

First print



New South Wales

WorkCover Legislation Amendment Bill 1995

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Workers Compensation Act 1987*, the *Occupational Health and Safety Act 1983* and associated legislation, the *Compensation Court Act 1984* and various other Acts as follows:

Workers Compensation Act 1987

The following amendments are made:

- (a) Existing provision for the automatic indexation of workers compensation lump sum payments for permanent disabilities (section 66) and pain and suffering (section 67) in line with movements in average wages is suspended so as to freeze that compensation at current levels.
 - (b) It is made clear that lump sum workers compensation for pain and suffering is limited to pain and suffering resulting from permanent disability and does not extend to other pain and suffering resulting from work injury.
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Explanatory note

- (c) A 5% eligibility threshold is imposed for industrial deafness claims so that lump sum workers compensation is not payable unless hearing loss reaches 6%.
- (d) No compensation will be payable for psychological injury (such as stress) unless employment was a substantial cause and no compensation will be payable where stress resulted from reasonable action by the employer with respect to staffing matters (such as promotion, demotion, transfer, discipline, dismissal and retrenchment).
- (e) The payment of interest on lump sum workers compensation for non-economic loss (permanent disability and pain and suffering compensation) will be abolished, except for late payment of a Court award or agreed compensation.
- (f) The payment of interest on common law damages (for work injuries) for non-economic loss is abolished, and the payment of interest on common law damages for economic loss is restricted in line with restrictions in the *Motor Accidents Act 1988*. Interest on late payment of an award is not affected.
- (g) Additional provisions are inserted to make it clear that lump sum workers compensation is not payable for pre-existing impairment of the neck, back or pelvis by requiring the deduction of that pre-existing impairment from the compensation payable. The amendment overcomes the effect of a number of court decisions.
- (h) Lump sum compensation is introduced for workers who contract HIV/AIDS in the course of their employment.
- (i) Lump sum compensation is introduced for workers who suffer severe permanent bowel injury in the course of their employment.
- (j) Time limits for the lodgment of claims for workers are tightened to require claims to be lodged within 3 years after injury unless there are exceptional circumstances.
- (k) Penalties and other measures (such as preventing the recovery of costs) are introduced for unscrupulous activities such as touting and claims chasing, particularly in the area of hearing loss claims.
- (l) Cost penalties are introduced for unreasonable refusal of lump sum compensation settlement offers.
- (m) Provisions are introduced requiring workers to lodge their claim with the employer/insurer before litigation can be commenced. In the case of lump sum disability claims, an initial 3 month period is provided to allow an opportunity for proper claim assessment and possible reference to a medical panel if disputed.

- (n) Existing provisions requiring insurers to refer to conciliation disputes concerning liability to commence weekly compensation are extended to also require conciliation referral by insurers of disputes concerning liability to continue weekly compensation (but these provisions will not prevent the bringing of proceedings in the Compensation Court). Procedural improvements are also made to conciliation provisions
- (o) An expanded role is provided for medical panels, and (if the worker and employer agree) an independent medical practitioner of their choice, to assess disputed permanent disability compensation claims.
- (p) An expanded role is provided for commissioners of the Compensation Court with power for the regulations to prescribe those matters that are to be allocated to the commissioners, with appeals on questions of law on those matters to go to a Judge of that Court.
- (q) A regulation making power is introduced to enable the fixing of maximum legal costs in workers compensation matters and the maximum costs for the provisions of medical evidence in those matters, with no recovery of costs above any prescribed maximum.
- (r) Provision is introduced that will prevent recovery from injured workers of medical, hospital and rehabilitation costs above the maximums that are set or that can be set under existing provisions.
- (s) Provision is introduced to enable the regulations to require employers to prepare return-to-work plans for injured workers.
- (t) Penalties for failure to take out workers compensation insurance are increased, including by the introduction of imprisonment for up to 6 months as a penalty option. Other provisions are introduced and existing provisions strengthened to increase the effectiveness of the compulsory insurance provisions.
- (u) The definition of worker is extended to make it clear that, where the worker has died, the legal personal representative or dependents of the worker are included.
- (v) The method of determining the current weekly wage rate of a worker is adjusted to avoid prejudice to a worker who is employed by more than one employer.
- (w) It is made clear that the exception under section 151B by virtue of which a worker may recover both certain common law damages and compensation under the Act is not activated simply by a failure to recover certain damages or compensation because of an agreement or compromise between parties.

Explanatory note

- (x) It is made clear that, under section 151Z, the entitlement of a workers compensation insurer (who has paid compensation to an injured worker) to be indemnified by a negligent third party responsible for the injury extends to cases where the worker's employer was partly responsible for the negligence.
- (y) It is made clear that clause 2 of Schedule 1 (which makes a contractor a notional worker in certain circumstances) applies as long as the contractor does not employ one or more workers, but does not override the exclusion in the general definition of *worker* in section 3 of the Act of casual workers.
- (z) Provision is introduced to enable the issue of penalty notices for offences.
- (aa) Miscellaneous amendments are made to reduce litigation and other costs by clarifying various provisions, rectifying anomalies and increasing procedural efficiency.

Occupational Health and Safety Act 1983

The following amendments are made:

- (a) Penalties for offences against the Act are increased.
- (b) The requirement that occupational health and safety inspectors must give notice before entering a place of work will be removed and replaced with a requirement to give notice as soon as reasonably practicable after entry.
- (c) Provisions are included to empower authorised officers of employee organisations to enter places of work to investigate suspected breaches of occupational health and safety laws.
- (d) The Minister will be empowered to call for reports into accidents and other dangerous occurrences at places of work and will be specifically authorised to make those reports public.
- (e) Provision is made for alternative convictions in respect of certain offences against the Act.
- (f) Provisions currently in the regulations which give power to inspectors to require a contravention or likely contravention of the Act to be remedied, or to prohibit any activity which is an immediate risk to health and safety, are transferred to the Act and expanded so as to allow for higher penalties for breaches and for review and appeal against such requirements or prohibitions.
- (g) The jurisdiction of a Local Court to impose a penalty for an offence against the Act or the regulations is increased.

Explanatory note

- (h) A court that convicts a person of an offence against the Act or the regulations is given power to order the person to remedy any continuing contravention of the Act or the regulations.
- (i) The time limits for instituting proceedings against the Act or the regulations are extended in certain circumstances.
- (j) The circumstances in which a director or manager of a corporation can be convicted of an offence against the Act or the regulations in respect of a contravention by the corporation are extended by removing the defence that the director had no knowledge of the contravention. Other existing defences available to directors and managers remain.
- (k) A provision which allows a court to impose an additional penalty of up to 2 years imprisonment in respect of a person who is convicted of an offence and has previously been convicted of the same offence is extended to allow additional monetary penalties to be imposed in such situations and so that the additional penalty applies in respect of any further offence against the Act (whether or not the further offence is the same as the earlier offence). Higher additional penalties are imposed for more serious offences while lower additional penalties are imposed for less serious offences.
- (l) The responsibilities of suppliers of plant or substances under the Act are extended to the situation where supply is by way of transfer (amendment to section 18).
- (m) The disturbance of plant, or workplaces, involved in fatalities or certain dangerous occurrences is prohibited and inspectors are empowered to give directions against the use of plant involved in certain occurrences (subject to certain safeguards and review).
- (n) Inspectors are empowered to examine, test and dismantle plant, to take tape recordings and to seize plant in certain circumstances (subject to safeguards and review).
- (o) Inspectors and authorised officers are empowered to require a person to identify himself or herself if the inspector or officer reasonably suspects the person has committed an offence.
- (p) Provision is inserted to enable the review of the exercise of certain powers of inspectors.
- (q) The provisions on industry codes of practice are amended to allow revocations to take effect from a day that is later than the date when notice of the revocation is published.
- (r) Provision is inserted to enable a court before which a summary trial for an offence takes place to order a convicted offender to reimburse the WorkCover Authority for its expenses in examining or testing plant.

Compensation Court Act 1984

The following amendments are made:

- (a) The provisions for medical panels are amended to require a panel to comprise medical practitioners nominated by both employer and employee organisations.
- (b) The existing provisions for allocation of matters as between Judges and Commissioners of the Court, which the Chief Judge is responsible for arranging by reference to criteria such as complexity and a list of scheduled matters, are varied by allowing Commissioners to deal with pain and suffering compensation claims, specifying that only Commissioners may hear application for revocation of a conciliation officer's payment direction, and also allowing regulations to prescribe different allocation arrangements.
- (c) Appeals from Commissioners to Judges are restricted to questions of law, admission or rejection of evidence or question as to the misuse of statutory discretion.
- (d) Appeals from Judges to the Court of Appeal are restricted to questions of law or the admission or rejection of evidence.
- (e) A new position of Senior Commissioner is provided for in the Act. That Officer is to be a member of the Court's rule committee and is to have such other functions as may be prescribed by the regulations and the rules.
- (f) Various consequential amendments are made to reflect the expanded role of commissioners under the *Workers Compensation Act 1987*.

Construction Safety Act 1912, Factories, Shops and Industries Act 1962 and Dangerous Goods Act 1975

The following amendments are made:

- (a) Penalties for offences against the Acts are increased.
- (b) The jurisdiction of a Local Court to impose a penalty for an offence against the Acts or the regulations under those Acts is increased.
- (c) Provision is inserted in the *Construction Safety Act 1912* to allow a powderman's certificate to be refused or suspended if there is an apprehended violence order against the person applying for or holding the certificate.

Workers' Compensation (Dust Diseases) Act 1942 (repeal of Workmen's Compensation (Broken Hill) Act 1920)

The *Workmen's Compensation (Broken Hill) Act 1920* is repealed and consequential provisions are inserted in the *Workers' Compensation (Dust Diseases) Act 1942* (including provision for the continuation of entitlements under the repealed Act).

Amendments to other Acts

The following amendments are made:

- (a) The *Public Finance and Audit Act 1983* and the *WorkCover Administration Act 1989* are amended as a consequence of the proposed repeal of the *Workmen's Compensation (Broken Hill) Act 1920*.
- (b) The *Justices Act 1902* is amended to provide for the enforcement of penalty notices issued for offences under the *Workers Compensation Act 1987*.
- (c) The *Statutory and Other Offices Remuneration Act 1975* is amended to provide for the remuneration of the Senior Commissioner and part-time commissioners of the Compensation Court.
- (d) The *Defamation Act 1974* is amended to provide defamation protection for conciliation officers in respect of certificates they will be able to issue under the *Workers Compensation Act 1987* as to the results of conciliation and for a fair report of such a certificate.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed, except for the amendments concerning the 6% threshold for hearing loss claims which commence on the date of assent.

Clause 3 gives effect to the amendments to the *Workers Compensation Act 1987* as set out in Schedule 1.

Clause 4 gives effect to the amendments to the *Occupational Health and Safety Act 1983* as set out in Schedule 2.

Clause 5 gives effect to the amendments to the *Compensation Court Act 1984* as set out in Schedule 3.

Clause 6 gives effect to the amendments to the *Construction Safety Act 1912* as set out in Schedule 4.

Clause 7 gives effect to the amendments to the *Factories, Shops and Industries Act 1962* as set out in Schedule 5.

Clause 8 gives effect to the amendments to the *Dangerous Goods Act 1975* as set out in Schedule 6.

Clause 9 gives effect to the amendments to the *Workers' Compensation (Dust Diseases) Act 1942* as set out in Schedule 7.

Clause 10 gives effect to the amendments to the other Acts contained in Schedule 8.

Schedule 1 Amendment of Workers Compensation Act 1987

Freezing of indexation of lump sum compensation for permanent disabilities and pain and suffering

Currently the Act provides for the automatic indexation of the maximum amounts of compensation payable for permanent disability and pain and suffering, in line with movements in weekly award rates of pay. The Bill removes the provisions for automatic indexation and so freezes the amounts payable for that compensation at current levels. The maximum amount payable for permanent disability under section 66 of the Act is \$132,300 for any one disability and \$160,950 for 2 or more disabilities resulting from the one injury. The maximum amount payable for pain and suffering under section 67 of the Act is \$66,200. Provision is included to enable the regulations to reintroduce indexation of these amounts in the future. (See Schedule 1 [19], [24], [37] and [38])

Clarification that pain and suffering compensation limited to permanent disability

The Bill makes it clear that the compensation for which the Act provides for pain and suffering resulting from a permanent disability is not payable for other pain and suffering that may have resulted from the injury which caused the disability. For example, a worker who suffers pain and suffering from an injury before the onset of a disability that eventually arises from the injury is not entitled to pain and suffering resulting from the injury before the onset of the disability but is entitled to pain and suffering resulting from the disability itself. (See Schedule 1 [25])

6% threshold for deafness claims

The Bill inserts a new section 69A that provides for a 6% eligibility threshold for compensation for industrial deafness, so that no lump sum disability compensation is payable unless the worker's hearing loss reaches 6%. The new section contains an example of how the changes will work in practice. It also requires hearing loss to be assessed on the basis of a loss in both ears to ensure that a disproportionate loss in one ear does not lead to anomalous application of the new threshold.

The amendments do however provide that the worker will still be entitled to claim the cost of hearing tests, at 3 year intervals (or when the worker leaves the noisy employment) to ascertain whether the threshold level has been reached. Under the amendments, the proposed threshold will apply to compensation claims in relation to deafness lodged with the employer/insurer on or after 10 November 1995 (the date announced as the commencement of the threshold). (See Schedule 1 [30])

Compensation for psychological injury

The Bill provides that no compensation is payable for psychological injuries such as stress unless employment was a substantial (in the sense of real and important) cause of the injury and the injury was not wholly or predominantly caused by reasonable action by the employer concerning transfer, demotion, promotion, discipline, performance appraisal, retrenchment or dismissal of workers or provision of employment benefits to workers.

Psychological injury is defined to mean any psychological or psychiatric disorder and extends to include the physiological effect of such a disorder on the nervous system. The new provision does not however affect any entitlement to compensation for an injury of a physical nature even if that injury may be a symptom or effect of psychological injury.

Medical certificates supporting claims for weekly benefits for alleged psychological injury will be required to give a proper medical diagnosis of the worker's condition (without using terminology such as "stress") and to comment on whether the worker's employment is likely to have been a cause of the injury. (See Schedule 1 [6])

Abolition of interest on lump sum compensation for non-economic loss

The Bill transfers to the Act as section 113 a provision that is currently section 19 of the *Compensation Court Act 1984*. That section currently provides for the payment of interest between the date a cause of action arises

and award of compensation. The section is amended by the Bill to abolish interest for that period on lump sum compensation for permanent disability and pain and suffering. Section 67 (3A) is repealed consequentially. (See Schedule 1 [58] and [26] and Schedule 3 [6])

Interest on common law damages

The Bill substitutes existing section 151M dealing with the payment of interest on common law damages. As substituted, the section will abolish entitlements to interest on damages for non-economic loss (and for domestic services, nursing and attendant or respite), claimed by a worker for an employment-related injury, and will restrict interest on damages for economic loss to three-quarters of the standard court rate. These amendments are in line with changes made in 1994 to corresponding provisions in the *Motor Accidents Act 1988*. (See Schedule 1 [71])

Pre-existing impairment of the neck, back or pelvis

The Bill inserts a new section 68A that provides for a reduction in compensation payable for permanent impairment of the back, neck or pelvis in line with the proportion of the impairment that is due to a pre-existing condition, abnormality or injury. The result will be that the employer will only be liable for the part of impairment actually caused by the work injury. The provision extends to other permanent losses of bodily function that may be suffered as a consequence of permanent impairment of the back, neck or pelvis. The intention is to minimise reluctance by an employer to employ a previously injured worker, or one with existing back weakness, because of concern about being held liable for the pre-existing condition. To avoid litigation seeking to determine the precise percentage of pre-existing impairment, the amendments provide that where it is clear that the worker did have some pre-existing impairment but there is an absence of medical evidence to ascertain the percentage, 10% of the worker's overall back etc impairment may be taken as the proportion to be deducted for that purpose. (See Schedule 1 [29])

Compensation for HIV/AIDS

The Bill inserts provision for the payment of lump sum disability and pain and suffering compensation for work related HIV infection or AIDS. Either HIV infection or AIDS will entitle the worker to the maximum lump sum disability compensation and lump sum compensation for pain and suffering. Compensation is not payable for both HIV and AIDS. No compensation is payable if HIV or AIDS was acquired by voluntary sexual activity or illicit drug use. (See Schedule 1 [28] and [34])

Compensation for bowel injury

The Bill provides lump sum disability and pain and suffering compensation for permanent loss of bowel function. It is specified that the maximum disability payment for that category of loss is payable where the worker requires a permanent ileostomy or colostomy. (See Schedule 1 [31] and [36])

Time limits on claim lodgment

The Bill amends section 92 of the Act to impose an upper limit of 3 years on the lodgment of a workers compensation claim unless there are exceptional circumstances. Failure to lodge a claim within the required period operates as a bar to recovery of compensation. The requirement to make the claim within 3 years refers to when the worker first claims any compensation for the injury, so that if some further part of compensation is claimed later, the time limit will already have been fully met by the initial claim. (See Schedule 1 [39]–[41])

Touting and other unscrupulous activities

The Bill designates claims for industrial deafness (and other prescribed claims) as *protected claims*. An agent who engages in *prohibited conduct* in relation to those claims is guilty of an offence (maximum penalty up to \$5,000) and is not entitled to recover any fees or costs that would otherwise be payable for services relating to the claim. Examples of prohibited conduct in this context include unsolicited direct telephone marketing of claim-related services to a person, to encourage that person to make a protected claim and to use the services of the agent (or other person from whom the agent receives any payment), and the making of deliberately misleading statements about workers compensation entitlements.

Provision is also included to require that a lawyer or agent is not entitled to payment (for services involving a protected claim) from a person such as a workers compensation insurer, unless it is certified that the claim was not paid as a result of prohibited conduct by the lawyer or agent. The WorkCover Authority will be authorised to notify insurers and self-insurers that specified persons, whom the Authority is satisfied have persistently engaged in prohibited conduct, are not entitled to recover fees or costs in connection with claims. A person must be given a reasonable opportunity to make submissions before being made the subject of such a notification and an appeal lies to the Compensation Court. (See Schedule 1 [68])

Cost penalties for unreasonable refusal of settlement offer and consequences of claims delays

The Bill authorises the Compensation Court to order that legal costs not be payable where there has been an unreasonable refusal of an offer of settlement, or failure to provide particulars sufficient to enable an offer of settlement to be made, which the Court is satisfied has prolonged litigation or added to the overall costs incurred. These orders as to costs will have the effect (unless the Compensation Court otherwise orders in special cases) that the legal representative of either the worker or the employer/insurer, as relevant to the case, will not be able to recover legal fees (because of the unreasonable refusal). The Bill also allows the Court and conciliation officers to report to the WorkCover Authority on delays by insurers in dealing with claims and cases of insurers being responsible for costs being unreasonably incurred in proceedings. The Authority is authorised to take appropriate action on the basis of such reports, including possible reduction in the management expenses payable to the insurer concerned. (See Schedule 1 [43] (proposed section 94B) and [58] (proposed section 119))

Restrictions on commencing court proceedings unless claim lodged with employer/insurer

The Bill restricts litigation on weekly compensation matters to situations where the worker has properly claimed against the employer/insurer in the first instance. In particular, court proceedings seeking weekly payments cannot be commenced unless the employer/insurer has failed to pay within 21 days after the worker's claim or, secondly, the employer/insurer terminates or reduces those payments. Similarly, the amendments state that court proceedings may not be commenced in relation to a lump sum disability claim under section 66 until 12 weeks after due lodgment of the claim. However, the 12 week non-litigation period may be extended if the employer/insurer promptly processes the claim (which includes giving the worker a written acknowledgment of receipt of the claim) and (within the 12 weeks) refers a resulting dispute to a medical panel. (See Schedule 1 [56])

Expanded role for medical panels

The 12 week non-litigation period mentioned above, as well as allowing an opportunity for proper processing of lump sum disability claims and reference to conciliation, allows scope for reference of medical disputes for assessment by medical panels. A further 2 week cooling-off period provided following issue of a medical panel's certificate gives further opportunity for negotiations to settle the matter using that certificate.

Medical panels will only be able to issue conclusive certificates (with existing exceptions regarding back impairment etc) where court proceedings have been commenced, if the worker did not go through the 12 week litigation-prohibition procedure mentioned above to permit non-litigious resolution.

The Bill specifies that medical panels (even where they have issued binding certificates on disputed disability questions) may correct miscalculations and mistakes in a certificate.

Parties will be free to agree to refer a medical question to an independent medical arbitrator (of their choice) as a substitute for an official panel, with the resulting opinion to be binding only if they agree. Provision is made for special payments to workers who use that procedure (in recognition of the legal and other costs thus saved by the employer/insurer).

Special provisions are introduced enabling the Senior Conciliation Officer to refer disputed medical questions for assessment by medical panels. The Bill provides that regulations may specify that the resulting certificate of a medical panel concerning questions of the existence, nature and extent of loss or impairment for the purpose of lump sum disability claims may be binding (this procedure will not be available in a case where court proceedings have commenced). However, in any other circumstances the resulting medical panel certificate will only have prima facie evidentiary value. (See Schedule 1 [61]–[66])

Claims procedures and conciliation

Requirements are introduced for insurers to always give claimants written notice when liability for a claim is denied. The notice must include the reason for denial, information about conciliation and a statement that the worker can seek assistance from his or her union or from a lawyer. A copy of that notice will form part of the information which insurers must provide under existing provisions concerning disputes about commencing weekly payments, when referring such disputes for conciliation. That arrangement for referring weekly payment disputes for conciliation is extended by the Bill to disputes about continuation of such payments. However, these provisions will not prevent the commencement of proceedings in the Compensation Court about the dispute or make conciliation a pre-condition to such proceedings. Various procedural changes are made to conciliation provisions, including provisions about obtaining documents and arranging conferences, to make conciliation more effective.

Workers will not be required to furnish documents or attend such conferences unless they have legal representation.

Existing provisions allowing an insurer, if it has a "reasonable excuse", longer than the normal 21 days (after lodgment of claim) to assess a claim for weekly payments and refer any resulting dispute for conciliation are amended to specify that such an excuse can only operate for an additional 21 days at the most. (See Schedule 1 [43] (proposed section 94A), [45]–[48], [50]–[53])

Expanded role for commissioners

At present, commissioners of the Compensation Court have jurisdiction in a range of workers compensation matters specified in Schedule 3 to the *Compensation Court Act 1984* that are allocated to commissioners by the Chief Judge. An appeal lies to a Judge of the Compensation Court from any decision of a Commissioner. The Bill will provide for commissioners to have exclusive jurisdiction in certain workers compensation matters (to be specified by the regulations). An appeal will lie to a Judge of the Compensation Court but only on a question of law, misuse of a statutory discretion or a question on the admission or rejection of evidence. (See Schedule 2, which contains the amendments to the *Compensation Court Act 1984*)

Fixing of maximum legal and medico-legal costs

The Bill inserts new regulation making powers allowing regulations (which may apply by reference to or prevail over regulations under the *Legal Profession Act 1987*) to set maximum legal fees, including medico-legal costs, above which the employer/insurer (as well as the worker) is not liable. (See Schedule 1 [58] (proposed sections 117 and 118))

Maximum medical, hospital and rehabilitation costs

The Act currently contains provisions that allow an injured worker to recover medical, hospital and rehabilitation costs from the employer as workers compensation. The Act and the regulations fix maximum amounts that can be recovered. The Bill inserts a new provision that will prevent recovery against the injured worker above the amounts that the worker is entitled to recover as compensation for those costs. (See Schedule 1 [16] and [17])

Return-to-work plans

The Bill inserts a regulation making power (proposed section 152A) authorising regulations to require employers to prepare return-to-work plans for injured workers. A consequential amendment is made to section 43A to replace references to rehabilitation plans with references to return-to-work plans. (See Schedule 1 [14] and [75])

Enforcement of requirement for workers compensation insurance

The current penalty of up to \$20,000 for failure by the employer to insure under the Act is increased to include imprisonment of up to 6 months. Provisions are also introduced specifying that injured directors of uninsured companies may not claim against the WorkCover Uninsured Fund and that, where that Fund has to pay compensation to injured employees (other than directors, who are excluded) the WorkCover Authority may recover the debt owing to the Fund personally against a director of the company. The director is then entitled to recover the amount back from the company. Procedural improvements are made to make the current civil penalty for non-insurance (twice the avoided premium recoverable by the Authority as a debt) more effective against defaulting employers. As well, the Bill allows for regulations to prescribe an amnesty period for defaulting employers to obtain insurance. (See Schedule 1 [67], [76] and [77]–[81])

Clarification that expression “worker” extends to legal personal representative or dependants of deceased worker

The Bill amends section 3 to make it clear that the term “worker” includes, in relation to a deceased worker, the legal personal representative or dependants of the worker. Transitional provisions make it clear that this amendment is for clarification only and accordingly applies in respect of any worker, including a worker who died or was injured before the commencement of the amendment. (See Schedule 1 [3])

Currently weekly wage rate of person employed by more than one employer

New section 42 (7A) provides that for the purposes of calculating the current weekly wage rate of a worker who is employed under more than one contract of service with more than one employer, the current weekly wage rate must not be less than what it would have been if the worker had been employed only in the employment in which he or she received an injury. (See Schedule 1 [9])

Clarification of provisions relating to damages and compensation

Section 151B is amended to make it clear that damages can be claimed and retained under that section's exceptions only when it is that section itself that is the reason why a party would otherwise lose certain damages or compensation.

At the same time, section 151B (4) is renumbered as subsection (3) because the amendment in the *Workers Compensation Legislation Amendment Act 1995* that would, if commenced, have inserted section 151B (3) is repealed by Schedule 8 to the Bill. (See Schedule 1 [69] and [70])

Insurance liability for common law claims for occupational diseases "straddling" commencement of the Act

The Bill amends existing section 151AB which applies where a number of insurers may each be partly liable to contribute to an employer's liability at common law to a worker who has contracted an occupational disease. This situation may occur if the employer has been covered by various workers compensation insurers over the period during which the disease was contracted. The current version of section 151AB has the effect that liability to indemnify the employer rests solely with the insurer who covered the employer when the worker was last employed in employment to the nature of which the disease was due (that is, in duties involving a risk of contracting the disease). The amendments made by the Bill will adjust this arrangement so that, in circumstances where part of the liability arose before the commencement of the Act and part arose afterwards, liability is divided equally between the insurer who covered the employer immediately before the commencement and the insurer who covered the employer after the commencement and when the worker was last employed in relevant employment. For those cases the amendments nominate the insurer after that commencement as the one normally responsible for dealing with and defending the claim, unless the 2 insurers otherwise agree or the Court otherwise orders. (See Schedule 1 [73] and [74])

Clarification of insurer's entitlement to be indemnified by a negligent third party

Section 151Z is amended to make it clear that, despite the High Court decision on a forerunner of that section in *PTC NSW v Murray-More* (1975) 49 ALJR 302, section 151Z enables a workers compensation insurer to take action against a negligent third party (who was responsible for the worker's injury) to obtain reimbursement for compensation paid by the insurer, even in circumstances where the worker's employer was also partly negligent. (See Schedule 1 [72])

Clarification of Schedule 1 Deemed employment of workers

Clause 2 of Schedule 1 is amended to make it clear that it does not matter whether a contractor employs 1 or more than 1 worker, for the exception in clause 2 (1) to operate. This means then, that despite the decision in *Monier v Szabo* (1992) 28 NSWLR 53, a contractor cannot be deemed to be a "worker" even if the contractor employs only one person. (See Schedule 1 [91])

Deemed employment

Clause 2 of Schedule 1 is further amended to exclude from the provisions under which an outworker or other contractor is taken to be a worker for the purposes of the Act a person who is a registered player of a sporting organisation. (See Schedule 1 [92])

Penalty notices

The Bill inserts a standard provision (proposed section 278A) that allows the regulations to specify offences under the Act that can be dealt with by means of a penalty notice. (See Schedule 1 [89])

Other amendments to prevent unnecessary litigation

The Bill makes the following amendments to prevent or avoid unnecessary court proceedings:

- Section 66A currently provides for the registration by the WorkCover Authority of agreements for the payment of lump sum compensation for occupational diseases. The worker is not entitled to receive any additional compensation once an agreement is registered (with safeguards for fraud and inadequate compensation). The Bill extends section 66A to all lump sum compensation agreements (not just those that relate to occupational diseases). (See Schedule 1 [20]–[22])
- The Bill inserts a new section 66B which prevents proceedings being taken in the Compensation Court merely for entry up of judgment for an award to give effect to an agreement for compensation (of the kind that can be registered under section 66A). (See Schedule 1 [23])

Miscellaneous amendments

The Bill makes the following miscellaneous amendments:

- (a) The Bill imposes additional requirements with respect to the obligation of employers to provide information to workers to enable them to calculate wage rates and related details. Currently the information is required to be provided in writing at the request of the worker (with no time specified for compliance by the employer) and there is an offence for failure to comply with such a request. The Bill will impose an upper time limit of 28 days on compliance with a request for information (with power for the regulations to change the time for compliance). The regulations will also be able to impose requirements as to the form and manner in which the information is to be given and will be able to require employers to certify as to the completeness and accuracy of the information. The offence will be changed to introduce a defence of reasonable excuse. The penalty for the offence will remain at 20 penalty units (\$2,000). (See Schedule 1 [10])
- (b) A further amendment relates to the operation of section 22 of the Act concerning apportionment of compensation liability where the worker's incapacity or bodily loss etc is partly caused by 2 or more injuries at different times. The amendment clarifies that the term "apportionment" is used in the ordinary sense of dividing shares, rather than some more limited technical sense which might confine the operation of the section to unusual cases (such as where the worker's incapacity results fully from each different injury, rather than the more common situation of resulting partly from each). (See Schedule 1 [7])
- (c) The Bill makes it clear that insurers licensed on a statutory fund basis do not have beneficial ownership of the statutory funds managed by them, but hold the assets of the fund on trust for the purposes of the Act. Those purposes include meeting claims under workers compensation insurance contracts which insurers enter into with employers whose premiums are paid into the statutory fund concerned. (See Schedule 1 [82])
- (d) The Bill provides that, where the Compensation Court reviews an award previously made by it (because of change of circumstances) and orders that the workers compensation entitlement be ended or reduced from a date prior to the order, the worker can be ordered to refund payments already received to which there was no proper entitlement. Workers can already be ordered to refund payments in that situation,

except that, at present, the repayment order may have to be obtained by the employer/insurer in separate proceedings in another court after the Compensation Court has conducted its review. This is because the existing provisions of the *Workers Compensation Act 1987* have been interpreted as limiting the Compensation Court's power to order repayments. The purpose of the amendment is to avoid duplication of litigation and related costs. (See Schedule 1 [15])

Savings and transitional provisions

Schedule 6 to the Act is amended to insert various transitional provisions as a consequence of the above amendments. (See Schedule 1 [94]–[110])

Schedule 2 Amendment of Occupational Health and Safety Act 1983

Increased penalties

A number of amendments increase the penalties for offences against the Act. The maximum penalty for an offence against the Act will be \$500,000 in respect of a corporation and \$50,000 in respect of an individual. If the offence is a further offence, an additional penalty may be imposed. The maximum penalty that may be imposed for an offence against the regulations is also increased. (See Schedule 2 [2], [3], [5], [6], [8], [9], [11], [12]–[16], [19]–[24], [30], [32], [38] and [39])

Alternative convictions

New section 15 (4) gives a court power, in respect of proceedings against a person for an offence against section 15 of the Act (Employers to ensure health, safety and welfare of their employees), to convict the person of an offence under section 16 of the Act (Employers and self-employed persons to ensure health and safety of persons other than employees at places of work) as an alternative conviction. New section 16 (3) contains a reciprocal provision in respect of proceedings for an offence against section 16. (See Schedule 2 [4] and [7])

Issue of improvement and prohibition notices

New sections 31R–31Y give power to inspectors to require a contravention or likely contravention of the Act to be remedied, or to prohibit any activity which is not safe or which is a risk to health. An inspector will be able to do this by issuing an improvement or prohibition notice. The notice may include directions as to the measures to be taken to remedy any contravention to which the notice relates. It is an offence to fail to comply with such a notice. These provisions are based on provisions currently contained in the *Occupational Health and Safety (Inspectors' Notices and Penalty Notices) Regulation 1988*. However, the penalty for non-compliance with a notice is increased (with prohibition notices having a higher penalty than improvement notices) and provision is also made for a right to review of a notice by the WorkCover Authority and for appeal against a notice to an Industrial Magistrate. (See Schedule 2 [28])

Increased jurisdiction of Local Court

An amendment to section 47 increases the maximum penalty that may be imposed by a Local Court in proceedings for an offence against the Act or the regulations from 100 penalty units (\$10,000) to 500 penalty units (\$50,000) or 2 years imprisonment (or both). (See Schedule 2 [31])

Court may order cause of offence to be remedied

New section 47A provides that a court that convicts a person of an offence of contravening the Act or the regulations may, if it appears to the court that it is within the person's power to remedy the contravention, order the person to take such steps as may be specified by the court to remedy the contravention. It will be an offence to fail to comply with such an order. (See Schedule 2 [33])

Increase in time for instituting proceedings for certain offences against the Act or regulations

New section 49 (2), (3) and (4) provides for an increased time limit for the institution of proceedings for an offence against the Act or the regulations in certain circumstances. At present proceedings must be instituted within 2 years after the act or omission constituting the offence concerned. New section 49 (2) provides that, where the act or omission is an offence against section 18 (which deals with duties of suppliers and manufacturers to ensure the health and safety of plants and substances supplied or manufactured for use at work) proceedings may be instituted within 6 months after it first becomes apparent to the WorkCover Authority that the contravention

concerned has occurred, or within the general 2 year limitation period, whichever period provides the longer time for proceedings to be instituted. New section 49 (3) provides for a similar extension for proceedings for an offence of failure to notify an accident or other matter relating to health and safety at a place of work. New section 49 (4) provides that, if it appears from proceedings of a coroner's inquest or a coroner's report that an offence has been committed against the Act or the regulations, proceedings for the offence may be instituted within 2 years after those proceedings or the making of that report. Transitional provisions are inserted to extend these provisions to any act or omission constituting an offence that occurred within 2 years before the commencement of the provisions. (See Schedule 2 [34])

Change in defences for directors and managers charged in respect of corporate contravention

At present every director or person concerned in the management of a corporation is deemed to contravene the Act or the regulations if the corporation contravenes the Act or the regulations. It is a defence for the director or manager to establish that the corporate contravention occurred without his or her knowledge, or that he or she was not in a position to influence the conduct of the corporation, or that he or she used all due diligence to prevent the contravention. The amendment to section 50 removes the defence that the contravention occurred without the director's or manager's knowledge. It will still be a defence to establish that the director or manager was not in a position to influence the conduct of the corporation or that he or she used all due diligence to prevent the contravention. (See Schedule 2 [35])

Penalties for further offence against the Act

At present section 51A of the Act allows a court that convicts a person of a second or subsequent offence against the Act (which is a wilful repetition of an earlier offence) to impose an additional penalty of up to 2 years imprisonment. This section is replaced. The new section provides that an additional penalty may be imposed for any subsequent offence against the Act (whether or not a repetition of an earlier offence). The additional penalties that may be imposed vary according to the seriousness of the offence. (See Schedule 2 [36])

Suppliers of plant or substances

Section 18 is amended to extend the concept of "supply" to include transfers as well as sales. (See Schedule 2 [10])

Stopping use of plant

New section 21B is inserted to prohibit the disturbance of plant, or an area of a place of work, involved in certain serious occurrences. However, the section provides exceptions and limits the duration of such a direction.

New section 21C is inserted to provide that an inspector may direct that plant must not be used, moved or interfered with if the inspector believes on reasonable grounds that it is necessary to allow an inspection or examination. However, the section provides exceptions and limits the duration of such a direction.

New section 21D provides that directions under this section may be reviewed under new section 31U. (See Schedule 2 [17])

Powers available on entry

Section 31I is amended to empower inspectors to examine or test plant, substances and things, to dismantle them, and in certain cases to take them away. Those powers are subject to a notice requirement under new section 31T and to a review procedure under new section 31U. Section 31I is further amended to make it clear that an inspector may take video or audio records in a workplace of an employer or self-employed person. (See Schedule 2 [26] and [27])

New sections 31Z-31AE deal in greater detail with the mechanism of taking things away, the giving of receipts for things taken, the forfeiture and return of those things and the provision to the owner of access to those things. (See Schedule 2 [28])

Powers of authorised officers and inspectors

New section 51C is inserted to empower authorised officers (ie officers specified by the regulations under existing section 51B) and inspectors to require a person to identify himself or herself if the officer or inspector reasonably suspects the person has committed an offence. (See Schedule 2 [37])

Industry codes of practice

Section 44A is amended to enable revocations of industry codes of practice to take effect from a day that is later than the date when notice of the revocation is published. At present, revocations take effect at the end of the day of gazettal, but new codes and amendments can take effect on a present or future date specified in the notice of the code or amendment. (See Schedule 1 [29])

Orders for reimbursement

Section 47 is amended to enable a court that hears a summary trial for an offence to order a convicted offender to reimburse the WorkCover Authority for its expenses in examining or testing plant to which the offence relates. (See Schedule 2 [31])

Inspectors' powers of entry

Section 31B (which presently requires prior notice by an inspector who enters a workplace) is replaced with a provision that inspectors must give notice as soon as reasonably practicable after entry, with exceptions for urgency and other circumstances where notice would not be appropriate or necessary. (See Schedule 2 [25])

Powers of entry of trade union officials

New sections 31AF-31AP confers on authorised officers of industrial organisations of employees powers of entry to a place of work where the organisations members work. The powers concerned closely parallel some of the powers of WorkCover inspectors. See Schedule 2 [28])

Reports on accidents and dangerous occurrences

New section 31AQ enables the Minister to call for reports from the WorkCover Authority on accidents and dangerous occurrences and authorises the Minister to make those reports public or table them in Parliament. Appropriate protections from liability are provided by the section. (See Schedule 2 [28])

Schedule 3 Amendment of Compensation Court Act 1984

Membership of medical panels

The Bill provides that medical referees arranged for medical panels are to be chosen on the basis of their relevant specialty or experience and that each panel must include one medical referee nominated by employer organisations and one nominated by employee organisations.

Expanded role of commissioners

The amendments provide that the Compensation Court is to be constituted either by a single Judge or a single Commissioner. Provision is made for appointment of a Senior Commissioner.

Under the amendments, appeals to a Judge of the Court will be available against a decision of a Commissioner on questions of law, the admission or rejection of evidence or misuse of a statutory discretion.

Appeals from decisions of Judges

The Bill restricts appeals from decisions of Judges of the Compensation Court to the Court of Appeal to questions of law and the admission or rejection of evidence.

Miscellaneous amendments

The Bills makes the following miscellaneous amendments:

- (a) The existing provision exempting liability to make weekly compensation payments from any order for stay of proceedings when the award under which the payments are made is appealed against is amended to limit that exemption to weekly payments in respect of the period after the award. (See Schedule 3 [22])
- (b) Provision is inserted to enable the Court to admit historical evidence and general medical and other evidence about exposure to noise in the workplace, to avoid repetition of the same evidence in a number of different proceedings. (See Schedule 3 [10])
- (c) Provision is inserted for payment of the costs of mediators and neutral evaluators of the Court out of the Workcover Authority Fund (from which the Court's operations are currently financed) rather than charging the parties for those costs. (See Schedule 3 [23])

Schedule 4 Amendment of Construction Safety Act 1912

Increased penalties

The amendments increase the penalties for offences against the Act. The maximum penalty for an offence against the Act will be \$50,000 in respect of a corporation and \$25,000 in respect of an individual. The maximum penalty that may be imposed for an offence against the regulations is also increased. (See Schedule 4 [3], [5], [6] and [8])

Increased jurisdiction of Local Court

The amendment to section 21 (3) increases the maximum penalty that may be imposed by a Local Court in proceedings for an offence against the Act or the regulations from 100 penalty units (\$10,000) to 500 penalty units (\$50,000). Transitional provisions are also inserted in the Act. (See Schedule 4 [7] and [9])

Powdermen's certificates

Section 17A is amended to make the existence of an apprehended violence order against a person a ground for refusing to issue a powderman's certificate to the person, or for suspending a certificate that the person already has. One effect of refusal or suspension is to remove a basis on which the person could seek a permit under the *Dangerous Goods Act 1975* to receive explosives. (See Schedule 4 [1] and [2])

Schedule 5 Amendment of Factories, Shops and Industries Act 1962

Increased penalties

The amendments increase the penalties for offences against the Act. The maximum penalty for an offence against the Act will be \$50,000 in respect of a corporation and \$25,000 in respect of an individual. The maximum penalty that may be imposed for an offence against the regulations is also increased.

Increased jurisdiction of Local Court

The amendment to section 145 increases the maximum penalty that may be imposed by a Local Court in proceedings for an offence against the Act or the regulations from 100 penalty units (\$10,000) to 500 penalty units (\$50,000). Transitional provisions are also inserted in the Act. (See Schedule 5 [6] and [9])

Schedule 6 Amendment of Dangerous Goods Act 1975

Increased penalties

The amendments increase the penalties for offences against the Act. The maximum penalty for an offence against the Act will be \$50,000 in respect of a corporation and \$25,000 in respect of an individual and \$10,000 per day in respect of a continuing offence. The maximum penalty that may be imposed for an offence against the regulations is also increased.

Increased jurisdiction of Local Court

The amendment to section 33 increases the maximum penalty that may be imposed by a Local Court in proceedings for an offence against the Act or the regulations from 100 penalty units (\$10,000) to 500 penalty units (\$50,000). Transitional provisions are also inserted in the Act. (See Schedule 6 [17] and [21])

Schedule 7 Amendment of Workers' Compensation (Dust Diseases) Act 1942

The *Workmen's Compensation (Broken Hill) Act 1920* ("the Broken Hill Act") is repealed. The *Workers' Compensation (Dust Diseases) Act 1942* ("the Dust Diseases Act") is amended to make savings and transitional provisions consequent on that repeal and to provide for the making of further savings and transitional provisions by regulation. Among other things, the transitional provisions provide for the transfer of the balance of the compensation fund under the Broken Hill Act to the fund under the Dust Diseases Act and for the continuation of the entitlements of claimants under the Broken Hill Act in accordance with the Dust Diseases Act. A provision that excluded Broken Hill mine owners from the scheme under the Dust Diseases Act is removed and other consequential amendments are made to the Act.

Schedule 8 Amendment of other Acts

Schedule 8 makes amendments to the *Public Finance and Audit Act 1983* and the *WorkCover Administration Act 1989* that are consequential on the repeal of the *Workmen's Compensation (Broken Hill) Act 1920*.

Schedule 3 (Amendments relating to interim payment of damages) to the *Workers Compensation Legislation Amendment Act 1995 No 30* has never commenced and is repealed.

WorkCover Legislation Amendment Bill 1995

Explanatory note

The *Statutory and Other Offices Remuneration Act 1975* is amended to provide for the remuneration of conciliation officers.

The *Defamation Act 1974* is amended to extend the protections for defamation currently afforded to conciliation officers so as to include certificates given by conciliation officers as to the results of conciliation (to be issued under amendments proposed to be made by the Bill to the *Workers Compensation Act 1987*), and with respect to fair reports of those certificates.

The *Justices Act 1902* is amended to apply the enforcement mechanisms under that Act that apply to penalty notices under most Acts to apply to penalty notices under the *Workers Compensation Act 1987*.

First print



New South Wales

WorkCover Legislation Amendment Bill 1995

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of Occupational Health and Safety Act 1983 No 20	2
5 Amendment of Compensation Court Act 1984 No 89	2
6 Amendment of Construction Safety Act 1912 No 38	2
7 Amendment of Factories, Shops and Industries Act 1962 No 43	2
8 Amendment of Dangerous Goods Act 1975 No 68	2
9 Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14	3
10 Amendment of other Acts	3

WorkCover Legislation Amendment Bill 1995

Contents

	Page
Schedules	
1 Amendment of Workers Compensation Act 1987	4
2 Amendment of Occupational Health and Safety Act 1983	83
3 Amendment of Compensation Court Act 1984	111
4 Amendment of Construction Safety Act 1912	121
5 Amendment of Factories, Shops and Industries Act 1962	123
6 Amendment of Dangerous Goods Act 1975	125
7 Amendment of Workers' Compensation (Dust Diseases) Act 1942	128
8 Amendment of other Acts	132



New South Wales

WorkCover Legislation Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Workers Compensation Act 1987* and the *Compensation Court Act 1984* to make further provision with respect to workers compensation dispute resolution, claims procedures, lump sum and weekly payments of compensation and the duties of insurers, and in other respects; to amend the *Occupational Health and Safety Act 1983* and associated legislation to increase penalties and to make further provision with respect to powers of inspectors and entry to the workplace, and in other respects; to make miscellaneous amendments to various other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1995*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2). 5
- (2) Schedule 1 [30] which inserts sections 69A and 69B into the *Workers Compensation Act 1987*, and Schedule 1 [104] to the extent that it inserts clause 9 of Part 6 of Schedule 6 to that Act, commence on the date of assent. 10

3 Amendment of Workers Compensation Act 1987 No 70

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

4 Amendment of Occupational Health and Safety Act 1983 No 20

The *Occupational Health and Safety Act 1983* is amended as set out in Schedule 2. 15

5 Amendment of Compensation Court Act 1984 No 89

The *Compensation Court Act 1984* is amended as set out in Schedule 3.

6 Amendment of Construction Safety Act 1912 No 38 20

The *Construction Safety Act 1912* is amended as set out in Schedule 4.

7 Amendment of Factories, Shops and Industries Act 1962 No 43

The *Factories, Shops and Industries Act 1962* is amended as set out in Schedule 5. 25

8 Amendment of Dangerous Goods Act 1975 No 68

The *Dangerous Goods Act 1975* is amended as set out in Schedule 6.

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

The *Workers' Compensation (Dust Diseases) Act 1942* is amended as set out in Schedule 7.

10 Amendment of other Acts

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The Acts specified in Schedule 8 are amended as set out in that Schedule.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 3 Definitions

Insert "or appointed" after "employed" in the definition of *conciliation officer* in section 3 (1). 5

[2] Section 3 (1)

Insert in alphabetical order:

Commissioner means a Commissioner of the Compensation Court under the *Compensation Court Act 1984*. 10

Judge means a Judge of the Compensation Court under the *Compensation Court Act 1984*.

[3] Section 3 (1A)

Insert after section 3 (1): 15

(1A) A reference to a worker who has been injured includes, if the worker is dead, a reference to the worker's legal personal representative or the worker's dependants, or any other person to whom or for whose benefit compensation is payable. 20

[4] Section 4A

Insert after section 4:

4A Directors of uninsured employer not entitled to compensation

If an employer that is a corporation had not obtained, or was not maintaining in force, at the relevant time a policy of insurance for the full amount of the employer's liability under this Act in respect of an injured worker and the injured worker was at the relevant time a director of the corporation, the injured worker is not entitled to any compensation under this Act in respect of that liability. 25
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[5] Section 7 Certain Acts not affected

Omit "*Workmen's Compensation (Broken Hill) Act 1920*".

[6] Section 11A

Insert after section 11:

11A No compensation for psychological injury unless employment substantial cause and not due to reasonable actions by employer 5

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury unless:
 - (a) the employment concerned was a substantial cause of the injury, and 10
 - (b) the injury was not wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers. 15
- (2) A *psychological injury* is an injury (as defined in section 4) that is a psychological or psychiatric disorder. The term extends to include the physiological effect of such a disorder on the nervous system. 20
- (3) This section does not affect any entitlement to compensation under this Act for an injury of a physical nature even if the injury is a physical symptom or effect of a psychological injury, so long as the injury is not merely a physiological effect on the nervous system. 25
- (4) A worker's employment is not to be regarded as a substantial cause of a psychological injury merely because the employment is a real or actual cause of the injury. The term "substantial" is used in this section in the sense of real and important. 30

- (5) This section does not extend the definition of *injury* in section 4. In particular, this section does not affect the requirement in section 4 that a disease is not an injury unless it is contracted by the worker in the course of employment. 5
- (6) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92): 10
- (a) use, for the purpose of describing the worker's condition, accepted medical terminology and not terminology such as "stress" or "stress condition", and
- (b) include a statement of the medical practitioner's opinion concerning the likelihood of the worker's employment being a cause (and, if so, how much of a cause) of the psychological injury (with expressions such as "work related" and similar expressions not being sufficient by themselves for this purpose). 15
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- (7) If a claim is deficient because subsection (6) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim: 25
- (a) the claim is not considered to have been duly made for the purposes of section 102 until subsection (6) is complied with, and 30
- (b) court proceedings cannot be commenced in respect of the claim until subsection (6) is complied with.

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

Insert after section 22A (8):

- (9) The operation of section 22 is not to be limited because of the fact that it provides for liability to be apportioned rather than providing for payment of contributions.

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

Omit “The regulations under section 100C may require insurers and self-insurers to refer such disputes to conciliation officers for conciliation.” from section 40 (4).

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[9] Section 42 Current weekly wage rate

Insert after section 42 (7):

- (7A) If the application of subsection (7) to an injured worker results in the current weekly wage rate of the worker being less than the rate that would be determined under this section if regard was only had to employment with the employer for whom the worker was working at the time of the worker’s injury, a reference to the current weekly wage rate of the worker is, despite that subsection, a reference to that higher rate.

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[10] Section 43 Computation of average weekly earnings

Omit “at the request of” from section 43 (2). Insert instead “within 28 days, or such other period as may be prescribed, after a request from”.

[11] Section 43 (2)

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Insert “and in accordance with any requirements of the regulations” after “in writing”.

[12] Section 43 (2)

Omit "Maximum penalty: 20 penalty units."

[13] Section 43 (2A) and (2B)

Insert after section 43 (2):

(2A) An employer who fails without reasonable excuse to comply with subsection (2) is guilty of an offence. 5

Maximum penalty: 20 penalty units.

(2B) The regulations may make provision for or with respect to:

(a) the manner and form in which the details required to be provided by subsection (2) are to be provided, and 10

(b) requiring an employer to certify as to the completeness and accuracy of details provided by the employer for the purposes of subsection (2). 15

[14] Section 43A Suitable employment

Insert "or return-to-work plan" after "rehabilitation plan" wherever occurring in section 43A (1) and (2) (a).

[15] Section 55 Review of weekly payments

Insert after section 55 (2): 20

(2A) If on any such review a weekly payment of compensation is ended or reduced with effect from a day that is earlier than the date of the Compensation Court's order on the review, the Compensation Court may order the worker to refund the amount of any payments made to the worker to which the worker is not entitled as a result of the order on the review. 25

[16] Section 60A

Insert after section 60:

60A Worker not liable for medical, hospital and rehabilitation charges above applicable rates

A worker is not liable to pay, and a person is not entitled to recover from a worker, any amount in respect of medical or related treatment, hospital treatment at a hospital or an occupational rehabilitation service, given or provided to the worker as a result of an injury, to the extent that the amount exceeds any applicable maximum, as follows: 5
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- (a) in the case of a medical or related treatment for which a sum is prescribed under section 61 (2), the applicable maximum is that prescribed sum, 15
- (b) in the case of hospital treatment at a hospital, the applicable maximum is the amount calculated as prescribed under section 62 (1) as the cost to the hospital of the treatment, 15
- (c) in the case of an occupational rehabilitation service for which a sum is prescribed under section 63A (2), the applicable maximum is that prescribed sum. 20

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

Omit section 63A (5). Insert instead: 25

- (5) The regulations may 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. 30

[18] Section 65 Definitions

Insert at the end of section 65 (2) (c):

- , and
- (d) a disease mentioned in that Table.

[19] Section 66 Compensation for permanent injuries

Omit "\$123,400" and "\$150,150".

Insert instead "\$132,300" and "\$160,950", respectively.

[20] Section 66A Registration of agreements for compensation

Omit "under section 66 for a loss that is an occupational disease (within the meaning of section 71)" from section 66A (1) (a). 5

Insert instead "under section 66 or 67".

[21] Section 66A (4A)

Omit the subsection.

[22] Section 66A (10) 10

Insert after section 66A (9):

- (10) Nothing in this section prevents an agreement that is registered under this section from containing provision as to the payment of costs.

[23] Section 66B 15

Insert after section 66A:

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

- (1) When a worker agrees to receive an amount of compensation under section 66 or 67, the Compensation Court is not to entertain proceedings for entry of an award to give effect to the agreement unless the proceedings also relate to some dispute in connection with the worker's claim for compensation under this Act. 20
- (2) The regulations may prescribe exceptions to this section. 25

[24] Section 67 Compensation for pain and suffering

Omit "\$61,750" from section 67 (1). Insert instead "\$66,200".

[25] Section 67 (1A)

Insert after section 67 (1):

- (1A) Because there is a distinction between *injury* and *loss resulting from an injury* (and compensation is payable under this section only for pain and suffering resulting from a loss), the pain and suffering for which compensation is payable under this section does not include pain and suffering that results from the injury but not from the loss. 5 10

[26] Section 67 (3A)

Omit the subsection.

[27] Section 67 (4A)

Insert after section 67 (4): 15

- (4A) It is permissible for an agreement as to the amount of compensation to be paid to a worker under this section to provide that the amount to be paid is the proportion of the maximum amount payable under this section that is the same as the proportion of the maximum amount payable under section 66 that is represented by the amount payable to the worker under that section in respect of the loss or losses concerned. This subsection does not prevent an agreement that some other amount is to be the amount to be paid to a worker under this section. 20 25

[28] Section 67A

Insert after section 67:

67A Special provisions for HIV/AIDS

- (1) For the purposes of section 67 (3), HIV infection and AIDS are each considered to be a most extreme case, so that the maximum amount of compensation under section 67 is payable. 5
- (2) Section 68 does not apply to a loss that is HIV infection or AIDS.
- (3) The regulations may make provision for methods for determining for the purposes of this Act whether a person is HIV infected or is suffering from AIDS. Regulations need not be made under this subsection and in the absence of regulations the determination of whether a person is HIV infected or suffering from AIDS is to be on the basis of medical opinion. 10 15
- (4) Compensation is not payable under section 66 or 67 for a loss that is HIV infection or AIDS if the loss resulted from voluntary sexual activity or illicit drug use. This subsection does not limit the operation of section 14. 20
- (5) In this section *HIV infection* means infection by the Human Immunodeficiency Virus, and *AIDS* means Acquired Immune Deficiency Syndrome.

[29] Section 68A

Insert after section 68: 25

68A Special provisions for back, neck and pelvis impairment

- (1) If a loss suffered by a worker as a result of an injury is permanent impairment of the back, neck or pelvis, no compensation is payable under this Division, by the

-
- employer who is liable in respect of the injury, for any proportion of the loss that is due to:
- (a) a previous injury for which compensation has been paid or is payable under this Division, or
 - (b) any other previous injury or any pre-existing condition or abnormality. 5
- (2) The proportion of a loss for which no compensation is payable because of subsection (1) is the *deductible proportion* for that loss.
- (3) If the loss resulted from 2 or more injuries for which compensation has been paid or is payable under this Division (as referred to in section 22), there is to be no deduction under this section for any proportion of the loss that is due to any of those 2 or more injuries. 10
- (4) If the loss resulted from an injury to which section 15 applies (a disease that is of such a nature as to be contracted by a gradual process) there is to be no deduction under this section for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due. 15
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- (5) If the loss resulted from an injury to which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under this section for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a contributing factor to the aggravation, acceleration, exacerbation or deterioration. 25
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- (6) If another loss was suffered by the worker as a consequence of the permanent impairment of the back, neck or pelvis for which there is a deductible proportion under subsection (1) and that other loss and the impairment both resulted from the same injury, no compensation is payable under this Division for the proportion of the other loss that equals the deductible proportion for the impairment. 35

- (7) Section 68 does not apply to a loss that is permanent impairment of the back, neck or pelvis.
- (8) If there is a deductible proportion for a loss but the extent of the deductible proportion will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion is 10%, unless this assumption is at odds with the available evidence.

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[30] Sections 69A and 69B

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Insert after section 69:

69A No compensation for less than 6% hearing loss

- (1) There is no entitlement to compensation under section 66 for a loss of hearing (the *present loss*) due to boilermakers deafness if the worker's total hearing loss due to boilermakers deafness is less than 6%. The worker's *total hearing loss* is the aggregate of the present loss and all previous losses of hearing due to boilermakers deafness.
- (2) The fact that compensation is not payable for a loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss, and does not affect the operation of section 17 in respect of that loss (if and when the worker's total hearing loss reaches 6%).
- (3) An example of the operation of this section is as follows (assume that all hearing losses mentioned are due to boilermakers deafness):
 - (a) A worker suffers a hearing loss of 4% (the first hearing loss that the worker has suffered). No compensation is payable under section 66 for the loss because it is less than 6%, though notice of injury can be given or a claim can be made for the hearing loss.

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- (b) The worker suffers a further hearing loss of 4%, bringing the total loss to 8%. The total loss has now passed the 6% threshold and compensation is payable for the full 8%. Compensation for the initial 4% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for that initial hearing loss. 5
- (c) The worker suffers a further hearing loss of 5%. The worker is entitled in the usual way to compensation for the 5% further loss because the 6% threshold has already been passed (the total loss is now 13%). 10
- (4) For the purposes of determining the percentage of loss of hearing due to boilermakers deafness, that loss of hearing is to be determined as a proportionate loss of hearing of both ears, even if the loss is in one ear only. The regulations may prescribe a method for calculating the proportionate loss of hearing of both ears. 15
- (5) A legal practitioner or agent who acts for a worker on a claim for compensation for loss of hearing due to boilermakers deafness is not entitled to recover any costs from the worker or the employer in connection with acting on the claim if no compensation is payable on the claim because the worker's total hearing loss due to boilermakers deafness is less than 6% (even if compensation subsequently becomes payable because the worker's loss of hearing reaches 6% as a result of further hearing loss). 20
25
- (6) A worker who refuses or fails to submit himself or herself for, or who obstructs, an examination required under section 129 or 131 in connection with a claim for which no compensation is payable under section 66 because of this section is (for the purposes of that claim) presumed in the absence of evidence to the contrary to have no hearing loss due to boilermakers deafness. 30
35
- (7) A reference in this section and in section 69B to boilermakers deafness includes a reference to any deafness of similar origin.

- (8) For the purposes of the operation of section 71 in relation to compensation for loss of hearing, a reference in that section to compensation that becomes payable under this Division includes a reference to compensation that would have become payable were it not for the operation of this section. 5

69B Employer's responsibility to pay for hearing loss tests

- (1) An employer who would, but for the operation of section 69A, be liable to pay compensation under section 66 for a loss of hearing suffered by a worker, is not liable under Division 3 to pay the cost of a hearing test for that loss, except any of the following tests: 10
- (a) the test that is the first such test for that loss after the commencement of this section,
 - (b) any test carried out not less than 3 years, or such other period as may be prescribed, after any previous test that the employer has paid the cost of obtaining, 15
 - (c) any test that finds that the worker has suffered a total hearing loss due to boilermakers deafness of 6% or more, 20
 - (d) any test carried out after the worker has left the worker's employment with the employer,
 - (e) any test carried out in such circumstances as may be prescribed by the regulations. 25
- (2) The cost of a hearing test is the cost of obtaining a medical certificate, and any examination required for the certificate, as to the extent of the hearing loss concerned.
- (3) This section does not operate to require payment by an employer for the cost of obtaining any hearing test that the employer would not otherwise be liable to pay for under Division 3. 30

[31] Section 72A Restrictions on commencing proceedings concerning hearing loss claims

Omit the section.

[32] Section 73 Reimbursement for costs of medical certificate and examination

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Insert "report or" after "means a" in the definition of *medical certificate* in section 73 (1).

[33] Part 3, Division 4, Table (Compensation for permanent injuries)

Insert after the matter relating to Foot injuries:

Bowel injury:

10

Permanent loss of bowel function0-65

[34] Part 3, Division 4, Table

Insert after the matter relating to Disfigurement:

Disease:

HIV infection (Human Immunodeficiency Virus infection)100

15

AIDS (Acquired Immune Deficiency Syndrome) ..100

[35] Part 3, Division 4, Table

Omit paragraph (g) of the Interpretation notes at the end of the Table.

[36] Part 3, Division 4, Table

Insert after paragraph (i) of the Interpretation notes at the end of the Table:

- (j) For the purposes of determining whether and to what extent a worker has suffered permanent loss of bowel function: 5
 - (i) the bowel is taken to include the anal sphincter, and
 - (ii) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable. 10

[37] Section 79 Definitions

Omit the definitions of *adjustable amount* and *base index number*.
Insert instead: 15

adjustable amount means:

- (a) each of the amounts specified in sections 25, 35, 37 and 40, without regard to any adjustment under this Division, and
- (b) such of the amounts specified in section 66 or 67 as may be declared by the regulations to be an adjustable amount for the purposes of this Division, without regard to any adjustment under this Division. 20

base index number means: 25

- (a) in respect of an adjustable amount that is an amount specified in section 25, 35, 37 or 40—the number 130.8, and
- (b) in respect of any adjustable amount that is an amount specified in section 66 or 67—the number declared by the regulations to be the base index number for that adjustable amount. 30

[38] Section 81 Rounding off

Omit “(being \$211,850, \$150,150, \$123,400 or \$61,750)”.

Insert instead “(being an amount specified in section 25, 66 or 67)”.

[39] Section 92 Making of claim for compensation

Insert after section 92 (1A):

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- (1B) To the extent that information has been furnished or material provided in the course of the making of a claim for compensation, it is not necessary to furnish that information or provide that material when making any further claim for compensation in respect of the same injury.

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[40] Section 92 (2A)–(2C)

Insert after section 92 (2):

- (2A) If a claim for compensation was made by an injured worker within the period required by subsection (2), that subsection does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker’s claim related.

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- (2B) For the purposes of subsection (2), a person is considered to have made a claim for compensation when the person makes any claim for compensation under this Act in respect of the injury or death concerned, even if the person’s claim did not relate to the particular compensation in question.

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- (2C) If there is no entitlement to compensation under section 66 for a loss of hearing because of section 69A (No compensation for less than 6% hearing loss) notice of injury given in accordance with section 89 suffices (for the purposes of this section) as a claim for the compensation concerned.

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[41] Section 92 (4)–(4D)

Omit section 92 (4). Insert instead:

- (4) The failure to make a claim in accordance with subsection (1) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause. 5
- (4A) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either: 10
 - (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or 15
 - (b) the claim is not made within that 3 years but it is found that, because of exceptional circumstances, it is in the interests of justice that the claim not be barred.
- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines, with the approval of the Authority, to accept the claim outside the period required by subsection (2). 20
- (4C) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of subsections (2) and (4A) taken to have been received when the worker first became so aware. If death results from an injury and a person who is entitled to claim compensation under this Act in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of subsections (2) and (4A) to a claim by that person, taken to be the date that the person became so aware. 25
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(4D) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries) a claim for the compensation is for the purposes of this section taken to have been made when a claim is made on any one of those persons.

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[42] Section 92A Manner of making claim for compensation

Omit section 92A (2).

[43] Sections 94A and 94B

Insert after section 94:

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94A Insurers to give notice and reasons when liability disputed

(1) If an insurer disputes liability in respect of a claim, the insurer must give notice of the dispute to the claimant.

(2) The notice must contain the following:

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(a) a statement of the reason the insurer disputes liability,

(b) unless paragraph (c) applies, a statement to the effect that the worker can refer the dispute for conciliation by a conciliation officer,

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(c) if the insurer has referred or proposes to refer the dispute for conciliation by a conciliation officer, a statement to that effect specifying the date of referral or proposed referral,

(d) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer,

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- (e) such other information as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers.
- (3) The regulations may make provision for the form of and for other information to be included in or to accompany a notice under this section. 5
- (4) Notice is not required to be given under this section with respect to a dispute if notice has been given under section 54 with respect to the dispute and that notice contained the statements and information that a notice under this section is required to contain. 10

94B Report about delays and the incurring of unreasonable costs by insurers

- (1) A Judge or Commissioner of the Compensation Court or a conciliation officer may make a report to the Authority on:
 - (a) delays by insurers in dealing with claims under this Act, and
 - (b) cases of insurers being responsible for costs in proceedings before the Compensation Court being unreasonably incurred, as provided by section 119. 20
- (2) The Authority may take such action as it considers appropriate on the basis of any such report, including (for example):
 - (a) by giving directions under section 93B to any insurer concerned, and
 - (b) in the case of an insurer to whom Division 4 of Part 7 applies, by reducing (by such amount as the Authority considers appropriate) the management expenses relating to the insurer's statutory fund that would otherwise be payable to the insurer. 30

[44] Section 96 Conciliation officers

Insert after section 96 (1):

(1A) The Governor may, on the recommendation of the Minister, appoint other suitably qualified persons to be conciliation officers for the purposes of this Act, to conciliate on disputes as and when required to do so by the Senior Conciliation Officer. Schedule 2 has effect with respect to conciliation officers appointed under this subsection.

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[45] Section 97 Referral of disputes for conciliation

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Insert after section 97 (1):

(1A) The Compensation Court may at any stage of proceedings refer a matter in dispute between the parties to the Senior Conciliation Officer for conciliation or further conciliation by a conciliation officer.

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[46] Section 98 Conciliation of disputes

Insert "having proper regard to relevant entitlements and liabilities under the Act" after "bring the parties to agreement" in section 98 (1).

[47] Sections 98A–98D

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Insert after section 98:

98A Power of conciliation officer to require information

(1) A conciliation officer may give a direction in writing to a party to a dispute referred to the conciliation officer requiring the party:

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(a) to produce to the conciliation officer, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the conciliation officer considers relevant to the dispute concerned, or

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WorkCover Legislation Amendment Bill 1995

Schedule 1 Amendment of Workers Compensation Act 1987

- (b) to furnish specified information to the conciliation officer within a time specified in the direction, being information that the conciliation officer considers relevant to the dispute concerned.
- (2) A conciliation officer must not give a direction under this section to a worker unless the conciliation officer is satisfied that the worker will be represented by a legal practitioner at a conciliation conference on the dispute. 5
- (3) A direction under this section can extend to copies of documents lodged or produced in proceedings before the Compensation Court unless the Court otherwise orders in those proceedings. 10
- (4) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence. 15
- Maximum penalty: 50 penalty units.
- (5) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Compensation Court have the document or information admitted into evidence in the proceedings unless the Court otherwise orders in the special circumstances of the case. This subsection does not apply to a worker unless the worker was represented by a legal practitioner at the time of the failure. 20 25
- (6) A conciliation officer may at his or her discretion make any document or information produced or furnished under this section available to any other party to the dispute, but only after consultation with the party who produced or furnished it. 30

98B Summons to appear at conciliation conference

- (1) The Senior Conciliation Officer may issue a summons requiring the attendance of a party to a dispute at a conciliation conference (as defined in section 100A) on the dispute if the Senior Conciliation Officer is satisfied that the party has failed without reasonable excuse to comply with a request by a conciliation officer to attend a conciliation conference on the dispute. 5
- (2) The Senior Conciliation Officer must not issue a summons under this section requiring the attendance of a worker at a conciliation conference unless satisfied that the worker will be represented by a legal practitioner at the conciliation conference. 10
- (3) A person must not fail without reasonable excuse to comply with a summons served on the person under this section. 15

Maximum penalty: 50 penalty units.

98C Role for conciliation officer in preparing for medical panel

- (1) When a dispute referred to a conciliation officer concerns compensation payable under section 66 and it appears to the conciliation officer that any issues in dispute may be appropriate for referral to a medical panel, the conciliation officer can take such steps as may be necessary or desirable for the purpose of ensuring that the matter is properly prepared for referral to a medical panel. 20
25
- (2) The conciliation officer can assist any party with respect to the making of an application under section 131 for referral of a medical dispute to a medical panel. 30
- (3) The conciliation officer can refer a completed application to the Senior Conciliation Officer for forwarding on to the registrar of the Court, and any such application is taken to have been made by the party or parties on whose behalf it was forwarded to the registrar. 35

98D Certificates as to conciliation of disputes

- (1) The Senior Conciliation Officer is required, on the application of any person who is or has been a party to conciliation of a dispute under this Division, to issue to the person free of charge a conciliation certificate for the dispute. The Senior Conciliation Officer may delegate to any conciliation officer the function of issuing a conciliation certificate. 5
- (2) A conciliation officer may, during or after completion of conciliation of a dispute by the conciliation officer, issue to any party to the dispute on application by the party a conciliation certificate for the dispute. 10
- (3) A conciliation certificate is a certificate as to such of the following matters as the person applying for the certificate requests: 15
- (a) whether a dispute with respect to a claim under this Act is or has been the subject of conciliation under Division 2,
 - (b) the date of referral of the dispute to conciliation,
 - (c) the current position (as at the date of the certificate) with respect to conciliation of the dispute, 20
 - (d) any final outcome of the conciliation (including, if applicable, matters identified as remaining in dispute at the conclusion of the conciliation), 25
 - (e) whether (and, if so, how) a particular party to the dispute has in the opinion of the conciliation officer unreasonably failed to participate in conciliation.
- (4) A conciliation certificate is evidence of the matters that it certifies. 30
- (5) A conciliation officer (including the Senior Conciliation Officer) is competent to give evidence as to matters in a conciliation certificate issued by the conciliation officer under this section but the conciliation officer may not be compelled to give any such evidence. 35

[48] Section 99 Control and direction of conciliation officers

Insert after section 99 (1):

- (1A) Subject to subsection (1), conciliation officers are, in the exercise of their functions, subject to the general control and direction of the Senior Conciliation Officer. 5
- (1B) Subsection (1) does not prevent the making of arrangements for the training of conciliation officers, and does not prevent conciliation officers obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations. 10
- (1C) Conciliation officers are subject to guidelines issued by the Senior Conciliation Officer with respect to the procedures to be followed in the conciliation of disputes, being guidelines issued for the purpose of achieving consistency in the application of the provisions of this Act and the regulations. Any such guidelines are subject to the regulations under section 100C. 15

[49] Section 100A Proceedings before conciliation officers

Insert after section 100A (3):

- (3A) A party to a dispute at a conciliation conference is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to adequately communicate at the conciliation conference. 20
- (3B) A conciliation officer must take into account any written submission prepared by a legal practitioner acting for a party to the dispute and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at a conciliation conference on the dispute). 25

[50] Section 100C Regulations

Omit section 100C (a).

[51] Section 102 Claim for weekly payments—commencement of payments

Insert “in accordance with section 103B” after “refers the dispute” in section 102 (2) (b). 5

[52] Section 102 (4) and (5)

Omit the subsections. Insert instead:

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of the weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (1) and (2) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends: 10
- (a) 42 days after the claim for compensation is duly made, or 15
- (b) when the person ceases to have that reasonable excuse, 20
- whichever is earlier. 20

[53] Sections 103A, 103B

Insert after section 103:

103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days

- (1) If there is a dispute as to liability to continue to make weekly payments of compensation, the person making the weekly payments must, within 21 days after the dispute arises, refer the dispute in accordance with section 103B for conciliation under Division 2. 25

Maximum penalty: 50 penalty units. 30

-
- (2) For the purposes of this section, a dispute as to liability to make weekly payments of compensation for a period of incapacity (or alleged incapacity) is not considered to have arisen unless the worker has provided to the person making the payments a certificate by a medical practitioner certifying with respect to the worker's incapacity during that period. 5
- (3) For the purposes of this section, a dispute as to liability to make weekly payments of compensation is considered to have arisen: 10
- (a) on the commencement of the period of incapacity (or alleged incapacity) to which the reduction or discontinuation of payments relates, unless paragraph (b) applies, or
- (b) if the certificate referred to in subsection (2) is provided by the worker after the commencement of that period—when that certificate is provided by the worker. 15
- (4) A person's failure to refer a dispute for conciliation under Division 2 in accordance with this section is not a contravention of this section if the dispute has already been referred by the claimant for conciliation under Division 2. 20

103B How disputes about weekly payments are to be referred to conciliation 25

- (1) For the purposes of this Division, a dispute about weekly payments of compensation is referred to conciliation under Division 2 by forwarding the following material to the Senior Conciliation Officer:
- (a) a statement of the matters in dispute (which, if the Authority approves a form for the purpose, is to be in such form as the Authority approves), 30
- (b) a copy of the claim and all relevant documentation relating to the claim in the person's possession or reasonably obtainable by the person, 35

- (c) a copy of the notice given to the worker under section 94A or 54 (whichever is relevant to the case),
 - (d) a copy of all medical or other information on which the decision to dispute liability was based, 5
 - (e) in a case to which section 102 (4) applies, details of the excuse for not commencing weekly payments (or the balance of weekly payments in dispute) within 21 days.
- (2) This section applies only to the referral of a dispute by the person on whom the claim was made or the person making the weekly payments of compensation. It does not apply to the referral of a dispute by the person claiming weekly payments of compensation. 10
- [54] Section 105 Maximum period of weekly payments of compensation under direction of conciliation officer 15**
- Insert "constituted by a commissioner" after "Compensation Court" in section 105 (2).
- [55] Section 106 Revocation of directions of conciliation officer**
- Insert "constituted by a commissioner" after "Compensation Court" in section 106 (2). 20
- [56] Part 4, Division 3A**
- Insert after section 106C:
- Division 3A Restrictions on commencing court proceedings 25**
- 106D Restrictions on commencing court proceedings about weekly payments**
- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless:

-
- (a) the person on whom a claim for the compensation was duly made has failed to commence weekly payments within 21 days, or
 - (b) if that person has commenced those payments—a dispute has arisen as to liability to continue to make those weekly payments (as referred to in section 103A) and a period of 21 days has elapsed since the dispute arose. 5
- (2) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate. 10 15
- (3) This section does not prevent the commencement of court proceedings in any of the following circumstances:
- (a) if the proceedings concern an application for a determination under section 53,
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court, 20
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act, 25
 - (d) any circumstances prescribed by the regulations.

106E Restrictions on commencing court proceedings for lump sum compensation

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 until: 30
- (a) 12 weeks after a claim for the compensation is duly made, or
 - (b) if the person on whom the claim is made has, within that 12 weeks, proceeded to deal with and decide the claim with reasonable promptness and 35

duly applied under section 131 for reference of the matter to a medical panel—14 days after the panel has given its certificate under that section,

whichever is later.

- (2) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss, or for related compensation, until subsection (1) allows the commencement of proceedings in respect of compensation under section 66 for the loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss or pain and suffering. 5 10
- (3) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until: 15
- (a) 12 weeks after the claim was amended, or
 - (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates, 20
- whichever is later.
- (4) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (3). 25
- (5) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3). 30

-
- (6) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim. 5
- (7) This section does not prevent the commencement of court proceedings in such circumstances (if any) as may be prescribed by the regulations. 10
- (8) For the purposes of this section a person is not considered to have dealt with a claim with reasonable promptness unless the person has, within 21 days (or such other period as may be prescribed by the regulations) after receipt of the claim, given the claimant a written acknowledgment of receipt of the claim. 15
- 106F Restrictions on commencing court proceedings about hospital, medical and other expenses 20**
- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute has arisen about that compensation. 25
- (2) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106D or 106E (whichever is appropriate). 30
- (3) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations. 35

[57] Section 108

Insert after section 107A:

108 Applications to be heard together

- (1) A person who has applied to the Compensation Court for a determination of a claim for compensation under this Act against 2 or more persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any of the applications heard together. 5 10
- (2) If more than one employer or more than one insurer may be involved in an application for compensation or any other matter under this Act, the regulations or the rules of the Compensation Court may make provision for or with respect to requiring one of those insurers or one of those employers, the Authority or some other person, to represent the employers or insurers in any proceedings relating to the application. 15

[58] Sections 113–119

Insert after section 112: 20

113 Interest before order for payment

- (1) In any proceedings in the Compensation Court, the Court may order that there is to be included, in any sum to be paid, interest at such rate as it thinks fit on the whole or any part of the sum for the whole or any part of the period before the sum is payable, subject to the limitations imposed by this section. 25
- (2) Interest cannot be ordered under this section:
- (a) on any compensation payable under Division 4 of Part 3, or 30

-
- (b) on any compensation payable under this Act for any period before a claim for the compensation was duly made, or
- (c) on any compensation payable under this Act for any period during which proceedings before the Court were adjourned on the application of the claimant for the compensation or pursuant to section 106E. 5
- (3) This section does not:
- (a) authorise the giving of interest upon interest, or 10
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

114 Interest after order for payment

- (1) Unless the Court orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum ordered to be paid by the Court as is from time to time unpaid. 15
- (2) Interest payable under subsection (1) in respect of any sum ordered to be paid: 20
- (a) is to be calculated as from the date when the order was made or from such later date as the Court in any particular case fixes, and
- (b) is to be calculated at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and 25
- (c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest. 30

(3) Despite subsections (1) and (2), where:

- (a) the amount of any sum ordered to be paid (excluding the amount of costs to be assessed) is paid in full within 21 days after the sum becomes payable, or 5
- (b) the amount of costs assessed is paid in full within 21 days after that amount is assessed, interest is not payable on the amount so paid, unless the Court otherwise orders.

115 Interest on agreed payment of lump sum compensation 10

- (1) Unless the Court orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum agreed to be paid as compensation under section 66 or 67 as is from time to time unpaid. 15
- (2) Interest payable under subsection (1) in respect of any sum so agreed to be paid:
 - (a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or (if the agreement does not so provide) the date that is 21 days after the date the agreement was made, and 20
 - (b) is to be calculated at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and 25
 - (c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

116 Costs 30

- (1) In this section, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.

-
- (2) Subject to this Act and the regulations and the rules of the Compensation Court and subject to any other Act:
- (a) costs in or in relation to any proceedings are in the discretion of the Court, and
 - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings, and 5
 - (c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* or on an indemnity basis. 10
- (3) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation was frivolous or vexatious, fraudulent or made without proper justification. 15
- (4) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application. 20
- (5) If a person claiming compensation appeals under section 34A (Appeal to Judge from commissioner) of the *Compensation Court Act 1984*, costs in or in relation to the appeal are to be paid by the unsuccessful party unless the Compensation Court is of the opinion that such a requirement would be unjust in the circumstances of the case. 25
- (6) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under this Act if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker. 30

- (7) An order of the Court for payment of costs may include:
- (a) the costs actually incurred or to be incurred by a person claiming compensation, and
 - (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person's claim, and 5
 - (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 2 of Part 4), and 10
 - (d) costs incidental to an application for referral of a medical dispute under section 131, or to referral of a medical question by agreement under section 131A, and
 - (e) costs incidental to an application for registration of an agreement under section 66A. 15
- (8) In this section:
- application for compensation* includes any proceedings in connection with an application for compensation.
- compensation* means compensation under this Act. 20
- decision* includes award, order, determination, ruling and direction.

117 Regulations fixing maximum costs recoverable by legal practitioners

- (1) The regulations may make provision for or with respect to the following: 25
- (a) fixing maximum costs for legal services provided to a worker (or other claimant), an employer or an insurer in any workers compensation matter,
 - (b) fixing maximum costs for matters that are not legal services but are related to proceedings on a workers compensation matter (for example, expenses for witnesses or medical opinions). 30

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- (2) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (3) To the extent that the regulations so provide, a legal practitioner is not entitled to be paid or recover costs of the kind referred to in subsection (1) (b) that are incurred in connection with the obtaining of any report or opinion for use for any of the following purposes and which is not used for the purpose for which it was obtained: 5
- (a) for use in the making of a claim for compensation under this Act, 10
 - (b) for use in negotiations or conciliation in respect of a claim for compensation,
 - (c) for consideration by a medical panel or medical referee under section 131 or by a medical practitioner under section 131A, 15
 - (d) for use in court proceedings.
- (4) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*. 20
- (5) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 1987* (in particular section 196 of that Act) and the regulations under that Act. An assessment under Division 6 of Part 11 of that Act of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation. 25
- (6) Expressions used in this section have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*. 30
- (7) In this section *costs* includes:
- (a) costs actually incurred or to be incurred by a person claiming compensation, and 35

- (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
- (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 2 of Part 4), and 5
- (d) costs incidental to an application for referral of a medical dispute under section 131, or to referral of a medical question by agreement under section 131A, and 10
- (e) costs incidental to an application for registration of an agreement under section 66A.

118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services 15

- (1) The regulations may make provision for or with respect to fixing maximum fees for the provision by medical practitioners of the following services:
 - (a) provision of any medical opinion or certificate for use in court proceedings in connection with a claim for compensation under this Act, 20
 - (b) appearance as a witness in court proceedings on a claim for compensation under this Act.
- (2) A medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed by regulations under this section for the provision of the service. 25

119 Limit on recovery of costs unreasonably incurred

- (1) If the Compensation Court is satisfied that any costs in proceedings under this Act before the Court were unreasonably incurred, the Court is to order that those costs are to be treated as unreasonably incurred for the purposes of this section and the Court is not to make an order for payment of those costs by any other party to the proceedings. 30
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- (2) Costs incurred by a party to proceedings are considered to have been unreasonably incurred for the purposes of this section only if they were incurred by the party:
- (a) after a reasonable offer of settlement in the proceedings was made to the party, or 5
 - (b) after the party has failed without reasonable excuse to comply with a written request from another party to the proceedings to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or 10
 - (c) after the party has unreasonably failed to participate in a conciliation of the dispute with which the proceedings are concerned and the Court is of the opinion that the failure has resulted in unnecessary litigation. 15
- (3) A legal practitioner representing a party to proceedings in the Compensation Court is not entitled to recover from the party any costs that the Court has ordered are to be treated as unreasonably incurred. 20
- (4) The Court may by order exempt any costs or a proportion of any costs from the operation of subsection (3) if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned. 25

[59] Section 122 Solicitor/client costs in compensation proceedings

Omit “any proceedings under this Act (including a conciliation conference as defined in section 100A)” from section 122 (1). 30
Insert instead “the claim”.

[60] Section 122 (5) and (6)

Insert after section 122 (4):

(5) A person must not:

- (a) claim a lien that the person is not entitled to claim because of subsection (1), or 5
- (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of subsection (1).

Maximum penalty: 50 penalty units.

(6) A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of subsection (1) is entitled to recover the amount paid as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court. 10
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[61] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit 131 (5B) (a) and (b). Insert instead:

- (a) the dispute concerns a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin, or 20
- (b) the dispute concerns compensation that is the subject of proceedings by reason of the amendment of a claim as referred to in section 106E (3), or 25

[62] Section 131 (5C)

Omit the subsection.

[63] Sections 131A

Insert after section 131:

131A Agreement to refer medical question to independent medical practitioner

- (1) A worker and employer may agree to refer a medical question to a particular medical practitioner and agree that some or all of the medical practitioner's findings on that reference are to be binding on them for the purposes of the worker's claim for compensation. The medical practitioner need not be a medical referee. 5
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- (2) In addition, the agreement can make provision for any of the following:
 - (a) for the worker to submit himself or herself for examination by the medical practitioner,
 - (b) for medical reports, X-rays and other test results to be furnished or disclosed to the medical practitioner. 15
- (3) The medical practitioner to whom a medical question is referred by agreement under this section is to give a certificate as to the medical practitioner's findings on the medical question as required by the terms of reference. 20
- (4) The certificate is conclusive evidence as to such of the findings certified as are findings that the worker and employer agreed would be binding on them for the purposes of the worker's claim for compensation. 25
- (5) As an incentive to the reaching of agreement under this section, the employer may agree to make a special payment to the worker over and above any compensation payable to the worker (and whether or not any compensation is paid to the worker). The payment must not exceed an amount fixed by (or determined in 30

- accordance with) the regulations or guidelines published by the Authority as the maximum payment for the purposes of this section. Any such guidelines are subject to the regulations.
- (6) Any payment received by a worker under subsection (5) is taken to have been received as compensation paid under this Act. 5
- (7) A worker or employer who is a party to an agreement under this section may apply to the Authority for registration of the agreement and any medical certificate given by a medical practitioner pursuant to the agreement, and the Authority is to register the agreement and certificate, or such extract from them as the Authority considers appropriate. The Authority is to provide the Compensation Court with a copy of the agreements and certificates or the extracts from them that are registered by the Authority under this section. 10 15
- (8) The fees of the medical practitioner to whom a medical question is referred by agreement under this section are to be paid by the employer. 20
- (9) In this section *medical question* means any question (whether or not there is a dispute) as to any of the following:
- (a) the worker's condition (including the existence, nature and extent of any loss or impairment and, if relevant, whether there exists, and the extent of, any deductible proportion under section 68A), 25
- (b) the worker's fitness for employment (including the kind of employment for which the worker is fit),
- (c) whether and to what extent the incapacity of the worker is due to the injury or alleged injury and whether or not there is any disagreement between the worker and the employer as to those matters. 30

[64] Section 131B

Insert before section 132:

131B Reference of medical disputes by Senior Conciliation Officer

- (1) When a medical dispute (as defined in section 131) is the subject of conciliation by a conciliation officer and concerns the compensation payable under section 66, the Senior Conciliation Officer may request the registrar of the Compensation Court to refer the dispute to a medical panel and the registrar is to refer the dispute accordingly. 5
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- (2) The medical panel to whom a medical dispute is so referred is to give a certificate as to the worker's condition, in accordance with the terms of reference of the dispute.
- (3) The certificate of the medical panel is conclusive evidence as to such of the matters certified (being matters that relate to the existence, nature or extent of a loss mentioned in the Table to Division 4 of Part 3) as are matters that the regulations provide can be conclusively certified for the purposes of this section. The certificate is evidence as to all other matters certified but is not conclusive evidence as to those other matters and evidence may be adduced to the contrary. 15
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- (4) However, the certificate of the medical panel is not conclusive evidence as to any matter certified if: 25
- (a) the request to refer the dispute to a medical panel was made after the commencement of court proceedings with respect to the dispute, or
- (b) before the Senior Conciliation Officer requested referral of the dispute to a medical panel, the worker or the employer had applied under section 131 for referral of the dispute to a medical panel or the worker and the employer had agreed under section 131A to refer the dispute to a medical practitioner. 30
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(5) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:

(a) the worker's right to recover compensation under this Act with respect to the injury, or

(b) the worker's right to weekly payments,
is suspended until the examination has taken place.

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[65] Section 133 Reimbursement of worker for loss of wages and expenses associated with medical examination

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Insert after section 133 (4):

(5) A worker who agrees under section 131A to submit himself or herself for examination by a medical practitioner is taken for the purposes of this section (except subsection (2)) to be required to submit himself or herself for examination pursuant to this Division.

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[66] Section 136A

Insert after section 136:

136A Power to correct mistakes in medical reports or certificates

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(1) A medical referee or medical panel may, of the referee's or panel's own motion or on the application of a party to proceedings (and without formally reconvening), correct a certificate or report given by the referee or panel if it contains:

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(a) a clerical mistake, or

(b) an error arising from an accidental slip or omission, or

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- (c) a material miscalculation of figures or material mistake in the description of any person, thing or matter referred to in the certificate or report, or
 - (d) a defect of form.
- (2) This section applies to a medical certificate given by a medical practitioner pursuant to section 131A as if the medical practitioner were a medical referee. 5

[67] Section 145A

Insert after section 145:

145A Recovery from directors of corporations liable to reimburse Authority 10

- (1) If a corporation is liable to reimburse the Authority an amount for a payment made under the Scheme and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time. 15
- (2) A corporation is considered to be liable to reimburse the Authority an amount for a payment made under the Scheme if the Authority is entitled to recover the amount either under section 145 or under an order of the Compensation Court made on application under that section, even if the corporation has ceased to exist. 20
- (3) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise. 25

- (4) A person is a culpable director of a corporation at the relevant time if:
- (a) the corporation contravened section 155 (Compulsory insurance for employers) in respect of a policy of insurance that would have covered the corporation for the liability to which the payment made under the Scheme related (whether or not the corporation has been proceeded against or convicted of an offence for the contravention), and
 - (b) at the time of the contravention the person was a director of the corporation.
- (5) A person is not a culpable director of a corporation if the person establishes that:
- (a) the corporation contravened section 155 without the person's knowledge, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to that contravention, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (6) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.
- (7) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

[68] Part 4, Division 7

Insert after Division 6:

Division 7 Prohibited conduct relating to touting for claims

148B Definitions

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(1) In this Division:

agent means a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a claim, but does not (unless the regulations otherwise provide) include a legal practitioner.

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claim means a claim for compensation under this Act.

lawyer means a legal practitioner.

prohibited conduct has the meaning given by section 148C.

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protected claim means:

- (a) a claim under section 66 for loss of hearing, and
- (b) any other claim that is declared by the regulations to be a protected claim for the purposes of this section.

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(2) Each of the following activities is considered to constitute acting as agent for a person in connection with a claim:

- (a) advising the person with respect to the making of a claim,
- (b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim,
- (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,

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- (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim,
 - (e) any other activity prescribed by the regulations.
- (3) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division. 5

148C Prohibited conduct by agents

- (1) The following conduct by an agent is prohibited conduct for the purposes of this Division: 10
- (a) making a statement to a person, knowing that the statement is false or misleading in a material particular, for the purpose of encouraging the person or any other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim, 15
 - (b) using information obtained by the agent in connection with a claim to contact any other person for the purpose of encouraging that other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim, 20
 - (c) seeking to obtain information from a client of the agent for the purpose of using that information as described in paragraph (b), 25
 - (d) inducing or attempting to induce a client of the agent to encourage any other person to make a claim (whether or not it is a protected claim) and to use (in connection with the claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the claim, 30
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- (e) making any unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client of the agent, for the purpose of encouraging the person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim, 5
- (f) such other conduct as may be prescribed by the regulations as prohibited conduct for the purposes of this section. 10
- (2) The regulations can specify circumstances in which conduct that would otherwise be prohibited conduct under subsection (1) is not to be regarded as prohibited conduct for the purposes of this Division. 15
- (3) For the purposes of this Division, any conduct engaged in by a person on behalf of an agent, or that an agent has caused or procured the person to engage in, is taken to have been engaged in by the agent. 20

148D Offence of engaging in prohibited conduct

An agent who engages in prohibited conduct is guilty of an offence.

Maximum penalty: 50 penalty units.

148E Consequences of prohibited conduct for recovery of fees by agents 25

- (1) An agent is not entitled to recover from a person any fees, costs or other charges that would otherwise be payable by the person in connection with services made use of by the person if the services were made use of as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct. 30

- (2) If prohibited conduct engaged in by an agent involved encouraging a person to make use of services and the person makes use of those services after the conduct is engaged in, it is to be presumed for the purposes of this section that the services were made use of as a result of that prohibited conduct, unless the agent concerned establishes otherwise. 5
- (3) If the services of an agent were made use of as a result of prohibited conduct engaged in by the agent in connection with a claim under section 66 for loss of hearing, it is to be presumed for the purposes of this section that any services of the agent made use of in connection with a subsequent claim for further loss of hearing made by the same worker (whether or not made against the same employer) were made use of as a result of prohibited conduct engaged in by the agent, unless the agent concerned establishes otherwise. 10 15
- (4) A person who has paid any amount in respect of fees, costs or other charges to an agent that the agent would not have been entitled to recover because of this section is entitled to recover the amount from the agent as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court. 20

148F Consequences of prohibited conduct for lawyers

- (1) A lawyer who acts for a person on a claim must not include in any bill given to the person, and must not otherwise seek to recover from the person, any amount by way of disbursements for fees paid to an agent in connection with referral of the person to the lawyer by the agent if the lawyer knows or has reasonable cause to suspect that the agent engaged in prohibited conduct that involved encouraging the person to make the claim, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct. 25 30 35

Maximum penalty: 50 penalty units.

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- (2) A lawyer who acts for a person on a claim is not entitled to recover from any person any amount by way of disbursements for fees paid to an agent in connection with the claim if the claim was made as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct. 5
- (3) If prohibited conduct engaged in by an agent involved encouraging a person to make a claim and the person makes a claim after the conduct is engaged in, it is to be presumed for the purposes of subsection (2) that the claim was made as a result of that prohibited conduct unless the lawyer establishes otherwise. 10
- (4) If a claim under section 66 for loss of hearing was made as a result of prohibited conduct engaged in by an agent, it is to be presumed for the purposes of subsection (2) that any subsequent claim for further loss of hearing made by the same worker (whether or not made against the same employer) in connection with which that agent performed any service was made as a result of prohibited conduct engaged in by that agent, unless the lawyer concerned establishes otherwise. 15
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- (5) A person who has paid any amount in respect of disbursements to a lawyer that the lawyer would not have been entitled to recover because of subsection (2) is entitled to recover the amount from the lawyer as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court. 25
- 148G Lawyers and agents can be requested to certify as to prohibited conduct** 30
- (1) An employer or insurer who is liable to pay a lawyer or agent any fees, costs or other charges incurred in connection with a protected claim made by a person is entitled to request the lawyer or agent to provide a certificate under this section about the claim (unless the lawyer or agent has already provided it). The request must be in writing. 35

- (2) A certificate under this section is a certificate that to the best of the lawyer's or agent's knowledge, no agent has engaged in prohibited conduct that involved encouraging the person to make the claim or any previous claim, except as may be disclosed in the certificate. 5
- (3) If a certificate is requested:
- (a) the lawyer or agent is not entitled to be paid by or recover from the employer or insurer any fees, costs or other charges incurred in connection with the claim concerned until the certificate is provided (even if the fees, costs or other charges are payable under an award or order of a court), and 10
 - (b) no interest that might otherwise be payable on those fees, costs or other charges is payable for the period from when the certificate is requested until it is provided (despite any order or award of a court for the payment of that interest). 15
- (4) A lawyer or agent can provide an employer or insurer with a certificate under this section even if the employer or insurer has not requested it. 20
- (5) A lawyer or agent who gives a certificate under this section about a claim made by a person is guilty of an offence if the lawyer or agent knew or had reasonable cause to suspect that an agent had engaged in prohibited conduct that involved encouraging the person to make the claim. 25

Maximum penalty: 50 penalty units.

148H Power to restrict or ban recovery of costs by agents who engage in prohibited conduct 30

- (1) The Authority can by notification given to insurers and self-insurers direct that an agent specified in the notification is not entitled to recover any fees, costs or

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- other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that: 5
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or
 - (b) in the case of an agent that is a corporation, a director of the corporation or other person concerned in the management of the corporation has persistently engaged in any such conduct. 10
- (3) Before the Authority gives such a notification it must give the agent a reasonable opportunity to make written submissions to the Authority on the matter. 15
- (4) The effect of a notification under this section is that the agent specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force. 20
- (5) An agent aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders. 25
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the agent to whom it applies. 30

148I Power to restrict or ban agents who engage in prohibited conduct

- (1) The Authority can by direction in writing given to an agent prohibit the agent from acting for any person in connection with any claims or in connection with specified types of claims. The prohibition can be absolute or subject to conditions. 5
- (2) Such a direction cannot be given unless:
- (a) the Authority is satisfied that the agent concerned has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5) and as a result is not a fit and proper person to act in connection with claims to which the direction relates, and 10
 - (b) the Authority has given the agent a reasonable opportunity to make written submissions to the Authority on the matter. 15
- (3) An agent who acts in contravention of a direction given under this section:
- (a) is guilty of an offence for which the maximum penalty is 200 penalty units, and 20
 - (b) is not entitled to recover any fees, costs or other charges from a person for anything done by the agent in contravention of the direction.
- (4) A person aggrieved by a direction under this section can appeal against the direction to the Compensation Court within 14 days after the direction is given to the agent. An appeal does not stay the operation of the direction unless the Court otherwise orders. 25
- (5) A direction remains in force until it is withdrawn. A direction can be withdrawn at any time by the Authority by giving written notice of withdrawal to the agent concerned. 30

148J Past conduct included in assessing persistent conduct

- (1) A reference in section 148H and 148I to conduct that constitutes a contravention of section 148D or 122 (5) includes a reference to:
- (a) conduct engaged in by a person before the commencement of this section, and 5
 - (b) conduct engaged in before the commencement of section 148D or 122 (5) that would, if engaged in after that commencement, have constituted a contravention of the provision. 10
- (2) However, a person cannot be considered to have persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5) unless at least one instance of that conduct occurred after the commencement of this section. 15

148K Duty of claimants to comply with requests for information about agents and lawyers

- (1) A person who makes a protected claim must comply with a request from the insurer or self-insurer concerned for information as to whether the person made use of the services of an agent or lawyer in respect of the claim and how the person came to make use of those services. Such a request by the insurer may be made at any time (whether or not court proceedings have been commenced in respect of the claim). 20
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- (2) The regulations may make provision for limiting the operation of this section with respect to lawyers.

[69] Section 151B Effect of recovery of damages from employer on payment of compensation

- Renumber section 151B (4) as section 151B (3). 30

[70] Section 151B (4)

Insert at the end of section 151B:

- (4) In applying subsection (2) or (3) to a particular case:
- (a) the reason for the non-recovery of damages for economic loss or non-economic loss (respectively) must be solely the operation of section 151H or 151G (respectively), and not a combination of reasons (including, for example, a partial settlement or partial compromise of a claim), and 5
 - (b) the amount of damages for non-economic loss applied in determining the operation of the threshold test in the relevant section must be calculated on the basis of the actual loss, and must not be reduced on the basis of any settlement or compromise or otherwise. 10
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[71] Section 151M

Omit the section. Insert instead:

151M Payment of interest

- (1) **Limited statutory entitlement**
A plaintiff has only such right to interest on damages as is conferred by this section. 20
- (2) **Domestic services, nursing and attendance**
No interest is payable on damages comprising compensation under section 151K. A court cannot order the payment of interest on such damages. 25
- (3) **Non-economic loss**
No interest is payable on damages awarded under section 151G. A court cannot order the payment of interest on such damages.

(4) **Other heads of damages**

The following provisions apply to damages, other than damages to which subsection (2) or (3) applies:

- (a) Interest is not payable (and a court cannot order the payment of interest) on such damages unless: 5
 - (i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or 10
 - (ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or 15
 - (iii) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made. 20 25 30
- (b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind. 35
- (c) For the purposes of this subsection, an offer of settlement must be in writing.

(5) **Calculation of interest**

If a court is satisfied that interest is payable under subsection (4) on damages:

- (a) the amount of interest is to be calculated for the period from the date of the death of or injury to the worker until the date on which the court determines the damages, and 5
- (b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section. 10

(6) **Rate of interest**

The rate of interest to be used in any such calculation is three-quarters of the rate that would otherwise be applicable under the rules of court. 15

(7) **Judgment debts**

Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

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

Insert "or is entitled to take" after "takes" in section 151Z (2) (a). 20

[73] Section 151AB Special insurance provision relating to occupational diseases etc

Omit section 151AB (1) and (2). Insert instead:

- (1) If an employer is liable independently of this Act for damages for an occupational disease contracted by a worker, the following provisions have effect for the purpose of identifying from among a number of insurers under policies of insurance obtained by the employer for different periods which insurer or insurers is liable to indemnify the employer for the full amount of the 25 30

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- damages or which is liable to pay the full amount of damages to the worker (without any right to a contribution from those other insurers):
- (a) Any liability of that employer that arose before the relevant commencement is taken to have arisen when the worker was last employed before that commencement by that employer in an employment to the nature of which the disease was due. 5
 - (b) Any liability of that employer that arose after the relevant commencement is taken to have arisen when the worker was last employed after that commencement by that employer in an employment to the nature of which the disease was due. 10
15
- (2) If the employer's liability arose partly before and partly after the relevant commencement, the following additional provisions apply:
- (a) Subsection (1) (a) applies to any liability that arose before that commencement and subsection (1) (b) applies to any liability that arose after that commencement, with the result that 2 insurers are identified as the insurers who are to be liable as referred to in subsection (1). These insurers are referred to in this subsection as the **responsible insurers**. 20
25
 - (b) Of the responsible insurers, the one that is the insurer in respect of the employer's liability that arose after the relevant commencement is to be the insurer **primarily responsible** for the claim. 30
 - (c) The responsible insurers can however agree as to which of them is to be primarily responsible for the claim or the court can order that one of them is to be the insurer primarily responsible, and any such agreement or order overrides paragraph (b). 35
 - (d) The insurer who is primarily responsible for the claim is to act for both the responsible insurers in respect of any claim for the damages and has sole

liability for the claim (that is, it is to indemnify the employer for the full amount of the damages or is to pay the full amount of damages to the worker, without any right to a contribution from any other insurer, except as provided by paragraph (e)).

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- (e) The insurer who is primarily responsible is entitled to recover from the other responsible insurer half of the amount paid as damages to the worker, half of the amount paid in respect of the worker's legal costs and half of such reasonable amount as the insurer primarily responsible may have incurred in respect of its own legal expenses in the matter.

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[74] Section 151AB (6)

Insert after the definition of *occupational disease*:

relevant commencement means:

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- (a) except as provided by paragraph (b)—4 p.m. on 30 June 1987, or
- (b) in the case of an employer who was insured under a policy of insurance that was assigned as referred to in clause 10 of Part 15 of Schedule 6 to this Act—the commencement of the period of insurance of the policy so assigned.

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[75] Section 152A

Insert after section 152:

152A Return-to-work plans for injured workers

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- (1) The regulations may prescribe circumstances in which the employer of an injured worker must prepare or arrange for the preparation of a return-to-work plan for the worker.

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- (2) Any such return-to-work plan must, subject to the regulations, comply with any guidelines determined by the Authority.
- (3) The regulations may:
- (a) require any such return-to-work plan to be approved by the Authority or other person or body, and 5
 - (b) create offences with respect to any failure to comply with the regulations under this section.
- [76] Section 155 Compulsory insurance for employers** 10
- Omit "Maximum penalty: 200 penalty units." from section 155 (1).
Insert instead "Maximum penalty: 200 penalty units or imprisonment for 6 months, or both".
- [77] Section 155 (4) and (5)**
- Insert after section 155 (3): 15
- (4) The Authority may undertake not to prosecute a person for an offence under this section in respect of a failure by the person to obtain or maintain in force a policy of insurance on condition that the person pays to the Authority the amount that the Authority is entitled to recover under section 156 in respect of the failure or such lesser amount as the Authority may determine to accept. If the person pays the amount in compliance with any terms and conditions of the undertaking, the person is not liable to be proceeded against or convicted for an offence under this section in respect of the failure concerned. 20 25
 - (5) The regulations may make provision for or with respect to an amnesty for contraventions of this section, such that a person who satisfies the conditions of the amnesty is not liable to be prosecuted for an offence under this section in respect of such a contravention and is not liable to recovery under section 156 in respect of such a contravention. 30

[78] Section 156 Recovery of double premiums from employer not obtaining policy of insurance

Insert “or such lesser amount as the Authority may agree to accept in any particular case” after “that period” in section 156 (1).

[79] Section 156 (5)–(7) 5

Insert after section 156 (4):

- (5) In the absence of information that would enable the Authority to accurately determine the premium that would have been payable for the issue of a particular policy of insurance, the following provisions have effect: 10
- (a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority), 10
 - (b) the Authority’s estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made, 20
 - (c) if the Authority’s estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment. 25
- (6) A court that convicts an employer of an offence under section 155 may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the failure to which the offence relates. Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) and is to be dealt with accordingly. 30 35

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- (7) A Local Court cannot order the payment of an amount under subsection (5) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.

[80] Section 161 Inspection of policies

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Insert after section 161 (3):

- (3A) A person is not liable to be prosecuted both for an offence under section 155 of failing to obtain and maintain in force a policy of insurance and for an offence under this section in respect of a failure to produce that policy of insurance for inspection.

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

Omit section 174 (6A) and (6B). Insert instead:

- (6A) The Authority may order that an employer supply to the Authority, or (at the request of the insurer) to an insurer who has issued a policy of insurance to the employer, any records in the employer's possession relating to any contract (however described) under which the employer has made payments to an individual to perform work during such period (not exceeding 7 years after the work was performed) as is specified in the order.

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- (6B) An order under subsection (6A) may be made only if the Authority is satisfied that:

- (a) in the case of a request made by an insurer, the request has been made by the insurer for the purpose of determining whether the correct premium has been paid under the policy of insurance, and

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- (b) the information contained in the records has not already been supplied or made available elsewhere under this section or under section 173.

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[82] Section 196 Assets of statutory funds

Insert at the end of section 196:

- (2) The assets of a statutory fund maintained by an insurer under this Division are held by the insurer on trust for the purposes to which the assets of the statutory fund are authorised or required to be applied under this Act. The insurer has no beneficial interest in or entitlement to assets of the statutory fund maintained by the insurer. 5

[83] Section 199 Protection of assets of statutory funds

Omit "all other" from section 199 (1). 10

[84] Section 200 Directors of licensee companies under trustee duty

Insert "the Authority and" wherever occurring before "the appropriate" in section 200 (1) (b) and (3).

[85] Section 274 Powers of entry and inspection by officers of Authority 15

Omit "employer or insurer" from section 274 (2) (a). Insert instead "employer, insurer or agent (as defined in section 148B)".

[86] Section 277 Offences by corporations

Omit section 277 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that: 20
- (a) the corporation contravened the provision without the person's knowledge, or 25

-
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation. 5

[87] Section 278 Proceedings for offences

Omit "100 penalty units" from section 278 (2).
Insert instead "200 penalty units".

[88] Section 278 (5) 10

Insert after section 278 (4):

- (5) Proceedings for an offence against this Act or the regulations may be instituted by (but not only by) the Authority.

[89] Section 278A 15

Insert after section 278:

278A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act (or the regulations under this Act), being an offence prescribed by the regulations. 20
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section. 25

- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence. 5
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and 10
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences. 15
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court. 20
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section authorised officer means a person declared by the regulations to be an authorised officer for the purposes of this section. 25

[90] Section 279 Time for instituting proceedings

Insert after section 279 (2):

- (3) Despite subsection (1), proceedings for an offence under section 155 (Compulsory insurance for employers) may be instituted by the Authority: 30
 - (a) within 2 years after the act or omission alleged to constitute the offence, or

(b) in a case where the Authority first becomes aware of the act or omission alleged to constitute the offence because of a claim made by a worker of the employer concerned under Division 6 of Part 4—within 6 months after the Authority pays compensation or makes any other payment to the worker in respect of the claim under that Division or the Compensation Court determines the claim (whichever occurs later), 5

whichever provides the longer time for proceedings to be instituted. 10

[91] Schedule 1 Deemed employment of workers

Omit “nor employs workers” from clause 2 (1).
Insert instead “nor employs any worker”.

[92] Schedule 1, clause 2 (3) 15

Insert after clause 2 (2):

(3) A person excluded from the definition of *worker* in section 3 (1) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

[93] Schedule 2 20

Insert after Schedule 1:

Schedule 2 Provisions relating to appointed conciliation officers

1 Schedule applies to appointed conciliation officers

This Schedule applies only to conciliation officers appointed under section 96 (1A). 25

2 Terms of office

Subject to this Schedule, a conciliation officer holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the conciliation officer, but is eligible for re-appointment. 5

3 Remuneration

A conciliation officer is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a conciliation officer as the Minister may from time to time determine in respect of the conciliation officer. Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*. 10

4 Casual vacancies

- (1) A conciliation officer is taken to have vacated office if the conciliation officer: 15
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 20
 - (d) becomes a mentally incapacitated person, or 25
 - (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or 30

(f) resigns the office by instrument in writing addressed to the Governor, or

(g) is removed from office by the Governor under subclause (2).

(2) The Governor may remove a conciliation officer from office. 5

5 Effect of certain other Acts

(1) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 10

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a conciliation officer or from accepting and retaining any remuneration payable to the person under this Act as a conciliation officer. 15

(2) Part 2 of the *Public Sector Management Act 1988* does not apply to a conciliation officer. 20

[94] Schedule 6 Savings, transitional and other provisions, Part 1 Preliminary

Insert at the end of Part 1:

2 Extended definition of worker (section 3 (1A))

Section 3 (1A), which was inserted by the *WorkCover Legislation Amendment Act 1995*, was inserted to avoid doubt and accordingly the section is taken to apply in respect of any injured worker, including a worker who was injured or died before the commencement of that section, but not so as to affect any decision of a court made before the commencement of that section. 25 30

**[95] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 6 (2):

- (3) Section 22A (9) (as inserted by the *WorkCover Legislation Amendment Act 1995*) was inserted for the purpose of avoiding doubt and accordingly is taken to have applied from the commencement of section 22A. 5

[96] Schedule 6, Part 2

Insert at the end of Part 2:

7 Restrictions on psychological injury claims 10

Section 11A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to injuries received before the commencement of that section.

8 Deemed employment of workers 15

- (1) The amendments to clause 2 of Schedule 1 made by the *WorkCover Legislation Amendment Act 1995* are made for the purpose of avoiding doubt, and accordingly that clause is taken to have been so amended from its own commencement. 20
- (2) However, those amendments do not affect any determination of a court made before the commencement of the amendments.

**[97] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert at the end of Part 4:

12 Information to be provided at request of workers

An amendment made to section 43 by the *WorkCover Legislation Amendment Act 1995* does not apply to a request made by a worker under that section before the commencement of the amendment. 5

**13 Refund of weekly payments—amendments to section 55
of this Act**

The amendment to section 55 (Review of weekly payments) of this Act made by the *WorkCover Legislation Amendment Act 1995* extends to weekly payments of compensation made before the commencement of the amendment. However, the amendment does not apply to enable an order under that section (as so amended) to be made in respect of any case in which a court has, before that commencement, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that commencement. 10
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**[98] Schedule 6 Savings, transitional and other provisions, Part 5
Provisions relating to compensation for medical, hospital and
rehabilitation expenses**

Insert at the end of Part 5:

9 Worker's liability for expenses above applicable rates

Section 60A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) and the amendment made to section 63A by that Act do not apply to medical or related treatment, hospital treatment or occupational rehabilitation services given or provided before the commencement of section 60A. 30

[99] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)

Insert after clause 2 (2):

- (3) To avoid doubt, if a loss mentioned in the Table to Division 4 of Part 3 of this Act results both from an injury received before the commencement of that Division and an injury received after that commencement, the part of the loss resulting from the injury received before that commencement is not to be taken into account for the purposes of determining under section 67 (2) of this Act whether section 67 applies to the loss (whether or not compensation has been paid or is payable under section 16 of the former Act for that part of the loss). 5
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[100] Schedule 6, Part 6

Omit clause 2A.

[101] Schedule 6, Part 6, clause 6 (2)

Omit "if compensation has already been paid".
Insert instead "whether or not compensation has been paid or is payable". 20

[102] Schedule 6, Part 6, clause 6 (2A)

Insert after clause 6 (2):

- (2A) The amendment made to subclause (2) by the *WorkCover Legislation Amendment Act 1995* is made to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. The amendment extends to court proceedings commenced but not finally determined before the commencement of the amendment but does not affect any award of compensation made before that commencement or any compensation that a worker has received or agreed to receive before that commencement. 25
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[103] Schedule 6, Part 6, clause 8 (1)

Omit the subclause.

[104] Schedule 6, Part 6

Insert at the end of Part 6:

9 No compensation for less than 6% hearing loss 5

(1) Section 69A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to apply to any claim for compensation for loss of hearing made on or after 10 November 1995 even if the injury concerned was received before that date, but does not apply to: 10

- (a) a claim for compensation made before that date, or
- (b) court proceedings commenced before that date.

(2) In determining the extent of a worker's hearing loss for the purposes of section 69A, hearing loss suffered before the commencement of that section is to be taken into account. 15

(3) Section 69A does not affect:

- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of this clause, or 20
- (b) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of this clause.

10 Compensation for pain and suffering resulting from loss rather than injury 25

Section 67 (1A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the purpose of avoiding doubt and accordingly that subsection is taken to have been so inserted from the 30

commencement of this Act, but not so as to affect any decision of a court made before the commencement of the subsection or any compensation that a worker has received or agreed to receive before that commencement.

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11 HIV, AIDS and bowel injuries

The amendments made to Division 3 of Part 4 by the *WorkCover Legislation Amendment Act 1995* with respect to HIV infection, AIDS, and permanent loss of bowel function do not apply to injuries received before the commencement of the amendments.

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12 Limit on costs recovery after offer of settlement

(1) Section 119 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to an offer of settlement, or request for particulars, as referred to in that section made before the commencement of that section.

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(2) Section 119 extends to an offer of settlement, or request for particulars, as referred to in that section made after the commencement of that section even if the offer or request relates to a claim for compensation made before the commencement of that section.

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13 Cessation of indexation of amounts under sections 66 and 67

Sections 66 and 67 continue to apply in respect of an injury received before the commencement of this clause (as inserted by the *WorkCover Legislation Amendment Act 1995*) as if the amendments made by that Act to the dollar amounts specified in those sections, and to sections 79 and 81, had not been made.

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14 Lump sum compensation agreements

The amendments made to section 66A by the *WorkCover Legislation Amendment Act 1995* extend to agreements with respect to compensation made before the commencement of the amendments.

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15 Proceedings for award of agreed compensation

Section 66B (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to agreements with respect to compensation made before the commencement of the amendments, but not so as to affect court proceedings pending at the commencement of that section.

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16 Agreements as to proportion of compensation under section 67 payable

Section 67 (4A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act.

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17 Special provisions for back, neck and pelvis impairment

Section 68A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act, but not so as to affect:

20

- (a) any award of compensation made before the date of commencement of the section, or
- (b) any compensation that a worker has received or agreed to receive before that date, or
- (c) any award of, or compromise or settlement of a claim for, damages made before the commencement of the section, or
- (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of the section.

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**[105] Schedule 6 Savings, transitional and other provisions, Part 9
Provisions relating to notice of injury and claims for
compensation**

Insert at the end of Part 9:

5 Time for making claim for compensation 5

Section 92 (4A) (as inserted by the *WorkCover Legislation Amendment Act 1995*) applies in respect of an injury, or death resulting from an injury, received before the substitution of that subsection (but not before 4 p.m. on 30 June 1987), as if paragraph (a) of that subsection read as follows: 10

- (a) the claim is made within 3 years after the commencement of this subsection (as inserted by the *WorkCover Legislation Amendment Act 1995*), or 15

6 Legal and medico-legal costs

Division 7 of Part 4 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to fees and costs incurred before the commencement of that Division. 20

7 Solicitor/client costs

The amendments made to section 122 by the *WorkCover Legislation Amendment Act 1995* (except the insertion of section 122 (5)) are made for the purpose of avoiding doubt and accordingly: 25

- (a) the amendments apply to costs incurred before or after the commencement of the amendments, and
- (b) section 122 (6) applies to amounts paid before or after the commencement of that subsection.

[106] Schedule 6 Savings, transitional and other provisions, Part 11

Insert after Part 10:

**Part 11 Provisions relating to proceedings before
Commissioners and the Compensation
Court**

5

1 Interest before order for payment

Section 113 (2) (as inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to the ordering of interest on compensation for injuries received before the insertion of that provision, but the following provisions do apply to the ordering of that interest:

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(a) interest must not be ordered on any compensation payable under this Act for any period before a claim for the compensation was duly made or (where no such claim was duly made before the commencement of the proceedings in the Court) for any period before the worker gave the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of compensation claimed,

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(b) the provisions of paragraph (a) extend to proceedings pending at that commencement but do not affect any order for interest made before that commencement.

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**2 Interest before commencement of section 19 of
Compensation Court Act 1984**

(1) Section 113 of this Act extends to authorise the ordering of interest for any period before the commencement of that section but not before 3 December 1984 (being the date of commencement of section 19 of the *Compensation Court Act 1984*).

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- (2) To remove doubt it is declared that section 19 of the *Compensation Court Act 1984* did not authorise the ordering of interest for any period before the commencement of that section (3 December 1984), despite any provision of Schedule 6 to this Act. 5
- (3) Subclause (2) is taken to have had effect on and from the commencement of section 19 of that Act (including for the purposes of any proceedings pending at the commencement of this clause) but not so as to affect any order for interest made before the commencement of this clause. 10

**[107] Schedule 6 Savings, transitional and other provisions, Part 13
Provisions relating to uninsured liability and indemnity scheme**

Insert at the end of Part 13:

7 Claims by directors against uninsured corporations 15

Section 4A (as inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply in respect of an injury received before the commencement of that section.

8 Recovery from directors of corporations liable to reimburse Authority 20

Section 145A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply in respect of a contravention of section 155 that occurred before the commencement of section 145A. 25

**[108] Schedule 6 Savings, transitional and other provisions, Part 14
Provisions relating to common law remedies**

Insert at the end of Part 14:

7 Payment of interest

Section 151M, as substituted by the *WorkCover Legislation Amendment Act 1995*, applies to any claim for damages that: 5

- (a) is a claim in respect of an injury received by a worker at or after 4 p.m. on 30 June 1987 or the death of a worker resulting from or caused by such an injury, and 10
- (b) was not settled or finally determined as at the date on which that section was so substituted.

8 Effect of recovery of damages from employer on payment of compensation 15

- (1) The amendment to section 151B made by the *WorkCover Legislation Amendment Act 1995* to insert section 151B (4) is made for the purpose of avoiding doubt, and accordingly section 151B is taken to have been so amended from the commencement of that section. 20
- (2) However, that amendment does not affect any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendment.

9 Recovery against both employer and stranger

- (1) The amendment made to section 151Z by the *WorkCover Legislation Amendment Act 1995* is made for the purpose of avoiding doubt, and accordingly section 151Z is taken to have been so amended from the commencement of that section. 25
- (2) However, those amendments do not affect: 30
 - (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or

- (b) any decision of a court with respect to an action on an indemnity provided for by section 151Z (1) (d) made before that commencement.

10 Amendment of section 151AB

The amendments made to section 151AB by the *WorkCover Legislation Amendment Act 1995* do not affect: 5

- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or 10
- (b) any court proceedings commenced by a worker for damages from the workers' employer (or other person referred to in section 150) before that commencement.

[109] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance 15

Insert at the end of Part 15:

23 Ownership of assets of insurer-managed statutory funds

Section 196 (2), as inserted by the *WorkCover Legislation Amendment Act 1995*, is inserted for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of this Act. 20

24 Time limit for proceedings for failure to insure

Section 279 (2A), as inserted by the *WorkCover Legislation Amendment Act 1995*, does not apply to proceedings for an offence alleged to have been committed before the commencement of that subsection. 25

[110] Schedule 6 Savings, transitional and other provisions, Part 20 Savings and transitional regulations

Insert at the end of clause 1 (1): 30

WorkCover Legislation Amendment Act 1995

Schedule 2 Amendment of Occupational Health and Safety Act 1983

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order:

5

improvement notice means a notice issued under section 31R.

prohibition notice means a notice issued under section 31S.

[2] Section 15 Employers to ensure health, safety and welfare of their employees

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Omit "2,500" from section 15 (3). Insert instead "5,000".

[3] Section 15 (3)

Omit "250". Insert instead "500".

[4] Section 15 (4)

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Insert after section 15 (3):

- (4) If in proceedings against a person for an offence against this section the court is not satisfied that the person contravened this section but is satisfied that the act or omission concerned constituted a contravention of section 16, the court may convict the person of an offence against that section.

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[5] Section 16 Employers and self-employed persons to ensure health and safety of persons other than employees at places of work

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Omit "2,500" from section 16 (2). Insert instead "5,000".

[6] Section 16 (2)

Omit "250". Insert instead "500".

[7] Section 16 (3)

Insert after section 16 (2).

- (3) If in proceedings against a person for an offence against this section the court is not satisfied that the person contravened this section but is satisfied that the act or omission concerned constituted a contravention of section 15, the court may convict the person of an offence against that section. 5
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[8] Section 17 Persons in control of workplaces, plants and substances used by non-employees to ensure health and safety

Omit "2,500" from section 17 (1). Insert instead "5,000".

[9] Section 17 (1)

Omit "250". Insert instead "500". 15

[10] Section 18 Manufacturers, suppliers etc to ensure health and safety as regards plant and substances for use at work

Insert "transfer," after "sale," in the definition of *supply* in section 18 (1).

[11] Section 18 (10)

Omit "2,500". Insert instead "5,000". 20

[12] Section 18 (10)

Omit "250". Insert instead "500".

[13] Section 19 Employees at work to take care of others and to co-operate with employer

Omit "25". Insert instead "30".

[14] Section 20 Person not to interfere with or misuse things provided for health, safety and welfare

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Omit "25". Insert instead "30".

[15] Section 21A Person not to hinder aid to injured worker etc

Omit "2,500". Insert instead "5,000".

[16] Section 21A

Omit "250". Insert instead "500".

10

[17] Sections 21B–21D

Insert after section 21A:

21B Plant or premises involved in dangerous occurrence

- (1) The occupier (within the meaning of Division 4) of premises that are a place of work must take measures to ensure that plant on those premises is not used, moved, or interfered with after it has been involved in a dangerous occurrence.

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Maximum penalty: 500 penalty units in the case of a corporation and 250 penalty units in any other case.

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- (2) The occupier must also take measures to ensure that no person disturbs an area at the premises that is within 4 metres (or, if the regulations prescribe some other distance, that other distance) from the location where the dangerous occurrence occurred.

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Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (3) If the regulations prescribe measures that satisfy the requirements of subsection (1) or (2), the occupier is taken to have satisfied the requirements of that subsection if the occupier has taken the measures so prescribed. 5
- (4) This section does not prevent use, movement, interference or disturbance:
- (a) to help or remove a trapped or injured person or to remove a body, or
 - (b) to avoid injury to a person or damage to property, or 10
 - (c) for the purposes of any police investigation, or
 - (d) in accordance with a direction or permission of an inspector, or
 - (e) in such other circumstances as may be prescribed by the regulations. 15
- (5) The requirements of this section in relation to any particular dangerous occurrence apply only for the period that ends at midnight on the first working day (that is, any day except a Saturday, Sunday or public holiday) after the day on which the occurrence was notified in accordance with section 27 or otherwise notified to the WorkCover Authority, subject to any extension of that period under subsection (6). 20
- (6) The period for which the requirements of this section apply in relation to a dangerous occurrence can be extended by an inspector by giving notice in writing to the occupier of the premises concerned, but only if notice is given before the end of the period provided by subsection (5). Any such extension is to be on the basis of the period that the inspector considers, after an inspection, to be necessary for a proper examination of the relevant plant or area. 25
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- (7) In this section, *dangerous occurrence* means:
- (a) an occurrence that causes death, or
 - (b) an occurrence that causes a serious injury that is prescribed by the regulations for the purposes of this definition, or
 - (c) an occurrence prescribed by the regulations for the purposes of this definition.

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21C Notice to stop plant or prevent disturbance of premises to allow inspection

- (1) An inspector who has entered premises under Division 4 may issue a notice under this section to the occupier of the premises (within the meaning of Division 4) if the inspector believes on reasonable grounds that it is necessary to issue the notice in order to allow an inspection, examination, taking of measurements or conduct of tests on the premises, relating to the premises or any plant, substance or thing on the premises.

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- (2) The notice must set out the grounds on which it is given.

- (3) While the notice is in force, the occupier must:

- (a) stop the use of any plant, substance or thing that is specified in the notice, and
- (b) take measures to prevent the disturbance of any plant, substance or thing that is specified in the notice.

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Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

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- (4) A notice remains in force for the period, not exceeding 7 days, specified in the notice. A notice may be renewed more than once by an inspector by issuing a further notice in accordance with this section.

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- (5) The occupier to whom a notice is issued under this section must, unless an inspector otherwise directs, display a copy of it while it is in force in a prominent place on the premises to which it applies.

Maximum penalty: 10 penalty units.

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- (6) An inspector who issues a direction under this section must take reasonable steps to inform the employer of the employees in the place of work on the premises to which the notice relates of the notice as soon as practicable after issuing it. 5

21D Review in accordance with section 31U

A notice under section 21B or 21C (including any terms of the notice and its period of operation) may be reviewed and appealed against in accordance with section 31U. 10

[18] Section 24 Functions of occupational health and safety committees

Omit "under the associated occupational health and safety legislation" from section 24 (1) (c).

[19] Section 25 Powers of members of occupational health and safety committees 15

Omit "50". Insert instead "100".

[20] Section 26 Unlawful dismissal etc of employee

Omit "150". Insert instead "250".

[21] Section 26 20

Omit "100". Insert instead "150".

[22] Section 26

Omit "5 penalty units". Insert instead "10 penalty units".

[23] Section 27 Notification of accidents and other matters

Omit "150". Insert instead "500".

[24] Section 27

Omit "100". Insert instead "250".

[25] Section 31B

5

Omit the section. Insert instead:

31B Notice of entry

(1) An inspector authorised to enter premises under this Division may enter the premises without notice.

(2) The inspector must notify the occupier of the premises of the inspector's presence on the premises as soon as reasonably practicable after entering the premises, unless:

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(a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the inspector in a case of urgency, or

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(b) the occupier is already aware that the inspector has entered the premises or was notified in advance of when the inspector would enter the premises.

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[26] Section 31I Powers available on entry

Insert "and make video and audio records" after "photographs" in section 31I (a).

[27] Section 31I (b1)–(b3)

Insert after section 31I (b):

- (b1) dismantle any plant or thing on the premises for the purpose of examination, if the inspector believes on reasonable grounds that the plant or thing has been used in the commission of an offence against the relevant legislation, 5
- (b2) take any plant, substance or thing (or any sample of a substance) from the premises, if the inspector believes on reasonable grounds that the plant, substance or thing has been used in the commission of an offence against the relevant legislation, 10
- (b3) keep any plant, substance, sample or thing taken under paragraph (b2) that: 15
 - (i) may reasonably be required as evidence in proceedings for an offence against the relevant legislation, or
 - (ii) might, if not so kept, be used to continue or repeat the offence, 20

[28] Sections 31R–31AQ

Insert after section 31Q:

31R Inspector may issue improvement notices

- (1) If an inspector is of the opinion that any person:
 - (a) is contravening any provision of this Act or the regulations, or 25
 - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may issue to the person a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice. 30

-
- (2) The period within which a person is required by an improvement notice to remedy a contravention or the matters occasioning the contravention must be at least 7 days after the issue of the notice.
- (3) However, an inspector may specify a period that is less than 7 days after the issue of the improvement notice if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period. 5
- (4) An improvement notice must: 10
- (a) state that the inspector is of the opinion referred to in subsection (1), and
 - (b) state the reasons for that opinion, and
 - (c) specify the provision of the Act or the regulations in respect of which that opinion is held, and 15
 - (d) include information about obtaining a review of the notice under section 31U.
- (5) A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence. 20
- Maximum penalty:
- (a) 500 penalty units in the case of a corporation, or
 - (b) 250 penalty units in the case of an individual who contravenes this subsection otherwise than in his or her capacity as an employee, or 25
 - (c) 15 penalty units in the case of an individual who contravenes this subsection in his or her capacity as an employee.

31S Inspector may issue prohibition notices

- (1) If an inspector is of the opinion that at any place of work there is occurring or about to occur any activity which involves or will involve an immediate risk to the health or safety of any person, the inspector may issue to the 30

- person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters which give or will give rise to the risk are remedied.
- (2) A prohibition notice must: 5
- (a) state that the inspector is of the opinion referred to in subsection (1), and
 - (b) state the reasons for that opinion, and
 - (c) specify the activity in respect of which that opinion is held, and 10
 - (d) if in the inspector's opinion the activity involves a contravention or likely contravention of any provision of the Act or the regulations—specify that provision and state the reasons for that opinion, and 15
 - (e) include information about obtaining a review of the notice under section 31U.
- (3) A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence. 20
- Maximum penalty:
- (a) 1,000 penalty units in the case of a corporation, or
 - (b) 500 penalty units in the case of an individual who contravenes this subsection otherwise than in his or her capacity as an employee, or 25
 - (c) 30 penalty units in the case of an individual who contravenes this subsection in his or her capacity as an employee.

31T Notices may include directions

- (1) An inspector may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention or matter to which the notice relates. 30

-
- (2) Any such direction may:
- (a) adopt, by reference, the requirements of any industrial or other code of practice, and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter. 5

31U Review of notices

- (1) A person who is issued with a notice under section 21B, 21C or 31Z, an improvement notice or a prohibition notice may apply in writing to the WorkCover Authority for a review of the notice. 10
- (2) The application for review must be made within 7 days after the notice is issued or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice. 15
- (4) If an application for review is duly made to the WorkCover Authority:
 - (a) the WorkCover Authority must review the notice, and 20
 - (b) the notice the subject of the application is stayed from the time of receipt of the application by the WorkCover Authority until such time as the WorkCover Authority gives notice to the applicant of the result of the review. 25
- (5) The WorkCover Authority may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant. 30
- (6) An applicant who is not satisfied with the result of a review may appeal against the notice concerned to a Local Court constituted by an Industrial Magistrate sitting alone.

- (7) An appeal to a Local Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.
- (8) Regulations may be made with respect to reviews and appeals under this section, including as to the time and manner in which an application for such a review or appeal is to be made. 5

31V Withdrawal of notices

- (1) A notice under section 21C or 31Z or an improvement notice or a prohibition notice may be withdrawn at any time by the inspector who issued the notice or by the WorkCover Authority if the inspector or the WorkCover Authority is satisfied that the notice was issued in error or is incorrect in some respect. 10
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued. 15

31W Revocation or withdrawal of notice does not prevent issue of another notice

The revocation or withdrawal of a notice under section 21C or 31Z or an improvement notice or a prohibition notice does not prevent the issue of any other notice. 20

31X Service and exhibition of notices

- (1) A notice under section 21B, 21C or 31Z or an improvement notice or prohibition notice, or a notice confirming, revoking or withdrawing such a notice may be issued or given to a person: 25
- (a) by delivering it personally to the person, or
- (b) by leaving it with some other person at, or sending it by post to, the person's place of residence or business or the place of work to which the notice relates. 30

-
- (2) This section does not affect the operation of any provision of a law or the rules of a court authorising a notice or other document to be served in a manner not authorised by this section.
- (3) An inspector may cause a notice containing a copy of or extract from a notice referred to in subsection (1), or of the matter contained in the notice, to be exhibited at the place of work concerned in a manner approved by the WorkCover Authority. 5
- (4) A person must not destroy, damage or remove a notice exhibited under subsection (3) except with the approval of the WorkCover Authority or an inspector. 10

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

31Y Proceedings for offences not affected by notices 15

The issue, variation, revocation or withdrawal of a notice under section 21C or 31Z or a prohibition notice or improvement notice does not affect any proceedings for an offence against this Act, the regulations or the associated occupational health and safety legislation in connection with any matter in respect of which the notice was issued. 20

31Z Notice of taking or dismantling

- (1) Before exercising any of the powers under section 31I (b1)–(b3), an inspector must give notice to the occupier of a place of work where the relevant plant, substance or thing is situated of the inspector's intention to exercise that power. 25
- (2) The notice must specify the date and time when the inspector proposes to exercise the powers as well as the plant, substance or thing in relation to which the powers are to be exercised. 30

31AA Powers supporting taking

- (1) Having taken a thing under section 31I (b2), an inspector may:
- (a) move the thing from the place where it was taken, or 5
 - (b) leave the thing at the place but take reasonable action to restrict access to it, or
 - (c) if the thing is plant—dismantle it.
- (2) The following are examples of restricting access to a thing: 10
- (a) sealing a thing and marking it to show access to it is restricted,
 - (b) sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted. 15
- (3) If an inspector restricts access to a thing taken, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.
- Maximum penalty: 40 penalty units. 20
- (4) To enable a thing to be taken under section 31I (b2), an inspector may require the person in control of it:
- (a) to take it to a stated reasonable place by a stated reasonable time, and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time. 25
- (5) The requirement:
- (a) must be made by notice in the approved form, or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable. 30

- (6) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty: 40 penalty units.

- (7) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

5

31AB Receipt for things taken

- (1) As soon as reasonably practicable after an inspector takes a thing under section 31I (b2), the inspector must give a receipt for it to the person from whom it was taken.

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- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place where the thing was taken.

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- (3) The receipt must describe generally each thing taken and its condition.

- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing's nature, condition and value).

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31AC Forfeiture of things taken

- (1) A thing taken under section 31I (b2) is forfeited to the State if the inspector who took the thing:

- (a) cannot find its owner after making reasonable inquiries, or

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- (b) cannot return it to its owner, after making reasonable efforts, or

- (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.

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- (2) Subsection (1) (a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1) (b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner. 5
- (3) If the inspector decides to forfeit a thing under subsection (1) (c), the inspector must tell the owner of the decision by written notice.
- (4) Subsection (3) does not apply if:
- (a) the inspector cannot find its owner, after making reasonable inquiries, or 10
 - (b) it is impracticable or would be unreasonable to give the notice.
- (5) The notice must state:
- (a) the reasons for the decision, and 15
 - (b) that the owner may apply within 28 days for the decision to be reviewed, and
 - (c) how the owner may apply for the review, and
 - (d) that the owner may apply for a stay of the decision if the owner applies for a review. 20
- (6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

31AD Return of things taken 25

- (1) If a thing taken under section 31I (b2) has not been forfeited, the inspector must return it to its owner at the end of:
- (a) 6 months, or
 - (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding. 30

-
- (2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing taken as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary. 5

31AE Access to things taken

- (1) Until a thing taken under section 31I (b2) is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying. 10

Division 5 Entry and inspection powers of employees' representatives

31AF Definitions 15

authorised officer of an industrial organisation of employees, means an officer of that organisation (including any person who is concerned in, or takes part in, the management of that organisation) who is authorised under section 733 of the *Industrial Relations Act 1991* (Right of entry of officer of industrial organisation of employees). 20

industrial organisation of employees has the same meaning it has in the *Industrial Relations Act 1991*.

occupier has the same meaning as in Division 4. 25

31AG Powers of entry of places of work

An authorised officer of an industrial organisation of employees may, for the purpose of investigating any suspected breach of the associated occupational health and safety legislation, enter any premises the officer has reason to believe is a place of work where members of that organisation (or persons who are eligible to be members of that organisation) work. 30

31AH Notice of entry

- (1) An authorised officer authorised to enter premises under this Division may enter the premises without notice.
- (2) The authorised officer must notify the occupier of the premises of the authorised officer's presence on the premises as soon as reasonably practicable after entering the premises, unless:
 - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency, or
 - (b) the occupier is already aware that the authorised officer has entered the premises or was notified in advance of when the authorised officer would enter the premises.

31AI Authority to enter premises

- (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority issued by the Industrial Registrar under section 733 of the *Industrial Relations Act 1991* and produces the authority if required to do so by the occupier of the premises.
- (2) Entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on.

31AJ Entry to domestic premises

The powers of entry conferred by this Division are not exercisable in relation to domestic premises except with the permission of the occupier of the premises.

31AK Powers available on entry

For the purpose of investigating any suspected breach of the associated occupational health and safety legislation, an authorised officer who enters premises under this Division may do any of the following:

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- (a) make searches and inspections (and take photographs),
- (b) require the occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the officer to exercise the officer's functions under this Division,
- (c) require the production of and inspect any records in or about those premises that directly affect or directly deal with the occupational health and safety of employees working at those premises,
- (d) take copies of or extracts from any such records.

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31AL Care to be taken

In the exercise of a function under this Division, an authorised officer must do as little damage as possible.

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31AM Authorised officer may request assistance from inspector

An inspector may accompany and take all reasonable steps to assist an authorised officer in the exercise of the officer's functions under this Division if the officer reasonably believes that the officer may be obstructed in the exercise of those functions.

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31AN Offence of obstructing authorised officer

A person must not:

- (a) obstruct, hinder or impede an authorised officer in the exercise of the officer's functions under this Division, or

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- (b) directly or indirectly intimidate or threaten or attempt to intimidate an authorised officer in the exercise of the officer's functions under this Division, or
- (c) without reasonable excuse, refuse or fail to comply with a requirement made by an authorised officer in accordance with this Division. 5

Maximum penalty: 20 penalty units.

31AO Offence of impersonating an authorised officer

A person must not impersonate, or falsely represent that the person is, an authorised officer. 10

Maximum penalty: 100 penalty units.

31AP Disclosure of information

- (1) A person who is, or was at any time, an authorised officer must not disclose any information relating to any manufacturing or commercial secrets or working processes that was obtained by the officer in connection with the exercise of functions under this Division. 15

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is: 20
 - (a) made with the prior permission of the Minister, or
 - (b) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing. 25
- (3) The Minister may grant the permission referred to in subsection (2) (a) only if the Minister is satisfied that to do so would be in the public interest. 30

Division 6 Miscellaneous

31AQ Minister may require and publish special reports into accidents and dangerous occurrences

- (1) The Minister may direct the WorkCover Authority to prepare a special report for the Minister with respect to: 5
- (a) any accident that occurred at a place of work and that caused the death of or bodily injury to any person, or
 - (b) any occurrence at a place of work that constituted a danger to any person. 10
- (2) The Minister may, if the Minister thinks fit, cause such a report or any part of such a report to be made public, whether by causing the report or part of the report to be published or otherwise. The Minister may table a copy of the report in Parliament. 15
- (3) No liability is incurred by the Crown and no personal liability is incurred by, or by any person acting at the direction of, the Minister or the WorkCover Authority in respect of anything done in good faith in connection with the preparation or making public of a report under this section. 20
- (4) No liability is incurred by a person for publishing in good faith:
- (a) a report made public under this section, or
 - (b) a fair report or summary of such a report. 25
- (5) In this section *liability* includes liability in defamation.

[29] Section 44A Industry codes of practice

Omit section 44A (7)–(9). Insert instead:

- (7) An approved industry code of practice commences on the day when the code is published in the Gazette or, if a later commencement date is specified in the code, on that date. 30

(8) An approved amendment of an industry code of practice commences on the day when the amendment is published in the Gazette or, if a later commencement date is specified in the amendment, on that date.

(9) An approved revocation of an industry code of practice commences on the day when the revocation is published in the Gazette or, if a later commencement date is specified in the revocation, on that date.

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[30] Section 45 Regulations

Omit "100" from section 45 (4). Insert instead "250".

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[31] Section 47 Summary procedure for offences

Insert after section 47 (1):

(1A) If a person is convicted of an offence against this Act, the convicting court may order the offender to pay to the WorkCover Authority the reasonable cost of examining or testing (under section 31I (b1)) any plant, substance or thing to which the conviction relates.

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(1B) That cost may be recovered by the WorkCover Authority as a judgment debt against the person convicted.

[32] Section 47 (2)

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Omit "100 penalty units".

Insert instead "500 penalty units or 2 years imprisonment (or both)".

[33] Section 47A

Insert after section 47:

47A Court may order cause of offence to be remedied

- (1) If a court convicts a person of an offence against this Act or the regulations in respect of a matter which appears to the court to be within the person's power to remedy, the court may, in addition to imposing a penalty provided with respect to the offence, order the person to take such steps as may be specified in the order for remedying that matter within the period specified in the order. 5
10
- (2) A person must not, without reasonable excuse, fail to comply with an order under this section.
Maximum penalty: 1,000 penalty units in the case of a corporation and 250 penalty units in any other case.
- (3) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if application for such an extension is made before the end of that period. 15

[34] Section 49 Time for instituting proceedings for offences

Insert at the end of section 49: 20

- (2) Proceedings for an offence against section 18 (Manufacturers, suppliers etc to ensure health and safety as regards plant substances for use at work) may be instituted, despite subsection (1):
- (a) within 2 years after the act or omission alleged to constitute the offence, or 25
- (b) within 6 months after it first becomes apparent to the WorkCover Authority that the act or omission alleged to constitute the offence has occurred,
- whichever provides the longer time for proceedings to be instituted. 30

- (3) Proceedings for an offence against section 27 (Notification of accidents and other matters) may be instituted, despite subsection (1):
- (a) within 2 years after the act or omission alleged to constitute the offence, or 5
 - (b) within 6 months after the WorkCover Authority first becomes aware of the act or omission alleged to constitute the offence,
- whichever provides the longer time for proceedings to be instituted. 10
- (4) If a coroner's inquest or inquiry is held and it appears from the coroner's report or proceedings at the inquest or inquiry that an offence has been committed against this Act or the regulations, proceedings in respect of that offence may be instituted, despite anything to the contrary in this section, within 2 years after the date the report was made or the inquest or inquiry was concluded, as the case may be. 15

[35] Section 50 Offences by corporations

Omit section 50 (1) (a). 20

[36] Section 51A

Omit the section. Insert instead:

51A Additional penalty for further offence against the Act

- (1) A Court that convicts a person of an offence (the *current offence*) against this Act may, if the person has previously been convicted of an offence against this Act (whether the same offence or another), impose as additional penalty in respect of the current offence not exceeding the following penalties: 25
- (a) if the current offence is an offence against section 15, 16, 17 or 18 of this Act—2,500 penalty units in the case of a corporation or 250 penalty units or 2 years imprisonment, or both, in any other case, or 30

-
- (b) if the current offence is any other offence against this Act—50% of the maximum penalty for the offence (that is, 50% of the maximum penalty that would apply but for this section).
- (2) For the purposes of section 47 (Summary procedure for offences), the maximum penalty provided in respect of an offence is, in the case of an offence to which this section applies, taken to include any additional penalty that may be imposed under this section. 5
- (3) This section applies even if the previous offence concerned was committed before the commencement of this section. 10

[37] Section 51C

Insert after section 51B:

51C Requirement to give name and address 15

- (1) An authorised officer (within the meaning of section 51B) or an inspector may require a person whom the officer or inspector reasonably suspects has committed an offence against this Act or the associated occupational health and safety legislation or any regulation under this Act or that legislation to state the person's residential address and full name and to provide reasonable proof of the person's identity. 20
- (2) A person who, without reasonable excuse, fails to comply with a requirement of an officer or inspector under this section is guilty of an offence. 25
- Maximum penalty: 15 penalty units.
- (3) A person does not commit an offence against this section if:
- (a) the officer or inspector does not, at the time when the officer or inspector makes the requirement, show the person proof of the officer's or inspector's authority, or 30

WorkCover Legislation Amendment Bill 1995

Schedule 2 Amendment of Occupational Health and Safety Act 1983

- (b) the officer or inspector does not, at the time when the officer or inspector makes the requirement, warn the person that it would be an offence not to comply with the requirement.

[38] Section 52 Offence: obstruction or hindering persons in exercise of powers 5

Omit "150". Insert instead "500".

[39] Section 52

Omit "100". Insert instead "150".

[40] Schedule 8 Savings and transitional provisions 10

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[41] Schedule 8, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of the WorkCover Legislation Amendment Act 1995 15

9 Definition

In this Part:

amending Act means the *WorkCover Legislation Amendment Act 1995*. 20

10 Alternative convictions (section 15 and 16)

- (1) The amendments made to sections 15 and 16 by the amending Act do not apply in respect of proceedings against a person for an offence against section 15 or 16 that were commenced in a court before the commencement of those amendments. 25

- (2) In respect of any proceedings against a person that are commenced in a court on or after the commencement of those amendments, the amendments apply whether the offence is alleged to have been committed before or after the commencement of those amendments. 5

11 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 47 of this Act (Summary procedure for offences) by the amending Act does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment. 10
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after the commencement of the amendment. 15

12 Power of court to order that contravention of Act or regulations be remedied

Section 47A of this Act (which was inserted by the amending Act) applies in respect of any person convicted of an offence against this Act or the regulations on or after the commencement of that section, even if the offence was committed before the commencement of that section. 20

13 Increase in time limit for institution of offence proceedings 25

Section 49 (2), (3) and (4) of this Act (as inserted by the amending Act) extend to apply in respect of an act or omission constituting an offence against this Act or the regulations which occurred within 2 years before the commencement of those subsections. 30

14 Change in defences available to directors and managers

The amendment made to section 50 of this Act by the amending Act does not apply in respect of a contravention of this Act or the regulations that occurred before the commencement of that amendment. 35

15 Increased penalty for additional offence

- (1) The amendment made to section 51A of this Act by the amending Act does not apply in respect of proceedings for an offence against this Act which was committed before the commencement of that amendment.
- (2) Section 51A, as in force immediately before that amendment, continues to apply in respect of such proceedings as if the amendment had not been made.

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Schedule 3 Amendment of Compensation Court Act 1984

(Section 5)

[1] Section 12A

Insert after section 12:

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12A Senior Commissioner

- (1) Of the persons appointed as commissioners, one is to be appointed as Senior Commissioner by the person's instrument of appointment or a subsequent instrument executed by the Governor. 10
- (2) The Senior Commissioner has such functions as may be prescribed by the regulations under this Act or the *Workers Compensation Act 1987* or by the rules of Court. Regulations made under the *Workers Compensation Act 1987* pursuant to this section cannot be made without the concurrence of the Minister administering this section. 15
- (3) When a person is appointed as Senior Commissioner, any previous appointment of a person as Senior Commissioner ceases to have effect. 20
- (4) The Senior Commissioner may delegate to a Commissioner the exercise of any of the Senior Commissioner's functions, other than:
 - (a) the functions of hearing any matter before the Senior Commissioner, or 25
 - (b) this power of delegation.

[2] Section 14A Medical referees

Insert after section 14A (2):

- (2A) Of the medical practitioners appointed as medical referees:
- (a) some are to be appointed from amongst persons nominated by such employer organisations as the Minister invites to make nominations, and 5
 - (b) some are to be appointed from amongst persons nominated by such employee organisations as the Minister invites to make nominations, and 10
 - (c) some may be appointed from amongst persons nominated by the Director-General of the Department of Health.

[3] Section 14B Medical panels

Insert after section 14B (2): 15

- (2A) Of the medical referees constituting a medical panel:
- (a) one (and not more than one) must be a medical referee appointed under section 14A (2A) (a), and
 - (b) one (and not more than one) must be a medical referee appointed under section 14A (2A) (b). 20
- (2B) The medical referees constituting a medical panel must be chosen on the basis of their relevant specialty or experience in the particular matter or class of matters concerned.
- (2C) When a medical panel is constituted by 2 medical referees, their decision is the decision of the panel. When a medical panel is constituted by more than 2 medical referees, the decision of a majority of them is the decision of the panel. 25

[4] Section 16 References to commissioner

Omit the section.

[5] Section 18 Costs

Omit the section.

[6] Section 19 Interest before order for payment

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Omit the section.

[7] Section 19A Interest after order for payment

Omit the section.

[8] Section 22 Arrangement of business of the Court

Insert "the need for proceedings to be disposed of efficiently by the Court and" after "have regard to" in section 22 (3).

10

[9] Section 22 (5)

Insert after section 22 (4):

- (5) The regulations under the *Workers Compensation Act 1987* may provide that specified matters arising under that Act (whether or not they are matters specified in Schedule 3 to this Act) are matters that are to be dealt with by the commissioners. Such a matter must, despite any other provision of this section, be allocated under this section to a commissioner. Regulations pursuant to this section may not be made without the concurrence of the Minister administering this section.

15

20

[10] Section 25

Insert after section 24:

25 Special provision for evidence of exposure to noise

Historical evidence and general medical or other expert
evidence concerning exposure of workers to noise in 5
employment with particular employers or in employment
of a particular class, which has been admitted in any
proceedings before the Court, may, with the leave of the
Court, be received as evidence in any other proceedings
before the Court, whether or not the proceedings are 10
between the same parties.

[11] Section 25A Applications to be heard together

Omit the section.

[12] Section 26 Commissioners' jurisdiction

Omit section 26 (3). 15

[13] Section 27 Procedure before commissioners

Omit section 27 (3). Insert instead:

- (3) Proceedings before a commissioner are to be recorded
unless the commissioner otherwise orders or the rules
otherwise provide. 20
- (4) The decision of a commissioner in any proceedings is,
subject to the rules, to include details of the findings
made by the commissioner on material questions of fact
and of the commissioner's reasons for the decision.

[14] Part 4, Division 1, heading

Omit the heading. Insert instead “**Division 1 Appeals from Judges**”.

[15] Sections 32–34

Omit the sections. Insert instead:

5

32 Appeal to Court of Appeal from Judge on question of law

- (1) If a party to any proceedings before the Court constituted by a Judge is aggrieved by an award of the Judge in point of law or on a question as to the admission or rejection of evidence, that party may appeal to the Court of Appeal. 10
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the Compensation Court for determination by the Compensation Court in accordance with any decision of the Court of Appeal and may make such other order in relation to the appeal as the Court of Appeal sees fit. 15
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the Compensation Court and on all the parties to the proceedings in respect of which the appeal was made. 20

[16] Part 4, Division 1A

Insert after section 34:

Division 1A Appeals etc from commissioners

25

34A Appeal to Judge from commissioner

- (1) If a party to any proceedings before a commissioner is aggrieved by an award of the commissioner in point of law or on a question as to the admission or rejection of evidence, that party may appeal to a Judge. 30

- (2) If, in any proceedings before a commissioner, the commissioner has misused a statutory discretion, any party to those proceedings may appeal to a Judge but such an appeal cannot be made without the leave of a Judge. 5
- (3) Regulations may be made for or with respect to prescribing further grounds on which appeals may be made to a Judge with respect to proceedings before a commissioner.
- (4) There is to be no re-hearing or new hearing of proceedings the subject of appeal under this section. However, the Judge hearing the appeal may, by leave, receive further evidence if the Judge considers that special grounds exist or if the evidence concerns matters occurring after the decision appealed against. 10 15
- (5) A Judge may, on the hearing of any appeal under this section:
- (a) remit the matter to the appropriate commissioner for determination by the commissioner in accordance with any decision of the Judge, or 20
 - (b) make such other order in relation to the appeal as the Judge sees fit.
- (6) In this section, *award* includes interim award, order, decision, determination, ruling and direction.
- 34B References of questions of law to a Judge** 25
- (1) A commissioner may:
- (a) of the commissioner's own motion, or
 - (b) on application by the parties, or any one of them,
- refer for the opinion of a Judge any question arising in proceedings before the commissioner that is a question of law or a question that the commissioner thinks is of sufficient importance to warrant consideration by a Judge. 30

-
- (2) Despite the reference of a question to a Judge by a commissioner under this section (not being the question of whether the commissioner may exercise powers under this Act in relation to a matter), the commissioner may make an award in the matter in which the question arose. 5
- (3) Upon the determination by a Judge of a question referred under this section:
- (a) if the commissioner has not made an award in the matter in which the question arose, the commissioner may make an award not inconsistent with the opinion of the Judge, or 10
- (b) if the commissioner has made an award in the matter in which the question arose, the commissioner is to vary that award in such a way as will make it consistent with the opinion of the Judge. 15

[17] Part 4, Division 2, heading

Omit "Commissioners or".

[18] Section 36 Review of decisions

Omit "commissioner or" from section 36 (1). 20

[19] Section 37 References to the Court

Omit "commissioner or a" from section 37 (1).

[20] Section 37 (1)

Omit "commissioner's or".

[21] Section 37

Omit "commissioner or" wherever occurring. 25

[22] Section 38 Stay of proceedings

Insert "to the extent that the payments are in respect of a period after the award is made" after "under the award" in section 38 (3).

[23] Section 38F

Omit the section. Insert instead:

5

38F Costs of mediation and neutral evaluation

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*.

10

[24] Section 39 Costs of operation of the Court

Omit "Workers Compensation and Rehabilitation Authority".
Insert instead "WorkCover Authority".

[25] Section 41 Liaison with WorkCover Authority

Omit "Workers Compensation and Rehabilitation Authority" wherever occurring.
Insert instead "WorkCover Authority".

15

[26] Section 42 Rule Committee

Omit section 42 (1) (c). Insert instead:

(c) the Senior Commissioner,

20

[27] Schedule 2 Commissioners

Omit clause 3. Insert instead:

3 Full-time or part-time Commissioners

- (1) A Commissioner may be appointed as either a full-time or part-time Commissioner. The Senior Commissioner must be a full-time Commissioner.
- (2) A full-time Commissioner is required to devote the whole of his or her time to the duties of the office of Commissioner.

25

[28] Schedule 3 Functions of the Court that may be exercised by Commissioners

Omit paragraph (c).

[29] Schedule 3, paragraph (g)

Omit “(excluding compensation for pain and suffering under section 67 of that Act)”. 5

[30] Schedule 3, paragraph (h)

Omit “(including compensation for pain and suffering under section 67 of that Act)”.

[31] Schedule 4 Savings and transitional provisions

10

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[32] Schedule 4, Part 4

Insert after Part 3:

Part 4 WorkCover Legislation Amendment Act 1995

15

7 Application of amendments to pending proceedings

- (1) An amendment made to this Act by the *WorkCover Legislation Amendment Act 1995 (the 1995 Act)* does not apply to proceedings in the Court commenced before the commencement of the amendment (except as provided by subclause (2)) but applies to proceedings commenced after the commencement of the amendment whenever the cause of action arose. 20

WorkCover Legislation Amendment Bill 1995

Schedule 3 Amendment of Compensation Court Act 1984

- (2) An amendment made by the 1995 Act to Division 1 (Appeals from Judges) of Part 4 extends to proceedings commenced before the commencement of the amendment but only if no hearing in the proceedings has commenced to be heard before the commencement of the amendment. 5

8 Application of medical referee/panel amendments

An amendment made by the *WorkCover Legislation Amendment Act 1995* to section 14A or 14B does not apply to a medical panel constituted for any purpose before the commencement of the amendment. 10

Schedule 4 Amendment of Construction Safety Act 1912

(Section 6)

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons 5

Insert after section 17A (2) (b):

- (c) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person against whom an apprehended violence order (whether or not the order is an interim order) is in force under Part 15A of the *Crimes Act 1900*. 10

[2] Section 17A (5AA)

Insert "If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a powderman's certificate of competency (whether or not the person has been served with a notice under subsection (5)) the Authority may suspend the certificate of competency for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force." at the end of the subsection. 15
20

[3] Section 17B Endorsement of certificates

Omit "15" from section 17B (2). Insert instead "50".

[4] Section 18 Notice of accidents

Insert at the end of section 18 (2):

This subsection does not apply to anything on premises that are a place of work within the meaning of the *Occupational Health and Safety Act 1983* (as to which see section 21B of that Act). 25

- [5] **Section 21 Penalties and proceedings for offences**
Omit "250" from section 21 (1). Insert instead "500".
- [6] **Section 21**
Omit "100" from section 21 (1). Insert instead "250".
- [7] **Section 21** 5
Omit "100" from section 21 (3). Insert instead "500".
- [8] **Section 22 Regulations**
Omit "100" from section 22 (4). Insert instead "250".
- [9] **Second Schedule Savings, transitional and other provisions**
Insert at the end of clause 1 (1): 10
WorkCover Legislation Amendment Act 1995
- [10] **Second Schedule, Part 3**
Insert after Part 2:
- Part 3 Provisions consequent on enactment of
the WorkCover Legislation Amendment
Act 1995** 15
- 7 Increase in penalty that may be imposed by Local Court**
- (1) The amendment made to section 21 (3) of this Act by the
WorkCover Legislation Amendment Act 1995 does not
apply in respect of proceedings for an offence against
this Act or the regulations that were commenced in a
Local Court before the commencement of that
amendment. 20
- (2) In respect of proceedings commenced on or after the
commencement of that amendment, the amendment
applies whether the offence was committed before or
after that commencement. 25

Schedule 5 Amendment of Factories, Shops and Industries Act 1962

(Section 7)

- [1] **Section 45 Means of escape from and extinguishing fires**
Omit "250" from section 45 (2). Insert instead "500". 5
- [2] **Section 45 (2)**
Omit "100". Insert instead "250".
- [3] **Section 45 (2)**
Omit "2.5". Insert instead "5".
- [4] **Section 144 Regulations** 10
Omit "100" from section 144 (1) (e) (i). Insert instead "250".
- [5] **Section 144 (1) (e) (i)**
Omit "25". Insert instead "50".
- [6] **Section 145 Proceedings**
Omit "100" from section 145 (3A). Insert instead "500". 15
- [7] **Section 147 Penalties**
Omit "250" from section 147 (1) (a). Insert instead "500".
- [8] **Section 147 (1) (a)**
Omit "100". Insert instead "250".

WorkCover Legislation Amendment Bill 1995

Schedule 5 Amendment of Factories, Shops and Industries Act 1962

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[10] Schedule 2, Part 3

Insert after Part 2:

5

**Part 3 Provisions consequent on enactment of
the WorkCover Legislation Amendment
Act 1995**

7 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 145 (3A) of this Act by the *WorkCover Legislation Amendment Act 1995* does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment. 10
15
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

Schedule 6 Amendment of Dangerous Goods Act 1975

(Section 8)

- [1] **Section 9 Keeping generally**
Omit "50" from section 9 (2) (a). Insert instead "250". 5
- [2] **Section 9 (2) (b)**
Omit "250". Insert instead "500".
- [3] **Section 9 (2)**
Omit "50" where secondly occurring.
Insert instead "100". 10
- [4] **Section 11 Offence of unlicensed conveyance**
Omit "250" from section 11 (1). Insert instead "500".
- [5] **Section 11 (1)**
Omit "50". Insert instead "250".
- [6] **Section 12 Conveyance generally** 15
Omit "250" from section 12 wherever occurring.
Insert instead "500".
- [7] **Section 12**
Omit "50" from section 12 wherever occurring.
Insert instead "250". 20
- [8] **Section 13 Offence of sale in public place**
Omit "250". Insert instead "500".

[9] Section 13

Omit "50". Insert instead "250".

[10] Section 14 Negligent or careless use etc

Omit "50". Insert instead "250".

[11] Section 20 Offence of unlicensed manufacture

5

Omit "250" from section 20 (1). Insert instead "500".

[12] Section 20

Omit "50" wherever occurring. Insert instead "250".

[13] Section 24 Supply to minors

Omit "10" from section 24 (1). Insert instead "50".

10

[14] Section 26 Possession of explosives

Omit "50" from section 26 (1). Insert instead "250".

[15] Section 26 (1)

Omit "250". Insert instead "500".

[16] Section 32 Obstruction of inspectors etc

15

Omit "50" from section 32 (1). Insert instead "250".

[17] Section 33 Proceedings for offences

Omit "100" from section 33 (1A). Insert instead "500".

[18] Section 41 Regulations

Omit "100" from section 41 (3) (g). Insert instead "250".

[19] Section 41 (3) (g)

Omit "5". Insert instead "10".

[20] Section 41 (3A)

5

Omit "100". Insert instead "250".

[21] Schedule 3 Transitional and other provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[22] Schedule 3, Part 3

10

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
the WorkCover Legislation Amendment
Act 1995**

10 Increase in penalty that may be imposed by Local Court

15

(1) The amendment made to section 33 (1A) of this Act by the *WorkCover Legislation Amendment Act 1995* does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.

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(2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

25

**Schedule 7 Amendment of Workers'
Compensation (Dust Diseases)
Act 1942**

(Section 9)

- [1] **The whole Act** 5
Omit "the Schedule" wherever occurring.
Insert instead "Schedule 1".
- [2] **Section 3 Definitions**
Omit the definitions of *Broken Hill mine* and *Broken Hill mine-owner* from section 3 (1). 10
- [3] **Section 3 (1), definition of "worker"**
Omit the definition. Insert instead:
worker does not include a worker in or about a mine to which the *Coal Mines Regulation Act 1982* applies.
- [4] **Section 3 (2)** 15
Omit the subsection.
- [5] **Section 6 Constitution of Fund**
Insert after section 6 (1) (a):
(a) all balances, investments and moneys of which the fund established under the scheme of the *Workmen's Compensation (Broken Hill) Act 1920* consisted immediately before the repeal of that Act, and all moneys that, immediately before that repeal, were owing to that fund and are paid after that repeal, 20
25

-
- [6] **Section 6 (9)**
Omit "by a Broken Hill mine owner, or".
- [7] **Section 10 Regulations**
Omit "Broken Hill mines or" from section 10 (2) (b2).
- [8] **Sections 12 and 13:** 5
Insert after section 11:
- 12 Repeal of Workmen's Compensation (Broken Hill) Act
1920 No 36**
- The *Workmen's Compensation (Broken Hill) Act 1920* is
repealed. 10
- 13 Savings, transitional and other provisions**
Schedule 2 has effect.
- [9] **Schedule 1**
Omit the heading to the Schedule.
Insert instead "Schedule 1 Dust diseases". 15
- [10] **Schedule 2**
Insert after Schedule 1:
- Schedule 2 Savings, transitional and other
provisions**
- (Section 13) 20
- Part 1 Preliminary**
- 1 Regulations**
- (1) The regulations may include provisions of a savings or
transitional nature consequent on the enactment of:
- WorkCover Legislation Amendment Act 1995* 25

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate: 5
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 10
- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication. 15

Part 2 Provisions consequent on enactment of WorkCover Legislation Amendment Act 1995

2 Definitions

In this Part: 20

Broken Hill Compensation Fund means the fund established under the scheme of the Broken Hill Act.

Broken Hill Act means the *Workmen's Compensation (Broken Hill) Act 1920*, as in force immediately before its repeal. 25

3 Transfer of balance of Broken Hill Compensation Fund to Dust Diseases Fund

The balance of and any investments to the credit of the Broken Hill Compensation Fund immediately before the repeal of the Broken Hill Act are, on that repeal, transferred to the Fund established under this Act and any liability of the Broken Hill Compensation Fund becomes, on and from that repeal, a liability of the Fund established under this Act. 30

4 Continuation of entitlements under Broken Hill Act

- (1) On the repeal of the Broken Hill Act the scheme of compensation under that Act ceases to have effect.
- (2) Any person who, immediately before that repeal, was in receipt of compensation under that Act, is entitled, on and from the repeal, to receive compensation from the Fund constituted under this Act in accordance with this Act. 5

5 Applications and appeals under Broken Hill Act

- (1) Any application for an award of compensation under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an application for compensation under this Act. 10
- (2) An appeal to the Industrial Court from an order, determination or award of compensation of the joint committee under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an appeal under this Act from an order, determination or award of compensation of the board. 15
20

6 Functions exercised by joint committee under Broken Hill Act

Anything done by the joint committee under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the board under this Act. 25

7 Functions exercised by medical authority under Broken Hill Act

Anything done by the medical authority under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the medical authority under this Act. 30

Schedule 8 Amendment of other Acts

(Section 10)

8.1 Defamation Act 1974 No 18

[1] **Section 17BB Conciliation officers under Workers Compensation Act 1987**

5

Insert at the end of section 17BB:

, and

- (c) for the publication by any such conciliation officer of a conciliation certificate under section 98D of the *Workers Compensation Act 1987*.

10

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

Insert "or that consists of a conciliation certificate under section 98D of that Act" after "1987" in clause 3 (6).

8.2 Justices Act 1902 No 27

15

Section 100I Interpretation

Insert at the end of paragraph (a) of the definition of *penalty notice* in section 100I:

Workers Compensation Act 1987, section 278A;

8.3 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "Joint Committee established under paragraph 30 of the Schedule to the *Workmen's Compensation (Broken Hill) Act 1920*."

8.4 Statutory and Other Offices Remuneration Act 1975 (1976 No 4) 5

Schedule 2 Public offices

Omit from Part 1:

Senior Workers Compensation Commissioner.

Workers Compensation Commissioner, other than the Senior Workers Compensation Commissioner. 10

Insert instead:

Senior Commissioner under the *Compensation Court Act 1984*.

Full-time commissioner under the *Compensation Court Act 1984*, other than the Senior Commissioner. 15

Part-time commissioner under the *Compensation Court Act 1984*.

8.5 WorkCover Administration Act 1989 No 120

Section 3 Definitions

Omit paragraph (d) from the definition of *workers compensation legislation* in section 3 (1). 20

WorkCover Legislation Amendment Bill 1995

Schedule 8 Amendment of other Acts

**8.6 Workers Compensation Legislation Amendment Act
1995 No 30**

**Schedule 3 Amendments relating to interim payment of
damages**

Omit the Schedule.

5

LEGISLATIVE COUNCIL

WORKCOVER LEGISLATION AMENDMENT

BILL 1995

SECOND READING

MINISTER TO SAY

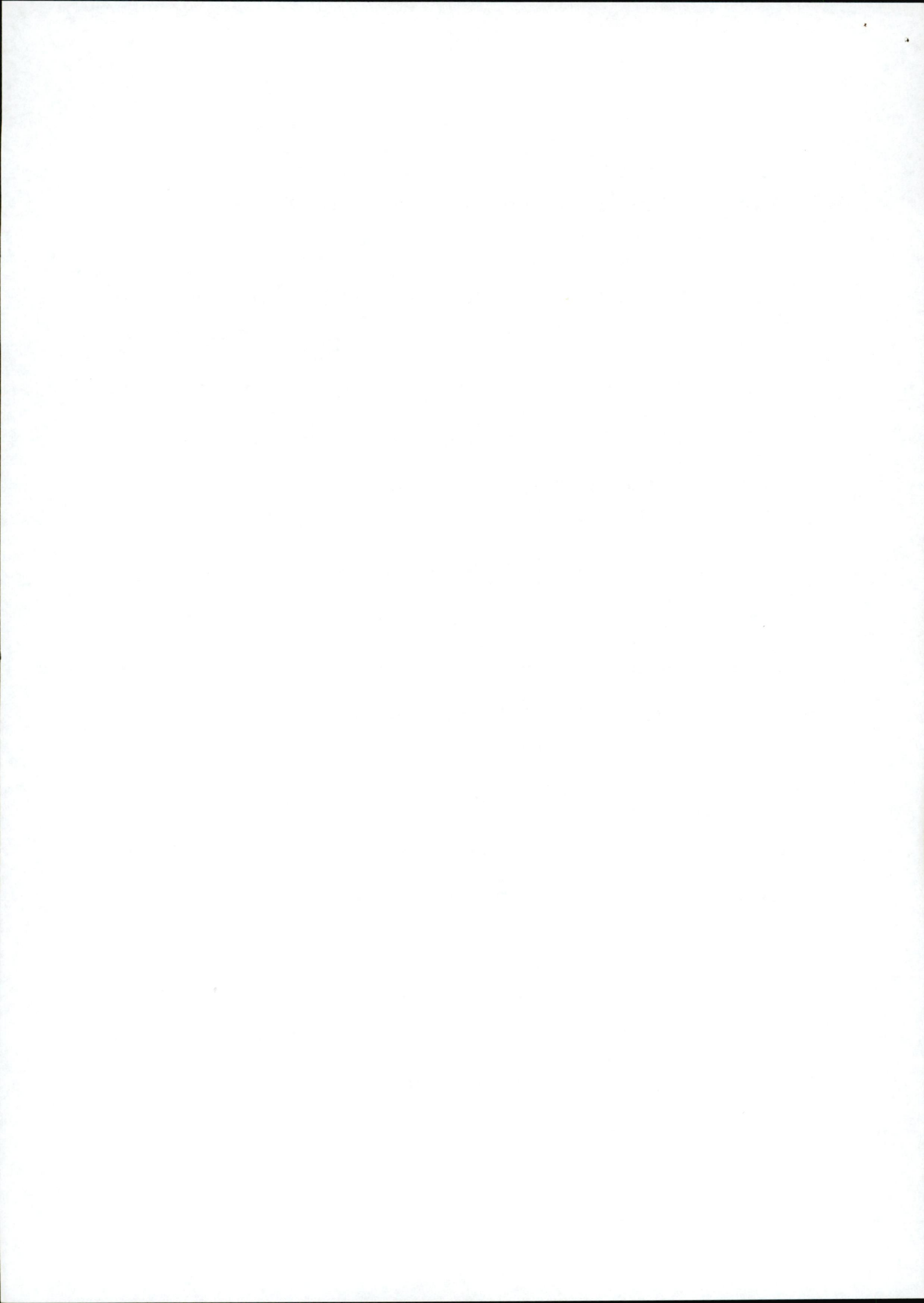
I move that this Bill be now read a second time.

The current WorkCover Scheme cost problem, which was inherited by the present Government, must be addressed to ensure the financial viability of the Scheme to meet claims of injured workers, as well as to avoid adverse effects on employment and the economy of this State.

The package of measures contained in this Bill, which takes into account submissions from many parties, is reasonable and balanced in terms of its effect on workers, employers, insurers, the legal and medical professions and others.

The proposed changes involve the least possible negative effect on worker benefits, while providing appropriate new benefits such as for work-related HIV/AIDS.

The proposals concentrate on controlling costs through efficient delivery of benefits and, as far as possible, non-litigious methods of dispute resolution.



Turning to the details of the Bill, reasonable restrictions will be applied to workers compensation claims for stress and similar conditions, which are defined by the amendments as "psychological injury".

Compensation will not be payable unless the worker's employment was a substantial cause of the psychological injury and, secondly, the injury was not wholly or mainly caused by reasonable action by the employer relating to specified staffing matters.

Such matters include promotion, performance appraisal, transfer, discipline and dismissal.

These restrictions will not apply to physical symptoms or effects of psychological injury - for example, some cases of heart attacks - if they themselves satisfy the normal criteria for compensable physical "injuries" under the Act.

At the procedural level, medical certificates provided in support of psychological injury claims will be required to



comment on the possible link with the worker's employment.

They must also describe the worker's condition using accepted medical terminology. Loose descriptions such as "stress" or "stress condition" would not meet that requirement.

A number of changes contained in the Bill relate to lump sum claims for permanent disability (covered by section 66 of the Act) and for related pain and suffering (section 67).

As a cost control measure, further indexation increases in the maximum lump sums under those provisions - currently \$160,950 for disability and \$66,200 for pain and suffering - will be suspended. Maximum entitlements will thus be frozen at those levels, pending re-activation of indexation at some future date.

A positive measure included in the Bill is the introduction of substantial lump sum entitlements for workers who

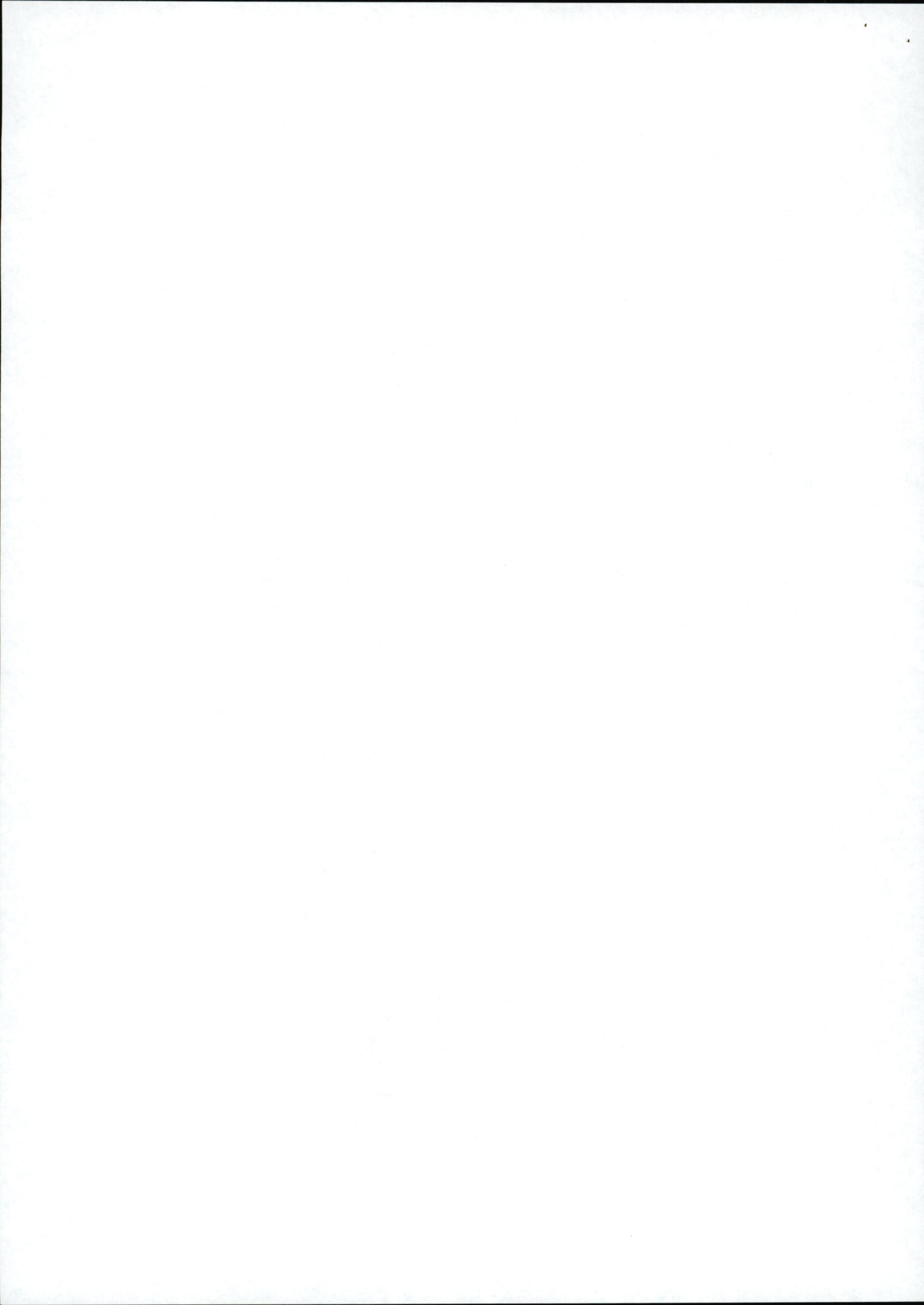
contract employment-related HIV/AIDS or who suffer severe bowel injuries.

At present, workers who become infected with HIV/AIDS in the course of their employment are entitled to weekly compensation and coverage of medical and hospital expenses.

The amendments will supplement these payments by introducing specific items in the statutory Table of Disabilities for HIV infection and AIDS. As a result, lump sum benefits at the maximum disability and pain and suffering levels will be payable in those cases.

This improvement will be particularly relevant to health workers, police and corrective services officers.

Lump sum entitlements are also provided for the first time for workers suffering severe bowel injuries - with the maximum being payable for injuries resulting in a permanent colostomy or ileostomy.



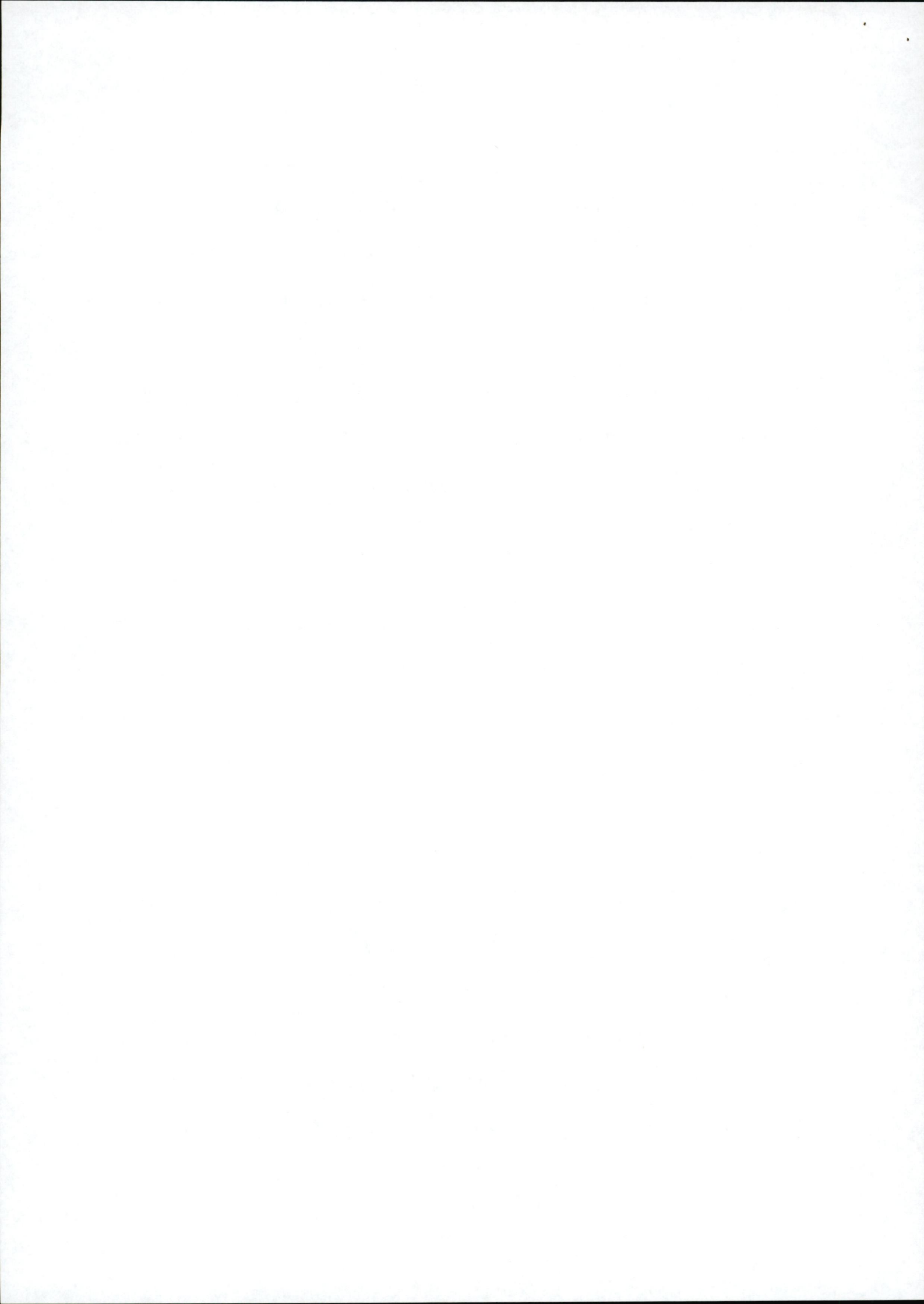
The existing lump sum provisions for permanent impairment of the back, neck or pelvis are amended by the Bill to clarify the original legislative intention from 1987.

That intention was that any pre-existing impairment should be deducted from a worker's claim, so that the employer would only be liable for impairment actually due to the work injury concerned.

In the absence of such deductions, potential employers are reluctant to hire workers with prior back conditions, because of concern about their exposure to additional compensation costs.

Unfortunately, however, the Court of Appeal in decisions such as T.A.F.E. v Pitt (November 1992) has interpreted the provisions contrary to their original purpose.

The amendments also specify that deduction of the part of the worker's impairment that is due to pre-existing factors also applies to secondary losses of function suffered as a

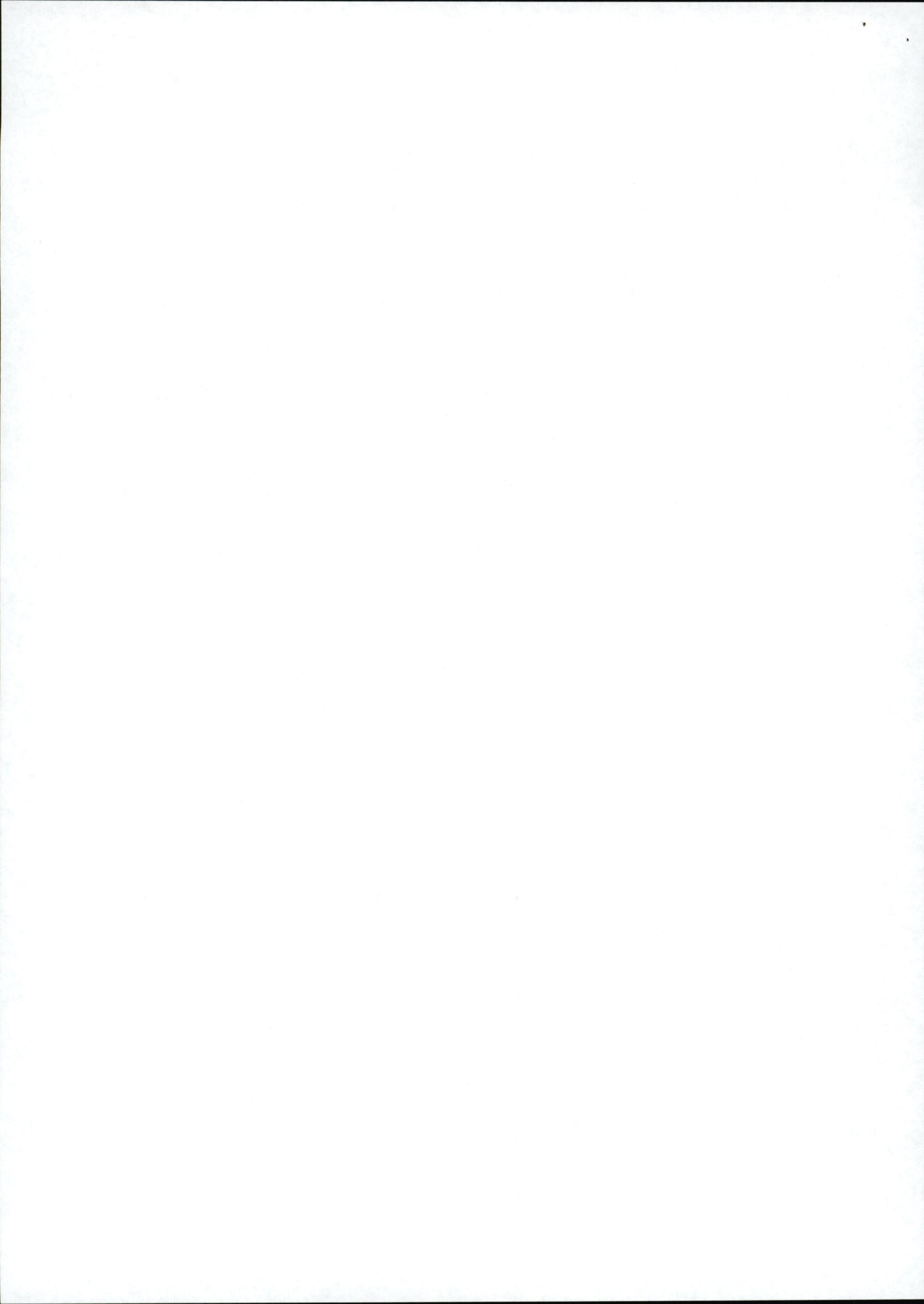


consequence of an injury to the back, neck or pelvis.

This approach is in line with the Court of Appeal's decision some years ago in Department of Public Works v Morrow which is taken to establish that a worker who, for example, suffers some loss of use of a leg caused by sciatic pain or other effects of a back injury, can claim a disability lump sum in relation to the leg.

The amendments also provide a handy calculation method for cases where it is apparent that part of the worker's back etc impairment is due to pre-existing factors, but it would be impracticable or would prolong litigation to attempt to quantify the precise percentage.

In such cases, it is stated that the percentage of that pre-existing component may be taken to be 10% of the worker's current overall impairment. That handy provision is not meant to preclude determination of a higher or lower pre-existing percentage if appropriate.



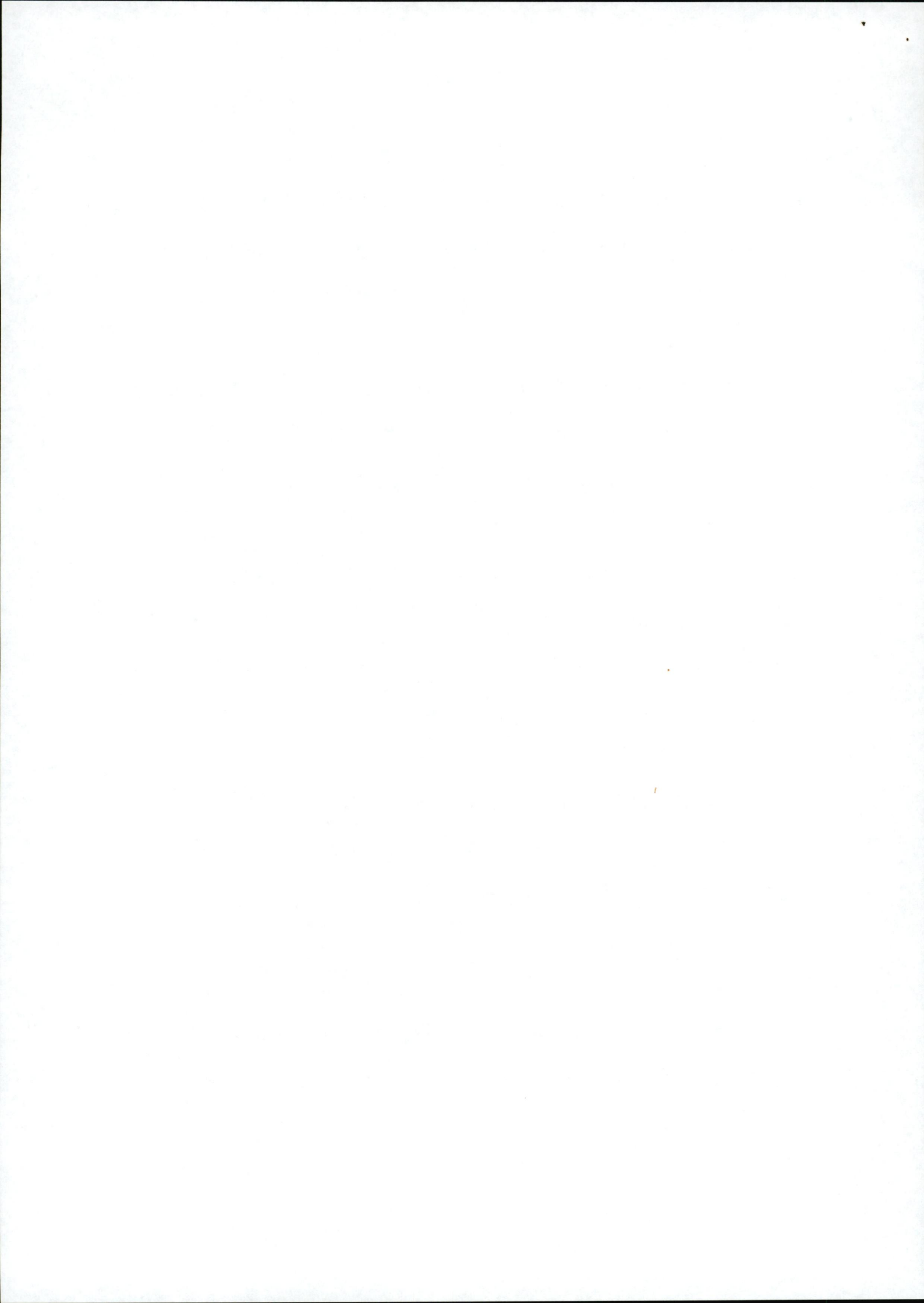
Another item in the Bill which is in the nature of clarification concerns assessment of the lump sum pain and suffering entitlement under section 67 of the Act.

The proposed amendment reinforces that that entitlement is confined to the "permanent loss" resulting from a worker's injury, rather than encompassing other effects of the injury.

In the area of lump sum claims for industrial deafness, the Bill will impose an eligibility threshold, whereby compensation is only payable if the worker's hearing loss reaches 6 per cent.

This addresses the problem of disproportionate administrative and other costs associated with claims for small amounts of hearing loss.

The new provisions will, however, still allow workers in noisy jobs to claim the cost of periodic hearing tests to check whether they have reached the 6 per cent level.



Also in relation to hearing loss claims, the Bill deals with what one Judge of the Compensation Court recently described as "a racket of monumental proportions".

That was a reference to the activities of certain firms of agents or consultants, specialising in hearing loss claims, and of some solicitors who co-operate with them in exploiting the system.

Serious concern has also been expressed by unions, individual workers and the Law Society.

Unscrupulous practices adopted by such persons, in dealing with workers, include touting of a harassing nature, making misleading statements to encourage claims and use of personal information contrary to principles of privacy.

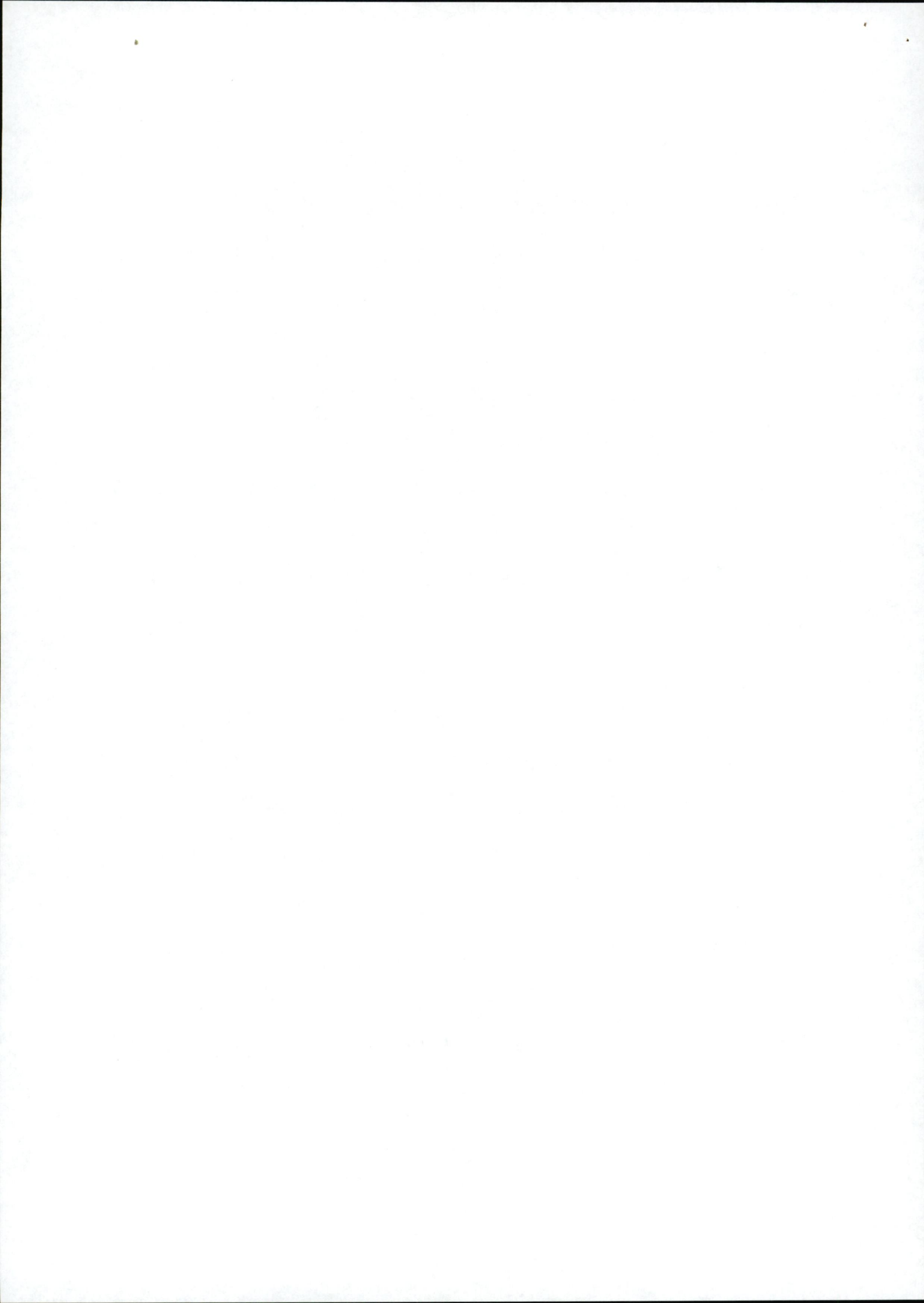
For example, those agents obtain the names of potential new clients by falsely telling current clients that they must give names of co-workers as "witnesses".

Many workers have been left hundreds of dollars out-of-pocket as a result of fees improperly charged by these firms.

In response, the Bill designates claims for industrial deafness as "protected claims". Offences are created for agents who engage in prohibited conduct in relation to those claims. In addition, where claims result from such conduct, the agent is deprived of entitlement to payment from either the worker or the employer for services rendered.

Persistent offenders are to be subject to banning or other restrictions by the WorkCover Authority, with appeals available to the Compensation Court. Solicitors who knowingly act for claimants referred to them following prohibited conduct by agents may also forfeit their entitlement to fees.

Another proposal in the Bill that relates to lump sums is the partial abolition of entitlements to interest on those claims.



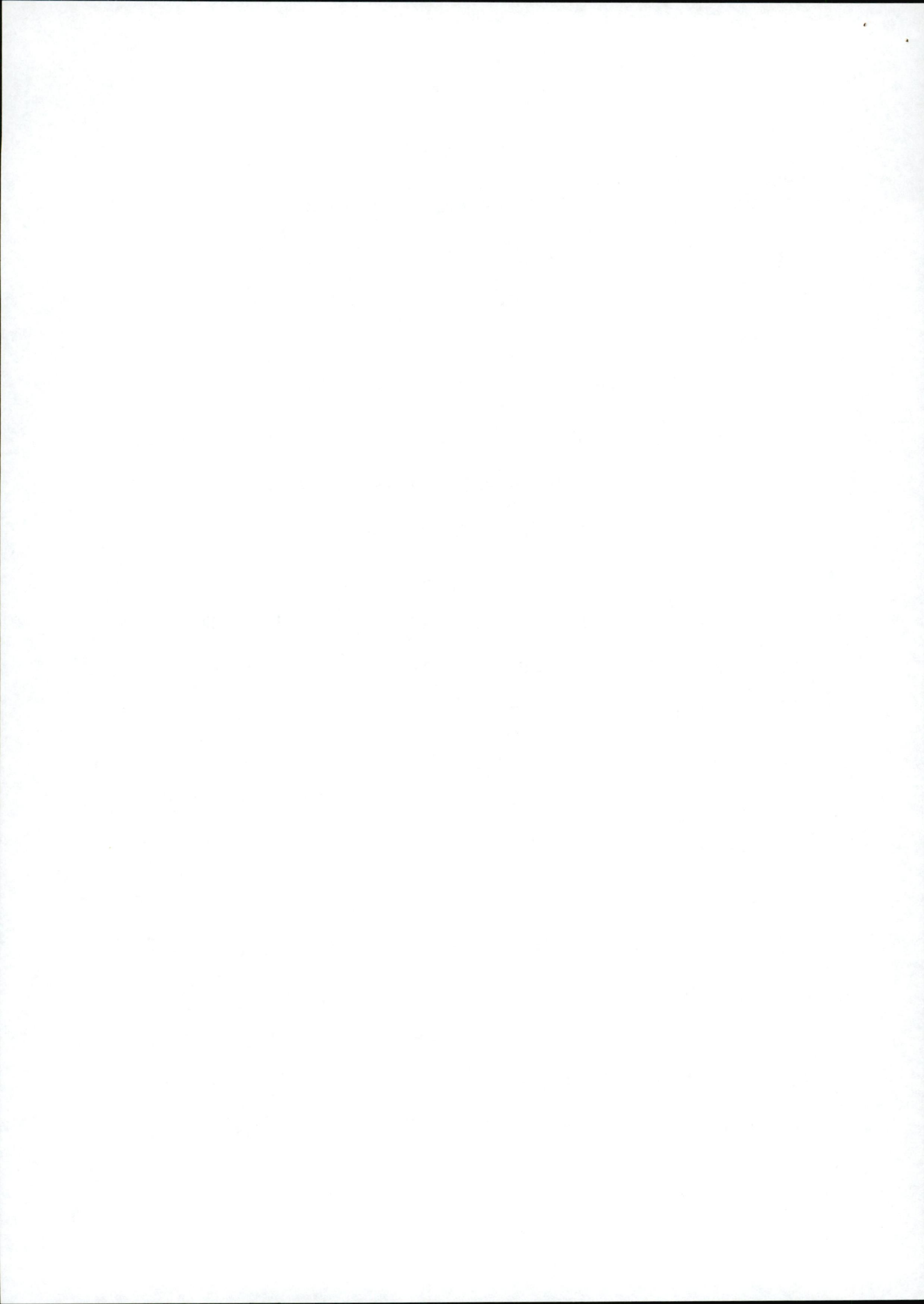
The wide discretion that the Compensation Court currently has to order the payment of interest, back to the date of injury, is not found in other workers compensation schemes in Australia.

Orders for the payment of interest have become a standard feature of awards of the Court, to the point where the total annual payout has grown out of proportion.

Under the Bill, interest on lump sums will be removed, except interest for late payment of compensation ordered by the Court or under an agreed settlement. On the other hand, the discretion to order interest on weekly compensation will remain, but only from the date of claim, at the earliest.

Time limits for the making of claims are also tightened in this legislation.

The Workers Compensation Act presently contains a nominal 6 month time limit for lodging claims, which is



honoured more in the breach than the observance.

Instead, the Bill before the House provides that the normal time for lodgement of workers compensation claims is within 3 years after the worker's injury. But extensions will be allowed in exceptional circumstances.

Sensibly, the amendments state that - if the date when a worker first becomes aware (for example, through diagnosis of a gradual disease) that he or she has received an injury is later than the injury date for legal purposes - the 3 years will run from that later date.

Various other changes are made in the area of claim procedures to facilitate the fast and efficient determination of claims, with minimum litigation.

A study carried out on behalf of the WorkCover Authority by the Civil Justice Research Centre has found that, in many cases, workers' solicitors are in effect using the filing of proceedings in the Compensation Court as the first step

in making a claim. That is not appropriate.

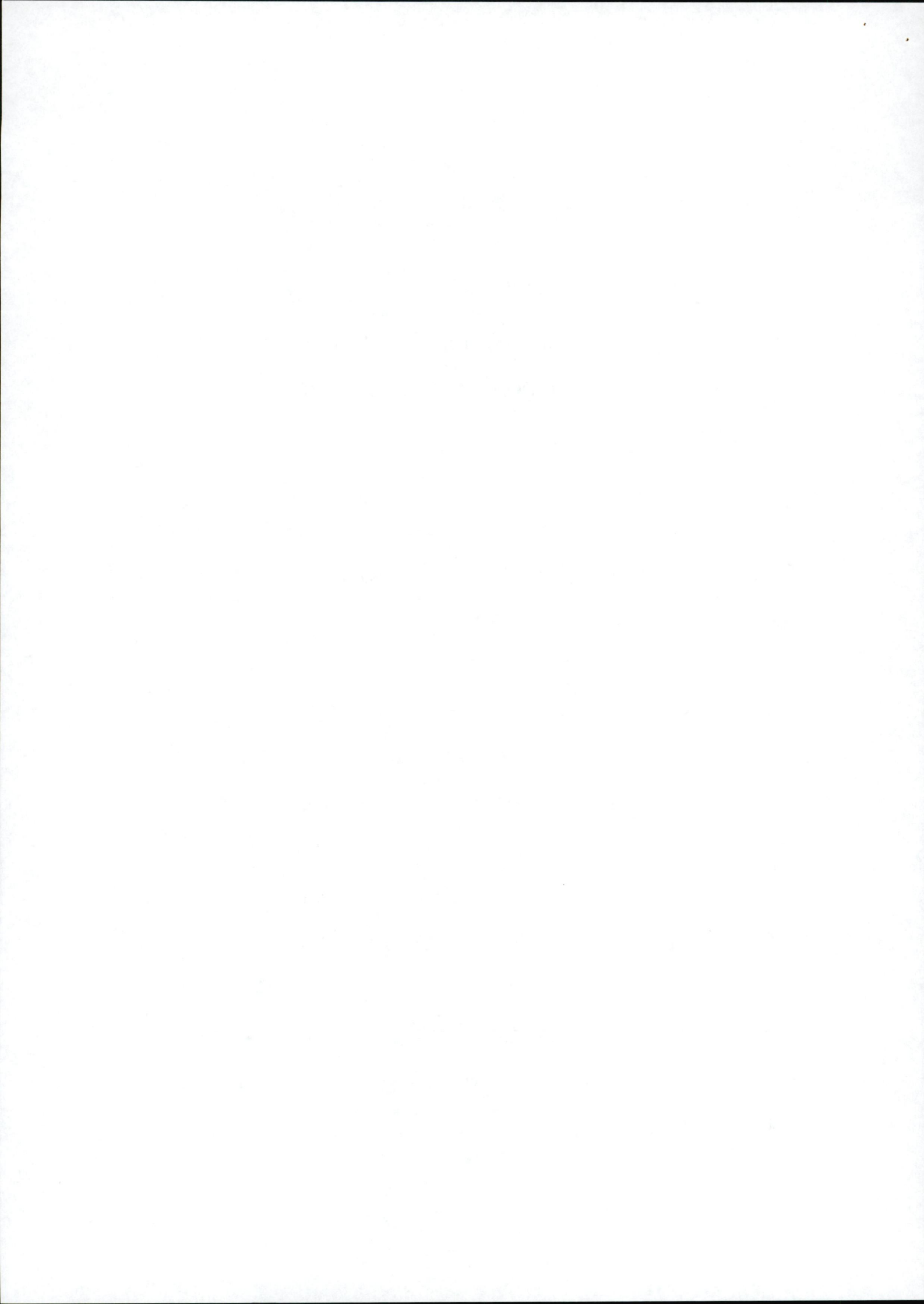
Accordingly, the amendments will require workers to properly lodge their claim in the first instance on the employer or insurer, before dispute resolution avenues can be pursued.

Existing provisions enacted earlier this year provide a 3 month non-litigation period after lodgement on the employer of an industrial deafness claim.

That is designed to allow a reasonable opportunity for the employer's insurer to assess the claim and, if applicable, to refer a dispute on the matter to a medical panel.

The current Bill will extend that arrangement to all lump sum disability claims under section 66 of the Act.

If the insurer processes the claim promptly and, within the initial 3 months, refers a resulting medical dispute to a medical panel, the non-litigation period is extended until 14



days after the panel issues its certificate.

That 14 day period is provided as a cooling-off period for further negotiations to settle the matter using the panel's certificate.

Another improvement in claim-related procedures is a new requirement for insurers always to give written notice to the worker when denying liability for a claim.

That notice will be required to contain reasons for the denial, information about conciliation and a statement that the worker may consult his or her union or a lawyer.

A copy of that notice will also form part of the information which insurers are required - following existing arrangements - to refer to the WorkCover Conciliation Service.

Those automatic conciliation referrals by insurers are

presently limited to cases where initial liability to start weekly compensation payments is disputed.

The amendments will extend this arrangement to weekly compensation disputes involving termination or reduction of payments. This will operate as a useful mechanism to screen out non-genuine denials of liability.

However, these provisions will not prevent the commencement of proceedings in the Compensation Court and will not impose conciliation as a pre-condition to those proceedings.

Additional procedural changes will increase the effectiveness of conciliation.

For example, conciliation officers will be authorised to require the production of documents and, in some cases, attendance at a conciliation conference. Workers, however, would not be required to produce documents or attend such conferences unless they have the benefit of legal

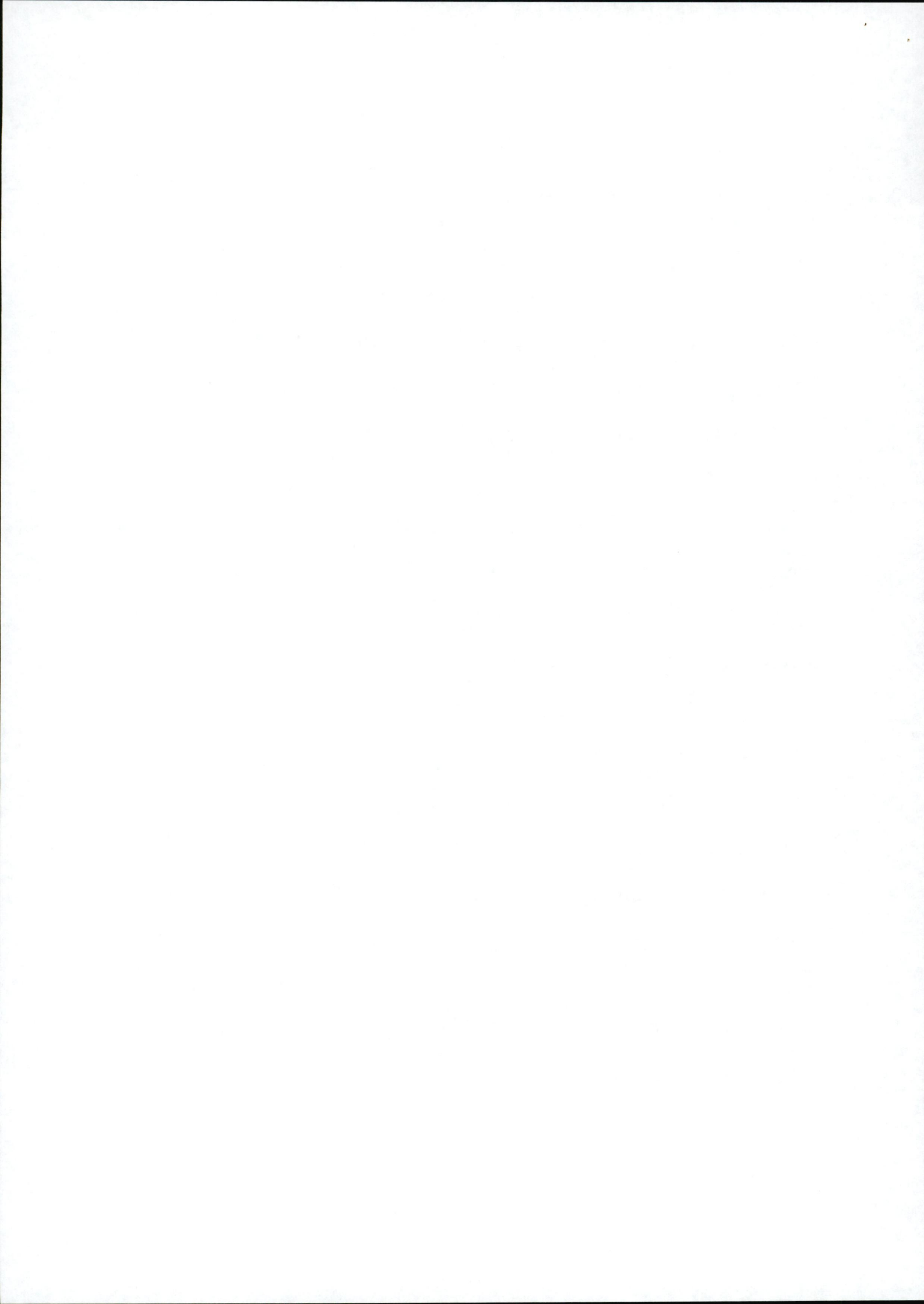


representation.

In relation to legal representation at conciliation conferences, the status quo will remain. That is, there will be no entitlement to that representation unless the conciliation officer and the parties agree.

A new provision will enable regulations to be made under which the Senior Conciliation Officer may refer medical aspects of section 66 lump sum disputes for binding assessment by a medical panel.

Medical panels will be made fairer by new requirements that, on each panel, there will have to be one medical practitioner nominated by employee organisations and one nominated by employer organisations. Those practitioners will also have to be appropriately qualified or experienced specialists. Medical panels - even those that give binding determinations - will be able to subsequently correct any miscalculations and similar errors.

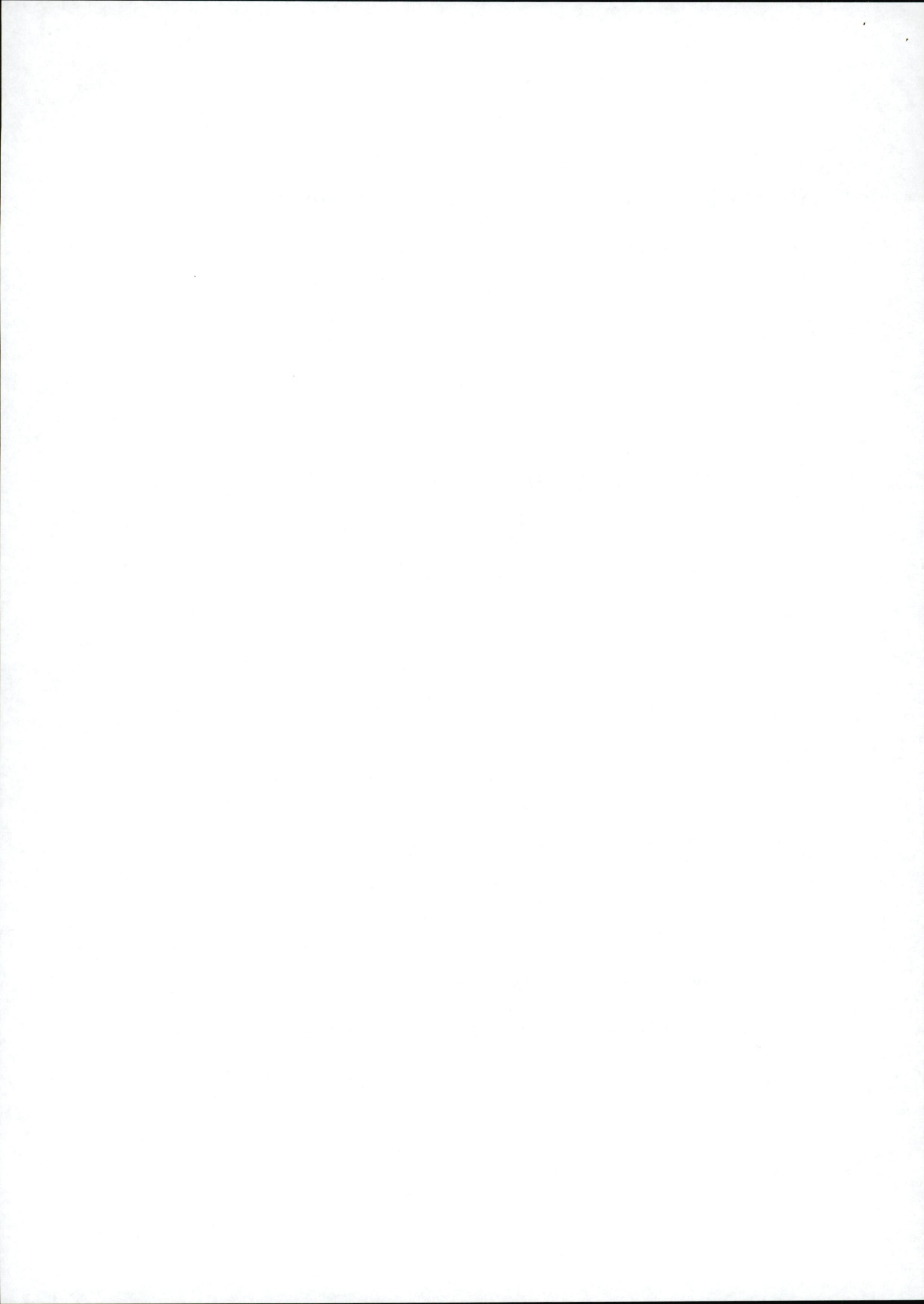


As an alternative to reference of matters to official medical panels, workers and employers will be free to agree to refer to an independent medical arbitrator of their choice, medical questions relating to a claim, whether or not the parties have reached the point of dispute.

The parties may specifically agree that the independent medical practitioner's decision on some or all of the questions so referred will be treated as binding.

The amendments state that - as an incentive for the worker's agreement to participate (and in recognition of legal and other expenses thus saved by the insurer) - the insurer may agree to pay a participating worker an amount over and above his or her compensation entitlement.

With regard to the operations of the Compensation Court, various provisions in the Bill should allow the Court to increase its efficiency and devote more of its time to the actual hearing of cases requiring determination in such a forum.

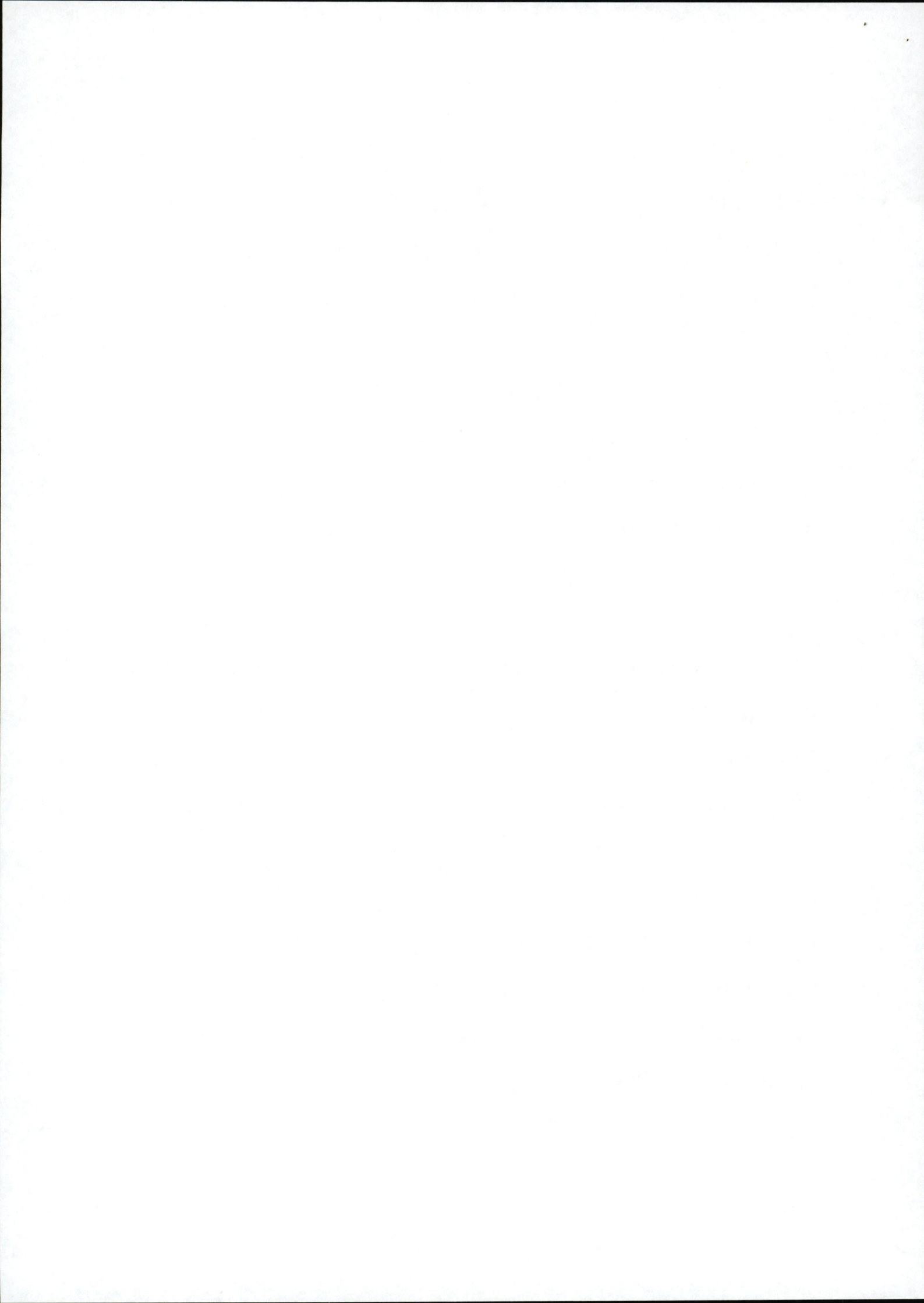


Unfortunately, a kind of culture of pre-planned settlement on the day of hearing has developed, as referred to in the Report by the Civil Justice Research Centre.

Under the Bill, provisions will be introduced for cost penalties for unreasonable refusal by either party of a settlement offer or for prolonging litigation through failure to provide particulars which might have allowed such an offer.

These provisions will ensure that legal representatives for both parties must seriously address the possibility of early settlement. These cost penalties are not directed at workers themselves and are not intended to result in unfair pressure on workers to accept inappropriate settlements.

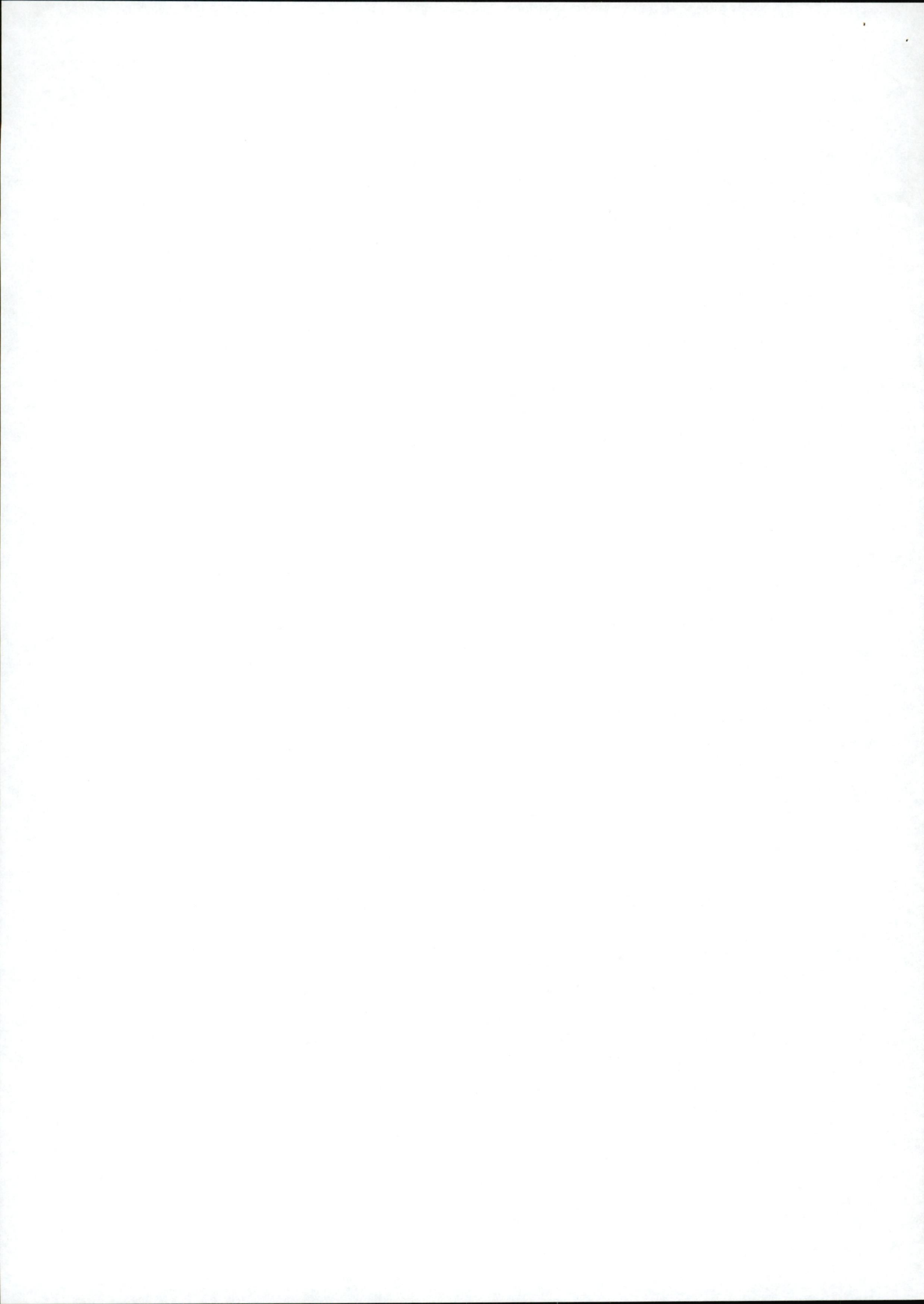
If insurers are responsible for unreasonably incurring litigation costs or delays in handling claims, consequences can include adjustment of their conditions of licence and reductions in their management fees.



The status of Commissioners of the Compensation Court is enhanced by the amendments. The current provision preventing allocation to Commissioners of pain and suffering claims is removed. The Bill also allows flexibility for allocation arrangements between Judges and Commissioners to be updated or varied by future regulations.

Appeals from decisions of Judges of the Compensation Court to the Court of Appeal are to be limited to questions of law and the admission or rejection of evidence. Appeals from decisions of Commissioners to Judges will be on a generally similar basis.

Further prescriptive powers will allow greater control of maximum legal fees payable to representatives of both workers and employers or insurers. It is the Government's intention to reduce those fees by some 10 per cent in Judge matters and further in Commissioner matters. Medico-legal fees will also be subject to appropriate controls.

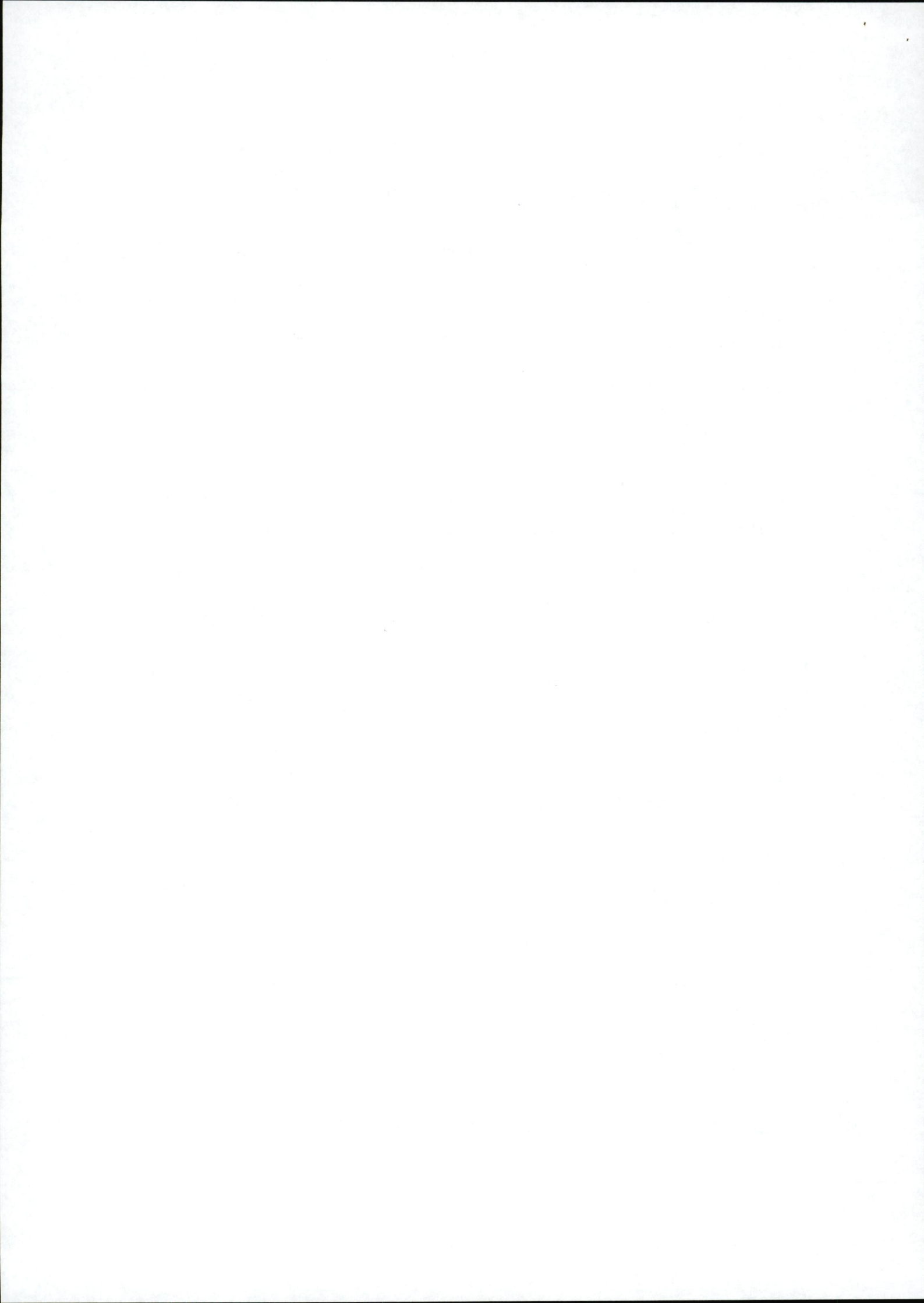


In regard to fees for medical and hospital treatment of injured workers, the Act already provides regulatory powers to set maximum claimable amounts. The Bill will specify that, to the extent that current or future regulations set such maximums, the worker will not be liable for any gap in fees that may emerge.

On the subject of workers compensation insurance, the Bill includes several measures to deter breach by employers of their obligations in that regard. This includes the introduction of imprisonment - applicable both to employers who are individuals and to directors of uninsured corporations - for up to 6 months as an additional penalty option in appropriate cases.

Avoidance of insurance obligations by a minority of employers is grossly unfair to the majority who properly insure, since the latter are effectively subsidising the former.

Regarding rehabilitation obligations of employers, the



effectiveness of current provisions for workplace rehabilitation programs will be increased by new requirements for the preparation of return-to-work plans to assist re-employment of individual injured workers.

I turn now to the provisions of the Bill relating to occupational health and safety.

Maximum fines for workplace safety offences by employers will be increased by these amendments from \$250,000 to \$500,000 in the case of corporations. Corresponding increases are made in penalties applicable to individual offenders.

These changes are in line with recommendations in the Federal Industry Commission's recent Report "An Inquiry into Occupational Health and Safety", and will bring OHS penalty levels in this State into line with the highest in Australia.

In the case of second or further offences, the amendments

will provide that the maximum penalty increases by half as much again - bringing the possible maximum fine for a corporation in serious cases to \$750,000.

This does not mean that courts should simply increase the amount of the employer's previous fine by half. Rather, the court should - whether dealing with a first or repeat offence - give due regard to the maximum penalty. Possible imprisonment is also provided for second or further OHS offences.

The Bill contains a range of other important improvements in regard to OHS enforcement and related arrangements.

Current provisions making directors of a corporation, which has been convicted of an offence against the OHS Act, personally liable to prosecution will be amended to remove ignorance as a specific defence.

The availability of the defence of ignorance in these circumstances is inconsistent with the duty of care required

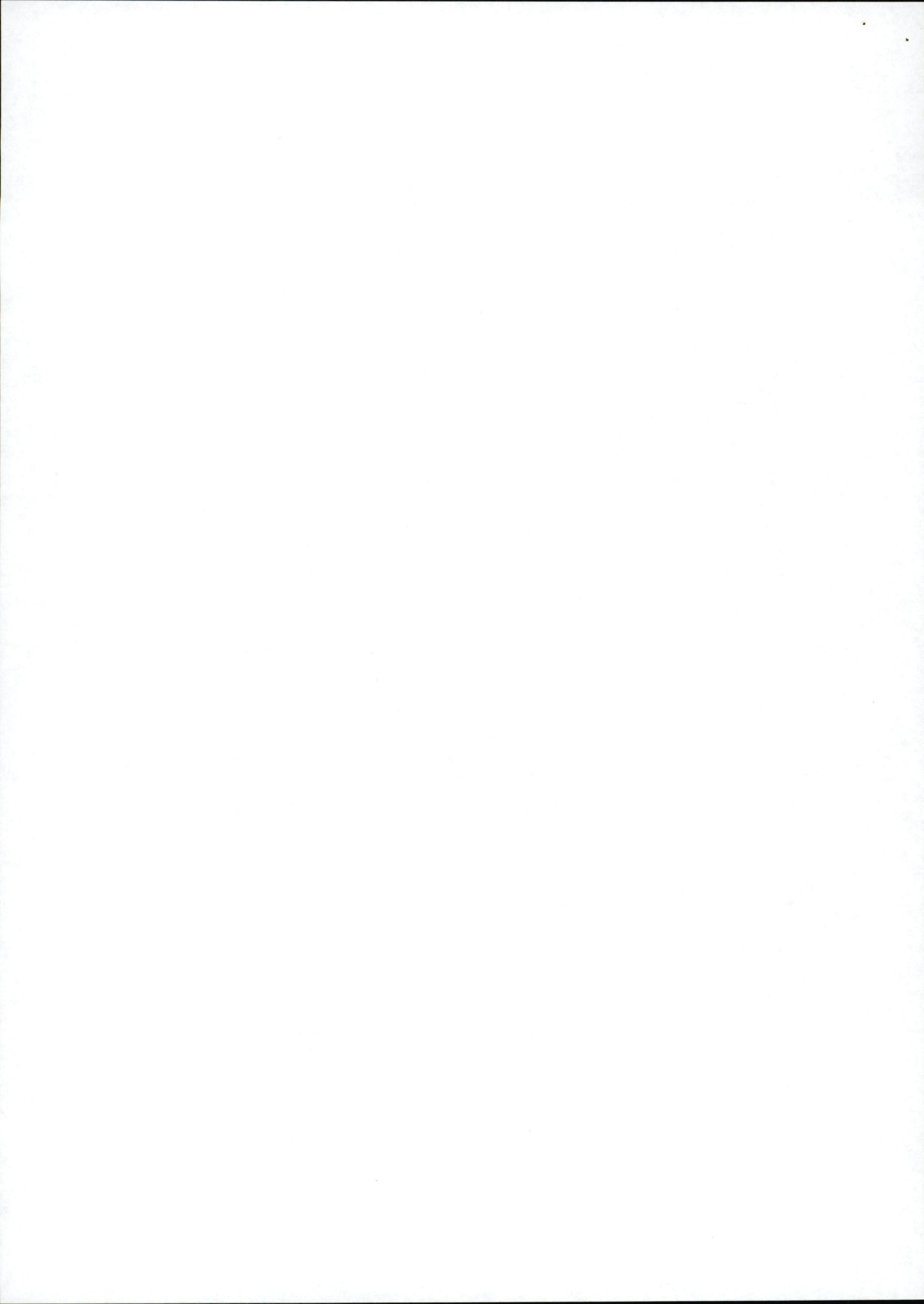
of employers as regards the maintenance of safe working systems under the Occupational Health and Safety Act.

Instead, the main defence available to directors will be the more appropriate one of establishing due diligence in relation to the corporation's safety responsibilities. The defence of proving that he or she was not in a position to influence the corporation's conduct will also still be available.

In line with the arrangement applicable elsewhere in Australia and in most comparable overseas jurisdictions, the amendments will make clear that WorkCover safety inspectors can enter workplaces without giving prior notice.

New provisions will allow authorised union officers also to enter workplaces to check in relation to safety breaches.

Provisions on improvement and prohibition notices, which WorkCover inspectors can issue in the interests of safety, are transferred by this Bill from the regulations to the Act



itself.

As a result, penalties for failure to comply with those notices are increased to more realistic levels. In addition, appropriate review and appeal avenues are made available to employers affected.

Another new provision will allow the Minister administering the Occupational Health and Safety Act to direct the WorkCover Authority to prepare special reports on workplace accidents or dangerous occurrences. Those reports will be able to be publicised, including by tabling in Parliament.

The Bill also contains numerous other miscellaneous refinements and clarifications to workers compensation legislation and occupational health and safety legislation. These are intended to save costs, remove anomalies, avoid litigation and increase administrative efficiency.

An example that is the miscellaneous category is an

amendment relating to section 22 of the Workers Compensation Act which deals with arrangements for sharing liability where a worker's claim relates to two or more different injuries.

The clarifying amendment is intended to bring out that the provisions of sections 22 and 22A represent a break with the previous case law on apportionment. The word "apportionment" has some legal connotations suggesting that it is only applicable in situations where a single or common liability is to be divided.

Despite that, the clear intention of the legislature is that apportionment in the section 22 context must be allowed to operate, even though the liability to be divided would normally involve situations where incapacity of the worker partly results from, or is partly contributed to, by two or more injuries with different employers or covered by different insurers.

I commend the Bill to the House.

C-068
GOVT

LEGISLATIVE COUNCIL

WorkCover Legislation Amendment Bill 1995

First Print

Amendments to be moved in Committee

No. 1 Page 10, Schedule 1 [21], line 9. Omit all words on that line, insert instead:

Omit the subsection. Insert instead:

(4A) The Authority must refuse to register an agreement unless it is satisfied that the worker received independent legal advice about the agreement before the worker entered into the agreement.

No. 2 Page 20, Schedule 1 [41], line 17. Omit ", because of exceptional circumstances,".

No. 3 Page 38, Schedule 1 [58]. At the end of line 16, insert:

, and
(f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the Compensation Court Act 1984.

No. 4 Page 40, Schedule 1 [58]. At the end of line 13, insert:

, and
(f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the Compensation Court Act 1984.

No. 5 Pages 43 and 44, Schedule 1 [63], line 26 on page 43 to line 7 on

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page 44. Omit all words on those lines.

No. 6 Page 99, Schedule 2 [28], line 29. Omit "associated".

No. 7 Page 101, Schedule 2 [28], line 3. Omit "associated".

No. 8 Page 104, Schedule 2 [31], line 16. Omit "(under section 311 (b1))".

No. 9 Page 111, Schedule 3 [1], lines 4-26. Omit all words on those lines.

No. 10 Page 112, Schedule 3 [2]. After line 13, insert:

(2B) The Minister can, when inviting nominations for the purposes of subsection (2A), specify the minimum number of persons required to be nominated.

No. 11 Page 112, Schedule 3 [3], lines 16-20. Omit all words on those lines, insert instead:

(2A) As far as reasonably practicable, one of the medical referees constituting a medical panel must be a medical referee appointed under section 14A (2A) (a) and one must be a medical referee appointed under section 14A (2A) (b).

(2B) Of the medical referees constituting a medical panel, no more than one is to be a medical referee appointed under section 14A (2A) (a) and no more than one is to be a medical referee appointed under section 14A (2A) (b).

No. 12 Page 112, Schedule 3 [3]. After line 29, insert:

(2D) When a medical panel is constituted by 2 medical referees and they cannot agree as to their decision, the medical panel is to be reconstituted as a panel of 3 medical referees (whether or not including either or both of the medical referees from the original panel).

No. 13 Page 113, Schedule 3 [5], line 4. Omit all words on that line, insert instead:

Omit the section. Insert instead:

18 Costs

Section 116 (Costs) of the Workers Compensation Act 1987 applies to and in respect of any proceedings in

the Court, not just proceedings under that Act.

- No. 14 Page 113, Schedule 3 [8], lines 10 and 11. Omit all words on those lines, insert instead:

Insert before section 22 (3) (a):

- (a1) the need for proceedings to be disposed of efficiently by the Court, including the need to make full use of the commissioners, and

- No. 15 Page 113, Schedule 3 [9], lines 12-22. Omit all words on those lines.

- No. 16 Page 118, Schedule 3 [23], lines 7-10. Omit all words on those lines, insert instead:

The cost of providing mediation and neutral evaluation for the purposes of this Part (including the remuneration of mediators and neutral evaluators and the cost of administrative support) is a cost of operation of the Compensation Court and accordingly is payable under section 19 (2) (c) of the WorkCover Administration Act 1989.

- No. 17 Page 118, Schedule 3 [26], lines 18-20. Omit all words on those lines.

- No. 18 Page 118, Schedule 3 [27], lines 25 and 26. Omit "The Senior Commissioner must be a full-time Commissioner."

- No. 19 Page 133, Schedule 8.4, line 13. Omit all words on that line.

- No. 20 Page 133, Schedule 8.4, line 15. Omit ", other than the Senior Commissioner".

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LEGISLATIVE COUNCIL

WorkCover Legislation Amendment Bill 1995

First Print

Amendments to be moved in Committee

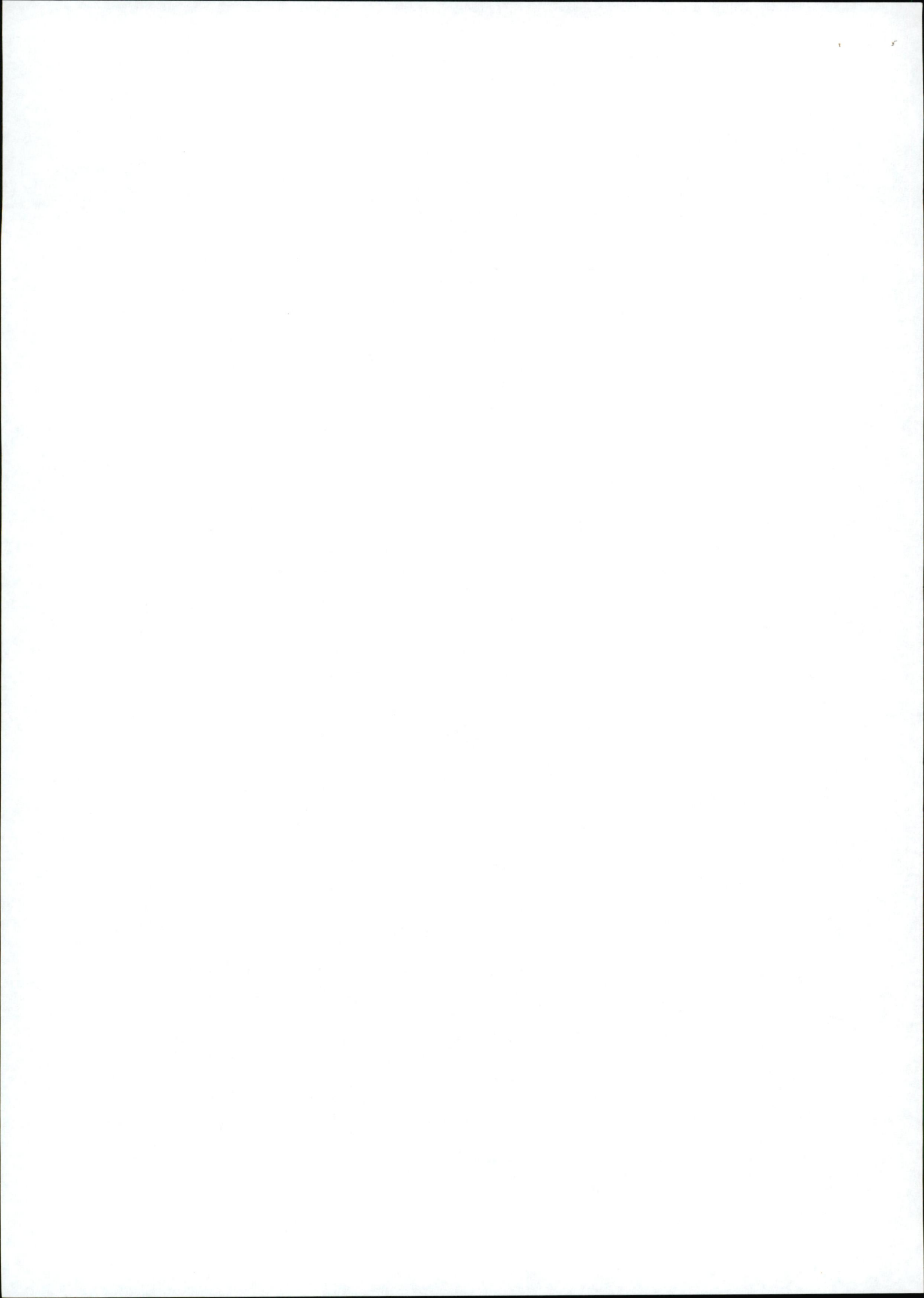
No. 1 Page 5, Schedule 1 [6]. After line 18, insert:

- (2) If total or partial incapacity for work results from an injury that is a psychological injury, any compensation payable to the injured worker is not to include a weekly payment under Division 2 (Weekly compensation by way of income support) of Part 3 for any period of incapacity after the first 3 years of incapacity. A reference in this subsection to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.

No. 2 Page 10, Schedule 1 [20] and [21], lines 4-9. Omit all words on those lines.

No. 3 Page 14, Schedule 1 [30], lines 20-25. Omit all words on those lines, insert instead:

- (2) Once a worker has been paid compensation under section 66 for a loss or further loss of hearing due to boilermakers deafness (whether the compensation was paid before or after the commencement of this section), the worker has no entitlement to compensation under section 66 for any further loss of hearing due to boilermakers deafness unless that further loss is at least 5%. This subsection is capable of applying to a worker on more than one occasion.
- (3) The fact that compensation is not payable for a loss or further loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss or further loss, and does not affect the operation of section 17 in respect of that loss or



further loss (if and when the worker's total hearing loss reaches 6% or that further loss reaches 5%).

No. 4 Page 15, Schedule 1 [30], lines 8-12. Omit all words on those lines, insert instead:

- (c) The worker suffers a further hearing loss of 4%. The worker is not entitled to compensation for the 4% further loss (because it is less than the 5% further loss threshold). Again, notice of injury can be given or a claim can be made for that further loss even though compensation is not payable for it.
- (d) The worker suffers a further hearing loss of 3%. The total further loss has now passed the 5% threshold and compensation is payable for the full 7% further loss. Each time the worker suffers a further loss of hearing after compensation has been paid for any previous loss, no compensation is payable for the further loss until it reaches 5%.

No. 5 Page 16, Schedule 1 [30], lines 10-13. After "loss" wherever occurring, insert "or further loss".

No. 6 Page 16, Schedule 1 [30], lines 19-21. Omit all words on those lines, insert instead:

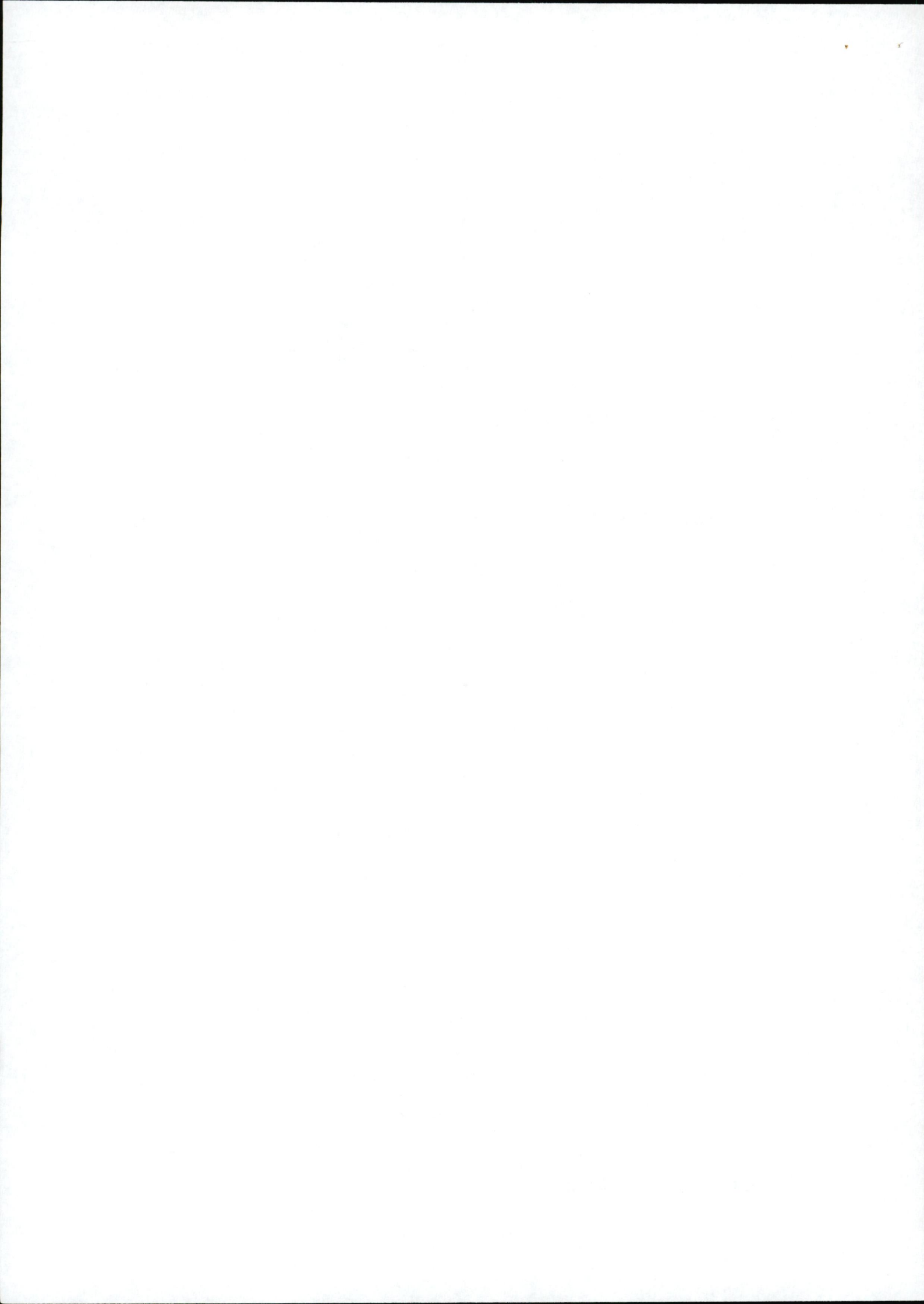
- (c) any test that finds that the worker has suffered a total hearing loss due to boilermakers deafness of 6% or more (being hearing loss for which the worker has not received compensation under section 66),
- (d) in the case of a worker who has received compensation under section 66 for loss of hearing (whether before or after the commencement of this section), any test that finds that the worker has suffered a further hearing loss due to boilermakers deafness of 5% or more,

No. 7 Page 20, Schedule 1 [41], line 17. Omit ", because of exceptional circumstances,".

No. 8 Page 21, Schedule 1 [41]. After line 6, insert:

- (4E) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of subsections (2) and (4A) as the making of a claim for compensation in respect of the injury.

No. 9 Page 22, Schedule 1 [43]. After line 12, insert:



- (5) An employer against whom a claim for compensation is made under this Act may require the employer's insurer in respect of the claim to defend the claim (whether by disputing liability or otherwise). An insurer is required to comply with such a requirement, subject to the regulations.
- (6) The regulations may make provision for or with respect to the resolution of disputes between insurers and employers as to the defending of claims by insurers pursuant to a requirement under subsection (5).

No. 10 Page 24, Schedule 1 [47], lines 27-31. Omit all words on those lines.

No. 11 Page 27, Schedule 1. After line 17, insert:

[49] **Section 100A Proceedings before conciliation officers**
Omit "not" from section 100A (2).

[50] **Section 100A (3)**
Omit the subsection.

No. 12 Page 32, Schedule 1 [56], line 4. After "later.", insert "However, this subsection does not prevent the commencement of court proceedings by a worker in respect of compensation under section 66 after a period of 16 weeks has elapsed since a claim for the compensation was duly made, so long as the worker has responded to any offer of settlement made to the worker during that period."

No. 13 Pages 43 and 44, Schedule 1 [63]. Omit all words on those pages.

No. 14 **[NOTE: This amendment should not be moved unless amendment No 13 is rejected.]**

Page 43, Schedule 1 [63], lines 22-25. Omit all words on those lines, insert instead:

- (4) The certificate is, in any proceedings, evidence (but not conclusive evidence) as to the findings certified.

No. 15 Page 45, Schedule 1 [64], lines 15-35. Omit all words on those lines, insert instead:

- (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.

No. 16 Page 66, Schedule 1 [82], after line 8, insert:

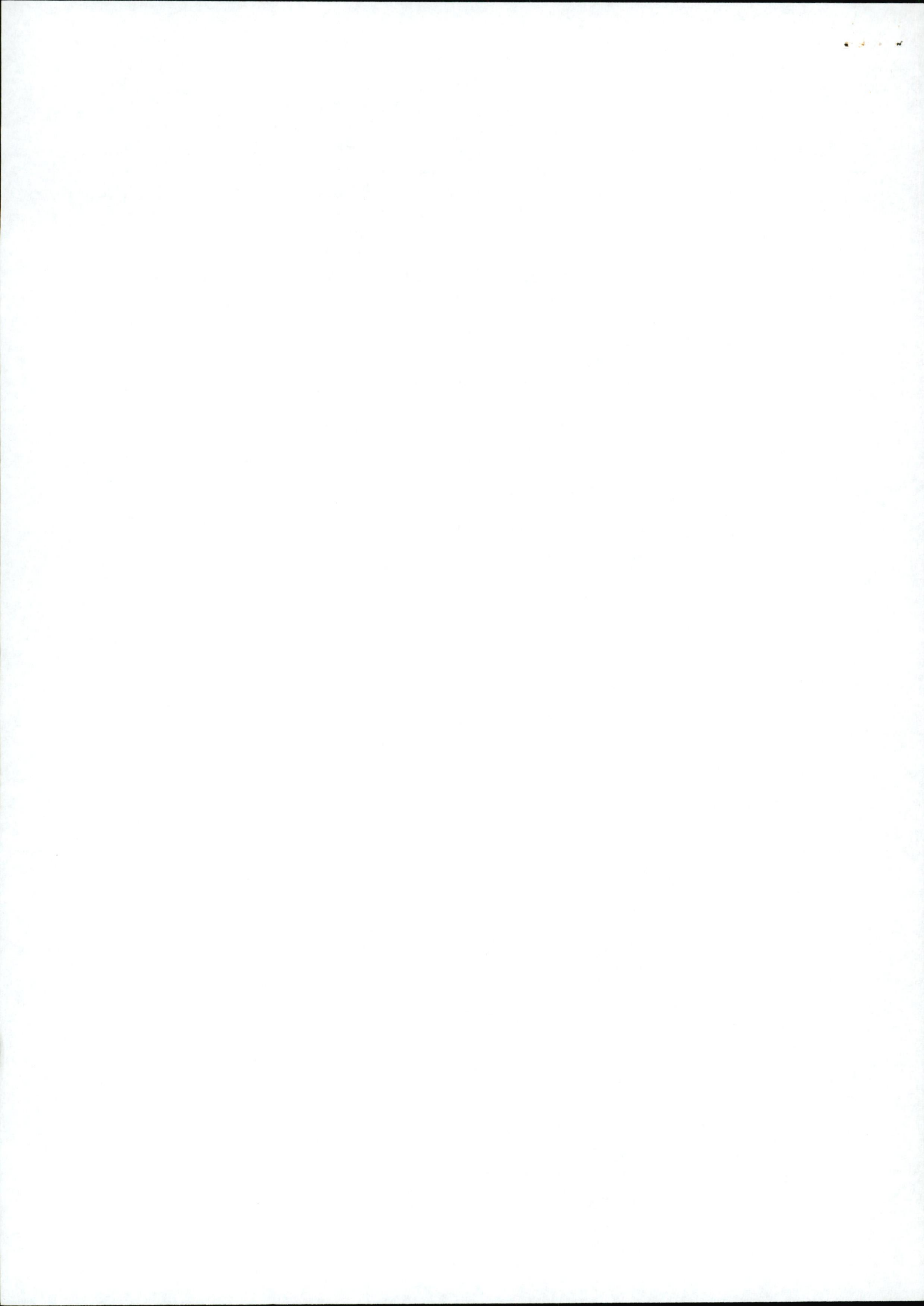
- (3) The assets of a statutory fund maintained by an insurer under this Division may not be applied for the purpose of enabling any payment by the Authority as a dividend to the credit of the



Consolidated Fund, whether by virtue of a direction of the Minister under this Act or the WorkCover Administration Act 1989 or pursuant to a requirement under section 59B of the Public Finance and Audit Act 1983, or otherwise.

- (4) The assets of the WorkCover Authority Fund under the WorkCover Administration Act 1989 may not be applied for the purpose of payment of a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or pursuant to a requirement under section 59B of the Public Finance and Audit Act 1983, or otherwise.

- No. 17 Page 111, Schedule 3 [1], lines 4-26. Omit all words on those lines.
- No. 18 Page 113, Schedule 3 [9], lines 12-22. Omit all words on those lines.
- No. 19 Page 118, Schedule 3 [26], lines 18-20. Omit all words on those lines.
- No. 20 Page 118, Schedule 3 [27], lines 25 and 26. Omit "The Senior Commissioner must be a full-time Commissioner".
- No. 21 Page 133, Schedule 8.4, line 13. Omit all words on that line.
- No. 22 Page 133, Schedule 8.4, line 15. Omit ", other than the Senior Commissioner".
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C-084
OPP

LEGISLATIVE COUNCIL

WorkCover Legislation Amendment Bill 1995

First Print

Amendments to be moved in Committee

No. 1 Page 5, Schedule 1 [6]. After line 18, insert:

- (2) If total or partial incapacity for work results from an injury that is a psychological injury, any compensation payable to the injured worker is not to include a weekly payment under Division 2 (Weekly compensation by way of income support) of Part 3 for any period of incapacity after the first 3 years of incapacity. A reference in this subsection to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.

No. 2 Page 10, Schedule 1 [20] and [21], lines 4-9. Omit all words on those lines.

No. 3 Page 14, Schedule 1 [30], lines 20-25. Omit all words on those lines, insert instead:

- (2) Once a worker has been paid compensation under section 66 for a loss or further loss of hearing due to boilermakers deafness (whether the compensation was paid before or after the commencement of this section), the worker has no entitlement to compensation under section 66 for any further loss of hearing due to boilermakers deafness unless that further loss is at least 5%. This subsection is capable of applying to a worker on more than one occasion.
- (3) The fact that compensation is not payable for a loss or further loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss or further loss, and does not affect the operation of section 17 in respect of that loss or

further loss (if and when the worker's total hearing loss reaches 6% or that further loss reaches 5%).

No. 4 Page 15, Schedule 1 [30], lines 8-12 Omit all words on those lines, insert instead:

- (c) The worker suffers a further hearing loss of 4%. The worker is not entitled to compensation for the 4% further loss (because it is less than the 5% further loss threshold). Again, notice of injury can be given or a claim can be made for that further loss even though compensation is not payable for it.
- (d) The worker suffers a further hearing loss of 3%. The total further loss has now passed the 5% threshold and compensation is payable for the full 7% further loss. Each time the worker suffers a further loss of hearing after compensation has been paid for any previous loss, no compensation is payable for the further loss until it reaches 5%.

No. 5 Page 16, Schedule 1 [30], lines 10-13. After "loss" wherever occurring, insert "or further loss"

No. 6 Page 16, Schedule 1 [30], lines 19-21. Omit all words on those lines, insert instead:

- (c) any test that finds that the worker has suffered a total hearing loss due to boiler-makers deafness of 6% or more (being hearing loss for which the worker has not received compensation under section 66),
- (d) in the case of a worker who has received compensation under section 66 for loss of hearing (whether before or after the commencement of this section), any test that finds that the worker has suffered a further hearing loss due to boiler-makers deafness of 5% or more,

No. 7 Page 20, Schedule 1 [41], line 17. Omit ", because of exceptional circumstances,".

No. 8 Page 21, Schedule 1 [41]. After line 6, insert:

- (4E) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of subsections (2) and (4A) as the making of a claim for compensation in respect of the injury.

No. 9 Page 24, Schedule 1 [47], lines 27-31. Omit all words on those lines.

- No. 10 Page 32, Schedule 1 [56], line 4. After "later.", insert "However, this subsection does not prevent the commencement of court proceedings by a worker in respect of compensation under section 66 after a period of 16 weeks has elapsed since a claim for the compensation was duly made, so long as the worker has responded to any offer of settlement made to the worker during that period."
- No. 11 Pages 43 and 44, Schedule 1 [63]. Omit all words on those pages.
- No. 12 **[NOTE: This amendment should not be moved unless amendment No 11 is rejected.]**
Page 43, Schedule 1 [63], lines 22-25. Omit all words on those lines, insert instead:
 - (4) The certificate is, in any proceedings, evidence (but not conclusive evidence) as to the findings certified.
- No. 13 Page 45, Schedule 1 [64], lines 15-35. Omit all words on those lines, insert instead:
 - (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.
- No. 14 Page 111, Schedule 3 [1], lines 4-26. Omit all words on those lines.
- No. 15 Page 113, Schedule 3 [9], lines 12-22. Omit all words on those lines.
- No. 16 Page 118, Schedule 3 [26], lines 18-20. Omit all words on those lines.
- No. 17 Page 118, Schedule 3 [27], lines 25 and 26. Omit "The Senior Commissioner must be a full-time Commissioner."
- No. 18 Page 133, Schedule 8.4, line 13. Omit all words on that line.
- No. 19 Page 133, Schedule 8.4, line 15. Omit ", other than the Senior Commissioner".



New South Wales

WorkCover Legislation Amendment Act 1995 No 89

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of Occupational Health and Safety Act 1983 No 20	2
5 Amendment of Compensation Court Act 1984 No 89	2
6 Amendment of Construction Safety Act 1912 No 38	2
7 Amendment of Factories, Shops and Industries Act 1962 No 43	2
8 Amendment of Dangerous Goods Act 1975 No 68	3
9 Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14	3
10 Amendment of other Acts	3

WorkCover Legislation Amendment Act 1995 No 89

Contents

	Page
Schedules	
1 Amendment of Workers Compensation Act 1987	4
2 Amendment of Occupational Health and Safety Act 1983	83
3 Amendment of Compensation Court Act 1984	111
4 Amendment of Construction Safety Act 1912	120
5 Amendment of Factories, Shops and Industries Act 1962	122
6 Amendment of Dangerous Goods Act 1975	124
7 Amendment of Workers' Compensation (Dust Diseases) Act 1942	128
8 Amendment of other Acts	132



New South Wales

WorkCover Legislation Amendment Act 1995 No 89

Act No 89, 1995

An Act to amend the *Workers Compensation Act 1987* and the *Compensation Court Act 1984* to make further provision with respect to workers compensation dispute resolution, claims procedures, lump sum and weekly payments of compensation and the duties of insurers, and in other respects; to amend the *Occupational Health and Safety Act 1983* and associated legislation to increase penalties and to make further provision with respect to powers of inspectors and entry to the workplace, and in other respects; to make miscellaneous amendments to various other Acts; and for other purposes. [Assented to 20 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1995*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [30] which inserts sections 69A and 69B into the *Workers Compensation Act 1987*, and Schedule 1 [106] to the extent that it inserts clause 9 of Part 6 of Schedule 6 to that Act, commence on the date of assent.

3 Amendment of Workers Compensation Act 1987 No 70

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

4 Amendment of Occupational Health and Safety Act 1983 No 20

The *Occupational Health and Safety Act 1983* is amended as set out in Schedule 2.

5 Amendment of Compensation Court Act 1984 No 89

The *Compensation Court Act 1984* is amended as set out in Schedule 3.

6 Amendment of Construction Safety Act 1912 No 38

The *Construction Safety Act 1912* is amended as set out in Schedule 4.

7 Amendment of Factories, Shops and Industries Act 1962 No 43

The *Factories, Shops and Industries Act 1962* is amended as set out in Schedule 5.

8 Amendment of Dangerous Goods Act 1975 No 68

The *Dangerous Goods Act 1975* is amended as set out in Schedule 6.

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

The *Workers' Compensation (Dust Diseases) Act 1942* is amended as set out in Schedule 7.

10 Amendment of other Acts

The Acts specified in Schedule 8 are amended as set out in that Schedule.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 3 Definitions

Insert "or appointed" after "employed" in the definition of *conciliation officer* in section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

Commissioner means a Commissioner of the Compensation Court under the *Compensation Court Act 1984*.

Judge means a Judge of the Compensation Court under the *Compensation Court Act 1984*.

[3] Section 3 (1A)

Insert after section 3 (1):

(1A) A reference to a worker who has been injured includes, if the worker is dead, a reference to the worker's legal personal representative or the worker's dependants, or any other person to whom or for whose benefit compensation is payable.

[4] Section 4A

Insert after section 4:

4A Directors of uninsured employer not entitled to compensation

If an employer that is a corporation had not obtained, or was not maintaining in force, at the relevant time a policy of insurance for the full amount of the employer's liability under this Act in respect of an injured worker and the injured worker was at the relevant time a director of the corporation, the injured worker is not entitled to any compensation under this Act in respect of that liability.

[5] Section 7 Certain Acts not affected

Omit "*Workmen's Compensation (Broken Hill) Act 1920*".

[6] Section 11A

Insert after section 11:

11A No compensation for psychological injury unless employment substantial cause and not due to reasonable actions by employer

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury unless:
 - (a) the employment concerned was a substantial cause of the injury, and
 - (b) the injury was not wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.
- (2) If total or partial incapacity for work results from an injury that is a psychological injury, any compensation payable to the injured worker is not to include a weekly payment under Division 2 (Weekly compensation by way of income support) of Part 3 for any period of incapacity after the first 3 years of incapacity. A reference in this subsection to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.
- (3) A *psychological injury* is an injury (as defined in section 4) that is a psychological or psychiatric disorder. The term extends to include the physiological effect of such a disorder on the nervous system.

- (4) This section does not affect any entitlement to compensation under this Act for an injury of a physical nature even if the injury is a physical symptom or effect of a psychological injury, so long as the injury is not merely a physiological effect on the nervous system.
- (5) A worker's employment is not to be regarded as a substantial cause of a psychological injury merely because the employment is a real or actual cause of the injury. The term "substantial" is used in this section in the sense of real and important.
- (6) This section does not extend the definition of *injury* in section 4. In particular, this section does not affect the requirement in section 4 that a disease is not an injury unless it is contracted by the worker in the course of employment.
- (7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92):
 - (a) use, for the purpose of describing the worker's condition, accepted medical terminology and not terminology such as "stress" or "stress condition", and
 - (b) include a statement of the medical practitioner's opinion concerning the likelihood of the worker's employment being a cause (and, if so, how much of a cause) of the psychological injury (with expressions such as "work related" and similar expressions not being sufficient by themselves for this purpose).
- (8) If a claim is deficient because subsection (7) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the

deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim:

- (a) the claim is not considered to have been duly made for the purposes of section 102 until subsection (7) is complied with, and
- (b) court proceedings cannot be commenced in respect of the claim until subsection (7) is complied with.

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

Insert after section 22A (8):

- (9) The operation of section 22 is not to be limited because of the fact that it provides for liability to be apportioned rather than providing for payment of contributions.

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

Omit “The regulations under section 100C may require insurers and self-insurers to refer such disputes to conciliation officers for conciliation.” from section 40 (4).

[9] Section 42 Current weekly wage rate

Insert after section 42 (7):

- (7A) If the application of subsection (7) to an injured worker results in the current weekly wage rate of the worker being less than the rate that would be determined under this section if regard was only had to employment with the employer for whom the worker was working at the time of the worker’s injury, a reference to the current weekly wage rate of the worker is, despite that subsection, a reference to that higher rate.

[10] Section 43 Computation of average weekly earnings

Omit "at the request of" from section 43 (2). Insert instead "within 28 days, or such other period as may be prescribed, after a request from".

[11] Section 43 (2)

Insert "and in accordance with any requirements of the regulations" after "in writing".

[12] Section 43 (2)

Omit "Maximum penalty: 20 penalty units."

[13] Section 43 (2A) and (2B)

Insert after section 43 (2):

(2A) An employer who fails without reasonable excuse to comply with subsection (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

(2B) The regulations may make provision for or with respect to:

(a) the manner and form in which the details required to be provided by subsection (2) are to be provided, and

(b) requiring an employer to certify as to the completeness and accuracy of details provided by the employer for the purposes of subsection (2).

[14] Section 43A Suitable employment

Insert "or return-to-work plan" after "rehabilitation plan" wherever occurring in section 43A (1) and (2) (a).

[15] Section 55 Review of weekly payments

Insert after section 55 (2):

- (2A) If on any such review a weekly payment of compensation is ended or reduced with effect from a day that is earlier than the date of the Compensation Court's order on the review, the Compensation Court may order the worker to refund the amount of any payments made to the worker to which the worker is not entitled as a result of the order on the review.

[16] Section 60A

Insert after section 60:

60A Worker not liable for medical, hospital and rehabilitation charges above applicable rates

A worker is not liable to pay, and a person is not entitled to recover from a worker, any amount in respect of medical or related treatment, hospital treatment at a hospital or an occupational rehabilitation service, given or provided to the worker as a result of an injury, to the extent that the amount exceeds any applicable maximum, as follows:

- (a) in the case of a medical or related treatment for which a sum is prescribed under section 61 (2), the applicable maximum is that prescribed sum,
- (b) in the case of hospital treatment at a hospital, the applicable maximum is the amount calculated as prescribed under section 62 (1) as the cost to the hospital of the treatment,
- (c) in the case of an occupational rehabilitation service for which a sum is prescribed under section 63A (2), the applicable maximum is that prescribed sum.

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

Omit section 63A (5). Insert instead:

- (5) The regulations may 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.

[18] Section 65 Definitions

Insert at the end of section 65 (2) (c):

, and

- (d) a disease mentioned in that Table.

[19] Section 66 Compensation for permanent injuries

Omit "\$123,400" and "\$150,150".

Insert instead "\$132,300" and "\$160,950", respectively.

[20] Section 66A Registration of agreements for compensation

Omit "under section 66 for a loss that is an occupational disease (within the meaning of section 71)" from section 66A (1) (a).

Insert instead "under section 66 or 67".

[21] Section 66A (4A)

Omit the subsection. Insert instead:

- (4A) The Authority must refuse to register an agreement unless it is satisfied that the worker received independent legal advice about the agreement before the worker entered into the agreement.

[22] Section 66A (10)

Insert after section 66A (9):

- (10) Nothing in this section prevents an agreement that is registered under this section from containing provision as to the payment of costs.

[23] Section 66B

Insert after section 66A:

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

- (1) When a worker agrees to receive an amount of compensation under section 66 or 67, the Compensation Court is not to entertain proceedings for entry of an award to give effect to the agreement unless the proceedings also relate to some dispute in connection with the worker's claim for compensation under this Act.
- (2) The regulations may prescribe exceptions to this section.

[24] Section 67 Compensation for pain and suffering

Omit "\$61,750" from section 67 (1). Insert instead "\$66,200".

[25] Section 67 (1A)

Insert after section 67 (1):

- (1A) Because there is a distinction between *injury* and *loss resulting from an injury* (and compensation is payable under this section only for pain and suffering resulting from a loss), the pain and suffering for which compensation is payable under this section does not include pain and suffering that results from the injury but not from the loss.

[26] Section 67 (3A)

Omit the subsection.

[27] Section 67 (4A)

Insert after section 67 (4):

- (4A) It is permissible for an agreement as to the amount of compensation to be paid to a worker under this section to provide that the amount to be paid is the proportion of the maximum amount payable under this section that is the same as the proportion of the maximum amount payable under section 66 that is represented by the amount payable to the worker under that section in respect of the loss or losses concerned. This subsection does not prevent an agreement that some other amount is to be the amount to be paid to a worker under this section.

[28] Section 67A

Insert after section 67:

67A Special provisions for HIV/AIDS

- (1) For the purposes of section 67 (3), HIV infection and AIDS are each considered to be a most extreme case, so that the maximum amount of compensation under section 67 is payable.
- (2) Section 68 does not apply to a loss that is HIV infection or AIDS.
- (3) The regulations may make provision for methods for determining for the purposes of this Act whether a person is HIV infected or is suffering from AIDS. Regulations need not be made under this subsection and in the absence of regulations the determination of whether a person is HIV infected or suffering from AIDS is to be on the basis of medical opinion.

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- (4) Compensation is not payable under section 66 or 67 for a loss that is HIV infection or AIDS if the loss resulted from voluntary sexual activity or illicit drug use. This subsection does not limit the operation of section 14.
 - (5) In this section *HIV infection* means infection by the Human Immunodeficiency Virus, and *AIDS* means Acquired Immune Deficiency Syndrome.

[29] Section 68A

Insert after section 68:

68A Special provisions for back, neck and pelvis impairment

- (1) If a loss suffered by a worker as a result of an injury is permanent impairment of the back, neck or pelvis, no compensation is payable under this Division, by the employer who is liable in respect of the injury, for any proportion of the loss that is due to:
 - (a) a previous injury for which compensation has been paid or is payable under this Division, or
 - (b) any other previous injury or any pre-existing condition or abnormality.
- (2) The proportion of a loss for which no compensation is payable because of subsection (1) is the *deductible proportion* for that loss.
- (3) If the loss resulted from 2 or more injuries for which compensation has been paid or is payable under this Division (as referred to in section 22), there is to be no deduction under this section for any proportion of the loss that is due to any of those 2 or more injuries.
- (4) If the loss resulted from an injury to which section 15 applies (a disease that is of such a nature as to be contracted by a gradual process) there is to be no deduction under this section for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due.

- (5) If the loss resulted from an injury to which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under this section for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.
- (6) If another loss was suffered by the worker as a consequence of the permanent impairment of the back, neck or pelvis for which there is a deductible proportion under subsection (1) and that other loss and the impairment both resulted from the same injury, no compensation is payable under this Division for the proportion of the other loss that equals the deductible proportion for the impairment.
- (7) Section 68 does not apply to a loss that is permanent impairment of the back, neck or pelvis.
- (8) If there is a deductible proportion for a loss but the extent of the deductible proportion will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion is 10%, unless this assumption is at odds with the available evidence.

[30] Sections 69A and 69B

Insert after section 69:

69A No compensation for less than 6% hearing loss

- (1) There is no entitlement to compensation under section 66 for a loss of hearing (the *present loss*) due to boilermakers deafness if the worker's total hearing loss due to boilermakers deafness is less than 6%. The worker's *total hearing loss* is the aggregate of the present loss and all previous losses of hearing due to boilermakers deafness.

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- (2) Once a worker has been paid compensation under section 66 for a loss or further loss of hearing due to boilermakers deafness (whether the compensation was paid before or after the commencement of this section), the worker has no entitlement to compensation under section 66 for any further loss of hearing due to boilermakers deafness unless that further loss is at least 5%. This subsection is capable of applying to a worker on more than one occasion.
 - (3) The fact that compensation is not payable for a loss or further loss of hearing because of this section does not prevent notice of injury being given or a claim being made in respect of that loss or further loss, and does not affect the operation of section 17 in respect of that loss or further loss (if and when the worker's total hearing loss reaches 6% or that further loss reaches 5%).
 - (4) An example of the operation of this section is as follows (assume that all hearing losses mentioned are due to boilermakers deafness):
 - (a) A worker suffers a hearing loss of 4% (the first hearing loss that the worker has suffered). No compensation is payable under section 66 for the loss because it is less than 6%, though notice of injury can be given or a claim can be made for the hearing loss.
 - (b) The worker suffers a further hearing loss of 4%, bringing the total loss to 8%. The total loss has now passed the 6% threshold and compensation is payable for the full 8%. Compensation for the initial 4% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for that initial hearing loss.
 - (c) The worker suffers a further hearing loss of 4%. The worker is not entitled to compensation for the 4% further loss (because it is less than the 5% further loss threshold). Again, notice of injury can be given or a claim can be made for that further loss even though compensation is not payable for it.

- (d) The worker suffers a further hearing loss of 3%. The total further loss has now passed the 5% threshold and compensation is payable for the full 7% further loss. Each time the worker suffers a further loss of hearing after compensation has been paid for any previous loss, no compensation is payable for the further loss until it reaches 5%.
- (5) For the purposes of determining the percentage of loss of hearing due to boilermakers deafness, that loss of hearing is to be determined as a proportionate loss of hearing of both ears, even if the loss is in one ear only. The regulations may prescribe a method for calculating the proportionate loss of hearing of both ears.
- (6) A legal practitioner or agent who acts for a worker on a claim for compensation for loss of hearing due to boilermakers deafness is not entitled to recover any costs from the worker or the employer in connection with acting on the claim if no compensation is payable on the claim because the worker's total hearing loss due to boilermakers deafness is less than 6% (even if compensation subsequently becomes payable because the worker's loss of hearing reaches 6% as a result of further hearing loss).
- (7) A worker who refuses or fails to submit himself or herself for, or who obstructs, an examination required under section 129 or 131 in connection with a claim for which no compensation is payable under section 66 because of this section is (for the purposes of that claim) presumed in the absence of evidence to the contrary to have no hearing loss due to boilermakers deafness.
- (8) A reference in this section and in section 69B to boilermakers deafness includes a reference to any deafness of similar origin.
- (9) For the purposes of the operation of section 71 in relation to compensation for loss of hearing, a reference in that section to compensation that becomes payable under this Division includes a reference to compensation that would have become payable were it not for the operation of this section.

69B Employer's responsibility to pay for hearing loss tests

- (1) An employer who would, but for the operation of section 69A, be liable to pay compensation under section 66 for a loss or further loss of hearing suffered by a worker, is not liable under Division 3 to pay the cost of a hearing test for that loss or further loss, except any of the following tests:
 - (a) the test that is the first such test for that loss or further loss after the commencement of this section,
 - (b) any test carried out not less than 3 years, or such other period as may be prescribed, after any previous test that the employer has paid the cost of obtaining,
 - (c) any test that finds that the worker has suffered a total hearing loss due to boiler-makers deafness of 6% or more (being hearing loss for which the worker has not received compensation under section 66),
 - (d) in the case of a worker who has received compensation under section 66 for loss of hearing (whether before or after the commencement of this section), any test that finds that the worker has suffered a further hearing loss due to boiler-makers deafness of 5% more,
 - (e) any test carried out after the worker has left the worker's employment with the employer,
 - (f) any test carried out in such circumstances as may be prescribed by the regulations.
- (2) The cost of a hearing test is the cost of obtaining a medical certificate, and any examination required for the certificate, as to the extent of the hearing loss concerned.
- (3) This section does not operate to require payment by an employer for the cost of obtaining any hearing test that the employer would not otherwise be liable to pay for under Division 3.

[31] Section 72A Restrictions on commencing proceedings concerning hearing loss claims

Omit the section.

[32] Section 73 Reimbursement for costs of medical certificate and examination

Insert "report or" after "means a" in the definition of *medical certificate* in section 73 (1).

[33] Part 3, Division 4, Table (Compensation for permanent injuries)

Insert after the matter relating to Foot injuries:

Bowel injury:

Permanent loss of bowel function 0-65

[34] Part 3, Division 4, Table

Insert after the matter relating to Disfigurement:

Disease:

HIV infection (Human Immunodeficiency
Virus infection) 100

AIDS (Acquired Immune Deficiency Syndrome) .100

[35] Part 3, Division 4, Table

Omit paragraph (g) of the Interpretation notes at the end of the Table.

[36] Part 3, Division 4, Table

Insert after paragraph (i) of the Interpretation notes at the end of the Table:

- (j) For the purposes of determining whether and to what extent a worker has suffered permanent loss of bowel function:
 - (i) the bowel is taken to include the anal sphincter, and
 - (ii) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable.

[37] Section 79 Definitions

Omit the definitions of *adjustable amount* and *base index number*.
Insert instead:

adjustable amount means:

- (a) each of the amounts specified in sections 25, 35, 37 and 40, without regard to any adjustment under this Division, and
- (b) such of the amounts specified in section 66 or 67 as may be declared by the regulations to be an adjustable amount for the purposes of this Division, without regard to any adjustment under this Division.

base index number means:

- (a) in respect of an adjustable amount that is an amount specified in section 25, 35, 37 or 40—the number 130.8, and
- (b) in respect of any adjustable amount that is an amount specified in section 66 or 67—the number declared by the regulations to be the base index number for that adjustable amount.

[38] Section 81 Rounding off

Omit “(being \$211,850, \$150,150, \$123,400 or \$61,750)”.

Insert instead “(being an amount specified in section 25, 66 or 67)”.

[39] Section 92 Making of claim for compensation

Insert after section 92 (1A):

- (1B) To the extent that information has been furnished or material provided in the course of the making of a claim for compensation, it is not necessary to furnish that information or provide that material when making any further claim for compensation in respect of the same injury.

[40] Section 92 (2A)–(2C)

Insert after section 92 (2):

- (2A) If a claim for compensation was made by an injured worker within the period required by subsection (2), that subsection does not apply to a claim for compensation in respect of the death of the worker resulting from the injury to which the worker’s claim related.
- (2B) For the purposes of subsection (2), a person is considered to have made a claim for compensation when the person makes any claim for compensation under this Act in respect of the injury or death concerned, even if the person’s claim did not relate to the particular compensation in question.
- (2C) If there is no entitlement to compensation under section 66 for a loss of hearing because of section 69A (No compensation for less than 6% hearing loss) notice of injury given in accordance with section 89 suffices (for the purposes of this section) as a claim for the compensation concerned.

[41] Section 92 (4)–(4E)

Omit section 92 (4). Insert instead:

- (4) The failure to make a claim in accordance with subsection (1) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause.
- (4A) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if it is found that the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and either:
 - (a) the claim is made within 3 years after the injury or accident happened or, in the case of death, within 3 years after the date of death, or
 - (b) the claim is not made within that 3 years but it is found that it is in the interests of justice that the claim not be barred.
- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines, with the approval of the Authority, to accept the claim outside the period required by subsection (2).
- (4C) If an injured worker first becomes aware that he or she has received an injury after the injury was received, the injury is for the purposes of subsections (2) and (4A) taken to have been received when the worker first became so aware. If death results from an injury and a person who is entitled to claim compensation under this Act in respect of the death first becomes aware after the death that the death resulted or is likely to have resulted from the injury, the date of death is, for the purposes of the application of subsections (2) and (4A) to a claim by that person, taken to be the date that the person became so aware.

- (4D) In a case where 2 or more persons are liable or partly liable in respect of compensation (whether or not that liability arises from the same or from different injuries) a claim for the compensation is for the purposes of this section taken to have been made when a claim is made on any one of those persons.
- (4E) When particulars of any injury received by a worker are entered in a register of injuries kept by the employer under this Act, the making of that entry suffices for the purposes of subsections (2) and (4A) as the making of a claim for compensation in respect of the injury.

[42] Section 92A Manner of making claim for compensation

Omit section 92A (2).

[43] Sections 94A and 94B

Insert after section 94:

94A Insurers to give notice and reasons when liability disputed

- (1) If an insurer disputes liability in respect of a claim, the insurer must give notice of the dispute to the claimant.
- (2) The notice must contain the following:
 - (a) a statement of the reason the insurer disputes liability,
 - (b) unless paragraph (c) applies, a statement to the effect that the worker can refer the dispute for conciliation by a conciliation officer,
 - (c) if the insurer has referred or proposes to refer the dispute for conciliation by a conciliation officer, a statement to that effect specifying the date of referral or proposed referral,

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- (d) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer,
 - (e) such other information as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers.
- (3) The regulations may make provision for the form of and for other information to be included in or to accompany a notice under this section.
 - (4) Notice is not required to be given under this section with respect to a dispute if notice has been given under section 54 with respect to the dispute and that notice contained the statements and information that a notice under this section is required to contain.
 - (5) An employer against whom a claim for compensation is made under this Act may require the employer's insurer in respect of the claim to defend the claim (whether by disputing liability or otherwise). An insurer is required to comply with such a requirement, subject to the regulations.
 - (6) The regulations may make provision for or with respect to the resolution of disputes between insurers and employers as to the defending of claims by insurers pursuant to a requirement under subsection (5).

94B Report about delays and the incurring of unreasonable costs by insurers

- (1) A Judge or Commissioner of the Compensation Court or a conciliation officer may make a report to the Authority on:
 - (a) delays by insurers in dealing with claims under this Act, and
 - (b) cases of insurers being responsible for costs in proceedings before the Compensation Court being unreasonably incurred, as provided by section 119.

- (2) The Authority may take such action as it considers appropriate on the basis of any such report, including (for example):
- (a) by giving directions under section 93B to any insurer concerned, and
 - (b) in the case of an insurer to whom Division 4 of Part 7 applies, by reducing (by such amount as the Authority considers appropriate) the management expenses relating to the insurer's statutory fund that would otherwise be payable to the insurer.

[44] Section 96 Conciliation officers

Insert after section 96 (1):

- (1A) The Governor may, on the recommendation of the Minister, appoint other suitably qualified persons to be conciliation officers for the purposes of this Act, to conciliate on disputes as and when required to do so by the Senior Conciliation Officer. Schedule 2 has effect with respect to conciliation officers appointed under this subsection.

[45] Section 97 Referral of disputes for conciliation

Insert after section 97 (1):

- (1A) The Compensation Court may at any stage of proceedings refer a matter in dispute between the parties to the Senior Conciliation Officer for conciliation or further conciliation by a conciliation officer.

[46] Section 98 Conciliation of disputes

Insert "having proper regard to relevant entitlements and liabilities under the Act" after "bring the parties to agreement" in section 98 (1).

[47] Sections 98A–98D

Insert after section 98:

98A Power of conciliation officer to require information

- (1) A conciliation officer may give a direction in writing to a party to a dispute referred to the conciliation officer requiring the party:
 - (a) to produce to the conciliation officer, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the conciliation officer considers relevant to the dispute concerned, or
 - (b) to furnish specified information to the conciliation officer within a time specified in the direction, being information that the conciliation officer considers relevant to the dispute concerned.
- (2) A conciliation officer must not give a direction under this section to a worker unless the conciliation officer is satisfied that the worker will be represented by a legal practitioner at a conciliation conference on the dispute.
- (3) A direction under this section can extend to copies of documents lodged or produced in proceedings before the Compensation Court unless the Court otherwise orders in those proceedings.
- (4) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (5) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Compensation Court have the document or information

admitted into evidence in the proceedings unless the Court otherwise orders in the special circumstances of the case. This subsection does not apply to a worker unless the worker was represented by a legal practitioner at the time of the failure.

98B Summons to appear at conciliation conference

- (1) The Senior Conciliation Officer may issue a summons requiring the attendance of a party to a dispute at a conciliation conference (as defined in section 100A) on the dispute if the Senior Conciliation Officer is satisfied that the party has failed without reasonable excuse to comply with a request by a conciliation officer to attend a conciliation conference on the dispute.
- (2) The Senior Conciliation Officer must not issue a summons under this section requiring the attendance of a worker at a conciliation conference unless satisfied that the worker will be represented by a legal practitioner at the conciliation conference.
- (3) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.

Maximum penalty: 50 penalty units.

98C Role for conciliation officer in preparing for medical panel

- (1) When a dispute referred to a conciliation officer concerns compensation payable under section 66 and it appears to the conciliation officer that any issues in dispute may be appropriate for referral to a medical panel, the conciliation officer can take such steps as may be necessary or desirable for the purpose of ensuring that the matter is properly prepared for referral to a medical panel.
- (2) The conciliation officer can assist any party with respect to the making of an application under section 131 for referral of a medical dispute to a medical panel.

- (3) The conciliation officer can refer a completed application to the Senior Conciliation Officer for forwarding on to the registrar of the Court, and any such application is taken to have been made by the party or parties on whose behalf it was forwarded to the registrar.

98D Certificates as to conciliation of disputes

- (1) The Senior Conciliation Officer is required, on the application of any person who is or has been a party to conciliation of a dispute under this Division, to issue to the person free of charge a conciliation certificate for the dispute. The Senior Conciliation Officer may delegate to any conciliation officer the function of issuing a conciliation certificate.
- (2) A conciliation officer may, during or after completion of conciliation of a dispute by the conciliation officer, issue to any party to the dispute on application by the party a conciliation certificate for the dispute.
- (3) A conciliation certificate is a certificate as to such of the following matters as the person applying for the certificate requests:
 - (a) whether a dispute with respect to a claim under this Act is or has been the subject of conciliation under Division 2,
 - (b) the date of referral of the dispute to conciliation,
 - (c) the current position (as at the date of the certificate) with respect to conciliation of the dispute,
 - (d) any final outcome of the conciliation (including, if applicable, matters identified as remaining in dispute at the conclusion of the conciliation),
 - (e) whether (and, if so, how) a particular party to the dispute has in the opinion of the conciliation officer unreasonably failed to participate in conciliation.

- (4) A conciliation certificate is evidence of the matters that it certifies.
- (5) A conciliation officer (including the Senior Conciliation Officer) is competent to give evidence as to matters in a conciliation certificate issued by the conciliation officer under this section but the conciliation officer may not be compelled to give any such evidence.

[48] Section 99 Control and direction of conciliation officers

Insert after section 99 (1):

- (1A) Subject to subsection (1), conciliation officers are, in the exercise of their functions, subject to the general control and direction of the Senior Conciliation Officer.
- (1B) Subsection (1) does not prevent the making of arrangements for the training of conciliation officers, and does not prevent conciliation officers obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations.
- (1C) Conciliation officers are subject to guidelines issued by the Senior Conciliation Officer with respect to the procedures to be followed in the conciliation of disputes, being guidelines issued for the purpose of achieving consistency in the application of the provisions of this Act and the regulations. Any such guidelines are subject to the regulations under section 100C.

[49] Section 100A Proceedings before conciliation officers

Omit "not" from section 100A (2).

[50] Section 100A (3)

Omit the subsection.

[51] Section 100A (3A), (3B)

Insert after section 100A (3):

(3A) A party to a dispute at a conciliation conference is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to adequately communicate at the conciliation conference.

(3B) A conciliation officer must take into account any written submission prepared by a legal practitioner acting for a party to the dispute and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at a conciliation conference on the dispute).

[52] Section 100C Regulations

Omit section 100C (a).

[53] Section 102 Claim for weekly payments—commencement of payments

Insert “in accordance with section 103B” after “refers the dispute” in section 102 (2) (b).

[54] Section 102 (4) and (5)

Omit the subsections. Insert instead:

(4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of the weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (1) and (2) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends:

- (a) 42 days after the claim for compensation is duly made, or
- (b) when the person ceases to have that reasonable excuse,

whichever is earlier.

[55] Sections 103A, 103B

Insert after section 103:

103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days

- (1) If there is a dispute as to liability to continue to make weekly payments of compensation, the person making the weekly payments must, within 21 days after the dispute arises, refer the dispute in accordance with section 103B for conciliation under Division 2.

Maximum penalty: 50 penalty units.

- (2) For the purposes of this section, a dispute as to liability to make weekly payments of compensation for a period of incapacity (or alleged incapacity) is not considered to have arisen unless the worker has provided to the person making the payments a certificate by a medical practitioner certifying with respect to the worker's incapacity during that period.
- (3) For the purposes of this section, a dispute as to liability to make weekly payments of compensation is considered to have arisen:
 - (a) on the commencement of the period of incapacity (or alleged incapacity) to which the reduction or discontinuation of payments relates, unless paragraph (b) applies, or
 - (b) if the certificate referred to in subsection (2) is provided by the worker after the commencement of that period—when that certificate is provided by the worker.
- (4) A person's failure to refer a dispute for conciliation under Division 2 in accordance with this section is not a contravention of this section if the dispute has already been referred by the claimant for conciliation under Division 2.

103B How disputes about weekly payments are to be referred to conciliation

- (1) For the purposes of this Division, a dispute about weekly payments of compensation is referred to conciliation under Division 2 by forwarding the following material to the Senior Conciliation Officer:
 - (a) a statement of the matters in dispute (which, if the Authority approves a form for the purpose, is to be in such form as the Authority approves),
 - (b) a copy of the claim and all relevant documentation relating to the claim in the person's possession or reasonably obtainable by the person,
 - (c) a copy of the notice given to the worker under section 94A or 54 (whichever is relevant to the case),
 - (d) a copy of all medical or other information on which the decision to dispute liability was based,
 - (e) in a case to which section 102 (4) applies, details of the excuse for not commencing weekly payments (or the balance of weekly payments in dispute) within 21 days.
- (2) This section applies only to the referral of a dispute by the person on whom the claim was made or the person making the weekly payments of compensation. It does not apply to the referral of a dispute by the person claiming weekly payments of compensation.

[56] Section 105 Maximum period of weekly payments of compensation under direction of conciliation officer

Insert "constituted by a commissioner" after "Compensation Court" in section 105 (2).

[57] Section 106 Revocation of directions of conciliation officer

Insert "constituted by a commissioner" after "Compensation Court" in section 106 (2).

[58] Part 4, Division 3A

Insert after section 106C:

Division 3A Restrictions on commencing court proceedings

106D Restrictions on commencing court proceedings about weekly payments

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless:
 - (a) the person on whom a claim for the compensation was duly made has failed to commence weekly payments within 21 days, or
 - (b) if that person has commenced those payments—a dispute has arisen as to liability to continue to make those weekly payments (as referred to in section 103A) and a period of 21 days has elapsed since the dispute arose.
- (2) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate.
- (3) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53,
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act,
 - (d) any circumstances prescribed by the regulations.

106E Restrictions on commencing court proceedings for lump sum compensation

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 until:
- (a) 12 weeks after a claim for the compensation is duly made, or
 - (b) if the person on whom the claim is made has, within that 12 weeks, proceeded to deal with and decide the claim with reasonable promptness and duly applied under section 131 for reference of the matter to a medical panel—14 days after the panel has given its certificate under that section,

whichever is later. However, this subsection does not prevent the commencement of court proceedings by a worker in respect of compensation under section 66 after a period of 16 weeks has elapsed since a claim for the compensation was duly made, so long as the worker has responded to any offer of settlement made to the worker during that period.

- (2) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss, or for related compensation, until subsection (1) allows the commencement of proceedings in respect of compensation under section 66 for the loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss or pain and suffering.
- (3) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until:
- (a) 12 weeks after the claim was amended, or
 - (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates,

whichever is later.

- (4) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (3).
- (5) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3).
- (6) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim.
- (7) This section does not prevent the commencement of court proceedings in such circumstances (if any) as may be prescribed by the regulations.
- (8) For the purposes of this section a person is not considered to have dealt with a claim with reasonable promptness unless the person has, within 21 days (or such other period as may be prescribed by the regulations) after receipt of the claim, given the claimant a written acknowledgment of receipt of the claim.

106F Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute has arisen about that compensation.

- (2) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106D or 106E (whichever is appropriate).
- (3) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.

[59] Section 108

Insert after section 107A:

108 Applications to be heard together

- (1) A person who has applied to the Compensation Court for a determination of a claim for compensation under this Act against 2 or more persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any of the applications heard together.
- (2) If more than one employer or more than one insurer may be involved in an application for compensation or any other matter under this Act, the regulations or the rules of the Compensation Court may make provision for or with respect to requiring one of those insurers or one of those employers, the Authority or some other person, to represent the employers or insurers in any proceedings relating to the application.

[60] Sections 113–119

Insert after section 112:

113 Interest before order for payment

- (1) In any proceedings in the Compensation Court, the Court may order that there is to be included, in any sum to be paid, interest at such rate as it thinks fit on the whole or any part of the sum for the whole or any part of the period before the sum is payable, subject to the limitations imposed by this section.
- (2) Interest cannot be ordered under this section:
 - (a) on any compensation payable under Division 4 of Part 3, or
 - (b) on any compensation payable under this Act for any period before a claim for the compensation was duly made, or
 - (c) on any compensation payable under this Act for any period during which proceedings before the Court were adjourned on the application of the claimant for the compensation or pursuant to section 106E.
- (3) This section does not:
 - (a) authorise the giving of interest upon interest, or
 - (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

114 Interest after order for payment

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

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- (2) Interest payable under subsection (1) in respect of any sum ordered to be paid:
- (a) is to be calculated as from the date when the order was made or from such later date as the Court in any particular case fixes, and
 - (b) is to be calculated at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and
 - (c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest.
- (3) Despite subsections (1) and (2), where:
- (a) the amount of any sum ordered to be paid (excluding the amount of costs to be assessed) is paid in full within 21 days after the sum becomes payable, or
 - (b) the amount of costs assessed is paid in full within 21 days after that amount is assessed, interest is not payable on the amount so paid, unless the Court otherwise orders.

115 Interest on agreed payment of lump sum compensation

- (1) Unless the Court orders in any particular case that interest be not payable, interest is payable on so much of the amount of any sum agreed to be paid as compensation under section 66 or 67 as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum so agreed to be paid:
 - (a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or (if the agreement does not so provide) the date that is 21 days after the date the agreement was made, and

- (b) is to be calculated at the rate prescribed for the purposes of section 95 (1) of the *Supreme Court Act 1970* or, if the regulations under this Act prescribe some other rate, at that other prescribed rate, and
- (c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

116 Costs

- (1) In this section, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.
- (2) Subject to this Act and the regulations and the rules of the Compensation Court and subject to any other Act:
 - (a) costs in or in relation to any proceedings are in the discretion of the Court, and
 - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings, and
 - (c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* or on an indemnity basis.
- (3) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation was frivolous or vexatious, fraudulent or made without proper justification.
- (4) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application.
- (5) If a person claiming compensation appeals under section 34A (Appeal to Judge from commissioner) of the *Compensation Court Act 1984*, costs in or in relation to

the appeal are to be paid by the unsuccessful party unless the Compensation Court is of the opinion that such a requirement would be unjust in the circumstances of the case.

- (6) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under this Act if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker.
- (7) An order of the Court for payment of costs may include:
- (a) the costs actually incurred or to be incurred by a person claiming compensation, and
 - (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
 - (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 2 of Part 4), and
 - (d) costs incidental to an application for referral of a medical dispute under section 131, or to referral of a medical question by agreement under section 131A, and
 - (e) costs incidental to an application for registration of an agreement under section 66A, and
 - (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.
- (8) In this section:

application for compensation includes any proceedings in connection with an application for compensation.

compensation means compensation under this Act.

decision includes award, order, determination, ruling and direction.

117 Regulations fixing maximum costs recoverable by legal practitioners

- (1) The regulations may make provision for or with respect to the following:
 - (a) fixing maximum costs for legal services provided to a worker (or other claimant), an employer or an insurer in any workers compensation matter,
 - (b) fixing maximum costs for matters that are not legal services but are related to proceedings on a workers compensation matter (for example, expenses for witnesses or medical opinions).
- (2) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (3) To the extent that the regulations so provide, a legal practitioner is not entitled to be paid or recover costs of the kind referred to in subsection (1) (b) that are incurred in connection with the obtaining of any report or opinion for use for any of the following purposes and which is not used for the purpose for which it was obtained:
 - (a) for use in the making of a claim for compensation under this Act,
 - (b) for use in negotiations or conciliation in respect of a claim for compensation,
 - (c) for consideration by a medical panel or medical referee under section 131 or by a medical practitioner under section 131A,
 - (d) for use in court proceedings.
- (4) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

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- (5) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 1987* (in particular section 196 of that Act) and the regulations under that Act. An assessment under Division 6 of Part 11 of that Act of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.
- (6) Expressions used in this section have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*.
- (7) In this section *costs* includes:
- (a) costs actually incurred or to be incurred by a person claiming compensation, and
 - (b) if liability for a claim for compensation is admitted without recourse to the Court—the reasonable expenses incurred by a person in pursuing the person's claim, and
 - (c) costs incurred in relation to any proceedings under this Act (including conciliation of a dispute under Division 2 of Part 4), and
 - (d) costs incidental to an application for referral of a medical dispute under section 131, or to referral of a medical question by agreement under section 131A, and
 - (e) costs incidental to an application for registration of an agreement under section 66A, and
 - (f) costs incurred in relation to the mediation or neutral evaluation of any matter under Part 4A of the *Compensation Court Act 1984*.

118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services

- (1) The regulations may make provision for or with respect to fixing maximum fees for the provision by medical practitioners of the following services:

- (a) provision of any medical opinion or certificate for use in court proceedings in connection with a claim for compensation under this Act,
 - (b) appearance as a witness in court proceedings on a claim for compensation under this Act.
- (2) A medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed by regulations under this section for the provision of the service.

119 Limit on recovery of costs unreasonably incurred

- (1) If the Compensation Court is satisfied that any costs in proceedings under this Act before the Court were unreasonably incurred, the Court is to order that those costs are to be treated as unreasonably incurred for the purposes of this section and the Court is not to make an order for payment of those costs by any other party to the proceedings.
- (2) Costs incurred by a party to proceedings are considered to have been unreasonably incurred for the purposes of this section only if they were incurred by the party:
- (a) after a reasonable offer of settlement in the proceedings was made to the party, or
 - (b) after the party has failed without reasonable excuse to comply with a written request from another party to the proceedings to provide that other party with particulars (including any necessary medical report) sufficient to enable that other party to properly consider the claim for the purpose of making an offer of settlement, or
 - (c) after the party has unreasonably failed to participate in a conciliation of the dispute with which the proceedings are concerned and the Court is of the opinion that the failure has resulted in unnecessary litigation.

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- (3) A legal practitioner representing a party to proceedings in the Compensation Court is not entitled to recover from the party any costs that the Court has ordered are to be treated as unreasonably incurred.
 - (4) The Court may by order exempt any costs or a proportion of any costs from the operation of subsection (3) if of the opinion that it would be unjust not to do so because the legal practitioner concerned made all reasonable efforts to avoid unnecessary litigation in the proceedings or for any other reason should not be held responsible for the incurring of the costs concerned.

[61] Section 122 Solicitor/client costs in compensation proceedings

Omit "any proceedings under this Act (including a conciliation conference as defined in section 100A)" from section 122 (1).
Insert instead "the claim".

[62] Section 122 (5) and (6)

Insert after section 122 (4):

- (5) A person must not:
 - (a) claim a lien that the person is not entitled to claim because of subsection (1), or
 - (b) deduct costs from a sum awarded, ordered or agreed as compensation that the person is not entitled to deduct because of subsection (1).

Maximum penalty: 50 penalty units.

- (6) A person who has paid an amount in respect of costs to another person that the other person was not entitled to recover because of subsection (1) is entitled to recover the amount paid as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.

[63] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit 131 (5B) (a) and (b). Insert instead:

- (a) the dispute concerns a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin, or
- (b) the dispute concerns compensation that is the subject of proceedings by reason of the amendment of a claim as referred to in section 106E (3), or

[64] Section 131 (5C)

Omit the subsection.

[65] Sections 131A

Insert after section 131:

131A Agreement to refer medical question to independent medical practitioner

- (1) A worker and employer may agree to refer a medical question to a particular medical practitioner and agree that some or all of the medical practitioner's findings on that reference are to be binding on them for the purposes of the worker's claim for compensation. The medical practitioner need not be a medical referee.
- (2) In addition, the agreement can make provision for any of the following:
 - (a) for the worker to submit himself or herself for examination by the medical practitioner,
 - (b) for medical reports, X-rays and other test results to be furnished or disclosed to the medical practitioner.

- (3) The medical practitioner to whom a medical question is referred by agreement under this section is to give a certificate as to the medical practitioner's findings on the medical question as required by the terms of reference.
- (4) The certificate is, in any proceedings, evidence (but not conclusive evidence) as to the findings certified.
- (5) A worker or employer who is a party to an agreement under this section may apply to the Authority for registration of the agreement and any medical certificate given by a medical practitioner pursuant to the agreement, and the Authority is to register the agreement and certificate, or such extract from them as the Authority considers appropriate. The Authority is to provide the Compensation Court with a copy of the agreements and certificates or the extracts from them that are registered by the Authority under this section.
- (6) The fees of the medical practitioner to whom a medical question is referred by agreement under this section are to be paid by the employer.
- (7) In this section *medical question* means any question (whether or not there is a dispute) as to any of the following:
 - (a) the worker's condition (including the existence, nature and extent of any loss or impairment and, if relevant, whether there exists, and the extent of, any deductible proportion under section 68A),
 - (b) the worker's fitness for employment (including the kind of employment for which the worker is fit),
 - (c) whether and to what extent the incapacity of the worker is due to the injury or alleged injury and whether or not there is any disagreement between the worker and the employer as to those matters.

[66] Section 131B

Insert before section 132:

131B Reference of medical disputes by Senior Conciliation Officer

- (1) When a medical dispute (as defined in section 131) is the subject of conciliation by a conciliation officer and concerns the compensation payable under section 66, the Senior Conciliation Officer may request the registrar of the Compensation Court to refer the dispute to a medical panel and the registrar is to refer the dispute accordingly.
- (2) The medical panel to whom a medical dispute is so referred is to give a certificate as to the worker's condition, in accordance with the terms of reference of the dispute.
- (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.
- (4) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments,is suspended until the examination has taken place.

[67] Section 133 Reimbursement of worker for loss of wages and expenses associated with medical examination

Insert after section 133 (4):

- (5) A worker who agrees under section 131A to submit himself or herself for examination by a medical practitioner is taken for the purposes of this section (except subsection (2)) to be required to submit himself or herself for examination pursuant to this Division.

[68] Section 136A

Insert after section 136:

136A Power to correct mistakes in medical reports or certificates

- (1) A medical referee or medical panel may, of the referee's or panel's own motion or on the application of a party to proceedings (and without formally reconvening), correct a certificate or report given by the referee or panel if it contains:
 - (a) a clerical mistake, or
 - (b) an error arising from an accidental slip or omission, or
 - (c) a material miscalculation of figures or material mistake in the description of any person, thing or matter referred to in the certificate or report, or
 - (d) a defect of form.
- (2) This section applies to a medical certificate given by a medical practitioner pursuant to section 131A as if the medical practitioner were a medical referee.

[69] Section 145A

Insert after section 145:

145A Recovery from directors of corporations liable to reimburse Authority

- (1) If a corporation is liable to reimburse the Authority an amount for a payment made under the Scheme and the amount is not recoverable from the corporation, the Authority is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.
- (2) A corporation is considered to be liable to reimburse the Authority an amount for a payment made under the Scheme if the Authority is entitled to recover the amount

- either under section 145 or under an order of the Compensation Court made on application under that section, even if the corporation has ceased to exist.
- (3) An amount is considered to be not recoverable from a corporation if the Authority certifies that it will be unable or unlikely to recover the amount from the corporation by reasonable efforts at recovery, whether because the corporation is being wound up and is unable to pay its debts, or otherwise.
 - (4) A person is a culpable director of a corporation at the relevant time if:
 - (a) the corporation contravened section 155 (Compulsory insurance for employers) in respect of a policy of insurance that would have covered the corporation for the liability to which the payment made under the Scheme related (whether or not the corporation has been proceeded against or convicted of an offence for the contravention), and
 - (b) at the time of the contravention the person was a director of the corporation.
 - (5) A person is not a culpable director of a corporation if the person establishes that:
 - (a) the corporation contravened section 155 without the person's knowledge, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to that contravention, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
 - (6) If there is a right of recovery against more than one director of a corporation in respect of the same amount, the right is a right against all those directors jointly and severally.
 - (7) A director from whom an amount is recovered under this section is entitled to recover the amount from the corporation.

[70] Part 4, Division 7

Insert after Division 6:

Division 7 Prohibited conduct relating to touting for claims

148B Definitions

- (1) In this Division:

agent means a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a claim, but does not (unless the regulations otherwise provide) include a legal practitioner.

claim means a claim for compensation under this Act.

lawyer means a legal practitioner.

prohibited conduct has the meaning given by section 148C.

protected claim means:

- (a) a claim under section 66 for loss of hearing, and
 - (b) any other claim that is declared by the regulations to be a protected claim for the purposes of this section.
- (2) Each of the following activities is considered to constitute acting as agent for a person in connection with a claim:
- (a) advising the person with respect to the making of a claim,
 - (b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim,
 - (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,

- (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim,
 - (e) any other activity prescribed by the regulations.
- (3) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division.

148C Prohibited conduct by agents

- (1) The following conduct by an agent is prohibited conduct for the purposes of this Division:
- (a) making a statement to a person, knowing that the statement is false or misleading in a material particular, for the purpose of encouraging the person or any other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
 - (b) using information obtained by the agent in connection with a claim to contact any other person for the purpose of encouraging that other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
 - (c) seeking to obtain information from a client of the agent for the purpose of using that information as described in paragraph (b),
 - (d) inducing or attempting to induce a client of the agent to encourage any other person to make a claim (whether or not it is a protected claim) and to use (in connection with the claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the claim,

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- (e) making any unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client of the agent, for the purpose of encouraging the person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim,
 - (f) such other conduct as may be prescribed by the regulations as prohibited conduct for the purposes of this section.
- (2) The regulations can specify circumstances in which conduct that would otherwise be prohibited conduct under subsection (1) is not to be regarded as prohibited conduct for the purposes of this Division.
 - (3) For the purposes of this Division, any conduct engaged in by a person on behalf of an agent, or that an agent has caused or procured the person to engage in, is taken to have been engaged in by the agent.

148D Offence of engaging in prohibited conduct

An agent who engages in prohibited conduct is guilty of an offence.

Maximum penalty: 50 penalty units.

148E Consequences of prohibited conduct for recovery of fees by agents

- (1) An agent is not entitled to recover from a person any fees, costs or other charges that would otherwise be payable by the person in connection with services made use of by the person if the services were made use of as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.
- (2) If prohibited conduct engaged in by an agent involved encouraging a person to make use of services and the person makes use of those services after the conduct is

engaged in, it is to be presumed for the purposes of this section that the services were made use of as a result of that prohibited conduct, unless the agent concerned establishes otherwise.

- (3) If the services of an agent were made use of as a result of prohibited conduct engaged in by the agent in connection with a claim under section 66 for loss of hearing, it is to be presumed for the purposes of this section that any services of the agent made use of in connection with a subsequent claim for further loss of hearing made by the same worker (whether or not made against the same employer) were made use of as a result of prohibited conduct engaged in by the agent, unless the agent concerned establishes otherwise.
- (4) A person who has paid any amount in respect of fees, costs or other charges to an agent that the agent would not have been entitled to recover because of this section is entitled to recover the amount from the agent as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.

148F Consequences of prohibited conduct for lawyers

- (1) A lawyer who acts for a person on a claim must not include in any bill given to the person, and must not otherwise seek to recover from the person, any amount by way of disbursements for fees paid to an agent in connection with referral of the person to the lawyer by the agent if the lawyer knows or has reasonable cause to suspect that the agent engaged in prohibited conduct that involved encouraging the person to make the claim, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

Maximum penalty: 50 penalty units.

- (2) A lawyer who acts for a person on a claim is not entitled to recover from any person any amount by way of disbursements for fees paid to an agent in connection with the claim if the claim was made as a result of

prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

- (3) If prohibited conduct engaged in by an agent involved encouraging a person to make a claim and the person makes a claim after the conduct is engaged in, it is to be presumed for the purposes of subsection (2) that the claim was made as a result of that prohibited conduct unless the lawyer establishes otherwise.
- (4) If a claim under section 66 for loss of hearing was made as a result of prohibited conduct engaged in by an agent, it is to be presumed for the purposes of subsection (2) that any subsequent claim for further loss of hearing made by the same worker (whether or not made against the same employer) in connection with which that agent performed any service was made as a result of prohibited conduct engaged in by that agent, unless the lawyer concerned establishes otherwise.
- (5) A person who has paid any amount in respect of disbursements to a lawyer that the lawyer would not have been entitled to recover because of subsection (2) is entitled to recover the amount from the lawyer as a debt in a court of competent jurisdiction or by proceedings in the Compensation Court.

148G Lawyers and agents can be requested to certify as to prohibited conduct

- (1) An employer or insurer who is liable to pay a lawyer or agent any fees, costs or other charges incurred in connection with a protected claim made by a person is entitled to request the lawyer or agent to provide a certificate under this section about the claim (unless the lawyer or agent has already provided it). The request must be in writing.

- (2) A certificate under this section is a certificate that to the best of the lawyer's or agent's knowledge, no agent has engaged in prohibited conduct that involved encouraging the person to make the claim or any previous claim, except as may be disclosed in the certificate.
- (3) If a certificate is requested:
 - (a) the lawyer or agent is not entitled to be paid by or recover from the employer or insurer any fees, costs or other charges incurred in connection with the claim concerned until the certificate is provided (even if the fees, costs or other charges are payable under an award or order of a court), and
 - (b) no interest that might otherwise be payable on those fees, costs or other charges is payable for the period from when the certificate is requested until it is provided (despite any order or award of a court for the payment of that interest).
- (4) A lawyer or agent can provide an employer or insurer with a certificate under this section even if the employer or insurer has not requested it.
- (5) A lawyer or agent who gives a certificate under this section about a claim made by a person is guilty of an offence if the lawyer or agent knew or had reasonable cause to suspect that an agent had engaged in prohibited conduct that involved encouraging the person to make the claim.

Maximum penalty: 50 penalty units.

148H Power to restrict or ban recovery of costs by agents who engage in prohibited conduct

- (1) The Authority can by notification given to insurers and self-insurers direct that an agent specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.

- (2) Such a notification cannot be given unless the Authority is satisfied that:
 - (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or
 - (b) in the case of an agent that is a corporation, a director of the corporation or other person concerned in the management of the corporation has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the agent a reasonable opportunity to make written submissions to the Authority on the matter.
- (4) The effect of a notification under this section is that the agent specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) An agent aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the agent to whom it applies.

148I Power to restrict or ban agents who engage in prohibited conduct

- (1) The Authority can by direction in writing given to an agent prohibit the agent from acting for any person in connection with any claims or in connection with specified types of claims. The prohibition can be absolute or subject to conditions.

- (2) Such a direction cannot be given unless:
 - (a) the Authority is satisfied that the agent concerned has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5) and as a result is not a fit and proper person to act in connection with claims to which the direction relates, and
 - (b) the Authority has given the agent a reasonable opportunity to make written submissions to the Authority on the matter.
- (3) An agent who acts in contravention of a direction given under this section:
 - (a) is guilty of an offence for which the maximum penalty is 200 penalty units, and
 - (b) is not entitled to recover any fees, costs or other charges from a person for anything done by the agent in contravention of the direction.
- (4) A person aggrieved by a direction under this section can appeal against the direction to the Compensation Court within 14 days after the direction is given to the agent. An appeal does not stay the operation of the direction unless the Court otherwise orders.
- (5) A direction remains in force until it is withdrawn. A direction can be withdrawn at any time by the Authority by giving written notice of withdrawal to the agent concerned.

148J Past conduct included in assessing persistent conduct

- (1) A reference in section 148H and 148I to conduct that constitutes a contravention of section 148D or 122 (5) includes a reference to:
 - (a) conduct engaged in by a person before the commencement of this section, and
 - (b) conduct engaged in before the commencement of section 148D or 122 (5) that would, if engaged in after that commencement, have constituted a contravention of the provision.

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- (2) However, a person cannot be considered to have persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5) unless at least one instance of that conduct occurred after the commencement of this section.

148K Duty of claimants to comply with requests for information about agents and lawyers

- (1) A person who makes a protected claim must comply with a request from the insurer or self-insurer concerned for information as to whether the person made use of the services of an agent or lawyer in respect of the claim and how the person came to make use of those services. Such a request by the insurer may be made at any time (whether or not court proceedings have been commenced in respect of the claim).
- (2) The regulations may make provision for limiting the operation of this section with respect to lawyers.

[71] Section 151B Effect of recovery of damages from employer on payment of compensation

Re-number section 151B (4) as section 151B (3).

[72] Section 151B (4)

Insert at the end of section 151B:

- (4) In applying subsection (2) or (3) to a particular case:
- (a) the reason for the non-recovery of damages for economic loss or non-economic loss (respectively) must be solely the operation of section 151H or 151G (respectively), and not a combination of reasons (including, for example, a partial settlement or partial compromise of a claim), and
- (b) the amount of damages for non-economic loss applied in determining the operation of the threshold test in the relevant section must be calculated on the basis of the actual loss, and must not be reduced on the basis of any settlement or compromise or otherwise.

[73] Section 151M

Omit the section. Insert instead:

151M Payment of interest

(1) **Limited statutory entitlement**

A plaintiff has only such right to interest on damages as is conferred by this section.

(2) **Domestic services, nursing and attendance**

No interest is payable on damages comprising compensation under section 151K. A court cannot order the payment of interest on such damages.

(3) **Non-economic loss**

No interest is payable on damages awarded under section 151G. A court cannot order the payment of interest on such damages.

(4) **Other heads of damages**

The following provisions apply to damages, other than damages to which subsection (2) or (3) applies:

(a) Interest is not payable (and a court cannot order the payment of interest) on such damages unless:

- (i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or
- (ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or

(iii) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

(b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind.

(c) For the purposes of this subsection, an offer of settlement must be in writing.

(5) Calculation of interest

If a court is satisfied that interest is payable under subsection (4) on damages:

(a) the amount of interest is to be calculated for the period from the date of the death of or injury to the worker until the date on which the court determines the damages, and

(b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) Rate of interest

The rate of interest to be used in any such calculation is three-quarters of the rate that would otherwise be applicable under the rules of court.

(7) Judgment debts

Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

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

Insert “or is entitled to take” after “takes” in section 151Z (2) (a).

[75] Section 151AB Special insurance provision relating to occupational diseases etc

Omit section 151AB (1) and (2). Insert instead:

- (1) If an employer is liable independently of this Act for damages for an occupational disease contracted by a worker, the following provisions have effect for the purpose of identifying from among a number of insurers under policies of insurance obtained by the employer for different periods which insurer or insurers is liable to indemnify the employer for the full amount of the damages or which is liable to pay the full amount of damages to the worker (without any right to a contribution from those other insurers):
 - (a) Any liability of that employer that arose before the relevant commencement is taken to have arisen when the worker was last employed before that commencement by that employer in an employment to the nature of which the disease was due.
 - (b) Any liability of that employer that arose after the relevant commencement is taken to have arisen when the worker was last employed after that commencement by that employer in an employment to the nature of which the disease was due.
- (2) If the employer’s liability arose partly before and partly after the relevant commencement, the following additional provisions apply:
 - (a) Subsection (1) (a) applies to any liability that arose before that commencement and subsection (1) (b) applies to any liability that arose after that commencement, with the result that 2 insurers are identified as the insurers who are to be liable as referred to in subsection (1). These insurers are referred to in this subsection as the *responsible insurers*.

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- (b) Of the responsible insurers, the one that is the insurer in respect of the employer's liability that arose after the relevant commencement is to be the insurer *primarily responsible* for the claim.
 - (c) The responsible insurers can however agree as to which of them is to be primarily responsible for the claim or the court can order that one of them is to be the insurer primarily responsible, and any such agreement or order overrides paragraph (b).
 - (d) The insurer who is primarily responsible for the claim is to act for both the responsible insurers in respect of any claim for the damages and has sole liability for the claim (that is, it is to indemnify the employer for the full amount of the damages or is to pay the full amount of damages to the worker, without any right to a contribution from any other insurer, except as provided by paragraph (e)).
 - (e) The insurer who is primarily responsible is entitled to recover from the other responsible insurer half of the amount paid as damages to the worker, half of the amount paid in respect of the worker's legal costs and half of such reasonable amount as the insurer primarily responsible may have incurred in respect of its own legal expenses in the matter.

[76] Section 151AB (6)

Insert after the definition of *occupational disease*:

relevant commencement means:

- (a) except as provided by paragraph (b)—4 p.m. on 30 June 1987, or
- (b) in the case of an employer who was insured under a policy of insurance that was assigned as referred to in clause 10 of Part 15 of Schedule 6 to this Act—the commencement of the period of insurance of the policy so assigned.

[77] Section 152A

Insert after section 152:

152A Return-to-work plans for injured workers

- (1) The regulations may prescribe circumstances in which the employer of an injured worker must prepare or arrange for the preparation of a return-to-work plan for the worker.
- (2) Any such return-to-work plan must, subject to the regulations, comply with any guidelines determined by the Authority.
- (3) The regulations may:
 - (a) require any such return-to-work plan to be approved by the Authority or other person or body, and
 - (b) create offences with respect to any failure to comply with the regulations under this section.

[78] Section 155 Compulsory insurance for employers

Omit "Maximum penalty: 200 penalty units." from section 155 (1).
Insert instead "Maximum penalty: 200 penalty units or imprisonment for 6 months, or both".

[79] Section 155 (4) and (5)

Insert after section 155 (3):

- (4) The Authority may undertake not to prosecute a person for an offence under this section in respect of a failure by the person to obtain or maintain in force a policy of insurance on condition that the person pays to the Authority the amount that the Authority is entitled to recover under section 156 in respect of the failure or such lesser amount as the Authority may determine to accept. If the person pays the amount in compliance with any terms and conditions of the undertaking, the person is not liable to be proceeded against or convicted for an offence under this section in respect of the failure concerned.

- (5) The regulations may make provision for or with respect to an amnesty for contraventions of this section, such that a person who satisfies the conditions of the amnesty is not liable to be prosecuted for an offence under this section in respect of such a contravention and is not liable to recovery under section 156 in respect of such a contravention.

[80] Section 156 Recovery of double premiums from employer not obtaining policy of insurance

Insert "or such lesser amount as the Authority may agree to accept in any particular case" after "that period" in section 156 (1).

[81] Section 156 (5)-(7)

Insert after section 156 (4):

- (5) In the absence of information that would enable the Authority to accurately determine the premium that would have been payable for the issue of a particular policy of insurance, the following provisions have effect:
- (a) the Authority is entitled to make an estimate of that premium (based on the information available to the Authority),
 - (b) the Authority's estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made,
 - (c) if the Authority's estimate is successfully challenged and as a result a more accurate estimate is substituted, the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.

- (6) A court that convicts an employer of an offence under section 155 may, on the application of the Authority, order the employer to pay to the Authority the amount that the court is satisfied the Authority is entitled to recover from the employer under this section in respect of the failure to which the offence relates. Any amount paid by an employer under such an order is taken to have been recovered from the employer under subsection (1) and is to be dealt with accordingly.
- (7) A Local Court cannot order the payment of an amount under subsection (5) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.

[82] Section 161 Inspection of policies

Insert after section 161 (3):

- (3A) A person is not liable to be prosecuted both for an offence under section 155 of failing to obtain and maintain in force a policy of insurance and for an offence under this section in respect of a failure to produce that policy of insurance for inspection.

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

Omit section 174 (6A) and (6B). Insert instead:

- (6A) The Authority may order that an employer supply to the Authority, or (at the request of the insurer) to an insurer who has issued a policy of insurance to the employer, any records in the employer's possession relating to any contract (however described) under which the employer has made payments to an individual to perform work during such period (not exceeding 7 years after the work was performed) as is specified in the order.

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- (6B) An order under subsection (6A) may be made only if the Authority is satisfied that:
- (a) in the case of a request made by an insurer, the request has been made by the insurer for the purpose of determining whether the correct premium has been paid under the policy of insurance, and
 - (b) the information contained in the records has not already been supplied or made available elsewhere under this section or under section 173.

[84] Section 196 Assets of statutory funds

Insert at the end of section 196:

- (2) The assets of a statutory fund maintained by an insurer under this Division are held by the insurer on trust for the purposes to which the assets of the statutory fund are authorised or required to be applied under this Act. The insurer has no beneficial interest in or entitlement to assets of the statutory fund maintained by the insurer.
- (3) The assets of a statutory fund maintained by an insurer under this Division may not be applied for the purpose of enabling any payment by the Authority as a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or the *WorkCover Administration Act 1989* or pursuant to a requirement under section 59B of the *Public Finance and Audit Act 1983*, or otherwise.
- (4) The assets of the WorkCover Authority Fund under the *WorkCover Administration Act 1989* may not be applied for the purpose of payment of a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or pursuant to a requirement under section 59B of the *Public Finance and Audit Act 1983*, or otherwise.

[85] Section 199 Protection of assets of statutory funds

Omit "all other" from section 199 (1).

[86] Section 200 Directors of licensee companies under trustee duty

Insert “the Authority and” wherever occurring before “the appropriate” in section 200 (1) (b) and (3).

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

Omit “employer or insurer” from section 274 (2) (a).
Insert instead “employer, insurer or agent (as defined in section 148B)”.

[88] Section 277 Offences by corporations

Omit section 277 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the person’s knowledge, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

[89] Section 278 Proceedings for offences

Omit “100 penalty units” from section 278 (2).
Insert instead “200 penalty units”.

[90] Section 278 (5)

Insert after section 278 (4):

- (5) Proceedings for an offence against this Act or the regulations may be instituted by (but not only by) the Authority.

[91] Section 278A

Insert after section 278:

278A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act (or the regulations under this Act), being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section authorised officer means a person declared by the regulations to be an authorised officer for the purposes of this section.

[92] Section 279 Time for instituting proceedings

Insert after section 279 (2):

- (3) Despite subsection (1), proceedings for an offence under section 155 (Compulsory insurance for employers) may be instituted by the Authority:
 - (a) within 2 years after the act or omission alleged to constitute the offence, or
 - (b) in a case where the Authority first becomes aware of the act or omission alleged to constitute the offence because of a claim made by a worker of the employer concerned under Division 6 of Part 4—within 6 months after the Authority pays compensation or makes any other payment to the worker in respect of the claim under that Division or the Compensation Court determines the claim (whichever occurs later),

whichever provides the longer time for proceedings to be instituted.

[93] Schedule 1 Deemed employment of workers

Omit “nor employs workers” from clause 2 (1).
Insert instead “nor employs any worker”.

[94] Schedule 1, clause 2 (3)

Insert after clause 2 (2):

- (3) A person excluded from the definition of *worker* in section 3 (1) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

[95] Schedule 2

Insert after Schedule 1:

Schedule 2 Provisions relating to appointed conciliation officers

1 Schedule applies to appointed conciliation officers

This Schedule applies only to conciliation officers appointed under section 96 (1A).

2 Terms of office

Subject to this Schedule, a conciliation officer holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the conciliation officer, but is eligible for re-appointment.

3 Remuneration

A conciliation officer is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a conciliation officer as the Minister may from time to time determine in respect of the conciliation officer. Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*.

4 Casual vacancies

- (1) A conciliation officer is taken to have vacated office if the conciliation officer:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (d) becomes a mentally incapacitated person, or
 - (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
 - (f) resigns the office by instrument in writing addressed to the Governor, or
 - (g) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove a conciliation officer from office.

5 Effect of certain other Acts

- (1) If by or under any other Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,that provision does not operate to disqualify the person from holding that office and also the office of a conciliation officer or from accepting and retaining any remuneration payable to the person under this Act as a conciliation officer.

- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to a conciliation officer.

[96] Schedule 6 Savings, transitional and other provisions, Part 1 Preliminary

Insert at the end of Part 1:

2 Extended definition of worker (section 3 (1A))

Section 3 (1A), which was inserted by the *WorkCover Legislation Amendment Act 1995*, was inserted to avoid doubt and accordingly the section is taken to apply in respect of any injured worker, including a worker who was injured or died before the commencement of that section, but not so as to affect any decision of a court made before the commencement of that section.

[97] Schedule 6 Savings, transitional and other provisions, Part 2 Provisions relating to liability for compensation

Insert after clause 6 (2):

- (3) Section 22A (9) (as inserted by the *WorkCover Legislation Amendment Act 1995*) was inserted for the purpose of avoiding doubt and accordingly is taken to have applied from the commencement of section 22A.

[98] Schedule 6, Part 2

Insert at the end of Part 2:

7 Restrictions on psychological injury claims

Section 11A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to injuries received before the commencement of that section.

8 Deemed employment of workers

- (1) The amendments to clause 2 of Schedule 1 made by the *WorkCover Legislation Amendment Act 1995* are made for the purpose of avoiding doubt, and accordingly that clause is taken to have been so amended from its own commencement.
- (2) However, those amendments do not affect any determination of a court made before the commencement of the amendments.

[99] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Insert at the end of Part 4:

12 Information to be provided at request of workers

An amendment made to section 43 by the *WorkCover Legislation Amendment Act 1995* does not apply to a request made by a worker under that section before the commencement of the amendment.

13 Refund of weekly payments—amendments to section 55 of this Act

The amendment to section 55 (Review of weekly payments) of this Act made by the *WorkCover Legislation Amendment Act 1995* extends to weekly payments of compensation made before the commencement of the amendment. However, the amendment does not apply to enable an order under that section (as so amended) to be made in respect of any case in which a court has, before that commencement, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that commencement.

**[100] Schedule 6 Savings, transitional and other provisions, Part 5
Provisions relating to compensation for medical, hospital and
rehabilitation expenses**

Insert at the end of Part 5:

9 Worker's liability for expenses above applicable rates

Section 60A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) and the amendment made to section 63A by that Act do not apply to medical or related treatment, hospital treatment or occupational rehabilitation services given or provided before the commencement of section 60A.

**[101] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 2 (2):

- (3) To avoid doubt, if a loss mentioned in the Table to Division 4 of Part 3 of this Act results both from an injury received before the commencement of that Division and an injury received after that commencement, the part of the loss resulting from the injury received before that commencement is not to be taken into account for the purposes of determining under section 67 (2) of this Act whether section 67 applies to the loss (whether or not compensation has been paid or is payable under section 16 of the former Act for that part of the loss).

[102] Schedule 6, Part 6

Omit clause 2A.

[103] Schedule 6, Part 6, clause 6 (2)

Omit "if compensation has already been paid".

Insert instead "whether or not compensation has been paid or is payable".

[104] Schedule 6, Part 6, clause 6 (2A)

Insert after clause 6 (2):

- (2A) The amendment made to subclause (2) by the *WorkCover Legislation Amendment Act 1995* is made to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. The amendment extends to court proceedings commenced but not finally determined before the commencement of the amendment but does not affect any award of compensation made before that commencement or any compensation that a worker has received or agreed to receive before that commencement.

[105] Schedule 6, Part 6, clause 8 (1)

Omit the subclause.

[106] Schedule 6, Part 6

Insert at the end of Part 6:

9 No compensation for less than 6% hearing loss

- (1) Section 69A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to apply to any claim for compensation for loss of hearing made on or after 10 November 1995 even if the injury concerned was received before that date, but does not apply to:
- (a) a claim for compensation made before that date, or
 - (b) court proceedings commenced before that date.
- (2) In determining the extent of a worker's hearing loss for the purposes of section 69A, hearing loss suffered before the commencement of that section is to be taken into account.

- (3) Section 69A does not affect:
- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of this clause, or
 - (b) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of this clause.

10 Compensation for pain and suffering resulting from loss rather than injury

Section 67 (1A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the purpose of avoiding doubt and accordingly that subsection is taken to have been so inserted from the commencement of this Act, but not so as to affect any decision of a court made before the commencement of the subsection or any compensation that a worker has received or agreed to receive before that commencement.

11 HIV, AIDS and bowel injuries

The amendments made to Division 3 of Part 4 by the *WorkCover Legislation Amendment Act 1995* with respect to HIV infection, AIDS, and permanent loss of bowel function do not apply to injuries received before the commencement of the amendments.

12 Limit on costs recovery after offer of settlement

- (1) Section 119 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to an offer of settlement, or request for particulars, as referred to in that section made before the commencement of that section.

- (2) Section 119 extends to an offer of settlement, or request for particulars, as referred to in that section made after the commencement of that section even if the offer or request relates to a claim for compensation made before the commencement of that section.

13 Cessation of indexation of amounts under sections 66 and 67

Sections 66 and 67 continue to apply in respect of an injury received before the commencement of this clause (as inserted by the *WorkCover Legislation Amendment Act 1995*) as if the amendments made by that Act to the dollar amounts specified in those sections, and to sections 79 and 81, had not been made.

14 Lump sum compensation agreements

The amendments made to section 66A by the *WorkCover Legislation Amendment Act 1995* extend to agreements with respect to compensation made before the commencement of the amendments.

15 Proceedings for award of agreed compensation

Section 66B (which was inserted by the *WorkCover Legislation Amendment Act 1995*) extends to agreements with respect to compensation made before the commencement of the amendments, but not so as to affect court proceedings pending at the commencement of that section.

16 Agreements as to proportion of compensation under section 67 payable

Section 67 (4A) (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act.

17 Special provisions for back, neck and pelvis impairment

Section 68A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) is inserted for the avoidance of doubt and accordingly is taken to have had effect from the commencement of this Act, but not so as to affect:

- (a) any award of compensation made before the date of commencement of the section, or
- (b) any compensation that a worker has received or agreed to receive before that date, or
- (c) any award of, or compromise or settlement of a claim for, damages made before the commencement of the section, or
- (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before the commencement of the section.

[107] Schedule 6 Savings, transitional and other provisions, Part 9 Provisions relating to notice of injury and claims for compensation

Insert at the end of Part 9:

5 Time for making claim for compensation

Section 92 (4A) (as inserted by the *WorkCover Legislation Amendment Act 1995*) applies in respect of an injury, or death resulting from an injury, received before the substitution of that subsection (but not before 4 p.m. on 30 June 1987), as if paragraph (a) of that subsection read as follows:

- (a) the claim is made within 3 years after the commencement of this subsection (as inserted by the *WorkCover Legislation Amendment Act 1995*), or

6 Legal and medico-legal costs

Division 7 of Part 4 (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to fees and costs incurred before the commencement of that Division.

7 Solicitor/client costs

The amendments made to section 122 by the *WorkCover Legislation Amendment Act 1995* (except the insertion of section 122 (5)) are made for the purpose of avoiding doubt and accordingly:

- (a) the amendments apply to costs incurred before or after the commencement of the amendments, and
- (b) section 122 (6) applies to amounts paid before or after the commencement of that subsection.

[108] Schedule 6 Savings, transitional and other provisions, Part 11

Insert after Part 10:

Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

1 Interest before order for payment

Section 113 (2) (as inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply to the ordering of interest on compensation for injuries received before the insertion of that provision, but the following provisions do apply to the ordering of that interest:

- (a) interest must not be ordered on any compensation payable under this Act for any period before a claim for the compensation was duly made or (where no such claim was duly made before the commencement of the proceedings in the Court) for any period before the worker gave the

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- employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of compensation claimed,
- (b) the provisions of paragraph (a) extend to proceedings pending at that commencement but do not affect any order for interest made before that commencement.

2 Interest before commencement of section 19 of Compensation Court Act 1984

- (1) Section 113 of this Act extends to authorise the ordering of interest for any period before the commencement of that section but not before 3 December 1984 (being the date of commencement of section 19 of the *Compensation Court Act 1984*).
- (2) To remove doubt it is declared that section 19 of the *Compensation Court Act 1984* did not authorise the ordering of interest for any period before the commencement of that section (3 December 1984), despite any provision of Schedule 6 to this Act.
- (3) Subclause (2) is taken to have had effect on and from the commencement of section 19 of that Act (including for the purposes of any proceedings pending at the commencement of this clause) but not so as to affect any order for interest made before the commencement of this clause.

[109] Schedule 6 Savings, transitional and other provisions, Part 13 Provisions relating to uninsured liability and indemnity scheme

Insert at the end of Part 13:

7 Claims by directors against uninsured corporations

Section 4A (as inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply in respect of an injury received before the commencement of that section.

8 Recovery from directors of corporations liable to reimburse Authority

Section 145A (which was inserted by the *WorkCover Legislation Amendment Act 1995*) does not apply in respect of a contravention of section 155 that occurred before the commencement of section 145A.

[110] Schedule 6 Savings, transitional and other provisions, Part 14 Provisions relating to common law remedies

Insert at the end of Part 14:

7 Payment of interest

Section 151M, as substituted by the *WorkCover Legislation Amendment Act 1995*, applies to any claim for damages that:

- (a) is a claim in respect of an injury received by a worker at or after 4 p.m. on 30 June 1987 or the death of a worker resulting from or caused by such an injury, and
- (b) was not settled or finally determined as at the date on which that section was so substituted.

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

- (1) The amendment to section 151B made by the *WorkCover Legislation Amendment Act 1995* to insert section 151B (4) is made for the purpose of avoiding doubt, and accordingly section 151B is taken to have been so amended from the commencement of that section.
- (2) However, that amendment does not affect any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendment.

9 Recovery against both employer and stranger

- (1) The amendment made to section 151Z by the *WorkCover Legislation Amendment Act 1995* is made for the purpose of avoiding doubt, and accordingly section 151Z is taken to have been so amended from the commencement of that section.

- (2) However, those amendments do not affect:
- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or
 - (b) any decision of a court with respect to an action on an indemnity provided for by section 151Z (1) (d) made before that commencement.

10 Amendment of section 151AB

The amendments made to section 151AB by the *WorkCover Legislation Amendment Act 1995* do not affect:

- (a) any award of, or compromise or settlement of a claim for, damages made before the commencement of the amendments, or
- (b) any court proceedings commenced by a worker for damages from the workers' employer (or other person referred to in section 150) before that commencement.

[111] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance

Insert at the end of Part 15:

23 Ownership of assets of insurer-managed statutory funds

Section 196 (2), as inserted by the *WorkCover Legislation Amendment Act 1995*, is inserted for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of this Act.

24 Time limit for proceedings for failure to insure

Section 279 (2A), as inserted by the *WorkCover Legislation Amendment Act 1995*, does not apply to proceedings for an offence alleged to have been committed before the commencement of that subsection.

[112] Schedule 6 Savings, transitional and other provisions, Part 20 Savings and transitional regulations

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

Schedule 2 Amendment of Occupational Health and Safety Act 1983

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order:

improvement notice means a notice issued under section 31R.

prohibition notice means a notice issued under section 31S.

[2] Section 15 Employers to ensure health, safety and welfare of their employees

Omit "2,500" from section 15 (3). Insert instead "5,000".

[3] Section 15 (3)

Omit "250". Insert instead "500".

[4] Section 15 (4)

Insert after section 15 (3):

- (4) If in proceedings against a person for an offence against this section the court is not satisfied that the person contravened this section but is satisfied that the act or omission concerned constituted a contravention of section 16, the court may convict the person of an offence against that section.

[5] Section 16 Employers and self-employed persons to ensure health and safety of persons other than employees at places of work

Omit "2,500" from section 16 (2). Insert instead "5,000".

[6] Section 16 (2)

Omit "250". Insert instead "500".

[7] Section 16 (3)

Insert after section 16 (2).

- (3) If in proceedings against a person for an offence against this section the court is not satisfied that the person contravened this section but is satisfied that the act or omission concerned constituted a contravention of section 15, the court may convict the person of an offence against that section.

[8] Section 17 Persons in control of workplaces, plants and substances used by non-employees to ensure health and safety

Omit "2,500" from section 17 (1). Insert instead "5,000".

[9] Section 17 (1)

Omit "250". Insert instead "500".

[10] Section 18 Manufacturers, suppliers etc to ensure health and safety as regards plant and substances for use at work

Insert "transfer," after "sale," in the definition of *supply* in section 18 (1).

[11] Section 18 (10)

Omit "2,500". Insert instead "5,000".

[12] Section 18 (10)

Omit "250". Insert instead "500".

[13] Section 19 Employees at work to take care of others and to co-operate with employer

Omit "25". Insert instead "30".

[14] Section 20 Person not to interfere with or misuse things provided for health, safety and welfare

Omit "25". Insert instead "30".

[15] Section 21A Person not to hinder aid to injured worker etc

Omit "2,500". Insert instead "5,000".

[16] Section 21A

Omit "250". Insert instead "500".

[17] Sections 21B–21D

Insert after section 21A:

21B Plant or premises involved in dangerous occurrence

- (1) The occupier (within the meaning of Division 4) of premises that are a place of work must take measures to ensure that plant on those premises is not used, moved, or interfered with after it has been involved in a dangerous occurrence.

Maximum penalty: 500 penalty units in the case of a corporation and 250 penalty units in any other case.

- (2) The occupier must also take measures to ensure that no person disturbs an area at the premises that is within 4 metres (or, if the regulations prescribe some other distance, that other distance) from the location where the dangerous occurrence occurred.

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (3) If the regulations prescribe measures that satisfy the requirements of subsection (1) or (2), the occupier is taken to have satisfied the requirements of that subsection if the occupier has taken the measures so prescribed.
- (4) This section does not prevent use, movement, interference or disturbance:
- (a) to help or remove a trapped or injured person or to remove a body, or
 - (b) to avoid injury to a person or damage to property, or
 - (c) for the purposes of any police investigation, or
 - (d) in accordance with a direction or permission of an inspector, or
 - (e) in such other circumstances as may be prescribed by the regulations.
- (5) The requirements of this section in relation to any particular dangerous occurrence apply only for the period that ends at midnight on the first working day (that is, any day except a Saturday, Sunday or public holiday) after the day on which the occurrence was notified in accordance with section 27 or otherwise notified to the WorkCover Authority, subject to any extension of that period under subsection (6).
- (6) The period for which the requirements of this section apply in relation to a dangerous occurrence can be extended by an inspector by giving notice in writing to the occupier of the premises concerned, but only if

notice is given before the end of the period provided by subsection (5). Any such extension is to be on the basis of the period that the inspector considers, after an inspection, to be necessary for a proper examination of the relevant plant or area.

- (7) In this section, *dangerous occurrence* means:
- (a) an occurrence that causes death, or
 - (b) an occurrence that causes a serious injury that is prescribed by the regulations for the purposes of this definition, or
 - (c) an occurrence prescribed by the regulations for the purposes of this definition.

21C Notice to stop plant or prevent disturbance of premises to allow inspection

- (1) An inspector who has entered premises under Division 4 may issue a notice under this section to the occupier of the premises (within the meaning of Division 4) if the inspector believes on reasonable grounds that it is necessary to issue the notice in order to allow an inspection, examination, taking of measurements or conduct of tests on the premises, relating to the premises or any plant, substance or thing on the premises.
- (2) The notice must set out the grounds on which it is given.
- (3) While the notice is in force, the occupier must:
 - (a) stop the use of any plant, substance or thing that is specified in the notice, and
 - (b) take measures to prevent the disturbance of any plant, substance or thing that is specified in the notice.

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (4) A notice remains in force for the period, not exceeding 7 days, specified in the notice. A notice may be renewed more than once by an inspector by issuing a further notice in accordance with this section.
- (5) The occupier to whom a notice is issued under this section must, unless an inspector otherwise directs, display a copy of it while it is in force in a prominent place on the premises to which it applies.

Maximum penalty: 10 penalty units.

- (6) An inspector who issues a direction under this section must take reasonable steps to inform the employer of the employees in the place of work on the premises to which the notice relates of the notice as soon as practicable after issuing it.

21D Review in accordance with section 31U

A notice under section 21B or 21C (including any terms of the notice and its period of operation) may be reviewed and appealed against in accordance with section 31U.

[18] Section 24 Functions of occupational health and safety committees

Omit "under the associated occupational health and safety legislation" from section 24 (1) (c).

[19] Section 25 Powers of members of occupational health and safety committees

Omit "50". Insert instead "100".

[20] Section 26 Unlawful dismissal etc of employee

Omit "150". Insert instead "250".

[21] Section 26

Omit "100". Insert instead "150".

[22] Section 26

Omit "5 penalty units". Insert instead "10 penalty units".

[23] Section 27 Notification of accidents and other matters

Omit "150". Insert instead "500".

[24] Section 27

Omit "100". Insert instead "250".

[25] Section 31B

Omit the section. Insert instead:

31B Notice of entry

- (1) An inspector authorised to enter premises under this Division may enter the premises without notice.
- (2) The inspector must notify the occupier of the premises of the inspector's presence on the premises as soon as reasonably practicable after entering the premises, unless:
 - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the inspector in a case of urgency, or
 - (b) the occupier is already aware that the inspector has entered the premises or was notified in advance of when the inspector would enter the premises.

[26] Section 31I Powers available on entry

Insert “and make video and audio records” after “photographs” in section 31I (a).

[27] Section 31I (b1)–(b3)

Insert after section 31I (b):

- (b1) dismantle any plant or thing on the premises for the purpose of examination, if the inspector believes on reasonable grounds that the plant or thing has been used in the commission of an offence against the relevant legislation,
- (b2) take any plant, substance or thing (or any sample of a substance) from the premises, if the inspector believes on reasonable grounds that the plant, substance or thing has been used in the commission of an offence against the relevant legislation,
- (b3) keep any plant, substance, sample or thing taken under paragraph (b2) that:
 - (i) may reasonably be required as evidence in proceedings for an offence against the relevant legislation, or
 - (ii) might, if not so kept, be used to continue or repeat the offence,

[28] Sections 31R–31AQ

Insert after section 31Q:

31R Inspector may issue improvement notices

- (1) If an inspector is of the opinion that any person:
 - (a) is contravening any provision of this Act or the regulations, or
 - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may issue to the person a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice.

- (2) The period within which a person is required by an improvement notice to remedy a contravention or the matters occasioning the contravention must be at least 7 days after the issue of the notice.
- (3) However, an inspector may specify a period that is less than 7 days after the issue of the improvement notice if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period.
- (4) An improvement notice must:
 - (a) state that the inspector is of the opinion referred to in subsection (1), and
 - (b) state the reasons for that opinion, and
 - (c) specify the provision of the Act or the regulations in respect of which that opinion is held, and
 - (d) include information about obtaining a review of the notice under section 31U.
- (5) A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence.

Maximum penalty:

- (a) 500 penalty units in the case of a corporation, or
- (b) 250 penalty units in the case of an individual who contravenes this subsection otherwise than in his or her capacity as an employee, or
- (c) 15 penalty units in the case of an individual who contravenes this subsection in his or her capacity as an employee.

31S Inspector may issue prohibition notices

- (1) If an inspector is of the opinion that at any place of work there is occurring or about to occur any activity which involves or will involve an immediate risk to the health

or safety of any person, the inspector may issue to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters which give or will give rise to the risk are remedied.

- (2) A prohibition notice must:
- (a) state that the inspector is of the opinion referred to in subsection (1), and
 - (b) state the reasons for that opinion, and
 - (c) specify the activity in respect of which that opinion is held, and
 - (d) if in the inspector's opinion the activity involves a contravention or likely contravention of any provision of the Act or the regulations—specify that provision and state the reasons for that opinion, and
 - (e) include information about obtaining a review of the notice under section 31U.
- (3) A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units in the case of a corporation, or
- (b) 500 penalty units in the case of an individual who contravenes this subsection otherwise than in his or her capacity as an employee, or
- (c) 30 penalty units in the case of an individual who contravenes this subsection in his or her capacity as an employee.

31T Notices may include directions

- (1) An inspector may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.

- (2) Any such direction may:
 - (a) adopt, by reference, the requirements of any industrial or other code of practice, and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter.

31U Review of notices

- (1) A person who is issued with a notice under section 21B, 21C or 31Z, an improvement notice or a prohibition notice may apply in writing to the WorkCover Authority for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is issued or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.
- (4) If an application for review is duly made to the WorkCover Authority:
 - (a) the WorkCover Authority must review the notice, and
 - (b) the notice the subject of the application is stayed from the time of receipt of the application by the WorkCover Authority until such time as the WorkCover Authority gives notice to the applicant of the result of the review.
- (5) The WorkCover Authority may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (6) An applicant who is not satisfied with the result of a review may appeal against the notice concerned to a Local Court constituted by an Industrial Magistrate sitting alone.

- (7) An appeal to a Local Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.
- (8) Regulations may be made with respect to reviews and appeals under this section, including as to the time and manner in which an application for such a review or appeal is to be made.

31V Withdrawal of notices

- (1) A notice under section 21C or 31Z or an improvement notice or a prohibition notice may be withdrawn at any time by the inspector who issued the notice or by the WorkCover Authority if the inspector or the WorkCover Authority is satisfied that the notice was issued in error or is incorrect in some respect.
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued.

31W. Revocation or withdrawal of notice does not prevent issue of another notice

The revocation or withdrawal of a notice under section 21C or 31Z or an improvement notice or a prohibition notice does not prevent the issue of any other notice.

31X Service and exhibition of notices

- (1) A notice under section 21B, 21C or 31Z or an improvement notice or prohibition notice, or a notice confirming, revoking or withdrawing such a notice may be issued or given to a person:
 - (a) by delivering it personally to the person, or
 - (b) by leaving it with some other person at, or sending it by post to, the person's place of residence or business or the place of work to which the notice relates.

- (2) This section does not affect the operation of any provision of a law or the rules of a court authorising a notice or other document to be served in a manner not authorised by this section.
- (3) An inspector may cause a notice containing a copy of or extract from a notice referred to in subsection (1), or of the matter contained in the notice, to be exhibited at the place of work concerned in a manner approved by the WorkCover Authority.
- (4) A person must not destroy, damage or remove a notice exhibited under subsection (3) except with the approval of the WorkCover Authority or an inspector.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

31Y Proceedings for offences not affected by notices

The issue, variation, revocation or withdrawal of a notice under section 21C or 31Z or a prohibition notice or improvement notice does not affect any proceedings for an offence against this Act, the regulations or the associated occupational health and safety legislation in connection with any matter in respect of which the notice was issued.

31Z Notice of taking or dismantling

- (1) Before exercising any of the powers under section 311 (b1)–(b3), an inspector must give notice to the occupier of a place of work where the relevant plant, substance or thing is situated of the inspector's intention to exercise that power.
- (2) The notice must specify the date and time when the inspector proposes to exercise the powers as well as the plant, substance or thing in relation to which the powers are to be exercised.

31AA Powers supporting taking

- (1) Having taken a thing under section 31I (b2), an inspector may:
 - (a) move the thing from the place where it was taken, or
 - (b) leave the thing at the place but take reasonable action to restrict access to it, or
 - (c) if the thing is plant—dismantle it.
- (2) The following are examples of restricting access to a thing:
 - (a) sealing a thing and marking it to show access to it is restricted,
 - (b) sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.
- (3) If an inspector restricts access to a thing taken, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty: 40 penalty units.
- (4) To enable a thing to be taken under section 31I (b2), an inspector may require the person in control of it:
 - (a) to take it to a stated reasonable place by a stated reasonable time, and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (5) The requirement:
 - (a) must be made by notice in the approved form, or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

- (6) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty: 40 penalty units.

- (7) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

31AB Receipt for things taken

- (1) As soon as reasonably practicable after an inspector takes a thing under section 31I (b2), the inspector must give a receipt for it to the person from whom it was taken.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place where the thing was taken.
- (3) The receipt must describe generally each thing taken and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing's nature, condition and value).

31AC Forfeiture of things taken

- (1) A thing taken under section 31I (b2) is forfeited to the State if the inspector who took the thing:
- (a) cannot find its owner after making reasonable inquiries, or
 - (b) cannot return it to its owner, after making reasonable efforts, or
 - (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.

- (2) Subsection (1) (a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1) (b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) If the inspector decides to forfeit a thing under subsection (1) (c), the inspector must tell the owner of the decision by written notice.
- (4) Subsection (3) does not apply if:
 - (a) the inspector cannot find its owner, after making reasonable inquiries, or
 - (b) it is impracticable or would be unreasonable to give the notice.
- (5) The notice must state:
 - (a) the reasons for the decision, and
 - (b) that the owner may apply within 28 days for the decision to be reviewed, and
 - (c) how the owner may apply for the review, and
 - (d) that the owner may apply for a stay of the decision if the owner applies for a review.
- (6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

31AD Return of things taken

- (1) If a thing taken under section 31I (b2) has not been forfeited, the inspector must return it to its owner at the end of:
 - (a) 6 months, or
 - (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.

- (2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing taken as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

31AE Access to things taken

- (1) Until a thing taken under section 31I (b2) is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Division 5 Entry and inspection powers of employees' representatives

31AF Definitions

authorised officer of an industrial organisation of employees, means an officer of that organisation (including any person who is concerned in, or takes part in, the management of that organisation) who is authorised under section 733 of the *Industrial Relations Act 1991* (Right of entry of officer of industrial organisation of employees).

industrial organisation of employees has the same meaning it has in the *Industrial Relations Act 1991*.

occupier has the same meaning as in Division 4.

31AG Powers of entry of places of work

An authorised officer of an industrial organisation of employees may, for the purpose of investigating any suspected breach of the occupational health and safety legislation, enter any premises the officer has reason to believe is a place of work where members of that organisation (or persons who are eligible to be members of that organisation) work.

31AH Notice of entry

- (1) An authorised officer authorised to enter premises under this Division may enter the premises without notice.
- (2) The authorised officer must notify the occupier of the premises of the authorised officer's presence on the premises as soon as reasonably practicable after entering the premises, unless:
 - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency, or
 - (b) the occupier is already aware that the authorised officer has entered the premises or was notified in advance of when the authorised officer would enter the premises.

31AI Authority to enter premises

- (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority issued by the Industrial Registrar under section 733 of the *Industrial Relations Act 1991* and produces the authority if required to do so by the occupier of the premises.
- (2) Entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on.

31AJ Entry to domestic premises

The powers of entry conferred by this Division are not exercisable in relation to domestic premises except with the permission of the occupier of the premises.

31AK Powers available on entry

For the purpose of investigating any suspected breach of the occupational health and safety legislation, an authorised officer who enters premises under this Division may do any of the following:

- (a) make searches and inspections (and take photographs),
- (b) require the occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the officer to exercise the officer's functions under this Division,
- (c) require the production of and inspect any records in or about those premises that directly affect or directly deal with the occupational health and safety of employees working at those premises,
- (d) take copies of or extracts from any such records.

31AL Care to be taken

In the exercise of a function under this Division, an authorised officer must do as little damage as possible.

31AM Authorised officer may request assistance from inspector

An inspector may accompany and take all reasonable steps to assist an authorised officer in the exercise of the officer's functions under this Division if the officer reasonably believes that the officer may be obstructed in the exercise of those functions.

31AN Offence of obstructing authorised officer

A person must not:

- (a) obstruct, hinder or impede an authorised officer in the exercise of the officer's functions under this Division, or

- (b) directly or indirectly intimidate or threaten or attempt to intimidate an authorised officer in the exercise of the officer's functions under this Division, or
- (c) without reasonable excuse, refuse or fail to comply with a requirement made by an authorised officer in accordance with this Division.

Maximum penalty: 20 penalty units.

31AO Offence of impersonating an authorised officer

A person must not impersonate, or falsely represent that the person is, an authorised officer.

Maximum penalty: 100 penalty units.

31AP Disclosure of information

- (1) A person who is, or was at any time, an authorised officer must not disclose any information relating to any manufacturing or commercial secrets or working processes that was obtained by the officer in connection with the exercise of functions under this Division.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is:
 - (a) made with the prior permission of the Minister, or
 - (b) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

- (3) The Minister may grant the permission referred to in subsection (2) (a) only if the Minister is satisfied that to do so would be in the public interest.

Division 6 Miscellaneous

31AQ Minister may require and publish special reports into accidents and dangerous occurrences

- (1) The Minister may direct the WorkCover Authority to prepare a special report for the Minister with respect to:
- (a) any accident that occurred at a place of work and that caused the death of or bodily injury to any person, or
 - (b) any occurrence at a place of work that constituted a danger to any person.
- (2) The Minister may, if the Minister thinks fit, cause such a report or any part of such a report to be made public, whether by causing the report or part of the report to be published or otherwise. The Minister may table a copy of the report in Parliament.
- (3) No liability is incurred by the Crown and no personal liability is incurred by, or by any person acting at the direction of, the Minister or the WorkCover Authority in respect of anything done in good faith in connection with the preparation or making public of a report under this section.
- (4) No liability is incurred by a person for publishing in good faith:
- (a) a report made public under this section, or
 - (b) a fair report or summary of such a report.
- (5) In this section *liability* includes liability in defamation.

[29] Section 44A Industry codes of practice

Omit section 44A (7)–(9). Insert instead:

- (7) An approved industry code of practice commences on the day when the code is published in the Gazette or, if a later commencement date is specified in the code, on that date.
- (8) An approved amendment of an industry code of practice commences on the day when the amendment is published in the Gazette or, if a later commencement date is specified in the amendment, on that date.
- (9) An approved revocation of an industry code of practice commences on the day when the revocation is published in the Gazette or, if a later commencement date is specified in the revocation, on that date.

[30] Section 45 Regulations

Omit “100” from section 45 (4). Insert instead “250”.

[31] Section 47 Summary procedure for offences

Insert after section 47 (1):

- (1A) If a person is convicted of an offence against this Act, the convicting court may order the offender to pay to the WorkCover Authority the reasonable cost of examining or testing any plant, substance or thing to which the conviction relates.
- (1B) That cost may be recovered by the WorkCover Authority as a judgment debt against the person convicted.

[32] Section 47 (2)

Omit “100 penalty units”.

Insert instead “500 penalty units or 2 years imprisonment (or both),”.

[33] Section 47A

Insert after section 47:

47A Court may order cause of offence to be remedied

(1) If a court convicts a person of an offence against this Act or the regulations in respect of a matter which appears to the court to be within the person's power to remedy, the court may, in addition to imposing a penalty provided with respect to the offence, order the person to take such steps as may be specified in the order for remedying that matter within the period specified in the order.

(2) A person must not, without reasonable excuse, fail to comply with an order under this section.

Maximum penalty: 1,000 penalty units in the case of a corporation and 250 penalty units in any other case.

(3) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if application for such an extension is made before the end of that period.

[34] Section 49 Time for instituting proceedings for offences

Insert at the end of section 49:

(2) Proceedings for an offence against section 18 (Manufacturers, suppliers etc to ensure health and safety as regards plant substances for use at work) may be instituted, despite subsection (1):

(a) within 2 years after the act or omission alleged to constitute the offence, or

(b) within 6 months after it first becomes apparent to the WorkCover Authority that the act or omission alleged to constitute the offence has occurred,

whichever provides the longer time for proceedings to be instituted.

- (3) Proceedings for an offence against section 27 (Notification of accidents and other matters) may be instituted, despite subsection (1):
- (a) within 2 years after the act or omission alleged to constitute the offence, or
 - (b) within 6 months after the WorkCover Authority first becomes aware of the act or omission alleged to constitute the offence,
- whichever provides the longer time for proceedings to be instituted.
- (4) If a coroner's inquest or inquiry is held and it appears from the coroner's report or proceedings at the inquest or inquiry that an offence has been committed against this Act or the regulations, proceedings in respect of that offence may be instituted, despite anything to the contrary in this section, within 2 years after the date the report was made or the inquest or inquiry was concluded, as the case may be.

[35] Section 50 Offences by corporations

Omit section 50 (1) (a).

[36] Section 51A

Omit the section. Insert instead:

51A Additional penalty for further offence against the Act

- (1) A Court that convicts a person of an offence (the *current offence*) against this Act may, if the person has previously been convicted of an offence against this Act

(whether the same offence or another), impose as additional penalty in respect of the current offence not exceeding the following penalties:

- (a) if the current offence is an offence against section 15, 16, 17 or 18 of this Act—2,500 penalty units in the case of a corporation or 250 penalty units or 2 years imprisonment, or both, in any other case, or
 - (b) if the current offence is any other offence against this Act—50% of the maximum penalty for the offence (that is, 50% of the maximum penalty that would apply but for this section).
- (2) For the purposes of section 47 (Summary procedure for offences), the maximum penalty provided in respect of an offence is, in the case of an offence to which this section applies, taken to include any additional penalty that may be imposed under this section.
- (3) This section applies even if the previous offence concerned was committed before the commencement of this section.

[37] Section 51C

Insert after section 51B:

51C Requirement to give name and address

- (1) An authorised officer (within the meaning of section 51B) or an inspector may require a person whom the officer or inspector reasonably suspects has committed an offence against this Act or the associated occupational health and safety legislation or any regulation under this Act or that legislation to state the person's residential address and full name and to provide reasonable proof of the person's identity.

- (2) A person who, without reasonable excuse, fails to comply with a requirement of an officer or inspector under this section is guilty of an offence.

Maximum penalty: 15 penalty units.

- (3) A person does not commit an offence against this section if:
- (a) the officer or inspector does not, at the time when the officer or inspector makes the requirement, show the person proof of the officer's or inspector's authority, or
 - (b) the officer or inspector does not, at the time when the officer or inspector makes the requirement, warn the person that it would be an offence not to comply with the requirement.

[38] Section 52 Offence: obstruction or hindering persons in exercise of powers

Omit "150". Insert instead "500".

[39] Section 52

Omit "100". Insert instead "150".

[40] Schedule 8 Savings and transitional provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[41] Schedule 8, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of the
WorkCover Legislation Amendment Act
1995**

9 Definition

In this Part:

amending Act means the *WorkCover Legislation Amendment Act 1995*.

10 Alternative convictions (section 15 and 16)

- (1) The amendments made to sections 15 and 16 by the amending Act do not apply in respect of proceedings against a person for an offence against section 15 or 16 that were commenced in a court before the commencement of those amendments.
- (2) In respect of any proceedings against a person that are commenced in a court on or after the commencement of those amendments, the amendments apply whether the offence is alleged to have been committed before or after the commencement of those amendments.

11 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 47 of this Act (Summary procedure for offences) by the amending Act does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after the commencement of the amendment.

12 Power of court to order that contravention of Act or regulations be remedied

Section 47A of this Act (which was inserted by the amending Act) applies in respect of any person convicted of an offence against this Act or the regulations on or after the commencement of that section, even if the offence was committed before the commencement of that section.

13 Increase in time limit for institution of offence proceedings

Section 49 (2), (3) and (4) of this Act (as inserted by the amending Act) extend to apply in respect of an act or omission constituting an offence against this Act or the regulations which occurred within 2 years before the commencement of those subsections.

14 Change in defences available to directors and managers

The amendment made to section 50 of this Act by the amending Act does not apply in respect of a contravention of this Act or the regulations that occurred before the commencement of that amendment.

15 Increased penalty for additional offence

- (1) The amendment made to section 51A of this Act by the amending Act does not apply in respect of proceedings for an offence against this Act which was committed before the commencement of that amendment.
- (2) Section 51A, as in force immediately before that amendment, continues to apply in respect of such proceedings as if the amendment had not been made.

Schedule 3 Amendment of Compensation Court Act 1984

(Section 5)

[1] Section 14A Medical referees

Insert after section 14A (2):

- (2A) Of the medical practitioners appointed as medical referees:
 - (a) some are to be appointed from amongst persons nominated by such employer organisations as the Minister invites to make nominations, and
 - (b) some are to be appointed from amongst persons nominated by such employee organisations as the Minister invites to make nominations, and
 - (c) some may be appointed from amongst persons nominated by the Director-General of the Department of Health.
- (2B) The Minister can, when inviting nominations for the purposes of subsection (2A), specify the minimum number of persons required to be nominated.

[2] Section 14B Medical panels

Insert after section 14B (2):

- (2A) As far as reasonably practicable, one of the medical referees constituting a medical panel must be a medical referee appointed under section 14A (2A) (a) and one must be a medical referee appointed under section 14A (2A) (b).
- (2B) Of the medical referees constituting a medical panel, no more than one is to be a medical referee appointed under section 14A (2A) (a) and no more than one is to be a medical referee appointed under section 14A (2A) (b).

- (2C) The medical referees constituting a medical panel must be chosen on the basis of their relevant specialty or experience in the particular matter or class of matters concerned.
- (2D) When a medical panel is constituted by 2 medical referees, their decision is the decision of the panel. When a medical panel is constituted by more than 2 medical referees, the decision of a majority of them is the decision of the panel.
- (2E) When a medical panel is constituted by 2 medical referees and they cannot agree as to their decision, the medical panel is to be reconstituted as a panel of 3 medical referees (whether or not including either or both of the medical referees from the original panel).

[3] Section 16 References to commissioner

Omit the section.

[4] Section 18 Costs

Omit the section. Insert instead:

18 Costs

Section 116 (Costs) of the *Workers Compensation Act 1987* applies to and in respect of any proceedings in the Court, not just proceedings under that Act.

[5] Section 19 Interest before order for payment

Omit the section.

[6] Section 19A Interest after order for payment

Omit the section.

[7] Section 22 Arrangement of business of the Court

Insert before section 22 (3) (a):

- (a) the need for proceedings to be disposed of efficiently by the Court, including the need to make full use of the commissioners, and

[8] Section 25

Insert after section 24:

25 Special provision for evidence of exposure to noise

Historical evidence and general medical or other expert evidence concerning exposure of workers to noise in employment with particular employers or in employment of a particular class, which has been admitted in any proceedings before the Court, may, with the leave of the Court, be received as evidence in any other proceedings before the Court, whether or not the proceedings are between the same parties.

[9] Section 25A Applications to be heard together

Omit the section.

[10] Section 26 Commissioners' jurisdiction

Omit section 26 (3).

[11] Section 27 Procedure before commissioners

Omit section 27 (3). Insert instead:

- (3) Proceedings before a commissioner are to be recorded unless the commissioner otherwise orders or the rules otherwise provide.
- (4) The decision of a commissioner in any proceedings is, subject to the rules, to include details of the findings made by the commissioner on material questions of fact and of the commissioner's reasons for the decision.

[12] Part 4, Division 1, heading

Omit the heading. Insert instead “**Division 1 Appeals from Judges**”.

[13] Sections 32–34

Omit the sections. Insert instead:

32 Appeal to Court of Appeal from Judge on question of law

- (1) If a party to any proceedings before the Court constituted by a Judge is aggrieved by an award of the Judge in point of law or on a question as to the admission or rejection of evidence, that party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the Compensation Court for determination by the Compensation Court in accordance with any decision of the Court of Appeal and may make such other order in relation to the appeal as the Court of Appeal sees fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the Compensation Court and on all the parties to the proceedings in respect of which the appeal was made.

[14] Part 4, Division 1A

Insert after section 34:

Division 1A Appeals etc from commissioners

34A Appeal to Judge from commissioner

- (1) If a party to any proceedings before a commissioner is aggrieved by an award of the commissioner in point of law or on a question as to the admission or rejection of evidence, that party may appeal to a Judge.

- (2) If, in any proceedings before a commissioner, the commissioner has misused a statutory discretion, any party to those proceedings may appeal to a Judge but such an appeal cannot be made without the leave of a Judge.
- (3) Regulations may be made for or with respect to prescribing further grounds on which appeals may be made to a Judge with respect to proceedings before a commissioner.
- (4) There is to be no re-hearing or new hearing of proceedings the subject of appeal under this section. However, the Judge hearing the appeal may, by leave, receive further evidence if the Judge considers that special grounds exist or if the evidence concerns matters occurring after the decision appealed against.
- (5) A Judge may, on the hearing of any appeal under this section:
 - (a) remit the matter to the appropriate commissioner for determination by the commissioner in accordance with any decision of the Judge, or
 - (b) make such other order in relation to the appeal as the Judge sees fit.
- (6) In this section, *award* includes interim award, order, decision, determination, ruling and direction.

34B References of questions of law to a Judge

- (1) A commissioner may:
 - (a) of the commissioner's own motion, or
 - (b) on application by the parties, or any one of them,refer for the opinion of a Judge any question arising in proceedings before the commissioner that is a question of law or a question that the commissioner thinks is of sufficient importance to warrant consideration by a Judge.

- (2) Despite the reference of a question to a Judge by a commissioner under this section (not being the question of whether the commissioner may exercise powers under this Act in relation to a matter), the commissioner may make an award in the matter in which the question arose.
- (3) Upon the determination by a Judge of a question referred under this section:
 - (a) if the commissioner has not made an award in the matter in which the question arose, the commissioner may make an award not inconsistent with the opinion of the Judge, or
 - (b) if the commissioner has made an award in the matter in which the question arose, the commissioner is to vary that award in such a way as will make it consistent with the opinion of the Judge.

[15] Part 4, Division 2, heading

Omit "Commissioners or".

[16] Section 36 Review of decisions

Omit "commissioner or" from section 36 (1).

[17] Section 37 References to the Court

Omit "commissioner or a" from section 37 (1).

[18] Section 37 (1)

Omit "commissioner's or".

[19] Section 37

Omit "commissioner or" wherever occurring.

[20] Section 38 Stay of proceedings

Insert "to the extent that the payments are in respect of a period after the award is made" after "under the award" in section 38 (3).

[21] Section 38F

Omit the section. Insert instead:

38F Costs of mediation and neutral evaluation

The cost of providing mediation and neutral evaluation for the purposes of this Part (including the remuneration of mediators and neutral evaluators and the cost of administrative support) is a cost of operation of the Compensation Court and accordingly is payable under section 19 (2) (c) of the *WorkCover Administration Act 1989*.

[22] Section 39 Costs of operation of the Court

Omit "Workers Compensation and Rehabilitation Authority".
Insert instead "WorkCover Authority".

[23] Section 41 Liaison with WorkCover Authority

Omit "Workers Compensation and Rehabilitation Authority" wherever occurring.
Insert instead "WorkCover Authority".

[24] Schedule 2 Commissioners

Omit clause 3. Insert instead:

3 Full-time or part-time Commissioners

- (1) A Commissioner may be appointed as either a full-time or part-time Commissioner.
- (2) A full-time Commissioner is required to devote the whole of his or her time to the duties of the office of Commissioner.

[25] Schedule 3 Functions of the Court that may be exercised by Commissioners

Omit paragraph (c).

[26] Schedule 3, paragraph (g)

Omit “(excluding compensation for pain and suffering under section 67 of that Act)”.

[27] Schedule 3, paragraph (h)

Omit “(including compensation for pain and suffering under section 67 of that Act)”.

[28] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[29] Schedule 4, Part 4

Insert after Part 3:

Part 4 WorkCover Legislation Amendment Act 1995

7 Application of amendments to pending proceedings

- (1) An amendment made to this Act by the *WorkCover Legislation Amendment Act 1995 (the 1995 Act)* does not apply to proceedings in the Court commenced before the commencement of the amendment (except as provided by subclause (2)) but applies to proceedings commenced after the commencement of the amendment whenever the cause of action arose.

- (2) An amendment made by the 1995 Act to Division 1 (Appeals from Judges) of Part 4 extends to proceedings commenced before the commencement of the amendment but only if no hearing in the proceedings has commenced to be heard before the commencement of the amendment.

8 Application of medical referee/panel amendments

An amendment made by the *WorkCover Legislation Amendment Act 1995* to section 14A or 14B does not apply to a medical panel constituted for any purpose before the commencement of the amendment.

Schedule 4 Amendment of Construction Safety Act 1912

(Section 6)

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (b):

- (c) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person against whom an apprehended violence order (whether or not the order is an interim order) is in force under Part 15A of the *Crimes Act 1900*.

[2] Section 17A (5AA)

Insert "If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a powderman's certificate of competency (whether or not the person has been served with a notice under subsection (5)) the Authority may suspend the certificate of competency for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force." at the end of the subsection.

[3] Section 17B Endorsement of certificates

Omit "15" from section 17B (2). Insert instead "50".

[4] Section 18 Notice of accidents

Insert at the end of section 18 (2):

This subsection does not apply to anything on premises that are a place of work within the meaning of the *Occupational Health and Safety Act 1983* (as to which see section 21B of that Act).

[5] Section 21 Penalties and proceedings for offences

Omit "250" from section 21 (1). Insert instead "500".

[6] Section 21

Omit "100" from section 21 (1). Insert instead "250".

[7] Section 21

Omit "100" from section 21 (3). Insert instead "500".

[8] Section 22 Regulations

Omit "100" from section 22 (4). Insert instead "250".

[9] Second Schedule Savings, transitional and other provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[10] Second Schedule, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of the WorkCover Legislation Amendment Act 1995

7 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 21 (3) of this Act by the *WorkCover Legislation Amendment Act 1995* does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

Schedule 5 Amendment of Factories, Shops and Industries Act 1962

(Section 7)

[1] Section 45 Means of escape from and extinguishing fires

Omit "250" from section 45 (2). Insert instead "500".

[2] Section 45 (2)

Omit "100". Insert instead "250".

[3] Section 45 (2)

Omit "2.5". Insert instead "5".

[4] Section 144 Regulations

Omit "100" from section 144 (1) (e) (i). Insert instead "250".

[5] Section 144 (1) (e) (i)

Omit "25". Insert instead "50".

[6] Section 145 Proceedings

Omit "100" from section 145 (3A). Insert instead "500".

[7] Section 147 Penalties

Omit "250" from section 147 (1) (a). Insert instead "500".

[8] Section 147 (1) (a)

Omit "100". Insert instead "250".

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[10] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
the WorkCover Legislation Amendment
Act 1995**

7 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 145 (3A) of this Act by the *WorkCover Legislation Amendment Act 1995* does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

Schedule 6 Amendment of Dangerous Goods Act 1975

(Section 8)

[1] Section 9 Keeping generally

Omit "50" from section 9 (2) (a). Insert instead "250".

[2] Section 9 (2) (b)

Omit "250". Insert instead "500".

[3] Section 9 (2)

Omit "50" where secondly occurring.
Insert instead "100".

[4] Section 11 Offence of unlicensed conveyance

Omit "250" from section 11 (1). Insert instead "500".

[5] Section 11 (1)

Omit "50". Insert instead "250".

[6] Section 12 Conveyance generally

Omit "250" from section 12 wherever occurring.
Insert instead "500".

[7] Section 12

Omit "50" from section 12 wherever occurring.
Insert instead "250".

[8] Section 13 Offence of sale in public place

Omit "250". Insert instead "500".

[9] Section 13

Omit "50". Insert instead "250".

[10] Section 14 Negligent or careless use etc

Omit "50". Insert instead "250".

[11] Section 20 Offence of unlicensed manufacture

Omit "250" from section 20 (1). Insert instead "500".

[12] Section 20

Omit "50" wherever occurring. Insert instead "250".

[13] Section 24 Supply to minors

Omit "10" from section 24 (1). Insert instead "50".

[14] Section 26 Possession of explosives

Omit "50" from section 26 (1). Insert instead "250".

[15] Section 26 (1)

Omit "250". Insert instead "500".

[16] Section 32 Obstruction of inspectors etc

Omit "50" from section 32 (1). Insert instead "250".

[17] Section 33 Proceedings for offences

Omit "100" from section 33 (1A). Insert instead "500".

[18] Section 41 Regulations

Omit "100" from section 41 (3) (g). Insert instead "250".

[19] Section 41 (3) (g)

Omit "5". Insert instead "10".

[20] Section 41 (3A)

Omit "100". Insert instead "250".

[21] Schedule 3 Transitional and other provisions

Insert at the end of clause 1 (1):

WorkCover Legislation Amendment Act 1995

[22] Schedule 3, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
the WorkCover Legislation Amendment
Act 1995**

10 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 33 (1A) of this Act by the *WorkCover Legislation Amendment Act 1995* does

not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.

- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

**Schedule 7 Amendment of Workers'
Compensation (Dust Diseases)
Act 1942**

(Section 9)

[1] The whole Act

Omit "the Schedule" wherever occurring.
Insert instead "Schedule 1".

[2] Section 3 Definitions

Omit the definitions of *Broken Hill mine* and *Broken Hill mine-owner* from section 3 (1).

[3] Section 3 (1), definition of "worker"

Omit the definition. Insert instead:

worker does not include a worker in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

[4] Section 3 (2)

Omit the subsection.

[5] Section 6 Constitution of Fund

Insert after section 6 (1) (a):

- (a1) all balances, investments and moneys of which the fund established under the scheme of the *Workmen's Compensation (Broken Hill) Act 1920* consisted immediately before the repeal of that Act, and all moneys that, immediately before that repeal, were owing to that fund and are paid after that repeal,

[6] Section 6 (9)

Omit "by a Broken Hill mine owner, or".

[7] Section 10 Regulations

Omit "Broken Hill mines or" from section 10 (2) (b2).

[8] Sections 12 and 13:

Insert after section 11:

**12 Repeal of Workmen's Compensation (Broken Hill) Act
1920 No 36**

The *Workmen's Compensation (Broken Hill) Act 1920* is
repealed.

13 Savings, transitional and other provisions

Schedule 2 has effect.

[9] Schedule 1

Omit the heading to the Schedule.
Insert instead "**Schedule 1 Dust diseases**".

[10] Schedule 2

Insert after Schedule 1:

**Schedule 2 Savings, transitional and other
provisions**

(Section 13)

Part 1 Preliminary

1 Regulations

- (1) The regulations may include provisions of a savings or
transitional nature consequent on the enactment of:

WorkCover Legislation Amendment Act 1995

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of WorkCover Legislation Amendment Act 1995

2 Definitions

In this Part:

Broken Hill Compensation Fund means the fund established under the scheme of the Broken Hill Act.

Broken Hill Act means the *Workmen's Compensation (Broken Hill) Act 1920*, as in force immediately before its repeal.

3 Transfer of balance of Broken Hill Compensation Fund to Dust Diseases Fund

The balance of and any investments to the credit of the Broken Hill Compensation Fund immediately before the repeal of the Broken Hill Act are, on that repeal, transferred to the Fund established under this Act and any liability of the Broken Hill Compensation Fund becomes, on and from that repeal, a liability of the Fund established under this Act.

4 Continuation of entitlements under Broken Hill Act

- (1) On the repeal of the Broken Hill Act the scheme of compensation under that Act ceases to have effect.
- (2) Any person who, immediately before that repeal, was in receipt of compensation under that Act, is entitled, on and from the repeal, to receive compensation from the Fund constituted under this Act in accordance with this Act.

5 Applications and appeals under Broken Hill Act

- (1) Any application for an award of compensation under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an application for compensation under this Act.
- (2) An appeal to the Industrial Court from an order, determination or award of compensation of the joint committee under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an appeal under this Act from an order, determination or award of compensation of the board.

6 Functions exercised by joint committee under Broken Hill Act

Anything done by the joint committee under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the board under this Act.

7 Functions exercised by medical authority under Broken Hill Act

Anything done by the medical authority under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the medical authority under this Act.

Schedule 8 Amendment of other Acts

(Section 10)

8.1 Defamation Act 1974 No 18

[1] Section 17BB Conciliation officers under Workers Compensation Act 1987

Insert at the end of section 17BB:

, and

- (c) for the publication by any such conciliation officer of a conciliation certificate under section 98D of the *Workers Compensation Act 1987*.

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

Insert "or that consists of a conciliation certificate under section 98D of that Act" after "1987" in clause 3 (6).

8.2 Justices Act 1902 No 27

Section 100I Interpretation

Insert at the end of paragraph (a) of the definition of *penalty notice* in section 100I:

Workers Compensation Act 1987, section 278A;

8.3 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "Joint Committee established under paragraph 30 of the Schedule to the *Workmen's Compensation (Broken Hill) Act 1920*."

**8.4 Statutory and Other Offices Remuneration Act 1975
(1976 No 4)**

Schedule 2 Public offices

Omit from Part 1:

Senior Workers Compensation Commissioner.

Workers Compensation Commissioner, other than the Senior Workers Compensation Commissioner.

Insert instead:

Full-time commissioner under the *Compensation Court Act 1984*

Part-time commissioner under the *Compensation Court Act 1984*.

8.5 WorkCover Administration Act 1989 No 120

Section 3 Definitions

Omit paragraph (d) from the definition of *workers compensation legislation* in section 3 (1).

**8.6 Workers Compensation Legislation Amendment Act
1995 No 30**

**Schedule 3 Amendments relating to interim payment of
damages**

Omit the Schedule.

[Minister's second reading speech made in—
Legislative Assembly on 6 December 1995
Legislative Council on 13 December 1995]