of Part 3, insert:

**Division 8 - Reduction of benefits  
where additional or alternative  
compensation payable**

**Additional or alternative compensation to which Division  
applies**

87A (1) This Division applies to additional or alternative compensation prescribed by the regulations.

(2) The regulations may prescribe any of the following as additional or alternative compensation:

- (a) payments to workers or their dependants in respect of injuries or deaths under any specified or class of contract of employment, industrial agreement, award or other arrangement (including payments as a supplement or an alternative to the periodic or lump sum payments of compensation under this Act);
- (b) damages for breaches of section 52, 53B or 55A of the Trade Practices Act 1974 of the Commonwealth;

SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS  
ETC. - *continued*

(c) any other payments in respect of injuries or deaths for which compensation is payable under this Act.

(3) The regulations may prescribe additional or alternative compensation even though the arrangements under which it is paid were made before the commencement of this Division.

(4) For the purposes of this Division, compensation is paid to a worker or other person if it is paid for the benefit or at the direction of the worker or other person.

**Reduction of compensation under this Act**

87B. (1) If a person who is entitled to compensation under this Act has been paid additional or alternative compensation to which this Division applies, the amount of compensation payable under this Act is to be reduced by the amount of the additional or alternative compensation.

(2) If any such additional or alternative compensation is paid after compensation has been paid under this Act, the relevant amount of compensation paid under this Act is to be refunded.

(3) Any such refund may be deducted from any future payments of compensation under this Act or be recovered as a debt in a court of competent jurisdiction.

(4) A reduction, refund or deduction under this section is to be made in accordance with the regulations and is not to be made in any case excluded by the regulations.

(5) This section applies even though the compensation under this Act is payable under an award of the Compensation Court.

**Employer etc. to notify claim or payment of additional or alternative compensation**

87C. (1) An employer (not being a self-insurer) or top-up insurer on whom a claim is made for additional or alternative compensation to which this Division applies (or who pays any such compensation) must, within 7 days after receipt of the claim or making the payment, notify the

SCHEDULE 7 - AMENDMENT OF WORKERS COMPENSATION  
ACT 1987 RELATING TO "TOP-UP" ARRANGEMENTS  
ETC. - *continued*

relevant workers compensation insurer of the details of the claim or payment.

(2) For the purposes of this section:

(a) the relevant workers compensation insurer is the insurer who the employer believes is liable to indemnify the employer in respect of a claim under this Act for compensation for the injury to the worker concerned; and

(b) a top-up insurer is a person who indemnifies an employer against liability for additional or alternative compensation.

(3) A person who contravenes this section is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) Section 168 (**Insurance premiums order**):

After section 168 (3), insert:

(3A) Without limiting the generality of subsection (3), an insurance premiums order may provide for the payment of increased premiums by employers who (under any specified or class of contract of employment, industrial agreement, award or other arrangement) are or may become liable to make payments to workers or their dependants in respect of injuries or deaths (including payments as a supplement or an alternative to the periodic or lump sum payments of compensation under this Act).

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987

(Sec. 3)

(1) Section 3 (**Definitions**):

Omit the definition of "specialised insurer", insert instead:

"specialised insurer" means an insurer or proposed insurer declared by the regulations or by order of the Authority to be a specialised insurer;



SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

- (2) Section 8 (**Workers Compensation Review Committee**):  
Omit the section.
- (3) Section 43 (**Computation of average weekly earnings**):  
Before "55" in section 43 (2) (c), insert "40 or".
- (4) Section 62 (**Rates applicable for hospital treatment**):
  - (a) Section 62 (1):  
Omit "(other than a public hospital)".
  - (b) Section 62 (2) - (4):  
Omit the subsections.
- (5) Section 64A:  
After section 64, insert:  
**Compensation for cost of interpreter services**  
64A. (1) If it is reasonably necessary for a worker to obtain the assistance of an interpreter in connection with a claim for compensation under this Act, the worker's employer is liable to pay, in addition to any other compensation under this Act, the reasonable costs of any such assistance.
  - (2) The regulations may prescribe:
    - (a) guidelines for determining the amount payable under this section; and
    - (b) the maximum amount payable under this section.
  - (3) Payments under this section are to be made as the costs are incurred, but only if properly verified.
  - (4) The Authority may pay any such costs (whether or not liability to pay those costs has been determined) and recover the amount from any employer liable to pay them.
  - (5) This section applies only to the costs of assistance provided in respect of a claim made after the commencement of this section.

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

- (6) Section 71 (**Further losses of function - occupational diseases**):  
After "has been paid" in section 71 (1) (a), insert "or becomes payable".
- (7) Part 3, Division 4, Table (**Compensation for permanent injuries**):  
Omit the following matter:  
**Loss of mental powers -**  
Incurable loss of mental powers resulting  
in total inability to work ..... 100  
Insert instead the following matter:  
**Brain damage:**  
Permanent brain damage (being an injury  
which is not or is not wholly an injury  
otherwise compensable under this Table) ... 0 - 100
- (8) Section 131 (**Reference of medical disputes to referee or panel on application of worker or employer**):  
Omit section 131 (5) (b) (iii), insert instead:  
(iii) permanent brain damage;
- (9) Section 160 (**Recovery of \$500 excess from employer**):  
After section 160 (4), insert:  
(4A) For the purposes of this section, the amount of a claim paid under a policy is the total amount paid to or on behalf of the claimant in respect of the injury concerned, but does not include:  
(a) any expenses of the insurer associated with the claim; or  
(b) any amount of a kind prescribed by the regulations.  
(4B) If liability for a claim is apportioned between 2 or more successive insurers of an employer, the amount repayable by the employer is to be similarly apportioned.
- (10) Sections 160 (6), 168 (4), 193 (definition of "policy of insurance"), 217 (definition of "premium income"):

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

After "Government workers" wherever occurring, insert "who are declared by the Minister to be central Government workers by order served on the Government Insurance Office".

- (11) Section 172 (**Recovery of unpaid premiums**):  
After section 172 (3), insert:  
(4) The making of an application to the Authority under section 170 (determination of premium to be charged) does not affect the entitlement of an insurer under this section to recover the premium (or part of premium) concerned except to the extent that:  
(a) the Authority otherwise directs in a particular case;  
or  
(b) the regulations otherwise provide.
- (12) Section 189 (**Information and records as to business etc. to be supplied to Authority by insurers**):  
Omit "or a self-insurer" from the definition of "insurer" in section 189 (1), insert instead ", a self-insurer or a former self-insurer".
- (13) Section 203 (**Establishment of Premiums Adjustment Fund**):  
At the end of section 203 (2) (b), insert:  
; and  
(c) all other amounts authorised by this Division or the regulations to be paid into that Fund.
- (14) Section 205 (**Pooling of premiums between statutory funds of an insurer or between insurers**):  
Omit section 205 (5), insert instead:  
(5) If a direction is given under this section for the transfer of any amount from a statutory fund:  
(a) the amount is to be paid to the Authority and credited to the Premiums Adjustment Fund before being carried to the statutory fund to which it is directed to be transferred; and



SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

- (b) if it is not so paid, the amount may be recovered by the Authority as a debt in a court of competent jurisdiction.
- (6) For the purposes of this section, the determination of whether a statutory fund is in surplus or deficit is to be made after such adjustments in its calculations as the Authority considers necessary for an equitable distribution of the effects of cross-subsidisation in premium-fixing, indexation of benefits, changes in benefits and the introduction of new benefits.
- (15) Section 206 (**Distribution of surplus remaining after pooling of premiums**):
- (a) Omit "by way of profits" wherever occurring, insert instead "by way of a performance bonus".
- (b) Section 206 (2) (b):  
After "premiums;", insert "and".
- (c) Omit section 206 (6), insert instead:
- (6) If a direction is given under this section for the transfer of any amount from a statutory fund:
- (a) the amount is to be paid to the Authority and credited to the Premiums Adjustment Fund before being carried to the statutory fund or other fund to which it is directed to be transferred; and
- (b) if it is not so paid, the amount may be recovered by the Authority as a debt in a court of competent jurisdiction.
- (16) Section 215A:  
After section 215, insert:  
**Bank guarantee etc. as alternative to deposit**  
215A (1) It is sufficient compliance with a requirement of this Division to deposit an amount of money with the Treasurer if a bank guarantee of payment of the amount is provided on terms acceptable to the Authority.

SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued*

(2) If a refund of part of a deposit is authorised under section 213 (2), the authorisation operates as authority for the Treasurer to give the appropriate partial release from a guarantee provided instead of a deposit.

(3) Any amount paid to the Treasurer pursuant to such a guarantee is to be regarded for the purposes of this Division as having been deposited with the Treasurer by the self-insurer concerned and is to be dealt with accordingly.

(4) In this section:

"guarantee" includes undertaking.

- (17) Section 216 (**Application of deposit**):  
From section 216 (3) (b), omit "licensed insurer", insert instead "self-insurer".
- (18) Schedule 1 (**Deemed employment of workers**):  
Omit "(b) or (c)" from clause 15 (3), insert instead "(c) or (d)".
- (19) Schedule 6, Part 5 (**Savings and transitional provisions relating to hospital treatment etc**):
- (a) Omit clause 6.
- (b) Omit clause 7, insert instead:  
**Public hospital rates of treatment**  
7. (1) Until the regulations otherwise provide, the amount for which an employer is liable in respect of hospital treatment of a worker at a public hospital is (after the commencement of the 1989 Amending Act) the amount prescribed under section 62 (2) - (4) as in force immediately before that commencement.  
(2) A reference in this clause to the commencement of the 1989 Amending Act is a reference to the commencement of Schedule 8 (4) to the Workers Compensation (Benefits) Amendment Act 1989.
- (20) Schedule 6, Part 15 (**Savings and transitional provisions relating to insurance**):

**SCHEDULE 8 - MISCELLANEOUS AMENDMENTS TO  
WORKERS COMPENSATION ACT 1987 - *continued***

After clause 14, insert:

**Policies issued or renewed before 4 p.m. on 30 June 1987**

15. (1) This clause applies to policies of insurance issued or renewed before 4 p.m. on 30 June 1987 by insurers licensed under section 27 of the former Act.

(2) A policy of insurance to which this clause applies extends (and is to be taken to have always extended) to any liability under this Act for injuries received before 4 p.m. on 30 June 1987.

(3) This clause applies despite the fact that the policy of insurance refers to liability under the Workers' Compensation Act 1926.

**Government workers insurance**

16. (1) In this clause, a reference to a relevant provision is a reference to section 160 (6), 168 (4), 193 (definition of "policy of insurance") or 217 (definition of "premium income").

(2) On the commencement of Schedule 8 (10) to the Workers Compensation (Benefits) Amendment Act 1989, the Minister is to be taken to have served an order on the Government Insurance Office under the relevant provisions declaring all Government workers (except workers whose employer is the Forestry Commission) to be central Government workers.

(21) **Schedule 6, Part 20 (Savings and transitional regulations):**

At the end of clause 1 (1), insert:

the Workers Compensation (Benefits) Amendment Act 1989;



**SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION  
(BUSH FIRE, EMERGENCY AND RESCUE SERVICES) ACT  
1987**

(Sec. 4)

- (1) Section 7 (**Injuries to which Part applies**):
  - (a) Section 7 (2):

After "an official fire fighter", insert "(or a person of a prescribed class)".
  - (b) Section 7 (2):

After "the official fire fighter", insert "(or the person)".
- (2) Section 10 (**Compensation payable for injury or death**):

After "hospital treatment" in section 10 (c), insert  
", occupational rehabilitation service".
- (3) Section 11 (**Provisions relating to compensation for injury or death**):
  - (a) After section 11 (2), insert:

(2A) If the fire fighter left no dependants, the amount of compensation payable under subsection (2) is to be 60 per cent of the amount prescribed by section 25 (1) (a) of the Principal Act (rounded off to the nearest dollar).
  - (b) From section 11 (6) (b), omit "\$500", insert instead "\$545.70".
- (4) Section 23 (**Definitions**):
  - (a) Definition of "rescue association worker":

After paragraph (a) of the definition, insert:  
(a1) a surf life saver;
  - (b) Definition of "surf life saver":

After the definition of "rescue association worker", insert:  
"surf life saver" means a person who:
    - (a) is an elected or appointed officer, or advisor, of the Surf Life Saving Association of Australia - New South Wales State Centre Incorporated; or

SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION  
(BUSH FIRE, EMERGENCY AND RESCUE SERVICES)  
ACT 1987 - *continued*

- (b) is an elected member of a management committee or of the executive of a branch affiliated with that Association, being a branch specified in the regulations; or
  - (c) is a member of a club which is affiliated with a branch referred to in paragraph (b), being a club specified in the regulations; or
  - (d) is prescribed by the regulations as being a surf life saver; or
  - (e) is a member of a class of persons prescribed by the regulations as being surf life savers; or
  - (f) in the opinion of the Authority, having regard to all the circumstances, should be regarded as being a surf life saver.
- (5) Section 26 (**Compensation payable for injury or death**):  
After "hospital treatment" in section 26 (c), insert  
", occupational rehabilitation service".
- (6) Section 27 (**Provisions relating to compensation for injury or death**):
- (a) After section 27 (2), insert:
    - (2A) If the worker left no dependants, the amount of compensation payable under subsection (2) is to be 60 per cent of the amount of compensation prescribed by section 25 (1) (a) of the Principal Act (rounded off to the nearest dollar).
  - (b) From section 27 (6) (b), omit "\$500" insert instead "\$545.70".
- (7) Section 32 (**Application of Principal Act**):
- (a) From section 32 (1) (c), omit "except sections 38 and 52", insert instead "except section 52".
  - (b) After section 32 (1) (g), insert:
    - (g1) Division 8 of Part 3;
  - (c) Omit section 32 (1) (i), insert instead:

*Workers Compensation (Benefits) Amendment 1989*

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**SCHEDULE 9 - AMENDMENT OF WORKERS COMPENSATION  
(BUSH FIRE, EMERGENCY AND RESCUE SERVICES)  
ACT 1987 - *continued***

- (i) sections 151 and 151z;
- (d) At the end of section 32 (2) (b), insert:
  - ; and
  - (c) a reference to the Authority's Fund were a reference to the Bush Fire Fighters Compensation Fund or the Emergency and Rescue Workers Compensation Fund, as the case requires.

**SCHEDULE 10 - AMENDMENT OF WORKERS' COMPENSATION  
(DUST DISEASES) ACT 1942**

(Sec. 5)

- (1) Section 8 (**Certificate of medical authority and rates of compensation**):
  - (a) Section 8 (2) (d):

After "hospital treatment", insert "or occupational rehabilitation service".
  - (b) Section 8 (2B) (b) (i), (3) (d):

Omit "\$25,650" wherever occurring, insert instead "\$100,000".
  - (c) Section 8 (2B) (b) (ii):

Omit "\$89.10", insert instead "\$97.20".
  - (d) Section 8 (2B) (b) (iii):

Omit "\$31.10", insert instead "\$49.10".
  - (e) Section 8 (2F):

After section 8 (2E), insert:
    - (2F) The amendments made to this section by Schedule 10 to the Workers Compensation (Benefits) Amendment Act 1989 apply:
      - (a) in the case of the amendments made to subsections (2B) (b) (i) and (3) (d), only in respect of the death of a person occurring on or after 1 July 1989; or
      - (b) in any other case, in respect of compensation that becomes payable on or after 1 July 1989 (whether



SCHEDULE 10 - AMENDMENT OF WORKERS COMPENSATION  
(DUST DISEASES) ACT 1942 - *continued*

the claim concerned arose before or after that date).

(f) Section 8 (3) (b):

After "request", insert ", but despite clause 4 of Part 4 of Schedule 6, section 37 applies without modification".

(2) Section 11:

After section 10, insert:

**Effect of extending Act to other dust diseases: Baker v. Australian Asbestos Insulations Pty. Ltd. overruled**

11. (1) If the Schedule is amended (whether by Act or regulation) so as to include a disease as a dust disease within the meaning of this Act:

(a) the amendment operates to extinguish an entitlement to compensation under the Principal Act in respect of that disease existing immediately before the amendment unless an application for compensation in respect of the entitlement is made before the amendment; and

(b) this Act is to be taken to have always applied to the dust disease.

(2) Subsection (1) (a) does not operate to extinguish a person's entitlement to compensation if the person does not have an entitlement to compensation under this Act in respect of the matter concerned.

(3) This section applies to an amendment made to the Schedule whether before or after this section commences (including that made by the Workers' Compensation (Dust Diseases) Amendment Act 1983) but not so as to affect an entitlement to compensation under the Principal Act for which an application for compensation has been made before this section commences.

(4) In this section, a reference to the amendment of the Schedule includes a reference to the substitution of the Schedule.

**SCHEDULE 11 - AMENDMENT OF OTHER ACTS**

(Sec. 6)

**Workmen's Compensation (Broken Hill) Act 1920 No. 36:**

**Schedule, Part 2 (Compensation Provisions):**

- (a) Clause 6 (1) (a):  
Omit "38.30", "13.40", "13.40", "18.20", "18.20", "18.20",  
"13.40", insert instead respectively "41.80", "14.60", "14.60",  
"19.90", "19.90", "19.90", "14.60".
- (b) Clause 6 (1) (b):  
Omit "38.30", "27.80", "18.20", insert instead respectively  
"41.80", "30.30", "19.90".
- (c) Clause 6 (1) (c):  
Omit "38.30", insert instead "41.80".
- (d) Clause 6A (b) (i):  
Omit "120.70", insert instead "131.70".
- (e) Clause 6A (b) (ii):  
Omit "120.70", "8.60", insert instead respectively "131.70",  
"9.40".
- (f) Clause 6A (b) (iii):  
Omit "50.80", insert instead "55.40".

**Defamation Act 1974 No. 18**

Section 17BD:

Before section 17c, insert:

**Matters arising under Workers Compensation Act 1987**

17BD. (1) There is a defence of absolute privilege:

- (a) for a publication to or by an insurer for the purpose  
of any claim or any proceedings arising from any  
claim under the Workers Compensation Act 1987;  
and
- (b) for a publication by an insurer of a report of a  
decision or determination in respect of any such

SCHEDULE 11 - AMENDMENT OF OTHER ACTS - *continued*

claim and of the reason for that decision or determination; and

- (c) for a publication of information under section 93D of the Workers Compensation Act 1987 by the Authority referred to in that section; and
- (d) for a publication to or by an insurer pursuant to an exchange of information authorised by section 93D (2) of the Workers Compensation Act 1987.

(2) In subsection (1), "insurer" and "claim" have the same meanings as in Division 1A of Part 4 of the Workers Compensation Act 1987 and in subsection (1) (d), "insurer" has the extended meaning it has in section 93D of that Act.

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WORKERS COMPENSATION (BENEFITS) AMENDMENT BILL

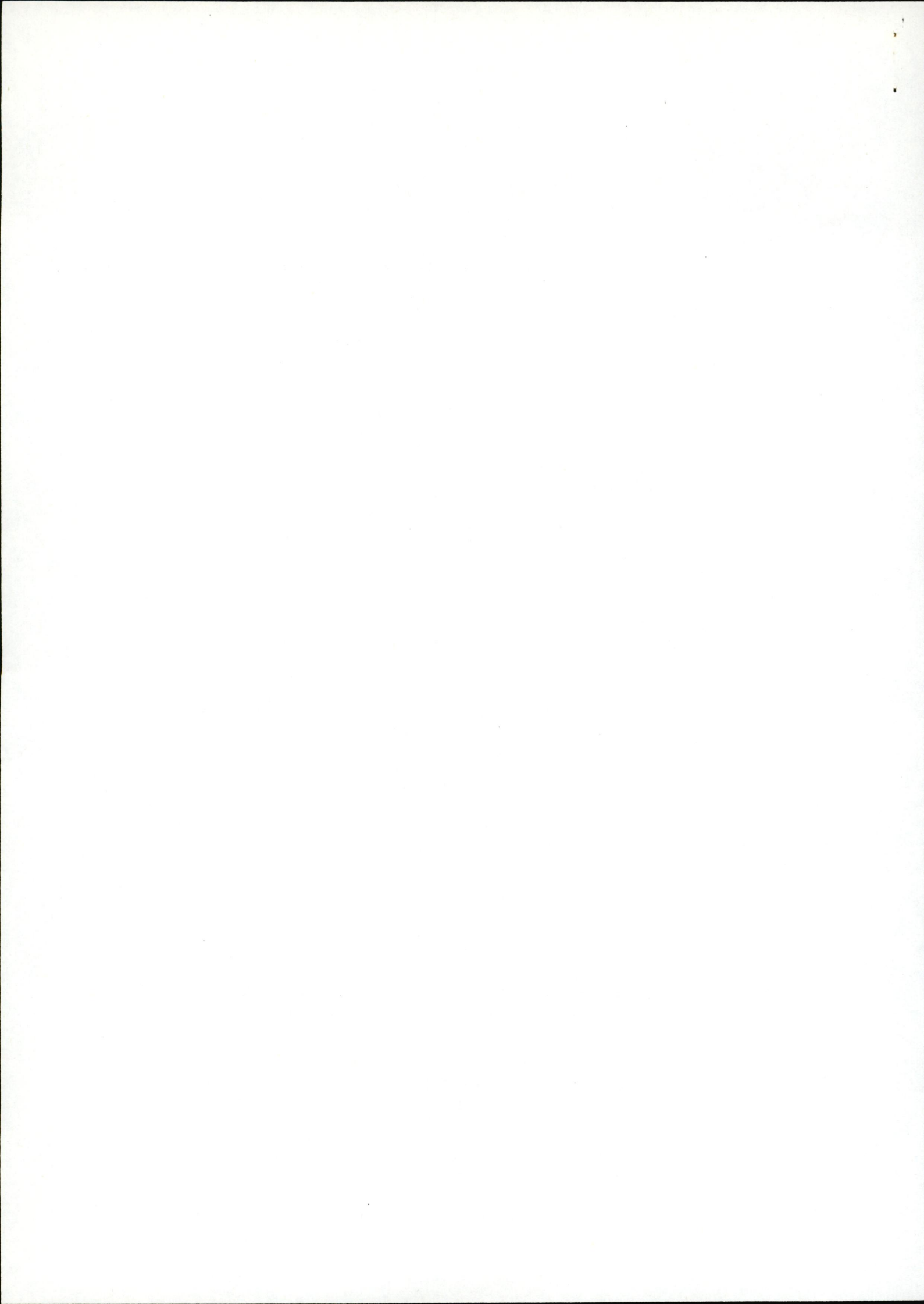
Schedule of the amendments referred to  
in Message of *3 August 1989*

  
Acting Clerk of the Parliaments

- No. 1 Page 2, clause 3. Omit "8", insert instead "6".
- No. 2 Page 2, clause 4. Omit "9", insert instead "7".
- No. 3 Page 2, clause 5. Omit "10", insert instead "8".
- No. 4 Page 2, clause 6. Omit "11", insert instead "9".
- No. 5 Pages 4 and 5, Schedule 1. Omit all words on lines 24-30 on page 4 and all words on lines 1-24 on page 5 (proposed section 151A).
- No. 6 Page 6, Schedule 1, proposed section 151B (2). Omit all words on lines 6-11.
- No. 7 Pages 7 and 8, Schedule 1. Omit all words on the last 2 lines on page 7 and on the first 2 lines on page 8 (proposed section 151G (2)).
- No. 8 Page 8, Schedule 1, lines 4 and 5 (proposed section 151G (3)). Omit ", but the maximum amount may be awarded only in a most extreme case".
- No. 9 Page 8, Schedule 1, lines 6-21 (proposed section 151G (4)-(7)). Omit all words on those lines, insert instead:

(3) If the amount of non-economic loss is assessed to be \$15,000 or less, no damages for non-economic loss are to be awarded.

(4) If the amount of damages to be awarded for non-economic loss in accordance with subsections (1) and (2) is more than \$15,000 but less than \$55,000, the following deductions are to be made from that amount:



- (a) If the amount of damages is less than \$40,000 - the amount to be deducted is \$15,000;
- (b) if the amount of damages is not less than \$40,000 - the amount to be deducted is \$15,000 or \$15,000 reduced by \$1,000 for every \$1,000 by which the amount of damages exceeds \$40,000.

(5) Division 6 of Part 3 (Indexation of amounts of benefits) applies as if the amounts mentioned in this section were adjustable amounts.

- No. 10 Pages 8 and 9, Schedule 1. Omit all words on lines 28-31 on page 8 and all words on page 9 (proposed section 151H).
- No. 11 Page 16, Schedule 1, lines 1-5 (proposed section 151Q (1)). Omit all words on those lines, insert instead:  
award exceeds the statutory weekly payments of workers compensation and the plaintiff has requested that the section should apply; or  
(b) the court considers that the section should apply.
- No. 12 Page 19, Schedule 1, lines 12-31 (proposed section 151V). Omit all words on those lines.
- No. 13 Page 20, Schedule 1, proposed section 151W. Omit "151D", insert instead "151C".
- No. 14 Page 22, Schedule 1, proposed section 151Y (9). Omit "151X", insert instead "151U".
- No. 15 Page 26, Schedule 1, item (5). Omit "151AA", insert instead "151X".
- No. 16 Page 39, Schedule 4, lines 16-30 (proposed section 63A (3) and (4)). Omit all words on those lines, insert instead:  
  
(3) The Authority may investigate and take such action as it considers appropriate if the costs of occupational rehabilitation services under this section appear unreasonable.
- No. 17 Pages 41-43, Schedule 5. Omit the Schedule.
- No. 18 Pages 48-50, Schedule 7. Omit the Schedule.
- No. 19 Page 55, Schedule 8, item (19). Omit "Schedule 8", insert instead "Schedule 6".
- No. 20 Page 56, Schedule 8, item (20). Omit "Schedule 8", insert instead "Schedule 6".



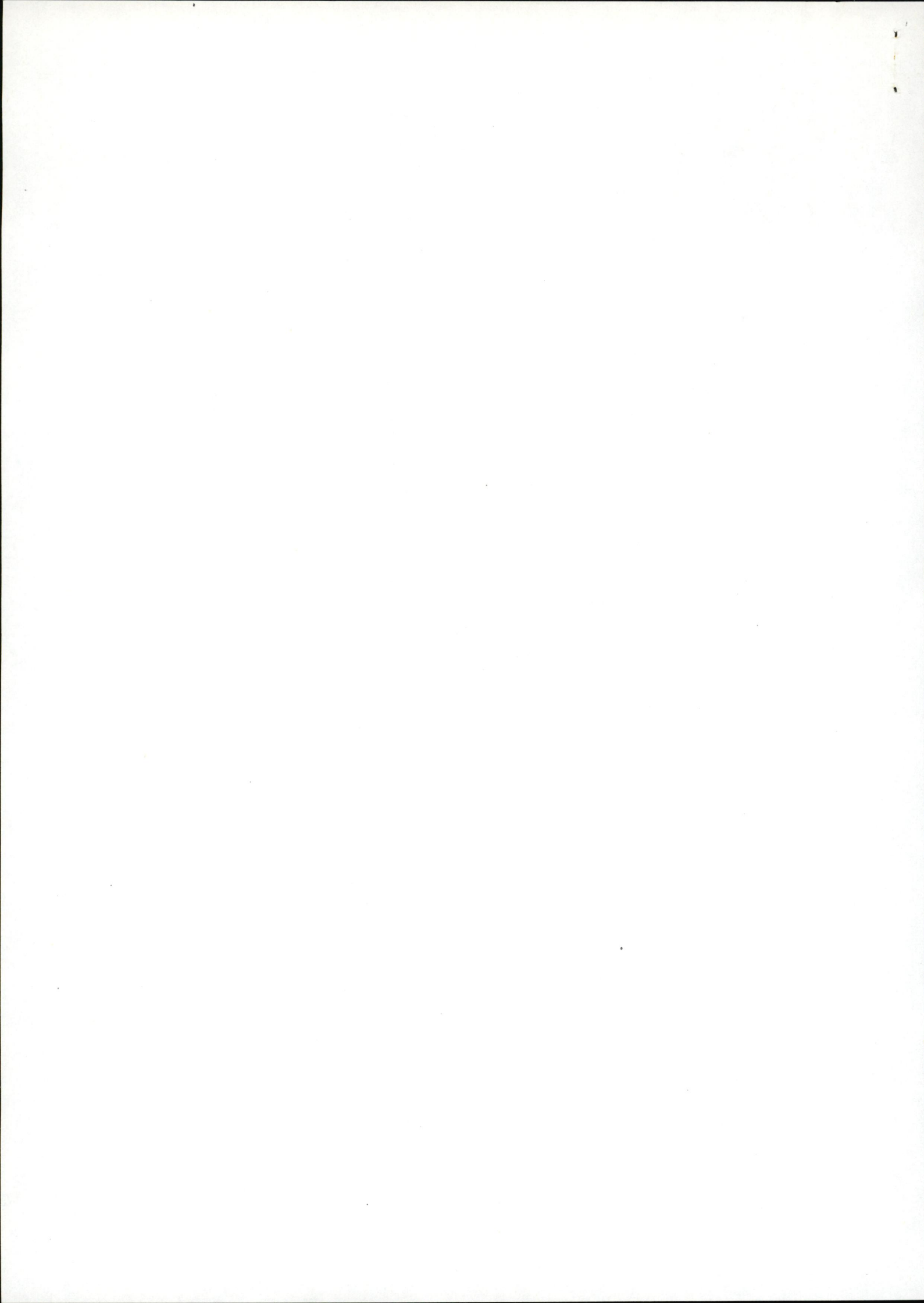


- No. 21 Page 59, Schedule 9, item (7) (c). Omit  
"151Z", insert instead "151W".
- No. 22 Page 59, Schedule 10, item (1) (e). Omit  
"Schedule 10", insert instead "Schedule 8".

Examined

A large, stylized handwritten signature in cursive script, appearing to read "Herman J. Sawyer".

Chairman of Committees





Workers Compensation (Benefits) Amendment Bill  
New South Wales



LEGISLATIVE ASSEMBLY

Mr PRESIDENT

The Legislative Assembly having had under consideration the Legislative Council's message dated 3 August 1989 requesting the concurrence of the Legislative Assembly with certain amendments to the Workers Compensation (Benefits) Amendment Bill 1989 as set forth in the Schedule to that Message, acquaints the Legislative Council as follows—

Amendment Nos. 1 to 4: The Assembly disagrees with the proposed amendments because—

*The amendments are consequential amendments to the substantive amendments proposed by the Council.*

Amendment No. 5: The Assembly disagrees with the proposed amendment and proposes the following—

"Page 5, Schedule 1 (1), line 19. Omit all words on that line, insert instead:

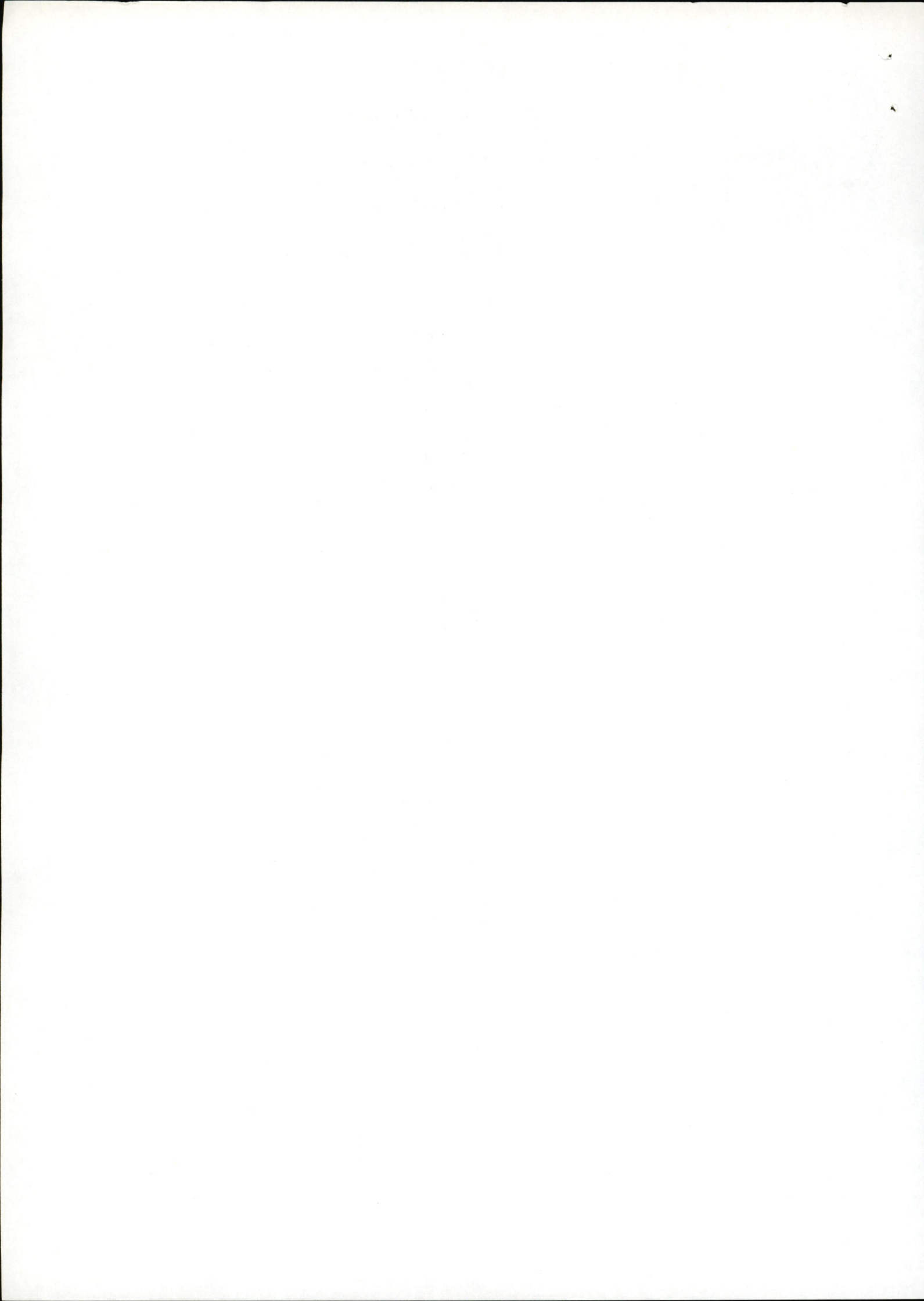
- (4) An election is irrevocable, except that an election to claim permanent loss compensation may be revoked with the leave of the court given in accordance with this section.
- (5) If:
  - (a) a person elects to claim permanent loss compensation in respect of an injury; and
  - (b) after the election is made, the injury causes a further material deterioration in the person's medical condition that, had it existed at the time of the election, would have entitled the person to additional permanent loss compensation; and
  - (c) at the time of the election, there was no reasonable cause to believe that the further deterioration would occur,the person may, with the leave of the court and on such terms (if any) as the court thinks fit, revoke the election and commence proceedings in the court for the recovery of damages in respect of the injury.
- (6) If the election is revoked the permanent loss compensation paid is not required to be repaid, except out of the damages recovered in accordance with section 151B."

because—

*The modified common law in the terms of the bill as passed by the Assembly is fair and affordable.*

Amendment No. 6: The Assembly disagrees with the proposed amendment because—

*The amendment is a consequential amendment to the substantive amendments proposed by the Council.*



Amendments Nos. 7 to 12: The Assembly disagrees with the proposed amendments because—

*The modified common law in terms of the bill as passed by the Assembly is fair and affordable.*

Amendments Nos. 13 to 15: The Assembly disagrees with the proposed amendments because—

*The amendments are consequential amendments to the substantive amendments proposed by the Council.*

Amendment No. 16: The Assembly disagrees with the proposed amendment because—

*Rehabilitation costs can only be properly controlled in the terms of the bill as passed by the Assembly.*

Amendment No. 17: The Assembly disagrees with the proposed amendment because—

*Journey claims in the terms of the bill as passed by the Assembly should only be the subject of workers compensation.*

Amendment No. 18: The Assembly disagrees with the proposed amendment because—

*Regulation of top-up arrangements in terms of the bill as passed by the Assembly is required to ensure the viability of the WorkCover scheme.*

Amendments Nos. 19 to 22: The Assembly disagrees with the proposed amendments because—

*The amendments are consequential amendments to the substantive amendments proposed by the Council.*

Legislative Assembly  
3 August 1989



Speaker



