

# WORKERS REHABILITATION AND COMPENSATION ACT 1986

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[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



SOUTH AUSTRALIA

**WORKERS REHABILITATION AND COMPENSATION ACT 1986**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **14 March 1996**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# WORKERS REHABILITATION AND COMPENSATION ACT 1986

being

Workers Rehabilitation and Compensation Act 1986  
No. 124 of 1986 [Assented to 24 December 1986]<sup>1</sup>

as amended by

Workers Rehabilitation and Compensation Act Amendment Act 1987 No. 106 of 1987 [Assented to 17 December 1987]<sup>2</sup>

Workers Rehabilitation and Compensation Act Amendment Act 1988 No. 39 of 1988 [Assented to 28 April 1988]<sup>3</sup> (as amended by Statutes Amendment (Workers Rehabilitation and Compensation) Act 1988<sup>4</sup>)

Statutes Amendment (Workers Rehabilitation and Compensation) Act 1988 No. 97 of 1988 [Assented to 15 December 1988]<sup>4</sup>

Workers Rehabilitation and Compensation Act Amendment Act 1990 No. 34 of 1990 [Assented to 26 April 1990]<sup>5</sup>

Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1991 No. 4 of 1991 [Assented to 21 March 1991]<sup>6</sup>

Workers Rehabilitation and Compensation (General) Regulations 1987 No. 232 of 1987 [*Gaz.* 24 September 1987, p. 1002] (as varied by Regulation No. 97 of 1992 [*Gaz.* 18 June 1992, p. 1810])

Statutes Amendment (Public Actuary) Act 1992 No. 69 of 1992 [Assented to 19 November 1992]<sup>7</sup>

Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1992 No. 84 of 1992 [Assented to 3 December 1992]<sup>8</sup>

Workers Rehabilitation and Compensation (General) Regulations 1987 No. 232 of 1987 [*Gaz.* 24 September 1987, p. 1002] (as varied by Regulation No. 212 of 1992 [*Gaz.* 10 December 1992, p. 1761]<sup>9</sup>)

Statutes Amendment (Chief Inspector) Act 1993 No. 1 of 1993 [Assented to 25 February 1993]<sup>10</sup>

Workers Rehabilitation and Compensation (Review Authorities) Amendment Act 1993 No. 52 of 1993 [Assented to 20 May 1993]<sup>11</sup>

Workers Rehabilitation and Compensation (Administration) Amendment Act 1994 No. 49 of 1994 [Assented to 16 June 1994]<sup>12</sup>

Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995 No. 35 of 1995 [Assented to 27 April 1995]<sup>13</sup> (as amended by Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1995<sup>14</sup>)

Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1995 No. 56 of 1995 [Assented to 3 August 1995]<sup>14</sup>

Workers Rehabilitation and Compensation (Dispute Resolution) Amendment Act 1995 No. 75 of 1995 [Assented to 9 November 1995]<sup>15</sup>

Statutes Amendment (Workers Rehabilitation and Compensation) Act 1995 No. 105 of 1995 [Assented to 14 December 1995]<sup>16</sup>

Workers Rehabilitation and Compensation (SGIC) Amendment Act 1996 No. 2 of 1996 [Assented to 7 March 1996]<sup>17</sup>

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

- <sup>1</sup> Came into operation (except ss. 3-6, 26, 29-63, 65-76, 80, 81, 85, 86, 88-120, 122-125, Scheds. 1, 2 and 3) 16 April 1987: *Gaz.* 16 April 1987, p. 1008; remainder of Act came into operation at 4 p.m. on 30 September 1987: *Gaz.* 17 September 1987, p. 886.
- <sup>2</sup> Came into operation at 4 p.m. on 30 September 1987: s. 2.
- <sup>3</sup> Came into operation (except ss. 18, 19(a), 22(a) and new s. 58B (as inserted by s. 15)) 17 October 1988: *Gaz.* 6 October 1988, p. 1236; new s. 58B came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2010; ss. 18, 19(a) and 22(a) had not been brought into operation at the date of, and the amendments effected to this Act by those provisions have not been included in, this reprint.
- <sup>4</sup> Came into operation (except ss. 9-11) 15 December 1988; ss. 9 and 10 came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009; s. 11 had not been brought into operation at the date of, and the amendment effected to this Act by that provision has not been included in, this reprint.
- <sup>5</sup> Came into operation (except ss. 3 and 5) on assent; s. 3 came into operation 16 April 1987: s. 2(2); s. 5 came into operation 1 July 1990: s. 2(3).
- <sup>6</sup> Came into operation 8 April 1991: *Gaz.* 4 April 1991, p. 1148.
- <sup>7</sup> Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.
- <sup>8</sup> S. 3 came into operation at 4.00 p.m. on 30 September 1987: s. 2(2); s. 18(a) came into operation 8 April 1991: s. 2(3); ss. 1, 2, 4, 5, 16, 18(b), (c), 19, 21 and 22 came into operation 3 December 1992: *Gaz.* 3 December 1992, p. 1688; ss. 11, 12(a), (b) and (c) and 20 came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1754; ss. 7(a), (b), 8, 9, 13 and 15 came into operation 3 May 1993: *Gaz.* 22 April 1993, p. 1400; ss. 6, 7(c), 10, 12(d) and 17 came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2045; s. 14 came into operation 3 December 1994 (by virtue of the *Acts Interpretation Act 1915*, s. 7(5)).
- <sup>9</sup> Came into operation 10 December 1992: reg. 2.
- <sup>10</sup> Came into operation 1 July 1993: *Gaz.* 17 June 1993, p. 1974.
- <sup>11</sup> Ss. 3 and 14(c) came into operation on assent: s. 2(2); ss. 5, 6, 15, 16(1) and (7) came into operation 20 May 1993: *Gaz.* 20 May 1993, p. 1694; ss. 7-12, 14(a), (d)-(g) and 16(2)-(6) came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2045; ss. 4, and 14(b) came into operation 24 February 1994: *Gaz.* 24 February 1994, p. 524; s. 13 came into operation 20 May 1995 (by virtue of the *Acts Interpretation Act 1915*, s. 7(5)).
- <sup>12</sup> Came into operation 1 July 1994: *Gaz.* 30 June 1994, p. 1842.
- <sup>13</sup> Came into operation (except ss. 7, 9, 14, 16, 21, 25, 26 and 28) 25 May 1995: *Gaz.* 25 May 1995, p. 2200; ss. 9, 14, 16, 26 and 28 came into operation 17 August 1995: *Gaz.* 17 August 1995, p. 446; s. 7 came into operation 25 January 1996: *Gaz.* 25 January 1996, p. 807; ss. 21 and 25 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.
- <sup>14</sup> Came into operation 17 August 1995: *Gaz.* 17 August 1995, p. 447.
- <sup>15</sup> Came into operation (except ss. 3-5 and 7-17) 14 December 1995: *Gaz.* 14 December 1995, p. 1642; ss. 3-5 and 7-17 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.
- <sup>16</sup> Came into operation (except s. 4) 14 December 1995: *Gaz.* 14 December 1995, p. 1642; s. 4 came into operation 25 May 1995: s. 2(a).
- <sup>17</sup> Came into operation 14 March 1996: *Gaz.* 14 March 1996, p. 1592.

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**An Act to provide for the rehabilitation and compensation of workers in respect of disabilities arising from their employment; to repeal the Workers Compensation Act 1971; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Workers Rehabilitation and Compensation Act 1986*.

**Objects of Act**

2. (1) The objects of this Act are—

- (a) to establish a workers rehabilitation and compensation scheme—
  - (i) that achieves a reasonable balance between the interests of employers and the interests of workers; and
  - (ii) that provides for the effective rehabilitation of disabled workers and their early return to work; and
  - (iii) that provides fair compensation for employment-related disabilities; and
  - (iv) that reduces the overall social and economic cost to the community of employment-related disabilities; and
  - (v) that ensures that employers' costs are contained within reasonable limits so that the impact of employment-related disabilities on South Australian businesses is minimised; and
- (b) to provide for the efficient and effective administration of the scheme; and
- (c) to establish incentives to encourage efficiency and discourage abuses; and
- (d) to ensure that the scheme is fully funded on a fair basis; and
- (e) to reduce the incidence of employment-related accidents and disabilities; and
- (f) to reduce litigation and adversarial contests to the greatest possible extent.

(2) A person exercising judicial, quasi-judicial or administrative powers must interpret this Act in the light of its objects without bias towards the interests of employers on the one hand, or workers on the other.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"**actuary**" means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

"**Advisory Committee**" means the Workers Rehabilitation and Compensation Advisory Committee established under Part 2;

"**apprentice**" includes—

- (a) a person undertaking training in a declared vocation under the *Industrial and Commercial Training Act 1981*;
- (b) a person undertaking training in a scheme approved by the Corporation for the purposes of this definition,

and "**apprenticeship**" has a corresponding meaning;

"**authorised officer**" means a person who is authorised by the Corporation to exercise the powers of an authorised officer under this Act;

"**average minimum award rate**" means the amount published by the Commonwealth Statistician as the weighted average minimum weekly award rate for adult persons (wage and salary earners) in South Australia;

"**average weekly earnings**", in relation to a worker, means the worker's average weekly earnings determined in accordance with section 4;

"**the board**" means the board of management of the Corporation;

"**business day**" means any day except Saturday, Sunday or a public holiday;

"**child**", in relation to a deceased worker, includes a person in relation to whom the worker stood, at the date of death, *in loco parentis*;

"**compensation**" includes any monetary benefit payable under this Act;

"**compensable disability**" means a disability that is compensable by virtue of section 30;

"**the Consumer Price Index**" means the Consumer Price Index (all groups index for Adelaide) published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth;

"**contract of service**" means—

- (a) a contract under which one person (the worker) is employed by another (the employer);
- (b) a contract, arrangement or understanding under which one person (the worker) works for another (the employer) in prescribed work or work of a prescribed class;
- (c) a contract of apprenticeship;
- (d) a contract, arrangement or understanding under which a person (the worker)—

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- (i) receives on-the-job training in a trade or vocation from another (the employer); and
- (ii) is during the period of that training remunerated by the employer;

"**Corporation**" means the *WorkCover Corporation of South Australia*;

"**corresponding law**" means a law—

- (a) of the Commonwealth; or
- (b) of a State (other than this State) or a Territory of the Commonwealth; or
- (c) of another country,

that provides for compensation for disabilities arising from employment;

"**dependant**", in relation to a deceased worker, means a relative of the worker who, at the time of the worker's death—

- (a) was wholly or partially dependent for the ordinary necessities of life on earnings of the worker; or
- (b) would, but for the worker's disability, have been so dependent,

and includes a posthumous child of the worker; and "**dependent**" has a corresponding meaning;

"**disability**" of a worker means—

- (a) any physical or mental injury including—
  - (i) loss, deterioration or impairment of a limb, organ or part of the body, or of a physical, mental or sensory faculty; or
  - (ii) a disease; or
  - (iii) disfigurement; or
- (b) where the context admits—the death of the worker,

and includes a secondary disability;

"**disease**" includes—

- (a) any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development; and
- (b) any disability to which section 31 applies;

"**educational institution**" means—

- (a) a secondary school; or

- (b) a trade or technical school; or
- (c) a college of advanced education, university or other institution at which tertiary education is provided; or
- (d) any other educational or training institution approved by the Corporation for the purposes of this definition;

**"employer"** means—

- (a) a person by whom a worker is employed under a contract of service, or for whom work is done by a worker under a contract of service;
- (b) in relation to persons of whom the Crown is, under section 103A, the presumptive employer—the Crown;
- (c) in relation to persons of whom any other person is, by virtue of a provision of this Act, the presumptive employer—that other person,

and includes a former employer and the legal personal representative of a deceased employer;

**"employment"** includes—

- (a) work done under a contract of service;
- (b) the work of a self-employed person to whom the Corporation has extended the protection of this Act;
- (c) the work of persons of whom the Crown is, under section 103A, the presumptive employer;
- (d) attendance by a worker at a place of pick-up;

**"exempt employer"** means an employer who is registered by the Corporation as an exempt employer in pursuance of Division 1 of Part 5;

**"foreign law"** means any law except a law of this State;

**"the Industrial Court"** means the Industrial Court of South Australia;

**"industry"** includes any business or activity in which workers are employed;

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**"local government corporation"** means—

- (a) a council as defined in the *Local Government Act 1934*; or
- (b) the Local Government Association of South Australia; or

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- (c) any other body—
  - (i) established for local government purposes; and
  - (ii) prescribed for the purposes of this definition;

**"medical expert"** means—

- (a) a legally qualified medical practitioner;
- (b) a registered dentist;
- (c) a registered psychologist;
- (d) a registered optician;
- (e) a registered physiotherapist;
- (f) a registered chiropractor;
- (g) a registered podiatrist;
- (h) a registered occupational therapist;
- (i) a registered speech pathologist;

**"medical question"** means any question of the nature, extent or probable duration of a disability, but does not include any question of a worker's incapacity for work or of the extent of an incapacity for work;

**"medical services"** means—

- (a) attendance, examination or treatment by a medical expert (including the obtaining from a medical expert of a certificate or report); or
- (b) any diagnostic examination or test required for the purposes of treatment by a medical expert;

**"non-economic loss"** means—

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) any other loss or detriment of a non-economic nature;

**"notional weekly earnings"** in relation to a worker means—

- (a) the worker's average weekly earnings; or

- (b) where an adjustment has been made under this Act to take account of changes in levels of earnings or in the value of money (or both)—the worker's average weekly earnings as so adjusted;

"**officer**" of the Corporation includes an employee of the Corporation;

"**orphan child**" means a child whose natural or a adoptive parents are dead and includes a child, one of whose natural or adoptive parents is dead and who has no reasonable prospect of being supported by the surviving natural or adoptive parent;

"**parent**", in relation to a deceased worker, includes a person who stood *in loco parentis* to the worker at the time of the worker's death;

"**place of employment**" means a place where a worker is required to carry out duties of employment and, if the place is a building, includes land within the external boundaries of the land on which the building is situated;

\* \* \* \* \*

"**premises**" means—

- (a) a building, structure or place (including an aircraft, ship or vehicle); or
- (b) a part of premises;

"**prescribed allowance**", in relation to the earnings of a worker, means any amount received by the worker from an employer—

- (a) by way of an allowance to cover special expenses incurred by the worker in the course of employment;
- (b) by way of special rates paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed (not being rates that are paid during a period of leave with pay);

\* \* \* \* \*

- (d) by way of site allowance;
- (e) by way of any other allowance or benefit prescribed for the purposes of this definition;

"**recognised medical expert**" means—

- (a) a legally qualified medical practitioner; or
- (b) in relation to disabilities of a particular kind—a medical expert who is recognised by the Corporation as having specialised knowledge of, and experience in the treatment of, disabilities of that kind;



"**registered association**" means—

- (a) an association registered under the *Industrial Relations Act (S.A.) 1972*;
- (b) an association registered under the *Industrial Relations Act 1988* of the Commonwealth;
- (c) the United Trades and Labor Council;
- (d) the Australian Mines and Metals Association;
- (e) the Employer-Managed Workers Compensation Association Incorporated;

"**relative**", in relation to a deceased worker, means a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, brother, sister, stepbrother, stepsister, half-brother or half-sister of the worker;

"**the repealed Act**" means the *Workers Compensation Act 1971* repealed by this Act;

"**residence**" in relation to a worker includes a place—

- (a) at which the worker resides in pursuance of the terms of the worker's employment or at the request of the employer; or
- (b) at which it is necessary or convenient for the worker to reside temporarily for the purposes of employment;

"**review authority**" means—

- (a) a Review Officer appointed for the purposes of this Act; or
- (b) the Tribunal;

\* \* \* \* \*

"**reviewable decision**" means a decision that is subject to review<sup>1</sup> and includes a provision of a rehabilitation and return to work plan that is subject to review<sup>2</sup>;

<sup>1</sup> See section 95.

<sup>2</sup> See section 28B.

"**secondary disability**" means a disability that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior disability;

"**self-employed worker**" means a person to whom the Corporation has extended the protection of this Act pursuant to section 103;

"**ship**" includes a boat, vessel or craft;

"**South Australian ship**" means a ship—

- (a) that is registered in the State; or
- (b) that is owned or under charter by the Crown; or
- (c) that is owned or under charter by a body corporate or other person—
  - (i) whose principal office or place of business is in the State; or
  - (ii) whose principal office or place of business with respect to the control or management of the ship is in the State;

"**spouse**", in relation to a worker, includes a person who is cohabiting with the worker as the *de facto* husband or wife of the worker if—

- (a)
  - (i) the person has been so cohabiting with the worker continuously for the preceding period of 5 years; or
  - (ii) the person has during the preceding period of 6 years cohabited with the worker for periods aggregating not less than 5 years; or
  - (iii) although neither subparagraph (i) nor (ii) applies, the person has been cohabiting with the worker for a substantial part of a period referred to in either of those subparagraphs and the Corporation considers that it is fair and reasonable that the person be regarded as the spouse of the worker for the purposes of this Act; or
- (b) a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living);

"**the State**" includes the territorial waters of the State;

"**therapeutic appliance**" means—

- (a) spectacles or contact lenses; or
- (b) a hearing aid; or
- (c) false teeth; or
- (d) a prosthesis; or
- (e) a crutch or wheelchair; or
- (f) any other appliance or aid for reducing the extent of a disability or enabling a person to overcome in whole or part the effects of a disability;

"**trauma**" means an event, or series of events, out of which a compensable disability arises;

"**the Tribunal**" means the Workers Compensation Appeal Tribunal constituted under this Act;

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"**unrepresentative disability**" means a disability arising from an attendance mentioned in section 30(3) or a journey mentioned in section 30(5)(b);

"**worker**" means—

- (a) a person by whom work is done under a contract of service (whether or not as an employee);
- (b) a person who is a worker by virtue of section 103A;
- (c) a self-employed worker,

and includes a former worker and the legal personal representative of a deceased worker;

"**working day**" in relation to a worker means a day on which the worker works or would, if not incapacitated for work, be normally required to work in the course of employment.

\* \* \* \* \*

(3) A member of the crew of a fishing boat who is remunerated by a share in profits or gross receipts obtained by working the boat is not a worker for the purposes of this Act.

\* \* \* \* \*

(5) Where a worker has no fixed place of employment, the worker's place of employment on a particular working day is the place at which, or the area in which, the worker works or is required to work on that working day.

(6) Where in a prescribed industry or in prescribed circumstances a person ("the principal") contracts with another person ("the contractor") for the performance by the contractor of work undertaken by the principal, the principal shall, for the purposes of this Act, be deemed to be the employer of workers employed by the contractor.

(7) The regulations may exclude (either absolutely or subject to limitations or conditions stated in the regulations) specified classes of workers wholly or partially from the application of this Act.

(8) A regulation under subsection (7) may only be made after consultation with the Advisory Committee.

**Average weekly earnings**

4. (1) Subject to this section, the average weekly earnings of a disabled worker are the average amount that the worker could reasonably be expected to have earned for a week's work if the worker had not been disabled.

(2) For the purpose of determining the average weekly earnings of a worker—

- (a) where the worker was, immediately before the relevant date, employed by more than one employer—aggregate earnings from all employment shall be taken into account; and

- (b) subject to subsection (3)—
  - (i) the actual weekly earnings of the worker over a period of up to 12 months before the relevant date may be taken into account; and
  - (ii) if by reason of the shortness of time during which the worker has been in employment, the terms of the worker's employment or for any other reason, it is not possible to arrive at a fair average, the worker's average weekly earnings may be determined by reference to the average weekly amount being earned by other persons in the same employment who perform similar work at the same grade as the worker or, if there is no person so employed, by other persons in the same class of employment who perform similar work at the same grade as the worker.

(3) Where a worker is a contractor rather than an employee, the worker's average weekly earnings shall be determined by reference to the rate of pay that the worker would have received if the worker had been working as an employee and, if there is an award or industrial agreement applicable to the class and grade of work in which the worker was engaged, the worker's average weekly earnings shall be determined by reference to that award or industrial agreement.

(4) Where because of the gradual onset of a compensable disability it appears that the level of earnings of a disabled worker prior to the relevant date were affected by the disability, the average weekly earnings of the worker shall be set at an amount that fairly represents the weekly amount that the worker would have been earning if the level of earnings had not been so affected.

(5) The average weekly earnings of a disabled worker who—

- (a) was not a full-time worker immediately prior to the relevant date; and
- (b) immediately prior to the relevant date had been seeking full-time employment; and
- (c) had been predominantly during the preceding 18 months a full-time worker,

shall be determined as if the worker had been a full-time worker.

(6) Where a permanently incapacitated worker is under the age of 21 years, the average weekly earnings of the worker shall be determined as if the worker had attained the age of 21 years and where a permanently incapacitated worker is an apprentice, the average weekly earnings of the worker shall be determined as if the worker had completed the apprenticeship.

(7) Notwithstanding the foregoing provisions of this section—

- (a) where a disabled worker's remuneration was, at the relevant date, covered by an award or industrial agreement, the worker's average weekly earnings shall not be less than the weekly wage to which the worker was then entitled under the award or industrial agreement;
- (b) if, but for this paragraph, the average weekly earnings of a worker (not being a self-employed worker) would be less than the prescribed amount, the average weekly earnings shall be fixed at the prescribed amount;

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- (c) the average weekly earnings of a worker shall in no case be fixed at more than twice State average weekly earnings.
- (8) For the purposes of determining the average weekly earnings of a worker—
  - (a) any component of the worker's earnings attributable to overtime will be disregarded unless—
    - (i) the worker worked overtime in accordance with a regular and established pattern; and
    - (ii) the pattern was substantially uniform as to the number of hours of overtime worked; and
    - (iii) the worker would have continued to work overtime in accordance with the established pattern if he or she had not been disabled; and
  - (ab) any contribution paid or payable by an employer to a superannuation scheme for the benefit of the worker will be disregarded; and
  - (b) any prescribed allowances will be disregarded.
- (9) In this section—
  - (a) a reference to the relevant date is—
    - (i) a reference to the date of the commencement of the period of the worker's incapacity for work or, where the worker has been incapacitated for work as a result of the same disability for a number of separate periods, a reference to the date of the commencement of the last such period of incapacity; or
    - (ii) where the worker is dead and the death was not immediately preceded by a period of incapacity for work in respect of which the worker received compensation under this Act—a reference to the date of the worker's death; and
  - (b) a reference to State average weekly earnings is a reference to the amount last published before the relevant date by the Commonwealth Statistician as an estimate of Average Weekly Earnings for Ordinary Hours of Work for each Full-time Employed Male Unit in this State.

**Act to bind Crown**

**5.** This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

**Territorial application of this Act**

**6.** (1) This Act applies to a worker's employment (either within or outside the State) if there is a nexus between the worker's employment and the State.

(2) A nexus exists between a worker's employment and a State if—

- (a) the worker is usually employed in the State and not in any other State; or

- (b) the worker is usually employed in 2 or more States but is based in the State.
- (3) In addition, a nexus exists between a worker's employment and this State if—
  - (a) the worker is not usually employed in any State; but
  - (b) the worker is employed in the State or the worker's employment involves (or is likely to involve) recurrent trips to and from a base in the State, and the worker is not protected against employment-related disabilities by a corresponding law.

*In this section—*

1. A **State** includes a Territory.
2. A reference to **employment** is a reference to the worker's work (and not to employment as an abstract legal relationship).
3. A worker is **usually employed** in a particular State if 10% or more of the time the worker spends working in employment is (or is to be) spent working in the State.
4. A worker is **based** (or has a **base**) in a particular State if the worker's usual place of residence is in the State or if the worker regularly travels between a port or other point of embarkation in the State and the place of employment.

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**PART 2**  
**THE WORKERS REHABILITATION AND COMPENSATION**  
**ADVISORY COMMITTEE**

**The Advisory Committee**

7. (1) The *Workers Rehabilitation and Compensation Advisory Committee* is established.
- (2) The Advisory Committee consists of nine members appointed by the Governor of whom—
- (a) three (who must include an expert in rehabilitation) will be appointed on the Minister's nomination made after consulting with associations representing employers and with associations representing employees (including the UTLC); and
  - (b) three (who must include at least one suitable representative of registered employers and at least one suitable representative of exempt employers) will be appointed on the Minister's nomination made after consulting with associations representing employers; and
  - (c) three will be appointed on the Minister's nomination made after consultation with associations representing employees, including the UTLC.
- (3) One member<sup>1</sup> of the Committee must be appointed<sup>2</sup> by the Governor to preside at meetings of the Committee.

<sup>1</sup> The member is referred to in this Act as the "**presiding member**" of the Committee.

<sup>2</sup> The appointment must be made from among the members appointed under subsection (2)(a).

**Functions of the Advisory Committee**

8. (1) The functions of the Advisory Committee are—
- (a) to advise the Minister on the formulation and implementation of policies relating to workers rehabilitation and compensation; and
  - (b) to advise the Minister (on its own initiative or at the request of the Minister) on—
    - (i) proposals to make amendments to this Act, or to make regulations under this Act; and
    - (ii) other legislative proposals that may affect the operation of this Act; and
  - (c) to investigate work-related injury and disease; and
  - (d) to report to the Minister (on its own initiative or at the request of the Minister) on any other matter relating to workers rehabilitation or compensation; and
  - (e) to carry out other functions assigned to the Advisory Committee by the Minister.
- (2) The Advisory Committee may conduct public meetings and discussions and may, with the approval of the Minister, conduct inquiries, on questions arising before the Advisory Committee.

(3) The Advisory Committee may on its own initiative, and must at the direction of the Minister, consult and co-operate with the Corporation, other government authorities at a State or national level, representatives of registered associations and other persons or bodies.

(4) The Advisory Committee may, with the approval of the Minister, establish subcommittees to assist the Committee.

(5) A subcommittee may, but need not, consist of, or include, members of the Advisory Committee.

**Terms and conditions of office**

**9.** (1) A member of the Advisory Committee will be appointed on conditions, and for a term (not exceeding three years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(2) The Governor may remove a member from office for—

- (a) breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(3) The office of a member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is found guilty of an offence against subsection (5) (Disclosure of interest); or
- (e) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(5) A member who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Advisory Committee—

- (a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Committee; and
- (b) must not take part in a deliberation or decision of the Committee on the matter and must not be present at a meeting of the Committee when the matter is under consideration.

Penalty: \$8 000 or imprisonment for two years.



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**Allowances and expenses**

**10.** (1) A member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.

(2) The fees, allowances and expenses are payable out of the Compensation Fund.

**Proceedings, etc., of the Advisory Committee**

**11.** (1) Meetings of the Advisory Committee must be held at times and places appointed by the Committee, but there must be at least six meetings per year.

(2) Six members of the Advisory Committee constitute a quorum of the Committee.

(3) The presiding member of the Advisory Committee will, if present at a meeting of the Committee, preside at the meeting and, in the absence of the presiding member, a member chosen by the members present will preside.

(4) A decision carried by a majority of the votes of the members present at a meeting of the Advisory Committee is a decision of the Committee.

(5) Each member present at a meeting of the Advisory Committee is entitled to one vote on a matter arising for decision by the Committee, and, if the votes are equal, the person presiding at the meeting has a second or casting vote.

(6) The Advisory Committee must ensure that accurate minutes are kept of its proceedings.

(7) The Advisory Committee may open its proceedings to the public unless the proceedings relate to commercially sensitive matters or to matters of a private confidential nature.

(8) Subject to this Act, the proceedings of the Advisory Committee will be conducted as the Committee determines.

**Confidentiality**

**12.** A member of the Advisory Committee who, as a member of the Committee, acquires information that—

(a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or

(b) the Committee classifies as confidential information,

must not divulge the information without the approval of the Committee.

Penalty: \$1 000.

**Immunity of members of Advisory Committee**

**13.** (1) No personal liability attaches to a member of the Advisory Committee for an act or omission by the member or the Committee in good faith and in the exercise or purported exercise of powers or functions under this Act.

(2) A liability that would, but for subsection (1), lie against a member lies instead against the Crown.

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**PART 3  
REHABILITATION AND ACCIDENT PREVENTION PROGRAMMES**

**DIVISION 1—REHABILITATION**

**Rehabilitation programmes**

**26.** (1) The Corporation shall establish or approve rehabilitation programmes with the object of ensuring that workers suffering from compensable disabilities—

- (a) achieve the best practicable levels of physical and mental recovery; and
  - (b) are, where possible, restored to the workforce and the community.
- (2) A rehabilitation programme may be established by the Corporation in relation to—
- (a) a particular worker;
  - (b) workers of a particular class;
  - (c) workers suffering from disabilities of a particular class.
- (3) For the purposes, or in the course, of a rehabilitation programme the Corporation may—
- (a) provide for the physical, mental or vocational assessment of workers;
  - (b) provide advisory services to workers, members of the families of workers, employers and others;
  - (c) assist workers in seeking, obtaining or retaining employment;
  - (d) assist in the training or retraining of workers;
  - (e) assist workers to find appropriate accommodation;
  - (f) provide for the necessary and reasonable costs (including costs of travel, accommodation and child care) incurred by workers in order to participate in rehabilitation programmes;
  - (g) provide equipment, facilities and services to assist workers to cope with their disabilities at home or in the workplace;
  - (h) provide assistance to persons who may be in a position to help workers to overcome or cope with their disabilities;
  - (i) disseminate information that relates to work related disabilities;
  - (j) conduct, participate in or subsidise research into any aspect of rehabilitation;
  - (k) encourage and support the work of organisations that provide assistance to workers suffering from compensable disabilities;
  - (l) do anything else that may assist in the rehabilitation of workers.

(4) The Corporation may admit a disabled worker to a rehabilitation programme notwithstanding that it has not been finally established that the worker's disability is compensable.

**Clinics and other facilities**

**27.** (1) In the exercise of its powers under this Division, the Corporation should seek to utilise rehabilitation facilities and services provided by the employer of a disabled worker.

(2) In the exercise of its powers under this Division, the Corporation should give encouragement and assistance to the establishment and provision of rehabilitation facilities and services in the private sector.

(3) The Corporation may—

- (a) enter into arrangements with any government agency or other body under which medical services or rehabilitation facilities and services will be provided for disabled workers; and
- (b) with the approval of the Minister, establish clinics and other facilities for the assessment, treatment or rehabilitation of disabled workers; and
- (c) establish and maintain a register of persons and organisations that are, in the opinion of the Corporation, properly qualified and equipped to provide rehabilitation services.

**Rehabilitation advisers**

**28.** (1) The Corporation shall appoint such rehabilitation advisers as are necessary for the purposes of this Act.

(2) A rehabilitation adviser—

- (a) shall assist in devising and co-ordinating rehabilitation programmes for disabled workers; and
- (b) shall be responsible to the Corporation for monitoring the progress of disabled workers who are involved in rehabilitation programmes; and
- (c) may, subject to monetary limitations set by the Corporation, expend money of the Corporation in obtaining for a disabled worker services and equipment that may assist towards rehabilitation; and
- (d) shall consult with employers with a view to expediting the return to work of disabled workers.

(3) A statement made by or to a rehabilitation adviser about a worker who is participating in a rehabilitation program must not be disclosed in proceedings under this Act unless—

- (a) the rehabilitation adviser and the worker consent to the disclosure; or
- (b) the statement is relevant to an allegation of fraud or dishonesty in criminal proceedings against the worker.

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**Rehabilitation and return to work plans**

**28A.** (1) The Corporation may establish a rehabilitation and return to work plan for a worker who is incapacitated for work by a compensable disability.

(2) If a worker—

- (a) is receiving compensation by way of income maintenance; and
- (b) is (or is likely to be) incapacitated for work by a compensable disability for more than 3 months (but has some prospect of returning to work),

the Corporation must prepare a rehabilitation and return to work plan for the worker.

(3) In preparing the plan, the Corporation—

- (a) must consult with the worker and the employer out of whose employment the disability arose; and
- (b) should if practicable—
  - (i) review medical records relevant to the worker's condition; or
  - (ii) consult with any medical expert who is treating the worker for the compensable disability.

(4) A rehabilitation and return to work plan may impose obligations on the worker and on the employer.

(5) The Corporation must give the worker and the employer a copy of the rehabilitation and return to work plan.

(6) The plan is binding on the worker and the employer.

**Review of plan**

**28B.** (1) A worker or employer may apply for review of—

- (a) a decision to establish or not to establish a rehabilitation and return to work plan; or
- (b) a provision of a rehabilitation and return to work plan,

on the ground that the decision or the provision is unreasonable.

(2) On review of a rehabilitation and return to work plan (or in consequent appellate proceedings), the plan may be modified to the extent necessary to ensure that the plan does not impose unreasonable obligations on the worker or the employer.

(3) Proceedings on a review under this section (or consequent appellate proceedings) do not suspend obligations imposed by a rehabilitation and return to work plan.

**Rehabilitation standards and requirements**

**28C.** (1) Rehabilitation programs, and rehabilitation and return to work plans, must comply with standards and requirements imposed by regulation.

(2) Before the publication of regulations imposing standards and requirements for rehabilitation programs or rehabilitation and return to work plans, the Corporation must consult on the proposed regulations with—

- (a) professional associations representing the providers of rehabilitation services of the relevant kinds; and
- (b) the Self-Insurers Association of South Australia Incorporated and associations representing self-managed employers; and
- (c) associations representing employers (including the South Australian Employers Chamber of Commerce and Industry); and
- (d) associations representing employees (including the United Trades and Labor Council).

**DIVISION 2—DISABILITY PREVENTION PROGRAMMES**

**Prevention programmes**

**29.** The Corporation may assist employers to establish or maintain programmes that are designed to prevent or reduce the incidence of compensable disabilities.

**PART 4  
COMPENSATION**

**DIVISION 1—CONDITIONS UNDER WHICH DISABILITY IS COMPENSABLE**

**Compensability of disabilities**

- 30.** (1) Subject to this Act, a disability is compensable if it arises from employment.
- (2) Subject to this section, a disability arises from employment if—
- (a) in the case of a disability that is not a secondary disability or a disease—it arises out of or in the course of employment; or
  - (b) in the case of a disability that is a secondary disability or a disease—
    - (i) the disability arises out of employment; or
    - (ii) the disability arises in the course of employment and the employment contributed to the disability.
- (3) A worker's employment includes—
- (a) attendance at the worker's place of employment on a working day but before the day's work begins in order to prepare, or be ready, for work; and
  - (b) attendance at the worker's place of employment during an authorised break from work; and
  - (c) attendance at the worker's place of employment but after work ends for the day while the worker is preparing to leave, or in the process of leaving, the place; and
  - (d) attendance at an educational institution under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; and
  - (e) attendance at a place to receive a medical service, to obtain a medical report or certificate (or to be examined for the purpose), to participate in a rehabilitation program, or to apply for, or receive, compensation for a compensable disability.
- (4) However, a disability does not arise from employment if it arises out of, or in the course of, the worker's involvement in a social or sporting activity, except where the activity forms part of the worker's employment or is undertaken at the direction or request of the employer.
- (5) A disability that arises out of, or in the course of, a journey arises from employment only if—
- (a) the journey is undertaken in the course of carrying out duties of employment; or
  - (b) the journey is between—
    - (i) the worker's place of residence and place of employment; or

- (ii) the worker's place of residence or place of employment and—
  - an educational institution the worker attends under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; or
  - a place the worker attends to receive a medical service, to obtain a medical report or certificate (or to be examined for that purpose), to participate in a rehabilitation program, or to apply for, or receive, compensation for a compensable disability,

and there is a real and substantial connection between the employment and the accident out of which the disability arises.

(6) However, the fact that a worker has an accident in the course of a journey to or from work does not in itself establish a sufficient connection between the accident and the employment for the purposes of subsection (5)(b).

(7) The journey between places mentioned in subsection (5)(b) must be a journey by a reasonably direct route but may include an interruption or deviation if it is not, in the circumstances of the case, substantial, and does not materially increase the risk of injury to the worker.

### **Psychiatric disabilities**

**30A.** A disability consisting of an illness or disorder of the mind is compensable if and only if—

- (a) the employment was a substantial cause of the disability; and
- (b) the disability did not arise wholly or predominantly from—
  - (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or
  - (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment; or
  - (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or
  - (iv) reasonable action taken in a reasonable manner under this Act affecting the worker.

### **Effect of misconduct, etc.**

**30B.** (1) A worker who is acting in connection with, and for the purposes of, the employer's trade or business is presumed to be acting in the course of employment despite the fact that—

- (a) the worker is acting in contravention of a statutory or other regulation applicable to the employment; or
- (b) the worker is acting without, or in contravention of, instructions from the employer.

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(2) However—

- (a) a worker will not be presumed to be acting in the course of employment if the worker is guilty of misconduct or acts in contravention of instructions from the employer during the course of an attendance under section 30(3); and
- (b) a disability is not compensable if it is established on the balance of probabilities that the disability is wholly or predominantly attributable to—
  - (i) serious and wilful misconduct on the part of the worker; or
  - (ii) the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in a reasonable quantity by the worker).

(3) Subsection (2)(a) does not apply in a case of death or permanent total incapacity for work and subsection (2)(b) does not apply in a case of death or serious and permanent disability.

**Evidentiary provision**

**31.** (1) A disability is not compensable unless it is established on the balance of probabilities that it arises from employment.

(2) However, if a worker suffers a disability of a kind referred to in the first column of schedule 2 and has been employed in work of a type referred to in the second column of schedule 2 opposite the disability, the worker's disability is presumed, in the absence of proof to the contrary, to have arisen from that employment.

(3) A regulation made on the recommendation, or with the approval, of the Corporation or the Advisory Committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation.

(4) Where a worker retires or is retired from employment on account of age or ill-health and the worker makes a claim for noise induced hearing loss after the expiration of two years from the date of the retirement, subsection (2) does not apply in relation to that claim.

(5) Where—

- (a) a worker's disability consists of the aggravation, acceleration, exacerbation, deterioration or recurrence of a pre-existing coronary heart disease; and
- (b) the disability arises in the course of employment,

it will be presumed, in the absence of proof to the contrary, that the employment contributed to the disability.

**DIVISION 2—COMPENSATION FOR MEDICAL EXPENSES, ETC.**

**Compensation for medical expenses**

**32.** (1) Subject to this section, a worker is entitled to be compensated for costs of a kind described in subsection (2) reasonably incurred by the worker in consequences of having suffered a compensable disability—



- (a) in accordance with a scale prescribed under this section; or
- (b) if the relevant service is not covered by a scale under this section—to the extent of a reasonable amount for the provision of the service.

\* \* \* \* \*

(2) The costs referred to in subsection (1) are as follows:

- (a) the cost of medical services;
- (b) the cost of hospitalisation and all associated medical, surgical and nursing services;
- (c) the cost of approved rehabilitation;
- (d) the cost of travelling, or being transported, to and from any place for the purpose of receiving medical services, hospitalisation or approved rehabilitation (but not where the worker travels in a private vehicle);
- (e) where it is necessary for the worker to be accommodated away from home for the purpose of receiving medical services or approved rehabilitation—the cost of such accommodation (but not exceeding limits prescribed by regulation);
- (f) the cost of attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, where the disability is such that the worker must have nursing or personal attendance;
- (g) the cost of the provision, maintenance, replacement or repair of therapeutic appliances;
- (h) the cost of medicines and other material purchased on the prescription or recommendation of a medical expert;
- (i) any other costs (or classes of costs) authorised by the Corporation.

(3) Compensation in respect of costs to which this section applies may be paid—

- (a) to the worker; or
- (b) directly to the person to whom the worker is liable for those costs.

(4) Where a worker has been charged more than the amount that the worker is entitled to claim for the provision of a service in respect of which compensation is payable under this section, the Corporation may reduce the charge by the amount of the excess.

(4a) A decision of the Corporation under subsection (4) is not reviewable.

(5) Where—

- (a) services of a kind to which this section applies were provided to a worker in relation to a compensable disability; and

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- (b) the Corporation considers that the services were, in the circumstances of the case, inappropriate or unnecessary,

the Corporation may disallow charges for the services.

- (6) Where the Corporation disallows or reduces a charge under this section—

- (a) it must give to the provider of the service a notice setting out—

- (i) the basis of the Corporation's decision to disallow or reduce the charge; and
- (ii) where the charge has been disallowed under subsection (5) the provider's right to have the decision reviewed under this Act; and

- (b) the worker is not liable to the provider for the disallowed charge, or for more than the reduced charge, (as the case requires) and, if the worker has in fact paid an amount for which he or she is not liable, the Corporation will reimburse the worker for that amount and may recover it from the provider as a debt.

(7) Where a worker travels in a private vehicle to or from any place for the purpose of receiving medical services, hospitalisation or approved rehabilitation, and the travel is reasonably necessary in the circumstances of the case, the worker is entitled to a travel allowance at rates fixed by a scale published under this section.

(8) A reference in this section to approved rehabilitation is a reference to rehabilitation programmes or services provided by a person who has an agreement with the Corporation for the provision of those programmes or services.

(9) If a treatment protocol for a disability of a particular kind has been prescribed under this section, costs of medical services for treatment of a disability of the relevant kind (and related hospitalisation and nursing services) are only compensable where—

- (a) the services are provided in accordance with the protocol; or
- (b) the provider of the services establishes, to the Corporation's satisfaction, that services outside the terms of the protocol are justified in the circumstances of the particular case.

(10) The amount of compensation for a service covered by a scale of charges prescribed under this section must be in accordance with the scale.

- (11) The Governor may, by regulation, prescribe—

- (a) scales of charges for the purposes of this section (ensuring as far as practicable that the scales comprehensively cover the various kinds of services to which this section applies);
- (b) treatment protocols for treatment of disabilities of particular kinds.

(12) A scale of charges prescribed under this section must be based on the average charge to private patients for the relevant service (but the amount fixed for the service must not exceed the amount recommended by the relevant professional association).

(13) Before a regulation is made prescribing a scale of charges, or a treatment protocol, the Corporation must consult on the terms of the proposed regulation with—

- (a) professional associations representing the providers of medical services of the relevant kind; and
- (b) the Self-Insurers Association of South Australia Incorporated and associations representing self-managed employers; and
- (c) associations representing employers (including the South Australian Employers Chamber of Commerce and Industry); and
- (d) associations representing employees (including the United Trades and Labor Council).

(14) A person who provides a service for a disabled worker, knowing the worker to be entitled to compensation for the service under this section, must not charge for the service an amount exceeding the amount allowed under a scale of charges prescribed under this section.

Maximum penalty: \$1 000.

### **Transportation for initial treatment**

**33.** (1) Where—

- (a) a worker is injured at the worker's place of employment during the course of employment; and
- (b) the injury is such as to require immediate medical treatment,

the employer shall, at the employer's own expense, provide the worker with immediate transportation to a hospital or medical expert for initial treatment.

(2) If an employer fails to provide transportation in accordance with subsection (1), the cost may be recovered by the Corporation from the employer as a debt due to the Corporation.

(3) An amount recovered by the Corporation under subsection (2) shall, if the worker incurred costs in consequence of the employer's failure to provide transportation, be paid to the worker.

(4) If the cost of transportation provided by an employer (other than an exempt employer) to a worker in accordance with subsection (1) exceeds an amount prescribed by the regulations, the employer is, on application to the Corporation in a manner and form approved by the Corporation, entitled to recover the excess from the Corporation.

## **DIVISION 3—COMPENSATION FOR PROPERTY DAMAGE**

### **Compensation for property damage**

**34.** (1) Where a worker suffers a compensable disability and, in consequence of the trauma out of which the disability arose, damage occurs to any therapeutic appliances, clothes, personal effects or tools of trade of the worker, the worker is, subject to limitations prescribed by regulation, entitled to be compensated for the full amount of the damage.

(2) An entitlement under subsection (1) does not extend to compensation for damage to a motor vehicle.

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**DIVISION 4—COMPENSATION BY WAY OF INCOME MAINTENANCE**

**Weekly payments**

**35.** (1) Subject to this Act, where a worker suffers a compensable disability that results in incapacity for work, the worker is entitled to weekly payments in respect of that disability in accordance with the following principles:

- (a) if the period of incapacity for work does not exceed one year—
  - (i) the worker is, if totally incapacitated for work, entitled for the period of incapacity to weekly payments equal to the worker's notional weekly earnings;
  - (ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment;
- (b) if the period of incapacity for work exceeds one year, the worker is entitled to weekly payments determined in accordance with paragraph (a) for the first year of the period of incapacity and thereafter—
  - (i) the worker is, if totally incapacitated for work, entitled for the period of incapacity to weekly payments equal to 80 per cent of the worker's notional weekly earnings;
  - (ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to 80 per cent of the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment that the worker has a reasonable prospect of obtaining.
- (2) For the purposes of subsection (1)—
  - (a) the following factors must be considered (and given fair and reasonable weight) in assessing what employment is suitable for a partially incapacitated worker—
    - (i) the nature and extent of the worker's disability; and
    - (ii) the worker's age, level of education and skills; and
    - (iii) the worker's experience in employment; and
    - (iv) the worker's ability to adapt to new employment; and
  - (b) for the first two years of the period of incapacity, partial incapacity for work is treated as total incapacity unless the Corporation establishes that suitable employment is reasonably available to the worker; and
  - (c) after the end of the first two years of the period of incapacity, if—
    - (i) suitable employment is in fact not available to the worker; and

- (ii) the worker establishes that the worker is, in effect, unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances irrespective of the state of the labour market,

partial incapacity for work will also be treated as total incapacity, but otherwise an assessment of the weekly earnings the worker could earn in suitable employment after the end of the first two years of the period of incapacity must be made on the basis that employment of the relevant kind is available to the worker.

(2a) Where—

- (a) a period of incapacity for work exceeds two years; and
- (b) an assessment of the weekly earnings that the worker is earning or could earn in suitable employment is made under subsection (1)(b)(ii); and
- (c) the worker's actual weekly earnings subsequently exceed the amount so assessed,

the Corporation cannot reduce the weekly payments to reflect the worker's actual weekly earnings except to the extent that the aggregate of the weekly payment plus the actual weekly earnings (excluding prescribed allowances) exceeds the notional weekly earnings of the worker.

(3) Subject to subsection (4), where a disabled worker receives from an employer a payment, allowance or benefit in respect of a period of incapacity for work, the weekly payments payable to the worker under this section in respect of that period shall not, unless the Corporation determines otherwise, be reduced to take account of the value of that payment, allowance or benefit.

(4) No reduction shall be made under subsection (3) on account of—

- (a) any payment, allowance or benefit related to annual or other leave;
- (b) any payment, allowance or benefit paid or conferred by the employer on the worker's retirement;
- (c) any payment, allowance or benefit paid or conferred under a superannuation or pension scheme;
- (d) any payment, allowance or benefit paid or conferred on the retrenchment, or in relation to the redundancy, of the worker.

(5) Weekly payments are not payable in respect of a period of incapacity for work falling after the date on which the worker reaches retirement age.

In this subsection, **retirement age** means—

- (a) if there is a normal retirement age for workers in employment of the kind from which the worker's disability arose—that age of retirement; or
- (b) the age of 65 years,

whichever is the lesser.

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(5a) However, if a worker who is within 6 months of retirement age or above retirement age, becomes incapacitated for work while still in employment, weekly payments are, subject to the following exceptions, payable for a period of incapacity falling within 6 months after the commencement of the incapacity.

Exceptions—

- (a) weekly payments are not payable under this subsection for a period of incapacity falling after the worker reaches 70 years of age;
- (b) weekly payments are not payable under this subsection to—
  - (i) a worker who is, at the commencement of the incapacity, employed by a body corporate of which the worker is a director; or
  - (ii) a worker who is not, at common law, an employee of the employer unless the Crown is the worker's presumptive employer under section 103A.

(6) A worker is not entitled to receive for two or more disabilities weekly payments in excess of the worker's notional weekly earnings.

(6a) If a liability to make weekly payments is redeemed, the worker is taken, for the purposes of this section, to be receiving the weekly payments that would have been payable if there had been no redemption.

(6b) If a worker ceases to be entitled to weekly payments because the Corporation makes a capital payment for loss of earning capacity under Division 4B, the worker is presumed, for the purposes of this section, to be receiving the weekly payments the worker would have been receiving if there had been no such capital payment.

(7) In this section—

- (a) a reference to a period of incapacity for work is, where the disability results in separate periods of incapacity for work, a reference to the aggregate period of incapacity;
- (b) a reference to weekly earnings is a reference to weekly earnings exclusive of prescribed allowances.

**Discontinuance of weekly payments**

**36.** (1) Subject to this Act, weekly payments to a worker who has suffered a compensable disability must not be discontinued unless—

- (a) the worker consents to the discontinuance of weekly payments; or
- (b) the Corporation is satisfied, on the basis of a certificate of a recognised medical expert, that the worker has ceased to be incapacitated for work by the compensable disability; or
- (c) the worker has returned to work; or
- (d) the worker has obtained work as an employee, or as a self-employed contractor, that is providing remuneration equal to or above the worker's notional weekly earnings; or

- (e) the worker is dismissed from employment for serious and wilful misconduct; or
  - (f) the worker breaches the obligation of mutuality; or
  - (g) the worker is, without the Corporation's consent—
    - (i) resident outside the State; or
    - (ii) absent from the State for more than two months in any continuous period of 12 months; or
  - (h) the discontinuance of weekly payments is authorised or required by some other provision of this Act.
- (1a) A worker breaches the **obligation of mutuality** if—
- (a) the Corporation has, by written notice to the worker, required the worker to submit to an examination by a recognised medical expert nominated by the Corporation and the worker fails to comply with the requirement within the time allowed in the notice or obstructs the examination; or
  - (b) the Corporation has, by written notice to the worker, required the worker to submit to the Corporation a certificate from a recognised medical expert certifying that the compensable disability continues, and the worker fails to comply with the requirement within the time allowed in the notice; or
  - (c) the worker refuses or fails to submit to proper medical treatment for the worker's condition; or
  - (d) the worker refuses or fails to participate in a rehabilitation program under this Act or participates in a way that frustrates the objectives of the program; or
  - (e) the worker fails to comply with an obligation under a rehabilitation and return to work plan under this Act; or
  - (f) the worker refuses or fails—
    - (i) to undertake work that the worker has been offered and is capable of performing; or
    - (ii) to take reasonable steps to find or obtain suitable employment, or having obtained suitable employment, unreasonably discontinues the employment; or
  - (g) the worker does anything else that is, apart from this subsection, recognised as a breach of the obligation of mutuality.
- (1b) However, a worker does not breach the obligation of mutuality—
- (a) by reasonably refusing surgery or the administration of a drug; or

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- (b) where there is a difference of medical opinion about the appropriate treatment for the worker's condition, or the possibility of choice between a number of reasonable forms of treatment—by choosing one form of treatment in preference to another.

(2) Subject to this Act, weekly payments to a worker who has suffered a compensable disability shall not be reduced unless—

- (a) the worker consents to the reduction of weekly payments; or
- (b) the Corporation is satisfied, on the basis of a certificate of a recognised medical expert, that there has been a reduction in the extent the worker is incapacitated for work by the compensable disability; or
- (ba) the reduction is necessary to correct an arithmetical or clerical error; or
- (bb) where the weekly payments include a component for overtime—the Corporation is satisfied that if the worker had continued in the work in which he or she was last employed before becoming incapacitated, he or she would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished; or
- (c) the reduction of weekly payments is authorised or required by some other provision of this Act,

(and any reduction made on the basis of this subsection must be consistent with section 35).

(3) Where the Corporation decides to discontinue or reduce weekly payments in pursuance of this section, the Corporation must give notice in writing to the worker containing such information as the regulations may require as to the reasons for the Corporation's decision and informing the worker of the worker's right to have the decision reviewed.

(3a) The notice must be given at least 21 days before the decision is to take effect in any of the following cases:

- (a) where a decision to discontinue weekly payments is made, without the consent of the worker, on the ground that—
  - (i) the Corporation is satisfied that the worker has ceased to be incapacitated for work by the compensable disability (although the worker has not returned to work); or
  - (ii) the worker has failed to submit to an examination by a recognised medical expert or to provide a medical certificate as required by the Corporation; or
  - (iii) the worker has been dismissed from employment for serious and wilful misconduct; or
  - (iv) the worker has breached the obligation of mutuality; or
- (b) where a decision to reduce weekly payments is made, without the consent of the worker, on the ground that—



- (i) the Corporation is satisfied that there has been a reduction in the extent the worker is incapacitated for work by the compensable disability; or
  - (ii) the Corporation is satisfied, in the case of a worker whose weekly payments include a component for overtime, that the worker would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished; or
- (c) where a decision to discontinue or reduce weekly payments is made under section 38,

and in any other case the notice must be given as soon as practicable after the decision is made (but not necessarily before it takes effect).

(4) Where a worker applies for the review of a decision by the Corporation to discontinue or reduce weekly payments under this section within one month after the worker receives notice of the decision, the operation of the decision is suspended, and the weekly payments must continue or, if the decision has already taken effect, be reinstated (to their previous level), until the matter is first brought before a Review Officer.

(4a) If any proceedings before a Review Officer that relate to a decision of the Corporation under this section are adjourned, the Review Officer may, subject to subsection (4b), on such terms and conditions as the regulations may prescribe, order that weekly payments be made to the worker for the duration of the adjournment.

(4b) A Review Officer should, in considering whether or not to make an order under subsection (4a), take into account—

- (a) the reason or reasons for the adjournment; and
- (b) the conduct of the parties to the proceedings,

and may take into account such other matters as the Review Officer thinks fit.

(4c) Any period between the conclusion of a hearing before a Review Officer and the handing-down of the Review Officer's decision is to be regarded as an adjournment for the purposes of subsections (4a) and (4b).

(5) Where, on a review, the Corporation's decision under this section is confirmed, any amounts to which the worker would not have been entitled but for the operation of subsection (4) or (4a) may, at the Corporation's discretion (but subject to the regulations)—

- (a) be recovered by the Corporation from the worker as a debt; or
- (b) be set off by the Corporation against liabilities of the Corporation to make payments to the worker under this Act.

(6) If the Corporation makes a weekly payment to a worker on the assumption that the worker is incapacitated for work but the worker has in fact returned to work, the Corporation may, subject to the regulations, recover the amount of the payment as a debt.

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- (7) If the Corporation overpays a worker by way of weekly payments in consequence of—
- (a) an arithmetical or clerical error; or
  - (b) an assumption, subsequently found to be incorrect, that a particular pattern of overtime would have continued if the worker had continued in the work in which he or she was last employed before becoming incapacitated,

the Corporation may, subject to and in accordance with the regulations, recover the amount overpaid as a debt.

(8) An employer who believes that reasonable grounds exist for the discontinuance or reduction of weekly payments under this section to a worker employed by, or formerly employed by, the employer may, in a manner determined by the Corporation, request the Corporation to review the circumstances of the case and to discontinue or reduce the weekly payments.

(9) The Corporation must carry out the review as soon as practicable after receipt of the request unless the request is, in the Corporation's opinion, unreasonable.

(10) If the Corporation declines to carry out a review in pursuance of a request under subsection (8), or it appears that there has been undue delay in carrying out the review, a Review Officer may, on application by the employer, direct the Corporation to carry out the review, or give such directions as appear reasonable in the circumstances to expedite the review (as the case may require).

(11) The Corporation must comply, or take steps to ensure compliance, with such a direction.

(12) On completing the review, the Corporation must give the employer notice in writing—

- (a) of the Corporation's decision on the review, and the reasons for its decision; and
- (b) of the employer's right to have the Corporation's decision reviewed.

(13) This section does not apply in relation to the discontinuance of payments pursuant to Division 4A.

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**Review of weekly payments**

**38.** (1) Subject to subsection (2), the Corporation may on its own initiative and shall if requested by a worker or an employer review the amount of the weekly payments made to a worker who has suffered a compensable disability.

(1a) If a period of incapacity continues for more than one year, the Corporation must conduct a review under this section in the second year of incapacity and in each subsequent year of the incapacity.

(2) The Corporation is not required to comply with a request for a review under subsection (1) if the request is made within three months from the completion of an earlier review.

(3) Before the Corporation begins a review under this section, the Corporation must give the worker notice, in the form prescribed by regulation—

- (a) informing the worker of the proposed review; and
- (b) inviting the worker to make written representation to the Corporation on the subject of the review within a reasonable time specified in the notice.

(4) If the Corporation finds on a review under this section that the worker's entitlement to weekly payments has ceased, or has increased or decreased, the Corporation must adjust or discontinue the weekly payments to reflect that finding.

*Example—*

For example, if the Corporation finds on the review that there has been a change in the extent of the worker's incapacity with a consequent change in the amount the worker is earning or could earn in suitable employment, the Corporation must adjust the weekly payments to reflect the change in entitlement.

(5) For the purposes of a review under this section, the Corporation may, by notice in writing to a worker, who is receiving weekly payments—

- (a) require the worker to submit to an examination by a recognised medical expert nominated by the Corporation; or
- (b) require the worker to furnish evidence of the worker's earnings.

(6) If a worker fails to comply with a requirement under subsection (5) within the time allowed in the notice, the Corporation may suspend weekly payments to the worker.

(7) On completing the review, the Corporation must give notice, in the prescribed form, setting out the Corporation's decision on the review, and the rights of review that exist in respect of the decision, to—

- (a) the worker; and
- (b) the employer from whose employment the compensable disability arose.

**Discontinuance or reduction of weekly payments because of passage of time**

**38A.** (1) If a worker's entitlement to weekly payments ceases or reduces because of the passage of time, the Corporation may (without proceeding to a review of the worker's entitlement) discontinue or reduce the weekly payments to reflect the cessation or reduction of the entitlement.

*Examples—*

- The Corporation may, for example, discontinue weekly payments to the worker under this section when the worker reaches that age at which the worker ceases to be entitled to weekly payments under section 35(5);
- The Corporation may, for example, reduce the amount of a worker's weekly payments under this section because the amount to which the worker is entitled has automatically diminished under section 35(1)(b) at the end of the first year of incapacity.

(2) On discontinuing or reducing weekly payments under this section, the Corporation must give notice, in the prescribed form, of the discontinuance or reduction and the reasons for it to—

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- (a) the worker; and
- (b) the employer from whose employment the compensable disability arose.

**Economic adjustments to weekly payments**

**39.** (1) Where a worker to whom weekly payments are payable is incapacitated for work or appears likely to be incapacitated for work for more than one year, the Corporation shall, during the course of each year of incapacity, review the weekly payments for the purpose of making an adjustment to the amount of those payments under this section.

(2) An adjustment under this section—

- (a) must be based on—
  - (i) changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's disability arose; or
  - (ii) if the worker applies, in accordance with the regulations, for the adjustment to be made on the basis of changes in rates of remuneration prescribed by an award or enterprise agreement payable to a group of workers of which the worker was a member at the time of the occurrence of the disability—changes in those rates of remuneration; and
- (b) operates from the end of the year of incapacity in which the review is made.

(3) Where the Corporation makes an adjustment to weekly payments in pursuance of this section, the Corporation shall give notice in writing, in the form prescribed by regulation, to the worker—

- (a) containing such information as the regulations may require as to the grounds on which the adjustment is being made; and
- (b) informing the worker of the worker's rights to have the Corporation's decision reviewed.

**Weekly payments and leave entitlements**

**40.** (1) Subject to subsection (3), neither the liability to make weekly payments to a worker in respect of a period of incapacity nor the amount of such weekly payments is affected by a payment, allowance or benefit for annual leave or long service leave to which the worker is entitled in respect of that period.

(2) Where a worker is absent from employment in consequence of a compensable disability, the period of absence shall for the purposes of computing the worker's entitlement to annual leave or sick leave under any Act, award or industrial agreement, be counted as a period of service in the worker's employment.

(3) Where a worker has received weekly payments in respect of total incapacity for work over a period of 52 weeks or more, the liability of the employer to grant annual leave to the worker in respect of a year of employment that coincides with, or ends during the course of, that period shall be deemed to have been satisfied.

(4) Subsection (3) does not affect the obligation of an employer to make a payment in the nature of an annual leave loading.

(5) Where—

- (a) the entitlement of a worker to annual leave, or payment in lieu of annual leave, is governed by a law of the Commonwealth or a State or Territory of the Commonwealth (not being this State); and
- (b) the worker is absent from employment in consequence of a compensable disability; and
- (c) the period of absence is not taken into account as service for the purpose of calculating the worker's entitlement to annual leave or payment in lieu of annual leave,

the worker is entitled by way of compensation to the monetary value of the annual leave that would have accrued if the worker had not been absent from employment.

(6) Any compensation payable under subsection (5) shall be paid when the annual leave, or the payment in lieu of annual leave, would (assuming that the worker had not been absent from employment) have been granted or made.

**Absence of worker from Australia**

**41.** (1) Where a worker who has suffered a compensable disability and who is receiving weekly payments is to be absent from Australia for a period in excess of 28 days, the worker shall, at least 28 days before leaving Australia, give the Corporation prescribed details of the proposed absence.

(2) Where the Corporation is of the opinion that the absence may impair the prospects of the worker's rehabilitation, it may, after giving the worker at least 14 days notice, in the form prescribed by regulation, of its intention to do so, suspend or reduce the weekly payments to the worker.

(3) The Corporation may suspend weekly payments that are being made to a worker who is absent from Australia—

- (a) if the Corporation cannot obtain, to its satisfaction, information relating to—
  - (i) the whereabouts of the worker;
  - (ii) the continuance of the worker's disability or incapacity for work;
  - (iii) the earning capacity of the worker; or
- (b) if there is, in the opinion of the Corporation, some other proper reason justifying suspension of the weekly payments.

(4) If a disabled worker leaves Australia without giving the notice required under subsection (1), the Corporation may suspend weekly payments to the worker.

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**DIVISION 4A—REDEMPTION**

**Redemption of liabilities**

**42.** (1) Any of the following liabilities may, by agreement between the worker and the Corporation, be redeemed by a capital payment to the worker—

- (a) a liability to make weekly payments;
- (b) a liability to pay compensation under section 32;
- (c) a liability to make a capital payment for loss of future earning capacity.

(2) An agreement for the redemption of a liability under this section cannot be made unless—

- (a) the worker has received competent professional advice about the consequences of redemption; and
- (b) the worker has received competent financial advice about the investment or use of money to be received on redemption; and
- (c) the Corporation has consulted with the employer out of whose employment the disability arose and has considered any representations made by the employer; and
- (d) a recognised medical expert has certified that the extent of the worker's incapacity resulting from the compensable disability can be determined with a reasonable degree of confidence.

(3) The amount of the redemption payment is to be fixed by the agreement.

(4) If the Corporation notifies a worker in writing that it is prepared to enter into negotiations for the redemption of a liability by agreement under this section, the Corporation is liable to indemnify the worker for reasonable costs of obtaining the advice required under this section up to a limit prescribed by regulation.

(5) If agreement is not reached within 3 months after redemption is first proposed (by the worker or the Corporation), either party may apply to the Tribunal for reference of the matter to a conciliation conference.

(6) The Tribunal will then appoint a conciliator, and a conciliation conference will be held, in accordance with the rules of the Tribunal.

(7) At the conciliation conference, each party must disclose information in the party's possession that may be relevant to the failure to reach agreement (including representation made by an employer about the redemption proposal).

(8) The conciliator must make every practicable attempt to help the parties to settle their differences by agreement.

(9) However, if agreement is not reached, a party cannot be compelled to agree to redemption of the liability.

(10) The Corporation may accredit professional and financial advisers for the purpose of giving advice under this section (but a worker is not required to obtain the necessary advice from an accredited adviser).

(11) However, the Corporation incurs no liability for advice given by an accredited professional or financial adviser.

#### **DIVISION 4B—COMPENSATION FOR LOSS OF EARNING CAPACITY**

##### **Loss of earning capacity**

**42A.** (1) Where a worker suffers a compensable disability that results in incapacity for work for a period exceeding two years, the Corporation may assess the worker's loss of future earning capacity as a capital loss.

(2) In making the assessment, the following principles will be applied:

- (a) the worker's notional weekly earnings (less an estimation of income tax) will be projected forward over the remainder of the worker's notional working life;
- (b) in the case of partial incapacity, the amount the worker could earn in suitable employment that the worker has a reasonable prospect of obtaining by way of average weekly earnings (less an estimation of income tax) will be projected forward over the remainder of the worker's notional working life and subtracted from the amount projected under paragraph (a);
- (c) the worker's capital loss will be taken to be 80 per cent of the present value of the loss indicated by the above projections (and in determining the present value of that loss a prescribed discount rate must be applied).

(3) For the purposes of subsection (2)—

- (a) the projections referred to in that subsection will be made on the basis of rates of earnings current at the date of the assessment and without regard to possible future changes in those rates; and
- (b) the worker's notional working life is the period over which the worker would have worked assuming that he or she had not been incapacitated and that period will be assessed having regard to the contingencies and vicissitudes of life that might in any event have prevented the worker from continuing in employment but the period will not, in any event, be taken to extend beyond the date on which weekly payments would (assuming no assessment of capital loss were made under this section) cease to be payable (see section 35(5)); and
- (c) the following factors must be considered (and given fair and reasonable weight) in assessing what employment is suitable for a partially incapacitated worker—
  - (i) the nature and extent of the worker's disability; and
  - (ii) the worker's age, level of education and skills; and
  - (iii) the worker's experience in employment; and

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- (iv) the worker's ability to adapt to new employment; and
- (d) if—
  - (i) suitable employment is in fact not available to a partially incapacitated worker when the assessment is made; and
  - (ii) the worker establishes that the worker is, in effect, unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances irrespective of the state of the labour market,

the worker's partial incapacity for work will be treated as total incapacity, but otherwise an assessment of the weekly earnings the worker could earn in suitable employment must be made on the basis that employment of the relevant kind is available to the worker and will continue to be available to the worker for the whole, or—in the case of an interim assessment—the relevant portion, of the worker's notional working life.

(4) The Corporation may make one or more interim assessments of loss as to nominated portions of the worker's notional working life before making a final assessment of loss under this section.

(5) An amount assessed under this section becomes due and payable from the date of the assessment but may be paid, at the discretion of the Corporation, in a single lump sum or in instalments that are actuarially equivalent to the lump sum (and in determining actuarial equivalence any principles, and any discount, decrement or inflation rates, prescribed by the regulations must be applied).

(6) Subject to subsection (7), where the Corporation pays or commences to pay compensation under this section, the worker ceases to be entitled to weekly payments under Division 4.

(7) The Corporation must give the worker at least 21 days notice of the cessation of payments under Division 4.

- (8) The Corporation may establish principles to be applied in relation to—
  - (a) the making of interim assessments under this section;
  - (b) the payment of amounts assessed under this section in instalments (including the amounts and frequency of any such instalments);
  - (c) any other matter relevant to the operation of this section.
- (9) The following decisions of the Corporation are not reviewable—
  - (a) a decision of the Corporation to make or not to make an assessment under this section (but an assessment is reviewable);
  - (b) a decision of the Corporation as to whether to make a final assessment or one or more interim assessments;



- (c) a decision of the Corporation as to whether to pay an amount assessed under this section in a single lump sum or in instalments and, if the Corporation decides to pay in instalments, the Corporation's decision as to the frequency of those instalments.

**Power to require medical examination, etc.**

**42B.** (1) For the purposes of this Division, the Corporation may, by notice in writing to the worker—

- (a) require the worker to submit to an examination by a medical expert nominated by the Corporation; or
- (b) require the worker to furnish such information, relevant to the operation of this Division, as the Corporation thinks fit.

(2) If a worker fails to comply with a requirement under subsection (1) within the time allowed in the notice, the Corporation may—

- (a) if no compensation has been paid under this Division—suspend any weekly payments being made to the worker;
- (b) if compensation has been paid under this Division—determine not to pay compensation in respect of the period of default.

(3) A requirement imposed by the Corporation under subsection (1) is, on the application of the worker made within the prescribed period in accordance with the regulations, subject to review by a Review Officer.

(4) Where a worker applies for a review under subsection (3), any weekly payments suspended under subsection (2) must be reinstated (to their previous level) until the matter is first brought before a Review Officer.

(5) If any proceedings before a Review Officer under this section are adjourned, the Review Officer may, on such terms and conditions as the regulations may prescribe, order that one or more payments be made to the worker during the adjournment.

(6) A Review Officer should, in considering whether or not to make an order under subsection (5), take into account—

- (a) the reason or reasons for the adjournment; and
- (b) the conduct of the parties to the proceedings,

and may take into account such other matters as the Review Officer thinks fit.

(7) Any period between the conclusion of a hearing before a Review Officer and the handing-down of the Review Officer's decision is to be regarded as an adjournment for the purposes of subsections (5) and (6).

(8) A Review Officer must, in hearing and determining any proceedings under this section, act with as much expedition as is reasonably practicable in the circumstances.

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(9) On an application under this section, a Review Officer may—

- (a) confirm, vary or quash the requirement imposed by the Corporation;
- (b) give such directions as the Review Officer thinks necessary to expedite any assessment under this Division.

(10) If a Review Officer decides in favour of the Corporation, the Corporation may, at the Corporation’s discretion (but subject to the regulations)—

- (a) recover any amounts paid under subsections (4) or (5) from the worker as a debt; or
- (b) set off any amounts paid under subsections (4) or (5) against liabilities of the Corporation to make payments to the worker under this Act.

**DIVISION 5—COMPENSATION FOR NON-ECONOMIC LOSS**

**Lump sum compensation**

**43.** (1) Subject to this Act, where a worker suffers a permanent disability and the disability is compensable under this Act, the worker is entitled (in addition to any entitlement apart from this section) to compensation for non-economic loss by way of a lump sum.

(2) Subject to this section, the lump sum shall be a percentage of the prescribed sum determined by reference to schedule 3.

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(6) Where—

- (a) a compensable disability consists of the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior compensable disability; and
- (b) compensation by way of lump sum has been previously paid under this section, or a corresponding previous enactment,

there shall be a proportionate reduction in the amount of the lump sum payable under subsection (2) in respect of the disability.

(7) Where a worker suffers two or more compensable disabilities arising from the same trauma, the worker shall not be entitled to receive compensation by way of lump sum under subsection (2) in respect of those disabilities in excess of the prescribed sum.

(7a) If the amount of compensation to which a worker is entitled under subsection (2) is greater than 55 per cent of the prescribed sum, the worker is entitled to a supplementary benefit equivalent to 1.5 times the amount by which that amount exceeds 55 per cent of the prescribed sum.

(8) No payment shall be made under this section unless the worker is living at the expiration of 28 days from the date of the occurrence of the disability and payment shall not be made under this section after the death of the worker.

(9) The Governor may, by regulation, amend schedule 3 by adding specified disabilities and fixing in relation to each such additional disability a percentage of the prescribed sum that is to be payable in respect of that disability.

(10) A regulation under subsection (9) must not be made except—

- (a) on the recommendation of the Corporation; or
- (b) with the approval of the Corporation.

(11) In this section—

**"the prescribed sum"** means—

- (a) in relation to a disability occurring in 1987—\$65 300;
- (b) in relation to a disability occurring in a subsequent year—a sum (calculated to the nearest multiple of \$100) that bears to \$62 000 the same proportion as the Consumer Price Index for the September quarter of the immediately preceding year bears to the Consumer Price Index for the September quarter, 1985.

#### **DIVISION 6—COMPENSATION PAYABLE ON DEATH**

##### **Compensation payable on death**

**44.** (1) Subject to this Act, where a worker dies as a result of a compensable disability, compensation is payable as follows:

- (a) a funeral benefit is payable equal to—
  - (i) the actual cost of the worker's funeral; or
  - (ii) the prescribed amount,whichever is the lesser;
- (b) a spouse is entitled to—
  - (i) a lump sum equal to 1.675 times the prescribed sum less any amount that the worker received as compensation for non-economic loss under Division 5; and
  - (ii) in the case of a dependent spouse—weekly payments equal to—
    - (A) in the case of total dependency—50 per cent;
    - (B) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,of the amount of the notional weekly earnings of the deceased worker;

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- (c) a dependent child (being an orphan child) is entitled to—
    - (i) a lump sum equal to—
      - (A) where the child is the only orphan child—50 per cent of an amount arrived at by subtracting from an amount equal to 1.675 times the prescribed sum the amount (if any) that the worker received as compensation for non-economic loss under Division 5;
      - (B) where the child is one of two or more orphan children—an amount determined by dividing 50 per cent of the amount referred to above equally between the orphan children; and
    - (ii) weekly payments equal to—
      - (A) in the case of total dependency—25 per cent;
      - (B) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,

of the amount of the notional weekly earnings of the deceased worker;
  - (d) a dependent child (not being an orphaned child) is entitled to weekly payments equal to—
    - (i) in the case of total dependency—12½ per cent;
    - (ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,

of the amount of the notional weekly earnings of the deceased worker;
  - (e) a dependent relative (not being a spouse or child) is entitled to such compensation by way of lump sum or weekly payments as may be determined by the Corporation having regard to—
    - (i) the extent of the relative's dependency on the deceased worker;
    - (ii) the earning capacity of the relative;
    - (iii) the relative's means;
    - (iv) the extent of any other benefits provided under this Act in respect of the worker's death.
- (2) A funeral benefit payable under subsection (1)(a) shall be paid—
- (a) to the person who conducted the funeral; or
  - (b) a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.

(3) A spouse is not entitled to a lump sum under subsection (1)(b)(i) unless—

- (a) the spouse was cohabiting with the worker on the date of the worker's death; or
- (b) although the spouse was not cohabiting with the worker on the date of the worker's death it is, in the opinion of the Corporation, fair that the spouse should receive a lump sum under that provision.

(4) For the purposes of subsection (1), where a worker and the worker's spouse jointly contributed to the support of a dependent child immediately before the occurrence of the compensable disability that resulted in the worker's death, any contribution to the support of the child from the worker's spouse shall be disregarded in determining whether the child is a dependant and, if so, the extent of the child's dependency.

(4a) The Corporation may, in its discretion, in a case of extraordinary hardship, increase the lump sum paid to an orphan child of a deceased worker under this section (but the total amount paid by way of lump sum to the deceased worker's orphan child or children under this section cannot exceed an amount arrived at by subtracting from an amount equal to 1.675 times the prescribed sum the amount (if any) that the worker received as compensation for non-economic loss under Division 5).

(5) Where—

- (a) a worker dies leaving a spouse and a dependent child; and
- (b) the spouse subsequently dies,

the child (if still eligible to receive weekly payments under this section) shall then be entitled to receive weekly payments under subsection (1)(c) as an orphaned child.

(6) Compensation is payable, if the Corporation so decides, to a spouse or child of a deceased worker who, although not dependent on the worker at the time of the worker's death, suffers a change of circumstances that may, if the worker had survived, have resulted in the spouse or child becoming dependent on the worker.

(7) Weekly payments shall not be made to a dependent child under this section unless—

- (a) the child is under the age of 18 years; or
- (b) the child is a full-time student at an educational institution approved by the Corporation for the purposes of this paragraph and is under the age of 26 years; or
- (c) the child is, by reason of physical or mental disability, incapable of earning a living.

(8) Weekly payments shall not be paid under this section beyond the date at which such payments would, assuming that the worker had survived but had been permanently incapacitated for work, have ceased to be payable to the worker.

(9) Where weekly payments payable under this section would but for this subsection exceed in aggregate the amount of the weekly payments to which the worker would have been entitled in the event of total and permanent incapacity, the weekly payments shall be proportionately reduced so as not to exceed that amount.

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(10) Where a person who is entitled to a payment (either by way of lump sum or weekly payment) under this section is under the age of 18 years, the payment may, if the Corporation so determines, be made wholly or in part to a guardian or trustee for the benefit of that person.

(11) Subject to subsection (12), where the child of a deceased worker who is entitled to weekly payments under this section is under the age of 18 years and is in the care of a person other than a dependent spouse of the worker, that person shall, if the Corporation so determines, be entitled to a supplementary allowance to assist in the care of the child until—

- (a) the child attains the age of 18 years; or
- (b) the person ceases to have the care of the child,

whichever first occurs.

(12) Where a child is by reason of a physical or mental disability, incapable of earning a living, the Corporation may pay a supplementary allowance under subsection (11) during the period of incapacity even though the child has attained the age of 18 years.

(13) Where the worker had received compensation under Division 4B, a person is not eligible for weekly payments under this section to the extent (if any) that those payments would coincide with a period in respect of which the compensation under Division 4B was paid but otherwise weekly payments are payable under this section as if compensation had not been paid under that Division.

(14) A liability to make weekly payments under this section may, on application by the person entitled to the weekly payments, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(15) However, the liability may only be commuted if the actuarial equivalent of the weekly payments does not exceed the prescribed sum<sup>4</sup>.

(16) The Corporation has (subject to this section) an absolute discretion to commute or not to commute a liability under this section, and the Corporation's decision to make or not to make commutation is not reviewable (but a decision on the amount of a commutation is reviewable).

(17) If the Corporation decides to make a commutation and makes an offer under this section, the Corporation cannot, without the agreement of the applicant, subsequently revoke its decision to make the commutation.

(18) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(19) A commutation discharges the Corporation's liability to make weekly payments to which the commutation relates.

<sup>4</sup> *The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s. 43(11).*

**Review of weekly payments**

**45.** (1) The Corporation may on its own initiative and shall if requested by an employer or the person to whom weekly payments are payable, review the amount of weekly payments payable to any person under this Division.

(2) A request for a review of the amount of weekly payments payable under this Division may not be made within 6 months from the completion of an earlier review.

(3) The amount of the weekly payments payable under this Division shall be reviewed at least once in each year.

(4) On a review under this section the Corporation shall make any necessary adjustments to the amount of weekly payments—

- (a) to reflect changes in the income or earning capacity of the person to whom the weekly payments are payable and any other relevant changes in the circumstances of that person; and
- (b) where the review is an annual review conducted in pursuance of subsection (3)—to reflect changes in the average minimum award rates since payments were commenced under this Division or an adjustment was last made under this section (as may be appropriate).

(5) For the purposes of a review under this section, the Corporation may, by notice in writing to a person who is receiving weekly payments under this Division, require that person to produce evidence to the satisfaction of the Corporation of—

- (a) income;
- (b) earning capacity;
- (c) any other circumstances that are relevant to the payment, or the amount, of weekly benefits.

(6) If a person fails to comply with a requirement under subsection (5) within the time allowed in the notice, the Corporation may suspend weekly payments to that person.

(7) Where the Corporation proposes the reduction of weekly payments to a person on a review under this section the Corporation shall, at least 21 days before the proposal is to take effect, give notice in writing to the person—

- (a) containing such information as the regulations may require as to the grounds on which weekly payments are to be reduced; and
- (b) informing the person of the person's rights to have the Corporation's decision reviewed.

#### **DIVISION 7—LIABILITY TO PAY COMPENSATION**

##### **Incidence of liability**

**46.** (1) Subject to this section, the Corporation is liable to make all payments of compensation to which any person becomes entitled under this Act.

(2) Where a compensable disability arises from employment by an exempt employer, the exempt employer is liable to make all payments of compensation to which any person becomes entitled in consequence of the occurrence of that compensable disability.

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(3) Subject to this section, where a worker is, as a result of a compensable disability, wholly or partially incapacitated for work and is in employment when the incapacity arises, the worker's employer is liable to pay compensation by way of income maintenance—

- (a) if the period of incapacity is two weeks or less—for the whole period of the incapacity; or
- (b) if the period of the incapacity is more than two weeks—for the first two weeks of the period of incapacity.

(4) If separate periods of incapacity commence during the course of the same calendar year (whether attributable to the same disability or not), an employer is not liable to pay compensation under subsection (3) for those periods of incapacity in excess of an amount equal to twice the worker's average weekly earnings.

(5) Where a worker is, at the commencement of a period of incapacity, in the employment of two or more employers, they are liable to pay the compensation referred to in subsection (3) in proportions determined by agreement between them or, in default of agreement, by the Corporation.

(6) An employer who is liable to pay compensation to a worker under subsection (3) shall make the payment—

- (a) if the claim for compensation is not disputed—within 14 days after the date of the claim; or
- (b) if the claim for compensation is disputed—forthwith after the dispute is determined.

(6a) Where an employer (not being an exempt employer) pays compensation under subsection (3) in respect of an unrepresentative disability, the employer may recover the amount of the payment from the Corporation.

(7) Where an employer pays compensation under subsection (3) in respect of a disability that did not arise from employment by that employer, that employer may recover the amount of the payment from the Corporation, and the Corporation may, in turn, recover that amount—

- (a) from the employer from whose employment the disability arose; or
- (b) if it appears that the worker was not entitled to that compensation—from the worker.

(8) Where the Corporation pays compensation by way of income maintenance to a worker who was not in employment when the incapacity for work arose, the Corporation may recover any amount that would, if the worker had been in employment, have been payable under subsection (3) by the employer from whose employment the worker's disability arose.

(8a) The regulations may exempt prescribed classes of employers from the operation of subsection (3) (and in that case the Corporation will undertake any liability of those employers that would otherwise have arisen under that subsection).



(9) No compensation by way of income maintenance is payable to a disabled self-employed worker whose disability arises from self-employment in respect of the first week of incapacity for work.

**Augmentation of weekly payment in consequence of delay**

**47.** (1) Subject to subsection (2), where—

- (a) a weekly payment, or part of a weekly payment, is not paid as and when required to be paid under this Act; or
- (b) the making of a weekly payment is delayed pending resolution of a dispute under this Act,

any amount in arrears shall be increased by interest at the prescribed rate.

(2) No interest is payable under this section if the delay is attributable to some fault on the part of the worker.

**Payments by Corporation on behalf of defaulting employer**

**48.** (1) Where an employer fails to make a payment of compensation that the employer is liable to make under this Act, the Corporation shall make that payment on behalf of the employer.

(2) Where the Corporation makes a payment of compensation under this section, the Corporation is entitled to recover from the employer as a debt—

- (a) the amount of the payment; and
- (b) an administration fee fixed in accordance with the regulations,

(and the Corporation shall take all reasonable steps to recover that debt).

**Corporation may undertake employer's liability to make weekly payments**

**49.** Where an employer is liable to make weekly payments of compensation, the Corporation may, at the request of the employer, undertake that liability on the employer's behalf in consideration of the payment by the employer to the Corporation of an amount fixed by the Corporation.

**Corporation as insurer of last resort**

**50.** (1) Where an exempt employer has ceased to be exempt, the Corporation may, in its discretion, undertake, in whole or part, liabilities related to compensable disabilities arising from employment during the period of the exemption.

(2) The Corporation must undertake the liabilities of a formerly exempt employer under subsection (1) if—

- (a) the employer becomes insolvent; or
- (b) ceases to carry on business in the State and fails to make provision that the Corporation considers adequate for dealing with claims, and meeting liabilities and responsibilities related to compensable disabilities arising from employment during the period of exemption.

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(3) The Corporation may recover the amount of liabilities undertaken by the Corporation under this section as a debt due to the Corporation from the employer (and, if the employer is being wound up, a claim for the relevant amount may be made in the winding up).

(4) If a claim is made under subsection (3) for an amount representing liabilities that have not fallen due, or have not been ascertained, as at the date of the claim, the liabilities will be estimated and capitalised in accordance with principles stated, or referred to, in the regulations.

**DIVISION 8—NOTICES OF DISABILITIES AND CLAIMS FOR COMPENSATION**

**Duty to give notice of disability**

**51.** (1) Where a worker suffers a compensable disability, notice of that disability must be given—

- (a) to the employer by whom the worker is employed at the time of the occurrence of the disability; or
- (b) if the worker is not then in employment or is self-employed—to the Corporation.

(2) Notice of a disability should be given—

- (a) if practicable within 24 hours after the occurrence of the disability but, if that is not practicable, as soon as practicable after the occurrence of the disability;
- (b) if the worker is not, immediately after the occurrence of the disability, aware of the disability—as soon as practicable after the worker becomes so aware;
- (c) if the worker dies without having become so aware or before it is practicable to give such a notice—as soon as practicable after the worker's death.

(3) Notice of a disability—

- (a) may be given orally or in writing; and
- (b) should specify to the best of the knowledge, information and belief of the person giving the notice—
  - (i) the day on which the disability occurred; and
  - (ii) the place at which the disability occurred; and
  - (iii) the nature of the disability; and
  - (iv) the cause of the disability.

(4) For the purposes of this section, notice of a disability shall be deemed to have been given to an employer if—

- (a) it is given to—
  - (i) the employer at any place of business of the employer; or

- (ii) any person under whose supervision the worker was employed at the time of the disability; or
  - (iii) any person designated for the purpose by the worker's employer; or
- (b) it is served by post on the employer.

(5) A person by whom a notice under this section is given orally shall, at the request of the person to whom the notice is given, complete a written statement in a form determined by the Corporation.

(6) Subject to subsection (8), where an employer (not being an exempt employer) receives notice of a disability given or purportedly given under this section the employer shall, within 5 business days after the receipt of the notice, send a copy of the notice to the Corporation together with the prescribed information.

Penalty: \$1 000.

(7) Where it appears from a notice under this section that the worker was not, at the date of the notice, in the employment of the employer from whose employment the disability arose, the Corporation shall (where it is practicable to do so) send a copy of the notice to that employer.

(8) The Corporation may, by notice published in the *Gazette*—

- (a) exclude from the application of this section minor disabilities of a class specified in the notice;
- (b) vary, in relation to cases of a specified class, the time at which an employer is required to report to it under this section.

### **Claim for compensation**

**52.** (1) Subject to this section, a claim for compensation—

- (a) must be made in a manner and form approved by the Corporation; and
- (b) must be made within the prescribed period; and
- (c) must be supported by a certificate in the prescribed form by a recognised medical expert certifying—
  - (i) the nature of the disability;
  - (ii) the probable cause of the disability so far as that is ascertainable by the medical expert;
  - (iii) where the claimant claims to be incapacitated for work—the extent and probable duration of the incapacity.

(2) Where notice of a disability is required under this Division, a claim for compensation may not be made in respect of that disability unless notice of the disability has been given in accordance with this Division.

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(3) Notwithstanding subsections (1) and (2)—

(a) the absence of, or a defect in, a notice of disability is not a bar to the making of a claim if—

(i) the proper determination of the claim has not been substantially prejudiced; or

(ii) the failure to give the notice, or the defect in the notice, was occasioned by ignorance of the claimant, mistake or absence from the State, or other reasonable cause; and

(b) a failure to make a claim within the prescribed period is not a bar to the making of a claim if—

(i) the proper determination of the claim has not been substantially prejudiced; or

(ii) the failure to make the claim within the prescribed period was occasioned by ignorance of the claimant, mistake or absence from the State, or other reasonable cause.

(4) A claim for compensation must be given as follows:

(a) where the worker is at the commencement of the incapacity in employment—the claim must be given to the employer;

(b) in any other case—the claim must be given to the Corporation.

(5) Within 5 business days after receipt of a claim under this section, an employer (not being an exempt employer) shall forward to the Corporation—

(a) a copy of the claim;

(b) a statement in the prescribed form containing such information as may be prescribed.

Penalty: \$1 000.

(6) Where it appears from a claim that the worker was not, at the time of making the claim, in the employment of the employer from whose employment the disability arose, the Corporation shall (where it is practicable to do so) notify that employer of the claim.

(6a) Where a claim is only for compensation under section 32, the Corporation (or an exempt employer) may dispense with the requirement of a certificate under subsection (1)(c).

(7) In this section—

"**prescribed period**", in relation to the making of a claim in pursuance of this section, means the period of 6 months commencing on the day on which the entitlement to make the claim arises.

**Determination of claim**

**53.** (1) On receipt of a claim for compensation the Corporation shall make such investigations and inquiries as it thinks necessary to determine the claim.

(2) For the purpose of satisfying itself of the nature, extent or probable duration of a disability, the Corporation may require a worker to submit to an examination by a recognised medical expert nominated by the Corporation from a list of approved experts.

(3) If a claimant for compensation—

- (a) fails or refuses to furnish information reasonably required by the Corporation to determine the claim; or
- (b) fails or refuses to submit to an examination as required under subsection (2),

the claim may be rejected.

(4) The Corporation shall determine claims for compensation as expeditiously as reasonably practicable and where the claim is for compensation by way of income maintenance shall, wherever practicable, endeavour to determine the claim within 10 business days after the date of receipt of the claim.

(4a) Where—

- (a) the disability results from a road accident; and
- (b) no member of the police force attends at the scene of the accident; and
- (c) the claimant is required to report the accident to a member of the police force or at a police station under the *Road Traffic Act 1961*,

the Corporation may refrain from determining the claim until the accident is so reported.

(4b) If an employer notifies the Corporation, before the Corporation determines a claim, that the employer disputes that the disability is compensable under this Act, the Corporation must, before determining the claim, make a reasonable investigation into the grounds on which the employer disputes the compensability of the disability.

(5) As soon as practicable after determining a claim for compensation the Corporation shall give notice in writing of the determination—

- (a) to the claimant; and
- (b) to any employer who may be directly affected.

(6) Where any part of a claim is rejected, the notice referred to in subsection (5) must include—

- (a) such information as the regulations may require as to the grounds on which the claim is rejected; and
- (b) a statement of the claimant's rights to have the determination reviewed.

(7) The Corporation may, in an appropriate case, by notice in writing to the worker, redetermine a claim.

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(7a) For the purposes of subsection (7), an appropriate case is one where—

- (a) the redetermination is necessary to give effect to an agreement reached between the parties to an application for review or to reflect progress (short of an agreement) made by the parties to such an application in an attempt to resolve questions by agreement; or
- (b) the claimant deliberately withheld information that should have been supplied to the Corporation and the original determination was, in consequence, based on inadequate information; or
- (c) the redetermination is appropriate by reason of new information that was not available and could not reasonably have been discovered by due enquiry at the time that the original determination was made; or
- (d) the original determination was made as the result of an administrative error and the redetermination is made within two weeks of the making of the original determination; or
- (e) the redetermination is made in prescribed circumstances.

(7b) A regulation made for the purposes of subsection (7a)(e) cannot come into operation until the time for disallowance has passed.

(8) The redetermination of a claim does not give rise to any right on the part of the Corporation to recover from the worker money paid under a previous determination unless the previous determination was made in consequence of the worker's fraud.

**DIVISION 9—MISCELLANEOUS**

**Limitation of employer's liability**

**54.** (1) Subject to subsection (2), no liability attaches to an employer in respect of a compensable disability arising from employment by that employer except—

- (a) a liability under this Act; or

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(2) Subsection (1) does not affect a liability arising out of the use of a motor vehicle, being a liability against which the employer was or ought to have been insured under the law of compulsory third-party motor vehicle insurance.

(3) A court before which an action is brought against an employer for non-economic loss arising from a compensable disability (being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2)) shall make due allowance for any lump sum paid or payable under Division 5 or 6 to the person by or on whose behalf the action is brought.

\* \* \* \* \*

(4a) Where—

- (a) a worker suffers a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2)); and
- (b) the disability is attributable to the negligence of another worker—
  - (i) who was acting in the course of employment with the same employer; and
  - (ii) whose negligence did not arise from, or in the course of, serious and wilful misconduct,

the worker has no right of action against the other worker.

(4b) Where—

- (a) a worker suffers a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2)); and
- (b) action is taken against a person other than the employer for damages in respect of the disability,

the other person has no right to recover contribution from the employer.

(5) Where—

- (a) compensation is paid or payable under this Act in respect of a compensable disability;
- (b) a right of action exists against a person other than the employer for damages in respect of the disability,

the person by whom the compensation is paid or payable is entitled to recover from that other person the amount of the compensation in accordance with subsection (7).

(6) Where—

- (a) a compensable disability arises out of the use of a motor vehicle;
- (b) the employer was or ought to have been insured against liability for the disability under the law of compulsory third-party motor vehicle insurance;
- (c) compensation is paid or payable by the Corporation under this Act in respect of the disability,

the Corporation is entitled to recover the amount of the compensation in accordance with subsection (7).

(7) Where—

- (a) compensation is paid or payable to a person ("the injured party") under this Act;

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- (b) the injured party has received, or is entitled to, damages from another person ("the wrongdoer") in pursuance of rights arising from the same trauma as gave rise to the rights to compensation under this Act;
- (c) the person by whom the compensation is paid or payable under this Act ("the claimant") is entitled to recover the amount of the compensation by virtue of subsection (5) or (6),

then the following provisions apply:

- (d) the claimant is entitled to recover the amount of compensation paid or payable under this Act from the wrongdoer or the injured party but subject to the following qualifications:
  - (i) no amount may be recovered from the wrongdoer in excess of the wrongdoer's unsatisfied liability to the injured party; and
  - (ii) the claimant must exhaust its rights against the wrongdoer before recovering against the injured party; and
  - (iii) no amount may be recovered from the injured party in excess of the amount of the damages received by the injured party;
- (e) the claimant shall, on giving notice to a wrongdoer of an entitlement to recover compensation under this section, have a first charge, to the extent of the entitlement, on damages payable by the wrongdoer to the injured party;
- (f) any amount recovered by the claimant against a wrongdoer under this subsection shall be deemed to be an amount paid in or towards satisfaction of the wrongdoer's liability to the injured party;
- (g) an action for the recovery of compensation under this subsection—
  - (i) may be heard and determined by the Industrial Court; and
  - (ii) must be commenced within 3 years after the date of the trauma referred to in paragraph (b).

(7a) This section is intended to apply in relation to any action that arises out of the occurrence of a compensable disability—

- (a) irrespective of where the disability occurred; and
- (b)
  - (i) irrespective of whether the action is brought before a court of this State or before a court of some other state, territory or country; and
  - (ii) notwithstanding that the court before which the action is brought would not (but for this subsection) apply, or take into account, South Australian law.



(7b) If—

- (a) an action is brought in respect of a compensable disability in a court that is not a court of the State; and
- (b) notwithstanding subsection (7a), the court awards an amount against an employer that is in excess of the amount (if any) that would have been awarded in a similar action before a court of the State; and
- (c) the Corporation is liable to pay the amount awarded by virtue of insurance provided under this Act,

the Corporation is entitled to recover the excess from the person to whom the amount is awarded.

(7c) In the course of proceedings under subsection (7b) a court may—

- (a) receive in evidence any transcript of evidence in proceedings before the court by which the amount was awarded and draw any conclusions of fact from the evidence that it considers proper; or
- (b) adopt any of the court's findings of fact.

(8) In this section—

"**damages**" includes any form of compensation payable apart from this Act in respect of a compensable disability;

"**employer**" includes—

- (a) any person for whose torts an employer is vicariously liable;
- (b) any person who is vicariously liable for the torts of an employer;

"**the law of compulsory third-party motor vehicle insurance**" means—

- (a) Part 4 of the *Motor Vehicles Act 1959* (including a policy of insurance under that Part); or
- (b) the law of another State or a Territory of the Commonwealth that corresponds to Part 4 of the *Motor Vehicles Act 1959* (including a policy of insurance under such a law).

\* \* \* \* \*

**Prohibition of double recovery of compensation**

**55.** (1) Where a disability is compensable under this Act and under a corresponding law, compensation shall not be paid both under this Act and under the corresponding law.

(2) Where compensation is in fact paid both under this Act and under a corresponding law, the compensation paid under this Act may be recovered as a debt due to the person by whom it was paid from the person to whom it was paid.

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(3) The fact that compensation or damages in respect of a disability have been recovered under a foreign law is a bar to the recovery of compensation in respect of the same disability under this Act.

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**Compensation payable in respect of disabilities arising from employment on ships**

**57.** Where a compensable disability arises from employment on a ship the amount of the compensation is not subject to any limitation imposed by the *Merchant Shipping Act 1894* of the United Kingdom.

**Certain sporting injuries not to be compensable**

**58.** (1) Notwithstanding any other provision of this Act, but subject to subsection (2), where—

- (a) a worker is employed by an employer solely—
  - (i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation); or
  - (ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting); and
- (b) remuneration is not payable under the contract of employment except in respect of such employment,

a disability arising out of or in the course of that employment is not compensable.

(2) This section does not apply to—

- (a) a person authorised or permitted under the *Racing Act 1976* to ride or drive in a race as defined in that Act; or
- (b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match; or
- (c) a person who derives an entire livelihood, or an annual income in excess of the prescribed amount, from employment of a kind referred to in subsection (1)(a).

(3) In this section—

"the prescribed amount" means—

- (a) in relation to 1987—\$27 200;
- (b) in relation to a subsequent year—a sum (calculated to the nearest multiple of \$100) that bears to \$25 000 the same proportion as the Consumer Price Index for the September quarter of the immediately preceding year bears to the Consumer Price Index for the September quarter, 1985.

**Reports of return to work, etc.**

**58A.** (1) An employer (other than an exempt employer) must notify the Corporation whenever—

- (a) a worker who has been receiving weekly payments for total incapacity returns to work;  
or
- (b) there is a change in the weekly earnings of a worker who is receiving weekly payments for partial incapacity; or
- (c) there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity,

(but notification is not required in a case or class of cases excepted by the Corporation from the operation of this subsection).

(2) Where a worker who has been receiving weekly payments for total incapacity returns to work with an employer other than the employer from whose employment the disability arose, the worker must notify that previous employer of the return to work.

(3) A notification under subsection (1) or (2)—

- (a) must be given within 14 days of the occurrence of the notifiable event or such longer period as the regulations may allow; and
- (b) must include full particulars of the notifiable event.

(4) A person who without reasonable excuse fails to comply with this section is guilty of an offence.

Penalty: \$1 000.

**Employer's duty to provide work**

**58B.** (1) If a worker who has been incapacitated for work in consequence of a compensable disability is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer from whose employment the disability arose must provide suitable employment for the worker (the employment being employment for which the worker is fit and, subject to that qualification, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was employed immediately before the incapacity).

(2) Subsection (1) does not apply if—

- (a) it is not reasonably practicable to provide employment in accordance with that subsection (and the onus of establishing that lies in any legal proceedings on the employer); or
- (b) the worker left the employment of that employer before the commencement of the incapacity for work; or
- (c) the worker terminated the employment after the commencement of the incapacity for work; or

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- (e) the employer currently employs less than 10 employees, and the period that has elapsed since the worker became incapacitated for work is more than 1 year.

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**Notice of termination of employment to be given in certain cases**

**58C.** (1) If a worker has suffered a compensable disability, the employer from whose employment the disability arose must not terminate the worker's employment without first giving the Corporation and the worker at least 28 days notice of the proposed termination.

Maximum penalty: \$15 000.

(2) However, notice of termination is not required under this section if—

- (a) the employment is properly terminated on the ground of serious and wilful misconduct; or
- (b) the worker is neither receiving compensation, nor participating in a rehabilitation program, for the disability; or
- (c) the worker's rights to compensation for the disability have been exhausted or the time for making a claim for compensation has expired.

[In legal proceedings, the burden of establishing that an employer terminated a worker's employment on the ground of serious and wilful misconduct lies on the employer.]

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**PART 5  
REGISTRATION AND FUNDING**

**DIVISION 1—REGISTRATION OF EMPLOYERS**

**Registration of employers**

**59.** (1) Subject to subsection (2), an employer shall not employ a worker in employment to which this Act applies unless the employer is registered by the Corporation.

Penalty: \$10 000 for each worker so employed.

(2) An employer is not required to be registered if the employer is exempted by the regulations from the obligation to be registered.

(3) No offence is committed by an employer against this section if the employer applies for registration within 14 days after the obligation to be registered arises.

**Exempt employers**

**60.** (1) Subject to this section, an employer or a group of employers may apply to the Corporation for registration as an exempt employer or as a group of exempt employers.

(2) An application shall not be made under subsection (1) unless—

(a) in the case of an application by an individual employer—

- (i) the employer is a body corporate employing more than the prescribed number of workers; or
- (ii) the employer is an indemnified maritime employer;

(b) in the case of an application by a group—

- (i) the members of the group are related corporations or local government corporations; and
- (ii) the members of the group employ in aggregate more than the prescribed number of workers.

(3) Where—

(a) an application is made under subsection (1); and

(b) the Corporation is satisfied—

- (i) that the employer or the employers constituting the group have reached a standard that, in the opinion of the Corporation, must be achieved before conferral of exempt status can be considered; and
- (ii) that in all the circumstances it is appropriate to do so,

the Corporation may register the employer or the group as an exempt employer or a group of exempt employers.

(4) A registration under this section—

(a) is subject to—

- (i) a condition that the exempt employer must not exercise any power or discretion delegated to the exempt employer under this Act unreasonably; and
- (ii) such other terms and conditions as the Corporation determines from time to time or as are prescribed by the regulations; and

(b) where the exemption was granted on the ground that the employer is an indemnified maritime employer—is subject to a condition limiting the effect of the exemption to the workers, or a specified class of the workers, to whom the relevant indemnity relates; and

(c) takes effect on a date fixed by the Corporation; and

(d) subject to this section—

- (i) has effect for an initial period (not exceeding three years) determined by the Corporation; and
- (ii) may, on further application to the Corporation, be renewed from time to time for a further period (not exceeding three years) determined by the Corporation at the time of the renewal.

(5) The Corporation may revoke the registration of an exempt employer, or reduce the period of registration if the employer breaches or fails to comply with this Act or a term or condition of registration.

(6) In deciding whether to grant, renew, revoke, or reduce the period of registration as an exempt employer or group of employers under this section the Corporation may have regard to such matters as it considers relevant and will have regard to the following:

- (a) whether the employer or group is, and is likely to continue to be, able to meet its liabilities;
- (b) the resources that the employer or group has for the purpose of administering claims for compensation;
- (c) the incidence and severity of compensable disabilities arising from employment by the employer or employers;
- (d) the effect, or likely effect, of the working conditions under which workers are employed by the employer, or any of the employers, on the health and safety of those workers;
- (e) the record of the employer or employers in relation to the rehabilitation of disabled workers;
- (f) the record of the employer or employers in providing suitable employment to workers who suffer compensable disabilities;

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- (g) the views of any registered association that has, in the opinion of the Corporation, a proper interest in the matter,

but once an employer or group has been registered as exempt, the Corporation must not, in deciding whether to renew the registration, consider the effect of the registration on the Compensation Fund.

(7) Where employers are registered as a group of exempt employers, one of those employers nominated in the application for registration shall, for the purposes of this Act, be treated as the employer of all workers employed by the various members of the group.

(8) Notwithstanding subsection (7), the members of the group are jointly and severally liable to satisfy the liabilities under this Act of the member referred to in subsection (7).

(9) In this section—

**"indemnified maritime employer"** means an employer that has the benefit of an indemnity granted by a member of the International Group of Protection and Indemnity Associations;

**"related corporations"** means corporations that are related corporations for the purposes of the *Companies (South Australia) Code*.

**The Crown and certain agencies to be exempt employers**

**61.** (1) Subject to subsection (2), the Crown and any agency or instrumentality of the Crown shall be deemed to be registered as exempt employers.

(2) The Governor may, by proclamation, declare that an agency or instrumentality of the Crown is not to be regarded as an exempt employer, and in that event the agency or instrumentality shall not be regarded as an exempt employer.

(3) The Governor may, by further proclamation, vary or revoke a proclamation under subsection (2).

(4) In this section—

**"agency or instrumentality of the Crown"** includes any body, or body of a specified class, prescribed by regulation for the purposes of this definition.

(5) A regulation for the purposes of subsection (4) may, if the regulation so provides, take effect from a day antecedent to the day on which it is made.

**Applications**

**62.** (1) An application for registration as an employer, an exempt employer or a group of exempt employers—

(a) must be made in the prescribed manner and form; and

(b) must be accompanied by the prescribed information; and

- (c) in the case of an application for registration of a group of exempt employers—must nominate a member of the group as the employer who is, for the purposes of this Act, to be treated as the employer of all workers employed by the various members of the group.

(2) An application for registration as an exempt employer or group of exempt employers must be accompanied by a fee fixed in accordance with the regulations.

## **DIVISION 2—DELEGATION TO EXEMPT EMPLOYERS**

### **Delegation to an exempt employer**

**63.** (1) Subject to this Act, the following powers and discretions of the Corporation, insofar as they are exercisable in relation to workers of an exempt employer, are delegated to the exempt employer—

- (a) the powers and discretions under the following sections:

Section 26

Section 28A

Section 32 (but not section 32(11) and (13))

Section 35

Section 36

Section 38

Section 39

Section 41

Section 42

Section 42A

Section 42B

Section 43

Section 44

Section 45

Section 53 (but not the power to approve recognised medical experts for the purposes of section 53(2))

Section 106

Section 106A;

- (b) any other prescribed powers and discretions.

(2) Delegated powers and discretions referred to in subsection (1) shall not be exercised by the Corporation in relation to the workers of the exempt employer.

(3) Subject to this section, the Corporation shall not overrule or interfere with a decision of an exempt employer made in the exercise of delegated powers or discretions.

- (3aa) An exempt employer—

- (a) must notify the Corporation, in accordance with the regulations, of its intention to make an assessment under Division 4B of Part 4 (Compensation for Loss of Earning Capacity) and must not proceed to make the assessment except with the Corporation's consent; and



(b) is subject to direction by the Corporation as to how it is to exercise its powers and discretions under that Division in relation to the workers, or a particular worker, of the employer.

(3a) The Corporation may direct an exempt employer how the employer is to exercise its discretion regarding the maximum lump sum to be paid to an orphan child, or to orphan children.

(4) A decision of an exempt employer made in pursuance of a power or discretion delegated under subsection (1) shall have the same force and effect as a decision of the Corporation and shall be subject to review and appeal in the same way as a decision of the Corporation.

(5) A reference to the Corporation in the provisions of this Act referred to in subsection (1) shall, in relation to any matter over which an exempt employer has delegated powers or discretions, be construed as a reference to that exempt employer.

(6) If an exempt employer exercises a power or discretion delegated under subsection (1) unreasonably, the Corporation may withdraw (in whole or in part) the delegation effected by subsection (1).

(7) Where an employer ceases to be an exempt employer, the delegation to the employer under this section will, if the Corporation so determines, continue to such extent as the Corporation thinks fit in relation to disabilities that occurred before cessation of the exemption (and any act or omission of the employer within the scope of the delegation will be taken for the purposes of this Act, to be the Act or omissions of an exempt employer).

### **DIVISION 3—THE COMPENSATION FUND**

#### **The Compensation Fund**

**64.** (1) The Corporation shall establish and maintain a fund entitled the "Compensation Fund".

(2) The Compensation Fund shall consist of—

- (a) amounts received from the imposition of levies under this Part;
- (b) any income and accretions produced by the investment of money from the Fund;
- (c) any money advanced to the Corporation for the purposes of the Fund;
- (d) other money received by the Corporation under this Act or in the administration of this Act;
- (e) to the extent provided by regulation—money received by the Corporation under, or in the administration of, another Act.

(3) The Compensation Fund shall be applied towards—

- (a) the payments of compensation that the Corporation is liable to make under this Act;
- (b) the costs incurred by the Corporation in performing its functions under this Act;
- (c) the costs of the system of review, conciliation and appeal established by this Act;

- (d) to the extent provided by regulation—the costs incurred by the Corporation in carrying out its functions under another Act.

(3a) The amount to be paid from the Compensation Fund under subsection 3(c) will be determined by agreement between the Chief Executive Officer of the department of the Minister to whom the administration of this Act is committed and the Corporation or, in default of agreement, by the Minister.

(4) The Corporation may invest money that is not immediately required for the purposes of the Compensation Fund as the Corporation thinks fit.

(5) Subject to subsection (6), in deciding how to invest funds that are available for investment, the Corporation shall endeavour to achieve the highest possible rates of return.

(6) The Corporation is not required to comply with subsection (5) if the board unanimously decides, in relation to certain funds, to invest those funds at a lesser rate of return but so as to promote the economy of the State.

(7) Until there are sufficient funds in the Compensation Fund to meet the liabilities of the Fund, the Treasurer may, as may be required from time to time, lend money to the Corporation on such terms and conditions as the Treasurer may determine.

(8) The Treasurer may charge a fee of such amount as the Treasurer thinks fit in respect of any loan made to the Corporation under subsection (7).

#### **DIVISION 4—IMPOSITION OF LEVIES**

##### **Preliminary**

**65.** (1) In this Division—

"**class**" of industry includes a subclass;

"**remuneration**" includes payments made to or for the benefit of a worker which by the determination of the Corporation constitute remuneration but does not include payments determined by the Corporation not to constitute remuneration.

(2) For the purposes of this division, two or more workplaces in close proximity may, if the Corporation so determines, be regarded as a single workplace.

(3) For the purposes of this Division, two or more employers will, if the Corporation so determines, constitute a group if—

(a) they are capable of being treated as members of a group under the *Pay-roll Tax Act 1971*; or

(b) they are related in some other way.

(4) Where two or more employers constitute a group, one of those employers, nominated by the Corporation after consultation with the members of the group, will be treated as the employer of all workers employed by the members of the group.

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**Imposition of levies**

66. (1) An employer (not being an exempt employer) is liable to pay a levy to the Corporation under this section.

(2) The levy is a percentage of the aggregate remuneration paid to the employer's workers in each class of industry in which the employer employs workers.

(3) The Corporation may for the purposes of this section divide the industries carried on in the State into various classes.

(4) The Corporation may determine any question as to the class of industry in which an employer employs workers.

(5) In determining the class of industry in which an employer employs workers the following provisions will be applied—

- (a) if the employer employs a worker in two or more classes of industry—
  - (i) the worker will, subject to any determination by the Corporation to the contrary, be treated as if solely employed in the class of industry in which he or she is predominantly employed; and
  - (ii) if it is not possible to determine which is the predominant class, the worker will be treated as if solely employed in a class of industry determined by the Corporation; and
- (b) if the employer employs workers in different classes of industry at a particular workplace, all workers employed at the workplace will, if the Corporation so determines, be treated as engaged in the predominant class of industry; and
- (c) in determining what is the predominant class of industry, the Corporation will have regard to—
  - (i) the importance within the employer's total operations of each class of industry in which workers are employed; and
  - (ii) any other relevant factor.

(6) The Corporation—

- (a) must fix the percentages applicable to the various classes of industry by notice published in the *Gazette*; and
- (b) may, by subsequent notice published in the *Gazette*, vary the percentages so fixed.

(7) Subject to subsection (9), a percentage fixed under subsection (6) in relation to a class of industry must not exceed 7.5 per cent.

(8) In fixing the percentage applicable to a particular class of industry the corporation must have regard to—

- (a) the extent to which work carried on in that class is, in the opinion of the Corporation, likely to contribute to the cost of compensable disabilities; and
- (b) the need for the Corporation to establish and maintain sufficient funds—
  - (i) to satisfy the Corporation's current and future liabilities in respect of compensable disabilities attributable to traumas occurring in a particular period from levies raised from remuneration paid in that period; and
  - (ii) to make proper provision for administrative and other expenditure of the Corporation; and
  - (iii) to make up any insufficiency in the Compensation Fund resulting from previous liabilities or expenditures or from a reassessment of future liabilities.

(9) The Corporation may fix a percentage in excess of 7.5 per cent in relation to a particular class of industry if in each of two consecutive years the Corporation's estimate of the aggregate cost of claims in respect of disabilities attributable to traumas occurring in the year in the relevant class exceeds 30 per cent of the aggregate leviable remuneration paid to workers in that class.

(10) A percentage may not be fixed under subsection (9) in excess of 20 per cent.

(11) A percentage fixed under subsection (9) will be reviewed annually by the Corporation and applies until it is revoked or varied by the Corporation.

(12) The Corporation may, in prescribed circumstances, remit the levy payable by an employer under this section wholly or in part.

(13) Subject to any remission of levy granted by the Corporation where—

- (a) the amount of levy payable by an employer in a financial year would, apart from this subsection, be less than the prescribed minimum levy; or
- (b) an employer is registered but no levy would, apart from this subsection, be payable by the employer for that financial year,

the levy payable by the employer for that financial year is the prescribed minimum levy.

#### **Adjustment of levy in relation to individual employers**

**67.** (1) The Corporation may, in relation to a particular employer, having regard to all or any of the following matters—

- (a) the adequacy or inadequacy of measures taken by the employer to reduce the incidence of work related traumas;
- (b) the incidence or costs of claims for compensable disabilities suffered by the employer's workers (disregarding claims of a class excluded from the ambit of this paragraph by regulation);
- (c) the rehabilitation facilities or services for disabled workers provided by the employer, or the absence or inadequacy of such facilities or services provided by the employer;

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- (d) the employer's practices as to the retention, employment or re-employment of disabled workers (and, in particular, any failure on the employer's part to provide, in accordance with this Act, employment to a worker who has suffered a compensable disability in the employer's employment);
- (e) such other matters (whether similar or dissimilar to those referred to above) as the Corporation considers relevant,

grant to the employer a remission of the levy that would be otherwise payable or impose on the employer a supplementary levy (as the case may require).

(2) If the Corporation imposes a supplementary levy on an employer under subsection (1), it may also require the employer to observe conditions stipulated by the Corporation in a written notice given by the Corporation to the employer.

(3) If an employer fails to comply with a condition imposed under this section, the Corporation may impose on that employer a further supplementary levy.

(4) The Corporation may, for any proper reason—

- (a) vary or revoke a condition imposed under this section; or
- (b) revoke or reduce a supplementary levy imposed, or a remission of levy granted, under this section.

(5) The Corporation may establish rehabilitation and return to work programs for disabled workers on terms under which an employer who participates in the program by providing employment for disabled workers and complying with the other conditions of the scheme is entitled to reduction of the levy that would otherwise be payable by the employer on a basis set out in the scheme.

(6) The terms and conditions of a rehabilitation and return to work scheme established under subsection (5) must be promulgated by regulation.

**DIVISION 5—SPECIAL LEVY FOR EXEMPT EMPLOYERS**

**Special levy for exempt employers**

**68.** (1) An exempt employer is liable to pay a levy to the Corporation under this section.

(2) The levy payable by an exempt employer will be a percentage of the levy that would have been payable by the employer if the employer were not registered as an exempt employer and will be fixed by the Corporation with a view to raising from exempt employers—

- (a) a fair contribution towards the administrative expenditure of the Corporation; and
- (b) a fair contribution towards the cost of rehabilitation funding; and
- (c) a fair contribution towards the cost to the Corporation of reviews and appeals that relate to decisions of exempt employers; and
- (d) a fair contribution towards actual and prospective liabilities of the Corporation arising from the insolvency of employers.

(3) If the Corporation is satisfied that there are good reasons for differentiating between different classes of exempt employers, the percentage on which the levy for exempt employers is based may vary from class to class.

(4) Where the measures taken by an exempt employer—

- (a) to reduce the incidence of work related traumas and disabilities; and
- (b) to provide for the rehabilitation of disabled workers; and
- (c) to provide for the administration of claims,

conform to or exceed standards determined by the Corporation for the purposes of this subsection, the Corporation may grant to the exempt employer such remission of the levy that would otherwise be payable by the exempt employer as the Corporation thinks fit.

#### **DIVISION 6—PAYMENT OF LEVIES**

##### **Returns by employers**

**69.** (1) Every employer shall, within 7 days after the end of each month, furnish the Corporation with a return in a form approved by the Corporation containing—

- (a) (i) if the employer is an exempt employer—a statement of the aggregate remuneration paid to the employer's workers during the month;
- (ii) if the employer is not an exempt employer—a statement of the aggregate remuneration paid to the employer's workers in each class of industry during that month; and
- (b) prescribed information in relation to claims lodged with the employer under this Act during that month; and
- (c) such other information as may be prescribed or required by the Corporation.

(2) The return must be accompanied by the levy payable by the employer in respect of that month.

(3) The Corporation may require an employer to provide—

- (a) a certificate signed by the employer, a person authorised to act on the employer's behalf or, if the Corporation so requires, a person with prescribed accounting qualifications, verifying the information contained in a return; or
- (b) some other verification of that information of a kind stipulated by the Corporation.

(4) The Corporation may—

- (a) determine that a requirement of this section will not apply to a particular employer or employers of a particular class; and

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- (b) impose, by notice to the particular employer or by notice in the *Gazette*, such other requirements on that employer or those employers as may be appropriate in the circumstances.

(4a) The Corporation may, by further notice in the *Gazette*, vary or revoke requirements imposed under subsection (4)(b), or impose new requirements.

(5) Where—

- (a) an employer fails to comply with a requirement imposed by or under this section; or
- (b) a return furnished by or on behalf of an employer includes a statement that is, to the knowledge of the employer, false or misleading in a material particular; or
- (c) an employer in a return intentionally understates the aggregate remuneration paid by the employer,

the employer is guilty of an offence.

Penalty: \$50 000.

(6) The Corporation may determine that payments of a particular class are to be brought into account or to be excluded from account in the calculation of aggregate remuneration paid by an employer for the purposes of this Part.

**Deferred payment of levy**

**69A.** (1) The Corporation may, on application by an employer, defer the payment of levy by the employer if satisfied that—

- (a) the employer is in financial difficulties; but
- (b) the employer has a reasonable prospect of overcoming the financial difficulties and the deferment would assist materially in overcoming those difficulties.

(2) A deferment may be given under this section on conditions that the Corporation considers appropriate having regard to the objects of this Act.

(3) The Corporation may, by written notice to the employer, cancel a deferment under this section.

(4) If a deferment is cancelled, the employer must pay to the Corporation the amount covered by the deferment as required by the notice of cancellation.

**DIVISION 7—RECOVERY OF LEVIES AND FINES**

**Recovery on default**

**70.** (1) Where an employer—

- (a) fails or neglects duly to furnish a return when required by or under this Act; or
- (b) furnishes a return that the Corporation has reasonable grounds to believe to be defective in any respect,

the Corporation may make an assessment of levy on the basis of estimates made by the Corporation.

(2) Where an employer fails to pay a levy, or the full amount of a levy, required by or under this Act, the Corporation will make an assessment of the amount payable by the employer.

(3) The Corporation may, by assessment under subsection (1) or (2), impose on the employer a fine of an amount (not exceeding 3 times the amount assessed) fixed by the Corporation.

(4) The Corporation may for any proper reason remit a fine imposed under subsection (3) wholly or in part.

(5) An employer to whom a notice of an assessment or a fine under this section is given shall pay the amount of the assessment or fine within the time allowed in the notice.

Penalty: \$10 000.

**Penalty for late payment**

**71.** (1) Where an employer fails to pay a levy as and when required by or under this Part—

(a) the amount in arrears will, unless the Corporation determines otherwise be increased by penalty interest at the prescribed rate; and

(b) the Corporation may impose on the employer a fine of an amount (not exceeding 3 times the amount assessed) fixed by the Corporation.

(2) The Corporation may for any proper reason remit penalty interest or a fine imposed under subsection (1) wholly or in part.

(3) An employer to whom notice of an assessment or a fine under this section is given shall pay the amount of the assessment or fine within the time allowed in the notice.

Penalty: \$10 000.

**Review of levy, penalty interest or fine**

**72.** (1) Where an employer considers that a decision of the Corporation as to—

(a) the fixing or assessment of a levy; or

(b) the imposition of penalty interest or a fine; or

(c) the imposition or variation of a condition of a kind that may lead to the imposition of a supplementary levy,

is unreasonable, the Board must, on application by the employer, review the decision.

(2) An application for review does not suspend a liability to pay a levy, penalty interest or a fine.



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(3) The review will be conducted, in accordance with procedures determined by the Board, by the Board itself, or by a committee or person to whom the Board has delegated its powers of review under this section, and the Board has an absolute discretion as to whether it will permit the employer or a representative of the employer to be heard orally on the review.

(4) On review, the Board may—

- (a) alter a levy or an assessment;
- (b) quash or reduce penalty interest or a fine;
- (c) direct the repayment of amounts overpaid;
- (d) quash or vary a condition imposed by the Corporation.

(5) An application under this section for review of a decision of the Corporation—

- (a) must, if the decision relates to a class of employers, be made within four months after notice of the decision was given; or
- (b) must, if the decision relates to an individual employer, be made within two months after the employer was given notice of the decision,

unless the Board (or its delegate) allows an extension of time for making the application.

**DIVISION 8—MISCELLANEOUS**

**Separate accounts**

**73.** The Corporation shall, in a manner and form determined by the Corporation, maintain a separate account for each employer in which the Corporation records—

- (a) the levies charged to the employer; and
- (b) the amounts paid by an employer; and
- (c) the costs related to claims arising from employment by the employer, distinguishing the costs related to claims for unrepresentative disabilities and secondary disabilities from the other claims; and
- (d) all other costs attributable to the employer; and
- (e) any other matter that the Corporation thinks fit.

**Liability to keep accounts**

**74.** (1) For the purpose of completing returns in accordance with this Part, an employer shall keep—

- (a) an accurate account of all remuneration paid or payable to the workers of the employer;
- (b) such other information as may be required by the Corporation.

Penalty: \$10 000.

(2) Where an employer employs workers in more than one class of industry, the Corporation may require the employer to keep an account and other information under subsection (2) in respect of each separate class.

(3) Any accounts and other information required to be kept under this section must be kept within the State and in writing in the English language or so as to be readily accessible and convertible into writing in the English language.

(4) This section does not apply so as to require the retention of accounts or other information beyond 7 years or such lesser period as the Corporation may determine in a particular case from the end of the period to which the accounts or other information relates.

**Person ceasing to be an employer**

**75.** (1) Where a registered employer ceases to be an employer who is required to be registered under this Part, the person shall, within 14 days of ceasing to be such an employer—

- (a) give written notice in a manner and form approved by the Corporation; and
- (b) furnish the Corporation, in a manner and form approved by the Corporation, with such information as the Corporation may require.

(2) The Corporation may cancel the registration of an employer if it is satisfied that the person has ceased to be an employer who is required to be registered under this Part.

(3) The cancellation of registration does not affect any liability that arose before the date of cancellation.

**Proof of registration**

**76.** An employer shall, at the request of an authorised officer, an officer of a registered association or any other person appointed by the Corporation in writing for the purposes of this section, produce evidence of the employer's registration under this Act.

Penalty: \$1 000.

**Recovery of levy**

**76A.** A levy payable under this Act (and any penalty interest or fine imposed by the Corporation under this Part) is a debt due to the Corporation and may be recovered by the Corporation in a court of competent jurisdiction.

**PART 6  
REVIEWS AND APPEALS**

**DIVISION 1—REVIEW OFFICERS**

**Establishment of the Review Panel**

77. The *Review Panel* is established.

**Composition of the Panel**

77A. The Panel consists of—

- (a) a Review Officer to be called "the Chief Review Officer"; and
- (b) such other Review Officers as are appointed and hold office under this Division.

**Appointment of Review Officers**

77B. (1) The Governor may, on the recommendation of the Minister, appoint a person to the office of Chief Review Officer and appoint such other persons as the Minister considers necessary for the proper administration of the system of review established by this Act to the office of Review Officer.

(2) Subject to subsection (3), the Minister may not recommend a person for appointment as the Chief Review Officer or as a Review Officer until that person has been interviewed by a committee established by the Minister (which must include at least one member of the board appointed under section 8(1)(b) (or the deputy of such a member) and at least one member of the board appointed under section 8(1)(c) (or the deputy of such a member)), and the committee has reported to the Minister on the suitability of the prospective appointee for appointment.

(3) Subsection (2) does not apply in relation to the appointment of a person who has previously held office as a Review Officer.

**Conditions of appointment**

77C. (1) A Review Officer is to be appointed for a term of five years and is, on the expiration of a term of office, eligible for reappointment.

(2) The salary and conditions of office of a Review Officer are to be as determined by the Governor.

(3) A person ceases to hold office as a Review Officer if the person—

- (a) resigns by notice in writing addressed to the Minister; or
- (b) completes a term of office and is not reappointed; or
- (c) is removed from office by the Governor on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties satisfactorily.

(4) A Review Officer is not a member of the Public Service.

(5) Unless otherwise determined by the Governor in the relevant instrument of appointment, a Review Officer is an employee within the meaning of the *Superannuation Act 1988*.

(6) A Review Officer incurs no liability for an honest act or omission in carrying out or purportedly carrying out official functions.

#### **Responsibilities of the Chief Review Officer**

**77D.** (1) The Chief Review Officer is responsible, subject to the general direction of the Minister, for the administration of the business of the Review Panel.

(2) A Review Officer authorised by the Minister may, if the office of Chief Review Officer is vacant, or the Chief Review Officer is absent or unavailable to carry out the duties of office, exercise any of the powers or functions of the Chief Review Officer.

(3) The Chief Review Officer may (without derogation from his or her own powers) delegate to another Review Officer any administrative power or function.

(4) A delegation under subsection (3) may be absolute or conditional and is revocable at will.

(5) A Review Officer is subject to direction by the Chief Review Officer on administrative matters (including the duties to be performed by the Review Officer and the times and places at which those duties are to be performed), and on the practices and procedures to be observed in proceedings under this Act, but is not subject to any direction as to the decision that may be made on the determination of any proceedings.

(6) The Chief Review Officer must, on or before 30 September in each year, prepare a report for the Minister on the work of the Review Officers under this Act during the preceding financial year.

(7) The Minister must, within six sitting days after receiving a report under subsection (6), cause copies to be laid before both Houses of Parliament.

(8) The Chief Review Officer must provide to the Minister such other reports as the Minister may require from time to time.

#### **Rules**

**77E.** The Governor may, by regulation, make rules regulating the practice and procedure to be followed in connection with proceedings before a Review Officer.

### **DIVISION 2—THE WORKERS COMPENSATION APPEAL TRIBUNAL**

#### **The Tribunal**

**78.** There shall be a Workers Compensation Appeal Tribunal.

#### **Membership of the Tribunal**

**79.** (1) The Tribunal consists of—

- (a) the President of the Industrial Court, who will be the President of the Tribunal; and
- (b) the Deputy Presidents of the Industrial Court, who will be Deputy Presidents of the Tribunal; and
- (c) such persons (if any) as the Governor may appoint on the nomination of the Minister as additional Deputy Presidents of the Tribunal.

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(2) A person is not eligible for appointment as a Deputy President of the Tribunal unless that person is a legal practitioner of at least seven years standing.

(3) Before nominating a person for appointment as a Deputy President of the Tribunal, the Minister must consult with the United Trades and Labor Council and with associations that represent the interests of employers.

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(5) A member of the Tribunal may be appointed on a permanent or acting basis.

(6) A person appointed to the Tribunal will cease to be a member of the Tribunal if that person—

- (a) attains the age of 65 years; or
- (b) resigns by notice in writing addressed to the Minister; or
- (c) in the case of a member appointed on an acting basis—completes the term for which the member was appointed; or
- (d) is removed from office by the Governor on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily duties of office.

(7) A member of the Tribunal shall be entitled to such fees, allowances and expenses as the Governor may approve.

**Constitution of Tribunal**

**80.** (1) For the purpose of any proceedings, the Tribunal will, in accordance with the direction of the President or the rules of the Tribunal, be constituted of—

- (a) one member of the Tribunal; or
- (b) three members of the Tribunal.

(2) Where the Tribunal is constituted by three members, a decision in which any two members concur is a decision of the Tribunal.

**Immunity**

**81.** No liability attaches to a member of the Tribunal for an act or omission by the member, or by the Tribunal, in good faith and in the exercise or purported exercise of a power or function, or the discharge or purported discharge of a duty, of the member or the Tribunal.

**Rules of the Tribunal**

**82.** (1) The President of the Tribunal may make rules regulating the practice and procedure of the Tribunal.

(2) Without limiting the generality of subsection (1), those rules may make provision for—

- (a) prehearing conferences presided over by a member of the Tribunal sitting alone;
- (b) the disclosure of information between the parties to an appeal before the hearing of the appeal;
- (c) recording the terms of any settlement of an appeal;
- (d) procedures to be followed in default of the appearance of a party to an appeal.

(3) Subject to subsection (4), any hearing of an appeal before the Tribunal should be conducted in a place open to the public.

(4) The Tribunal may, in the interests of a party to an appeal, hear any proceedings in private.

### **The Registrar**

**82A.** (1) The Office of Registrar of the Tribunal is established.

(2) The Registrar is the chief executive officer of the Tribunal.

(3) The person holding office as Registrar of Appeal Authorities immediately before the commencement of this section will be taken to have been transferred to the office of Registrar of the Tribunal on the commencement of this section.

## **DIVISION 3—MEDICAL ADVISORY PANELS**

### **Medical Advisory Panels**

**83.** There shall be such Medical Advisory Panels as are necessary for the purposes of this Act.

### **Constitution of Medical Advisory Panels**

**84.** (1) A Medical Advisory Panel shall be constituted in relation to particular proceedings, or proceedings of a particular class, by the Minister.

(2) A Medical Advisory Panel will consist of—

- (a) a presiding officer; and
- (b) two ordinary members.

(3) Each Medical Advisory Panel shall be established as a specialised panel in relation to a particular class of disabilities and the members of the panel must be persons with specialised knowledge and extensive experience of disabilities of that class.

(4) For the purpose of constituting Medical Advisory Panels there shall be—

- (a) a panel of presiding officers consisting of specialists nominated by the Minister after taking into account the recommendations of the Corporation made by unanimous decision of the board;

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- (b) a panel of ordinary members consisting of specialists nominated by the Minister after taking into account the recommendations of the Corporation made by unanimous decision of the board.

(5) Where a specialist has been engaged to treat, or to furnish a report in relation to, a worker's disability, the specialist shall not sit as a member of a Medical Advisory Panel in proceedings to which the worker is a party.

(6) A reference in this section to a specialist is a reference to a medical expert who has specialised knowledge and extensive experience in a particular field of medicine or health care.

(7) A person ceases to be a member of a panel if that person—

- (a) resigns by notice in writing addressed to the Minister;
- (b) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties;
- (c) has completed a period of 5 years since being nominated, or last renominated as a member of the panel and is not renominated to the panel.

(8) A member of a panel shall be entitled to such fees, allowances and expenses as the Governor may approve.

**Procedure of Medical Advisory Panels**

**85.** (1) The presiding officer of a Medical Advisory Panel shall preside at the hearing of any proceedings by the Panel.

(2) A decision in which any 2 members of a Medical Advisory Panel concur is a decision of the Panel.

(3) A Medical Advisory Panel may require a worker on whose medical condition the Panel has been asked to advise to undergo a medical examination by the Panel or a member of the Panel, or by a medical expert nominated by the Panel and approved by the Corporation.

(4) A member of a Medical Advisory Panel who examines a worker under subsection (3) cannot be subsequently called to give evidence in any proceedings related to the worker's claim.

(5) When a Medical Advisory Panel completes its consideration of a matter referred for its advice, the Panel must—

- (a) give its advice in writing to the review authority by which the matter was referred; and
- (b) provide the parties to the proceedings before the review authority with copies of the advice.

**Confidentiality**

**85A.** A person must not disclose a matter arising before a Medical Advisory Panel except—

- (a) in the course of the administration of this Act or for the purposes of proceedings under this Act; or

- (b) in the course of proceedings before a court or a tribunal constituted by law; or
- (c) if the disclosure is required by or under another Act or law.

**Immunity**

**86.** No liability attaches to a member of a Medical Advisory Panel for an act or omission by the member, or by the Panel, in good faith and in the exercise or purported exercise of a power or function, or in the discharge or purported discharge of a duty, of the member or the Panel.

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**DIVISION 5—PROCEEDINGS BEFORE REVIEW AUTHORITIES**

**Principles relating to reviews**

**88.** (1) In proceedings under this Act, a review authority—

- (a) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(2) A review authority may refer any technical or specialised matter to an expert and accept that expert's report as evidence.

(3) Where an expert's report is obtained under subsection (2), the expert must, if a party to the proceedings so requests, be called for examination or cross-examination on the subject matter of the report.

(4) A review authority must, in conducting its proceedings under this Act, act as expeditiously as possible.

**Notice of proceedings, etc.**

**89.** (1) Reasonable notice shall be given to a party to proceedings before a review authority of the time and place at which the authority is to hear those proceedings.

(2) A party must be afforded a reasonable opportunity to make submissions to the review authority and, in the case of proceedings before a Review Officer, a reasonable opportunity to call or give evidence and to examine or cross-examine witnesses (but a Review Officer is not obliged to hear evidence from a witness—either generally or on a particular subject—if satisfied that the evidence is not relevant, or if of the opinion that the evidence would merely provide unnecessary corroboration of other evidence admitted by the Review Officer).

(2a) A review authority may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

(3) If a party does not attend at the time and place fixed by the notice, the review authority may hear the proceedings in the absence of that party.



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**Powers of Review Authority**

90. (1) In the exercise of its powers or functions, a review authority may—

- (a) by summons signed by or on behalf of the authority, require the attendance before the authority of any person; and
- (b) by summons signed by or on behalf of the authority, require the production of any relevant document, object or material; and
- (c) require any person to make an oath or affirmation truly to answer all questions put by the authority, or any person appearing before the authority; and
- (d) require any person appearing before the authority to answer any relevant questions put by the authority, any member of the authority or by any person appearing before the authority.

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(3) If any person—

- (a) who has been served with a summons to attend before a review authority fails without reasonable excuse to attend in obedience to the summons; or
- (b) who has been served with a summons to produce any document, object or material, fails without reasonable excuse to comply with the summons; or
- (c) misbehaves before a review authority, wilfully insults a review authority or any member of such an authority, or interrupts the proceedings of a review authority; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by a review authority,

that person shall be guilty of an offence and liable to a penalty not exceeding \$1 000.

(4) A person shall not be obliged to answer a question under this section if the answer to that question would tend to incriminate that person of an offence, or to produce any document, object or material if it or its contents would tend to incriminate that person of an offence.

(5) In the course of any proceedings, a review authority may—

- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact from the evidence that it considers proper; or
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

(6) Where—

- (a) the native language of a person who is to give oral evidence in any proceedings before a review authority is not English; and

- (b) the witness is not reasonably fluent in English,

the person is entitled to give that evidence through an interpreter.

(7) A person may present written evidence to a review authority in a language other than English if that written evidence has annexed to it—

- (a) a translation of the evidence into English; and
- (b) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original evidence.

### **Witness fees**

**91.** Any person who appears as a witness in proceedings before a review authority is, subject to any contrary direction by the review authority, entitled to reimbursement of expenses in accordance with the regulations.

### **Representation**

**92.** (1) A person is entitled to appear personally, or by representative, in proceedings before a review authority subject to the qualification that a person is not entitled to be represented by—

- (a) a member, or deputy member, of the board; or
- (b) a person whose name has been struck off the roll of legal practitioners or who, although a legal practitioner, is not entitled to practice the profession of law because of disciplinary action taken against him or her.

(2) Representation will not be allowed before a Medical Advisory Panel (although a worker who is to appear before a Medical Advisory Panel is entitled to be accompanied by a relative or friend to provide advice and moral support).

### **Costs**

**92A.** (1) Subject to this section, a review authority is empowered to award costs and must, in doing so, observe the following principles:

- (a) a party is entitled, subject to limits fixed by the regulations, to reimbursement of the costs of the proceedings;
- (b) a party (other than the Corporation or an exempt employer) who is represented by a legal practitioner or an officer or employee of a registered association is entitled, subject to limits fixed by the regulations, to the cost of representation;
- (c) if the proceedings are frivolous or vexatious, costs (which may exceed the limits fixed by the regulations) may be awarded against the party by whom the proceedings were brought.

(2) The award may cover not only costs related to proceedings before the review authority but also (where relevant) related conciliation proceedings.

(3) A review authority may decide against awarding costs to which a party would otherwise be entitled under this section, or reduce the amount of such costs, if of the opinion that the party acted unreasonably in bringing, or in relation to the conduct of, the proceedings.

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(4) Where costs of representation are awarded, the award may be made, if the review authority thinks fit, in favour of the representative.

(5) Unless otherwise ordered by the review authority, costs awarded under subsection (1)(a) or (b) are payable by the Corporation or an exempt employer (according to whether the Corporation or the exempt employer is the compensating authority).

(5a) The representative of a person in proceedings before a review authority must neither charge nor seek to recover in respect of his or her representation in those proceedings, and any other associated work, an amount by way of costs in excess of the amount allowable under scales published from time to time by the Minister in the *Gazette*.

(5b) The Minister must consult with the Crown Solicitor before fixing or varying a scale for the purposes of subsection (5a).

(6) Costs awarded under this section may be recovered as a debt.

**Statement of appeal rights, etc.**

**93.** (1) Subject to subsection (2), at the conclusion of a review, the review authority shall furnish the parties with a statement of—

- (a) the authority's findings of fact;
- (b) a summary of the evidence on which those findings were based;
- (c) the reasons for the authority's decision;
- (d) any further appeal rights that may be available to the parties under this Act.

(2) A review authority need not furnish a statement under subsection (1) unless a request for such a statement is made by or on behalf of a party to the review within 15 business days after the completion of the review.

(3) If a review authority does not propose to furnish a statement under subsection (1) as a matter of course, it must inform the parties, at the conclusion of the review, of the right to request such a statement.

**Reference of matters to Medical Advisory Panels**

**94.** (1) A review authority may, on its own initiative, or on the application of a party to proceedings before the authority, refer—

- (a) a medical question arising in the proceedings; or
- (b) a decision by the Corporation to disallow or reduce a charge for a service under section 32,

to a Medical Advisory Panel for advice.

(2) If a review authority differs from the advice provided by a Medical Advisory Panel, the authority must state its reasons for doing so in the reasons for its decision.

**DIVISION 6—REVIEWS AND APPEALS**

**Application for review**

**95.** (1) A person who is directly affected by a decision that is reviewable under subsection (2) may apply for a review of the decision.

(2) The following decisions are reviewable—

- (a) a decision made on a claim for compensation (including a decision in the nature of a redetermination of a claim);
- (b) a decision in relation to the nature of rehabilitation services provided, or to be provided, for a worker;
- (c) a decision to vary, suspend or discontinue weekly payments;
- (d) a decision on an application by an employer under section 36 to have weekly payments payable to a worker employed by, or formerly employed by, that employer reviewed;
- (da) a decision by the Corporation to disallow a charge for a service under section 32.

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(3) For the purposes of subsection (1), an employer from whose employment a compensable disability arises shall be regarded as being directly affected by a decision of a kind referred to in subsection (2) made in relation to that disability.

(4) An application for review must be in the prescribed manner and form and must be made within one month after the person applying for the review receives notice of the decision to which the review relates unless the Chief Review Officer, or another Review Officer authorised by the Chief Review Officer for the purposes of this provision, in his or her discretion, allows an extension of the time for making the application.

(5) An application for review must be made in accordance with the regulations.

(6) Where an application is made under this section, the Corporation must first endeavour to resolve the questions in issue by agreement.

(7) Where—

- (a) the Corporation fails to resolve the questions in issue by agreement; or
- (b) the questions in issue have not been resolved after 14 days from the date on which the application is first received by the Corporation and the applicant requests the reference of those questions to a Review Officer,

the application for review shall be referred to a Review Officer.

**Review by Review Officer**

**96.** (1) Where an application for review is referred to a Review Officer, the Review Officer shall conduct a review of the decision to which the application relates.

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(1a) A party to proceedings before a Review Officer must disclose to the Review Officer and all other parties to the proceedings the existence of all material in the party's possession or power that may be relevant to the proceedings and must, if the Review Officer so requests, produce all or any of that material to the Review Officer.

(2) On a review under this section, the Review Officer shall make a fresh determination of the matters to which the decision subject to review relates.

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(4) Where the Review Officer arrives at a decision that differs from the decision under review, the decision of the Review Officer shall take effect in substitution for that decision.

**Appeals to Tribunal**

**97.** (1) An appeal lies to the Tribunal against a decision by a Review Officer on a review.

(2) Such an appeal may be instituted by—

- (a) any person directly affected by the decision; or
- (b) the employer, or former employer, of a worker directly affected by the decision; or
- (c) the Corporation.

(3) An appeal must be in the prescribed manner and form and must be instituted within one month after the appellant receives notice of the decision of the Review Officer unless the Tribunal allows a longer time for the institution of the appeal.

(4) A notice of appeal must state with reasonable particularity the grounds of appeal and the relief sought on the appeal.

(4a) The Registrar must notify the Review Officer of the institution of an appeal.

(4b) The Review Officer must, as soon as practicable after receiving notification under subsection (4a), send to the Registrar of Review Authorities—

- (a) any application, documents, written submissions, statements, reports, and other papers lodged with, or received by, the Review Officer during the course of the earlier proceedings; and
- (b) any relevant exhibits in the custody of the Review Officer; and
- (c) a copy of any notes of evidence made by or at the direction of the Review Officer during the course of the earlier proceedings; and
- (d) a copy of the decision appealed against.

(4c) The Tribunal may, on an appeal under this section—

- (a) examine any papers, exhibits and notes submitted under subsection (4b) and draw any conclusions of fact from them it considers proper;

- (b) direct the Review Officer to furnish a report (which must be made available to the parties to the appeal) on any aspect of the subject matter of the appeal.

(4d) Subject to subsection (4e), the Tribunal has a discretion to rehear the whole or any part of the evidence taken before the Review Officer, or to take further evidence.

(4e) The Tribunal must, on the application of a party to the appeal—

- (a) rehear evidence taken before the Review Officer if the evidence is relevant to the appeal and the record of the evidence is incomplete or inaccurate in a material particular;
- (b) hear oral evidence relevant to the appeal from a witness from whom evidence was taken in documentary form by the Review Officer;
- (c) take further evidence if the evidence is relevant to the appeal and the party seeking to introduce it could not reasonably be expected to have done so in the proceedings before the Review Officer;
- (d) take evidence if—
  - (i) the evidence is relevant to the appeal; and
  - (ii) there is some substantial reason for admitting the evidence in the interests of justice.

(4f) A party must be afforded a reasonable opportunity to examine or cross-examine witnesses appearing before the Tribunal.

(5) On an appeal under this section, the Tribunal may exercise any one or more of the following powers—

- (a) confirm, vary, set aside or reverse the decision under appeal;
- (b) refer the subject matter of the appeal, or any matter arising in the course of the appeal, back to a Review Officer with directions or suggestions the Tribunal considers appropriate;
- (c) make incidental or ancillary orders.

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(8) On an appeal to the Tribunal under this section against a decision of a Review Officer, the Tribunal may, on such terms and conditions as it thinks fit, order that the operation of the decision subject to the appeal be stayed wholly or in part until the appeal is decided or until further order by the Tribunal.

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**Decisions relating to exempt employers**

**98A.** (1) If the Corporation—

- (a) refuses the registration of an employer or group of employers as an exempt employer or group of exempt employers; or
- (b) grants or renews registration as an exempt employer or group of exempt employers for a period of less than three years; or
- (c) cancels the registration of an employer or group of employers as an exempt employer or group of exempt employers,

the employer or employers may appeal to the Minister against that decision.

(2) The appeal must be instituted within one month after the employer or employers receive notice of the Corporation's decision unless the Minister, in his or her discretion, allows an extension of time for the appeal.

(3) The Minister may (but is not obliged to) permit an appellant to appear personally or by representative before the Minister on an appeal.

(4) The Minister has an absolute discretion to decide an appeal under this section as the Minister thinks fit.

(5) If the Minister decides in favour of the appellant, the Minister must furnish the Corporation with a statement of the reasons for the decision.

**DIVISION 7—CASES STATED AND APPEALS**

**Cases stated**

**99.** (1) The Tribunal may state a case on a question of law for the opinion of the Supreme Court.

(2) A case stated under this section shall be heard and determined by the Full Court.

**Appeals to Supreme Court**

**100.** (1) A party to proceedings before the Tribunal may, by leave of the Supreme Court, appeal against a decision of the Tribunal in those proceedings.

(2) An appeal under this section shall be heard and determined by the Full Court.

(3) An appeal under subsection (1) shall be limited to a question of law.

(4) An appeal under subsection (1) must be instituted within one month after the appellant receives notice of the decision appealed against unless the Supreme Court, in its discretion, allows a longer time for the institution of the appeal.

**DIVISION 8—MINISTERIAL INTERVENTION**

**Ministerial intervention**

**101.** Where, in the opinion of the Minister, intervention is desirable in the public interest, the Minister may intervene in an appeal before the Tribunal or the Supreme Court.

**DIVISION 9—MISCELLANEOUS**

**Special jurisdiction of Review Officer**

**102.** (1) A worker who believes that there has been undue delay in the determination of a claim by the worker under this Act may apply to a Review Officer under this section.

(2) An application shall not be made under this section within 14 days after the day on which the claim was made.

(3) On an application under this section the Review Officer may—

- (a) give such directions as the Review Officer thinks necessary to expedite the determination of the claim; or
- (b) personally decide the claim.

(4) A person to whom a direction is given by a Review Officer under subsection (3) shall comply with that direction.

(5) The regulations may prescribe procedures for the reference of applications under this section to Review Officers.



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**PART 7  
MISCELLANEOUS**

**Extension of the application of this Act to self-employed persons**

**103.** (1) The Corporation may, on the application of a person who is self-employed, extend to that person the protection of this Act.

(2) An application under subsection (1) may be granted by the Corporation subject to such conditions and limitations as the Corporation thinks fit and any such condition or limitation shall, to the extent of any inconsistency, prevail over the provisions of this Act.

**Special provision for prescribed classes of volunteers**

**103A.** (1) The Crown is the presumptive employer of persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State (and the Crown therefore has the liabilities of an exempt employer in relation to persons of that class).

(2) Where a person of a class prescribed under subsection (1) suffers a compensable disability while performing the work to which the prescription relates—

- (a) the question of whether and, if so, to what extent the person is incapacitated for work must be determined according to the employment (including self-employment) in which the person was otherwise engaged at the commencement of the incapacity or, if the person was not then engaged in other employment, by reference to employment for which he or she was then reasonably fitted; and
- (b) subject to paragraph (c), the average weekly earnings of the person must be determined—
  - (i) if the person was self-employed, by reference to the remuneration that the person would have received if he or she had been doing the same work in employment; or
  - (ii) if the person was not employed, by reference to the remuneration that the person would have received if he or she had been working in employment for which he or she was reasonably fitted,

and, if there is an award or industrial agreement applicable to that class or grade of employment, by reference to that award or agreement; and

- (c) where—
  - (i) the person dies;
  - (ii) a claim for compensation is made by a person claiming to be a dependant of the deceased;
  - (iii) the deceased and the claimant were both members of a partnership or proprietary company and the predominant work of the deceased before the date of death was in the business of that partnership or company,

then for the purposes of determining whether the claimant was a dependant of the deceased and, if so, the extent of the dependency, any income derived by the claimant from the partnership or company during the deceased's lifetime will (to the extent that the income is attributable to the deceased's work on behalf of the partnership or company) be taken to be an allowance made by the deceased, out of the deceased's own income, for the maintenance of the claimant.

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**Insurance of registered employers against other liabilities**

**105.** (1) An employer who is registered under this Act, and any employer who is not required to be registered because of an exemption under the regulations, is insured by the Corporation, subject to terms and conditions prescribed by regulation, against any liability that may arise apart from this Act in respect of a compensable disability arising from employment (being employment to which this Act applies) by the employer.

(2) Where an employer participates in the provision of a rehabilitation programme under this Act, and in consequence of that participation provides work for a person who is not a worker employed by that employer, that person will be taken to be in the employment of the employer for the purposes of subsection (1).

(3) The insurance provided by subsection (1) does not extend to an exempt employer except in relation to persons of the class referred to in subsection (2).

**Payment of interim benefits**

**106.** (1) The Corporation may, pending the final determination of a claim, make interim payments of compensation to a claimant.

(2) Where on the final determination of a claim it appears that an amount to which the claimant was not entitled has been paid under this section, the Corporation may recover that amount as a debt.

**Payment not to constitute an admission of liability**

**106A.** A payment by the Corporation or an employer to a worker does not constitute an admission of liability or estop a subsequent denial of liability.

**Employer may request progress report**

**107.** (1) The employer of a worker may at any time request the Corporation to provide a report on—

- (a) the medical progress being made by the worker;
- (b) the worker's incapacity for work as assessed under this Act.

(2) A request under subsection (1) must be accompanied by the prescribed fee.

(3) The Corporation shall prepare a report requested under subsection (1) within a reasonable time of the request being made and shall send copies of the report to the employer and the worker.

**Copies of medical reports**

**107A.** (1) The Corporation must, within 7 days after receiving a request from a worker's employer, provide the employer with copies of reports in the Corporation's possession prepared by medical experts and relevant to the worker's medical condition, the worker's progress in rehabilitation, or the extent of the worker's incapacity for work.

(2) A request under subsection (1) must be accompanied by the prescribed fee.

(3) An employer must not disclose confidential information about a worker in a report obtained under this section except as may be necessary—

(a) to assist the worker's rehabilitation and return to work; or

(b) for the purposes of proceedings under this Act.

**Medical examination at request of employer**

**108.** (1) Subject to subsection (2), the employer of a worker who has made a claim under this Act may require the Corporation to have the worker submit to an examination by a recognised medical expert nominated by the Corporation.

(2) A worker shall not be required to submit to examinations under this section more frequently than is permitted by the regulations.

(3) The Corporation may, if it thinks fit, charge the cost of an examination under this section to the employer.

(4) If it appears that there has been undue delay in having a worker examined under this section, a Review Officer may, on application by the employer, give such directions to the Corporation as appear reasonable in the circumstances to expedite the examination.

(5) The Corporation must comply, or take steps to secure compliance, with such a direction.

**Worker to be supplied with copy of medical report**

**109.** Where a report is obtained for the purposes of this Act by the Corporation or an employer on the findings made, or the opinions formed, by a medical expert on the examination of a worker, the Corporation or the employer must, within 7 days after receiving the report, send a copy of the report to the worker.

**Powers of entry and inspection**

**110.** (1) For the purposes of this Act, an authorised officer may, at any reasonable time—

(a) enter any workplace;

(b) inspect the workplace, anything at the workplace and work there in progress;

(c) require a person who has custody or control of books, documents or records relevant to any matter arising under this Act to produce those books, documents or records;

(d) examine, copy and take extracts from any such books, documents or records, or require an employer to provide a copy of any such books, documents or records;

(e) take photographs, films or video or audio recordings;

- (f) take measurements, make notes and records and carry out tests;
- (g) require (directly or through an interpreter) any person to answer, to the best of that person's knowledge, information and belief, any question relevant to any matter arising under this Act;
- (h) require an employer to produce any document, or a copy of any document, that is required to be prepared or kept under this Act.

(2) Where—

- (a) a person whose native language is not English is suspected of having breached this Act; and
- (b) the person is interviewed by an authorised officer in relation to that suspected breach; and
- (c) the person is not reasonably fluent in English,

the person is entitled to be assisted by an interpreter during the interview.

(3) A person is not required—

- (a) to provide information under this section that is privileged on the ground of legal professional privilege; or
- (b) to answer a question under this section if the answer would tend to incriminate that person of an offence.

(4) An authorised officer, who suspects on reasonable grounds that an offence against this Act has been committed, may seize and retain anything that affords evidence of that offence.

(5) An authorised officer must, at the request of any person from whose possession evidentiary material is seized under subsection (4), provide a receipt for that material.

(6) Where anything has been seized under subsection (4) the following provisions apply:

- (a) the thing seized must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
- (b) where proceedings for an offence against this Act relating to the thing seized are instituted within six months of its seizure and the person charged is found guilty of the offence, the court may—
  - (i) order that it be forfeited to the Crown; or

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- (ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;
- (c) where—
  - (i) proceedings are not instituted for an offence against this Act relating to the thing seized within six months after its seizure; or
  - (ii) proceedings having been so instituted—
    - (A) the person charged is found not guilty of the offence; or
    - (B) the person charged is found guilty of the offence but no order for forfeiture is made under paragraph (b),

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister, by action in a court of competent jurisdiction, the thing itself, or if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure.

(7) In the exercise of powers under this section, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(8) An employer whose workplace is subject to an inspection under this section must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

(9) A person must not—

- (a) hinder or obstruct an authorised officer in the exercise of a power conferred by this section; or
- (b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Penalty: \$10 000.

(10) An authorised officer, or a person assisting an authorised officer, who in the course of exercising powers under this section in relation to an employer—

- (a) unreasonably hinders or obstructs the employer in the day to day running of his or her business;
- (b) addresses offensive language to the employer or to any other person at the workplace;
- (c) assaults the employer or any other person at the workplace,

is guilty of an offence.

- Penalty: (a) for an offence against paragraph (a) or (b)—\$6 000;
- (b) for an offence against paragraph (c)—\$6 000 or imprisonment for one year.

**Inspection of place of employment by rehabilitation adviser**

**111.** (1) Subject to subsection (2), a rehabilitation adviser may inspect the place of employment of a disabled worker.

(2) A power of inspection under subsection (1) shall be exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at a place of employment.

(3) A person shall not hinder an inspection under this section.

Penalty: \$3 000.

**Confidentiality to be maintained**

**112.** (1) A person must not disclose information (except as permitted by subsection (2)) if—

- (a) the person obtained the information in the course of carrying out functions in, or related to, the administration, operation or enforcement of this Act; and
- (b) the information is—
- (i) about commercial or trading operations; or
  - (ii) about the physical or mental condition, or the personal circumstances or affairs, of a worker or other person; or
  - (iii) information provided in a return or in response to a request for information under this Act.

Penalty: \$3 000.

(2) A disclosure of information is permitted if it is—

- (a) a disclosure in the course of official duties; or
- (b) a disclosure of statistical information; or
- (c) a disclosure made with the consent of the person to whom the information relates, or who furnished the information; or
- (d) a disclosure required by a court or tribunal constituted by law, or before a review authority; or
- (e) a disclosure to the Corporation or an exempt employer; or
- (f) a disclosure to a disabled worker's employer in accordance with this Act; or
- (g) a disclosure made under the authorisation of the Minister; or
- (h) a disclosure authorised by regulation.

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(2a) A regulation made for the purposes of subsection (2)(h) cannot take effect unless it has been laid before both Houses of Parliament and—

- (a) no motion for disallowance is moved within the time for such a motion; or
- (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

\* \* \* \* \*

**Employer information**

**112A.** The Corporation may, as it thinks fit, disclose the following information in relation to any employer registered under this Act:

- (a) the number of claims in respect of compensable disabilities made by the employer's workers in a particular period;
- (b) the cost of claims in respect of compensable disabilities suffered by the employer's workers in a particular period;
- (c) the nature of compensable disabilities suffered by the employer's workers;
- (d) details of any remission of levy granted to the employer, or any supplementary levy imposed on the employer, under section 67.

**Disabilities that develop gradually**

**113.** (1) A disability (not being noise induced hearing loss) that develops gradually or is a disease shall be deemed to have occurred when the worker first becomes totally or a partially incapacitated for work by the disability.

(2) Subject to this section, where a claim is made under this Act in respect of noise induced hearing loss by a worker (not being a person who has retired from employment on account of age or ill-health), the whole of the loss shall be deemed to have occurred immediately before notice of the disability was given and, subject to any proof to the contrary, to have arisen out of employment in which the worker was last exposed to noise capable of causing noise induced hearing loss.

(2a) Where a claim is made under this Act in respect of noise induced hearing loss by a person who has retired from employment on account of age or ill-health, the whole of the loss shall be deemed to have occurred immediately before the person retired and, subject to any proof to the contrary, to have arisen out of employment in which the person was last exposed to noise capable of causing noise induced hearing loss.

(2b) The Corporation may, by notice to the particular employer or employers, or by notice in the *Gazette*, require an employer, or employers of a specified class determined by the Corporation, to carry out (within a period specified by the Corporation) tests of a kind prescribed by the regulations on workers belonging to classes determined by the Corporation.

(2c) Unless the Corporation otherwise determines, the cost of carrying out tests under subsection (2b) must be borne by the employer.

(3) Where—

- (a) an exempt employer establishes in accordance with procedures laid down by the regulations that a worker was, at the time of undertaking employment with the employer, suffering from a particular disability;
- (b) the disability is of a prescribed class;
- (c) an aggravation, acceleration, exacerbation, deterioration or recurrence of the disability arises from employment by the employer referred to in paragraph (a);
- (d) the employer pays compensation under this Act in respect of the disability,

the employer may, by action in the Industrial Court, recover a fair contribution, determined by the Court, towards the amount of the compensation—

- (e) from any exempt employer from whose employment the disability established under paragraph (a) arose; or
- (f) if there is no such exempt employer—from the Corporation.

(4) Where—

- (a) an employer (not being an exempt employer) establishes in accordance with procedures laid down by the regulations that a worker was, at the time of undertaking employment with the employer, suffering from a particular disability;
- (b) the disability is of a prescribed class;
- (c) an aggravation, acceleration, exacerbation, deterioration or recurrence of the disability arises from employment by the employer referred to in paragraph (a);
- (d) the Corporation pays compensation under this Act in respect of the disability,

the Corporation may, by action in the Industrial Court, recover a fair contribution, determined by the Court, towards the amount of the compensation from any exempt employer from whose employment the disability established under paragraph (a) arose.

**Certain payments not to affect benefits under this Act**

**114.** Compensation provided to a person under this Act shall not be reduced or otherwise affected by—

- (a) an *ex gratia* payment; or
- (b) an accident insurance payment; or
- (c) a payment or benefit of a class prescribed by regulation for the purposes of this section.

**No contribution from workers**

**115.** (1) An employer shall not deduct from the wages of a worker any part of any sum that the employer is or may become liable to pay under this Act.



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(2) An employer shall not discriminate against a worker on the ground that the employer is liable to pay any sum under this Act to or in relation to the worker.

(3) An employer shall not require or permit a worker to contribute in any manner towards indemnifying the employer against any liability which the employer may incur under this Act.

(4) A person who contravenes this section—

(a) is guilty of an offence; and

(b) is liable to compensate a worker for any monetary loss suffered by virtue of that contravention.

**Payment of compensation where worker in prison**

**116.** (1) Where a person who is in receipt of weekly payments under this Act is convicted of an offence and committed to prison, then during the period of imprisonment the weekly payments shall be suspended unless the Corporation determines that they should be paid to the dependants of the prisoner.

(2) Where the Corporation determines that weekly payments should be paid to the dependants of a prisoner, they shall be so paid in such proportions as the Corporation may determine.

**Service of documents**

**117.** (1) A notice or other document required or authorised by this Act to be served or given to any person may be served—

(a) personally; or

(b) by leaving the notice or document at an address for service; or

(c) by sending the notice or document or a sealed copy of the notice or document by post addressed to the person at an address for service; or

(d) by such other method as is permitted by any Act.

(2) In any case to which subsection (1) applies, unless the contrary is proved, service of a notice or document shall be deemed to have been effected 2 business days after the date of posting.

(3) In subsection (1)—

"**address for service**", in relation to a person, means—

(a) the person's last known place of residence or business; or

(b) an address for service as shown on a claim or a return made or furnished by the person, or on the person's behalf, under this Act (not being an address superseded by a subsequent address for service shown on a later claim or return).

**Service of documents on the Corporation**

**118.** Any claim, notice, return or form to be served on the Corporation for the purposes of this Act may be served by lodgment at an office of the Corporation with a person authorised by the Corporation to accept service of documents on its behalf.

**Contract to avoid Act**

**119.** (1) Any agreement or arrangement entered into without the consent of the Corporation that purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect.

(2) Any purported waiver of a right conferred by or under this Act is void and of no effect.

(3) Any person—

(a) who enters into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act; or

(b) who attempts to induce a person to waive a right or benefit conferred by or under this Act,

is guilty of an offence.

Penalty: \$5 000 or imprisonment for one year.

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**Dishonesty**

**120.** (1) A person who—

(a) obtains by dishonest means a payment or other benefit under this Act; or

(b) dishonestly claims to be entitled to a payment or other benefit under this Act; or

(c) dishonestly makes a statement about a claim under this Act knowing the statement is false or misleading; or

(d) dishonestly makes an application, or gives a return, under this Act knowing the application or return to be false or misleading,

is guilty of an offence.

Penalty: \$50 000 or imprisonment for one year.

(2) A person who—

(a) aids, abets, counsels or procures the commission of an offence against subsection (1); or

(b) solicits or incites the commission of any such offence,

is guilty of an offence.

Penalty: \$10 000 or imprisonment for one year.

(3) Where a court convicts a person of an offence against this section, or finds a person guilty of such an offence without recording a conviction, the court must, on application by the Corporation or an exempt employer, order the person who committed the offence—

- (a) to make good any loss to the applicant resulting from the commission of the offence; and
- (b) to reimburse costs incurred by the applicant in investigating and prosecuting the offence.

**Evidence**

**120A.** (1) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying—

- (a) that a person was, on a day specified in the certificate, an employer;
- (b) that a person was, on a day specified in the certificate, a worker,

will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(2) In any legal proceedings against a person for failing to register with the Corporation as an employer, a certificate apparently signed by an officer of the Corporation, certifying that the person was not, on a specified day, registered as an employer will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(3) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying that an amount specified in the certificate is payable to the Corporation, by way of levy or fine, by a person named in the certificate, will, in the absence of proof to the contrary, be proof of the liability.

(4) In any proceedings against a person for failing to furnish a return under this Act, a certificate apparently signed by an officer of the Corporation certifying that the return was not received before the expiration of the period within which it was required to be furnished will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the return.

(5) In any proceedings, a certificate apparently under the seal of the Corporation certifying that an officer of the Corporation named in the certificate was, on a day specified in the certificate, invested with specified delegated powers or functions will, in the absence of evidence to the contrary, be proof of the matters stated in the certificate.

(6) In this section—

"**officer of the Corporation**" includes a person who, although not an officer of the Corporation, is acting under a delegation of the Corporation.

\* \* \* \* \*

**Offences**

**122.** (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a fine not exceeding \$2 000.

(3) Proceedings for an offence against this Act shall be disposed of summarily.

(3a) A prosecution for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed.

(4) Subsection (1) does not render the Corporation, a member of the staff of the Corporation, or any person acting on behalf of the Corporation, liable to prosecution for any act or omission related to the administration or enforcement of this Act.

**Expiation of offences**

**122A.** Where it is alleged that a person has committed an offence against this Act (other than an offence involving dishonesty), the Corporation may cause to be served personally or by post on that person a notice to the effect that the offence may be expiated by payment to the Corporation of the expiation fee specified in the notice (being a fee fixed by the regulations) within 60 days of the date of the notice and, if the offence is so expiated, no prosecution of the alleged offence may be commenced.

\* \* \* \* \*

**Right of intervention**

**123A.** The Corporation has a right to intervene and be heard in—

- (a) any proceedings under this Act before a Review Officer, or the Tribunal; or
- (b) any proceedings before a court—
  - (i) in which the interpretation or application of this Act is in issue; or
  - (ii) in which the Corporation's interests may be directly or indirectly affected.

**Regulations**

**124.** (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Regulations made under this Act—

- (a) may be of general or limited application;
- (b) may allow for matters to be determined at the discretion of the Corporation (or a delegate of the Corporation) or confer other forms of discretionary power on the Corporation (or a delegate of the Corporation).

**Repeal of Workers Compensation Act 1971**

**125.** The *Workers Compensation Act 1971* is repealed.

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**SCHEDULE 1**

*Transitional Provisions*

**Interpretation**

1. In this schedule—

"the appointed day" means the day on which the *Workers Compensation Act 1971* is repealed by this Act;

"compensating authority" means the Corporation or an exempt employer.

**Application of repealed Act**

2. (1) Subject to this clause, the repealed Act continues to apply in respect of a disability that is attributable to a trauma that occurred before the appointed day.

(2) This Act applies in relation to a disability (referred to in this clause as a "transitional disability") that is partially attributable to a trauma that occurred before the appointed day and partially attributable to a trauma that occurred on or after the appointed day, but does not affect rights (referred to in this clause as "antecedent rights") that had accrued before the appointed day in respect of a transitional disability.

(3) The following provisions apply in relation to a transitional disability—

(a) where a compensating authority pays or is liable to pay compensation to a claimant under this Act in relation to a transitional disability, the compensating authority is subrogated, to an appropriate extent, to the antecedent rights of the claimant;

(b) where the claimant has received, in pursuance of antecedent rights, damages or compensation (not being weekly payments for a period of incapacity that concluded before the appointed day), there shall be an appropriate reduction in the amount of compensation payable under this Act in respect of the disability;

(c) the extent of a subrogation under paragraph (a), or a reduction in the amount of compensation under paragraph (b), shall be determined having regard to—

(i) the amount of the compensation payable (apart from this subclause) under this Act in respect of the transitional disability; and

(ii) the extent to which the transitional disability is attributable to a trauma that occurred before the appointed day; and

(iii) any other relevant factors.

(4) Where a compensating authority—

(a) pays compensation to a claimant under this Act; and

(b) becomes entitled to recover a proportion of the payment from an employer by virtue of subrogation to the rights of the claimant under subclause (3)(a); and

(c) notifies that employer in writing of the payment,

the amount recoverable from the employer will be increased by interest at the prescribed rate as from the date of the notification.

(5) The Corporation will, in the first instance, make a determination of—

(a) the extent of a subrogation under subclause (3)(a) or a reduction in the amount of compensation under subclause (3)(b); and

(b) the amount of any consequential liability.

(6) Before making such a determination the Corporation must allow any person whose interests may be affected by the determination a reasonable opportunity to make representations to the Corporation on the subject matter of the determination and when the determination is made the Corporation must give written notification (personally or by post) of the terms of the determination to every person whose interests are affected by it.

(7) Any such person may, by written notice served personally or by post on the Corporation within one month after receiving notice of the determination or such longer period as the Corporation may allow, dispute the determination.

(8) Any such dispute may be referred on the application of any party affected by the determination—

(a) to the Industrial Court; or

(b) if all parties affected by the determination agree—to an arbitrator appointed under the *Commercial Arbitration Act 1986*,

(but where the dispute is referred to an arbitrator no part of the costs of the arbitration can be awarded against the worker).

(9) Where a dispute is so referred, the Industrial Court or the arbitrator will review the Corporation's determination and may confirm, vary or revoke it.

(10) Subject to the regulations, a determination by the Corporation under this clause may be enforced in the same way as a judgment of the Industrial Court.

(11) A determination by the Corporation may be enforced notwithstanding that it is disputed, but if it appears from the result of a review that a compensating authority has recovered an amount in pursuance of the determination to which the compensating authority is not entitled, that amount must be repaid together with interest at the prescribed rate.

### **Exempt employers**

3. (1) An employer in respect of whom a certificate of exemption was in force under Division 2 of Part 10A of the repealed Act immediately before the appointed day shall be deemed to have been registered, on the appointed day, as an exempt employer under this Act.

(2) If within 30 days after the appointed day the Local Government Association lodges with the Corporation a schedule of local government corporations to be registered as a group of exempt employers under this Act, those corporations shall be so registered and shall be deemed to have been so registered as from the appointed day.

### **Mining and Quarrying Industries Fund**

4. (1) The scheme established under Part 9 of the repealed Act continues in existence for the settlement of claims and other matters arising in relation to death or disablement from silicosis suffered before the appointed day with the following qualifications:

(a) the Corporation will be liable to satisfy any claim made under the scheme; and

(b) the money standing to the credit of the general compensation fund is to be transferred to the Corporation.

(2) The money received by the Corporation under subclause (1) must be paid into a special account entitled the *Mining and Quarrying Industries Fund*.

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(3) The Mining and Quarrying Industries Fund is to be notionally divided into two parts (Part A and Part B), one part (Part A) to be available to the Corporation to satisfy its liabilities under subclause (1) and the balance (Part B) to be available to the Mining and Quarrying Occupational Health and Safety Committee established under schedule 4 for the purposes referred to in that schedule.

(4) For the purposes of the division of the Mining and Quarrying Industries Fund into two parts—

(a) the Corporation must on 30 June 1995 and thereafter at three yearly intervals arrange for an actuary to estimate the extent of the Corporation's existing and prospective liabilities under subclause (1) at that date; and

(b) (i) if it appears from any such estimate that the amount standing to the credit of Part A exceeds the amount required to satisfy the Corporation's liabilities under subclause (1), the amount of the excess must be transferred from Part A to Part B;

(ii) if it appears from any such estimate that the amount standing to the credit of Part A is less than the amount required to satisfy the Corporation's liabilities under subclause (1), the amount required to make up the deficiency must be transferred from Part B to Part A.

(5) The Corporation must keep separate accounting records for Parts A and B.

(6) Money standing to the credit of the Mining and Quarrying Industries Fund (and not immediately required for the purposes of the fund) may be invested as if it were part of the Compensation Fund.

(7) Income and accretions produced by the investment of the money must be shared between Parts A and B (the amount of the shares being determined according to the extent to which money held on each account has contributed to the amount invested).

(8) The Corporation may debit the Mining and Quarrying Industries Fund with—

(a) the reasonable costs of administering the fund; and

(b) the reasonable costs of providing services, facilities and staff to the Mining and Quarrying Occupational Health and Safety Committee under schedule 4.

**Statutory reserve fund**

5. (1) The Statutory Reserve Fund (referred to in section 118c of the repealed Act) must be re-established by separating out the part of the Compensation Fund that represents the former Statutory Reserve Fund.

(2) Division 4 of Part 10A (*ie* sections 118d to 118e) of the repealed Act, and related interpretative provisions, continue in force subject to the following modifications—

(a) references to the Commission are to be read as references to the Corporation; and

(b) references to the fund are to be read as references to the Statutory Reserve Fund re-established under subclause (1); and

(c) references to the Treasurer are to be read as references to the Corporation; and

(d) references to the Court are to be read as references to the Tribunal; and

(e) section 118d(10) is modified to read as follows:

(10) On an appeal under this section, the Tribunal has power to review all aspects of the Corporation's determination.; and

(f) after section 118d(12) subsections are inserted in the following terms:

(13) Any amounts recovered by the Corporation in the exercise of rights to which it is subrogated under subsection (12) must be paid into the fund.

(14) A claim made under this section before the date of transition that had not been disposed of at the date of transition (a "**pre-transition claim**"), is taken to have been made against the Corporation as if this section had been in force in its modified form when the claim was made and it was then made against the Corporation.

(15) It follows that the Corporation assumes responsibility for administering pre-transition claims and is substituted for the Commission or the Treasurer (as the case requires) in any legal proceedings relating to such claims.

(16) Any rights of subrogation that existed in favour of the Treasurer immediately before the date of transition are transferred to the Corporation.

(17) The Corporation may recoup administrative expenses and legal costs related to claims under this section from the fund.

(18) The Corporation may intervene and be heard in proceedings before a court if there is a prospect that a claim before the court, or a judgment of the court, may lead to a claim under this section.

(19) In this section—

"**date of transition**" means the date on which the *Workers Rehabilitation and Compensation (SGIC) Amendment Act 1996* comes into operation.

#### **Insurance Assistance Fund**

**5A.** (1) The Insurance Assistance Fund must be established by separating out the part of the Compensation Fund identified in the accounts of the Corporation as the Insurance Assistance Fund immediately before the commencement of this clause.

(2) The Governor may, by proclamation, transfer rights and liabilities of the insurer under a section 118g policy from the Motor Accident Commission to the Corporation.

(3) The Motor Accident Commission may delegate to the Corporation its responsibility for administering claims under section 118g policies.

(4) The Corporation may, by an authorised contract or arrangement—

(a) delegate its responsibility for administering claims under section 118g policies in relation to which the rights and liabilities of the insurer have been transferred to the Corporation under subclause (2); or

(b) subdelegate a responsibility for administering claims under section 118g policies delegated to it under subclause (3).

(5) The Motor Accident Commission or the Corporation (as the case requires) may recoup expenditure covering liabilities under section 118g policies and associated administrative and legal costs (other than expenditure and costs covered by a contract of reinsurance) from the Insurance Assistance Fund and, if that proves insufficient, from the Statutory Reserve Fund.

(6) In this clause—

"**authorised contract or arrangement**" means a contract or arrangement authorised by regulation under section 14 of the *WorkCover Corporation Act 1994*;



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"section 118g policy" means a policy of insurance issued under section 118g(3) of the repealed Act.

**Investment of, and dealings with, the Funds**

**5B.** (1) The Statutory Reserve Fund and the Insurance Assistance Fund may be invested in common with the Compensation Fund as if they formed part of the Compensation Fund.

(2) If the Corporation is of the opinion that the balance of the Statutory Reserve Fund or the Insurance Assistance Fund exceeds the amount reasonably required for the purposes for which the relevant fund exists, the Corporation may, with the Minister's consent, transfer the surplus to the Compensation Fund.

**Entitlement to documents**

**5C.** The Corporation is entitled to possession of all documents and other materials in the possession or power of the Motor Accident Commission relevant to claims against the Statutory Reserve Fund or to liabilities under policies of insurance transferred to the Corporation under this Schedule.

**Acts Interpretation Act**

**6.** The *Acts Interpretation Act 1915* shall, except to the extent of any inconsistency with the provisions of this schedule, apply to the repeal of the *Workers Compensation Act 1971*.

## SCHEDULE 2

Section	Description of Disability	Description of Work
	Ankylostomiasis .....	Mining.
	Anthrax .....	Any work— <ul style="list-style-type: none"> <li>(a) in connection with animals infected with anthrax;</li> <li>(b) involving handling of animal carcasses or parts of such carcasses;</li> <li>(c) involving handling of wool, hair, bristles, hides or skins;</li> <li>(d) involving loading or unloading, or transport, of animals, animal carcasses or parts of such carcasses, wool, hair, bristles, hides or skins.</li> </ul>
	Antimony poisoning or its <i>sequelae</i> .....	Any work involving the use of antimony or its preparations or compounds.
	Arsenic poisoning or its <i>sequelae</i> .....	Any work involving the use of arsenic or its preparations or compounds.
	Asbestosis .....	Any work involving exposure to inhalation of asbestos fibres.
	Asthma or asthmatic attacks .....	Any work involving contact with, or the inhalation of, the dust of red pine, western red cedar or blackwood. Any work involving contact with, or the inhalation of, flour or flour dust.
	Benzene poisoning (i.e. poisoning by benzene or its homologues or their nitro- and amido-derivatives) and its <i>sequelae</i> ...	Any work involving the production, liberation or utilisation of benzene or its homologues or their nitro- and amido-derivatives.
	Brucellosis, leptospirosis, or Q fever .....	Any work at, in, about, or in connection with, a meat works or involving the handling of meat, hides, skins or carcasses.
	Carbon monoxide poisoning or its <i>sequelae</i> .....	Any work involving contact with, or the inhalation of, carbon monoxide gas.
	Chrome ulceration or its <i>sequelae</i> .....	Any work involving the use of chromic acid or bi-chromate or ammonium potassium or sodium or their preparations.
	Copper poisoning or its <i>sequelae</i> .....	Any work involving the use or handling of copper or its preparations or compounds.
	Dermatitis .....	Any work involving exposure to, or contact with, the dust of blackwood.
	Halogen poisoning (i.e. poisoning by the halogen derivatives of hydrocarbons of the aliphatic series) and its <i>sequelae</i> .....	Any work involving the production, liberation or utilisation of halogen derivatives or hydrocarbons of the aliphatic series.
	Lead poisoning or its <i>sequelae</i> .....	Any work involving the use of lead or its preparations or compounds.
	Mercury poisoning or its <i>sequelae</i> .....	Any work involving the use of mercury or its preparations or compounds.

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Nitrous fumes poisoning and its <i>sequelae</i> .	Any work involving contact with nitric acid or the inhalation of nitrous fumes.
Noise induced hearing loss .....	Any work involving exposure to noise.
Pathological manifestations due to—	Any work involving exposure to the action of radium, radioactive substances or X-rays.
(a) radium and other radioactive substances;	
(b) X-rays .....	
Phosphorus, poisoning or its <i>sequelae</i> .....	Any work involving the use of phosphorus or its preparations or compounds.
Pneumoconiosis, including silicosis .....	Any work involving mining, quarrying, cutting, crushing, grinding or pushing stone or melting, grinding or polishing metal.
Primary epitheliomatous cancer of the skin	Any work involving processes which involve the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.
Septic poisoning or its <i>sequelae</i> .....	Any work involving the handling of meat or the manufacture of meat products or animal by-products in connection with the trade of butcher or slaughterman.
Zinc poisoning or its <i>sequelae</i> .....	Any work involving the use of zinc or its preparations or compounds.

**SCHEDULE 3**  
*Lump Sum Compensation*

Nature of the Disability	Percentage of the prescribed sum payable
Total and incurable loss of intellectual capacity resulting from damage to the brain . . . . .	100
Total and incurable paralysis of the limbs . . . . .	100
Loss of Vision—	
Total loss of sight of both eyes . . . . .	100
Total loss of sight of one eye . . . . .	50
Total loss of sight of one eye, the vision in the other eye being less than 6/60 Snellens type with correction or absent . . . . .	100
Hearing Loss—	
Total loss of hearing . . . . .	75
Speech Loss—	
Total loss of the power of speech . . . . .	75
Sensory Loss—	
Total loss of senses of taste and smell . . . . .	50
Total loss of sense of taste . . . . .	25
Total loss of sense of smell . . . . .	25
Arm Injuries—	
Loss of arm at or above elbow . . . . .	90
Loss of arm below elbow . . . . .	80
Hand Injuries—	
Loss of both hands . . . . .	100
Loss of thumb . . . . .	35
Loss of forefinger . . . . .	25
Loss of middle finger . . . . .	20
Loss of ring finger . . . . .	20
Loss of little finger . . . . .	14
Total loss of movement of joint of thumb . . . . .	15
Loss of distal phalanx of thumb . . . . .	17
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx . . . . .	15
Loss of distal phalanx of forefinger . . . . .	11
Loss of distal phalanx of other fingers . . . . .	9
Loss of hand or loss of thumb and four fingers . . . . .	80
Leg Injuries—	
Loss of leg at or above knee . . . . .	90
Loss of leg below knee . . . . .	80
Foot Injuries—	
Loss of both feet . . . . .	100
Loss of foot and hand . . . . .	100
Loss of foot . . . . .	75
Loss of great toe . . . . .	25
Loss of any other toe . . . . .	10
Loss of two phalanges of any other toe . . . . .	8
Loss of phalanx of great toe . . . . .	11

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Loss of phalanx of any other toe . . . . .	7
Loss of genital organs . . . . .	70
Total impairment of the neck and cervical spine . . . . .	80
Total impairment of the upper back and thoracic spine . . . . .	50
Total impairment of the lower back and lumbar spine . . . . .	80
Loss of all teeth . . . . .	20
Total impairment of the ventilatory function . . . . .	90
Total impairment of shoulder . . . . .	50
Total impairment of wrist . . . . .	25
Total impairment of hip . . . . .	45
Total impairment of ankle . . . . .	30

**Disfigurement—**

A percentage of the prescribed sum (not exceeding 70 per cent) proportionate to the extent, severity and likely duration of the disfigurement

**Impairment of a physical or sensory faculty not mentioned above—**

A percentage of the prescribed sum equivalent to the percentage loss of total bodily function represented by the impairment

1. For the purposes of this schedule, a limb or other member will be taken to be lost if it is rendered permanently and wholly useless, and a finger will be taken to be lost if two joints are severed from the hand or rendered permanently and wholly useless.

2. Where a disability consists of the permanent loss of a proportion (but not all) of the full efficient use of a physical or sensory faculty, a worker is entitled to a percentage of the compensation payable for total loss of the faculty equal to the percentage of full efficient use lost by the worker. However, in the case of hearing loss, compensation is not payable by reference to this schedule unless the percentage loss of hearing exceeds 5%.

3. For the purpose of determining the extent of a loss of full efficient use of a physical or sensory faculty, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance will be disregarded.

4. The percentage loss of total bodily function represented by a particular impairment of a physical or sensory faculty is to be determined in accordance with professionally accepted principles approved by regulation. However, a percentage loss of hearing is to be determined in accordance with the principles set out in the report entitled *Improved Procedure for Determining Percentage Loss of Hearing* published by the National Acoustic Laboratories and dated January 1988 (ISBN 0 644 06884 1).

5. Where a worker is entitled to compensation in respect of two or more disabilities to which the schedule applies, the worker's entitlement will be determined in accordance with principles prescribed by the regulations (but the total entitlement cannot exceed 100 per cent of the prescribed sum).

6. In this schedule—

**"impairment"** in relation to a physical or sensory faculty, means the loss of the faculty, the loss of its use, or the damage to or malfunction of the faculty.

**"physical or sensory faculty"** includes any part of the body.

**SCHEDULE 4**

*The Mining and Quarrying Occupational Health and Safety  
Committee*

**The Committee**

1. (1) The Mining and Quarrying Occupational Health and Safety Committee ("the Committee") is established.

(2) The Committee will consist of seven persons appointed by the Minister, of whom—

(a) two will be persons working in the field of occupational health and safety nominated by the Corporation; and

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(c) one will be a member of the Department of the Minister to whom the administration of the *Occupational Health, Safety and Welfare Act 1986* has been committed who has experience in the mining and quarrying industries; and

(d) two will be persons nominated by the South Australian Chamber of Mines and Energy to represent the interests of employers involved in the mining and quarrying industries; and

(e) two will be persons nominated by the United Trades and Labor Council to represent the interests of workers who work in the mining and quarrying industries.

(2a) The Minister will appoint one of the members of the Committee appointed under subclause (2)(a) to be the presiding member of the Committee.

(3) The Minister may appoint a deputy to a member of the Committee and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Committee.

(4) A member of the Committee may be appointed for a term not exceeding three years determined by the Minister and will, on the expiration of a term of appointment, be eligible for reappointment.

(5) The Minister may, on reasonable grounds, remove a member of the Committee from office at any time.

(6) A member of the Committee may resign by written notice to the Minister.

(7) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(8) Four members of the Committee constitute a quorum of the Committee.

(9) In the absence of the presiding member at a meeting of the Committee, the members present may decide who is to preside.

(10) A decision carried by at least four members of the Committee at a meeting of the Committee is a decision of the Committee.

(11) Each member present at a meeting of the Committee is entitled to one vote on any matter arising for decision at the meeting.

(12) The Committee must have accurate minutes kept of its proceedings at meetings.

(13) Subject to this schedule, the business of the Committee will be conducted in a manner determined by the Committee.

(14) A member of the Committee who has a direct or indirect pecuniary interest in a matter under consideration by the Committee—

- (a) must disclose the nature of the interest to the Committee; and
- (b) must not take part in any deliberation or decision of the Committee with respect to the matter.

Penalty: \$2 000.

(15) A disclosure under subclause (14) must be recorded in the minutes of the Committee.

(16) The Committee will, in connection with the performance of its functions, make use of the services, facilities and staff of the Corporation.

**Application of funds**

2. (1) Money available to the Committee from the Mining and Quarrying Industries Fund under schedule 1 may be used for any of the following purposes:

- (a) to promote and support practices, procedures and arrangements designed to protect workers from silicosis;
- (b) to support education in the field of occupational health or safety in the mining and quarrying industries;
- (c) to initiate or support research and studies into occupational health or safety that could benefit workers in the mining and quarrying industries;
- (d) to promote and support persons or organisations working to prevent, alleviate or treat the kinds of disabilities suffered by workers in the mining and quarrying industries;
- (e) to support any other kind of activity that could directly or indirectly improve occupational health or safety in the mining and quarrying industries or assist in the rehabilitation of disabled workers in those industries.

(2) The Committee has all such powers as are reasonably necessary for the effective performance of its functions (including the power to establish sub-committees and to engage, as may be appropriate, experts or consultants to assist the Committee in the performance of its functions).

(3) The Committee must, in making grants of money under this schedule, give preference to supporting projects directed at improving occupational health or safety in those industries that involve exposure to silica dust and in particular to supporting specialised research and training projects directed at that purpose in South Australia.

(4) The Committee must not spend any part of the principal standing to the credit of Part B of the Mining and Quarrying Industries Fund without the specific approval of the Minister and in any case the Committee is not to spend in any financial year more than 20 per cent of the principal that, at the commencement of that financial year, is standing to the credit of that part of the fund.

(5) The Committee must after the end of each financial year prepare a report on its operations during that financial year.

(6) The report must be submitted to the Minister in conjunction with the annual report of the Corporation for the relevant financial year (and laid before each House of Parliament by the Minister together with the Corporation's annual report).

**Ministerial control**

3. The Committee is, in the performance of its functions, subject to the control and direction of the Minister.

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**APPENDIX**

**LEGISLATIVE HISTORY**

**Transitional Provisions**

*(Transitional provision from Workers Rehabilitation and Compensation Act Amendment Act 1990, s. 8)*

8. (1) The amendment effected to the principal Act by section 3 of this Act does not affect—
- (a) the rights of the respondent in Supreme Court Action No. 998 of 1989; or
  - (b) the rights of any claimant whose claim is determined before the commencement of this Act; or
  - (c) the rights of any other claimant who, as at the commencement of this Act, is a party to proceedings before a Review Officer.

(2) Where a claim for compensation made before the commencement of this Act is rejected after the commencement of this Act on account of the enactment of section 3 of this Act, the claimant is entitled to be reimbursed by the Corporation for reasonable costs reasonably incurred by the claimant in making the claim.

*(Transitional provision from Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1991, s. 49)*

49. (1) The amendments effected by this Act to those provisions of the principal Act that relate to weekly payments of compensation apply as from the commencement of this Act to persons whose entitlements to weekly payments arose before or after the commencement of this Act.

(2) Where a worker became entitled to weekly payments before the commencement of this Act, the Corporation or an exempt employer may assess or reassess the amount of the weekly payments as from the commencement of this Act on the basis of the provisions of the principal Act as amended by this Act.

(3) Where such a reassessment is made, it cannot give rise to a right to repayment of any amount paid on the basis of a former assessment.

*(Transitional provision from the Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1992, s. 22)*

22. (1) Subject to this section, the amendments affecting entitlement to, or quantum of, compensation for disabilities apply in relation to—

- (a) a disability occurring on or after the commencement of this Act; or
- (b) a disability occurring before the commencement of this Act in relation to which—
  - (i) no claim for compensation had been made under the principal Act as at the commencement of this Act; or
  - (ii) a claim for compensation had been made under the principal Act but the claim had not been determined by the Corporation or the exempt employer.

(2) The amendments made by section 3, 5, 6, 10 and 11 apply whether the entitlement to compensation arose before or after the commencement of this Act.

(3) The amendments made by section 4 have no retrospective effect.



(4) A liability at common law for non-economic loss or solatium that arose before the commencement of this Act is not extinguished, on the commencement of this Act, by the amendments to section 54 of the principal Act, but, if an action is not commenced in a court to enforce the liability before the date falling 12 months after the cause of action arose or six months after the commencement of this Act (whichever is the later), the liability is then extinguished.

(5) The period prescribed by subsection (4) cannot be extended.

*(Transitional provision from Statutes Amendment (Chief Inspector)  
Act 1993, s. 65)*

65. This Act does not affect the appointment of any person as an inspector before the commencement of this Act (other than as a Chief Inspector).

*(Transitional provisions from Workers Rehabilitation and Compensation  
(Review Authorities) Amendment Act 1993, s. 16)*

16. (1) Regulation 162 of 1992 (relating to agencies and instrumentalities of the Crown) will be taken to have come into operation at 4 p.m. on 30 September 1987.

(2) Proceedings before a Review Officer under the principal Act immediately before the commencement of this provision may, subject to such directions as the Chief Review Officer thinks fit, be continued under the principal Act as amended by this Act.

(3) Proceedings before the Tribunal under the principal Act immediately before the commencement of this provision will, subject to such directions as the President of the Tribunal thinks fit, continue before the Tribunal as if this Act had not been enacted.

(4) A person who was, immediately before the commencement of this provision, a Review Officer under the principal Act will, subject to this Act, continue in office as a Review Officer under the principal Act as amended by this Act without interruption of his or her continuity of service and without prejudice to existing or accruing rights in respect of employment.

(5) A person to whom subsection (4) applies will be taken to have been appointed, as from the commencement of this provision, for the balance of any term of office that applied before the commencement of this provision, or for a period of five years, whichever is the lesser.

(6) The Governor may, by instrument in writing, vary any condition of employment that would otherwise apply to a person under subsection (4) (and any such instrument will have effect according to its terms).

(7) Proceedings cannot be instituted before a Review Officer after the commencement of section 3 of this Act in respect of any decision of the Corporation under section 32(4) of the principal Act before that commencement.

*(Transitional provision from Workers Rehabilitation and Compensation  
(Administration) Amendment Act 1994, s. 20)*

#### **Application of amendments**

20. (1) The amendments made by this Act to the principal Act apply in relation to disabilities occurring on or after the commencement of this Act.

(2) However—

(a) the amendments made by sections 8, 9 and 10 of this Act apply both prospectively and retrospectively; and

(b) the amendments made by section 18 apply to any claim for compensation for hearing loss made on or after 23 March 1994; and

(c) the amendment made by section 11 applies as from 24 February 1994.

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*(Transitional provisions from Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995, s. 34, as amended by Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1995, s. 9)*

34. (1) This Act applies to disabilities arising from traumas occurring before the commencement of this Act ("old disabilities") and disabilities arising from traumas occurring after the commencement of this Act ("new disabilities") subject to the following qualifications—

- (a) the amendments made by this Act do not affect—
  - (i) the principles on which weekly payments for a period of incapacity falling before the commencement of this Act are assessed; or
  - (ii) compensation for non-economic loss relating to loss or impairment of the capacity to engage in sexual intercourse if an application or request for such compensation had been made before 12 April 1995; and
- (b) section 58B of the principal Act, as enacted by this Act, applies whether the worker has an old or a new disability.

(2) A scale of charges in force under section 32 of the principal Act immediately before the commencement of section 9 of this Act remains in force until superseded by a regulation fixing a scale of charges.

(3) Until a regulation is made for the purposes of section 67(1)(b) of the principal Act (as substituted by this Act), the claims that are to be disregarded under that paragraph are claims for secondary and unrepresentative disabilities.

*(Transitional provisions from Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1995, s. 3(2) and (3))*

(2) A discontinuance or reduction of weekly payments made under the principal Act before the commencement of this section cannot be challenged on the ground that there was no antecedent review of the worker's entitlement if the discontinuance or reduction could, assuming that section 38A had then been in force, have been validly made under that section.

(3) Subsection (2) does not affect rights of the respondent arising under the judgment of the Supreme Court in *Mitsubishi Motors Australia Ltd and WorkCover v Frank Sosa* (No. S5084).

### **Legislative History**

*(entries in bold type indicate amendments incorporated since the last reprint)*

Section 2:	substituted by 49, 1994, s. 3
Section 2(2):	amended by 35, 1995, s. 3
Section 3(1):	definition of "actuary" inserted by 69, 1992, s. 31
	definition of "Advisory Committee" inserted by 49, 1994, s. 4(a)
	definition of "the Corporation" repealed and definition of "Corporation" inserted in its place by 49, 1994, s. 4(b)
	definition of "disability" amended by 39, 1988, s. 3(a)
	definition of "disease" substituted by 34, 1990, s. 3
	definition of "employer" amended by 39, 1988, s. 3(b)
	definition of "employment" amended by 39, 1988, s. 3(c), (d)
	definition of "journey" repealed by 49, 1994, s. 4(c)
	definition of "orphan child" inserted by 4, 1991, s. 3(a)
	definition of "place of employment" substituted by 49, 1994, s. 4(d)
	definition of "place of pick-up" repealed by 49, 1994, s. 4(e)
	definition of "prescribed allowance" paragraph (c) repealed by 4, 1991, s. 3(b)

	definition of "registered association" amended by 49, 1994, s. 4(f)
	definition of "review authority" amended by 4, 1991, s. 3(c); paragraph (c) repealed by 4, 1991, s. 3(c)
	definition of "reviewable decision" inserted by 35, 1995, s. 4
	definition of "unrepresentative disability" substituted by 49, 1994, s. 4(g); 105, 1995, s. 3
	definition of "worker" amended by 39, 1988, s. 3(e) repealed by 39, 1988, s. 3(f)
Section 3(2):	amended by 106, 1987, s. 3
Section 3(3):	repealed by 49, 1994, s. 4(h)
Section 3(4):	inserted by 4, 1991, s. 3(d)
Section 3(7):	inserted by 4, 1991, s. 3(d); substituted by 49, 1994, s. 4(i)
Section 3(8):	substituted by 4, 1991, s. 4; amended by 84, 1992, s. 3
Section 4(8):	substituted by 35, 1995, s. 5
Section 6:	
	Part 2 comprising ss. 7 - 25 and heading amended by 39, 1988 s. 4; 4, 1991, s. 5; repealed and ss. 7 - 13 and heading inserted in its place by 49, 1994, s. 5
Section 28(3):	substituted by 35, 1995, s. 6
Sections 28A - 28C:	inserted by 35, 1995, s. 7
Section 30:	amended by 84, 1992, s. 4; substituted by 49, 1994, s. 6
Section 30A:	inserted by 49, 1994, s. 6; substituted by 35, 1995, s. 8
Section 30B:	inserted by 49, 1994, s. 6
Section 31(1) - (3):	substituted by 49, 1994, s. 7(a)
Section 31(4):	inserted by 39, 1988, s. 5; amended by 49, 1994, s. 7(b)
Section 31(5):	inserted by 34, 1990, s. 4
Section 32(1):	substituted by 35, 1995, s. 9(a)
Section 32(1a):	inserted by 4, 1991, s. 6(a); amended by 52, 1993, s. 3(a); repealed by 35, 1995, s. 9(a)
Section 32(2):	amended by 39, 1988, s. 6; 4, 1991, s. 6(b)
Section 32(3):	substituted by 4, 1991, s. 6(c)
Section 32(4):	substituted by 4, 1991, s. 6(c); 52, 1993, s. 3(b)
Section 32(4a):	inserted by 52, 1993, s. 3(b)
Section 32(5):	inserted by 4, 1991, s. 6(c)
Section 32(6):	amended by 52, 1993, s. 3(c)
Section 32(7):	inserted by 4, 1991, s. 6(c)
Section 32(8):	inserted by 4, 1991, s. 6(c); amended by 52, 1993, s. 3(d)
Section 32(9):	substituted by 35, 1995, s. 9(b)
Section 32(10):	inserted by 4, 1991, s. 6(c); substituted by 52, 1993, s. 3(e); 35, 1995, s. 9(b)
Section 32(11) - (14):	inserted by 35, 1995, s. 9(b)
Section 33(4):	inserted by 39, 1988, s. 7
Section 34:	redesignated as s. 34(1) by 84, 1992, s. 5
Section 34(2):	inserted by 84, 1992, s. 5
Section 35(1):	amended by 84, 1992, s. 6(a)
Section 35(2):	substituted by 35, 1995, s. 10(a)
Section 35(2a):	inserted by 4, 1991, s. 7
Section 35(5):	amended by 35, 1995, s. 10(b); substituted by 105, 1995, s. 4
Section 35(5a):	inserted by 105, 1995, s. 4
Section 35(6):	substituted by 49, 1994, s. 8
Section 35(6a):	inserted by 84, 1992, s. 6(b); substituted by 49, 1994, s. 8; 35, 1995, s. 10(c)
Section 35(6b):	inserted by 49, 1994, s. 8; amended by 35, 1995, s. 10(d)
Section 36(1):	amended by 4, 1991, s. 8(a), (b); substituted by 35, 1995, s. 11(a)
Section 36(1a) and (1b):	inserted by 35, 1995, s. 11(a)
Section 36(2):	amended by 4, 1991, s. 8(c), (d)
Section 36(3):	substituted by 4, 1991, s. 8(e); amended by 84, 1992, s. 7(a)
Section 36(3a):	inserted by 4, 1991, s. 8(e); amended by 35, 1995, s. 11(b), (c)

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Section 36(4):	substituted by 4, 1991, s. 8(e); 84, 1992, s. 7(b)
Section 36(4a) - (4c):	inserted by 84, 1992, s. 7(b)
Section 36(5):	substituted by 84, 1992, s. 7(b)
Section 36(6):	inserted by 39, 1988, s. 8
Section 36(7) - (12):	inserted by 4, 1991, s. 8(f)
Section 36(13):	inserted by 84, 1992, s. 7(c)
Section 37:	amended by 84, 1992, s. 8; repealed by 35, 1995, s. 12
Section 38(1a):	inserted by 35, 1995, s. 13(a)
Section 38(2):	amended by 4, 1991, s. 9(a)
Section 38(3):	substituted by 35, 1995, s. 13(b)
Section 38(4):	repealed by 4, 1991, s. 9(b); inserted by 35, 1995, s. 13(b)
Section 38(7):	repealed by 4, 1991, s. 9(c); inserted by 35, 1995, s. 13(c)
Section 38A:	inserted by 56, 1995, s. 3(1)
Section 39(2):	amended by 84, 1992, s. 9(a); substituted by 56, 1995, s. 4
Section 39(3):	amended by 84, 1992, s. 9(b); 35, 1995, s. 14
Section 40(3):	amended by 35, 1995, s. 15
Section 41(2):	amended by 35, 1995, s. 16
Part 4 Division 4A heading:	inserted by 35, 1995, s. 17
Section 42:	substituted by 49, 1994, s. 9; 35, 1995, s. 17
Section 42(1):	substituted by 56, 1995, s. 5; amended by 75, 1995, s. 6
	Division 4A of Part 4 comprising ss. 42A, 42B and heading inserted by 84, 1992, s. 10; redesignated as Division 4B by 35, 1995, s. 18
Section 42A(3):	amended by 56, 1995, s. 6
Section 43(3) - (5):	repealed by 84, 1992, s. 11(a)
Section 43(6):	amended by 84, 1992, s. 11(b)
Section 43(7):	amended by 84, 1992, s. 11(c)
Section 43(7a):	inserted by 84, 1992, s. 11(d)
Section 43(11):	definition of "the prescribed sum" amended by 39, 1988, s. 9; 84, 1992, s. 11(e)
Section 44(1):	amended by 4, 1991, s. 10(a); 84, 1992, s. 12(a), (b)
Section 44(4a):	inserted by 4, 1991, s. 10(b); amended by 84, 1992, s. 12(c)
Section 44(5):	amended by 4, 1991, s. 10(c)
Section 44(10):	substituted by 4, 1991, s. 10(d)
Section 44(13):	repealed by 49, 1994, s. 10(a)
Section 44(14):	substituted by 49, 1994, s. 10(b)
Section 44(14a):	inserted by 84, 1992, s. 12(d); redesignated as s. 44(13) by 49, 1994, s. 10(a); amended by 35, 1995, s. 19
Section 44(15):	substituted by 49, 1994, s. 10(b)
Section 44(16) - (19):	inserted by 49, 1994, s. 10(b)
Section 45(7):	amended by 84, 1992, s. 13
Section 46(3):	amended by 39, 1988, s. 10(a); 35, 1995, s. 20(a)
Section 46(4):	substituted by 35, 1995, s. 20(b)
Section 46(6a):	inserted by 39, 1988, s. 10(b)
Section 46(8a):	inserted by 39, 1988, s. 10(c)
Section 46(8b) - (8j):	inserted by 84, 1992, s. 14; repealed by 35, 1995, s. 20(c)
Section 50(1) and (2):	substituted by 4, 1991, s. 11
Section 50(3):	substituted by 105, 1995, s. 5
Section 50(4):	inserted by 105, 1995, s. 5
Section 52(3):	substituted by 4, 1991, s. 12
Section 52(5):	amended by 39, 1988, s. 11(a)
Section 52(6a):	inserted by 39, 1988, s. 11(b)
Section 53(4a):	inserted by 39, 1988, s. 12
Section 53(4b):	inserted by 35, 1995, s. 22
Section 53(6):	amended by 84, 1992, s. 15
Section 53(7):	inserted by 52, 1993, s. 4
Section 53(7a) and (7b):	inserted by 49, 1994, s. 11
Section 53(8):	inserted by 52, 1993, s. 4
Section 54(1)(b):	repealed by 84, 1992, s. 16(a)

Section 54(3):	amended by 84, 1992, s. 16(b)
Section 54(4):	repealed by 84, 1992, s. 16(c)
Section 54(4a) and (4b):	inserted by 39, 1988, s. 13(a)
Section 54(5):	amended by 39, 1988, s. 13(b)
Section 54(7a) - (7c):	inserted by 39, 1988, s. 13(c)
Section 54(8):	definition of "prescribed sum" repealed by 84, 1992, s. 16(d)
Section 56:	repealed by 49, 1994, s. 12
Section 58(3):	definition of "the prescribed amount" amended by 39, 1988, s. 14
Sections 58A and 58B:	inserted by 39, 1988, s. 15
Section 58B(2):	amended by 35, 1995, s. 23(a)
Section 58B(2)(d):	repealed by 56, 1995, s. 7
Section 58B(3):	repealed by 35, 1995, s. 23(b)
Section 58B(3a):	inserted by 97, 1988, s. 10; repealed by 35, 1995, s. 23(b)
Section 58B(4):	repealed by 35, 1995, s. 23(b)
Section 58C:	inserted by 35, 1995, s. 24
Section 59(3):	inserted by 4, 1991, s. 13
Section 60(2):	amended by 4, 1991, s. 14(a)
Section 60(3):	substituted by 97, 1988, s. 4(a)
Section 60(4):	amended by 39, 1988, s. 16(a); substituted by 97, 1988, s. 4(a); 4, 1991, s. 14(b)
Section 60(5):	amended by 39, 1988, s. 16(b); substituted by 4, 1991, s. 14(b)
Section 60(5a):	inserted by 97, 1988, s. 4(b); repealed by 4, 1991, s. 14(b)
Section 60(6):	substituted by 4, 1991, s. 14(b)
Section 60(9):	definition of "indemnified maritime employer" inserted by 4, 1991, s. 14(d)
Section 61(4):	inserted by 4, 1991, s. 15
Section 61(5):	inserted by 52, 1993, s. 5
Section 62(2):	inserted by 105, 1995, s. 6
Section 63(1):	amended by 39, 1988, s. 17; 4, 1991, s. 16(a); 52, 1993, s. 6; 84, 1992, s. 17(a); 35, 1995, s. 26
Section 63(3):	amended by 4, 1991, s. 16(b); 84, 1992, s. 17(b)
Section 63(3aa):	inserted by 84, 1992, s. 17(c); amended by 56, 1995, s. 8
Section 63(3a):	inserted by 4, 1991, s. 16(c)
Section 63(7):	inserted by 4, 1991, s. 16(d)
Section 64(2):	amended by 49, 1994, s. 13(a)
Section 64(3):	amended by 52, 1993, s. 7(a); 49, 1994, s. 13(b); 35, 1995, s. 27
Section 64(3a):	inserted by 52, 1993, s. 7(b)
Section 65(3) and (4):	inserted by 97, 1988, s. 5
Section 66(7):	substituted by 34, 1990, s. 5(a)
Section 66(9):	amended by 34, 1990, s. 5(b)
Section 66(12):	substituted by 39, 1988, s. 19(b)
Section 66(13):	repealed by 34, 1990, s. 5(c); inserted by 4, 1991, s. 17
Section 67:	amended by 39, 1988, s. 20; substituted by 4, 1991, s. 18
Section 67(1):	amended by 35, 1995, s. 28(a)
Section 67(5) and (6):	inserted by 35, 1995, s. 28(b)
Section 68(2):	substituted by 39, 1988, s. 21
Section 68(3):	repealed by 39, 1988, s. 21; inserted by 105, 1995, s. 7
Section 68(4):	substituted by 4, 1991, s. 19
Section 69(4):	substituted by 39, 1988, s. 22(b)
Section 69(4a):	inserted by 39, 1988, s. 22(b)
Section 69A:	inserted by 35, 1995, s. 29
Section 71(1):	amended by 4, 1991, s. 20
Section 72:	amended by 39, 1988, s. 23; substituted by 4, 1991, s. 21
Section 76:	amended by 39, 1988, s. 24
Section 76A:	inserted by 39, 1988, s. 25
Section 77:	substituted by 52, 1993, s. 8
Sections 77A - 77E:	inserted by 52, 1993, s. 8
Section 79(1):	substituted by 34, 1990, s. 6(a); amended by 52, 1993, s. 9(a), (b)
Section 79(1)(d):	repealed by 52, 1993, s. 9(b)

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Section 79(2) and (3):	substituted by 34, 1990, s. 6(a)
Section 79(3a):	inserted by 34, 1990, s. 6(a); repealed by 52, 1993, s. 9(c)
Section 79(4):	repealed by 52, 1993, s. 9(c)
Section 79(6):	amended by 34, 1990, s. 6(b)
Section 80:	substituted by 52, 1993, s. 10
Section 82:	redesignated as s. 82(1) by 39, 1988, s. 26
Section 82(2):	inserted by 39, 1988, s. 26; amended by 52, 1993, s. 11
Section 82(3) and (4):	inserted by 39, 1988, s. 26
Section 82A:	inserted by 4, 1991, s. 22
Heading preceding section 83:	substituted by 4, 1991, s. 23
Section 83:	amended by 4, 1991, s. 24
Section 84(1) - (3):	amended by 4, 1991, s. 25(a)
Section 84(4):	amended by 39, 1988, s. 27; 4, 1991, s. 25(b)
Section 84(5):	amended by 4, 1991, s. 25(a)
Section 85(1) and (2):	amended by 4, 1991, s. 26(a)
Section 85(3) - (5):	inserted by 4, 1991, s. 26(b)
Section 85A:	inserted by 4, 1991, s. 27
Section 86:	amended by 4, 1991, s. 28
Division 4 of Part 4 comprising section 87 and heading repealed by 4, 1991, s. 29	
Section 88:	redesignated as s. 88(1) by 39, 1988, s. 28
Section 88(2) - (4):	inserted by 39, 1988, s. 28
Section 89(2):	substituted by 39, 1988, s. 29; amended by 4, 1991, s. 30(a)
Section 89(2a):	inserted by 4, 1991, s. 30(b)
Section 90(2):	repealed by 4, 1991, s. 31
Section 90(2a):	inserted by 39, 1988, s. 30; repealed by 4, 1991, s. 31
Section 92:	substituted by 4, 1991, s. 32
Section 92(1):	amended by 52, 1993, s. 12
Section 92A:	inserted by 4, 1991, s. 33
Section 92A(1):	amended by 84, 1992, s. 18
Section 92A(5a) and (5b):	inserted by 52, 1993, s. 13
Section 93(1):	amended by 39, 1988, s. 31(a)
Section 93(2):	substituted by 39, 1988, s. 31(b); amended by 4, 1991, s. 34
Section 93(3):	substituted by 39, 1988, s. 31(b)
Section 94:	substituted by 4, 1991, s. 35
Section 95(1):	amended by 52, 1993, s. 14(a)
Section 95(2):	amended by 39, 1988, s. 32; 97, 1988, s. 6; 4, 1991, s. 36; 52, 1993, s. 14(b), (c)
Section 95(2)(e):	repealed by 52, 1993, s. 14(d)
Section 95(4):	amended by 52, 1993, s. 14(e)
Section 95(5) and (6):	substituted by 52, 1993, s. 14(f)
Section 95(7):	amended by 52, 1993, s. 14(g)
Section 96(1a):	inserted by 39, 1988, s. 33
Section 96(3):	repealed by 4, 1991, s. 37
Section 97(1):	substituted by 4, 1991, s. 38(a)
Section 97(2):	amended by 39, 1988, s. 34(a); substituted by 4, 1991, s. 38(a)
Section 97(3):	amended by 4, 1991, s. 38(b)
Section 97(4):	substituted by 39, 1988, s. 34(b);
Section 97(4a):	inserted by 39, 1988, s. 34(b); amended by 4, 1991, s. 38(c)
Section 97(4b):	inserted by 39, 1988, s. 34(b)
Section 97(4c) - (4f):	inserted by 39, 1988, s. 34(b); amended by 4, 1991, s. 38(b)
Section 97(5):	substituted by 39, 1988, s. 34(b); amended by 4, 1991, s. 38(b); 52, 1993, s. 15; substituted by 49, 1994, s. 14
Section 97(6) and (7):	repealed by 4, 1991, s. 38(d)
Section 97(8):	substituted by 39, 1988, s. 34(c)
Section 98:	repealed by 4, 1991, s. 39
Section 98A:	inserted by 39, 1988, s. 35
Section 98A(1):	substituted by 4, 1991, s. 40
Section 103A:	inserted by 39, 1988, s. 36

Section 104:	repealed by 4, 1991, s. 41
Section 105:	substituted by 39, 1988, s. 37; amended and redesignated as s. 105(1) by 4, 1991, s. 42
Section 105(2) and (3):	inserted by 4, 1991, s. 42(b)
Section 106A:	inserted by 39, 1988, s. 38
Section 107A:	inserted by 35, 1995, s. 30
Section 108(4) and (5):	inserted by 4, 1991, s. 43
Section 109:	amended by 35, 1995, s. 31
Section 110:	substituted by 4, 1991, s. 44
Section 112(1):	substituted by 49, 1994, s. 15(a)
Section 112(2):	amended by 39, 1988, s. 39(a), (b); 34, 1990, s. 7; substituted by 49, 1994, s. 15(a)
Section 112(2a):	inserted by 39, 1988, s. 39(c); amended by 49, 1994, s. 15(b)
Section 112(3):	repealed by 49, 1994, s. 15(c)
Section 112A:	inserted by 84, 1992, s. 19
Section 113(2):	amended by 39, 1988, s. 40(a), (b)
Section 113(2a) - (2c):	inserted by 39, 1988, s. 40(c)
Section 119A:	inserted by 39, 1988, s. 41; repealed by 4, 1991, s. 45
Section 120:	substituted by 4, 1991, s. 45
Section 120(1):	substituted by 35, 1995, s. 32
Section 121:	repealed by 49, 1994, s. 16
Section 120A:	inserted by 39, 1988, s. 42
Section 122(3a):	inserted by 4, 1991, s. 46
Section 122(4):	inserted by 39, 1988, s. 43
Section 122A:	inserted by 4, 1991, s. 47
Section 123:	repealed by 49, 1994, s. 17
Section 123A:	inserted by 4, 1991, s. 48
Section 124:	redesignated as s. 124(1) by 39, 1988, s. 44
Section 124(2):	inserted by 39, 1988, s. 44
<b>Schedule 1</b>	
Clause 2(3):	amended by 39, 1988, s. 45(a)
Clause 2(4) - (11):	inserted by 39, 1988, s. 45(b)
Clause 4:	substituted by 97, 1988, s. 7
Clause 4(4):	amended by 69, 1992, s. 32
<b>Clause 5:</b>	<b>substituted by 2, 1996, s. 3</b>
<b>Clauses 5A - 5C:</b>	<b>inserted by 2, 1996, s. 3</b>
Schedule 3:	amended by Regulation No. 97 of 1992, reg. 3 [Gaz. 18 June 1992, p. 1810]; substituted by 84, 1992, s. 20; amended by Regulation No. 212 of 1992, reg. 4 [Gaz. 10 December 1992, p. 1761]; 35, 1995, s. 33
Clause 2:	amended by 49, 1994, s. 18(a)
Clause 4:	amended by 49, 1994, s. 18(b)
Schedule 4:	inserted by 97, 1988, s. 8
Clause 1(2):	amended by 1, 1993, s. 64; 49, 1994, s. 19(a)
Clause 1(2)(b):	repealed by 49, 1994, s. 19(a)
Clause 1(2a):	inserted by 49, 1994, s. 19(b)
Clause 2(6):	amended by 84, 1992, s. 21(a)
Clause 3:	inserted by 84, 1992, s. 21(b)