

South Australia

Workers Rehabilitation and Compensation (Scheme Review) Amendment Act 2008

An Act to amend the *Workers Rehabilitation and Compensation Act 1986*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Workers Rehabilitation and Compensation (Scheme Review) Amendment Act 2008*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Workers Rehabilitation and Compensation Act 1986*

4—Amendment of section 2—Objects of Act

Section 2—after subsection (2) insert:

- (3) The Corporation, and the employer from whose employment a compensable disability arises, must seek to achieve a disabled worker's return to work (taking into account the objects and requirements of this Act).

5—Amendment of section 3—Interpretation

- (1) Section 3(1)—definition of *apprentice*, (a)—delete paragraph (a) and substitute:
 - (a) a person undertaking training as a trainee in a trade, declared vocation or other occupation under a contract of training under the *Training and Skills Development Act 2003*;
- (2) Section 3(1)—definition of *arbitration officer*—delete the definition
- (3) Section 3(1)—definitions of *conciliation and arbitration officer* and *conciliation officer*—delete the definitions and substitute:

conciliation officer—see section 81;
- (4) Section 3(1)—definition of *the Consumer Price Index*—delete the definition and substitute:

Consumer Price Index means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;
- (5) Section 3(1), definition of *contract of service*, (b)—delete "(the employer)"

- (6) Section 3(1)—after the definition of *corresponding law* insert:
- current work capacity*, in relation to a worker, means a present inability arising from a compensable disability such that the worker is not able to return to his or her employment at the time of the occurrence of the disability but is able to return to work in suitable employment;
- (7) Section 3(1), definition of *employer*, (a)—after "worker under a contract of service" insert:
- (subject to any exclusion under subsection (9))
- (8) Section 3(1), definition of *exempt employer*—delete the definition
- (9) Section 3(1), definition of *industrial association*, (a)—delete "*Industrial and Employee Relations Act 1994*" and substitute:
- Fair Work Act 1994*
- (10) Section 3(1), definition of *industrial association*, (e)—delete paragraph (e) and substitute:
- (e) Self Insurers of South Australia Inc; or
(ea) South Australian Employers' Chamber of Commerce and Industry Inc (trading as Business SA); or
- (11) Section 3(1)—after the definition of *industrial association* insert:
- legal personal representative*—see subsection (11);
- (12) Section 3(1), definition of *local government corporation*, (a)—delete paragraph (a) and substitute:
- (a) a council under the *Local Government Act 1999*;
- (13) Section 3(1), definition of *medical expert*—after paragraph (i) insert:
- (j) a registered osteopath;
- (14) Section 3(1), definition of *medical question*—delete the definition
- (15) Section 3(1)—after the definition of *medical services* insert:
- no current work capacity*, in relation to a worker, means a present inability arising from a compensable disability such that a worker is not able to return to work, either in his or her employment at the time of the occurrence of the disability or in suitable employment;
- (16) Section 3(1), definition of *notional weekly earnings*, (b)—delete "levels of earnings or in the value of money (or both)" and substitute:
- levels of earnings, the value of money or remuneration (including under section 37) or other relevant factors (or 1 or more of these)
- (17) Section 3(1)—definition of *prescribed allowance*—delete the definition and substitute:
- prescribed allowance*, in relation to the earnings of a worker, means any amount received by the worker from an employer by way of an allowance or benefit prescribed for the purposes of this definition;

(18) Section 3(1)—after the definition of *self-employed worker* insert:

self-insured employer means an employer who is registered by the Corporation as a self-insured employer under Part 5 Division 1;

(19) Section 3(1)—after the definition of *the State* insert:

suitable employment, in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following:

- (a) the nature of the worker's incapacity and previous employment;
- (b) the worker's age, education, skills and work experience;
- (c) the worker's place of residence;
- (d) medical information relating to the worker that is reasonably available, including in any medical certificate or report;
- (e) if any rehabilitation programs are being provided to or for the worker;
- (f) the worker's rehabilitation and return to work plan, if any;

(20) Section 3—after subsection (8) insert:

(9) The regulations may, in prescribing work or work of a specified class for the purposes of paragraph (b) of the definition of *contract of service* in subsection (1)—

- (a) designate a person, or persons of a specified class, as the presumptive employer of a worker who is within the ambit of the relevant prescription;
- (b) exclude a person who would otherwise be the employer of such a worker from the definition of *employer* in subsection (1).

(10) For the purposes of this Act—

- (a) *total incapacity* for work is the incapacity for work that is represented by a worker having no current work capacity within the meaning of this Act; and
- (b) *partial incapacity* for work is the incapacity for work that is represented by a worker having a current work capacity within the meaning of this Act.

(11) For the purposes of this Act, a person is the legal personal representative of a deceased worker if the person is—

- (a) a person who is entitled at law to administer the estate of the deceased worker; or
- (b) a person who is authorised by the Tribunal (on application made under this subsection) to act under this Act as a legal personal representative of the deceased worker.

- (12) A reference in this Act to suitable employment provided or offered by a worker's employer includes—
- (a) employment in respect of which—
 - (i) the number of hours each day or week that the worker performs work; or
 - (ii) the range of duties the worker performs,is suitably increased in stages (in accordance with a rehabilitation and return to work plan or otherwise); and
 - (b) if the employer does not provide employment involving the performance of work duties—suitable training or vocational re-education provided—
 - (i) by the employer at the workplace or elsewhere; or
 - (ii) by any other person or body under arrangements approved by the employer,but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends the suitable training or vocational re-education.
- (13) A reference in a provision of this Act to a designated form is a reference to a form designated for the purposes of that provision by the Minister from time to time by notice in the Gazette.
- (14) A reference in a provision of this Act to a designated manner is a reference to a manner designated for the purposes of that provision by the Corporation from time to time by notice in the Gazette.
- (15) If a monetary sum is followed by the word (*indexed*), the amount is to be adjusted on 1 January of each year by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the September quarter of the immediately preceding year by the Consumer Price Index for the September quarter, 2007 (with the amount so adjusted being rounded up in accordance with the regulations).

6—Substitution of section 4

Section 4—delete the section and substitute:

4—Average weekly earnings

- (1) Subject to this section, the average weekly earnings of a disabled worker is the average weekly amount that the worker earned during the period of 12 months preceding the relevant date in relevant employment.
- (2) For the purposes of subsection (1), relevant employment is constituted by—
 - (a) employment with the employer from whose employment the disability arose; and

- (b) if the worker was, at the time of the occurrence of the disability, in the employment of 2 or more employers, employment with each such employer.
- (3) For the purposes of this section, any amount paid while a worker was on annual, sick or other leave will be taken to be earnings.
- (4) If during the period of 12 months before the relevant date the worker had changed the circumstances of his or her employment from working casually or seasonally to working in permanent employment (whether on a full-time or part-time basis) and the worker was in that permanent employment on the relevant date, the worker's average weekly earnings may be determined by reference to the average weekly amount that the worker earned during the period of that permanent employment rather than during the period of 12 months preceding the relevant date, unless to do so would disadvantage the worker.
- (5) If a worker voluntarily (otherwise than by reason of an incapacity resulting from a compensable disability)—
 - (a) reduces the normal number of hours worked; or
 - (b) alters the nature of the work performed with the result that a reduction occurs in the worker's weekly earnings,any period before the reduction or alteration takes effect will be disregarded for the purposes of determining average weekly earnings.
- (6) In addition, 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 with the same employer 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.
- (7) If a worker is a contractor rather than an employee, the worker's average weekly earnings will 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 will be determined by reference to that award or industrial agreement.
- (8) If—
 - (a) an employer is a body corporate; and
 - (b) the worker is a director as well as an employee of the employer,

the worker's average weekly earnings will be determined by reference to the remuneration (calculated on a weekly basis) last reported in a return from the employer to the Corporation under Part 5 Division 6 (unless the Corporation determines that there is good cause not to apply this subsection in the circumstances of the particular case).

- (9) If 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 must 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.
- (10) The average weekly earnings of a disabled worker who—
- (a) was not a full-time worker immediately before the relevant date; and
 - (b) immediately before the relevant date had been seeking full-time employment; and
 - (c) had been predominantly during the preceding 18 months a full-time worker,

will be taken to be the average weekly earnings of the worker while employed in full-time employment during the period of 18 months preceding the relevant date.

- (11) If a worker who suffers a permanent incapacity (whether total or partial) is under the age of 21 years, the average weekly earnings of the worker must be determined by applying the rate of pay that would have been payable to the worker had the worker been 21 years old and if a worker who suffers a permanent incapacity (whether total or partial) is an apprentice, the average weekly earnings of the worker must be determined by applying the rate of pay that would have been payable to the worker had the worker completed the apprenticeship (and this determination may have effect (if not before) when it is determined that a worker has a permanent incapacity under a redetermination under section 53).
- (12) 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 if, at the relevant date, the worker had no reasonable expectation to work overtime within the foreseeable future because of a change in employment arrangements or work practices, or other relevant factors, announced, introduced or occurring on or before the relevant date, but otherwise payments attributable to overtime will be taken into account; and
 - (b) to the extent that a worker has worked overtime that is to be taken into account, the component for overtime will be an amount calculated as follows:

$$C = \frac{A}{B}$$

Where

C is the amount of the component

A is the total of the amounts paid or payable to the worker for overtime during the period used to calculate the average weekly earnings of the worker under a preceding subsection (the *relevant period*)

B is the number of weeks in the relevant period during which the worker worked or was on annual, sick or other paid leave.

- (13) For the purposes of determining the average weekly earnings of a worker—
- (a) any amount otherwise payable to the worker that has been the subject of a voluntary salary sacrifice for superannuation purposes by the worker will be taken into account as earnings; and
 - (b) any non-cash benefit of a prescribed class provided to the worker by an employer—
 - (i) will be taken into account if the worker does not retain the benefit of the non-cash benefit (and valued after taking into account any principles specified by this Act or prescribed by the regulations); and
 - (ii) will not be taken into account if the worker retains the benefit of the non-cash benefit.
- (14) Despite a preceding subsection, the following will be disregarded for the purposes of determining the average weekly earnings of a worker:
- (a) any contribution paid or payable by an employer to a superannuation scheme for the benefit of the worker;
 - (b) any prescribed allowances.
- (15) Despite a preceding subsection—
- (a) if a disabled worker's remuneration was, at the relevant date, covered by an award or industrial agreement, the worker's average weekly earnings will 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 will be fixed at the prescribed amount;

- (c) the average weekly earnings of a worker will in no case be fixed at more than twice State average weekly earnings.
- (16) In this section—
- (a) a reference to the relevant date is a reference to the date on which the relevant disability occurs; and
 - (b) a reference to State average weekly earnings is a reference to the amount last published before the relevant date by the Australian Bureau of Statistics as an estimate of Average Weekly Earnings for Ordinary Hours of Work for each Full-time Employed Adult Male Unit in this State.

7—Amendment of section 7—Advisory Committee

Section 7(2)(b)—delete "exempt" and substitute:

self-insured

8—Amendment of section 28A—Rehabilitation and return to work plans

- (1) Section 28A(2)(b)—delete "3 months" and substitute:
13 weeks
- (2) Section 28A(3)—after paragraph (a) insert:
 - (ab) must consult with the relevant rehabilitation and return to work co-ordinator under section 28D (if appointed); and

9—Insertion of section 28D

After section 28C insert:

28D—Rehabilitation and return to work co-ordinators

- (1) Subject to this section, an employer must appoint a rehabilitation and return to work co-ordinator (referred to in this section as a "co-ordinator").
- (2) A co-ordinator—
 - (a) must be an employee of the employer; and
 - (b) must be based in South Australia.
- (3) The employer must appoint the co-ordinator—
 - (a) within 6 months after the requirement to be registered under Part 5 first arises (disregarding any exemption that may be available under that Part); or
 - (b) within a later period approved by the Corporation.

Maximum penalty: \$10 000.

- (4) A co-ordinator has the following functions:
- (a) to assist workers suffering from compensable disabilities, where prudent and practicable, to remain at or return to work as soon as possible after the occurrence of the disability;
 - (b) to assist with liaising with the Corporation in the preparation and implementation of a rehabilitation and return to work plan for a disabled worker;
 - (c) to liaise with any persons involved in the rehabilitation of, or the provision of medical services to, workers;
 - (d) to monitor the progress of a disabled worker's capacity to return to work;
 - (e) to take steps to, as far as practicable, prevent the occurrence of a secondary disability when a worker returns to work;
 - (f) to perform other functions prescribed by the regulations.
- (5) An employer must—
- (a) provide such facilities and assistance as are reasonably necessary to enable a co-ordinator to perform his or her functions under this section; and
 - (b) comply with any training or operational guidelines published by the Corporation from time to time for the purposes of this section.
- (6) If a vacancy occurs in the office of a co-ordinator under this section, the employer must make a new appointment to the office within the prescribed period.
Maximum penalty: \$10 000.
- (7) The regulations may exempt an employer, or employers of a prescribed class, from a requirement under this section.

10—Amendment of section 30—Compensability of disabilities

Section 30(3)(e)—after "rehabilitation program" insert:

or for the purposes of a rehabilitation and return to work plan

11—Amendment of section 32—Compensation for medical expenses

- (1) Section 32(1)(a)—delete "prescribed" and substitute:
published by the Minister
- (2) Section 32(7)—after "published" insert:
by the Minister
- (3) Section 32(9)—delete "prescribed" and substitute:
published by the Minister

- (4) Section 32(10)—delete "prescribed" and substitute:
published by the Minister
- (5) Section 32(11)—delete "The Governor may, by regulation, prescribe" and substitute:
The Minister may, by notice in the Gazette, on the recommendation of the Corporation, publish
- (6) Section 32(12)—delete "A" and substitute:
Subject to subsection (12a), a
- (7) Section 32(12)—delete "prescribed" and substitute:
published
- (8) Section 32—after subsection (12) insert:
(12a) A scale of charges for services provided by a public hospital may be based on government charges for the relevant service.
- (9) Section 32(13)—delete "a regulation is made prescribing" and substitute:
the Corporation makes a recommendation to the Minister about the publishing of
- (10) Section 32(13)—delete "on the terms of the proposed regulation"
- (11) Section 32(14)—delete "prescribed" and substitute:
published

12—Insertion of section 32A

After section 32 insert:

32A—Special provisions for payment of medical expenses after initial notification of disability

- (1) A worker may, by application made to the Corporation in the designated manner and the designated form, apply to the Corporation for the payment of costs within the ambit of section 32 before the determination of a claim under Division 8.
- (2) The Corporation may, in connection with an application under subsection (1), require a worker to provide information specified by the Corporation.
- (3) The Corporation may, on application under subsection (1), determine that it is reasonable to accept provisional liability for the payment of compensation under section 32 and make a payment under this section.
- (4) The maximum amount payable under this section with respect to a particular disability is \$5 000 (indexed).
- (5) The acceptance of provisional liability under this section does not constitute an admission of liability under this Act or independently of this Act.

- (6) A payment under this section with respect to a particular cost discharges any liability that the Corporation may have with respect to that cost under section 32.
- (7) The Corporation may determine not to make a payment under this section despite the fact that the Corporation has previously made 1 or more payments with respect to the same disability under this section.
- (8) Subject to subsection (9), if the Corporation makes 1 or more payments under this section and it is subsequently determined that the worker was not entitled to compensation under this Act, the Corporation may, subject to and in accordance with the regulations—
 - (a) recover the amount or amounts paid as a debt; or
 - (b) set the amount off against a right to payment of compensation under this Act.
- (9) A right of recovery or set off under subsection (8) only arises if the worker has acted dishonestly in making an application or providing information for the purposes of this or any other section of this Act.
- (10) The following decisions are not reviewable:
 - (a) a decision to accept or not to accept liability under this section;
 - (b) a decision to make or not to make a payment under this section;
 - (c) a decision to exercise or not to exercise a right of recovery under this section.

13—Amendment of section 33—Transportation for initial treatment

- (1) Section 33(4)—delete "an exempt" and substitute:
a self-insured
- (2) Section 33—after subsection (4) insert:
 - (5) An amount prescribed by regulation under subsection (4) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the Consumer Price Index.

14—Amendment of section 34—Compensation for property damage

Section 34—after subsection (2) insert:

- (3) An amount prescribed by regulation under subsection (1) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the Consumer Price Index.

15—Substitution of section 35

Section 35—delete the section and substitute:

35—Preliminary

- (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 this Division.
- (2) Weekly payments are not payable under this Division in respect of a period of incapacity for work falling after the date on which the worker reaches retirement age.
- (3) However, if a worker who is within 2 years of retirement age or above retirement age becomes incapacitated for work while still in employment, weekly payments are payable for a period of incapacity falling within 2 years after the commencement of the incapacity.
- (4) A worker is not entitled under this Division to receive, in respect of 2 or more disabilities, weekly payments in excess of the worker's notional weekly earnings.
- (5) If a liability to make weekly payments is redeemed, the worker is taken, for the purposes of this Division, to be receiving the weekly payments that would have been payable if there had been no redemption.
- (6) Subject to subsection (7) (and any other relevant provision of this Act) a reference in this Division to a worker making *every reasonable effort to return to work in suitable employment* includes any reasonable period during which—
 - (a) the worker is waiting for a response to a request for suitable employment made by the worker and received by the employer; and
 - (b) if the employer's response is that suitable employment may or will be provided at some time, the worker is waiting for suitable employment to commence; and
 - (c) if the employer's response is that suitable employment cannot be provided at some time, the worker is waiting for a response to requests for suitable employment from other employers; and
 - (d) the worker is waiting for the commencement of a rehabilitation and return to work plan, after approval has been given.
- (7) A worker must not be treated as making *every reasonable effort to return to work in suitable employment* for the purposes of this Division if the worker—
 - (a) has refused to have an assessment made of the worker's employment prospects; or

- (b) has refused or failed to take all reasonably necessary steps to obtain suitable employment; or
 - (c) has refused or failed to accept an offer of suitable employment from any person; or
 - (d) has refused or failed to participate in a rehabilitation program or a rehabilitation and return to work plan.
- (8) In this Division—
- (a) ***first entitlement period*** means an aggregate period not exceeding 13 weeks (whether consecutive or not) in respect of which a worker has an incapacity for work and is entitled to the payment of compensation under this Act on the account of that incapacity;
 - (b) ***second entitlement period*** means an aggregate period not exceeding 13 weeks (whether consecutive or not) commencing after the end of the first entitlement period, in respect of which a worker has an incapacity for work and is entitled to the payment of compensation under this Act on account of that incapacity;
 - (c) ***third entitlement period*** means an aggregate period not exceeding 104 weeks (whether consecutive or not), commencing after the end of the second entitlement period, in respect of which a worker has an incapacity for work and is entitled to the payment of compensation under this Act on the account of that incapacity;
 - (d) ***retirement age*** means—
 - (i) 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
 - (ii) the age of 65 years,whichever is the lesser;
 - (e) a reference to weekly earnings, or current weekly earnings, is a reference to weekly earnings exclusive of prescribed allowances.

35A—Weekly payments over designated periods

- (1) Subject to this Act, a worker is, in respect of a particular compensable disability, entitled to weekly payments while incapacitated for work during the first entitlement period as follows:
 - (a) for any period when the worker has no current work capacity—the worker is entitled to weekly payments equal to the worker's notional weekly earnings;

- (b) for any period when the worker has a current work capacity—the worker is entitled to weekly payments equal to the difference between the worker's notional weekly earnings and the worker's designated weekly earnings.
- (2) Subject to this Act, a worker is, in respect of a particular compensable disability, entitled to weekly payments while incapacitated for work during the second entitlement period as follows:
 - (a) for any period when the worker has no current work capacity—the worker is entitled to weekly payments equal to 90% of the worker's notional weekly earnings;
 - (b) for any period when the worker has a current work capacity—the worker is entitled to weekly payments equal to 90% of the difference between the worker's notional weekly earnings and the worker's designated weekly earnings.
- (3) Subject to this Act, a worker is, in respect of a particular compensable disability, entitled to weekly payments while incapacitated for work during the third entitlement period as follows:
 - (a) for any period when the worker has no current work capacity—the worker is entitled to weekly payments equal to 80% of the worker's notional weekly earnings;
 - (b) for any period when the worker has a current work capacity—the worker is entitled to weekly payments equal to 80% of the difference between the worker's notional weekly earnings and the worker's designated weekly earnings.
- (4) For the purposes of this section, but subject to subsection (5), the ***designated weekly earnings*** of a worker will be taken to be—
 - (a) the current weekly earnings of the worker in employment or self-employment; or
 - (b) the weekly earnings that the Corporation determines that the worker could earn from time to time (including, but not limited to, the amount of any current weekly earnings) in employment, whether in the worker's employment previous to the relevant disability or in suitable employment, that the Corporation determines the worker is capable of performing despite the disability,

whichever is the greater, but not to include a prescribed benefit under subsection (6).

- (5) Subsection (4)(b) will not apply to a worker who has a current work capacity during any period or periods during which the worker is incapacitated for work and in which either of the following circumstances apply:
- (a) the employer has failed to provide the worker with suitable employment and the worker is making every reasonable effort to return to work in suitable employment;
 - (b) the worker is participating in a rehabilitation and return to work plan which reasonably prevents the worker from returning to employment.
- (6) The following are *prescribed benefits* for the purposes of subsection (4):
- (a) any amount paid to the worker by the Corporation or a self-insured employer in respect of an employment program provided or arranged by the Corporation or self-insured employer for the purposes of this Act;
 - (b) any of the following received by the worker from an employer:
 - (i) any payment, allowance or benefit related to annual or other leave;
 - (ii) any payment, allowance or benefit paid or conferred by the employer on the worker's retirement;
 - (iii) any payment, allowance or benefit paid or conferred under a superannuation or pension scheme;
 - (iv) any payment, allowance or benefit paid or conferred on the retrenchment, or in relation to the redundancy, of the worker;
 - (c) any other payment, allowance or benefit of a prescribed kind.

35B—Weekly payments after expiry of designated periods—no work capacity

- (1) Subject to section 35C (and to the other provisions of this Act), a worker's entitlement to weekly payments under this Division ceases at the end of the third entitlement period under section 35A (unless brought to an end before this time) unless the worker is assessed by the Corporation as—
- (a) having no current work capacity; and
 - (b) likely to continue indefinitely to have no current work capacity.

- (2) If a worker qualifies under an assessment under subsection (1), the worker is entitled to weekly payments while incapacitated for work in respect of a particular disability equal to 80% of the worker's notional weekly earnings as though the third entitlement period were continuing.
- (3) A review of the assessment of a worker under this section may be conducted by the Corporation at any time and must be conducted as often as may be reasonably necessary, being at least once in every 2 years.
- (4) In connection with the operation of subsection (1), a worker who, immediately before the end of a third entitlement period, is in receipt of weekly payments under paragraph (a) of section 35A(3) is entitled to continue to receive weekly payments at the rate prescribed by that paragraph unless or until the Corporation has assessed whether the worker falls within the category of a worker who may be considered as—
 - (a) having no current work capacity; and
 - (b) likely to continue indefinitely to have no current work capacity.
- (5) An assessment under subsection (4) may be made before or after the end of the third entitlement period.
- (6) Despite section 35A, the Corporation must not discontinue weekly payments to a worker who is subject to the operation of subsection (4) until it has given the worker at least 13 weeks notice in writing of the proposed discontinuance (and the requirements of section 36 will not apply with respect to this notice).
- (7) A notice under subsection (6) must not be given unless or until the assessment envisaged by subsection (4) has been undertaken.
- (8) Subsections (4), (5), (6) and (7) do not apply if the Corporation discontinues the worker's weekly payments under section 36 or suspends such payments under another provision of this Act.
- (9) The Corporation may, on the basis of a review under subsection (3), discontinue weekly payments under this section if satisfied that the worker has a current work capacity.

**35C—Weekly payments after expiry of designated periods—
current work capacity**

- (1) Subject to this Act, a worker who is, or has been, entitled to weekly payments under section 35A(3)(b) or 35B, may apply to the Corporation in accordance with this section for a determination that the worker's entitlement to weekly payments under this Division does not cease at the end of the third entitlement period under section 35A or at the expiry of an entitlement under section 35B (as the case may be).

- (2) The Corporation may determine that the worker's entitlement to weekly payments under this Division does not cease as contemplated by subsection (1) if the Corporation is satisfied that the worker is in employment and that because of the compensable disability, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings.
- (3) The Corporation—
 - (a) must within 90 days of receiving an application under subsection (1), make or refuse to make a determination under subsection (2) and advise the worker in writing of its decision (unless the Corporation requires an extension of time because of the operation of paragraph (b)); and
 - (b) must not refuse to make a determination under subsection (2) on the ground that the Corporation is not satisfied under the requirements of that subsection unless—
 - (i) the Corporation has referred the medical question whether, because of the disability, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work, and if not so incapable, what further or additional employment or work the worker is capable of undertaking, for the opinion of a Medical Panel under Part 6C; and
 - (ii) the opinion of the Medical Panel is that the worker is not so incapable and specifies what further or additional employment or work the worker is capable of undertaking.
- (4) If the Corporation makes a determination under subsection (2), subject to this Division, the worker is entitled to weekly payments equal to 80% of the difference between the worker's notional weekly earnings and the worker's current weekly earnings.
- (5) The entitlement to weekly payments under subsection (4) continues until—
 - (a) the Corporation ceases to be satisfied as to the matters specified in subsection (2); or
 - (b) the worker otherwise ceases to be entitled to weekly payments (including by virtue of the operation of section 36).

16—Amendment of section 36—Discontinuance of weekly payments

- (1) Section 36(1)—delete paragraph (h) and substitute:
 - (h) the worker's entitlement to weekly payments ceases because of the passage of time; or

- (i) the worker's entitlement to weekly payments ceases because of the occurrence of some other event or the making of some other decision or determination that, under another provision of this Act, brings the entitlement to weekly payments to an end or the discontinuance of weekly payments is otherwise authorised or required under another provision of this Act.
- (2) Section 36(1a)—after paragraph (f) insert:
 - (fa) the worker refuses or fails to participate in assessments of the worker's capacity, rehabilitation progress or future employment prospects (including by failing to attend); or
- (3) Section 36(2)(c)—delete paragraph (c) and substitute:
 - (c) the worker has recommenced work as an employee or as a self-employed contractor, or the worker has had an increase in remuneration as an employee or a self-employed contractor; or
 - (d) the worker's entitlement to weekly payments reduces because of the passage of time; or
 - (e) the worker's entitlement to weekly payments reduces because of the occurrence of some other event or the making of some other decision or determination that, under another provision of this Act, is expressed to result in a reduction to an entitlement to weekly payments or the reduction of weekly payments is otherwise authorised or required under another provision of this Act.
- (4) Section 36(2)—delete "(and any reduction made on the basis of this subsection must be consistent with section 35)"
- (5) Section 36(3a)—delete "21 days" and substitute:

the prescribed number of days
- (6) Section 36(3a)—after paragraph (b) insert:
 - (ba) where a decision to reduce weekly payments is made on account of the end of the first entitlement period or the second entitlement period under section 35A; or
 - (bb) where a decision to discontinue weekly payments is made on account of the end of the third entitlement period under section 35A; or
 - (bc) where a decision to discontinue weekly payments is made on account of—
 - (i) a review by the Corporation under section 35B(3); or
 - (ii) a decision of the Corporation under section 35C(5)(a); or

- (7) Section 36—after subsection (3a) insert:
- (3b) For the purposes of subsection (3a), the prescribed number of days is—
 - (a) if the worker has been receiving weekly payments under this Division (or Division 7A) for a period that is less than 52 weeks, or for 2 or more periods that aggregate less than 52 weeks—14 days;
 - (b) in any other case—28 days.
- (8) Section 36(4), (4a) and (5)—delete subsections (4), (4a) and (5) and substitute:
- (4) Subject to complying with subsection (3a), a discontinuance or reduction of weekly payments under this section takes effect in accordance with the terms of the Corporation's notice under subsection (3).
 - (5) The effect of a decision to discontinue or reduce weekly payments is not affected by the worker lodging a notice of dispute under Part 6A.
 - (5a) If a dispute is resolved in favour of the worker at the reconsideration, conciliation or judicial determination stage, or on an appeal, the worker is entitled to be paid—
 - (a) in the case of a reconsideration—the total amount that, under the terms of the reconsideration, should have been paid to the worker between the date that the disputed decision took effect and the date that the decision, as varied under the reconsideration, takes effect (less any amount paid to the worker under subsection (15));
 - (b) in the case of a resolution at the conciliation stage—any amount payable under the terms of the relevant settlement;
 - (c) in the case of a judicial determination or determination or on appeal—the amount that, under the terms of the determination or according to the outcome of the appeal, would have constituted the worker's entitlements under this Act had the weekly payments not been discontinued or reduced (as the case may be), taking into account any amount paid to the worker under a preceding paragraph, under subsection (15), or under another provision of this Act, and subject to the specific terms of any determination or order made as a result of the judicial determination or appeal (as the case may be).
 - (5b) An amount paid under subsection (5a) will be taken to be an amount in arrears under section 47 (with interest payable subject to the operation of section 47(2)).

- (5c) If a dispute is ultimately resolved in favour of the Corporation and the worker has been paid an amount in excess of the amount of the worker's lawful entitlements to weekly benefits on account of the operation of subsection (5a)(c) or (15), the Corporation may, at the Corporation's discretion (but subject to the regulations)—
- (a) recover the amount of the excess (together with any interest on that amount paid by the Corporation) from the worker as a debt; or
 - (b) set off the amount recoverable under paragraph (a) against liabilities of the Corporation to make payments to the worker under this Act.

(9) Section 36—after subsection (13) insert:

- (14) In connection with the operation of subsection (1) (and to avoid doubt), a worker is required—
- (a) to take reasonable steps to attend any appointment reasonably required for the purposes of this Division; and
 - (b) to take reasonable steps to comply with any requirement reasonably required under a rehabilitation program or a rehabilitation and return to work plan,

(and a failure to comply with these requirements constitutes a ground for the discontinuance of payments under this section).

- (15) Despite subsections (4) and (5), if—
- (a) a worker who has—
 - (i) received a notice of discontinuance of weekly payments under this section; and
 - (ii) lodged a notice of dispute under Part 6A,applies to the WorkCover Ombudsman for a review of the decision to discontinue weekly payments; and
 - (b) on the application for review it appears to the WorkCover Ombudsman that it was not reasonably open to the Corporation to decide to discontinue the payments having regard to the circumstances of the case,

the WorkCover Ombudsman may suspend the operation of the decision to discontinue weekly payments.

- (16) Weekly payments reinstated under subsection (15) will continue until—
- (a) the notice of dispute is withdrawn; or
 - (b) the matter is resolved on reconsideration by the Corporation or at conciliation (or otherwise between the parties); or
 - (c) the Tribunal—
 - (i) determines the matter in the exercise of its judicial function; or

- (ii) pending its determination of the matter—orders that the worker should no longer have the benefit of the weekly payments due to some unreasonable act, omission or delay on the part of the worker in connection with the proceedings.
- (17) In connection with the operation of subsection (15)—
- (a) the WorkCover Ombudsman should seek to consider an application for review under subsection (15)(a) as expeditiously as is reasonably practicable; and
 - (b) the WorkCover Ombudsman has an absolute discretion as to whether or not the worker or the Corporation will be heard on the review; and
 - (c) a decision of the WorkCover Ombudsman on a review is not subject to appeal or review under this or any other Act or law.

17—Insertion of section 37

After section 36 insert:

37—Adjustments due to change from original arrangements

- (1) The Corporation may, on its own initiative or at the request of the worker, review the calculation of the average weekly earnings of a worker (and therefore the notional weekly earnings of a worker) for the purpose of making an adjustment due to—
 - (a) a change in a component of the worker's remuneration used to determine average weekly earnings (including a component constituted by a non-cash benefit); or
 - (b) a change in the equipment or facilities provided or made available to the worker (if relevant to average weekly earnings).
- (2) A request by a worker must be made in a designated manner and a designated form.
- (3) Before the Corporation begins a review under this section, the Corporation must give the worker notice, in a designated form—
 - (a) informing the worker of the proposed review; and
 - (b) inviting the worker to make written representations 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 there has been a change that warrants an adjustment contemplated by subsection (1), the Corporation may make the relevant adjustment.

- (5) An adjustment under this section—
 - (a) will take effect as an adjustment to the worker's notional weekly earnings (and may therefore increase or reduce weekly payments under this Division); and
 - (b) operates from a date determined by the Corporation (which may be an antecedent date but not a date that is before the date of the change on which the adjustment is based and not so as to result in a retrospective reduction in weekly payments).
- (6) For the purposes of a review under this section, the Corporation may, by notice in writing to the worker to whom the review relates, require the worker to furnish any information that the Corporation determines to be relevant to the review.
- (7) If a worker fails to comply with a requirement under subsection (6) within the time allowed in the notice, the Corporation may suspend weekly payments to the worker.
- (8) On completing the review, the Corporation must give notice, in a designated 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.

18—Amendment of section 38—Review of weekly payments

- (1) Section 38—after subsection (1a) insert:
 - (1b) A request by a worker or employer must be made in a designated manner and a designated form.
- (2) Section 38(3)—delete "in the form determined by the regulations" and substitute:

in a designated form
- (3) Section 38(7)—delete "in the prescribed form" and substitute:

in a designated form

19—Repeal of section 38A

Section 38A—delete the section

20—Amendment of section 39—Economic adjustments to weekly payments

- (1) Section 39—after subsection (1) insert:
 - (1a) Before the Corporation begins a review under this section, the Corporation must give the worker notice, in a designated form—
 - (a) informing the worker of the proposed review; and
 - (b) inviting the worker to make written representations to the Corporation on the subject of the review within a reasonable time specified in the notice.

- (2) Section 39(2)(a)(ii)—delete "in accordance with the regulations" and substitute:
in a designated manner and a designated form
- (3) Section 39(2)(b)—delete paragraph (b) and substitute:
(b) operates—
- (i) in the case of an adjustment under paragraph (a)(i)—from the end of the year of incapacity in which the review is made;
 - (ii) in the case of an adjustment under paragraph (a)(ii)—from the Corporation's decision on the application, back-dated to the date of the relevant changes in rates of remuneration.
- (4) Section 39(3)—delete "in the form prescribed by regulation" and substitute:
in a designated form

21—Amendment of section 41—Absence of worker from Australia

- Section 41(2)—delete "in the form prescribed by regulation" and substitute:
in a designated form

22—Amendment of section 42—Redemption of liabilities

- (1) Section 42(1)(c)—delete paragraph (c)
- (2) Section 42(2)—after paragraph (d) insert:
and
- (e) 1 (or more) of the following requirements are satisfied in the case of a proposed redemption under subsection (1)(a):
- (i) the rate of weekly payments to be redeemed does not exceed \$30 (indexed);
 - (ii) the worker has attained the age of 55 years and the Corporation has determined that the worker has no current work capacity;
 - (iii) the Tribunal (constituted of a presidential member) has determined, on the basis of a joint application made to the Tribunal by the worker and the Corporation in contemplation of an agreement being entered into under this section, that the continuation of weekly payments is contrary to the best interests of the worker from a psychological and social perspective.

23—Repeal of Part 4 Division 4B

- Part 4 Division 4B—delete Division 4B

24—Substitution of section 43

Section 43—delete the section and substitute:

43—Lump sum compensation

- (1) Subject to this Act, if a worker suffers a compensable disability resulting in permanent impairment as assessed in accordance with section 43A, 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 will be an amount that represents a portion of the prescribed sum calculated in accordance with the regulations.
- (3) Regulations made for the purposes of subsection (2) must provide for compensation that at least satisfies the requirements of Schedule 3 taking into account the assessment of whole of person impairment under this Division.
- (4) An entitlement does not arise under this section if the worker's degree of permanent impairment is less than 5%.
- (5) An entitlement does not arise under this section in relation to a psychiatric impairment.
- (6) If a worker suffers 2 or more compensable disabilities arising from the same trauma—
 - (a) the disabilities may together be treated as 1 disability to the extent set out in the WorkCover Guidelines (and assessed together using any combination or other principle set out in the WorkCover Guidelines); and
 - (b) the worker is not entitled to receive compensation by way of lump sum under subsection (2) in respect of those disabilities in excess of the prescribed sum.
- (7) If—
 - (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 will be a reduction of the lump sum payable under this section in respect of the disability by the amount of the previous payment unless such a reduction is incorporated into the provisions of the WorkCover Guidelines.
- (8) For the purposes of this section, the *prescribed sum* is—
 - (a) unless a regulation has been made under paragraph (b)—\$400 000 (indexed); or

- (b) a greater amount prescribed by regulation for the purposes of this definition.
- (9) In connection with the operation of subsection (8)—
 - (a) the amount to be applied with respect to a particular disability is the amount applying under that subsection at the time of the occurrence of that disability; and
 - (b) an amount prescribed by regulation under paragraph (b) of that subsection must be indexed so as to provide annual adjustments according to changes in the Consumer Price Index.
- (10) For the purposes of this section, any degree of impairment will be assessed in accordance with section 43A (and the *WorkCover Guidelines*).
- (11) Compensation is not payable under this section after the death of the worker concerned.
- (12) In this section—
WorkCover Guidelines means the guidelines published under section 43A.

43A—Assessment of impairment

- (1) This section sets out a scheme for assessing the degree of impairment that applies to a compensable disability that results in permanent impairment.
- (2) An assessment—
 - (a) must be made in accordance with the *WorkCover Guidelines*; and
 - (b) must be made by a legally qualified medical practitioner who holds a current accreditation issued by the Corporation for the purposes of this section.
- (3) The Minister will publish guidelines (the "*WorkCover Guidelines*") for the purposes of section 43 and this section.
- (4) The guidelines under subsection (3)—
 - (a) must be published in the *Gazette*; and
 - (b) may adopt or incorporate the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time; and
 - (c) must incorporate a methodology that arrives at an assessment of the degree of impairment of the whole person; and
 - (d) may specify procedures to be followed in connection with an assessment for the purposes of this Division; and

- (e) may have effect on a day specified by the Minister by notice in the Gazette; and
 - (f) may be amended or substituted by the Minister from time to time.
- (5) The Minister must, before publishing or amending the WorkCover Guidelines, consult with—
 - (a) the Australian Medical Association (South Australia) Incorporated; and
 - (b) any other prescribed body.
- (6) The Corporation will establish an accreditation scheme for the purposes of subsection (2)(b).
- (7) The accreditation scheme—
 - (a) may provide for a term or period of accreditation, and for the suspension or cancellation of accreditation on specified grounds; and
 - (b) may specify terms or conditions of accreditation; and
 - (c) may be amended or substituted by the Corporation from time to time.
- (8) An assessment of the degree of impairment resulting from a disability for the purposes of this Division must—
 - (a) be made after the disability has stabilised; and
 - (b) subject to subsection (9), be based on the worker's current impairment as at the date of assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the disability.
- (9) An assessment must take into account the following principles:
 - (a) if a worker presents for assessment in relation to disabilities which occurred on different dates, the impairments are to be assessed chronologically by date of disability;
 - (b) impairments from unrelated disabilities or causes are to be disregarded in making an assessment;
 - (c) assessments are to comply with any other requirements specified by the WorkCover Guidelines or prescribed by the regulations.
- (10) An amendment or substitution in relation to the WorkCover Guidelines under subsection (4)(d) will only apply in respect of a disability occurring on or after the date the amendment or substitution takes effect.

- (11) A number determined under the WorkCover Guidelines with respect to a value of a person's degree of impairment may be rounded up or down according to any principle set out in the WorkCover Guidelines.

43B—No disadvantage—compensation table

- (1) If—
- (a) a worker suffers a compensable disability that gives rise to an entitlement to compensation under sections 43 and 43A; and
 - (b) the compensable disability is a loss mentioned in the table in Schedule 3A; and
 - (c) the amount of compensation payable under sections 43 and 43A in respect of that disability is less than the amount applying under the table in Schedule 3A in respect of that disability,

then the worker is entitled to compensation equal to the amount applying under the table (and, if relevant, subsection (2)) instead of the compensation payable under sections 43 and 43A.

- (2) If a worker suffers 2 or more disabilities mentioned in the table in Schedule 3A arising from the same trauma, the worker is not entitled in any case to receive compensation under this section in excess of \$254 100 (indexed) (despite the operation of subsection (1) and the table).
- (3) Compensation is not payable under this section after the death of the worker concerned.

25—Amendment of section 44—Compensation payable on death—weekly payments

- (1) Section 44(1)—delete "compensation is payable" and substitute:
compensation in the form of weekly payments is payable
- (2) Section 44(1)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:
- (a) a dependent spouse or domestic partner is entitled to weekly payments equal to—
 - (i) in the case of total dependency—50%;
 - (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;
 - (b) a dependent child (being an orphaned child) is entitled to weekly payments equal to—
 - (i) in the case of total dependency—25%;

- (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;

- (3) Section 44(1)(e)—delete "lump sum or"
- (4) Section 44(2)—delete subsection (2)
- (5) Section 44(3)—delete subsection (3)
- (6) Section 44(4a)—delete subsection (4a)
- (7) Section 44(5)—delete "subsection (1)(c)" and substitute:
subsection (1)(b)
- (8) Section 44(10)—delete "(either by way of lump sum or weekly payment)"

26—Insertion of sections 45A, 45B and 45C

After section 45 insert:

45A—Compensation payable on death—lump sums

- (1) In this section—

child means a person who—

- (a) is under the age of 18 years; or
- (b) 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) is, by reason of physical or mental disability, incapable of earning a living;

dependent child means a child, including an orphaned child, totally, mainly or partially dependent on the worker's earnings;

dependent partner means a spouse or domestic partner totally or mainly dependent on the worker's earnings;

partially dependent partner means a spouse or domestic partner who is to any extent dependent on the worker's earnings;

prescribed sum means the prescribed sum under section 43 (as at the time of the occurrence of the compensable disability that resulted in the death of the relevant worker and less any amount paid to the relevant worker under section 43).

- (2) For the purposes of this section, in determining whether a spouse or domestic partner was wholly or mainly dependent on a worker's earnings at the time of death of the worker or other relevant time, no regard will be had to any money which the spouse or domestic partner had earned or was earning by his or her own personal exertion or to any savings arising from any such earnings.

- (3) For the purposes of this section, if a worker and the worker's spouse or domestic partner 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 or domestic partner will be disregarded in determining whether the child is a dependant and, if so, the extent of the child's dependency.
- (4) Subject to this Act, if a worker dies as a result of a compensable disability, compensation in the form of a lump sum is payable in accordance with this section.
- (5) If the worker leaves a dependent partner, or dependent partners, and no dependent child, the amount of compensation is an amount equal to the prescribed sum payable to the dependent partner or, if there is more than 1, in equal shares to the dependent partners.
- (6) If the worker leaves no dependent partner and no dependent children other than an orphan child or orphan children, the amount of compensation is an amount equal to the prescribed sum payable to that orphan child or, if there are 2 or more, in equal shares for those children.
- (7) If the worker leaves a dependent partner, or dependent partners, and 1, and only 1, dependent child, the amount of compensation is—
 - (a) an amount equal to 90% of the prescribed sum payable to the dependent partner or, if more than 1, in equal shares to the dependent partners; and
 - (b) an amount equal to 10% of the prescribed sum payable to the dependent child.
- (8) If the worker leaves a dependent partner, or dependent partners, and more than 1 and not more than 5 dependent children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:
 - (a) an amount equal to 5% of the prescribed sum payable to each dependent child;
 - (b) the balance to the dependent partner or, if more than 1, in equal shares to the dependent partners.
- (9) If the worker leaves a dependent partner, or dependent partners, and more than 5 dependent children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:
 - (a) an amount equal to 75% of the prescribed sum payable to the dependent partner or, if more than 1, in equal shares to the dependent partners;
 - (b) an amount equal to 25% of the prescribed sum payable to the dependent children in equal shares.

- (10) If the worker does not leave a dependent partner but leaves a dependent child or dependent children (not taking into account an orphan child or orphan children), that dependent child is, or if more than 1, each of those dependent children are, entitled to the amount of compensation being such share of a sum not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to the dependent child or, if more than 1 dependent child, to those dependent children.
- (11) If the worker leaves—
- (a) a partially dependent partner or partially dependent partners; and
 - (b) a dependent partner or dependent partners or a dependent child or dependent children or any combination thereof,
- each of those dependents is entitled to the amount of compensation being such share of a sum not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to that dependent.
- (12) If the worker does not leave any dependent partner, dependent child or partially dependent partner but leaves any other person who is to any extent dependent on the worker's earnings, the Corporation may, if it considers it to be justified in the circumstances, pay compensation of a sum not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to that person (and if the Corporation decides to make a payment of compensation to more than 1 person under this subsection then the sums paid must not in total exceed the prescribed sum).
- (13) If the worker, being under the age of 21 years at the time of the compensable disability, leaves no dependent partner, dependent child or partially dependent partner but, immediately before the disability, was contributing to the maintenance of the home of the members of his or her family, the members of his or her family are taken to be dependents of the worker partly dependent on the worker's earnings.
- (14) If a person who is entitled to a 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.
- (15) A claimant is entitled to interest at the prescribed rate on an amount of compensation payable under this section in respect of the period beginning on the date the claim for compensation was lodged in accordance with this Act and ending on the date of the payment.
- (16) Compensation is payable, if the Corporation so decides, to a spouse or domestic partner 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 domestic partner or child becoming dependent on the worker.

45B—Funeral benefit

- (1) If a worker dies as a result of a compensable disability, a funeral benefit is payable equal to—
 - (a) the actual cost of the worker's funeral; or
 - (b) the prescribed amount,whichever is the lesser.
- (2) A funeral benefit payable under subsection (1) will be paid—
 - (a) to the person who conducted the funeral; or
 - (b) to a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.
- (3) An amount prescribed by regulation under subsection (1) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the Consumer Price Index.

45C—Counselling services

- (1) If a worker dies as a result of a compensable disability, a family member is entitled to be compensated for the cost of approved counselling services to assist the family member to deal with issues associated with the death.
- (2) Compensation in respect of costs under this section may be paid—
 - (a) to the family member; or
 - (b) directly to the person to whom the family member is liable for those costs.
- (3) Compensation under this section—
 - (a) will be payable in accordance with scales determined or approved by the Minister and published in the Gazette; and
 - (b) will be subject, in any particular case, to a maximum entitlement prescribed by the regulations.
- (4) A reference in this section to approved counselling services is a reference to counselling services of a kind, or provided by a person, approved by the Corporation for the purposes of this section.
- (5) In this section—

family member means a spouse, domestic partner, parent, sibling or child of the worker or of the worker's spouse or domestic partner.

27—Amendment of section 46—Incidence of liability

- (1) Section 46(1)—delete "to make all payments of compensation to which any person becomes entitled under this Act" and substitute:

for the compensation that is payable under this Act on account of the occurrence of a compensable disability

- (2) Section 46(2)—delete "an exempt employer, the exempt" and substitute:
 - a self-insured employer, the self-insured
- (3) Section 46(6a)—delete "an exempt" and substitute:
 - a self-insured
- (4) Section 46—after subsection (8a) insert:
 - (8b) The Corporation will also undertake any liability of an employer under subsection (3) in respect of a particular disability if the Corporation is satisfied that the employer has complied with the employer's responsibilities under section 52(5) within 2 business days after receipt of the relevant claim (and if an employer pays compensation despite the operation of this subsection, the employer may recover the amount of the payment from the Corporation up to the amount of compensation payable to the worker under this Act in respect of the relevant period).

28—Amendment of section 50—Corporation as insurer of last resort

- (1) Section 50(1)—delete "Where an exempt employer has ceased to be exempt" and substitute:
 - If a self-insured employer has ceased to be registered as a self-insured employer under this Act
- (2) Section 50(1)—delete "the exemption" and substitute:
 - that registration
- (3) Section 50(2)—delete subsection (2) and substitute:
 - (2) The Corporation must undertake the liabilities of a formerly self-insured employer under subsection (1) if the employer—
 - (a) 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 the employer's registration as a self-insured employer.

29—Insertion of Part 4 Division 7A

Part 4—after Division 7 insert:

Division 7A—Special provisions for commencement of weekly payments after initial notification of disability

50A—Interpretation

In this Division—

initial notification means the notification of a disability that is given to an employer (if the worker is in employment) and the Corporation, in the manner and form required by the Provisional Payment Guidelines, by the worker or by a person acting on behalf of the worker (for example, by an employer or a medical expert);

Provisional Payment Guidelines means guidelines published by the Minister from time to time in the Gazette for the purposes of this Division.

50B—Commencement of weekly payments following initial notification of disability

- (1) Provisional weekly payments of compensation by the employer or the Corporation are to commence within 7 days after initial notification of a disability by the worker, unless the Corporation determines that there is a reasonable excuse for not commencing those weekly payments.
- (2) Weekly payments under subsection (1) are to be made—
 - (a) by the employer or the Corporation in accordance with the incidence of liability determined under the Provisional Payment Guidelines; and
 - (b) in accordance with any other requirements under the Provisional Payment Guidelines.
- (3) A reasonable excuse under subsection (1) must be a reasonable excuse under the Provisional Payment Guidelines.

50C—Status of payments

- (1) The payment of provisional weekly payments of compensation under this Division is on the basis of the provisional acceptance of liability for a period of up to 13 weeks determined by the Corporation having regard to the nature of the disability and the period of incapacity.
- (2) The acceptance of liability on a provisional basis does not constitute an admission of liability by the employer or the Corporation under this Act or independently of this Act.
- (3) A payment under this Division will be taken to constitute the payment of a weekly payment of compensation under Division 4 (and the other provisions of this Act will, subject to this Division or any provision made by the regulations, apply accordingly).

- (4) Without limiting the operation of any other section, the employer or the Corporation may decide to discontinue weekly payments under this section on any ground set out in the Provisional Payment Guidelines.

50D—Worker to be notified if weekly payments are not commenced

If weekly payments of compensation are not commenced because of a reasonable excuse under the Provisional Payment Guidelines, the Corporation must within the prescribed period give the worker notice in writing that there is a reasonable excuse for not commencing weekly payments of compensation and include in that notice—

- (a) details of that reasonable excuse; and
- (b) a statement in the designated form about the worker's rights under this Act (including to make a claim under Division 8).

50E—Notice of commencement of weekly payments

As soon as practicable after weekly payments of compensation commence under this Division, the employer or Corporation (as required under the Provisional Payment Guidelines) must give the worker notice in writing—

- (a) notifying the worker that weekly payments of compensation to the worker have commenced on the basis of provisional acceptance of liability; and
- (b) setting out a statement in the designated form about the operation of this Act in relation to the payments and the making of a claim.

50F—Obligations of worker

- (1) The Corporation may, on or after the commencement of weekly payments of compensation under this Division, require the worker to provide—
 - (a) a medical certificate in a designated form certifying as to the worker's incapacity for work; and
 - (b) other information of a prescribed kind.
- (2) Weekly payments of compensation under this Division may be discontinued by the Corporation if the worker fails to comply with a requirement under this section within 7 days after it is served on the worker.

50G—Liability to make weekly payments not affected by making of claim

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

- (2) If the period for making payment of provisional weekly payments ends before the determination of a claim under Division 8, an employer or the Corporation may (but need not), subject to any provision made by the Provisional Payment Guidelines, continue to make weekly payments under this Division until the determination of the claim or until otherwise determined by the employer or the Corporation (before the determination of the claim).

50H—Set-offs and rights of recovery

- (1) An amount paid under this Division may be set off against a liability to make weekly payments of compensation under Division 4.
- (2) Subject to subsection (3), if an employer or the Corporation makes 1 or more payments under this Division and it is subsequently determined that the worker was not entitled to compensation under this Act, the employer or the Corporation may, subject to and in accordance with the regulations, recover the amount or amounts paid as a debt from the worker.
- (3) A right of recovery under subsection (2) only arises if the worker has acted dishonestly in making an application or providing information for the purposes of this Division or any other provisions of this Act.

50I—Status of decisions

The following decisions under this Division are not reviewable:

- (a) a decision to make a provisional weekly payment of compensation;
- (b) a decision not to make a provisional weekly payment of compensation after it is established that there is a reasonable excuse under the Provisional Payment Guidelines;
- (c) a decision to discontinue weekly payments of compensation under section 50C or 50F;
- (d) a decision to continue or not to continue weekly payments of compensation under section 50G;
- (e) a decision to exercise or not to exercise a right of recovery under section 50H.

30—Amendment of section 51—Duty to give notice of disability

Section 51(6)—delete "an exempt" and substitute:

a self-insured

31—Amendment of section 52—Claim for compensation

- (1) Section 52(1)(c)—delete "the prescribed form" and substitute:
the designated form
- (2) Section 52(5)—delete "an exempt" and substitute:
a self-insured

- (3) Section 52(5)—delete "in the prescribed form" and substitute:
in the designated form
- (4) Section 52—after subsection (5) insert:
- (5a) An employer (not being a self-insured employer) must furnish to the Corporation, in such manner and form as the Corporation may determine, such other information as the Corporation may reasonably require in order to determine a claim.
Maximum penalty: \$1 000.
- (5) Section 52(6a)—delete subsection (6a) and substitute:
- (6a) The Corporation may dispense with a requirement under this section.
- (6b) A self-insured employer may dispense with the requirement for a certificate under subsection (1)(c) if a claim is only for compensation under section 32.

32—Amendment of section 53—Determination of claim

Section 53(7a)—after paragraph (c) insert:

- (ca) the redetermination is for the purposes of section 4(11) and is appropriate by reason of the stabilising of a compensable disability;
or

33—Amendment of section 54—Limitation of employer's liability

- (1) Section 54(6)(c)—after "the Corporation" insert:
or a self-insured employer
- (2) Section 54(6)—delete "the Corporation is" and substitute:
the Corporation or a self-insured employer (as the case requires) is

34—Amendment of section 58A—Reports of return to work etc

Section 58A(1)—delete "an exempt" and substitute:
a self-insured

35—Amendment of section 58B—Employer's duty to provide work or pay wages

- (1) Section 58B(1)—at the foot of subsection (1) insert:
Maximum penalty: \$25 000.
- (2) Section 58B—after subsection (2) insert:
- (3) If a worker who has been incapacitated for work in consequence of a compensable disability undertakes alternative or modified duties under employment or an arrangement that falls outside the worker's contract of service for the employment from which the disability arose, the employer must pay an appropriate wage or salary in respect of those duties unless otherwise determined by the Corporation.

36—Amendment of section 60—Self-insured employers

- (1) Section 60(1)—delete "an exempt employer or as a group of exempt" and substitute:
a self-insured employer or as a group of self-insured
- (2) Section 60(2)(a)(i)—delete "employing more than the prescribed number of workers"
- (3) Section 60(2)(b)—delete paragraph (b) and substitute:
 - (b) in the case of an application by a group—
 - (i) the members of the group are related bodies corporate or local government corporations; and
 - (ii) if the members of the group are related bodies corporate—no related body corporate of any member of the group that employs a worker or workers in employment to which this Act applies is not a member of the group.
- (4) Section 60(3)(b)(i)—delete "exempt" and substitute:
self-insured
- (5) Section 60(3)—delete "an exempt employer or a group of exempt" and substitute
a self-insured employer or a group of self-insured
- (6) Section 60(4)(a)(i)—delete "exempt" wherever occurring and substitute in each case:
self-insured
- (7) Section 60(4)(b)—delete "exemption was granted" and substitute:
self-insured status was conferred
- (8) Section 60(4)(b)—delete "exemption" second occurring and substitute:
conferral
- (9) Section 60(4)—after paragraph (b) insert:
 - (ba) where self-insured status was conferred on a group of related bodies corporate—is subject to the condition that there is at no time a related body corporate to any member of the group that employs a worker or workers in employment to which this Act applies that is not a member of the group; and
 - (bb) is subject to a condition that the self-insured employer will comply with any code of conduct for self-insured employers determined by the Corporation from time to time and published in the Gazette; and
- (10) Section 60—after subsection (4) insert:
 - (4a) The Corporation may, at any time, on the application of 2 or more self-insured employers, amend the registration of each self-insured employer so as to form a group on the ground that they are now related bodies corporate.

- (4b) The Corporation may, at any time, on application by a group of self-insured employers, amend the registration of the group in order to—
- (a) add another body corporate to the group (on the ground that the body corporate is now a related body corporate); or
 - (b) remove a body corporate from the group (on the ground that the body corporate is no longer a related body corporate); or
 - (c) amalgamate the registration of 2 or more groups (on the ground that all the bodies corporate are now related bodies corporate); or
 - (d) divide the registration of a group into 2 or more new groups (on the ground that the bodies corporate have separated into 2 or more groups of related bodies corporate).
- (11) Section 60(5)—delete subsection (5) and substitute:
- (5) The Corporation may revoke the registration of a self-insured employer or group of self-insured employers, or reduce the period of registration, if the employer, or a member of the group, (as the case requires) breaches or fails to comply with this Act or a term or condition of registration.
- (12) Section 60(6)—delete "an exempt" and substitute:
- a self-insured
- (13) Section 60(6)—before paragraph (a) insert:
- (aa) the number of employees employed by the employer or group;
- (14) Section 60(6)—delete "exempt" second occurring and substitute:
- self-insured
- (15) Section 60(7)—delete "exempt" and substitute:
- self-insured
- (16) Section 60—after subsection (7) insert:
- (7a) The Corporation may, on application by a group of self-insured employers, accept the nomination of another member of the group as the relevant employer under subsection (7).
- (17) Section 60(9), definition of *related corporations*—delete the definition and substitute:
- related bodies corporate* means—
- (a) in the case of corporations—bodies corporate that are related bodies corporate under section 50 of the *Corporations Act 2001* of the Commonwealth;
 - (b) in the case of any other kind of bodies corporate—bodies corporate that are associated entities under section 50AAA of the *Corporations Act 2001* of the Commonwealth.

37—Amendment of section 61—The Crown and certain agencies to be self-insured employers

- (1) Section 61(1)—delete "exempt" and substitute:
self-insured
- (2) Section 61(2)—delete "an exempt" wherever occurring and substitute in each case:
a self-insured

38—Amendment of section 62—Applications

- (1) Section 62(1)—delete "an exempt employer or a group of exempt" and substitute:
a self-insured employer or a group of self-insured
- (2) Section 62(1)(a)—delete "the prescribed manner and form" and substitute:
the designated manner and the designated form
- (3) Section 62(1)(c)—delete "exempt" and substitute:
self-insured
- (4) Section 62(2)—delete "an exempt employer or group of exempt" and substitute:
a self-insured employer or group of self-insured

39—Amendment of section 62A—Ministerial appeal on decisions relating to self-insured employers

- (1) Section 62A(1)—delete "an exempt employer or group of exempt" wherever occurring and substitute in each case:
a self-insured employer or group of self-insured
- (2) Section 62A(1)—after paragraph (b) insert:
 - (ba) reduces the period of registration of an employer or group of employers as a self-insured employer or group of self-insured employers; or
- (3) Section 62A—after subsection (2) insert:
 - (2a) If an employer or a group of employers appeals to the Minister against a decision of the Corporation to refuse to renew, or to cancel, the registration of the employer or employers as a self-insured employer or group of self-insured employers, the Corporation may extend or renew the registration of the employer or employers for a period of up to 3 months (pending resolution of the appeal).

40—Substitution of heading to Part 5 Division 2

Heading to Part 5 Division 2—delete the heading to Division 2 and substitute:

Division 2—Delegation to self-insured employers

41—Amendment of section 63—Delegation to self-insured employer

- (1) Section 63(1)—delete "an exempt" and substitute:
a self-insured

- (2) Section 63(1)—delete "exempt" second occurring and substitute:
self-insured
- (3) Section 63(1)(a)—before section 35 insert:
section 32A
- (4) Section 63(1)(a)—after "section 35" insert:
section 35A
section 35B
section 35C
- (5) Section 63(1)(a)—after "section 36" insert:
section 37
- (6) Section 63(1)(a)—after "section 43" insert:
section 43A (but not any power associated with an accreditation scheme
for medical practitioners under that section)
section 43B
- (7) Section 63(1)(a)—after "section 45" insert:
section 45A
section 45B
section 45C
section 50B
section 50C
section 50D
section 50E
section 50F
section 50G
section 50H
section 98F
section 98G
section 98H
- (8) Section 63(2)—delete "exempt" and substitute:
self-insured
- (9) Section 63(3)—delete "an exempt" and substitute:
a self-insured
- (10) Section 63(3aa)—delete "An exempt" and substitute:
A self-insured

- (11) Section 63(3a)—delete "an exempt" and substitute:
a self-insured
- (12) Section 63(4)—delete "an exempt" and substitute:
a self-insured
- (13) Section 63(5)—delete "an exempt" and substitute:
a self-insured
- (14) Section 63(5)—delete "exempt" second occurring and substitute:
self-insured
- (15) Section 63—after subsection (5) insert:
- (5a) If the Corporation would, but for this section, be required under a provision of this Act referred to in subsection (1) to take any action or do any thing in relation to a worker of a self-insured employer—
- (a) responsibility for taking the action or doing the thing rests with the self-insured employer; and
- (b) any cost incurred in connection with taking the action or doing the thing is to be borne by the self-insured employer.
- (16) Section 63(6)—delete "an exempt" and substitute:
a self-insured
- (17) Section 63(7)—delete subsection (7) and substitute:
- (7) If an employer ceases to be registered as a self-insured employer under this Act, 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 that cessation (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 omission of a self-insured employer).

42—Amendment of section 64—The Compensation Fund

- (1) Section 64(3)—after paragraph (b) insert:
- (ba) any costs incurred by the Minister or the Crown if a decision or process of the Minister under section 62A becomes the subject of judicial proceedings;
- (2) Section 64(3)—after paragraph (c) insert:
- (ca) the costs associated with the establishment and operation of Medical Panels;
- (cb) the costs recoverable from the Compensation Fund under Part 6C;
- (cc) the costs recoverable from the Compensation Fund under Part 6D;

43—Amendment of section 65—Preliminary

Section 65—after subsection (4) insert:

- (5) The levy under this Act is subject to any GST payable under *A New Tax System (Goods and Services) Tax Act 1999* (Commonwealth) and any such GST is additionally payable by an employer.
- (6) Subsection (5) does not extend to a fine imposed under section 70 or any penalty interest or fine imposed under section 71.

44—Amendment of section 66—Imposition of levies

- (1) Section 66(1)—delete "an exempt" and substitute:

a self-insured

- (2) Section 66—after subsection (2) insert:

- (2a) The levy will, subject to this Act, be payable at first instance on the basis of an estimate of aggregate remuneration for a particular financial year in accordance with Division 6.

- (3) Section 66(13)(a)—delete "prescribed" and substitute:

designated

- (4) Section 66(13)—delete "financial year is the prescribed" and substitute:

financial year is the designated

- (5) Section 66—after subsection (13) insert:

- (14) The Corporation may, from time to time, by notice in the Gazette, fix the designated minimum levy for the purposes of subsection (13).

45—Amendment of section 67—Adjustment of levy in relation to individual employers

Section 67(1)—after paragraph (c) insert:

- (ca) the employer's practices and procedures in connection with the appointment and work of a rehabilitation and return to work co-ordinator under Part 3 (including with respect to compliance with any relevant guidelines published by the Corporation for the purposes of section 28D);

46—Substitution of heading to Part 5 Division 5

Heading to Part 5 Division 5—delete the heading to Division 5 and substitute:

Division 5—Special levy for self-insured employers

47—Amendment of section 68—Special levy for self-insured employers

- (1) Section 68(1)—delete "An exempt" and substitute:

A self-insured

- (2) Section 68(2)—delete "an exempt" wherever occurring and substitute in each case:

a self-insured

- (3) Section 68(2)—delete "exempt" third occurring and substitute:
self-insured
- (4) Section 68(3)—delete subsection (3) and substitute:
- (3) If the Corporation is satisfied that there are good reasons for differentiating between different self-insured employers or classes of self-insured employers, the percentage on which the levy for self-insured employers is based may vary from self-insured employer to self-insured employer or from class to class.
- (5) Section 68(4)—delete "an exempt" and substitute:
a self-insured
- (6) Section 68(4)—delete "exempt" second and third occurring and substitute in each case:
self-insured

48—Substitution of Part 5 Division 6

Part 5 Division 6—delete Division 6 and substitute:

Division 6—Payment of levies

69—Initial payment

- (1) Subject to this Division, an employer must, by the prescribed date in each financial year, provide to the Corporation, in the form of a return determined by the Corporation—
- (a) if the employer is a self-insured employer—an estimate of the aggregate remuneration that the employer expects to pay to the employer's workers during the financial year;
- (b) if the employer is not a self-insured employer—an estimate of the aggregate remuneration that the employer expects to pay to the employer's workers in each class of industry during the financial year.
- (2) An estimate under subsection (1) must be provided in a manner approved by the Corporation.
- (3) A return under subsection (1) must be accompanied by the levy payable on aggregate remuneration in the relevant class or classes of industry based on the estimate or estimates set out in the return.
- (4) The Corporation may, by notice to a particular employer or by notice in the Gazette—
- (a) specify another date that will apply instead of the prescribed date under subsection (1);
- (b) specify an estimate or estimates of aggregate remuneration that will apply instead of any estimate under subsection (1);
- (c) specify that any levy must be paid according to some other requirement determined by the Corporation.

- (5) A date specified under subsection (4)(a) may be before or after the prescribed date and, in relation to a newly registered employer, may be specified on or after registration.
- (6) An estimate specified under subsection (4)(b) may apply, according to a determination of the Corporation—
 - (a) despite the provision of an estimate by the employer under subsection (1); or
 - (b) so as to relieve the employer from the requirement to provide an estimate under subsection (1).
- (7) If the Corporation specifies an estimate under subsection (4)(b), the amount of the estimate will be used for the purposes of the calculation of the levy that would otherwise be payable under subsection (3) (as if the Corporation's estimate were set out in a relevant return).
- (8) A requirement specified under subsection (4)(c) may—
 - (a) be a requirement that any levy be paid on a monthly basis, or with respect to some other period determined by the Corporation; or
 - (b) allow an employer to pay any levy on aggregate remuneration paid during a preceding period.
- (9) The Corporation may, from time to time as the Corporation thinks fit, vary or revoke a notice under subsection (4), or make a new specification or impose a new requirement under subsection (4).
- (10) A notice in the Gazette under subsection (4) or (9) may apply to—
 - (a) a specified employer; or
 - (b) employers of a specified class.

69A—Revised estimates of remuneration by employers

- (1) If as a result of a change in circumstances an employer becomes aware that the actual remuneration paid or payable by the employer exceeds or is likely to exceed by more than the prescribed percentage the estimate, or latest estimate, (as the case may be) of aggregate remuneration applying in relation to the employer under this Division, the employer must advise the Corporation of the changed circumstances and submit a revised estimate or estimates, in the designated form, within 28 days of becoming aware of the changed circumstances.
- (2) If the actual remuneration paid or payable by an employer as at any time before the last 2 months of a financial year exceeds the estimate, or the latest estimate, (as the case may be) of aggregate remuneration applying in relation to the employer under this Division, the employer must advise the Corporation and submit a revised estimate or estimates, in the designated form, within 28 days of the actual remuneration exceeding the estimate.

- (3) Subsection (2) does not apply if the period for the estimation of remuneration payable by the employer is less than a full financial year by virtue of the operation of a notice of the Corporation under section 69.

69B—Certificate of remuneration

The Corporation may by notice in writing require an employer to provide a certified statement of remuneration paid or payable by the employer in a designated form during a period specified by the Corporation to workers employed by the employer to the Corporation within 28 days of receiving the notice or such longer period as is specified in the notice.

69C—Revised estimates of remuneration by Corporation

- (1) The Corporation may, in addition to the preceding sections of this Division, in its absolute discretion, review an estimate of remuneration previously made under this Division.
- (2) In conducting the review, the Corporation may have regard to any matter relevant to the determination of the remuneration paid or payable to an employer.

69D—Statement for reconciliation purposes

An employer must, within the prescribed period after the end of a period for which levy is payable (the *designated period*), provide to the Corporation a statement in a designated form that sets out the remuneration paid by the employer to workers employed by the employer during the designated period.

69E—Adjustment of levy

- (1) If the Corporation considers that the levy payable by an employer should be adjusted—
 - (a) because of the specification of an estimate of remuneration under section 69(4); or
 - (b) because the circumstances specified in section 69A(1) or (2) apply; or
 - (c) because of information provided in a statement under section 69B; or
 - (d) because of the outcome of a review under section 69C(1),the Corporation may issue a notice of adjustment of levy to the employer.
- (2) If, as a result of the actual remuneration paid by an employer to workers employed by the employer during a period for which levy is payable, the employer has paid an amount of levy that does not equal the amount of levy payable under Division 4 or 5, there will be an adjustment of the employer's liability to levy with respect to that period by force of this subsection.

- (3) If additional levy is payable—
 - (a) under a notice of adjustment under subsection (1); or
 - (b) by operation of subsection (2),the additional amount is payable in accordance with the regulations (and may be recovered as unpaid levy in a case of default).
- (4) If an excess amount has been paid by the employer—
 - (a) on account of a notice of adjustment under subsection (1); or
 - (b) by operation of subsection (2),the Corporation may at the Corporation's discretion (but subject to the regulations)—
 - (c) refund the excess to the employer; or
 - (d) set off the excess against existing or future liabilities of the employer to make payments of levy under this Act.

69F—Deferred payment of levy

- (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.

69G—Exercise of adjustment powers

The Corporation may exercise its powers under this Division regardless of whether or not—

- (a) any levy has been fixed, demanded or paid; or
- (b) a period to which any determination or adjustment may apply has been completed; or
- (c) the Corporation has already reviewed or adjusted any estimate, liability or payment under this Division; or
- (d) any circumstances have arisen that would, but for this section, stop the Corporation from conducting a review, or making a determination or adjustment.

49—Amendment of section 70—Recovery on default

Section 70(1) to (4)—delete subsections (1) to (4) (inclusive) and substitute:

- (1) Without limiting the operation of Division 6, if an employer—
 - (a) fails or neglects to provide any information when required by or under this Part; or
 - (b) provides any information that the Corporation has reasonable grounds to believe is defective in any respect,the Corporation may make its own estimates, determinations or assessments (which will then have force by operation of this section).
- (2) In a case which falls within the ambit of subsection (1)(a) or (b), the Corporation may, in addition to any levy that may be payable, impose on the employer a fine of an amount (not exceeding 3 times the amount assessed) fixed by the Corporation.
- (3) The Corporation may for any proper reason remit a fine imposed under subsection (2) wholly or in part.

50—Amendment of section 72—Review

- (1) Section 72(1)—before paragraph (a) insert:
 - (aa) the estimate of remuneration that is to be used for the calculation of a levy; or
- (2) Section 72(4)—before paragraph (a) insert:
 - (aa) alter an estimate;

51—Insertion of section 76AA

After section 76 insert:

76AA—Discontinuance fee

- (1) An employer who—
 - (a) ceases to be registered under section 59 (including in a case where the employer is then registered as a self-insured employer under section 60); or
 - (b) ceases to be registered under section 60 (but not including in a case where the employer is then registered under section 59),is liable to pay to the Corporation a fee calculated in accordance with the regulations.
- (2) A fee payable under subsection (1) is a debt due to the Corporation and may be recovered by the Corporation in a court of competent jurisdiction.

52—Amendment of section 78—Constitution of Tribunal

Section 78(c)—delete paragraph (c) and substitute:

- (c) a single conciliation officer.

53—Substitution of heading to Part 6 Division 5

Heading to Part 6 Division 5—delete the heading to Division 5 and substitute:

Division 5—Conciliation officers

54—Amendment of section 81—Appointment of conciliation officers

Section 81—delete "and arbitration" wherever occurring

55—Amendment of section 81A—Conditions of appointment

Section 81A—delete "and arbitration" wherever occurring

56—Amendment of section 81B—Administrative responsibilities of conciliation officers

Section 81B—delete "and arbitration"

57—Amendment of section 84D—Issue of evidentiary summonses

Section 84D—delete "and arbitration" wherever occurring

58—Amendment of section 86A—Reference of question of law and final appeal to Supreme Court

(1) Section 86A—after subsection (1) insert:

(2) Subject to subsection (2a), an appeal also lies on a question of law against a decision of the Full Bench of the Tribunal to the Full Court of the Supreme Court.

(2a) An appeal cannot be commenced under subsection (1a) except with the permission of a Judge of the Supreme Court.

(2) Section 86A(3)—after "reference" insert:

or appeal

(3) Section 86A(3)(a)—delete "referred to the Court"

59—Amendment of section 88—Immunities

Section 88—delete "and arbitration" wherever occurring

60—Amendment of section 88A—Contempts of Tribunal

Section 88A(b)—delete "and arbitration"

61—Amendment of section 88E—Rules

Section 88E—delete "and arbitration" wherever occurring

62—Amendment of section 88H—Power to set aside judgments or orders

Section 88H(2)—delete "and arbitration"

63—Amendment of section 89—Interpretation

Section 89, definition of *relevant compensating authority*, (b)—delete "an exempt employer—the exempt" and substitute:

a self-insured employer—the self-insured

64—Substitution of section 92D

Section 92D—delete the section and substitute:

92D—Reference of dispute into Tribunal

If conciliation proceedings do not result in an agreed settlement of the dispute, the conciliator presiding at the conciliation proceedings must refer the dispute into the Tribunal for judicial determination.

65—Repeal of Part 6A Division 5

Part 6A Division 5—delete Division 5

66—Repeal of section 94

Section 94—delete the section

67—Amendment of section 94C—Determination of dispute

- (1) Section 94C(1)—delete "rehear the matter in dispute and"
- (2) Section 94C(2)—delete subsection (2) and substitute:
 - (2) However, if the amount of lump sum compensation is disputed by a worker and the amount the Tribunal proposes to award is less than, or the same as, or less than 10% above, the amount offered in conciliation proceedings, the worker is not entitled to costs of the proceedings under this Division.

68—Insertion of section 95A

After section 95 insert:

95A—Costs liability of representatives

- (1) In this section—

professional representative means a legal practitioner or other person who has been engaged or appointed to represent a party to proceedings before the Tribunal (whether personally or through an employee or agent).
- (2) If a professional representative acting for a party to proceedings before the Tribunal under this Part (whether personally or through an employee or agent) has caused costs—
 - (a) to be incurred improperly or without reasonable cause; or
 - (b) to be wasted by undue delay or negligence or by any other misconduct or default,the Tribunal may make an order as specified in subsection (3).

- (3) The Tribunal may order—
 - (a) that all or any of the costs between the professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;
 - (b) that the professional representative pay to his or her client all or any of the costs which his or her client has been ordered to pay to any party;
 - (c) that the professional representative pay all or any of the costs of any party other than his or her client.
- (4) Without limiting subsection (2), a professional representative is in default for the purposes of that subsection if any proceedings cannot conveniently be heard or proceed, or fail or are adjourned without any useful progress being made, because the professional representative failed to—
 - (a) attend in person or by a proper representative; or
 - (b) file any document which ought to have been filed; or
 - (c) lodge or deliver any document for the use of the Tribunal which ought to have been lodged or delivered; or
 - (d) be prepared with any proper evidence or account; or
 - (e) otherwise proceed.
- (5) The Tribunal may not make an order against a professional representative under subsection (3) unless the Tribunal has informed the professional representative of the nature of the order proposed and allowed the professional representative a reasonable opportunity to make representations, and call evidence, in relation to the matter.
- (6) The Tribunal may order that notice of any proceedings or order against a professional representative under this section be given to the client in such manner as the Tribunal directs.
- (7) A decision of the Tribunal constituted of a conciliation officer under this section may be reviewed, on application under the rules, by a presidential member of the Tribunal.
- (8) On a review under subsection (7), the presidential member of the Tribunal may—
 - (a) decide the matter and, if he or she thinks fit—
 - (i) make any order that may be made under this section at first instance;
 - (ii) vary or revoke the order that is the subject of the review;
 - (b) refer the matter back to the conciliation officer with directions the presidential member thinks fit;
 - (c) make consequential or related orders.

69—Amendment of section 97A—Constitution of Tribunal for proceedings under this Part

Section 97A—delete "and arbitration"

70—Insertion of Parts 6C and 6D

After section 97C insert:

Part 6C—Medical Panels

Division 1—Establishment and constitution

98—Establishment

- (1) There will be such Medical Panels as are necessary for the purposes of this Act.
- (2) For the purpose of constituting Medical Panels, there is to be a list of legally qualified medical practitioners appointed by the Governor on the recommendation of the Minister.
- (3) For the purpose of making recommendations under subsection (2), the Minister must establish a selection committee in accordance with the regulations and seek and take into account nominations from that committee.
- (4) For the purpose of making nominations under subsection (3), the selection committee must invite expressions of interest in accordance with the regulations.
- (5) Subsection (4) does not apply if the Minister is simply seeking the advice of the selection committee about whether a particular medical practitioner should be re-appointed at the expiration of a term of office.
- (6) A person appointed under subsection (2) will be appointed on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of office, is eligible for re-appointment.
- (7) The office of a person appointed under subsection (2) becomes vacant if the person—
 - (a) resigns by written notice addressed to the Minister; or
 - (b) is removed from office by the Governor for—
 - (i) breach of, or non-compliance with, a condition of appointment; or
 - (ii) mental or physical incapacity to carry out duties of office satisfactorily; or
 - (iii) neglect of duty; or
 - (iv) dishonourable conduct; or
 - (v) incompetence; or

- (c) completes a term of office and is not re-appointed; or
 - (d) ceases to be entitled to practise as a medical practitioner; or
 - (e) is convicted of an indictable offence or of an offence which, if committed in South Australia, would be an indictable offence; or
 - (f) is sentenced to imprisonment for an offence.
- (8) From the list of medical practitioners under subsection (2), the Minister must appoint (on terms and conditions determined by the Minister)—
- (a) a Convenor; and
 - (b) a Deputy Convenor.
- (9) The Deputy Convenor may, subject to the direction of the Convenor, exercise the functions and powers conferred on the Convenor by or under this Act.
- (10) In the temporary absence of the Convenor, the Deputy Convenor has, and may exercise, the functions and powers conferred on the Convenor by or under this Act.

98A—Constitution

- (1) A Medical Panel is to consist of the number of members, not exceeding 5, as is determined by the Convenor of Medical Panels in each particular case.
- (2) If a medical practitioner has been engaged to treat or examine, or to furnish a report in relation to, a worker (other than as a member of a Medical Panel), the medical practitioner is not to sit as a member of a Medical Panel examining the worker.
- (3) A member of a Medical Panel is entitled to fees, allowances and expenses approved by the Governor.
- (4) The fees, allowances and expenses are payable out of the Compensation Fund.
- (5) The Convenor must appoint a presiding member for each Medical Panel, who will have general responsibility for managing the operations of the Medical Panel in its particular case.

98B—Procedures

- (1) A Medical Panel is not bound by the rules of evidence but may inform itself in any way it considers appropriate.
- (2) A Medical Panel may act informally and without regard to technicalities or legal forms.
- (3) A Medical Panel may engage consultants and seek expert advice as it considers necessary in any particular case.
- (4) The Convenor may give directions as to the arrangement of the business of the Panels.

- (5) The Minister may for the purposes of—
 - (a) ensuring procedural fairness in the procedures of the Medical Panels; and
 - (b) facilitating the proper administration of the Medical Panels, issue guidelines as to the procedures of Medical Panels.
- (6) The Minister must consult with the Attorney-General and the Convenor before issuing any guidelines under this section.
- (7) The Convenor may give directions as to the procedures of the Panels but may not give directions inconsistent with any guidelines issued by the Minister.
- (8) An act or decision of a majority of the members of a Medical Panel constitutes an act or decision of the Medical Panel.
- (9) Subject to this section and the other provisions of this Part, a Medical Panel may determine its own procedures.

98C—Validity of acts

An act or proceeding of a Medical Panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

98D—Immunity of members

No personal liability attaches to a member of a Medical Panel for an act or omission by the member or the Medical Panel in good faith and in the exercise or purported exercise of powers or functions under this Act.

Division 2—Functions and powers

98E—Interpretation

In this Division—

medical question means—

- (a) a question whether a worker has a disability and, if so, the nature or extent of that disability; or
- (b) a question whether a worker's disability—
 - (i) in the case of a disability that is not a secondary disability or a disease—arose out of or in the course of employment; or
 - (ii) in the case of a disability that is a secondary disability or a disease—arose out of employment or arose in the course of employment and the employment contributed to the disability; or
- (c) a question whether a worker's employment was a substantial cause of a worker's disability consisting of an illness or disorder of the mind; or

- (d) a question whether a worker has suffered a disability of a kind referred to in the first column of Schedule 2; or
- (e) a question whether a medical expense has been reasonably incurred by a worker in consequence of having suffered a compensable disability; or
- (f) a question whether a charge for a medical service should be disallowed under section 32(5); or
- (g) a question whether a disability results in incapacity for work; or
- (h) a question as to the extent or permanency of a worker's incapacity for work and the question whether a worker has no current work capacity or a current work capacity; or
- (i) a question as to what employment would or would not constitute suitable employment for a worker; or
- (j) a question as to whether a worker who has no current work capacity is likely to continue indefinitely to have no current work capacity; or
- (k) a question whether a worker who has a current work capacity is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work and, if not so incapable, what further or additional employment or work the worker is capable of undertaking; or
- (l) a question as to when a disability, other than noise induced hearing loss, that developed gradually first caused an incapacity for work; or
- (m) a question as to when and in what employment a worker with noise induced hearing loss was last exposed to noise capable of causing noise induced hearing loss; or
- (n) a question as to when a worker has ceased to be incapacitated for work by a compensable disability; or
- (o) a question as to what constitutes proper medical treatment for the purposes of section 36(1a)(c); or
- (p) a question as to whether a disability is permanent and, if so, the level of impairment of a worker for the purposes of sections 43 and 43A; or
- (q) a question as to whether a provision of a rehabilitation and return to work plan imposes an unreasonable obligation on a worker; or
- (r) a question as to any other prescribed matter.

98F—Functions

- (1) The function of a Medical Panel is to give an opinion on any medical question referred to it under this Act.

- (2) The Corporation or the Tribunal may, at any time or from time to time, require a worker—
 - (a) who claims compensation under this Act; or
 - (b) who is in receipt of weekly payments of compensation under this Act,to submit himself or herself for examination by a Medical Panel or to answer questions (or both) on a date and at a place arranged by the Convenor of Medical Panels so that the Medical Panel can determine any specified medical question.
- (3) In addition, a medical question that constitutes or forms part of, or arises in connection with, a matter that is the subject of a dispute under Part 6A must be referred to a Medical Panel.
- (4) A Medical Panel may decide not to give an opinion on a particular medical question if it appears to the Medical Panel that the question relates to a matter that falls outside the range of matters that should be subject to determination under this Part.

98G—Powers and procedures on a referral

- (1) A Medical Panel may ask a worker—
 - (a) to meet with the Medical Panel and answer questions;
 - (b) to supply copies of all documents in the possession of the worker which relate to the medical question to the Medical Panel;
 - (c) to submit to a medical examination by the Medical Panel or by a member of the Medical Panel.
- (2) A person or body referring a medical question to a Medical Panel must submit a document to the Medical Panel specifying—
 - (a) the disability or alleged disability to, or in respect of, which the medical question relates;
 - (b) the facts or questions of fact relevant to the medical question which the person or body is satisfied have been agreed and those facts or questions that are in dispute.
- (3) A person or body referring a medical question to a Medical Panel must submit copies of all documents relating to the medical question in the possession of that person or body to the Medical Panel.
- (4) If a Medical Panel requests and the worker consents, a medical expert who has provided a medical service to a worker in relation to the relevant compensable disability must—
 - (a) meet with the Medical Panel and answer questions; and
 - (b) supply relevant documents to the Medical Panel.

- (5) If a worker unreasonably refuses to comply with subsection (1) or in any way hinders an examination—
 - (a) the worker's rights to recover compensation under this Act with respect to the disability; or
 - (b) the worker's rights to weekly payments,may be suspended by the Corporation until the examination has taken place in accordance with the requirements of the Medical Panel (and any weekly payments that would otherwise be payable during the period of suspension are forfeited).
- (6) Any attendance of a worker before a Medical Panel must be in private, unless the Medical Panel considers that it is necessary for another person to be present.
- (7) Information given to a Medical Panel cannot be used in subsequent proceedings unless—
 - (a) the proceedings are before the Tribunal or a court under this Act; or
 - (b) the worker consents to the use of the information; or
 - (c) the proceedings are for an offence against this Act.

98H—Opinions

- (1) A Medical Panel must form its opinion on a medical question referred under this Division within 60 days after the reference is made or such longer period as may be agreed by the Corporation or Tribunal (as the case requires).
- (2) The Medical Panel to which a medical question is so referred must give a certificate as to its opinion.
- (3) An opinion under subsection (2) must include a statement setting out the reason or reasons for the opinion provided by the Medical Panel.
- (4) For the purposes of determining any question or matter, the opinion of a Medical Panel on a medical question referred to the Medical Panel is to be adopted and applied by any body or person acting under this Act and must be accepted as final and conclusive irrespective of who referred the medical question to the Medical Panel or when the medical question was referred.

Division 3—Related matters

98I—Admissibility

- (1) A certificate given by a Medical Panel is admissible in evidence in any proceedings under this Act.
- (2) A member of a Medical Panel is competent to give evidence as to matters in a certificate given by the Medical Panel of which he or she was a member, but the member may not be compelled to give any such evidence.

- (3) A consultant engaged to provide expert advice to a Medical Panel is competent to give evidence as to matters relating to that expert advice, but the consultant may not be compelled to give any such evidence.

98J—Support staff

- (1) The Minister must ensure that there are such administrative and ancillary staff as are necessary for the proper functioning of Medical Panels.
- (2) The staff may be—
 - (a) Public Service employees assigned to work in support of the Medical Panels; or
 - (b) persons employed or engaged for the purposes of this Part.
- (3) The terms and conditions of appointment of a person under subsection (2)(b) will be determined by the Minister and such a person will not be a Public Service employee.
- (4) The costs associated with the staff under subsection (1) will be recoverable from the Compensation Fund under a scheme established or approved by the Treasurer after consultation with the Corporation.

Part 6D—WorkCover Ombudsman

Division 1—Appointment and conditions of office

99—Appointment

- (1) There is to be a *WorkCover Ombudsman*.
- (2) The WorkCover Ombudsman is appointed by the Governor.
- (3) The person appointed as the WorkCover Ombudsman may hold another office or position if the Governor is satisfied that there is no conflict between the functions and duties of the WorkCover Ombudsman and the functions and duties of the other office or position.

99A—Term of office and conditions of appointment

- (1) The WorkCover Ombudsman is appointed on conditions determined by the Governor and for a term, not exceeding 7 years, specified in the instrument of appointment.
- (2) An appointment may be renewed but a person must not hold office as WorkCover Ombudsman for more than 2 consecutive terms.
- (3) The Governor may remove the WorkCover Ombudsman from office on the presentation of an address from both Houses of Parliament seeking the WorkCover Ombudsman's removal.

- (4) The Governor may suspend the WorkCover Ombudsman from office on the ground of incompetence or misbehaviour and, in that event—
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
 - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the WorkCover Ombudsman's removal has not been presented to the Governor, the WorkCover Ombudsman must be restored to office.
- (5) The office of WorkCover Ombudsman becomes vacant if the WorkCover Ombudsman—
- (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) completes a term of office and is not reappointed; or
 - (d) is removed from office by the Governor under subsection (3); or
 - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
 - (f) is convicted of an indictable offence or of an offence which if committed in South Australia, would be an indictable offence; or
 - (g) is sentenced to imprisonment for an offence; or
 - (h) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
 - (i) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.
- (6) Except as is provided by this section, the WorkCover Ombudsman may not be removed or suspended from office, nor will the office of the WorkCover Ombudsman become vacant.

99B—Remuneration

The WorkCover Ombudsman is entitled to remuneration, allowances and expenses determined by the Governor.

99C—Temporary appointments

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the WorkCover Ombudsman—

- (a) during a vacancy in the office of WorkCover Ombudsman; or

- (b) when the WorkCover Ombudsman is absent from, or unable to discharge, official duties; or
- (c) if the WorkCover Ombudsman is suspended from office under this Act.

Division 2—Functions and powers

99D—Functions

- (1) The WorkCover Ombudsman has the following functions:
 - (a) to identify and review issues arising out of the operation or administration of this Act, and to make recommendations for improving the operation or administration of this Act, especially so as to improve processes that affect workers who have suffered a compensable disability or employers;
 - (b) to receive and investigate complaints about administrative acts under this Act, and to seek to resolve those complaints expeditiously, including by making recommendations to relevant parties;
 - (c) without limiting paragraphs (a) and (b)—
 - (i) to receive and investigate complaints about failures to comply with section 58B or 58C and to give directions to the Corporation or any relevant employer in connection with the operation or requirements of either section;
 - (ii) to investigate other matters relating to providing for the effective rehabilitation of disabled workers and their return to work on a successful basis;
 - (d) to encourage and assist the Corporation and employers to establish their own complaint-handling processes and procedures with a view to improving the effectiveness of this Act;
 - (e) to initiate or support other activities or projects relating to the workers rehabilitation and compensation scheme established by this Act;
 - (f) to provide other assistance or advice to support the fair and effective operation or administration of this Act.
- (2) The WorkCover Ombudsman may act under subsection (1) on his or her own initiative, at the request of the Minister, or on the receipt of a complaint by an interested person.
- (3) However, the WorkCover Ombudsman—
 - (a) may not investigate an act where the relevant matter—
 - (i) is, or is capable of being, the subject of proceedings under Part 5, 6, 6A, 6B or 6C; or

- (ii) is the subject of any legal proceedings; and
- (b) may not investigate an act in the nature of an industrial dispute under the *Fair Work Act 1994*.
- (4) The WorkCover Ombudsman must establish a scheme for receiving and dealing with complaints for the purposes of subsection (1).
- (5) The WorkCover Ombudsman may refuse to entertain a complaint, or, having commenced to consider a matter raised in a complaint, may refuse to continue if of the opinion—
 - (a) that the matter raised in the complaint is trivial; or
 - (b) that the complaint is frivolous or vexatious or is not made in good faith; or
 - (c) that the complainant or the person on whose behalf the complaint was made has not a sufficient personal interest in the matter raised in the complaint; or
 - (d) that the complainant has failed, without good reason, to take reasonable steps to resolve the matter through another established complaint-handling process; or
 - (e) that having regard to all the circumstances of the case, the investigation or the continuance of the investigation of the matter raised in the complaint is unnecessary or unjustifiable; or
 - (f) that the matter raised in the complaint should be dealt with under another Act or by another person or body; or
 - (g) that there is some other reasonable cause that justifies the discontinuance of proceedings under this Part.
- (6) The WorkCover Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation (and, in doing so, may act personally or through some other person).
- (7) In this section—

act includes—

 - (a) an omission;
 - (b) a decision, proposal or recommendation,and the circumstances surrounding an act.

99E—Powers—general

The WorkCover Ombudsman has the powers necessary or expedient for, or incidental to, the performance of the WorkCover Ombudsman's functions.

99F—Obtaining information

- (1) If the WorkCover Ombudsman has reason to believe that a person is capable of providing information or producing a document relevant to a matter under consideration by the WorkCover Ombudsman, the WorkCover Ombudsman may, by notice in writing provided to the person, require the person to do 1 or more of the following:
 - (a) to provide that information to the WorkCover Ombudsman in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
 - (b) to produce that document to the WorkCover Ombudsman;
 - (c) to attend before a person specified in the notice and answer questions or produce documents relevant to the matter.
- (2) A notice under subsection (1) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- (3) A notice under subsection (1) must provide a period of time for compliance with a requirement under that subsection that has been determined by the WorkCover Ombudsman to be reasonable in the circumstances.
- (4) A person must comply with a requirement under subsection (1).
Maximum penalty: \$5 000.
- (5) If a document is produced in accordance with a requirement under this section, the WorkCover Ombudsman or other appropriate person may take possession of, make copies of, or take extracts from, the document.

99G—Power to examine witnesses etc

- (1) The WorkCover Ombudsman, or a person who is to receive information under section 99F, may administer an oath or affirmation to a person required to attend before him or her under this Part and may examine the person on oath or affirmation.
- (2) The WorkCover Ombudsman may require a person to verify by statutory declaration—
 - (a) any information or document produced under this Part; or
 - (b) a statement that the person has no relevant information or documents or no further relevant information or documents.
- (3) A person must comply with a requirement under subsection (2).
Maximum penalty: \$5 000.

Division 3—Other matters

99H—Independence

- (1) In performing and exercising his or her functions and powers under this Act, the WorkCover Ombudsman must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the WorkCover Ombudsman is to exercise the WorkCover Ombudsman's statutory functions and powers.

99I—Staff

- (1) The WorkCover Ombudsman's staff consists of—
 - (a) Public Service employees assigned to work in the office of the WorkCover Ombudsman under this Act; and
 - (b) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
 - (a) exclude Public Service employees who are members of the WorkCover Ombudsman's staff from specified provisions of the *Public Sector Management Act 1995*; and
 - (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply, and such a notice will have effect according to its terms.
- (3) The WorkCover Ombudsman may, with the consent of the Minister, appoint staff for the purposes of this Act.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Minister and such a person will not be a Public Service employee.
- (5) The WorkCover Ombudsman may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

99J—Funding

The cost associated with the office of the WorkCover Ombudsman (including in the performance by the WorkCover Ombudsman of functions under this Act) and the WorkCover Ombudsman's staff will be recoverable from the Compensation Fund under a scheme established or approved by the Treasurer after consultation with the Corporation.

99K—Delegation

- (1) The WorkCover Ombudsman may delegate a function or power conferred on or vested in the WorkCover Ombudsman under this Act—
 - (a) to a particular person or body; or
 - (b) to the person for the time being occupying a particular office or position.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the WorkCover Ombudsman to act in a matter; and
 - (c) is revocable at will by the WorkCover Ombudsman.

99L—Annual report

- (1) The WorkCover Ombudsman must, on or before 30 September in each year, forward a report to the Minister on the work of the WorkCover Ombudsman under this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

99M—Other reports

- (1) The WorkCover Ombudsman may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the WorkCover Ombudsman's functions under this Act.
- (2) Subject to subsection (3), the Minister must, within 2 weeks after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- (3) If the Minister cannot comply with subsection (2) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
 - (a) immediately cause the report to be published; and
 - (b) lay the report before their respective Houses at the earliest opportunity.
- (4) A report will, when published under subsection (3)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

99N—Immunity

- (1) The WorkCover Ombudsman incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Act.
- (2) The immunity under subsection (1) does not extend to culpable negligence.
- (3) A civil liability that would, but for this section, attach to a person attaches instead to the Crown.

71—Amendment of section 103A—Special provision for prescribed classes of volunteers

Section 103A(1)—delete "an exempt" and substitute:

a self-insured

72—Amendment of section 105—Insurance of registered employers against other liabilities

- (1) Section 105(2)—after "rehabilitation programme" insert:

or a rehabilitation and return to work plan

- (2) Section 105(3)—delete "an exempt" and substitute:

a self-insured

73—Amendment of section 106—Payment of interim benefits

Section 106—after subsection (2) insert:

- (3) This section does not derogate from the operation of Part 4 Division 7A.

74—Amendment of section 107B—Worker's right of access to claims file

- (1) Section 107B(1), penalty provision—delete the penalty provision at the foot of subsection (1) and substitute:

Maximum penalty: \$5 000.

- (2) Section 107B(4)—delete "an exempt" and substitute:

a self-insured

75—Amendment of section 111—Inspection of place of employment by rehabilitation adviser

Section 111(3), penalty provision—delete the penalty provision at the foot of subsection (3) and substitute:

Maximum penalty: \$5 000.

76—Amendment to section 112—Confidentiality to be maintained

- (1) Section 112(1), penalty provision—delete the penalty provision at the foot of subsection (1) and substitute:

Maximum penalty: \$5 000.

- (2) Section 112—after subsection (1) insert:
- (1a) The Corporation may enter into arrangements with corresponding workers compensation authorities about sharing information obtained in the course of carrying out functions related to the administration, operation or enforcement of this Act or a corresponding law.
- (3) Section 112(2)—after paragraph (c) insert:
- (ca) a disclosure made to a corresponding workers compensation authority in accordance with an arrangement entered into under subsection (1a); or
- (cb) a disclosure authorised or required under any other Act or law; or
- (4) Section 112(2)(e)—delete "an exempt" and substitute:
a self-insured
- (5) Section 112—after subsection (2a) insert:
- (3) In this section—
corresponding workers compensation authority means any person or authority in another State or a Territory of the Commonwealth with power to determine or manage claims for compensation for disabilities arising from employment.

77—Insertion of section 112AA

After section 112 insert:

112AA—Confidentiality—employers

- (1) An employer who is registered under this Act, or a person employed by an employer who is registered under this Act, must not disclose information about the physical or mental condition of a worker unless the disclosure is—
- (a) reasonably required for, or in connection with, the carrying out of the proper conduct of the business of the employer; or
- (b) required in connection with the operation of this Act; or
- (c) made with the consent of the person to whom the information relates, or who furnished the information; or
- (d) required by a court or tribunal constituted by law, or before a review authority; or
- (e) authorised or required under any other Act or law; or
- (f) made—
- (i) to the Corporation; or
- (ii) to the worker's employer; or
- (g) made under the authorisation of the Minister; or
- (h) authorised by regulation.

Maximum penalty: \$5 000.

- (2) A regulation made for the purposes of subsection (1)(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.

78—Amendment of section 113—Disabilities that develop gradually

- (1) Section 113(3)(a)—delete "an exempt" and substitute:
a self-insured
- (2) Section 113(3)(e) and (f)—delete "exempt" wherever occurring and substitute in each case:
self-insured
- (3) Section 113(4)(a)—delete "an exempt" and substitute:
a self-insured
- (4) Section 113(4)—delete "any exempt" and substitute:
any self-insured

79—Amendment of section 119—Contract to avoid Act

Section 119—after subsection (3) insert:

- (4) Subsections (2) and (3) do not apply to—
 - (a) any action taken by an employer with the consent of the Corporation; or
 - (b) any agreement or arrangement entered into by an employer with, or with the consent of, the Corporation.

80—Amendment of section 120—Dishonesty

Section 120(3)—delete "an exempt" and substitute:

a self-insured

81—Insertion of section 123B

After section 123A insert:

123B—Code of Claimants' Rights

- (1) The Governor may, by regulation made on the recommendation of the Minister, prescribe a code to be known as the *Code of Claimants' Rights*.
- (2) The purpose of the Code is to meet the reasonable expectations of claimants for compensation under this Act (including the highest practicable standard of service and fairness) about how a relevant authority should deal with them, by—
 - (a) setting out principles that should be observed by a relevant authority; and

- (b) providing for the procedure for lodging and dealing with complaints about breaches of the Code; and
- (c) providing—
 - (i) for the consequences of, and remedies for, a breach of the Code by a relevant authority; and
 - (ii) without limiting subparagraph (i), how and to what extent a relevant authority must address situations where its conduct is not consistent with or does not uphold the rights of claimants under the Code.
- (3) The provisions of the Code—
 - (a) are in addition to other requirements under this or any other Act; and
 - (b) do not affect the entitlements and responsibilities of claimants under this Act; and
 - (c) do not affect the powers or discretions of a relevant authority under this Act or the validity of any decision or determination made in accordance with this Act.
- (4) A relevant authority must, in its dealings with claimants, seek to ensure that its actions are consistent with the Code.
- (5) The Governor may, by regulation made on the recommendation of the Minister, vary the Code (including by the substitution of a new code).
- (6) In this section—

relevant authority means the Corporation or a self-insured employer.

82—Amendment of Schedule 1

Schedule 1—after clause 5D insert:

5E—Additional transitional provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.
- (3) To the extent that a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a worker by decreasing the worker's rights.

83—Substitution of Schedule 3

Schedule 3—delete the Schedule and substitute:

Schedule 3—Minimum amounts of compensation according to degree of impairment under regulations

Degree of whole of person assessment	Minimum compensation payable under regulations under section 43(2)
5%—9% (inclusive)	\$10 000 (indexed)
10%—29% (inclusive)	\$17 500 (indexed)
30%—54% (inclusive)	\$75 000 (indexed)
55%—69% (inclusive)	\$250 000 (indexed)
70%—100% (inclusive)	\$400 000 (indexed)

This Schedule does not derogate from the operation of section 43(4), (5), (6) or (7).

Schedule 3A—No disadvantage—non-economic loss compensation

Disability	Minimum compensation payable under section 43B
Total and incurable paralysis of the limbs	\$254 100 (indexed)
Total loss of sight in both eyes	\$254 100 (indexed)
Total loss of sight of 1 eye	\$75 850 (indexed)
Total loss of sight of 1 eye, the vision in the other eye being less than 6/60 Snellens type with correction or absent	\$254 100 (indexed)
Total loss of hearing	\$159 300 (indexed)
Total loss of the power of speech	\$159 300 (indexed)
Total loss of senses of taste and smell	\$75 850 (indexed)
Total loss of sense of taste	\$37 930 (indexed)
Total loss of sense of smell	\$37 930 (indexed)
Loss of arm at or above elbow	\$215 160 (indexed)
Loss of arm below elbow	\$178 240 (indexed)
Loss of both hands	\$254 100 (indexed)
Loss of thumb	\$53 100 (indexed)
Loss of forefinger	\$37 930 (indexed)
Loss of middle finger	\$30 340 (indexed)
Loss of ring finger	\$30 340 (indexed)

Disability	Minimum compensation payable under section 43B
Loss of little finger	\$21 240 (indexed)
Total loss of movement of joint of thumb	\$22 760 (indexed)
Loss of distal phalanx of thumb	\$25 780 (indexed)
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	\$22 760 (indexed)
Loss of distal phalanx of forefinger	\$16 690 (indexed)
Loss of distal phalanx of other fingers	\$13 660 (indexed)
Loss of hand or loss of thumb and 4 fingers	\$178 240 (indexed)
Loss of leg at or above knee	\$215 160 (indexed)
Loss of leg below knee	\$178 240 (indexed)
Loss of both feet	\$254 100 (indexed)
Loss of a foot and hand	\$254 100 (indexed)
Loss of a foot	\$159 300 (indexed)
Loss of great toe	\$37 930 (indexed)
Loss of any other toe	\$15 170 (indexed)
Loss of 2 phalanges of any other toe	\$12 140 (indexed)
Loss of phalanx of great toe	\$16 690 (indexed)
Loss of phalanx of any other toe	\$10 620 (indexed)
Loss of genital organs	\$140 320 (indexed)
Total impairment of the neck and cervical spine	\$178 240 (indexed)
Total impairment of the upper back and thoracic spine	\$75 850 (indexed)
Total impairment of the lower back and lumbar spine	\$178 240 (indexed)
Loss of all teeth	\$30 340 (indexed)
Total impairment of the ventilatory function	\$215 160 (indexed)
Total impairment of shoulder	\$75 850 (indexed)
Total impairment of wrist	\$37 930 (indexed)
Total impairment of hip	\$68 270 (indexed)
Total impairment of ankle	\$45 510 (indexed)

For the purposes of this Schedule—

- (a) 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 2 joints are severed from the hand or rendered permanently and wholly useless; and
- (b) for the purpose of determining the extent of a loss, 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.

Schedule 1—Transitional provisions

1—Interpretation

- (1) In this Schedule—
principal Act means the *Workers Rehabilitation and Compensation Act 1986*;
relevant day means a day appointed by proclamation as the relevant day for the purposes of the provision in which the term is used;
self-insured employer includes an exempt employer (being the term previously used under the principal Act).
- (2) In this Schedule, terms used have meanings consistent with the meanings they have in the principal Act.

2—Average weekly earnings

- (1) Subject to subclause (2), section 4 of the principal Act, as enacted by this Act, applies to claims for compensation made on or after the relevant day (whether the entitlement to compensation arose before or on or after the relevant day).
- (2) Subsection (11) of section 4 of the principal Act, as enacted by this Act, operates both prospectively and retrospectively.

3—Provisional acceptance of liability—medical expenses

Section 32A of the principal Act, as enacted by this Act, extends to disabilities occurring before the enactment of that section.

4—Weekly payments

- (1) Sections 35 to 35C (inclusive) of the principal Act, as enacted by this Act, (in this clause referred to as the *new provisions*) apply in relation to workers who suffer compensable disabilities on or after the relevant day.
- (2) In addition, the new provisions extend to entitlements to weekly payments of compensation in relation to compensable disabilities occurring before the relevant day—
 - (a) if a worker has, before the relevant day, reached or gone past the end of the first 2 years of incapacity referred to in section 35(2) of the principal Act, as in existence immediately before the substitution of section 35 under section 15 of this Act (in this clause referred to as the *old provision*) (and is still in receipt of weekly payments of compensation on the relevant day); or
 - (b) if a worker, on or after the relevant day, reaches the end of the first 2 years of incapacity referred to in the old provision (and is still in receipt of weekly payments of compensation at the end of that 2 year period).
- (3) To avoid doubt, in the circumstances of any particular case, the new provisions replace section 35 of the principal Act, as in existence immediately before the substitution of section 35 under section 15 of this Act, if or when a worker falls within a set of circumstances described in paragraph (a) or (b) of subclause (2).

5—Discontinuance of weekly payments

- (1) Subject to subclause (2), the amendments made to section 36 of the principal Act by this Act extend to weekly payments commenced before the relevant day, or commenced on or after the relevant day, in relation to compensable disabilities occurring before the relevant day.
- (2) Subsections (4), (4a) and (5) of section 36 of the principal Act, as in existence immediately before the substitution of those subsections by section 16 of this Act, will continue to apply in relation to a decision that is the subject of a notice of dispute lodged under section 36(4) before the relevant day.

6—Adjustments due to change from original arrangements

- (1) Section 37 of the principal Act, as enacted by this Act, extends to any determination of average weekly earnings (and, if relevant, notional weekly earnings) made before or on or after the relevant day in relation to compensable disabilities occurring before the relevant day.
- (2) However, the operation of subclause (1) in relation to a determination of average weekly earnings made before the relevant day cannot apply to the disadvantage of a worker by decreasing average weekly earnings (and, if relevant, notional weekly earnings).

7—Economic adjustments to weekly payments

The amendments made to section 39 of the principal Act by this Act extend to weekly payments commenced before the relevant day, or commenced on or after the relevant day, in relation to compensable disabilities occurring before the relevant day.

8—Redemption of liabilities

- (1) Subject to subclause (2), paragraph (e) of section 42(2) of the principal Act, as enacted by this Act, applies in relation to—
 - (a) any relevant liability arising from a compensable disability that occurs on or after the relevant day; and
 - (b) any relevant liability arising from a compensable disability that occurred within the period of 3 years immediately preceding the relevant day; and
 - (c) on or after the expiration of 1 year from the relevant day—any relevant liability arising from a compensable disability that occurred before the 3 year period referred to in paragraph (b).
- (2) Subclause (1)(b) or (c) does not apply where, in a particular case, the Corporation or a self-insured employer has provided a notification to the worker under section 42(4) of the principal Act before the relevant day.
- (3) In this clause—

relevant liability means a liability that is capable of redemption under section 42(1) of the principal Act.

9—Loss of earning capacity—capital loss assessments

Division 4B of Part 4 of the principal Act, as in existence immediately before the relevant day, will be taken to continue to apply with respect to any case where the Corporation or a self-insured employer has made any assessment (including an interim assessment) under section 42A of the principal Act before the relevant day.

10—Lump sum compensation

Sections 43, 43A and 43B of the principal Act, as enacted by this Act, extend to any case where the Corporation or a self-insured employer (as the case requires) has not, before the relevant day, made a determination of the compensation payable in the particular case under section 43 of the principal Act, as in existence immediately before the substitution of that section under section 24 of this Act (in respect of a compensable disability occurring before the relevant day).

11—Compensation payable on death—weekly payments

The amendments made to section 44 of the principal Act by this Act apply to any claim for compensation made on or after the relevant day (whether the entitlement to compensation arose before or on or after the relevant day).

12—Compensation payable on death—lump sums

Section 45A of the principal Act, as enacted by this Act, applies to claims for a lump sum payment of compensation on account of the death of a worker made on or after the relevant day (whether the entitlement to compensation arose before or on or after the relevant day).

13—Funeral benefit

Section 45B of the principal Act, as enacted by this Act, applies to claims for a funeral benefit made on or after the relevant day (including in respect of a funeral occurring before the relevant day).

14—Counselling services

Section 45C of the principal Act, as enacted by this Act—

- (a) applies to claims for compensation made under that section on or after the relevant day (whether the entitlement to compensation arose before or on or after the relevant day); and
- (b) extends to claims for compensation for counselling services made to the Corporation or a self-insured employer before the relevant day under section 44 of the principal Act if the Corporation or self-insured employer determines that it is reasonable to allow the claim to be incorporated into the operation of this clause.

15—Provisional payments

- (1) Division 7A of Part 4 of the principal Act, as enacted by this Act, extends to cases involving disabilities occurring before the relevant day.
- (2) Subclause (1) does not apply in a case where the relevant worker has made a claim for compensation under Division 8 of Part 4 of the principal Act before the relevant day.

16—Medical panels

A medical question may be referred to a Medical Panel under Part 6C of the principal Act, as enacted by this Act, even if the medical question relates to a claim made or proceedings commenced before that enactment.

Schedule 2—Review

1—Review

- (1) The Minister must, as soon as practicable after 31 December 2010, appoint an independent person to carry out a review concerning—
 - (a) the impact of this Act on workers who have suffered compensable disabilities and been affected by the operation of this Act; and
 - (b) the impact of this Act on levies paid by employers under Part 5 of the principal Act; and
 - (c) the impact of this Act on the sufficiency of the Compensation Fund to meet the liabilities of the WorkCover Corporation of South Australia under the principal Act; and
 - (d) such other matters as the Minister may determine.
- (2) The person appointed by the Minister under subclause (1) must present to the Minister a report on the outcome of the review no later than 4 months following his or her appointment.
- (3) The Minister must, within 6 sitting days after receiving the report, have copies of the report laid before both Houses of Parliament.
- (4) In this clause, terms used have meanings consistent with the meanings they have in the principal Act.
- (5) In this clause—

principal Act means the *Workers Rehabilitation and Compensation Act 1986*.