

WORKERS REHABILITATION AND COMPENSATION ACT, 1986

Reprint No. 1—15.1.92

Reprint No. 2—18.6.92

Reprint No. 3—10.12.92 [New Parts I, IV, VI, VII, Schedules
and Appendix]

Reprint No. 4—3.5.93 [New Parts IV and Appendix]

Reprint No. 5—20.5.93 [New Parts IV, V, VI and Appendix]

[Subscribers to the Consolidation Service will receive complete replacement
Parts incorporating amendments to this Act as they come into force]

(Reprint No. 5)

SOUTH AUSTRALIA

WORKERS REHABILITATION AND COMPENSATION ACT, 1986

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 20 May 1993.

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

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Average weekly earnings
5. Act to bind Crown
6. Territorial application of this Act

PART II

THE WORKERS REHABILITATION AND COMPENSATION CORPORATION

DIVISION I—ESTABLISHMENT AND MANAGEMENT OF THE CORPORATION

7. The Corporation
8. Constitution of the management board
9. *Terms and conditions of office*
10. Allowances and expenses
11. Proceedings, etc., of the board
12. Validity of acts of board and immunity of members
13. Disclosure of interest

DIVISION II—FUNCTIONS AND POWERS OF THE CORPORATION

14. Functions and powers of the Corporation
15. Government Financing Authority Act not to apply to Corporation
16. Corporation to have proper regard to differences in ethnic background, etc.

DIVISION III—DELEGATES OF THE CORPORATION

17. Delegation

DIVISION IV—ACCOUNTS, REPORTS AND AUDIT

18. Accounts
19. Audit
20. Annual reports

DIVISION V—STAFF OF THE CORPORATION

21. Chief Executive Officer
22. Other staff of the Corporation
23. Certain periods of service to be regarded as continuous
24. Superannuation

DIVISION VI—USE OF PUBLIC FACILITIES, ETC.

25. Corporation may make use of public facilities

PART III

REHABILITATION AND ACCIDENT PREVENTION PROGRAMMES

DIVISION I—REHABILITATION

26. Rehabilitation programmes
27. Clinics and other facilities
28. Rehabilitation advisers

DIVISION II—DISABILITY PREVENTION PROGRAMMES

29. Prevention programmes

PART IV

COMPENSATION

DIVISION I—CONDITIONS UNDER WHICH DISABILITY IS COMPENSABLE

30. Compensability of disabilities
31. Evidentiary provision

Workers Rehabilitation and Compensation Act, 1986

DIVISION II—COMPENSATION FOR MEDICAL EXPENSES, ETC.

- 32. Compensation for medical expenses, etc.
- 33. Transportation for initial treatment

DIVISION III—COMPENSATION FOR PROPERTY DAMAGE

- 34. Compensation for property damage

DIVISION IV—COMPENSATION BY WAY OF INCOME MAINTENANCE

- 35. Weekly payments
- 36. Discontinuance of weekly payments
- 37. Suspension of weekly payments
- 38. Review of weekly payments
- 39. Economic adjustments to weekly payments
- 40. Weekly payments and leave entitlements
- 41. Absence of worker from Australia
- 42. Commutation of liability to make weekly payments

DIVISION V—COMPENSATION FOR NON-ECONOMIC LOSS

- 43. Lump sum compensation

DIVISION VI—COMPENSATION PAYABLE ON DEATH

- 44. Compensation payable on death
- 45. Review of weekly payments

DIVISION VII—LIABILITY TO PAY COMPENSATION

- 46. Incidence of liability
- 47. Augmentation of weekly payment in consequence of delay
- 48. Payments by Corporation on behalf of defaulting employer
- 49. Corporation may undertake employer's liability to make weekly payments
- 50. Corporation as insurer of last resort

DIVISION VIII—NOTICES OF DISABILITIES AND CLAIMS FOR COMPENSATION

- 51. Duty to give notice of disability
- 52. Claim for compensation
- 53. Determination of claim

DIVISION IX—MISCELLANEOUS

- 54. Limitation of employer's liability
- 55. Prohibition of double recovery of compensation
- 56. Effect of misconduct in relation to claim for compensation
- 57. Compensation payable in respect of disabilities arising from employment on ships
- 58. Certain sporting injuries not to be compensable
- 58a. Reports of return to work, etc.
- 58b. Continuation of employment

PART V

REGISTRATION AND FUNDING

DIVISION I—REGISTRATION OF EMPLOYERS

- 59. Registration of employers
- 60. Exempt employers
- 61. The Crown and certain agencies to be exempt employers
- 62. Applications

DIVISION II—DELEGATION TO EXEMPT EMPLOYERS

- 63. Delegation to exempt employer

DIVISION III—THE COMPENSATION FUND

- 64. The Compensation Fund

DIVISION IV—IMPOSITION OF LEVIES

- 65. Preliminary
- 66. Imposition of levies
- 67. Adjustment of levy in relation to individual employers

DIVISION V—SPECIAL LEVY FOR EXEMPT EMPLOYERS

- 68. Special levy for exempt employers

Workers Rehabilitation and Compensation Act, 1986

DIVISION VI—PAYMENT OF LEVIES

- 69. Returns by employers

DIVISION VII—RECOVERY OF LEVIES AND FINES

- 70. Recovery on default
- 71. Penalty for late payment
- 72. Review of levy, penalty interest or fine

DIVISION VIII—MISCELLANEOUS

- 73. Separate accounts
- 74. Liability to keep accounts
- 75. Person ceasing to be an employer
- 76. Proof of registration
- 76a. Recovery of levy

PART VI

REVIEWS AND APPEALS

DIVISION I—REVIEW OFFICERS

- 77. Review Officers

DIVISION II—THE WORKERS COMPENSATION APPEAL TRIBUNAL

- 78. The Tribunal
- 79. Membership of the Tribunal
- 80. Constitution of Tribunal, etc.
- 81. Immunity
- 82. Rules of the Tribunal
- 82a. The Registrar

DIVISION III—MEDICAL ADVISORY PANELS

- 83. Medical Advisory Panels
- 84. Constitution of Medical Advisory Panels
- 85. Procedure of Medical Advisory Panels
- 85a. Confidentiality
- 86. Immunity

DIVISION V—PROCEEDINGS BEFORE REVIEW AUTHORITIES

- 88. Principles relating to reviews
- 89. Notice of proceedings, etc.
- 90. Powers of Review Authority
- 91. Witness fees
- 92. Representation
- 92a. Costs
- 93. Statement of appeal rights, etc.
- 94. Reference of matters to Medical Advisory Panels

DIVISION VI—REVIEWS AND APPEALS

- 95. Application for review
- 96. Review by Review Officer
- 97. Appeals to Tribunal
- 98a. Decisions relating to exempt employers

DIVISION VII—CASES STATED AND APPEALS

- 99. Cases stated
- 100. Appeals to Supreme Court

DIVISION VIII—MINISTERIAL INTERVENTION

- 101. Ministerial intervention

DIVISION IX—MISCELLANEOUS

- 102. Special jurisdiction of Review Officer

Workers Rehabilitation and Compensation Act, 1986

PART VII

MISCELLANEOUS

- 103. Extension of the application of this Act to self-employed persons
- 103a. Special provision for prescribed classes of volunteers
- 105. Insurance of registered employers against other liabilities
- 106. Payment of interim benefits
- 106a. Payment not to constitute an admission of liability
- 107. Employer may request progress report
- 108. Medical examination at request of employer
- 109. Worker to be supplied with copy of medical report
- 110. Powers of entry and inspection
- 111. Inspection of place of employment by rehabilitation adviser
- 112. Confidentiality to be maintained
- 112a. Employer information
- 113. Disabilities that develop gradually
- 114. Certain payments not to affect benefits under this Act
- 115. No contribution from workers
- 116. Payment of compensation where worker in prison
- 117. Service of documents
- 118. Service of documents on the Corporation
- 119. Contract to avoid Act
- 120. Dishonesty
- 120a. Evidence
- 121. Protection of special name
- 122. Offences
- 122a. Expiation of offences
- 123. Exemption from stamp duty
- 123a. Right of intervention
- 124. Regulations
- 125. Repeal of Workers Compensation Act, 1971

SCHEDULES

WORKERS REHABILITATION AND COMPENSATION ACT, 1986

being

Workers Rehabilitation and Compensation Act, 1986, No. 124 of 1986 [Assented to 24 December 1986]¹

as amended by

Workers Rehabilitation and Compensation Act Amendment Act, 1987, No. 106 of 1987 [Assented to 17 December 1987]²
Workers Rehabilitation and Compensation Act Amendment Act, 1988, No. 39 of 1988 [Assented to 28 April 1988]³ (as amended by Statutes Amendment (Workers Rehabilitation and Compensation) Act, 1988⁴)
Statutes Amendment (Workers Rehabilitation and Compensation) Act, 1988, No. 97 of 1988 [Assented to 15 December 1988]⁴
Workers Rehabilitation and Compensation Act Amendment Act, 1990, No. 34 of 1990 [Assented to 26 April 1990]⁵
Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1991 No. 4 of 1991 [Assented to 21 March 1991]⁶
Workers Rehabilitation and Compensation (General) Regulations 1987 No. 232 of 1987 [Gaz. 24 September 1987, p. 1002]
(as varied by Regulation No. 97 of 1992 [Gaz. 18 June 1992, p. 1810])
Statutes Amendment (Public Actuary) Act 1992 No. 69 of 1992 [Assented to 19 November 1992]⁷
Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1992 No. 84 of 1992 [Assented to 3 December 1992]⁸
Workers Rehabilitation and Compensation (General) Regulations 1987 No. 232 of 1987 [Gaz. 24 September 1987, p. 1002]
(as varied by Regulation No. 212 of 1992 [Gaz. 10 December 1992, p. 1761])⁹
Workers Rehabilitation and Compensation (Review Authorities) Amendment Act 1993 No. 52 of 1993 [Assented to 20 May 1993]¹⁰

¹Came into operation (except ss. 3-6, 26, 29-63, 65-76, 80, 81, 85, 86, 88-120, 122-125, Scheds. 1, 2 and 3) 16 April 1987: *Gaz.* 16 April 1987, p. 1008; remainder of Act came into operation at 4 p.m. on 30 September 1987: *Gaz.* 17 September 1987, p. 886.

²Came into operation at 4 p.m. on 30 September 1987: s. 2.

³Came into operation (except ss. 18, 19(a), 22(a) and new s. 58b (as inserted by s. 15)) 17 October 1988: *Gaz.* 6 October 1988, p. 1236; new s. 58b came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2010; ss. 18, 19(a) and 22(a) had not been brought into operation at the date of, and the amendments effected to this Act by those provisions have not been included in, this reprint.

⁴Came into operation (except ss. 9-11) 15 December 1988; ss. 9 and 10 came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009; s. 11 had not been brought into operation at the date of, and the amendment effected to this Act by that provision has not been included in, this reprint.

⁵Came into operation (except ss. 3 and 5) on assent; s. 3 came into operation 16 April 1987: s. 2(2); s. 5 came into operation 1 July 1990: s. 2(3).

⁶Came into operation 8 April 1991: *Gaz.* 4 April 1991, p. 1148.

⁷Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.

⁸S. 3 came into operation at 4.00 p.m. on 30 September 1987: s. 2(2); s. 18(a) came into operation 8 April 1991: s. 2(3); ss. 1, 2, 4, 5, 16, 18(b), (c), 19, 21 and 22 came into operation 3 December 1992: *Gaz.* 3 December 1992, p. 1688; ss. 11, 12(a), (b) and (c) and 20 came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1754; ss. 7(a), (b), 8, 9, 13 and 15 came into operation 3 May 1993: *Gaz.* 22 April 1993, p. 1400; ss. 6, 7(c), 10, 12(d), 14 and 17 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

⁹Came into operation 10 December 1992: reg. 2.

¹⁰Ss. 3 and 14(c) came into operation on assent: s. 2(2); ss. 5, 6, 15, 16(1) and (7) came into operation 20 May 1993: *Gaz.* 20 May 1993, p. 1694; ss. 4, 7-13, 14(a), (b), (d)-(g) and 16(2)-(6) had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

N.B. The amendments effected to this Act by the Statutes Amendment (Chief Inspector) Act 1993 had not been brought into operation at the date of, and have not been included in, this reprint.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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

The Parliament of South Australia enacts as follows:

PART I
PRELIMINARY

Short title

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

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.
(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Interpretation

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

“actuary” means a Fellow or Accredited Member of the Institute of Actuaries of Australia:

“apprentice” includes—

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

and “apprenticeship” has a corresponding meaning:

“authorized officer” means a person who is authorized by the Corporation to exercise the powers of an authorized officer under this Act:

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

“average weekly earnings”, in relation to a worker, means the worker’s average weekly earnings determined in accordance with section 4:

“the board” means the board of management of the Corporation:

“business day” means any day except Saturday, Sunday or a public holiday:

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

“compensation” includes any monetary benefit payable under this Act:

“compensable disability” means a disability that is compensable by virtue of section 30:

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

“contract of service” means—

- (a) a contract under which one person (the worker) is employed by another (the employer);

(b) a contract, arrangement or understanding under which one person (the worker) works for another (the employer) in prescribed work or work of a prescribed class;

(c) a contract of apprenticeship;

(d) a contract, arrangement or understanding under which a person (the worker)—

(i) receives on-the-job training in a trade or vocation from another (the employer);

and

(ii) is during the period of that training remunerated by the employer:

“the Corporation” means the Workers Rehabilitation and Compensation Corporation established under Part II:

“corresponding law” means a law—

(a) of the Commonwealth;

(b) of a State (other than this State) or a Territory of the Commonwealth;

or

(c) of another country,

that provides for compensation for disabilities arising from employment:

“dependant”, in relation to a deceased worker, means a relative of the worker who, at the time of the worker’s death—

(a) was wholly or partially dependent for the ordinary necessities of life on earnings of the worker;

or

(b) would, but for the worker’s disability, have been so dependent,

and includes a posthumous child of the worker; and “dependent” has a corresponding meaning:

“disability” of a worker means—

(a) any physical or mental injury including—

(i) loss, deterioration or impairment of a limb, organ or part of the body, or of a physical, mental or sensory faculty;

(ii) a disease;

or

(iii) disfigurement;

or

(b) where the context admits—the death of the worker,

and includes a secondary disability:

“disease” includes—

(a) any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development;

and

(b) any disability to which section 31 applies:

“educational institution” means—

- (a) a secondary school;
- (b) a trade or technical school;
- (c) a college of advanced education, university or other institution at which tertiary education is provided;

or

- (d) any other educational or training institution approved by the Corporation for the purposes of this definition:

“employer” means—

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

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

“employment” includes—

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

“exempt employer” means an employer who is registered by the Corporation as an exempt employer in pursuance of Division 1 of Part V:

“foreign law” means any law except a law of this State:

“the Industrial Court” means the Industrial Court of South Australia:

“industry” includes any business or activity in which workers are employed:

“journey” between two places by a worker means the passage by any reasonable, direct or convenient route between those places and includes a deviation from that route or an interruption of that passage if—

- (a) the deviation or interruption is not, in the circumstances of the case, substantial;
- (b) the deviation or interruption is made for purposes connected with the worker’s employment or the purpose for which the journey was undertaken;

or

- (c) the deviation or interruption does not materially increase the risk of injury to the worker:

“local government corporation” means—

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

or

(c) any other body—

(i) established for local government purposes;

and

(ii) prescribed for the purposes of this definition:

“medical expert” means—

(a) a legally qualified medical practitioner;

(b) a registered dentist;

(c) a registered psychologist;

(d) a registered optician;

(e) a registered physiotherapist;

(f) a registered chiropractor;

(g) a registered podiatrist;

(h) a registered occupational therapist;

(i) a registered speech pathologist:

“medical question” means any question of the nature, extent or probable duration of a disability, but does not include any question of a worker’s incapacity for work or of the extent of an incapacity for work:

“medical services” means—

(a) attendance, examination or treatment by a medical expert (including the obtaining from a medical expert of a certificate or report);

or

(b) any diagnostic examination or test required for the purposes of treatment by a medical expert:

“non-economic loss” means—

(a) pain and suffering;

(b) loss of amenities of life;

(c) loss of expectation of life;

(d) any other loss or detriment of a non-economic nature:

“notional weekly earnings” in relation to a worker means—

(a) the worker’s average weekly earnings;

or

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

“officer” of the Corporation includes an employee of the Corporation:

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

Workers Rehabilitation and Compensation Act, 1986

“parent”, in relation to a deceased worker, includes a person who stood *in loco parentis* to the worker at the time of the worker’s death:

“place of employment” in relation to a worker includes a place of pick-up:

“place of pick-up” means a pre-arranged place at which employers select workers for employment:

“premises” means—

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

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

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

* * * * *

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

“recognized medical expert” means—

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

“registered association” means—

- (a) an association registered under Part IX of the *Industrial Conciliation and Arbitration Act, 1972*;
- (b) an association registered under the *Conciliation and Arbitration Act 1904* of the Commonwealth;
- (c) the United Trades and Labor Council;
- (d) the Australian Mines and Metals Association;
- (e) the Employer-Managed Workers Compensation Association Incorporated:

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

“the repealed Act” means the *Workers Compensation Act, 1971*, repealed by this Act:

“residence” in relation to a worker includes a place—

- (a) at which the worker resides in pursuance of the terms of the worker’s employment or at the request of the employer;
- or

(b) at which it is necessary or convenient for the worker to reside temporarily for the purposes of employment:

“review authority” means—

(a) a Review Officer appointed for the purposes of this Act;

or

(b) the Tribunal:

* * * * *

“secondary disability” means a disability that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior disability:

“self-employed worker” means a person to whom the Corporation has extended the protection of this Act pursuant to section 103:

“ship” includes a boat, vessel or craft:

“South Australian ship” means a ship—

(a) that is registered in the State;

(b) that is owned or under charter by the Crown;

or

(c) that is owned or under charter by a body corporate or other person—

(i) whose principal office or place of business is in the State;

or

(ii) whose principal office or place of business with respect to the control or management of the ship is in the State:

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

(a) (i) the person has been so cohabiting with the worker continuously for the preceding period of 5 years;

(ii) the person has during the preceding period of 6 years cohabited with the worker for periods aggregating not less than 5 years;

or

(iii) although neither subparagraph (i) nor (ii) applies, the person has been cohabiting with the worker for a substantial part of a period referred to in either of those subparagraphs and the Corporation considers that it is fair and reasonable that the person be regarded as the spouse of the worker for the purposes of this Act;

or

(b) a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living):

“the State” includes the territorial waters of the State:

“therapeutic appliance” means—

(a) spectacles or contact lenses;

(b) a hearing aid;

(c) false teeth;

Workers Rehabilitation and Compensation Act, 1986

- (d) a prosthesis;
- (e) a crutch or wheelchair;
- or
- (f) any other appliance or aid for reducing the extent of a disability or enabling a person to overcome in whole or part the effects of a disability:

“trauma” means an event, or series of events, out of which a compensable disability arises:

“the Tribunal” means the Workers Compensation Appeal Tribunal constituted under this Act:

“unrepresentative disability” means a disability arising from a journey, attendance or temporary absence referred to in section 30(3):

“worker” means—

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

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

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

* * * * *

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

(4) In relation to attendance by a worker at a place of pick-up or a journey between the worker’s residence and the place of pick-up (whether to or from the place of pick-up) the worker shall be deemed to be employed under a contract of service by—

- (a) the employer who last selected the worker for employment at that place of pick-up;

or

- (b) if there is no such employer—by all employers who customarily make use of that place of pick-up for the purpose of selecting workers for employment.

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

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

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

(8) A regulation under subsection (7) cannot be made unless the board, by unanimous resolution of the members present at a meeting of the board, agrees to be making of the regulation (but this requirement does not extend to a regulation revoking, or reducing the scope of an exclusion).

Average weekly earnings

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

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

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

and

(b) subject to subsection (3)—

(i) the actual weekly earnings of the worker over a period of up to 12 months before the relevant date may be taken into account;

and

(ii) if by reason of the shortness of time during which the worker has been in employment, the terms of the worker's employment or for any other reason, it is not possible to arrive at a fair average, the worker's average weekly earnings may be determined by reference to the average weekly amount being earned by other persons in the same employment who perform similar work at the same grade as the worker or, if there is no person so employed, by other persons in the same class of employment who perform similar work at the same grade as the worker.

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

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

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

(a) was not a full-time worker immediately prior to the relevant date;

(b) immediately prior to the relevant date had been seeking full-time employment;

and

(c) had been predominantly during the preceding 18 months a full-time worker,

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

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

Workers Rehabilitation and Compensation Act, 1986

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

Act to bind Crown

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

Territorial application of this Act

6. (1) Subject to this section, this Act applies in relation to—
- (a) employment in the State;
 - (b) employment outside the State of a worker who is predominantly employed in the State;
 - (c) employment outside the State by the Crown in right of the State;
 - (d) employment on a South Australian ship;
- or
- (e) employment outside the State (not being employment in respect of which the worker is protected by a corresponding law)—
 - (i) to which a worker regularly travels from a port or place in the State;or
 - (ii) which forms part of the employment of a worker who is employed both in and outside the State.
- (2) Where—
- (a) a worker (not being an officer or employee of the Crown in right of the State) is employed both in and outside the State, but predominantly outside the State;
- and
- (b) the worker is, in respect of employment in the State, protected by a corresponding law,

this Act does not apply in respect of the employment in the State.

PART II

THE WORKERS REHABILITATION AND COMPENSATION CORPORATION
DIVISION I—ESTABLISHMENT AND MANAGEMENT OF THE CORPORATION**The Corporation**

7. (1) There shall be a corporation entitled the "Workers Rehabilitation and Compensation Corporation".

(2) The Corporation—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of acquiring, holding, dealing with and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other rights or liabilities, and of suing and being sued;

(d) shall hold its property on behalf of the Crown;

and

(e) shall have the functions, powers, authorities and duties prescribed by or under this or any other Act.

(3) An apparently genuine document purporting to bear the common seal of the Corporation and to be signed by 2 members of the board shall, in the absence of proof to the contrary, be deemed to have been duly executed by the Corporation.

Constitution of the management board

8. (1) The Corporation shall be managed by a board consisting of 14 members appointed by the Governor of whom—

(a) one (who shall be the presiding officer of the board) shall be a person nominated by the Minister after consultation with the United Trades and Labor Council and associations that represent the interests of employers;

(b) six shall be nominated by the Minister taking into account the recommendations of the United Trades and Labor Council;

(c) five shall be nominated by the Minister taking into account the recommendations of associations that represent the interests of employers (and of these one shall be a suitable person to represent the interests of small business);

(d) one shall be nominated by the Minister, taking into account the recommendations of Employer-Managed Workers Compensation Association Incorporated;

(e) one shall be a person who is experienced in the field of rehabilitation nominated by the Minister after consultation with the United Trades and Labor Council and associations that represent the interests of employers.

(2) In making nominations under subsection (1), the Minister shall have regard to—

(a) the need for the board to be sensitive to cultural diversity in the population of the State;

and

(b) the Corporation's obligation to take into account, in the provision of rehabilitation and compensation under this Act, racial, ethnic and linguistic diversity in the population of the State.

Terms and conditions of office

9. (1) Subject to subsection (2), a member of the board shall be appointed on such conditions and for such term (not exceeding three years) as the Governor may determine and on the expiration of a term of office is eligible for re-appointment.

(2) The person appointed as the presiding officer of the board may be appointed for a term not exceeding five years.

(3) The Governor may appoint a suitable person nominated by the Minister to be a deputy of a member and that person may, in the absence of that member from the duties of office, act as a member of the board.

(4) The provisions of this Act requiring consultation before the appointment of a member extend to the appointment of a deputy of that member.

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

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

or

- (d) dishonourable conduct.

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

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- (c) resigns by written notice addressed to the Minister;
- (d) is found guilty of an offence against section 13(1);

or

- (e) is removed from office by the Governor pursuant to subsection (5).

(7) On the office of a member becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office (but a person who is to fill a casual vacancy in the office of a member shall be appointed only for the balance of the term of the person's predecessor).

Allowances and expenses

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

(2) Fees, allowances and expenses payable under subsection (1) shall be paid out of the Compensation Fund.

Proceedings, etc., of the board

11. (1) Meetings of the board shall be held at times and places appointed by the board, but there must be at least one meeting every month.

(2) Seven members of the board constitute a quorum of the board and no business shall be conducted at a meeting of the board unless a quorum is present.

(3) The presiding officer of the board shall, if present at a meeting of the board, preside at that meeting and, in the absence of the presiding officer, a member chosen from amongst their own number by the members present shall preside.

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

(5) Each member present at a meeting of the board is entitled to one vote on a matter arising for decision by the board, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.

(6) The board shall cause an accurate record to be kept of its proceedings.

(7) Subject to this Act, the proceedings of the board shall be conducted in such manner as the board may determine.

Validity of acts of board and immunity of members

12. (1) An act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No personal liability attaches to a member of the board for an act or omission by that member or the board in good faith in the exercise or discharge, or purported exercise or discharge, of the member's or the board's powers, duties or functions under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the board shall lie against the Crown.

Disclosure of interest

13. (1) A member of the board—

(a) who is directly or indirectly interested in a contract, or proposed contract, made by, or in contemplation of, the Corporation;

or

(b) who has a direct or indirect personal or pecuniary interest in any matter that is before the board for determination,

shall, as soon as practicable after becoming aware of the interest, disclose the nature of the interest to the board and shall not take part in any deliberations or decisions of the board on the contract or matter to which the interest relates.

Penalty: \$5 000.

(2) A disclosure made under this section shall be recorded in the minutes of the board.

(3) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

(a) the contract is not void, or liable to be avoided, on any ground arising from the member's interest in the contract;

and

(b) the member is not liable to account to the Corporation for profits derived from the contract.

DIVISION II—FUNCTIONS AND POWERS OF THE CORPORATION

Functions and powers of the Corporation

14. (1) The functions of the Corporation are—

(a) to undertake, subject to the general direction and control of the Minister, the administration and enforcement of this Act;

(b) to manage funds that come under its control in the administration of this Act;

(c) to keep under review the levels and adequacy of benefits under this Act;

- (d) to collect and publish data and statistics in relation to workers' rehabilitation and compensation;
- (e) to keep under review the effect on disabled workers of State laws (including this Act) and to make, where appropriate, recommendations to the Minister for the reform of those laws;
- (f) to keep the operation of the second schedule under review and to make, where appropriate, recommendations to the Minister for additions or amendments to that schedule;
- (g) to report to the Minister on the administration of this Act or any matter referred to the Corporation by the Minister;
- (h) to undertake or subsidize research and educational programmes with respect to work-related disabilities and the rehabilitation and compensation of disabled workers;
- (i) to perform any other function assigned to the Corporation by or under this or any other Act or law.

(2) For the purposes of this Act, the Corporation may—

- (a) establish and operate bank accounts;
- (b) invest money held by it;
- (c) with the consent of the Minister and the Treasurer, borrow money and give security for the repayment of any loan;
- (d) acquire, hold, lease, deal with and dispose of real and personal property;
- (e) enter into any other kind of contract, agreement or arrangement;
- (f) establish and maintain a central office and regional offices;
- (g) establish committees (which may, but need not consist of, or include, members of the Corporation) to advise the Corporation on any aspect of its functions;
- (h) collaborate with other bodies that provide assistance to disabled workers;
- (i) exercise any other powers that are contemplated by this Act or necessary or expedient for the efficient and proper performance of the Corporation's functions.

(3) For the purpose of determining any matter that might affect its liabilities, or carrying out any of its other functions, the Corporation may make such investigations and inquiries as it thinks fit.

Government Financing Authority Act not to apply to Corporation

15. The Corporation is not a semi-government authority for the purposes of the *Government Financing Authority Act, 1982*.

Corporation to have proper regard to differences in ethnic background, etc.

16. The Corporation shall seek to ensure that in the provision of rehabilitation and compensation under this Act racial, ethnic and linguistic diversity in the population of the State is taken into account and that those who may have grounds for seeking rehabilitation or compensation under this Act are not disadvantaged by their racial, ethnic or linguistic origins or background.

DIVISION III—DELEGATES OF THE CORPORATION

Delegation

17. (1) The Corporation may, by instrument in writing, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made—

(i) to a member of the board;

(ii) to a committee established by the Corporation;

(iii) to a particular officer of the Corporation, or to any officer of the Corporation occupying (or acting in) a particular office or position;

or

(iv) to a public authority or public instrumentality.

(b) may be made subject to such conditions as the Corporation thinks fit;

and

(c) is revocable at will and does not derogate from the power of the Corporation to act in any matter itself.

(3) In any legal proceedings an apparently genuine certificate, purporting to be signed by an officer of the Corporation, containing particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of the particulars.

DIVISION IV—ACCOUNTS, REPORTS AND AUDIT

Accounts

18. (1) The Corporation shall cause proper accounts to be kept of its financial affairs.

(2) The Corporation shall—

(a) ensure that all money payable to the Corporation is properly collected;

(b) ensure that all liabilities and expenditures of the Corporation are properly authorized;

(c) ensure that adequate control is maintained over its assets;

(d) ensure efficiency and economy of operations and the avoidance of waste and extravagance;

(e) develop and maintain an adequate budgeting and accounting system;

and

(f) develop and maintain an adequate internal audit system.

(3) The Corporation shall, in complying with subsection (2), take into account any relevant recommendation made by an auditor in reporting on the accounts of the corporation.

Audit

19. (1) The accounts of the Corporation must be audited at least once in each year.

(2) For the purposes of audit under this section, the Corporation shall, within the first 3 months of each financial year, appoint 2 or more auditors of the Corporation for that financial year.

(3) An auditor appointed under subsection (2) must be a registered company auditor or a firm of registered company auditors.

(4) It is the duty of the auditors to report on the Corporation's accounting records and on the accounts to be laid before Parliament in respect of the financial year for which they are appointed as auditors of the Corporation.

(5) The auditors shall have a right of access at all reasonable times to the accounting and other records of the Corporation and are entitled to require from any officer of the Corporation such information and explanations as they think necessary for the purposes of the audit.

(6) An auditor of the Corporation incurs no liability in defamation for any statement made by the auditor in the course of fulfilling the duties of auditor.

Annual reports

20. (1) The Corporation shall, on or before the thirty-first day of December in each year, deliver to the Minister an annual report containing—

(a) a report on its operations during the financial year ending on the thirtieth day of June in that year;

and

(b) audited accounts of the Corporation for that financial year.

(2) The Minister shall, within 12 sitting days after receipt of a report under subsection (1), cause a copy of the report to be laid before each House of Parliament.

DIVISION V—STAFF OF THE CORPORATION

Chief Executive Officer

21. (1) There will be a Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer is responsible to the board for—

(a) the implementation of its policies and decisions;

(b) the efficient and effective management of the Corporation's business;

and

(c) the supervision of the Corporation's staff.

(3) A person cannot be appointed as the Chief Executive Officer of the Corporation unless the Corporation has first consulted with the Minister in relation to the proposed appointment and the proposed terms and conditions of appointment.

(4) A reference in any other Act to the General Manager of the Corporation will be taken to be a reference to the Chief Executive Officer.

Other staff of the Corporation

22. (1) There shall be such other staff of the Corporation as the Corporation thinks necessary for the proper administration of this Act.

(2) In choosing staff the Corporation shall have regard to—

- (a) the need for the staff to be sensitive to cultural diversity in the population of the State;
- (b) the Corporation's obligation to take into account, in the provision of rehabilitation and compensation under this Act, racial, ethnic and linguistic diversity in the population of the State;

and

- (c) the need for the Corporation to have access to staff who are able to act as interpreters and translators so as to provide to people who are not reasonably fluent in English assistance in the proceedings and procedures under this Act.

(3) The staff of the Corporation are not public service employees.

Certain periods of service to be regarded as continuous

23. Where a person commences service as an officer of the Corporation within 3 months after cessation of service as—

- (a) an employee in the Public Service of the State;
 - (b) an employee of the State otherwise than in the Public Service;
 - (c) an officer or employee of the State Government Insurance Commission;
- or
- (d) an employee of a prescribed person, or of a person of a prescribed class,

then, for the purposes of determining rights to recreation leave, sick leave and long service leave as an officer or employee of the Corporation, the person's service in that previous employment (whether before or after the commencement of this Act) shall, subject to such conditions as the Corporation may impose, be deemed to be service as an officer of the Corporation.

Superannuation

24. The Corporation is a public authority within the meaning, and for the purposes of, the *Superannuation Act, 1974*, and may enter into arrangements with the South Australian Superannuation Board with respect to superannuation of its officers.

DIVISION VI—USE OF PUBLIC FACILITIES, ETC.

Corporation may make use of public facilities

25. The Corporation may, by arrangement with a department of the Public Service of the State, a public authority or a public instrumentality, make use of the services, facilities or staff of the department, authority or instrumentality.

PART III

REHABILITATION AND ACCIDENT PREVENTION PROGRAMMES

DIVISION I—REHABILITATION

Rehabilitation programmes

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

(a) achieve the best practicable levels of physical and mental recovery;

and

(b) are, where possible, restored to the workforce and the community.

(2) A rehabilitation programme may be established by the Corporation in relation to—

(a) a particular worker;

(b) workers of a particular class;

(c) workers suffering from disabilities of a particular class.

(3) For the purposes, or in the course, of a rehabilitation programme the Corporation may—

(a) provide for the physical, mental or vocational assessment of workers;

(b) provide advisory services to workers, members of the families of workers, employers and others;

(c) assist workers in seeking, obtaining or retaining employment;

(d) assist in the training or retraining of workers;

(e) assist workers to find appropriate accommodation;

(f) provide for the necessary and reasonable costs (including costs of travel, accommodation and child care) incurred by workers in order to participate in rehabilitation programmes;

(g) provide equipment, facilities and services to assist workers to cope with their disabilities at home or in the workplace;

(h) provide assistance to persons who may be in a position to help workers to overcome or cope with their disabilities;

(i) disseminate information that relates to work related disabilities;

(j) conduct, participate in or subsidize research into any aspect of rehabilitation;

(k) encourage and support the work of organizations that provide assistance to workers suffering from compensable disabilities;

(l) do anything else that may assist in the rehabilitation of workers.

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

Clinics and other facilities

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

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

(3) The Corporation may—

(a) enter into arrangements with any government agency or other body under which medical services or rehabilitation facilities and services will be provided for disabled workers;

(b) with the approval of the Minister, establish clinics and other facilities for the assessment, treatment or rehabilitation of disabled workers;

and

(c) establish and maintain a register of persons and organisations that are, in the opinion of the Corporation, properly qualified and equipped to provide rehabilitation services.

Rehabilitation advisers

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

(2) A rehabilitation adviser—

(a) shall assist in devising and co-ordinating rehabilitation programmes for disabled workers;

(b) shall be responsible to the Corporation for monitoring the progress of disabled workers who are involved in rehabilitation programmes;

(c) may, subject to monetary limitations set by the Corporation, expend money of the Corporation in obtaining for a disabled worker services and equipment that may assist towards rehabilitation;

and

(d) shall consult with employers with a view to expediting the return to work of disabled workers.

(3) No statement made by or to a rehabilitation adviser in respect of a worker who is participating in a rehabilitation programme shall be subsequently disclosed in any proceedings under this Act unless the rehabilitation adviser and the worker consent to the disclosure.

DIVISION II—DISABILITY PREVENTION PROGRAMMES

Prevention programmes

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

PART IV

COMPENSATION

DIVISION I—CONDITIONS UNDER WHICH DISABILITY IS COMPENSABLE

Compensability of disabilities

30. (1) Subject to this Act, a disability is compensable if it arises from employment.

(2) Subject to subsection (2a), a disability arises from employment if—

(a) in the case of a disability (not being a secondary disability or a disease)—it arises out of or in the course of employment;

or

(b) in the case of a disability that is a secondary disability or a disease—

(i) the disability arises out of employment;

or

(ii) the disability arises in the course of employment and the employment contributed to the disability.

(2a) A disability that consists of an illness or disorder of the mind caused by stress is compensable if and only if—

(a) stress arising out of employment was a substantial cause of the disability;

and

(b) the stress did not arise wholly or predominantly from—

(i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker;

(ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the worker's employment;

or

(iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment.

(3) Subject to subsection (4), the employment of a worker includes—

(a) a journey between the worker's residence and place of employment (whether to or from the place of employment);

(b) attendance by the worker at the worker's place of employment on a working day—

(i) before commencing work for the day;

(ii) after concluding work for the day;

or

(iii) during any authorized break from work;

(c) where the worker has attended at the place of employment on a working day—a temporary absence from the place of employment during a meal break or other authorized break from work;

(d) attendance by the worker at an educational institution in accordance with a legal obligation or at the request or with the approval of the employer for the purpose of receiving instruction or training and any journey for the purpose

of such an attendance at the institution between the worker's residence or place of employment and the institution (whether the journey is to or from the institution);

(e) attendance by the worker at any place (which may include the worker's place of employment) for the purpose of—

(i) obtaining a medical report or certificate in connection with a compensable disability;

(ii) receiving medical treatment for a compensable disability;

(iii) participating in a rehabilitation programme provided to the worker;

(iv) seeking or receiving compensation in connection with a compensable disability,

and any journey related to such an attendance between that place and the worker's residence or place of employment (whether the journey is to or from that place).

(4) If during the course of—

(a) attendance by a worker at the worker's place of employment in the circumstances referred to in subsection (3)(b);

or

(b) absence by a worker from the worker's place of employment in the circumstances referred to in subsection (3)(c),

the worker is guilty of misconduct or a breach of the employer's instructions or voluntarily subjects himself or herself to an abnormal risk of injury, the worker shall not then be regarded as acting in the course of employment unless the worker's disability results in death or permanent total incapacity for work.

(5) A journey between a place of employment at which a worker is employed by one employer and a place of employment at which the worker is employed by another employer forms part of the employment of the worker by that other employer.

(6) For the purposes of this section—

(a) a journey that commences at a worker's residence shall not be regarded as having commenced until the worker has progressed beyond land appurtenant to the house or other structure in which the worker resides unless the Corporation determines in the circumstances of a particular case that the journey should fairly be regarded as having commenced at an earlier point;

and

(b) a journey that terminates at a worker's residence shall be regarded as having terminated when the worker reaches land appurtenant to the house or other structure in which the worker resides unless the Corporation determines in the circumstances of a particular case that the journey should fairly be regarded as having terminated at a later point.

(7) Subject to this Act, a worker who is acting in connection with, and for the purposes of, the employer's trade or business shall be deemed to be acting in the course of employment notwithstanding the fact that—

(a) the worker is acting in contravention of a statutory or other regulation applicable to the employment;

or

(b) the worker is acting without, or in contravention of, instructions from the employer.

Evidentiary provision

31. (1) Where a worker—

(a) suffers a disability of a kind referred to in the first column of the second schedule;

and

(b) has been employed in work of a type referred to in the second column of that schedule opposite that disability,

it shall be presumed, in the absence of proof to the contrary, that the disability arose from that employment.

(2) The regulations may extend the operation of subsection (1) to disabilities and types of work prescribed in the regulations.

(3) A regulation under subsection (2) must not be made except—

(a) on the recommendation of the Corporation;

or

(b) with the approval of the Corporation.

(4) Where a worker retires or is retired from employment on account of age or ill-health and the worker makes a claim for noise induced hearing loss after the expiration of two years from the date of the retirement, subsection (1) does not apply in relation to that claim.

(5) Where—

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

and

(b) the disability arises in the course of employment,

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

DIVISION II—COMPENSATION FOR MEDICAL EXPENSES, ETC.**Compensation for medical expenses, etc.**

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

(1a) For the purposes of subsection (1), the amount of compensation will be determined—

(a) according to scales published by the Corporation in the *Gazette* under subsection (9);

or

(b) if a particular cost is not fixed by such a scale—according to what is a reasonable amount for the provision of the service in respect of which compensation is payable.

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

(a) the cost of medical services;

(b) the cost of hospitalization and all associated medical, surgical and nursing services;

(c) the cost of approved rehabilitation;

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

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

(a) to the worker;

or

(b) directly to the person to whom the worker is liable for those costs.

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

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

(5) Where—

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

and

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

the Corporation may disallow charges for the services.

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

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

(i) the basis of the Corporation's decision to disallow or reduce the charge;

and

(ii) where the charge has been disallowed under subsection (5) the provider's right to have the decision reviewed under this Act;

and

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

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

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

(9) Subject to subsection (10), the Corporation—

(a) will, by notice published in the *Gazette* fix scales of charges for the purposes of this section (ensuring so far as practicable that the scales comprehensively cover the various kinds of services to which this section applies);

and

(b) may, by subsequent notice in the *Gazette*, vary the scales so published.

(10) The Corporation must, before fixing or varying a scale under this section, consult with—

(a) the Self-Insurers Association of South Australia Incorporated;

and

(b) associations or persons who, in the opinion of the Corporation, represent persons who provide the kinds of services to which this section applies.

Transportation for initial treatment

33. (1) Where—

(a) a worker is injured at the worker's place of employment during the course of employment;

and

(b) the injury is such as to require immediate medical treatment,

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

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

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

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

DIVISION III—COMPENSATION FOR PROPERTY DAMAGE

Compensation for property damage

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

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

DIVISION IV—COMPENSATION BY WAY OF INCOME MAINTENANCE

Weekly payments

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

- (a) if the period of incapacity for work does not exceed one year—
 - (i) the worker is, if totally incapacitated for work, entitled for the period of incapacity to weekly payments equal to the worker's notional weekly earnings;
 - (ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment;
- (b) if the period of incapacity for work exceeds one year, the worker is entitled to weekly payments determined in accordance with paragraph (a) for the first year of the period of incapacity and thereafter—
 - (i) the worker is, if totally incapacitated for work, entitled for the period of incapacity to weekly payments equal to 80 per cent of the worker's notional weekly earnings;
 - (ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to 80 per cent of the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment that the worker has a reasonable prospect of obtaining.

(2) For the purposes of subsection (1)—

- (a) a partial incapacity for work over a particular period shall be treated as a total incapacity for work over that period unless the Corporation establishes that suitable employment for which the worker is fit is reasonably available to the worker in respect of that period (but where the period of incapacity extends beyond a period of two years, this paragraph does not apply to a period commencing after, or extending beyond, the end of the second year of incapacity);

and

- (b) the following factors shall be considered, and given such weight as may be fair and reasonable, in making an assessment of the prospects of a worker to obtain employment—

- (i) the nature and extent of the worker's disability;
- (ii) the worker's age, level of education and skills;
- (iii) the worker's experience in employment;

and

- (iv) the worker's ability to adapt to employment other than the employment in which he or she was engaged at the time of the occurrence of the disability.

(2a) Where—

- (a) a period of incapacity for work exceeds two years;
- (b) an assessment of the weekly earnings that the worker is earning or could earn in suitable employment is made under subsection (1)(b)(ii);

and

(c) the worker's actual weekly earnings subsequently exceed the amount so assessed,

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

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

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

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

(5) Weekly payments are not payable in respect of a period of incapacity for work falling after the later of the following dates—

(a) the date on which the worker attains the age at which the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1947* of the Commonwealth;

or

(b) the date on which the worker attains the normal retiring age for workers engaged in the kind of employment from which the worker's disability arose or 70 years of age (whichever is the lesser).

(6) A worker is not entitled to receive in respect of separate disabilities weekly payments in excess of the worker's notional weekly earnings and where a lump sum has been paid to a worker in commutation of weekly payments the worker shall for the purposes of this subsection be deemed to be receiving the weekly payments represented by that lump sum.

(7) In this section—

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

Discontinuance of weekly payments

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

- (a) the worker consents to the discontinuance of weekly payments;
- (b) the Corporation is satisfied, on the basis of a certificate of a recognized medical expert, that the worker has ceased to be incapacitated for work by the compensable disability;

(c) the Corporation has, by notice in writing to a worker, required the worker to—
(i) submit to an examination by a recognized medical expert nominated by the Corporation;

or

(ii) submit to the Corporation a certificate from a recognized medical expert certifying that the compensable disability continues, and the worker has failed to comply with the requirement within the time allowed in the notice;

(d) the worker has returned to work;

or

(e) the discontinuance of weekly payments is authorized or required by some other provision of this Act.

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

(a) the worker consents to the reduction of weekly payments;

(b) the Corporation is satisfied, on the basis of a certificate of a recognized medical expert, that there has been a reduction in the extent the worker is incapacitated for work by the compensable disability;

(ba) the reduction is necessary to correct an arithmetical or clerical error;

(bb) where the weekly payments include a component for overtime—the Corporation is satisfied that if the worker had continued in the work in which he or she was last employed before becoming incapacitated, he or she would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished;

or

(c) the reduction of weekly payments is authorized or required by some other provision of this Act,

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

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

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

(a) where a decision to discontinue weekly payments is made, without the consent of the worker, on the ground that—

(i) the Corporation is satisfied that the worker has ceased to be incapacitated for work by the compensable disability (although the worker has not returned to work);

or

(ii) the worker has failed to submit to an examination by a recognized medical expert or to provide a medical certificate as required by the Corporation;

(b) where a decision to reduce weekly payments is made, without the consent of the worker, on the ground that—

(i) the Corporation is satisfied that there has been a reduction in the extent the worker is incapacitated for work by the compensable disability;

or

(ii) the Corporation is satisfied, in the case of a worker whose weekly payments include a component for overtime, that the worker would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished;

or

(c) where a decision to discontinue or reduce weekly payments is made under section 37 or 38,

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

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

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

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

(a) the reason or reasons for the adjournment;

and

(b) the conduct of the parties to the proceedings,

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

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

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

(a) be recovered by the Corporation from the worker as a debt;

or

(b) be set off by the Corporation against liabilities of the Corporation to make payments to the worker under this Act.

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

(7) If the Corporation overpays a worker by way of weekly payments in consequence of—

(a) an arithmetical or clerical error;

or

(b) an assumption, subsequently found to be incorrect, that a particular pattern of overtime would have continued if the worker had continued in the work in which he or she was last employed before becoming incapacitated,

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

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

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

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

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

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

(a) of the Corporation's decision on the review, and the reasons for its decision;

and

(b) of the employer's right to have the Corporation's decision reviewed.

Suspension of weekly payments

37. (1) Where the Corporation is satisfied that a worker who is receiving weekly payments has failed or refused to submit to proper treatment for the worker's condition or to undertake an appropriate rehabilitation programme, the Corporation may suspend or reduce those payments.

(2) The Corporation shall not suspend or reduce weekly payments to a worker on the ground—

(a) that the worker has reasonably refused surgery or the administration of a drug;

or

(b) where there is a difference of medical opinion as to the appropriate treatment for the worker, or there is the possibility of a choice between a number of reasonable forms of treatment—that the worker has chosen one form of treatment in preference to another.

(3) Where the Corporation proposes the suspension or reduction of weekly payments to a worker in pursuance of subsection (1), the Corporation shall, at least 21 days before the proposal is to take effect, give notice in writing to the worker—

(a) containing such information as the regulations may require as to the grounds on which weekly payments are to be suspended or reduced;

and

(b) informing the worker of the worker's rights to have the Corporation's decision reviewed.

(4) Where a worker applies for the review of a decision by the Corporation to suspend or reduce weekly payments under this section, the weekly payments shall not be suspended or reduced unless and until a Review Officer confirms the Corporation's decision or makes an independent decision on the review that weekly payments should be discontinued or reduced.

(5) Where on a review referred to in subsection (4) weekly payments are suspended or reduced, any amounts to which the worker would not have been entitled but for the operation of that subsection may, subject to the regulations, be recovered as a debt.

Review of weekly payments

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

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

(3) On a review under this section the Corporation may adjust the amount of the weekly payments to take account of any change in the extent of the worker's incapacity for work (insofar as the incapacity is attributable to a compensable disability).

* * * * *

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

(a) require the worker to submit to an examination by a recognized medical expert nominated by the Corporation;

or

(b) require the worker to furnish evidence of the worker's earnings.

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

* * * * *

Economic adjustments to weekly payments

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

(2) An adjustment under this section—

(a) for the first and second years of incapacity—shall operate from the expiration of those years and shall be based on changes—

(i) in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's disability arose;

or

- (ii) if the worker applies, according to the regulations, for the adjustments to be made on the basis of changes in rates of remuneration payable to workers engaged in the kind of employment from which the worker's disability arose and furnishes satisfactory evidence of such changes—in those rates of remuneration;

and

- (b) for a subsequent year of incapacity—shall operate from a date fixed by the Corporation and shall be based on changes in the average minimum award rate since an adjustment was last made under this section.

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

- (a) containing such information as the regulations may require as to the grounds on which the adjustment is being made;

and

- (b) informing the worker of the worker's rights to have the Corporation's decision reviewed.

Weekly payments and leave entitlements

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

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

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

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

(5) Where—

- (a) the entitlement of a worker to annual leave, or payment in lieu of annual leave, is governed by a law of the Commonwealth or a State or Territory of the Commonwealth (not being this State);

- (b) the worker is absent from employment in consequence of a compensable disability;

and

- (c) the period of absence is not taken into account as service for the purpose of calculating the worker's entitlement to annual leave or payment in lieu of annual leave,

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

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

Absence of worker from Australia

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

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

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

- (a) if the Corporation cannot obtain, to its satisfaction, information relating to—
- (i) the whereabouts of the worker;
 - (ii) the continuance of the worker's disability or incapacity for work;
 - (iii) the earning capacity of the worker;

or

- (b) if there is, in the opinion of the Corporation, some other proper reason justifying suspension of the weekly payments.

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

Commutation of liability to make weekly payments

42. (1) Subject to subsection (2), a liability to make weekly payments under this Division may, on the application of the worker, be commuted, in whole or in part, to a liability to pay a lump sum representing the capitalized value of those payments.

(2) Subsection (1) is subject to the following qualifications:

- (a) the commutation may only apply in relation to a liability to make weekly payments in respect of a permanent incapacity;
- (b) a liability may only be commuted after the worker has received compensation for non-economic loss;

and

- (c) subject to subsection (3), the aggregate of the amount realized by the commutation and the amount of compensation for non-economic loss must not exceed the prescribed sum and if commutation of the total liability to make weekly payments would result in an aggregate of those amounts in excess of the prescribed sum, the extent of the commutation must be reduced accordingly.

(3) The Corporation has a discretion to allow a commutation notwithstanding that the limit prescribed by subsection (2)(c) is exceeded if, in the opinion of the Corporation, the commutation is desirable in order to avoid a residual liability to make weekly payments of a trivial amount.

(4) In this section—

“compensation for non-economic loss” means compensation under Division V:

“the prescribed sum” means the amount that, at the time of the occurrence of the disability that gave rise to the liability to make weekly payments, was the prescribed sum for the purposes of Division V.

DIVISION V—COMPENSATION FOR NON-ECONOMIC LOSS

Lump sum compensation

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

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

* * * * *

(6) Where—

(a) a compensable disability consists of the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior compensable disability;

and

(b) compensation by way of lump sum has been previously paid under this section, or a corresponding previous enactment,

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

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

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

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

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

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

(a) on the recommendation of the Corporation;

or

(b) with the approval of the Corporation.

(11) In this section—

“the prescribed sum” means—

(a) in relation to a disability occurring in 1987—\$65 300;

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

DIVISION VI—COMPENSATION PAYABLE ON DEATH

Compensation payable on death

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

- (a) a funeral benefit is payable equal to—
- (i) the actual cost of the worker's funeral;
 - or
 - (ii) the prescribed amount,
- whichever is the lesser;
- (b) a spouse is entitled to—
- (i) a lump sum equal to 1.675 times the prescribed sum less any amount that the worker received as compensation for non-economic loss under Division V;
- and
- (ii) in the case of a dependent spouse—weekly payments equal to—
 - (A) in the case of total dependency—50 per cent;
 - (B) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,of the amount of the notional weekly earnings of the deceased worker;
- (c) a dependent child (being an orphan child) is entitled to—
- (i) a lump sum equal to—
 - (A) where the child is the only orphan child—50 per cent of an amount arrived at by subtracting from an amount equal to 1.675 times the prescribed sum the amount (if any) that the worker received as compensation for non-economic loss under Division V;
 - (B) where the child is one of two or more orphan children—an amount determined by dividing 50 per cent of the amount referred to above equally between the orphan children;
- and
- (ii) weekly payments equal to—
 - (A) in the case of total dependency—25 per cent;
 - (B) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,of the amount of the notional weekly earnings of the deceased worker;
- (d) a dependent child (not being an orphaned child) is entitled to weekly payments equal to—
- (i) in the case of total dependency—12½ per cent;
 - (ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,
- of the amount of the notional weekly earnings of the deceased worker;
- (e) a dependent relative (not being a spouse or child) is entitled to such compensation by way of lump sum or weekly payments as may be determined by the Corporation having regard to—
- (i) the extent of the relative's dependency on the deceased worker;

- (ii) the earning capacity of the relative;
- (iii) the relative's means;
- (iv) the extent of any other benefits provided under this Act in respect of the worker's death.

(2) A funeral benefit payable under subsection (1)(a) shall be paid—

- (a) to the person who conducted the funeral;
- or
- (b) a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.

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

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

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

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

(5) Where—

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

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

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

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

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

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

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

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

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

(a) the child attains the age of 18 years;

or

(b) the person ceases to have the care of the child,

whichever first occurs.

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

(13) A liability to make weekly payments under this section may be commuted, in whole or in part, to a liability to pay a lump sum representing the capitalized value of those payments.

(14) In calculating the capitalized value of weekly payments for the purposes of subsection (13), a prescribed rate of discount shall be applied.

(15) In this section—

“the prescribed sum” means the amount that, at the time of the occurrence of the disability that resulted in the death of the worker, was the prescribed sum for the purposes of Division V.

Review of weekly payments

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

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

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

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

(a) to reflect changes in the income or earning capacity of the person to whom the weekly payments are payable and any other relevant changes in the circumstances of that person;

and

(b) where the review is an annual review conducted in pursuance of subsection (3)—to reflect changes in the average minimum award rates since payments were commenced under this Division or an adjustment was last made under this section (as may be appropriate).

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

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

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

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

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

DIVISION VII—LIABILITY TO PAY COMPENSATION

Incidence of liability

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

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

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

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

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

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

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

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

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

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

(a) from the employer from whose employment the disability arose;

or

(b) if it appears that the worker was not entitled to that compensation—from the worker.

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

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

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

Augmentation of weekly payment in consequence of delay

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

(a) a weekly payment, or part of a weekly payment, is not paid as and when required to be paid under this Act;

or

(b) the making of a weekly payment is delayed pending resolution of a dispute under this Act,

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

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

Payments by Corporation on behalf of defaulting employer

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

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

(a) the amount of the payment;

and

(b) an administration fee fixed in accordance with the regulations,

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

Corporation may undertake employer's liability to make weekly payments

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

Corporation as insurer of last resort

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

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

(a) the employer becomes insolvent;

or

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

(3) An amount representing the capitalized value of liabilities undertaken by the Corporation under this section may be recovered from the employer as a debt or claimed in the winding up of the employer.

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

Duty to give notice of disability

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

(a) to the employer by whom the worker is employed at the time of the occurrence of the disability;

or

(b) if the worker is not then in employment or is self-employed—to the Corporation.

(2) Notice of a disability should be given—

(a) if practicable within 24 hours after the occurrence of the disability but, if that is not practicable, as soon as practicable after the occurrence of the disability;

(b) if the worker is not, immediately after the occurrence of the disability, aware of the disability—as soon as practicable after the worker becomes so aware;

(c) if the worker dies without having become so aware or before it is practicable to give such a notice—as soon as practicable after the worker's death.

(3) Notice of a disability—

(a) may be given orally or in writing;

and

(b) should specify to the best of the knowledge, information and belief of the person giving the notice—

(i) the day on which the disability occurred;

(ii) the place at which the disability occurred;

Workers Rehabilitation and Compensation Act, 1986

- (iii) the nature of the disability;
- and
- (iv) the cause of the disability.

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

(a) it is given to—

- (i) the employer at any place of business of the employer;
- (ii) any person under whose supervision the worker was employed at the time of the disability;

or

- (iii) any person designated for the purpose by the worker's employer;

or

(b) it is served by post on the employer.

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

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

Penalty: \$1 000.

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

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

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

Claim for compensation

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

- (a) must be made in a manner and form approved by the Corporation;
- (b) must be made within the prescribed period;

and

(c) must be supported by a certificate in the prescribed form by a recognized medical expert certifying—

- (i) the nature of the disability;
- (ii) the probable cause of the disability so far as that is ascertainable by the medical expert;
- (iii) where the claimant claims to be incapacitated for work—the extent and probable duration of the incapacity.

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

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

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

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

or

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

and

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

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

or

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

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

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

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

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

(a) a copy of the claim;

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

Penalty: \$1 000.

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

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

(7) In this section—

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

Determination of claim

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

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

(3) If a claimant for compensation—

(a) fails or refuses to furnish information reasonably required by the Corporation to determine the claim;

or

(b) fails or refuses to submit to an examination as required under subsection (2),

the claim may be rejected.

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

(4a) Where—

(a) the disability results from a road accident;

(b) no member of the police force attends at the scene of the accident;

and

(c) the claimant is required to report the accident to a member of the police force or at a police station under the *Road Traffic Act, 1961*,

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

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

(a) to the claimant;

and

(b) to any employer who may be directly affected.

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

(a) such information as the regulations may require as to the grounds on which the claim is rejected;

and

(b) a statement of the claimant's rights to have the determination reviewed.

DIVISION IX—MISCELLANEOUS

Limitation of employer's liability

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

(a) a liability under this Act;

or

* * * * *

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

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

* * * * *

(4a) Where—

(a) a worker suffers a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2));

and

(b) the disability is attributable to the negligence of another worker—

(i) who was acting in the course of employment with the same employer;

and

(ii) whose negligence did not arise from, or in the course of, serious and wilful misconduct,

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

(4b) Where—

(a) a worker suffers a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2));

and

(b) action is taken against a person other than the employer for damages in respect of the disability,

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

(5) Where—

(a) compensation is paid or payable under this Act in respect of a compensable disability;

(b) a right of action exists against a person other than the employer for damages in respect of the disability,

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

(6) Where—

(a) a compensable disability arises out of the use of a motor vehicle;

(b) the employer was or ought to have been insured against liability for the disability under the law of compulsory third-party motor vehicle insurance;

(c) compensation is paid or payable by the Corporation under this Act in respect of the disability,

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

(7) Where—

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

(b) the injured party has received, or is entitled to, damages from another person (“the wrongdoer”) in pursuance of rights arising from the same trauma as gave rise to the rights to compensation under this Act;

(c) the person by whom the compensation is paid or payable under this Act (“the claimant”) is entitled to recover the amount of the compensation by virtue of subsection (5) or (6),

then the following provisions apply:

Workers Rehabilitation and Compensation Act, 1986

(d) the claimant is entitled to recover the amount of compensation paid or payable under this Act from the wrongdoer or the injured party but subject to the following qualifications:

(i) no amount may be recovered from the wrongdoer in excess of the wrongdoer's unsatisfied liability to the injured party;

(ii) the claimant must exhaust its rights against the wrongdoer before recovering against the injured party;

and

(iii) no amount may be recovered from the injured party in excess of the amount of the damages received by the injured party;

(e) the claimant shall, on giving notice to a wrongdoer of an entitlement to recover compensation under this section, have a first charge, to the extent of the entitlement, on damages payable by the wrongdoer to the injured party;

(f) any amount recovered by the claimant against a wrongdoer under this subsection shall be deemed to be an amount paid in or towards satisfaction of the wrongdoer's liability to the injured party;

(g) an action for the recovery of compensation under this subsection—

(i) may be heard and determined by the Industrial Court;

and

(ii) must be commenced within 3 years after the date of the trauma referred to in paragraph (b).

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

(a) irrespective of where the disability occurred;

and

(b) (i) irrespective of whether the action is brought before a court of this State or before a court of some other state, territory or country;

and

(ii) notwithstanding that the court before which the action is brought would not (but for this subsection) apply, or take into account, South Australian law.

(7b) If—

(a) an action is brought in respect of a compensable disability in a court that is not a court of the State;

(b) notwithstanding subsection (7a), the court awards an amount against an employer that is in excess of the amount (if any) that would have been awarded in a similar action before a court of the State;

and

(c) the Corporation is liable to pay the amount awarded by virtue of insurance provided under this Act,

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

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

(a) receive in evidence any transcript of evidence in proceedings before the court by which the amount was awarded and draw any conclusions of fact from the evidence that it considers proper;

or

(b) adopt any of the court's findings of fact.

(8) In this section—

“damages” includes any form of compensation payable apart from this Act in respect of a compensable disability:

“employer” includes—

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

“the law of compulsory third-party motor vehicle insurance” means—

- (a) Part IV of the *Motor Vehicles Act, 1959* (including a policy of insurance under that Part);

or

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

* * * * *

Prohibition of double recovery of compensation

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

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

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

Effect of misconduct in relation to claim for compensation

56. (1) Subject to subsection (2), the fact that a disability is attributable to misconduct on the part of a worker—

- (a) in a case of death or serious and permanent disability—is not a bar to a claim for compensation under this Act;

and

- (b) in any other case—is not a bar to a claim for compensation under this Act unless the misconduct amounts to serious and wilful misconduct.

(2) In any proceedings under this Act in which a claim for compensation is alleged to be barred by the misconduct of the worker, the onus of proving that allegation lies on the person by whom the allegation is made.

Compensation payable in respect of disabilities arising from employment on ships

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

Certain sporting injuries not to be compensable

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

Workers Rehabilitation and Compensation Act, 1986

- (a) a worker is employed by an employer solely—
- (i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation);
 - or
 - (ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting);

and

- (b) remuneration is not payable under the contract of employment except in respect of such employment,

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

- (2) This section does not apply to—

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

- (3) In this section—

“the prescribed amount” means—

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

Reports of return to work, etc.

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

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

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

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

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

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

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

Penalty: \$1 000.

Continuation of employment

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

(2) Subsection (1) does not apply if—

(a) it is not reasonably practicable to provide employment in accordance with that subsection (and the onus of establishing that lies in any legal proceedings on the employer);

or

(b) the worker left the employment of that employer before the commencement of the incapacity for work.

(3) If a worker has suffered a compensable disability, the employer from whose employment the disability arose must not terminate the worker's employment (except on the ground of serious and wilful misconduct) without first giving both the Corporation and the worker at least 28 days notice of the proposed termination of employment.

Penalty: \$5 000.

(3a) Subsection (3) does not apply where—

(a) the worker is neither receiving compensation nor participating in a rehabilitation programme in respect of the disability;

and

(b) the worker has exhausted his or her rights to claim compensation under this Act in respect of the disability, or the time for making such a claim has expired.

(4) In any legal proceedings in which an employer is alleged to have terminated a worker's employment contrary to subsection (3), the onus of proving that the employment was terminated on the ground of serious and wilful misconduct lies on the employer.

Workers Rehabilitation and Compensation Act, 1986

PART V

REGISTRATION AND FUNDING

DIVISION I—REGISTRATION OF EMPLOYERS

Registration of employers

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

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

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

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

Exempt employers

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

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

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

(i) the employer is a body corporate employing more than the prescribed number of workers;

or

(ii) the employer is an indemnified maritime employer;

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

(i) the members of the group are related corporations or local government corporations;

and

(ii) the members of the group employ in aggregate more than the prescribed number of workers.

(3) Where—

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

and

(b) the Corporation is satisfied—

(i) that the employer or the employers constituting the group have reached a standard that, in the opinion of the Corporation, must be achieved before conferral of exempt status can be considered;

and

(ii) that in all the circumstances it is appropriate to do so,

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

(4) A registration under this section—

(a) is subject to—

(i) a condition that the exempt employer must not exercise any power or discretion delegated to the exempt employer under this Act unreasonably;

and

- (ii) such other terms and conditions as the Corporation determines from time to time or as are prescribed by the regulations;
- (b) where the exemption was granted on the ground that the employer is an indemnified maritime employer—is subject to a condition limiting the effect of the exemption to the workers, or a specified class of the workers, to whom the relevant indemnity relates;
- (c) takes effect on a date fixed by the Corporation;
- and
- (d) subject to this section—
 - (i) has effect for an initial period (not exceeding three years) determined by the Corporation;
 - and
 - (ii) may, on further application to the Corporation, be renewed from time to time for a further period (not exceeding three years) determined by the Corporation at the time of the renewal.

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

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

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

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

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

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

(9) In this section—

“indemnified maritime employer” means an employer that has the benefit of an indemnity granted by a member of the International Group of Protection and Indemnity Associations:

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

The Crown and certain agencies to be exempt employers

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

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

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

(4) In this section—

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

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

Applications

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

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

(b) must be accompanied by the prescribed information;

and

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

DIVISION II—DELEGATION TO EXEMPT EMPLOYERS

Delegation to exempt employer

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

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

Section 26

Section 32, other than the powers conferred under section 32(9) and (10)

Section 35

Section 36

Section 37

Section 38

Section 39

Section 41

Section 42

Section 43

Section 44

Section 45

Section 53, other than the power to approve recognized medical experts for the purposes of section 53(2)

Section 106

Section 106a;

(b) any other prescribed powers and discretions.

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

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

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

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

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

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

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

DIVISION III—THE COMPENSATION FUND

The Compensation Fund

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

(2) The Compensation Fund shall consist of—

(a) amounts received from the imposition of levies under this Part;

(b) any income and accretions produced by the investment of money from the Fund;

(c) any money advanced to the Corporation for the purposes of the Fund;

(d) other money received by the Corporation under this Act or in the administration of this Act.

(3) The Compensation Fund shall be applied towards—

(a) the payments of compensation that the Corporation is liable to make under this Act;

(b) the costs incurred by the Corporation in performing its functions under this Act.

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

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

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

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

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

DIVISION IV—IMPOSITION OF LEVIES

Preliminary

65. (1) In this Division—

“class” of industry includes a subclass:

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

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

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

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

or

(b) they are related in some other way.

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

Imposition of levies

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

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

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

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

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

(a) if the employer employs a worker in two or more classes of industry—

(i) the worker will, subject to any determination by the Corporation to the contrary, be treated as if solely employed in the class of industry in which he or she is predominantly employed;

and

(ii) if it is not possible to determine which is the predominant class, the worker will be treated as if solely employed in a class of industry determined by the Corporation;

(b) if the employer employs workers in different classes of industry at a particular workplace, all workers employed at the workplace will, if the Corporation so determines, be treated as engaged in the predominant class of industry;

and

(c) in determining what is the predominant class of industry, the Corporation will have regard to—

(i) the importance within the employer's total operations of each class of industry in which workers are employed;

and

(ii) any other relevant factor.

(6) The Corporation—

(a) must fix the percentages applicable to the various classes of industry by notice published in the *Gazette*;

and

(b) may, by subsequent notice published in the *Gazette*, vary the percentages so fixed.

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

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

(a) the extent to which work carried on in that class is, in the opinion of the Corporation, likely to contribute to the cost of compensable disabilities;

and

(b) the need for the Corporation to establish and maintain sufficient funds—

(i) to satisfy the Corporation's current and future liabilities in respect of compensable disabilities attributable to traumas occurring in a particular period from levies raised from remuneration paid in that period;

(ii) to make proper provision for administrative and other expenditure of the Corporation;

and

(iii) to make up any insufficiency in the Compensation Fund resulting from previous liabilities or expenditures or from a reassessment of future liabilities.

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

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

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

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

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

(a) the amount of levy payable by an employer in a financial year would, apart from this subsection, be less than the prescribed minimum levy;

or

(b) an employer is registered but no levy would, apart from this subsection, be payable by the employer for that financial year,

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

Adjustment of levy in relation to individual employers

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

(a) the adequacy or inadequacy of measures taken by the employer to reduce the incidence of work related traumas;

(b) the incidence or costs of claims in respect of compensable disabilities suffered by the employer's workers (disregarding unrepresentative disabilities and secondary disabilities);

(c) the rehabilitation facilities or services for disabled workers provided by the employer, or the absence or inadequacy of such facilities or services provided by the employer;

(d) the employer's practices as to the retention, employment or re-employment of disabled workers (and, in particular, any failure on the employer's part to provide, in accordance with this Act, employment to a worker who has suffered a compensable disability in the employer's employment);

(e) such other matters (whether similar or dissimilar to those referred to above) as the Corporation considers relevant,

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

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

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

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

(a) vary or revoke a condition imposed under this section;

or

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

DIVISION V—SPECIAL LEVY FOR EXEMPT EMPLOYERS

Special levy for exempt employers

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

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

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

* * * * *

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

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

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

DIVISION VI—PAYMENT OF LEVIES

Returns by employers

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

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

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

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

(a) a certificate signed by the employer, a person authorized to act on the employer's behalf or, if the Corporation so requires, a person with prescribed accounting qualifications, verifying the information contained in a return;

or

(b) some other verification of that information of a kind stipulated by the Corporation.

(4) The Corporation may—

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

and

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

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

(5) Where—

(a) an employer fails to comply with a requirement imposed by or under this section;

(b) a return furnished by or on behalf of an employer includes a statement that is, to the knowledge of the employer, false or misleading in a material particular;

or

(c) an employer in a return intentionally understates the aggregate remuneration paid by the employer,

the employer is guilty of an offence.

Penalty: \$50 000.

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

DIVISION VII—RECOVERY OF LEVIES AND FINES

Recovery on default

70. (1) Where an employer—

(a) fails or neglects duly to furnish a return when required by or under this Act;

or

(b) furnishes a return that the Corporation has reasonable grounds to believe to be defective in any respect,

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

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

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

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

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

Penalty: \$10 000.

Penalty for late payment

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

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

and

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

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

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

Penalty: \$10 000.

Review of levy, penalty interest or fine

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

(a) the fixing or assessment of a levy;

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

or

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

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

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

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

(4) On review, the Board may—

(a) alter a levy or an assessment;

(b) quash or reduce penalty interest or a fine;

(c) direct the repayment of amounts overpaid;

(d) quash or vary a condition imposed by the Corporation.

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

(a) must, if the decision relates to a class of employers, be made within four months after notice of the decision was given;

or

(b) must, if the decision relates to an individual employer, be made within two months after the employer was given notice of the decision,

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

DIVISION VIII—MISCELLANEOUS

Separate accounts

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

(a) the levies charged to the employer;

(b) the amounts paid by an employer;

(c) the costs related to claims arising from employment by the employer, distinguishing the costs related to claims for unrepresentative disabilities and secondary disabilities from the other claims;

(d) all other costs attributable to the employer;

and

(e) any other matter that the Corporation thinks fit.

Liability to keep accounts

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

(a) an accurate account of all remuneration paid or payable to the workers of the employer;

(b) such other information as may be required by the Corporation.

Penalty: \$10 000.

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

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

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

Person ceasing to be an employer

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

(a) give written notice in a manner and form approved by the Corporation;

and

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

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

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

Proof of registration

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

Penalty: \$1 000.

Recovery of levy

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

PART VI
REVIEWS AND APPEALS
DIVISION I—REVIEW OFFICERS

Review Officers

77. (1) There shall be such Review Officers as are necessary for the purposes of this Act.

(2) A Review Officer shall be an officer of the Corporation.

(3) A Review Officer is not subject to direction by the Corporation with regard to the manner in which a review is to be determined and the Corporation shall not overrule or interfere with the decision of a Review Officer on a review.

DIVISION II—THE WORKERS COMPENSATION APPEAL TRIBUNAL

The Tribunal

78. There shall be a Workers Compensation Appeal Tribunal.

Membership of the Tribunal

79. (1) The Tribunal consists of—

(a) the President of the Industrial Court, who will be the President of the Tribunal;

(b) the Deputy Presidents of the Industrial Court, who will be Deputy Presidents of the Tribunal;

(c) such persons (if any) as the Governor may appoint on the nomination of the Minister as additional Deputy Presidents of the Tribunal;

and

(d) such persons as the Governor may appoint on the nomination of the Minister as ordinary members of the Tribunal.

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

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

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

(4) The power of appointing ordinary members of the Tribunal shall be so exercised so as to ensure that the number of members appointed after consultation with the United Trades and Labor Council is equal to the number of members appointed after consultation with associations that represent the interests of employers.

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

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

(a) attains the age of 65 years;

(b) resigns by notice in writing addressed to the Minister;

(c) in the case of a member appointed on an acting basis—completes the term for which the member was appointed;

or

(d) is removed from office by the Governor on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily duties of office.

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

Constitution of Tribunal, etc.

80. (1) For the purpose of any proceedings, the Tribunal shall be constituted of—

- (a) the President or a Deputy President (who shall preside at those proceedings);
- (b) one member selected in accordance with the rules of the Tribunal from among the ordinary members appointed after consultation with the United Trades and Labor Council;

and

- (c) one member selected in accordance with the rules of the Tribunal from among the ordinary members appointed after consultation with associations that represent the interests of employers.

(2) A decision in which any 2 members of the Tribunal concur is a decision of the Tribunal.

Immunity

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

Rules of the Tribunal

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

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

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

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

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

The Registrar

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

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

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

DIVISION III—MEDICAL ADVISORY PANELS

Medical Advisory Panels

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

Constitution of Medical Advisory Panels

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

(2) A Medical Advisory Panel will consist of—

(a) a presiding officer;

and

(b) two ordinary members.

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

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

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

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

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

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

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

(a) resigns by notice in writing addressed to the Minister;

(b) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties;

(c) has completed a period of 5 years since being nominated, or last renominated as a member of the panel and is not renominated to the panel.

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

Procedure of Medical Advisory Panels

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

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

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

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

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

(a) give its advice in writing to the review authority by which the matter was referred;

and

(b) provide the parties to the proceedings before the review authority with copies of the advice.

Confidentiality

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

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

(b) in the course of proceedings before a court or a tribunal constituted by law;

or

(c) if the disclosure is required by or under another Act or law.

Immunity

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

* * * * *

DIVISION V—PROCEEDINGS BEFORE REVIEW AUTHORITIES

Principles relating to reviews

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

(a) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;

and

(b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

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

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

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

Notice of proceedings, etc.

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

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

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

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

Powers of Review Authority

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

(a) by summons signed by or on behalf of the authority, require the attendance before the authority of any person;

(b) by summons signed by or on behalf of the authority, require the production of any relevant document, object or material;

(c) require any person to make an oath or affirmation truly to answer all questions put by the authority, or any person appearing before the authority;

and

(d) require any person appearing before the authority to answer any relevant questions put by the authority, any member of the authority or by any person appearing before the authority.

* * * * *
* * * * *

(3) If any person—

(a) who has been served with a summons to attend before a review authority fails without reasonable excuse to attend in obedience to the summons;

(b) who has been served with a summons to produce any document, object or material, fails without reasonable excuse to comply with the summons;

(c) misbehaves before a review authority, wilfully insults a review authority or any member of such an authority, or interrupts the proceedings of a review authority;

or

(d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by a review authority,

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

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

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

(a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact from the evidence that it considers proper;

or

(b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

(6) Where—

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

and

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

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

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

(a) a translation of the evidence into English;

and

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

Witness fees

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

Representation

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

(a) a member of the board;

or

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

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

Costs

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

(a) a party is entitled, subject to limits fixed by the regulations, to reimbursement of the costs of the proceedings;

(b) a party (other than the Corporation or an exempt employer) who is represented by a legal practitioner or an officer or employee of a registered association is entitled, subject to limits fixed by the regulations, to the cost of representation;

(c) if the proceedings are frivolous or vexatious, costs (which may exceed the limits fixed by the regulations) may be awarded against the party by whom the proceedings were brought.

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

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

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

(5) Unless otherwise ordered by the review authority, costs awarded under subsection (1)(a) or (b) are payable by the Corporation or an exempt employer (according to whether the Corporation or the exempt employer is the compensating authority).

(6) Costs awarded under this section may be recovered as a debt.

Statement of appeal rights, etc.

93. (1) Subject to subsection (2), at the conclusion of a review, the review authority shall furnish the parties with a statement of—

(a) the authority's findings of fact;

(b) a summary of the evidence on which those findings were based;

(c) the reasons for the authority's decision;

(d) any further appeal rights that may be available to the parties under this Act.

(2) A review authority need not furnish a statement under subsection (1) unless a request for such a statement is made by or on behalf of a party to the review within 15 business days after the completion of the review.

(3) If a review authority does not propose to furnish a statement under subsection (1) as a matter of course, it must inform the parties, at the conclusion of the review, of the right to request such a statement.

Reference of matters to Medical Advisory Panels

94. (1) A review authority may, on its own initiative, or on the application of a party to proceedings before the authority, refer—

(a) a medical question arising in the proceedings;

or

(b) a decision by the Corporation to disallow or reduce a charge for a service under section 32,

to a Medical Advisory Panel for advice.

(2) If a review authority differs from the advice provided by a Medical Advisory Panel, the authority must state its reasons for doing so in the reasons for its decision.

DIVISION VI—REVIEWS AND APPEALS

Application for review

95. (1) A person who is directly affected by a decision that is reviewable under subsection (2) may apply to the Corporation for a review of the decision.

(2) The following decisions are reviewable—

- (a) a decision made on a claim for compensation;
- (b) a decision in relation to the nature of rehabilitation services provided, or to be provided, for a worker;
- (c) a decision to vary, suspend or discontinue weekly payments;
- (d) a decision on an application by an employer under section 36 to have weekly payments payable to a worker employed by, or formerly employed by, that employer reviewed;
- (da) a decision by the Corporation to disallow a charge for a service under section 32;
- (e) a decision by the Corporation not to allow an extension of time under subsection (4).

(3) For the purposes of subsection (1), an employer from whose employment a compensable disability arises shall be regarded as being directly affected by a decision of a kind referred to in subsection (2) made in relation to that disability.

(4) An application for review must be in the prescribed manner and form and must be made within one month after the person applying for the review receives notice of the decision to which the review relates unless the Corporation, in its discretion, allows an extension of the time for making the application.

(5) An application for review may be made by delivering or posting the application to the Corporation.

(6) On receipt of an application under this section, the Corporation shall endeavour to resolve the questions in issue by agreement.

(7) Where—

- (a) the Corporation fails to resolve the questions in issue by agreement;
- or
- (b) the questions in issue have not after the expiration of 14 days from receipt of the application by the Corporation been resolved by agreement and the applicant requests the reference of those questions to a Review Officer,

the application for review shall be referred to a Review Officer.

Review by Review Officer

96. (1) Where an application for review is referred to a Review Officer, the Review Officer shall conduct a review of the decision to which the application relates.

(1a) A party to proceedings before a Review Officer must disclose to the Review Officer and all other parties to the proceedings the existence of all material in the party's possession or power that may be relevant to the proceedings and must, if the Review Officer so requests, produce all or any of that material to the Review Officer.

(2) On a review under this section, the Review Officer shall make a fresh determination of the matters to which the decision subject to review relates.

* * * * *

(4) Where the Review Officer arrives at a decision that differs from the decision under review, the decision of the Review Officer shall take effect in substitution for that decision.

Appeals to Tribunal

97. (1) An appeal lies to the Tribunal against a decision by a Review Officer on a review.

(2) Such an appeal may be instituted by—

- (a) any person directly affected by the decision;
 - (b) the employer, or former employer, of a worker directly affected by the decision;
- or
- (c) the Corporation.

(3) An appeal must be in the prescribed manner and form and must be instituted within one month after the appellant receives notice of the decision of the Review Officer unless the Tribunal allows a longer time for the institution of the appeal.

(4) A notice of appeal must state with reasonable particularity the grounds of appeal and the relief sought on the appeal.

(4a) The Registrar must notify the Review Officer of the institution of an appeal.

(4b) The Review Officer must, as soon as practicable after receiving notification under subsection (4a), send to the Registrar of Review Authorities—

- (a) any application, documents, written submissions, statements, reports, and other papers lodged with, or received by, the Review Officer during the course of the earlier proceedings;
- (b) any relevant exhibits in the custody of the Review Officer;
- (c) a copy of any notes of evidence made by or at the direction of the Review Officer during the course of the earlier proceedings;

and

(d) a copy of the decision appealed against.

(4c) The Tribunal may, on an appeal under this section—

- (a) examine any papers, exhibits and notes submitted under subsection (4b) and draw any conclusions of fact from them it considers proper;
- (b) direct the Review Officer to furnish a report (which must be made available to the parties to the appeal) on any aspect of the subject matter of the appeal.

(4d) Subject to subsection (4e), the Tribunal has a discretion to rehear the whole or any part of the evidence taken before the Review Officer, or to take further evidence.

(4e) The Tribunal must, on the application of a party to the appeal—

- (a) rehear evidence taken before the Review Officer if the evidence is relevant to the appeal and the record of the evidence is incomplete or inaccurate in a material particular;
- (b) hear oral evidence relevant to the appeal from a witness from whom evidence was taken in documentary form by the Review Officer;
- (c) take further evidence if the evidence is relevant to the appeal and the party seeking to introduce it could not reasonably be expected to have done so in the proceedings before the Review Officer;

(d) take evidence if—

(i) the evidence is relevant to the appeal;

and

(ii) there is some substantial reason for admitting the evidence in the interests of justice.

(4f) A party must be afforded a reasonable opportunity to examine or cross-examine witnesses appearing before the Tribunal.

(5) On an appeal under this section, the Tribunal may—

(a) confirm, vary or reverse the decision under appeal;

(ab) refer the subject matter of the appeal, or any matter arising in the course of the appeal, back to a Review Officer with such directions or suggestions as the Tribunal thinks fit to make;

(b) make incidental or ancillary orders.

* * * * *

(8) On an appeal to the Tribunal under this section against a decision of a Review Officer, the Tribunal may, on such terms and conditions as it thinks fit, order that the operation of the decision subject to the appeal be stayed wholly or in part until the appeal is decided or until further order by the Tribunal.

* * * * *

Decisions relating to exempt employers

98a. (1) If the Corporation—

(a) refuses the registration of an employer or group of employers as an exempt employer or group of exempt employers;

(b) grants or renews registration as an exempt employer or group of exempt employers for a period of less than three years;

or

(c) cancels the registration of an employer or group of employers as an exempt employer or group of exempt employers,

the employer or employers may appeal to the Minister against that decision.

(2) The appeal must be instituted within one month after the employer or employers receive notice of the Corporation's decision unless the Minister, in his or her discretion, allows an extension of time for the appeal.

(3) The Minister may (but is not obliged to) permit an appellant to appear personally or by representative before the Minister on an appeal.

(4) The Minister has an absolute discretion to decide an appeal under this section as the Minister thinks fit.

(5) If the Minister decides in favour of the appellant, the Minister must furnish the Corporation with a statement of the reasons for the decision.

DIVISION VII—CASES STATED AND APPEALS

Cases stated

99. (1) The Tribunal may state a case on a question of law for the opinion of the Supreme Court.

(2) A case stated under this section shall be heard and determined by the Full Court.

Appeals to Supreme Court

100. (1) A party to proceedings before the Tribunal may, by leave of the Supreme Court, appeal against a decision of the Tribunal in those proceedings.

(2) An appeal under this section shall be heard and determined by the Full Court.

(3) An appeal under subsection (1) shall be limited to a question of law.

(4) An appeal under subsection (1) must be instituted within one month after the appellant receives notice of the decision appealed against unless the Supreme Court, in its discretion, allows a longer time for the institution of the appeal.

DIVISION VIII—MINISTERIAL INTERVENTION

Ministerial intervention

101. Where, in the opinion of the Minister, intervention is desirable in the public interest, the Minister may intervene in an appeal before the Tribunal or the Supreme Court.

DIVISION IX—MISCELLANEOUS

Special jurisdiction of Review Officer

102. (1) A worker who believes that there has been undue delay in the determination of a claim by the worker under this Act may apply to a Review Officer under this section.

(2) An application shall not be made under this section within 14 days after the day on which the claim was made.

(3) On an application under this section the Review Officer may—

(a) give such directions as the Review Officer thinks necessary to expedite the determination of the claim;

or

(b) personally decide the claim.

(4) A person to whom a direction is given by a Review Officer under subsection (3) shall comply with that direction.

(5) The regulations may prescribe procedures for the reference of applications under this section to Review Officers.

PART VII
MISCELLANEOUS

Extension of the application of this Act to self-employed persons

103. (1) The Corporation may, on the application of a person who is self-employed, extend to that person the protection of this Act.

(2) An application under subsection (1) may be granted by the Corporation subject to such conditions and limitations as the Corporation thinks fit and any such condition or limitation shall, to the extent of any inconsistency, prevail over the provisions of this Act.

Special provision for prescribed classes of volunteers

103a. (1) The Crown is the presumptive employer of persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State (and the Crown therefore has the liabilities of an exempt employer in relation to persons of that class).

(2) Where a person of a class prescribed under subsection (1) suffers a compensable disability while performing the work to which the prescription relates—

(a) the question of whether and, if so, to what extent the person is incapacitated for work must be determined according to the employment (including self-employment) in which the person was otherwise engaged at the commencement of the incapacity or, if the person was not then engaged in other employment, by reference to employment for which he or she was then reasonably fitted;

(b) subject to paragraph (c), the average weekly earnings of the person must be determined—

(i) if the person was self-employed, by reference to the remuneration that the person would have received if he or she had been doing the same work in employment;

or

(ii) if the person was not employed, by reference to the remuneration that the person would have received if he or she had been working in employment for which he or she was reasonably fitted,

and, if there is an award or industrial agreement applicable to that class or grade of employment, by reference to that award or agreement;

and

(c) where—

(i) the person dies;

(ii) a claim for compensation is made by a person claiming to be a dependant of the deceased;

(iii) the deceased and the claimant were both members of a partnership or proprietary company and the predominant work of the deceased before the date of death was in the business of that partnership or company,

then for the purposes of determining whether the claimant was a dependant of the deceased and, if so, the extent of the dependency, any income derived by the claimant from the partnership or company during the deceased's lifetime will (to the extent that the income is attributable to the deceased's

work on behalf of the partnership or company) be taken to be an allowance made by the deceased, out of the deceased's own income, for the maintenance of the claimant.

* * * * *

Insurance of registered employers against other liabilities

105. (1) An employer who is registered under this Act, and any employer who is not required to be registered because of an exemption under the regulations, is insured by the Corporation, subject to terms and conditions prescribed by regulation, against any liability that may arise apart from this Act in respect of a compensable disability arising from employment (being employment to which this Act applies) by the employer.

(2) Where an employer participates in the provision of a rehabilitation programme under this Act, and in consequence of that participation provides work for a person who is not a worker employed by that employer, that person will be taken to be in the employment of the employer for the purposes of subsection (1).

(3) The insurance provided by subsection (1) does not extend to an exempt employer except in relation to persons of the class referred to in subsection (2).

Payment of interim benefits

106. (1) The Corporation may, pending the final determination of a claim, make interim payments of compensation to a claimant.

(2) Where on the final determination of a claim it appears that an amount to which the claimant was not entitled has been paid under this section, the Corporation may recover that amount as a debt.

Payment not to constitute an admission of liability

106a. A payment by the Corporation or an employer to a worker does not constitute an admission of liability or estop a subsequent denial of liability.

Employer may request progress report

107. (1) The employer of a worker may at any time request the Corporation to provide a report on—

- (a) the medical progress being made by the worker;
- (b) the worker's incapacity for work as assessed under this Act.

(2) A request under subsection (1) must be accompanied by the prescribed fee.

(3) The Corporation shall prepare a report requested under subsection (1) within a reasonable time of the request being made and shall send copies of the report to the employer and the worker.

Medical examination at request of employer

108. (1) Subject to subsection (2), the employer of a worker who has made a claim under this Act may require the Corporation to have the worker submit to an examination by a recognized medical expert nominated by the Corporation.

(2) A worker shall not be required to submit to examinations under this section more frequently than is permitted by the regulations.

(3) The Corporation may, if it thinks fit, charge the cost of an examination under this section to the employer.

Workers Rehabilitation and Compensation Act, 1986

(4) If it appears that there has been undue delay in having a worker examined under this section, a Review Officer may, on application by the employer, give such directions to the Corporation as appear reasonable in the circumstances to expedite the examination.

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

Worker to be supplied with copy of medical report

109. Where a report is obtained for the purposes of this Act by the Corporation or an employer on the findings made, or the opinions formed, by a medical expert on the examination of a worker, the Corporation or the employer shall, as soon as practicable after receiving the report, send a copy of the report to the worker.

Powers of entry and inspection

110. (1) For the purposes of this Act, an authorized officer may, at any reasonable time—

- (a) enter any workplace;
- (b) inspect the workplace, anything at the workplace and work there in progress;
- (c) require a person who has custody or control of books, documents or records relevant to any matter arising under this Act to produce those books, documents or records;
- (d) examine, copy and take extracts from any such books, documents or records, or require an employer to provide a copy of any such books, documents or records;
- (e) take photographs, films or video or audio recordings;
- (f) take measurements, make notes and records and carry out tests;
- (g) require (directly or through an interpreter) any person to answer, to the best of that person's knowledge, information and belief, any question relevant to any matter arising under this Act;
- (h) require an employer to produce any document, or a copy of any document, that is required to be prepared or kept under this Act.

(2) Where—

- (a) a person whose native language is not English is suspected of having breached this Act;
 - (b) the person is interviewed by an authorized officer in relation to that suspected breach;
- and
- (c) the person is not reasonably fluent in English,

the person is entitled to be assisted by an interpreter during the interview.

(3) A person is not required—

- (a) to provide information under this section that is privileged on the ground of legal professional privilege;
- or
- (b) to answer a question under this section if the answer would tend to incriminate that person of an offence.

(4) An authorized officer, who suspects on reasonable grounds that an offence against this Act has been committed, may seize and retain anything that affords evidence of that offence.

(5) An authorized officer must, at the request of any person from whose possession evidentiary material is seized under subsection (4), provide a receipt for that material.

(6) Where anything has been seized under subsection (4) the following provisions apply:

(a) the thing seized must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorizes its release to the person from whom it was seized, or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) where proceedings for an offence against this Act relating to the thing seized are instituted within six months of its seizure and the person charged is found guilty of the offence, the court may—

(i) order that it be forfeited to the Crown;

or

(ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

(c) where—

(i) proceedings are not instituted for an offence against this Act relating to the thing seized within six months after its seizure;

or

(ii) proceedings having been so instituted—

(A) the person charged is found not guilty of the offence;

or

(B) the person charged is found guilty of the offence but no order for forfeiture is made under paragraph (b),

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister, by action in a court of competent jurisdiction, the thing itself, or if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure.

(7) In the exercise of powers under this section, an authorized officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(8) An employer whose workplace is subject to an inspection under this section must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

(9) A person must not—

(a) hinder or obstruct an authorized officer in the exercise of a power conferred by this section;

or

(b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Penalty: \$10 000.

Workers Rehabilitation and Compensation Act, 1986

(10) An authorized officer, or a person assisting an authorized officer, who in the course of exercising powers under this section in relation to an employer—

- (a) unreasonably hinders or obstructs the employer in the day to day running of his or her business;
- (b) addresses offensive language to the employer or to any other person at the workplace;
- (c) assaults the employer or any other person at the workplace,

is guilty of an offence.

Penalty: (a) for an offence against paragraph (a) or (b)—\$6 000;

(b) for an offence against paragraph (c)—\$6 000 or imprisonment for one year.

Inspection of place of employment by rehabilitation adviser

111. (1) Subject to subsection (2), a rehabilitation adviser may inspect the place of employment of a disabled worker.

(2) A power of inspection under subsection (1) shall be exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at a place of employment.

(3) A person shall not hinder an inspection under this section.

Penalty: \$3 000.

Confidentiality to be maintained

112. (1) Subject to this section, an officer of the Corporation shall not divulge information as to—

- (a) the physical or mental condition of a worker;
- (b) the personal circumstances of a worker or other person;
- (c) matters contained in a return furnished by an employer under this Act,

that has come to the knowledge of the officer in the course of carrying out official duties.

Penalty: \$3 000.

(2) This section does not prevent—

- (a) the disclosure of information in the course of official duties;
- (ab) the disclosure of statistical information;
- (b) the disclosure of information with the consent of the person to whom the information relates;
- (c) the disclosure of information before a review authority, or a court or tribunal constituted by law;
- (d) the making of a report to a disabled worker's employer in accordance with this Act;
- (da) the disclosure of information to the South Australian Department of Labour or the South Australian Occupational Health and Safety Commission;
- (e) the disclosure of information in accordance with the regulations.

(2a) A regulation made for the purposes of subsection (2)(e) 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.

(3) In this section—

“officer of the Corporation” includes a person who, although not an officer of the Corporation, is authorized to exercise the powers of an authorized officer under section 110.

Employer information

112a. The Corporation may, as it thinks fit, disclose the following information in relation to any employer registered under this Act:

(a) the number of claims in respect of compensable disabilities made by the employer's workers in a particular period;

(b) the cost of claims in respect of compensable disabilities suffered by the employer's workers in a particular period;

(c) the nature of compensable disabilities suffered by the employer's workers;

(d) details of any remission of levy granted to the employer, or any supplementary levy imposed on the employer, under section 67.

Disabilities that develop gradually

113. (1) A disability (not being noise induced hearing loss) that develops gradually or is a disease shall be deemed to have occurred when the worker first becomes totally or a partially incapacitated for work by the disability.

(2) Subject to this section, where a claim is made under this Act in respect of noise induced hearing loss by a worker (not being a person who has retired from employment on account of age or ill-health), the whole of the loss shall be deemed to have occurred immediately before notice of the disability was given and, subject to any proof to the contrary, to have arisen out of employment in which the worker was last exposed to noise capable of causing noise induced hearing loss.

(2a) Where a claim is made under this Act in respect of noise induced hearing loss by a person who has retired from employment on account of age or ill-health, the whole of the loss shall be deemed to have occurred immediately before the person retired and, subject to any proof to the contrary, to have arisen out of employment in which the person was last exposed to noise capable of causing noise induced hearing loss.

(2b) The Corporation may, by notice to the particular employer or employers, or by notice in the *Gazette*, require an employer, or employers of a specified class determined by the Corporation, to carry out (within a period specified by the Corporation) tests of a kind prescribed by the regulations on workers belonging to classes determined by the Corporation.

(2c) Unless the Corporation otherwise determines, the cost of carrying out tests under subsection (2b) must be borne by the employer.

(3) Where—

(a) an exempt employer establishes in accordance with procedures laid down by the regulations that a worker was, at the time of undertaking employment with the employer, suffering from a particular disability;

- (b) the disability is of a prescribed class;
 - (c) an aggravation, acceleration, exacerbation, deterioration or recurrence of the disability arises from employment by the employer referred to in paragraph (a);
 - (d) the employer pays compensation under this Act in respect of the disability,
- the employer may, by action in the Industrial Court, recover a fair contribution, determined by the Court, towards the amount of the compensation—
- (e) from any exempt employer from whose employment the disability established under paragraph (a) arose;

or

- (f) if there is no such exempt employer—from the Corporation.

(4) Where—

- (a) an employer (not being an exempt employer) establishes in accordance with procedures laid down by the regulations that a worker was, at the time of undertaking employment with the employer, suffering from a particular disability;
 - (b) the disability is of a prescribed class;
 - (c) an aggravation, acceleration, exacerbation, deterioration or recurrence of the disability arises from employment by the employer referred to in paragraph (a);
 - (d) the Corporation pays compensation under this Act in respect of the disability,
- the Corporation may, by action in the Industrial Court, recover a fair contribution, determined by the Court, towards the amount of the compensation from any exempt employer from whose employment the disability established under paragraph (a) arose.

Certain payments not to affect benefits under this Act

114. Compensation provided to a person under this Act shall not be reduced or otherwise affected by—

- (a) an *ex gratia* payment;
 - (b) an accident insurance payment;
- or
- (c) a payment or benefit of a class prescribed by regulation for the purposes of this section.

No contribution from workers

115. (1) An employer shall not deduct from the wages of a worker any part of any sum that the employer is or may become liable to pay under this Act.

(2) An employer shall not discriminate against a worker on the ground that the employer is liable to pay any sum under this Act to or in relation to the worker.

(3) An employer shall not require or permit a worker to contribute in any manner towards indemnifying the employer against any liability which the employer may incur under this Act.

(4) A person who contravenes this section—

- (a) is guilty of an offence;

and

- (b) is liable to compensate a worker for any monetary loss suffered by virtue of that contravention.

Payment of compensation where worker in prison

116. (1) Where a person who is in receipt of weekly payments under this Act is convicted of an offence and committed to prison, then during the period of imprisonment the weekly payments shall be suspended unless the Corporation determines that they should be paid to the dependants of the prisoner.

(2) Where the Corporation determines that weekly payments should be paid to the dependants of a prisoner, they shall be so paid in such proportions as the Corporation may determine.

Service of documents

117. (1) A notice or other document required or authorized by this Act to be served or given to any person may be served—

- (a) personally;
- (b) by leaving the notice or document at an address for service;
- (c) by sending the notice or document or a sealed copy of the notice or document by post addressed to the person at an address for service;

or

- (d) by such other method as is permitted by any Act.

(2) In any case to which subsection (1) applies, unless the contrary is proved, service of a notice or document shall be deemed to have been effected 2 business days after the date of posting.

(3) In subsection (1)—

“address for service”, in relation to a person, means—

- (a) the person’s last known place of residence or business;

or

- (b) an address for service as shown on a claim or a return made or furnished by the person, or on the person’s behalf, under this Act (not being an address superseded by a subsequent address for service shown on a later claim or return).

Service of documents on the Corporation

118. Any claim, notice, return or form to be served on the Corporation for the purposes of this Act may be served by lodgment at an office of the Corporation with a person authorized by the Corporation to accept service of documents on its behalf.

Contract to avoid Act

119. (1) Any agreement or arrangement entered into without the consent of the Corporation that purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect.

(2) Any purported waiver of a right conferred by or under this Act is void and of no effect.

(3) Any person—

- (a) who enters into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act;

or

Workers Rehabilitation and Compensation Act, 1986

(b) who attempts to induce a person to waive a right or benefit conferred by or under this Act,

is guilty of an offence.

Penalty: \$5 000 or imprisonment for one year.

* * * * *

Dishonesty

120. (1) A person who—

(a) obtains by dishonest means any payment or other benefit under this Act;

(b) dishonestly claims to be entitled to a payment or other benefit under this Act;

or

(c) dishonestly makes a statement in relation to a claim under this Act knowing the statement to be false or misleading,

is guilty of an offence.

Penalty: \$10 000 or imprisonment for one year.

(2) A person who—

(a) aids, abets, counsels or procures the commission of an offence against subsection (1);

or

(b) solicits or incites the commission of any such offence,

is guilty of an offence.

Penalty: \$10 000 or imprisonment for one year.

(3) Where a court convicts a person of an offence against this section, or finds a person guilty of such an offence without recording a conviction, the court must, on application by the Corporation or an exempt employer, order the person who committed the offence—

(a) to make good any loss to the applicant resulting from the commission of the offence;

and

(b) to reimburse costs incurred by the applicant in investigating and prosecuting the offence.

Evidence

120a. (1) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying—

(a) that a person was, on a day specified in the certificate, an employer;

(b) that a person was, on a day specified in the certificate, a worker,

will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(2) In any legal proceedings against a person for failing to register with the Corporation as an employer, a certificate apparently signed by an officer of the Corporation, certifying that the person was not, on a specified day, registered as an employer will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(3) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying that an amount specified in the certificate is payable to the Corporation, by way of levy or fine, by a person named in the certificate, will, in the absence of proof to the contrary, be proof of the liability.

(4) In any proceedings against a person for failing to furnish a return under this Act, a certificate apparently signed by an officer of the Corporation certifying that the return was not received before the expiration of the period within which it was required to be furnished will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the return.

(5) In any proceedings, a certificate apparently under the seal of the Corporation certifying that an officer of the Corporation named in the certificate was, on a day specified in the certificate, invested with specified delegated powers or functions will, in the absence of evidence to the contrary, be proof of the matters stated in the certificate.

(6) In this section—

“officer of the Corporation” includes a person who, although not an officer of the Corporation, is acting under a delegation of the Corporation.

Protection of special name

121. (1) In this section—

“the prescribed name” means the name “Work Cover”.

(2) The Corporation has a proprietary interest in the prescribed name.

(3) A person who, without the consent of the Corporation, in the course of a trade or business, uses the prescribed name for the purpose of promoting the sale of services or the provision of any benefits shall be guilty of an offence.

Penalty: \$5 000.

(4) A consent under subsection (3) may be given with or without conditions.

(5) The Supreme Court may, on the application of the Corporation, grant an injunction to restrain a breach of this section.

(6) The court by which a person is convicted of an offence against this section may, on the application of the Corporation, order the convicted person to pay compensation of an amount fixed by the court to the Corporation.

(7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Corporation apart from those subsections.

Offences

122. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a fine not exceeding \$2 000.

(3) Proceedings for an offence against this Act shall be disposed of summarily.

(3a) A prosecution for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed.

(4) Subsection (1) does not render the Corporation, a member of the staff of the Corporation, or any person acting on behalf of the Corporation, liable to prosecution for any act or omission related to the administration or enforcement of this Act.

Expiation of offences

122a. Where it is alleged that a person has committed an offence against this Act (other than an offence involving dishonesty), the Corporation may cause to be served personally or by post on that person a notice to the effect that the offence may be expiated by payment to the Corporation of the expiation fee specified in the notice (being a fee fixed by the regulations) within 60 days of the date of the notice and, if the offence is so expiated, no prosecution of the alleged offence may be commenced.

Exemption from stamp duty

123. The Corporation is exempt from stamp duty in respect of the insurance business carried on by the Corporation and is not required to take out an annual licence under the *Stamp Duties Act, 1923*, in respect of that business.

Right of intervention

123a. The Corporation has a right to intervene and be heard in—

(a) any proceedings under this Act before a Review Officer, or the Tribunal;

or

(b) any proceedings before a court—

(i) in which the interpretation or application of this Act is in issue;

or

(ii) in which the Corporation's interests may be directly or indirectly affected.

Regulations

124. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Regulations made under this Act—

(a) may be of general or limited application;

(b) may allow for matters to be determined at the discretion of the Corporation (or a delegate of the Corporation) or confer other forms of discretionary power on the Corporation (or a delegate of the Corporation).

Repeal of Workers Compensation Act, 1971

125. The *Workers Compensation Act, 1971*, is repealed.

Workers Rehabilitation and Compensation Act, 1986

FIRST SCHEDULE TRANSITIONAL PROVISIONS

Interpretation

1. In this schedule—

“the appointed day” means the day on which the *Workers Compensation Act, 1971*, is repealed by this Act:

“compensating authority” means the Corporation or an exempt employer.

Application of repealed Act

2. (1) Subject to this clause, the repealed Act continues to apply in respect of a disability that is attributable to a trauma that occurred before the appointed day.

(2) This Act applies in relation to a disability (referred to in this clause as a “transitional disability”) that is partially attributable to a trauma that occurred before the appointed day and partially attributable to a trauma that occurred on or after the appointed day, but does not affect rights (referred to in this clause as “antecedent rights”) that had accrued before the appointed day in respect of a transitional disability.

(3) The following provisions apply in relation to a transitional disability—

(a) where a compensating authority pays or is liable to pay compensation to a claimant under this Act in relation to a transitional disability, the compensating authority is subrogated, to an appropriate extent, to the antecedent rights of the claimant;

(b) where the claimant has received, in pursuance of antecedent rights, damages or compensation (not being weekly payments for a period of incapacity that concluded before the appointed day), there shall be an appropriate reduction in the amount of compensation payable under this Act in respect of the disability;

(c) the extent of a subrogation under paragraph (a), or a reduction in the amount of compensation under paragraph (b), shall be determined having regard to—

(i) the amount of the compensation payable (apart from this subclause) under this Act in respect of the transitional disability;

(ii) the extent to which the transitional disability is attributable to a trauma that occurred before the appointed day;

and

(iii) any other relevant factors.

(4) Where a compensating authority—

(a) pays compensation to a claimant under this Act;

(b) becomes entitled to recover a proportion of the payment from an employer by virtue of subrogation to the rights of the claimant under subclause (3)(a);

and

(c) notifies that employer in writing of the payment,

the amount recoverable from the employer will be increased by interest at the prescribed rate as from the date of the notification.

(5) The Corporation will, in the first instance, make a determination of—

(a) the extent of a subrogation under subclause (3)(a) or a reduction in the amount of compensation under subclause (3)(b);

and

(b) the amount of any consequential liability.

(6) Before making such a determination the Corporation must allow any person whose interests may be affected by the determination a reasonable opportunity to make representations to the Corporation on the subject matter of the determination and when the determination is made the Corporation must give written notification (personally or by post) of the terms of the determination to every person whose interests are affected by it.

(7) Any such person may, by written notice served personally or by post on the Corporation within one month after receiving notice of the determination or such longer period as the Corporation may allow, dispute the determination.

(8) Any such dispute may be referred on the application of any party affected by the determination—

(a) to the Industrial Court;

or

(b) if all parties affected by the determination agree—to an arbitrator appointed under the *Commercial Arbitration Act, 1986*,

(but where the dispute is referred to an arbitrator no part of the costs of the arbitration can be awarded against the worker).

(9) Where a dispute is so referred, the Industrial Court or the arbitrator will review the Corporation's determination and may confirm, vary or revoke it.

(10) Subject to the regulations, a determination by the Corporation under this clause may be enforced in the same way as a judgment of the Industrial Court.

(11) A determination by the Corporation may be enforced notwithstanding that it is disputed, but if it appears from the result of a review that a compensating authority has recovered an amount in pursuance of the determination to which the compensating authority is not entitled, that amount must be repaid together with interest at the prescribed rate.

Exempt employers

3. (1) An employer in respect of whom a certificate of exemption was in force under Division II of Part XA of the repealed Act immediately before the appointed day shall be deemed to have been registered, on the appointed day, as an exempt employer under this Act.

(2) If within 30 days after the appointed day the Local Government Association lodges with the Corporation a schedule of local government corporations to be registered as a group of exempt employers under this Act, those corporations shall be so registered and shall be deemed to have been so registered as from the appointed day.

Mining and Quarrying Industries Fund

4. (1) The scheme established under Part IX of the repealed Act continues in existence for the settlement of claims and other matters arising in relation to death or disablement from silicosis suffered before the appointed day with the following qualifications:

(a) the Corporation will be liable to satisfy any claim made under the scheme;

and

(b) the money standing to the credit of the general compensation fund is to be transferred to the Corporation.

(2) The money received by the Corporation under subclause (1) must be paid into a special account entitled the *Mining and Quarrying Industries Fund*.

(3) The Mining and Quarrying Industries Fund is to be notionally divided into two parts (Part A and Part B), one part (Part A) to be available to the Corporation to satisfy its liabilities under subclause (1) and the balance (Part B) to be available to the Mining and Quarrying Occupational Health and Safety Committee established under the fourth schedule for the purposes referred to in that schedule.

(4) For the purposes of the division of the Mining and Quarrying Industries Fund into two parts—

(a) the Corporation must on 30 June 1995 and thereafter at three yearly intervals arrange for an actuary to estimate the extent of the Corporation's existing and prospective liabilities under subclause (1) at that date;

and

(b) (i) if it appears from any such estimate that the amount standing to the credit of Part A exceeds the amount required to satisfy the Corporation's liabilities under subclause (1), the amount of the excess must be transferred from Part A to Part B;

(ii) if it appears from any such estimate that the amount standing to the credit of Part A is less than the amount required to satisfy the Corporation's liabilities under subclause (1), the amount required to make up the deficiency must be transferred from Part B to Part A.

(5) The Corporation must keep separate accounting records for Parts A and B.

(6) Money standing to the credit of the Mining and Quarrying Industries Fund (and not immediately required for the purposes of the fund) may be invested as if it were part of the Compensation Fund.

(7) Income and accretions produced by the investment of the money must be shared between Parts A and B (the amount of the shares being determined according to the extent to which money held on each account has contributed to the amount invested).

(8) The Corporation may debit the Mining and Quarrying Industries Fund with—

(a) the reasonable costs of administering the fund;

and

(b) the reasonable costs of providing services, facilities and staff to the Mining and Quarrying Occupational Health and Safety Committee under the fourth schedule.

Statutory Reserve Fund

5. (1) The Statutory Reserve Fund shall be paid into the Compensation Fund.

(2) Notwithstanding subclause (1), a claim in respect of workers compensation liabilities under the repealed Act may be made as if Part XA of the repealed Act had not been repealed and any amount required to satisfy a proper claim shall be payable from the Compensation Fund.

(3) In this clause—

“workers compensation liabilities” has the same meaning as in Part XA of the repealed Act.

Acts Interpretation Act

6. The *Acts Interpretation Act, 1915*, shall, except to the extent of any inconsistency with the provisions of this schedule, apply to the repeal of the *Workers Compensation Act, 1971*.

Workers Rehabilitation and Compensation Act, 1986

91

SECOND SCHEDULE

Section	Description of Disability	Description of Work
	Ankylostomiasis	Mining.
	Anthrax	Any work— (a) in connection with animals infected with anthrax; (b) involving handling of animal carcasses or parts of such carcasses; (c) involving handling of wool, hair, bristles, hides or skins; (d) involving loading or unloading, or transport, of animals, animal carcasses or parts of such carcasses, wool, hair, bristles, hides or skins.
	Antimony poisoning or its <i>sequelae</i>	Any work involving the use of antimony or its preparations or compounds.
	Arsenic poisoning or its <i>sequelae</i>	Any work involving the use of arsenic or its preparations or compounds.
	Asbestosis	Any work involving exposure to inhalation of asbestos fibres.
	Asthma or asthmatic attacks	Any work involving contact with, or the inhalation of, the dust of red pine, western red cedar or blackwood. Any work involving contact with, or the inhalation of, flour or flour dust.
	Benzene poisoning i.e. poisoning by benzene or its homologues or their nitro- and amido-derivatives) and its <i>sequelae</i>	Any work involving the production, liberation or utilization of benzene or its homologues or their nitro- and amido-derivatives.
	Brucellosis, leptospirosis, or Q fever	Any work at, in, about, or in connection with, a meat works or involving the handling of meat, hides, skins or carcasses.
	Carbon monoxide poisoning or its <i>sequelae</i>	Any work involving contact with, or the inhalation of, carbon monoxide gas.
	Chrome ulceration or its <i>sequelae</i>	Any work involving the use of chromic acid or bi-chromate or ammonium potassium or sodium or their preparations.
	Copper poisoning or its <i>sequelae</i>	Any work involving the use or handling of copper or its preparations or compounds.
	Dermatitis	Any work involving exposure to, or contact with, the dust of blackwood.
	Halogen poisoning (i.e. poisoning by the halogen derivatives of hydrocarbons of the aliphatic series) and its <i>sequelae</i>	Any work involving the production, liberation or utilization of halogen derivatives of hydrocarbons of the aliphatic series.
	Lead poisoning or its <i>sequelae</i>	Any work involving the use of lead or its preparations or compounds.
	Mercury poisoning or its <i>sequelae</i>	Any work involving the use of mercury or its preparations or compounds.
	Nitrous fumes poisoning and its <i>sequelae</i>	Any work involving contact with nitric acid or the inhalation of nitrous fumes.
	Noise induced hearing loss	Any work involving exposure to noise.
	Pathological manifestations due to— (a) radium and other radioactive substances; (b) X-rays	Any work involving exposure to the action of radium, radioactive substances or X-rays.
	Phosphorus, poisoning or its <i>sequelae</i> ...	Any work involving the use of phosphorus or its preparations or compounds.
	Pneumoconiosis, including silicosis	Any work involving mining, quarrying, cutting, crushing, grinding or pushing stone or melting, grinding or polishing metal.
	Primary epitheliomatous cancer of the skin	Any work involving processes which involve the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.
	Septic poisoning or its <i>sequelae</i>	Any work involving the handling of meat or the manufacture of meat products or animal by-products in connection with the trade of butcher or slaughterman.
	Zinc poisoning or its <i>sequelae</i>	Any work involving the use of zinc or its preparations or compounds.

THIRD SCHEDULE
LUMP SUM COMPENSATION

Nature of the Disability	Percentage of the prescribed sum payable
Total and incurable loss of intellectual capacity resulting from damage to the brain	100
Total and incurable paralysis of the limbs	100
Loss of Vision—	
Total loss of sight of both eyes	100
Total loss of sight of one eye	50
Total loss of sight of one eye, the vision in the other eye being less than 6/60 Snellens type with correction or absent	100
Hearing Loss—	
Total loss of hearing	75
Speech Loss—	
Total loss of the power of speech	75
Sensory Loss—	
Total loss of senses of taste and smell	50
Total loss of sense of taste	25
Total loss of sense of smell	25
Arm Injuries—	
Loss of arm at or above elbow	90
Loss of arm below elbow	80
Hand Injuries—	
Loss of both hands	100
Loss of thumb	35
Loss of forefinger	25
Loss of middle finger	20
Loss of ring finger	20
Loss of little finger	14
Total loss of movement of joint of thumb	15
Loss of distal phalanx of thumb	17
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
Loss of distal phalanx of forefinger	11
Loss of distal phalanx of other fingers	9
Loss of hand or loss of thumb and four fingers	80
Leg Injuries—	
Loss of leg at or above knee	90
Loss of leg below knee	80
Foot Injuries—	
Loss of both feet	100
Loss of foot and hand	100
Loss of foot	75
Loss of great toe	25
Loss of any other toe	10
Loss of two phalanges of any other toe	8
Loss of phalanx of great toe	11
Loss of phalanx of any other toe	7
Loss of genital organs	70
Permanent loss of the capacity to engage in sexual intercourse	70
Total impairment of the neck and cervical spine	80
Total impairment of the upper back and thoracic spine	50
Total impairment of the lower back and lumbar spine	80
Loss of all teeth	20
Total impairment of the ventilatory function	90
Total impairment of shoulder	50
Total impairment of wrist	25
Total impairment of hip	45
Total impairment of ankle	30

Disfigurement—

A percentage of the prescribed sum (not exceeding 70 per cent) proportionate to the extent, severity and likely duration of the disfigurement

Impairment of a physical or sensory faculty not mentioned above—

A percentage of the prescribed sum equivalent to the percentage loss of total bodily function represented by the impairment

1. For the purposes of this schedule, a limb or other member will be taken to be lost if it is rendered permanently and wholly useless, and a finger will be taken to be lost if two joints are severed from the hand or rendered permanently and wholly useless.

2. Where a disability consists of the permanent loss of a proportion (but not all) of the full efficient use of a physical or sensory faculty, a worker is entitled to a percentage of the compensation payable for total loss of the faculty equal to the percentage of full efficient use lost by the worker.

3. For the purpose of determining the extent of a loss of full efficient use of a physical or sensory faculty, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance will be disregarded.

Workers Rehabilitation and Compensation Act, 1986

4. The percentage loss of total bodily function represented by a particular impairment of a physical or sensory faculty is to be determined in accordance with professionally accepted principles approved by regulation.

5. Where a worker is entitled to compensation in respect of two or more disabilities to which the schedule applies, the worker's entitlement will be determined in accordance with principles prescribed by the regulations (but the total entitlement cannot exceed 100 per cent of the prescribed sum).

6. In this schedule—

“impairment” in relation to a physical or sensory faculty, means the loss of the faculty, the loss of its use, or the damage to or malfunction of the faculty.

“physical or sensory faculty” includes any part of the body.

FOURTH SCHEDULE

The Mining and Quarrying Occupational Health and Safety Committee

The Committee

1. (1) The Mining and Quarrying Occupational Health and Safety Committee ("the Committee") is established.
 - (2) The Committee will consist of seven persons appointed by the Minister, of whom—
 - (a) one (who will be the presiding member of the Committee) will be an officer of the Corporation working in the field of occupational health and safety nominated by the Corporation;
 - (b) one will be a person nominated by the South Australian Occupational Health and Safety Commission;
 - (c) one will be the Chief Inspector of Mines, or a person nominated by the Chief Inspector of Mines;
 - (d) two will be persons nominated by the South Australian Chamber of Mines and Energy to represent the interests of employers involved in the mining and quarrying industries;and
 - (e) two will be persons nominated by the United Trades and Labor Council to represent the interests of workers who work in the mining and quarrying industries.
 - (3) The Minister may appoint a deputy to a member of the Committee and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Committee.
 - (4) A member of the Committee may be appointed for a term not exceeding three years determined by the Minister and will, on the expiration of a term of appointment, be eligible for reappointment.
 - (5) The Minister may, on reasonable grounds, remove a member of the Committee from office at any time.
 - (6) A member of the Committee may resign by written notice to the Minister.
 - (7) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
 - (8) Four members of the Committee constitute a quorum of the Committee.
 - (9) In the absence of the presiding member at a meeting of the Committee, the members present may decide who is to preside.
 - (10) A decision carried by at least four members of the Committee at a meeting of the Committee is a decision of the Committee.
 - (11) Each member present at a meeting of the Committee is entitled to one vote on any matter arising for decision at the meeting.
 - (12) The Committee must have accurate minutes kept of its proceedings at meetings.
 - (13) Subject to this schedule, the business of the Committee will be conducted in a manner determined by the Committee.
 - (14) A member of the Committee who has a direct or indirect pecuniary interest in a matter under consideration by the Committee—
 - (a) must disclose the nature of the interest to the Committee;and
 - (b) must not take part in any deliberation or decision of the Committee with respect to the matter.
- Penalty: \$2 000.
- (15) A disclosure under subclause (14) must be recorded in the minutes of the Committee.
 - (16) The Committee will, in connection with the performance of its functions, make use of the services, facilities and staff of the Corporation.

Application of funds

2. (1) Money available to the Committee from the Mining and Quarrying Industries Fund under the first schedule may be used for any of the following purposes:
 - (a) to promote and support practices, procedures and arrangements designed to protect workers from silicosis;
 - (b) to support education in the field of occupational health or safety in the mining and quarrying industries;
 - (c) to initiate or support research and studies into occupational health or safety that could benefit workers in the mining and quarrying industries;
 - (d) to promote and support persons or organizations working to prevent, alleviate or treat the kinds of disabilities suffered by workers in the mining and quarrying industries;
 - (e) to support any other kind of activity that could directly or indirectly improve occupational health or safety in the mining and quarrying industries or assist in the rehabilitation of disabled workers in those industries.
- (2) The Committee has all such powers as are reasonably necessary for the effective performance of its functions (including the power to establish sub-committees and to engage, as may be appropriate, experts or consultants to assist the Committee in the performance of its functions).
- (3) The Committee must, in making grants of money under this schedule, give preference to supporting projects directed at improving occupational health or safety in those industries that involve exposure to silica dust and in particular to supporting specialized research and training projects directed at that purpose in South Australia.

Workers Rehabilitation and Compensation Act, 1986

(4) The Committee must not spend any part of the principal standing to the credit of Part B of the Mining and Quarrying Industries Fund without the specific approval of the Minister and in any case the Committee is not to spend in any financial year more than 20 per cent of the principal that, at the commencement of that financial year, is standing to the credit of that part of the fund.

(5) The Committee must after the end of each financial year prepare a report on its operations during that financial year.

(6) The report must be submitted to the Minister in conjunction with the annual report of the Corporation for the relevant financial year (and laid before each House of Parliament by the Minister together with the Corporation's annual report).

Ministerial control

3. The Committee is, in the performance of its functions, subject to the control and direction of the Minister.

Workers Rehabilitation and Compensation Act, 1986

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

Transitional provision from Workers Rehabilitation and Compensation Act Amendment Act, 1990, s. 8

8. (1) The amendment effected to the principal Act by section 3 of this Act does not affect—
- (a) the rights of the respondent in Supreme Court Action No. 998 of 1989;
 - (b) the rights of any claimant whose claim is determined before the commencement of this Act;
- or
- (c) the rights of any other claimant who, as at the commencement of this Act, is a party to proceedings before a Review Officer.

(2) Where a claim for compensation made before the commencement of this Act is rejected after the commencement of this Act on account of the enactment of section 3 of this Act, the claimant is entitled to be reimbursed by the Corporation for reasonable costs reasonably incurred by the claimant in making the claim.

Transitional provision from Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1991, s. 49

49. (1) The amendments effected by this Act to those provisions of the principal Act that relate to weekly payments of compensation apply as from the commencement of this Act to persons whose entitlements to weekly payments arose before or after the commencement of this Act.

(2) Where a worker became entitled to weekly payments before the commencement of this Act, the Corporation or an exempt employer may assess or reassess the amount of the weekly payments as from the commencement of this Act on the basis of the provisions of the principal Act as amended by this Act.

(3) Where such a reassessment is made, it cannot give rise to a right to repayment of any amount paid on the basis of a former assessment.

(Transitional provision from the Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1992, s. 22)

22. (1) Subject to this section, the amendments affecting entitlement to, or quantum of, compensation for disabilities apply in relation to—

- (a) a disability occurring on or after the commencement of this Act;
- or
- (b) a disability occurring before the commencement of this Act in relation to which—
 - (i) no claim for compensation had been made under the principal Act as at the commencement of this Act; or
 - (ii) a claim for compensation had been made under the principal Act but the claim had not been determined by the Corporation or the exempt employer.

(2) The amendments made by section 3, 5, 6, 10 and 11 apply whether the entitlement to compensation arose before or after the commencement of this Act.

(3) The amendments made by section 4 have no retrospective effect.

(4) A liability at common law for non-economic loss or solatium that arose before the commencement of this Act is not extinguished, on the commencement of this Act, by the amendments to section 54 of the principal Act, but, if an action is not commenced in a court to enforce the liability before the date falling 12 months after the cause of action arose or six months after the commencement of this Act (whichever is the later), the liability is then extinguished.

(5) The period prescribed by subsection (4) cannot be extended.

(Transitional provisions from Workers Rehabilitation and Compensation (Review Authorities) Amendment Act 1993, s. 16)

16. (1) Regulation 162 of 1992 (relating to agencies and instrumentalities of the Crown) will be taken to have come into operation at 4 p.m. on 30 September 1987.

(7) Proceedings cannot be instituted before a Review Officer after the commencement of section 3 of this Act in respect of any decision of the Corporation under section 32(4) of the principal Act before the commencement.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

- Section 3(1): definition of "actuary" inserted by 69, 1992, s. 31
 definition of "disability" inserted by 39, 1988, s. 3(a)
 definition of "disease" substituted by 34, 1990, s. 3
 definition of "employer" amended by 39, 1988, s. 3(b)
 definition of "employment" amended by 39, 1988, s. 3(c), (d)
 definition of "orphan child" inserted by 4, 1991, s. 3(a)
 definition of "prescribed allowance" paragraph (c) repealed by 4, 1991, s. 3(b)
 definition of "review authority" amended by 4, 1991, s. 3(c); paragraph (c) repealed by 4, 1991, s. 3(c)
 definition of "worker" amended by 39, 1988, s. 3(e)
- Section 3(2): repealed by 39, 1988, s. 3(f)
- Section 3(3): amended by 106, 1987, s. 3

Section 3(7) and (8):	inserted by 4, 1991, s. 3(d)
Section 4(8):	substituted by 4, 1991, s. 4; amended by 84, 1992, s. 3
Section 14(3):	inserted by 39, 1988, s. 4
Section 21:	substituted by 4, 1991, s. 5
Section 30(2):	amended by 84, 1992, s. 4(a)
Section 30(2a):	inserted by 84, 1992, s. 4(b)
Section 31(4):	inserted by 39, 1988, s. 5
Section 31(5):	inserted by 34, 1990, s. 4
Section 32(1a):	inserted by 4, 1991, s. 6(a); amended by 52, 1993, s. 3(a)
Section 32(2):	amended by 39, 1988, s. 6; 4, 1991, s. 6(b)
Section 32(3):	substituted by 4, 1991, s. 6(c)
Section 32(4):	substituted by 4, 1991, s. 6(c); 52, 1993, s. 3(b)
Section 32(4a):	inserted by 52, 1993, s. 3(b)
Section 32(5):	inserted by 4, 1991, s. 6(c)
Section 32(6):	amended by 52, 1993, s. 3(c)
Section 32(7):	inserted by 4, 1991, s. 6(c)
Section 32(8):	inserted by 4, 1991, s. 6(c); amended by 52, 1993, s. 3(d)
Section 32(10):	inserted by 4, 1991, s. 6(c); substituted by 52, 1993, s. 3(e)
Section 33(4):	inserted by 39, 1988, s. 7
Section 34:	redesignated as s. 34(1) by 84, 1992, s. 5
Section 34(2):	inserted by 84, 1992, s. 5
Section 35(2a):	inserted by 4, 1991, s. 7
Section 36(1):	amended by 4, 1991, s. 8(a), (b)
Section 36(2):	amended by 4, 1991, s. 8(c), (d)
Section 36(3):	substituted by 4, 1991, s. 8(e)
Section 36(3a):	inserted by 4, 1991, s. 8(e)
Section 36(4):	substituted by 4, 1991, s. 8(e); 84, 1992, s. 7(b)
Section 36(4a) - (4c):	inserted by 84, 1992, s. 7(b)
Section 36(5):	substituted by 84, 1992, s. 7(b)
Section 36(6):	inserted by 39, 1988, s. 8
Section 36(7) - (12):	inserted by 4, 1991, s. 8(f)
Section 37(3):	amended by 84, 1992, s. 8
Section 38(2):	amended by 4, 1991, s. 9(a)
Section 38(4):	repealed by 4, 1991, s. 9(b)
Section 38(7):	repealed by 4, 1991, s. 9(c)
Section 39(2):	amended by 84, 1992, s. 9(a)
Section 39(3):	amended by 84, 1992, s. 9(b)
Section 43(3) - (5):	repealed by 84, 1992, s. 11(a)
Section 43(6):	amended by 84, 1992, s. 11(b)
Section 43(7):	amended by 84, 1992, s. 11(c)
Section 43(7a):	inserted by 84, 1992, s. 11(d)
Section 43(11):	definition of "the prescribed sum" amended by 39, 1988, s. 9; 84, 1992, s. 11(e)
Section 44(1):	amended by 4, 1991, s. 10(a); 84, 1992, s. 12(a), (b)
Section 44(4a):	inserted by 4, 1991, s. 10(b); amended by 84, 1992, s. 12(c)
Section 44(5):	amended by 4, 1991, s. 10(c)
Section 44(10):	substituted by 4, 1991, s. 10(d)
Section 45(7):	amended by 84, 1992, s. 13
Section 46(3):	amended by 39, 1988, s. 10(a)
Section 46(6a):	inserted by 39, 1988, s. 10(b)
Section 46(8a):	inserted by 39, 1988, s. 10(c)
Section 50(1) and (2):	substituted by 4, 1991, s. 11
Section 52(3):	substituted by 4, 1991, s. 12
Section 52(5):	amended by 39, 1988, s. 11(a)
Section 52(6a):	inserted by 39, 1988, s. 11(b)
Section 53(4a):	inserted by 39, 1988, s. 12
Section 53(6):	amended by 84, 1992, s. 15
Section 54(1)(b):	repealed by 84, 1992, s. 16(a)
Section 54(3):	amended by 84, 1992, s. 16(b)
Section 54(4):	repealed by 84, 1992, s. 16(c)
Section 54(4a) and (4b):	inserted by 39, 1988, s. 13(a)
Section 54(5):	amended by 39, 1988, s. 13(b)
Section 54(7a) - (7c):	inserted by 39, 1988, s. 13(c)
Section 54(8):	definition of "prescribed sum" repealed by 84, 1992, s. 16(d)
Section 58(3):	definition of "the prescribed amount" amended by 39, 1988, s. 14
Sections 58a and 58b:	inserted by 39, 1988, s. 15
Section 58b(3a):	inserted by 97, 1988, s. 10
Section 59(3):	inserted by 4, 1991, s. 13
Section 60(2):	amended by 4, 1991, s. 14(a)
Section 60(3):	substituted by 97, 1988, s. 4(a)
Section 60(4):	amended by 39, 1988, s. 16(a); substituted by 97, 1988, s. 4(a); 4, 1991, s. 14(b)
Section 60(5):	amended by 39, 1988, s. 16(b); substituted by 4, 1991, s. 14(b)
Section 60(5a):	inserted by 97, 1988, s. 4(b); repealed by 4, 1991, s. 14(b)
Section 60(6):	substituted by 4, 1991, s. 14(b)
Section 60(9):	definition of "indemnified maritime employer" inserted by 4, 1991, s. 14(d)
Section 61(4):	inserted by 4, 1991, s. 15
Section 61(5):	inserted by 52, 1993, s. 5
Section 63(1):	amended by 39, 1988, s. 17; 4, 1991, s. 16(a); 52, 1993, s. 6
Section 63(3):	amended by 4, 1991, s. 16(b)
Section 63(3a):	inserted by 4, 1991, s. 16(c)
Section 63(7):	inserted by 4, 1991, s. 16(d)
Section 65(3) and (4):	inserted by 97, 1988, s. 5
Section 66(7):	substituted by 34, 1990, s. 5(a)
Section 66(9):	amended by 34, 1990, s. 5(b)
Section 66(12):	substituted by 39, 1988, s. 19(b)

Workers Rehabilitation and Compensation Act, 1986

Section 66(13):	repealed by 34, 1990, s. 5(c); inserted by 4, 1991, s. 17
Section 67:	amended by 39, 1988, s. 20; substituted by 4, 1991, s. 18
Section 68(2):	substituted by 39, 1988, s. 21
Section 68(3):	repealed by 39, 1988, s. 21
Section 68(4):	substituted by 4, 1991, s. 19
Section 69(4):	substituted by 39, 1988, s. 22(b)
Section 69(4a):	inserted by 39, 1988, s. 22(b)
Section 71(1):	amended by 4, 1991, s. 20
Section 72:	amended by 39, 1988, s. 23; substituted by 4, 1991, s. 21
Section 76:	amended by 39, 1988, s. 24
Section 76a:	inserted by 39, 1988, s. 25
Section 79(1) - (3):	substituted by 34, 1990, s. 6(a)
Section 79(3a):	inserted by 34, 1990, s. 6(a)
Section 79(6):	amended by 34, 1990, s. 6(b)
Section 82:	redesignated as s. 82(1) by 39, 1988, s. 26
Section 82(2) - (4):	inserted by 39, 1988, s. 26
Section 82a:	inserted by 4, 1991, s. 22
Heading preceding section 83:	substituted by 4, 1991, s. 23
Section 83:	amended by 4, 1991, s. 24
Section 84(1) - (3):	amended by 4, 1991, s. 25(a)
Section 84(4):	amended by 39, 1988, s. 27; 4, 1991, s. 25(b)
Section 84(5):	amended by 4, 1991, s. 25(a)
Section 85(1) and (2):	amended by 4, 1991, s. 26(a)
Section 85(3) - (5):	inserted by 4, 1991, s. 26(b)
Section 85a:	inserted by 4, 1991, s. 27
Section 86:	amended by 4, 1991, s. 28
Division IV of Part IV comprising section 87 and heading repealed by 4, 1991, s. 29	
Section 88:	redesignated as s. 88(1) by 39, 1988, s. 28
Section 88(2) - (4):	inserted by 39, 1988, s. 28
Section 89(2):	substituted by 39, 1988, s. 29; amended by 4, 1991, s. 30(a)
Section 89(2a):	inserted by 4, 1991, s. 30(b)
Section 90(2):	repealed by 4, 1991, s. 31
Section 90(2a):	inserted by 39, 1988, s. 30; repealed by 4, 1991, s. 31
Section 92:	substituted by 4, 1991, s. 32
Section 92a:	inserted by 4, 1991, s. 33
Section 92a(1):	amended by 84, 1992, s. 18
Section 93(1):	amended by 39, 1988, s. 31(a)
Section 93(2):	substituted by 39, 1988, s. 31(b); amended by 4, 1991, s. 34
Section 93(3):	substituted by 39, 1988, s. 31(b)
Section 94:	substituted by 4, 1991, s. 35
Section 95(2):	amended by 39, 1988, s. 32; 97, 1988, s. 6; 4, 1991, s. 36; 52, 1993, s. 14(c)
Section 96(1a):	inserted by 39, 1988, s. 33
Section 96(3):	repealed by 4, 1991, s. 37
Section 97(1):	substituted by 4, 1991, s. 38(a)
Section 97(2):	amended by 39, 1988, s. 34(a); substituted by 4, 1991, s. 38(a)
Section 97(3):	amended by 4, 1991, s. 38(b)
Section 97(4):	substituted by 39, 1988, s. 34(b);
Section 97(4a):	inserted by 39, 1988, s. 34(b); amended by 4, 1991, s. 38(c)
Section 97(4b):	inserted by 39, 1988, s. 34(b)
Section 97(4c) - (4f):	inserted by 39, 1988, s. 34(b); amended by 4, 1991, s. 38(b)
Section 97(5):	substituted by 39, 1988, s. 34(b); amended by 4, 1991, s. 38(b); 52, 1993, s. 15
Section 97(6) and (7):	repealed by 4, 1991, s. 38(d)
Section 97(8):	substituted by 39, 1988, s. 34(c)
Section 98:	repealed by 4, 1991, s. 39
Section 98a:	inserted by 39, 1988, s. 35
Section 98a(1):	substituted by 4, 1991, s. 40
Section 103a:	inserted by 39, 1988, s. 36
Section 104:	repealed by 4, 1991, s. 41
Section 105:	substituted by 39, 1988, s. 37; amended and redesignated as s. 105(1) by 4, 1991, s. 42
Section 105(2) and (3):	inserted by 4, 1991, s. 42(b)
Section 106a:	inserted by 39, 1988, s. 38
Section 108(4) and (5):	inserted by 4, 1991, s. 43
Section 110:	substituted by 4, 1991, s. 44
Section 112(2):	amended by 39, 1988, s. 39(a), (b); 34, 1990, s. 7
Section 112(2a):	inserted by 39, 1988, s. 39(c)
Section 112a:	inserted by 84, 1992, s. 19
Section 113(2):	amended by 39, 1988, s. 40(a), (b)
Section 113(2a) - (2c):	inserted by 39, 1988, s. 40(c)
Section 119a:	inserted by 39, 1988, s. 41; repealed by 4, 1991, s. 45
Section 120:	substituted by 4, 1991, s. 45
Section 120a:	inserted by 39, 1988, s. 42
Section 122(3a):	inserted by 4, 1991, s. 46
Section 122(4):	inserted by 39, 1988, s. 43
Section 122a:	inserted by 4, 1991, s. 47
Section 123a:	inserted by 4, 1991, s. 48
Section 124:	redesignated as s. 124(1) by 39, 1988, s. 44
Section 124(2):	inserted by 39, 1988, s. 44
First schedule	
Clause 2(3):	amended by 39, 1988, s. 45(a)
Clause 2(4) - (11):	inserted by 39, 1988, s. 45(b)
Clause 4:	substituted by 97, 1988, s. 7
Clause 4(4):	amended by 69, 1992, s. 32

Third schedule:

amended by Regulation No. 97 of 1992, reg. 3 [Gaz. 18 June 1992, p. 1810]; substituted by 84, 1992, s. 20; amended by Regulation No. 212 of 1992, reg. 4 [Gaz. 19 December 1992, p. 1761]

Fourth schedule:

inserted by 97, 1988, s. 8

Clause 2(6):

amended by 84, 1992, s. 21(a)

Clause 3:

inserted by 84, 1992, s. 21(b)