

WESTERN AUSTRALIA

# WORKERS' COMPENSATION AND ASSISTANCE ACT 1981

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WESTERN AUSTRALIA

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# WORKERS' COMPENSATION AND ASSISTANCE ACT 1981

**AN ACT to amend and consolidate the law relating to compensation for and the rehabilitation of workers suffering disability by accident or disease in the course of their employment, to establish a Workers' Assistance Commission, to continue the Workers' Compensation Board, and for related purposes.**

## PART I—PRELIMINARY

### **Short title**

**1.** This Act may be cited as the *Workers' Compensation and Assistance Act 1981*<sup>1</sup>.

### **Commencement**

**2.** The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation<sup>1</sup>.

**Purposes****3. The purposes of this Act are—**

- (a) to make provision for the compensation of—
  - (i) workers who suffer a disability; and
  - (ii) certain dependants of those workers where the death of the worker results from such a disability;
- (b) to promote the rehabilitation of those workers with a view to restoring them to the fullest capacity for gainful employment of which they are capable; and
- (c) to promote safety measures in and in respect of employment aimed at preventing or minimizing occurrences of disabilities.

**General application**

4. (1) In this section “proclaimed date” means the date on which this section comes into operation<sup>2</sup>.

**(2) This Act—**

- (a) applies to and in respect of—
  - (i) liability and the extent of liability to pay compensation and to pay for the provision of other benefits;
  - (ii) the requirement to obtain and keep current a policy of insurance for the full amount of that liability; and
  - (iii) entitlement and the extent of entitlement to receive compensation and other benefits,

in relation to disability or death, as set out in the following cases—

- (iv) for incapacity occurring, or continuing to occur, on or after the proclaimed date, whether the disability from which the incapacity resulted occurred or first occurred before, on, or after that date, but in the case of a disability which occurred before that date, only if that disability was, or was deemed to be, a compensable injury under the repealed Act;
- (v) for injuries mentioned in Schedule 2, whether the date of the accident whereby that injury was caused to the worker occurred before, on, or after that date, but in the case of an accident which occurred before that date only if that injury was an injury under the Second Schedule of the repealed Act;
- (vi) for death which occurs on or after the proclaimed date, where death resulted from a disability which occurred or first occurred before, on, or after the proclaimed date, but in the case of a disability which occurred before that date only if that disability was, or was deemed to be, a compensable injury under the repealed Act;

- (vii) for death which occurs on or after the proclaimed date, where death did not result from the disability but for the purposes of clause 5 the period of 6 months referred to in that clause commenced before, on, or after that date;
- (viii) for weekly amounts payable to children in respect of periods on and after the proclaimed date for death which occurred before, on, or after that date;
- (ix) for such expenses as are provided for in clauses 4, 9, 17, 18, and 19, incurred on and after the proclaimed date, and for amounts payable under clause 10 for absences from work, on or after the proclaimed date whether the events or circumstances giving rise to those expenses or absences from work occurred or first occurred before, on, or after the proclaimed date, but in the case of events or circumstances which occurred before that date only if they would have given rise to payment of those expenses or for absences from work under the repealed Act;
- (b) applies to and in respect of rehabilitation of a worker under Part IX, whether the disability referred to in that Part occurred or first occurred before, on, or after the proclaimed date; and
- (c) applies to and in respect of the exercise of functions and powers and the performance of duties in relation, and incidental, to the matters referred to in paragraphs (a) and (b).

## **Interpretation**

### **5. (1) In this Act, unless the contrary intention appears—**

“Board” means the Workers’ Compensation Board continued and constituted under this Act, and in respect of the exercise by the Chairman of the Board of the powers conferred on him by section 112 (24) means the Chairman of the Board;

“child’s allowance” in clause 1 (2), (3), and (4), subject to subsection (3), means the sum of \$15.37 varied annually on 1 July, commencing 1 July 1982, and thereafter on the cumulative sum in accordance with such percentage change in the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Bureau of Statistics as occurs between 1 April in the calendar year preceding the variation and 31 March in the calendar year of the variation;

“chiropractor” means a person who is resident in this State and is registered as a chiropractor under the *Chiropractors Act 1964* and holds a licence to practise chiropractic issued by the Chiropractors Registration Board constituted under that Act and who is approved by the Commission to practise chiropractic for the purposes of this Act;

"clause" means—

- (a) where the term is used in or in respect of a particular Schedule, a clause in that Schedule; and
- (b) otherwise, a clause of Schedule 1;

"Commission" means the Workers' Compensation and Rehabilitation Commission constituted under this Act;

"Committee" means the Premium Rates Committee constituted under this Act;

"company" means a company, a recognized company, a registered foreign company or a recognized foreign company within the meaning of the *Companies (Western Australia) Code*;

"dentist" means—

- (a) a person who is resident in a State or Territory of the Commonwealth and is entitled to practise as a dentist in accordance with the laws of that State or Territory; or
- (b) a person who is not resident in a State or Territory of the Commonwealth but who is recognized as a dentist for the purposes of this Act by the Commission;

"dependants" means such members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would, but for the disability, have been so dependent;

"Deputy Registrar" means the Deputy Registrar of the Workers' Compensation Board;

"disability" means—

- (a) a personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer's instructions;
- (b) a disabling disease to which Part III Division 3 applies;
- (c) a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a recognizable degree;
- (d) the recurrence, aggravation, or acceleration of any pre-existing disease where the employment was a contributing factor to that recurrence, aggravation, or acceleration and contributed to a recognizable degree; or
- (e) a disabling loss of function to which Part III Division 4 applies;

"disabled from earning full wages" means rendered less able to earn full wages;

"disease" includes any physical or mental ailment, disorder, defect, or morbid condition whether of sudden or gradual development;

“District Court” means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*;

“Division” means a Division of the Part wherein the term is used;

“drug of addiction” means drug of addiction as defined by section 5 of the *Poisons Act 1964*;

“earnings” includes weekly payments of compensation under this Act;

“employer” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of employment the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person;

the term “employer” shall extend to any person for or by whom any worker, as defined in paragraph (a) or (b) of the definition of “worker”, works or is engaged;

and

“employer” in relation to liability to pay compensation for or in respect of a disability to a worker, means the employer in the relevant employment;

“estimate” means the estimate prepared and approved as provided by section 107 (1);

“Executive Director” means the person appointed to the office of Executive Director of the Workers' Compensation and Rehabilitation Commission and includes a person appointed to act in the place and during the absence of the Executive Director while that person is so acting;

“General Fund” means the Workers' Compensation and Rehabilitation General Fund established under this Act;

“hospital treatment” includes treatment by way of rehabilitation;

“industrial agreement” means an agreement which wholly or partially regulates the terms or conditions of employment;

“industrial award” means—

- (a) an award, a consent award, or an order of The Western Australian Industrial Relations Commission<sup>4</sup> constituted under the *Industrial Relations Act 1979*<sup>5</sup> of Western Australia;
- (b) an award or a certified agreement made under the *Conciliation and Arbitration Act 1904* of the Commonwealth;
- (c) an award or agreement made under the *Public Service Arbitration Act 1966*<sup>6</sup> of Western Australia; or

(d) an award of the Western Australian Coal Industry Tribunal constituted under the *Mining Act 1904*<sup>7</sup> of Western Australia,

as the relevant employment requires;

“industrial disease premium” means the additional industrial disease premium fixed pursuant to section 151 (a) (iii);

“medical practitioner” means—

(a) a person who is resident in a State or Territory of the Commonwealth and is entitled to practise as a medical practitioner in accordance with the laws of that State or Territory; or

(b) a person who is not resident in a State or Territory of the Commonwealth but who is recognized as a medical practitioner for the purposes of this Act by the Commission;

“member of a family” means spouse, father, mother, grandfather, grandmother, step-father, step-mother; any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grandson, grand-daughter, step-son, step-daughter (whether the step-son or step-daughter is legally adopted by the worker or not), brother, sister, half-brother, half-sister; and with respect to an ex-nuptial worker includes his mother, and his brothers and sisters, whether legitimate or ex-nuptial, by the same father or mother;

“mesothelioma” means primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or the peritoneum;

“mine” or “mining operation” means a mine or mining operation defined or classified as a Class A or Class B mine for the purposes of Part 9 of the *Mines Regulation Act Regulations 1976*;

“notional residual entitlement” in relation to a deceased worker, means a sum equal to—

(a) if section 56 or Schedule 5 clause 2 applied to any incapacity resulting from the relevant disability the aggregate of weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with Schedule 1 as at the date of his death, for a period from that date up to the date when weekly payments of compensation would have ceased by reason of age less the amount of any lump sum paid in redemption of weekly payments and the amount of any sum paid under Schedule 2, for that disability; or

(b) the prescribed amount as at the date of his death, less the amount of any weekly payments made, the amount of any lump sum paid in redemption of weekly payments, and the amount of any sum paid under Schedule 2, for that disability,

whichever is the less;

“paragraph” means a paragraph in a section, subsection, clause, or subclause in which the term is used;

“Part” means a Part of this Act;

“physiotherapist” means a person who is resident in the Commonwealth or a Territory of the Commonwealth and is registered as a physiotherapist in accordance with the laws of a State or Territory of the Commonwealth;

“prescribed amount” means the sum of \$46 000 varied annually on 1 July, commencing 1 July 1982, and thereafter on the cumulative sum in accordance with such percentage change in the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Bureau of Statistics as occurs between 1 April in the calendar year preceding the variation and 31 March in the calendar year of the variation but shall be \$58 885 indexed by that percentage change on the sum of \$46 000 annually until exceeded by that formula;

“Registrar” means the Registrar of the Workers' Compensation Board and includes a person appointed to act in the place and during the absence of the Registrar while that person is so acting and except in section 187 also includes the Deputy Registrar;

“relevant employment” means—

- (a) the employment in which the personal injury by accident occurred;
- (b) the last employment, during the period of one year mentioned in section 32 or, in the case of pneumoconiosis or mesothelioma, the last employment, to the nature of which the disabling Schedule 3 disease is, or was, due;
- (c) the employment in the course of which the disease was contracted and which was a contributing factor and contributed to a recognizable degree;
- (d) the employment which contributed and contributed to a recognizable degree to the recurrence, aggravation, or acceleration of the pre-existing disease; or
- (e) the last employment, during the period of 3 years mentioned in section 49, to the nature of which the disabling Schedule 4 loss of function is, or was, due,

as the case requires;

“repealed Act” means the Act repealed by section 194;

“Schedule” means a Schedule to this Act;

“section” means a section of this Act;

“self-insurer” means employer whom, or employer belonging to a group of employers which, the Governor exempts under section 164 from the obligation to insure pursuant to this Act except for

the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151 (a) (iii);

“ship” means any ship, vessel, boat, or other craft and includes any man-made structure at sea, whether floating or fixed to the seabed;

“specialist” means a medical practitioner—

(a) who is resident in the State and whose name is on the Register of Specialists prepared and maintained in accordance with section 146; or

(b) who is not resident in the State, but who is recognized as a specialist for the purposes of this Act by the Commission;

“spouse” in relation to compensation payable in respect of the death of a worker, includes—

(a) any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters; and

(b) in the case of a male worker a woman, or in the case of a female worker a man, who although not legally married to the worker—

(i) lived with the worker on a permanent and *bona fide* domestic basis immediately before the death, if the worker leaves any dependant who is the child of that union; or

(ii) lived with the worker on such a basis for not less than 3 years, if the worker does not leave any such dependant;

“State Government Insurance Commission” means the State Government Insurance Commission established by the *State Government Insurance Commission Act 1986*;

“State Government Insurance Corporation” means the State Government Insurance Corporation established by the *State Government Insurance Commission Act 1986*;

“subclause” means a subclause of the clause in which the term is used;

“subparagraph” means a subparagraph in the paragraph in which the term is used;

“subsection” means a subsection of the section in which the term is used;

“the Chairman of the Board” means the person appointed to the office of Chairman of the Workers' Compensation Board and includes a person appointed to act in the place and during the absence of the Chairman while that person is so acting;



“the Chairman of the Commission” means the person appointed to the office of Chairman of the Workers’ Compensation and Rehabilitation Commission and includes a person appointed to act in the place and during the absence of the Chairman while that person is so acting;

“treatment and attendance” includes treatment by way of rehabilitation and attendance for that purpose;

“treatment by way of rehabilitation” means any treatment of a kind approved by the Minister by notice published in the *Gazette* for the purposes of the rehabilitation of workers who have suffered a disability compensable under this Act;

“tributer” means a person who works a mine under an agreement with the lessee or owner of the mine to pay or receive from the lessee or owner a portion of the percentage product taken from the mine;

“Trust Fund” means the Workers’ Compensation and Rehabilitation Trust Fund established under this Act;

“weekly payments of compensation”, in respect of the prescribed amount, include payments made under clause 10 and weekly payments of the supplementary amount made under Schedule 5 clause 2;

“worker” does not include a person whose employment is of a casual nature and is not for the purpose of the employer’s trade or business, or except as hereinafter provided in this definition a member of the police force, or except as hereinafter provided in this definition a member of the employer’s family dwelling in his house; but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing;

the term “worker”, save as hereinbefore provided in this definition, includes a member of the police force, who suffers a disability and dies as a result of that disability, and any member of the employer’s family dwelling in his house whose name, employment, and estimated wages are disclosed, at the time of employment and thereafter from time to time when the insurance is renewed, in writing to the insurer of the employer’s liability to pay compensation under this Act, unless the insurer is permitted by the Commission to refuse insurance of that liability in respect of the members of the employer’s family;

the term “worker” save as aforesaid, also includes—

- (a) any person to whose service any industrial award or industrial agreement applies; and
- (b) any person engaged by another person to work for the purpose of the other person’s trade or business under a

contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services,

and any reference to a worker who has suffered a disability shall, where the worker is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

(2) Where in this Act reference is made to an Act, or to any provision thereof, other than an Act of this State, section 14 of the *Interpretation Act 1918*<sup>s</sup> shall be applied to that reference in like manner as that section 14 applies to a reference made in this Act to another Act of this State, or to any provision thereof.

(3) Where a child's allowance, as varied on 1 July 1985 or thereafter, would, but for this subsection, be expressed as including an amount in cents that is not a whole number of cents divisible by 10 without remainder, that amount—

- (a) shall be disregarded if it is less than 5 cents;
- (b) shall, if it is a whole number of cents divisible by 5 without remainder be reckoned as the next higher whole number of cents that is divisible by 10 without remainder; or
- (c) shall, if it is not referred to in paragraph (a) or (b), be reckoned as the nearest whole number of cents that is divisible by 10 without remainder.

[Section 5 amended by No. 79 of 1983 s. 2; No. 44 of 1985 s. 3; No. 51 of 1986 Schedule 3 (10); No. 85 of 1986 s. 4; No. 86 of 1986 ss. 5 and 6.]

## PART II—APPLICATION OF THIS ACT IN RESPECT OF CERTAIN PERSONS AND BODIES

### Local and other authorities

6. The exercise and performance of the powers and duties of a municipal corporation or other local, public, or statutory authority shall, for the purposes of this Act, be treated as the trade or business of such municipal corporation or other authority.

### Tributers

7. (1) For the purposes of this Act a tributer, and any wages man employed by the tributer, shall be deemed a worker, and the lessee or owner of the mine let on tribute shall be deemed an employer of the tributer or wages man.

(2) The earnings of the tributer shall be deemed to be equal to the ruling rate of wages for miners as prescribed for the time being by the current industrial agreement or industrial award in force in the district in which the mine is situated.

### **Baptist Clergymen**

8. In this Act "worker" includes a clergyman who is recognized as an accredited minister and who is in full time active ministry in an affiliated Baptist Church under the Constitution and By-laws of the Baptist Union of Western Australia Incorporated and the Baptist Union of Western Australia Incorporated is, for the purposes of this Act, deemed to be the employer of such a clergyman.

### **Anglican Clergymen**

9. In this Act "worker" includes a clergyman of the Anglican Church of Australia, that is, a priest ordained within the Anglican Church of Australia and licensed to work under the authority of the Bishop of the Diocese within which he is employed, under terms and conditions laid down by the Bishop with the approval of the governing body of the Church in the Diocese, and, irrespective of the Diocese in which he is so employed, the Anglican Archbishop of Perth is, for the purposes of this Act, deemed to be the employer of such a clergyman.

### **Other Clergymen**

10. At the request of the governing body of any other church, the Minister—

- (a) may, by notice published in the *Gazette*, declare that in this Act "worker" includes a clergyman, as defined in the notice, of that church and, if the Minister so declares, he shall also declare, in the same notice, who is, for the purposes of this Act, deemed to be the employer of such a clergyman, and thereupon the notice shall have effect according to its terms as if they were provided in this Act; and
- (b) may at any time by subsequent notice so published cancel or amend the first-mentioned notice and thereupon the subsequent notice shall have effect according to its terms as if they were provided in this Act.

### **Exclusion of certain working directors**

10A.<sup>9</sup> (1) Notwithstanding anything in section 5 a person is deemed not to be a worker within the meaning of this Act while he is—

- (a) a director of a company; and
- (b) engaged or employed by or working for that company,

if the employer company has not complied with the requirements of section 160 with respect to that person.

(2) Subsection (1) does not affect the employer's obligation to comply with the requirements of section 160 with respect to a person referred to in that subsection.

[Section 10A inserted by No. 44 of 1985 s. 4; amended by No. 85 of 1986 s. 5.]

### **Exclusion of certain persons who are contestants in sporting or athletic activities**

**11.** Notwithstanding anything in section 5 and subject to section 11A, a person is deemed not to be a worker within the meaning of this Act while he is, pursuant to a contract—

- (a) participating as a contestant in any sporting or athletic activity;
- (b) engaged in training or preparing himself with a view to his so participating; or
- (c) engaged on any regular journey, daily, or other periodic journey, or other journey in connection with his so participating or being so engaged,

if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.

[Section 11 amended by No. 44 of 1985 s. 5.]

### **Jockeys**

**11A.** (1) Notwithstanding section 11, for the purposes of this Act “worker” includes a person licensed as a jockey with the Western Australian Turf Club—

- (a) riding a horse in any race run under the management of a racing club registered with The Western Australian Turf Club; or
- (b) engaged on a racecourse in riding work, or carrying out the usual duties of a jockey, for a trainer licensed by The Western Australian Turf Club,

and The Western Australian Turf Club is, for the purposes of this Act, deemed to be the employer of such a person.

(2) The earnings of a person included as a worker under subsection (1) shall be deemed to be equal to the rate of wages, including special allowances, prescribed for stable foremen under the Horse Training Industry Award 1976 as made under the *Conciliation and Arbitration Act 1904* of the Commonwealth and amended from time to time.

[Section 11A inserted by No. 44 of 1985 s. 6.]

### **Compensation not payable in certain cases**

**12.** (1) A person is not entitled to claim or receive compensation under this Act, in respect of a disability to or the death of a person that occurred before the coming into operation of section 3 of the *Workers' Compensation Act Amendment Act (No. 2) 1977* if, had that section been in force when the disability or death occurred, the person who was disabled or died would not have been a worker within the meaning of this Act by reason only of the amendments made by that section.

(2) Subsection (1) does not apply to or in relation to compensation in respect of which proceedings had been commenced in the Board before 5 July 1977.

**Continued operation of this Act where compensation previously paid**

13. Nothing in sections 11 or 12 in any way affects or limits the operation of this Act apart from those sections in relation to a disability to or the death of a person if any person, at any time before 28 November 1977, received compensation under the repealed Act in respect of that disability or death, and this Act continues to apply to the liability for and the right to compensation in respect of that disability or death as if those sections were not in this Act.

**Application to worker in employment of Crown**

14. (1) In this section "Crown" means Crown in right of the State.

(2) This Act applies to workers employed by or under the Crown to whom this Act would apply if the employer were a private person.

(2a) For the purposes of this Act a person who is not a worker referred to in subsection (2) but who holds a judicial or other statutory office is deemed to be a worker employed by or under the Crown.

(3) All moneys payable under this Act by or on behalf of the Crown shall be paid out of moneys to be provided by Parliament.

(4) In all claims against the Crown, whether arising out of disabilities to workers employed by or under the Crown, or in respect of any other claim under this Act by any other person, proceedings may be taken and prosecuted under this Act by suit against the Attorney General as representing the Crown in his representative capacity and without imposing any personal liability upon the occupant of the office of Attorney General.

*[Section 14 amended by No. 44 of 1985 s. 7.]*

**Compensation in relation to workers employed in and out of the State.**

15. (1) Where an employer employs a worker in the State and the work the worker is so employed to do is or is to be performed—

- (a) partly in the State and partly in some other part of the Commonwealth or a Territory thereof;
- (b) partly in the State and partly in some other place outside the Commonwealth or a Territory thereof;
- (c) wholly in some place outside the State but in the Commonwealth or a Territory thereof; or
- (d) wholly in some place outside the State and outside any other part of the Commonwealth or of a Territory thereof,

and a disability is suffered by such worker outside the State in circumstances that if the disability had been suffered in the State the worker or his dependants would be entitled to compensation under this Act, the worker is and, in the case of the death of the worker resulting from that

disability or following circumstances mentioned in clause 5, his dependants are entitled to compensation subject to and in accordance with this Act, unless the worker had been continuously resident outside the State for a period of more than 24 months at the time the disability occurred, in which case the worker or his dependants, as the case may be, are, in respect of that disability or death, not entitled to compensation subject to and in accordance with this Act.

(2) Compensation is not payable pursuant to subsection (1) if in respect of the disability the worker has and, in the case of the death of the worker, his dependants have in any place other than the State received workers' compensation or obtained judgment against his employer or recovered damages in respect of the disability or death independently of this Act.

(3) If the worker or a dependant of the worker, as the case may be, receives compensation pursuant to subsection (1) in respect of a disability or death and subsequently in respect of that disability or death receives compensation in any place other than the State or obtains judgment against the worker's employer or recovers damages in respect of the disability or death independently of this Act, the employer may sue and recover from the worker or his dependant, as the case may be, the amount of compensation paid by the employer pursuant to subsection (1).

(4) For the purposes of this section "employer" means an employer domiciled or ordinarily resident in the State or who has a place of business in the State or was present in the State at the time of employing the worker.

### **Act to apply as to disability to persons employed on Western Australian ships**

**16.** (1) In this Act the term "Western Australian ship" means any ship which—

- (a) is registered in the State;
- (b) is owned by a body corporate established under the laws of the State or having its principal office or place of business in the State, or is in the possession of any such body corporate by virtue of a charter;
- (c) is owned by any person or body corporate whose chief office or place of business in respect of the management of such ship is in the State, or is in the possession of any such person or body corporate by virtue of a charter; or
- (d) is owned by the Crown in right of the State, or is in the possession of the Crown in that right by virtue of a charter.

(1a) This Act applies in respect of a disability occurring to a worker—

- (a) employed on a Western Australian ship; or
- (b) employed on a ship under a manning agreement by a person or body corporate whose principal office or place of business in respect of the manning of such ship is in the State,

whether or not the disability was suffered by the worker within the State.

(2) The application of this Act in respect of disabilities occurring to workers, as provided by this section, shall be subject to the following modifications—

- (a) the notice of disability and the claim for compensation may, except where the person disabled is the master, be served on the master of the ship as if he were the employer, but where the disability occurred and incapacity commenced on board the ship it is not necessary to give notice of the disability;
- (b) in the case of the death of the worker leaving no dependants, no compensation is payable if the owner of the ship is, under the *Merchant Shipping Act 1894* of the United Kingdom, liable to pay the expenses of burial;
- (c) where incapacity for work results from the disability, the owner of the ship may deduct from the payment due to the disabled worker under this Act any expenses of maintenance which the owner of the ship is, under the *Merchant Shipping Act 1894* of the United Kingdom, liable to defray and has, in fact, defrayed;
- (d) any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section 503 of the *Merchant Shipping Act 1894* of the United Kingdom (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the provisions of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or disability; and
- (e) section 174 (2) and (3) of the *Merchant Shipping Act 1894* of the United Kingdom (which relates to the recovery of wages of seamen lost with their ship), apply in respect of proceedings for the recovery of compensation by the dependants of a worker lost with his ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation are in such a case maintainable if the claim is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

[Section 16 amended by No. 44 of 1985 s. 8.]

### **Crew of fishing vessel**

17. This Act does not apply in respect of disabilities occurring to such members of the crew of a fishing vessel as contribute to the cost of working that vessel, and are remunerated by shares in the profits or the gross earnings of the working of that vessel.

## PART III—COMPENSATION

*Division 1—Disability—General***Liability of employers to workers for disabilities**

**18.** If a disability of a worker occurs, the employer shall, subject to this Act, be liable to pay compensation in accordance with Schedule 1.

**Worker travelling**

**19.** (1) Without limiting the generality of section 18, a worker is deemed to have suffered personal injury by accident arising out of or in the course of his employment where—

- (a) the worker suffers a personal injury without any substantial default or wilful act, on his part, while he is travelling on any regular, daily, or periodic journey, or on any other journey which the worker establishes to the satisfaction of the Board was reasonable in the circumstances for the worker to take—
  - (i) between his place of residence and place of employment;
  - (ii) between his place of residence or place of employment and any trade, technical, or other training school that he is required, by the terms of his employment or as an apprentice, to attend; or
  - (iii) between any camp or place, where the worker is required by the terms of his employment, or is expected by his employer, to reside temporarily or where it is reasonably necessary or convenient that he shall temporarily reside for any purpose of his employment, and the worker's place of residence when not so temporarily residing, if the journey is undertaken in accordance with the terms and conditions of his employment;

and

(b) the injury arises out of, and in the course of, the journey, unless the injury is incurred during, or after, any substantial interruption of, or substantial deviation from, the journey, made for any reason unconnected with his employment or with his attendance at the trade, technical, or other training school.

[(2), (3) and (4) repealed]



(5) For the purposes of this section—

- (a) a worker's journey from his place of residence shall be deemed to have commenced at, and the terminal point of his journey to his place of residence to be—
  - (i) if his place of residence is a flat or home unit in a residential flat building or home unit building—that exit of the flat or home unit whereby he departed on his journey from his place of residence, or that entrance of the flat or home unit whereby he entered or would but for injury have or may have entered his place of residence at the conclusion of his journey thereto, as the case may be;
  - (ii) in every other case where his place of residence is or is within a building or structure—that exit of the building or structure whereby he departed on his journey from his place of residence, or that entrance of the building or structure whereby he entered or would but for the injury have or may have entered his place of residence at the conclusion of his journey thereto, as the case may be;
- (b) “substantial default” includes the consumption of alcoholic liquor or of a drug of addiction, or both, to an extent which impairs the proper functioning of the faculties and contributes to the happening of the injury; and
- (c) “substantial interruption” *prima facie* includes any interruption of the journey for a period of more than one hour.

(6) For the purposes of subsection (1) and notwithstanding any other provision of this Act, a cardio-vascular or cerebro-vascular “accident” or an epileptic attack occurring during the course of a journey is not a personal injury by accident.

[Section 19 amended by No. 85 of 1986 s. 6.]

## Travelling and “pick-up”

20. For the purposes of section 19, a place at which persons, ordinarily employed in a particular employment in relation to port or harbour operations at each port or harbour, customarily attend, by prior arrangement, for the purpose of being selected and engaged, and at which employers of port or harbour labour at each port or harbour customarily select and engage persons, for that employment is the place of employment of a person who attends there for the purpose of being selected and engaged or who is travelling between that place and his place of residence, in order to attend there, or by reason of having attended

there, for that purpose; and such a person, while so attending or travelling, is deemed to be a worker under a contract of employment with the employer by whom he was last employed in that particular employment.

### **Compensation from date of incapacity**

**21.** An employer is liable to pay compensation under this Act from the date of incapacity resulting from the disability but clause 9 applies in any case.

### **Serious and wilful misconduct**

**22.** If it is proved that the disability of a worker is attributable to his—

- (a) voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of his faculties;
- (b) failure, without reasonable excuse, proof of which is on him, to use protective equipment, clothing, or accessories provided by his employer for the worker's use; or
- (c) other serious and wilful misconduct,

any compensation claimed in respect of that disability shall be disallowed unless the disability results in death or serious and permanent disablement.

### **Where claim exists elsewhere as well as in this State**

**23.** If a claim for compensation has already been made by the claimant in respect of the disability under any law of the Commonwealth, another State, or a Territory, of the Commonwealth, or a country other than Australia, compensation under this Act shall not be allowed to the claimant, nor shall any person having such a claim under any such law claim under this Act unless he declares in writing that he has not claimed, and will not claim, compensation for the disability under any such law.

### *Division 2—Lump Sum Payments for Specified Injuries*

### **Compensation for injuries mentioned in Schedule 2**

**24.<sup>10</sup>** (1) Notwithstanding Schedule 1, in respect of compensable personal injuries by accident, if the worker himself so elects during his lifetime as provided by subsection (2), the compensation payable for the injuries mentioned in column 1 of the table set out in Schedule 2 shall, subject to the provisions of this Act relating to Schedule 2, be the

percentage ratios of the prescribed amount indicated in column 2 thereof, but the compensation payable for each such injury shall be in accordance with the percentage ratio of the prescribed amount indicated in that column in respect of such an injury at the date of the accident whereby that injury was caused to the worker, irrespective of when the worker so elects.

(2) A worker elects for the purposes of subsection (1) if, and only if—

- (a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant injury; and
- (b) that form is filed with the Board, and a copy of it is served on the employer, by or on behalf of the worker.

(3) A form of election shall not be binding upon a worker unless the Registrar is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's future entitlement to compensation under this Act.

(4) Where the Registrar is not satisfied in accordance with subsection (3), he shall within 7 days notify the employer and the worker accordingly.

(5) Subject to this Act, a worker who elects for the purposes of subsection (1) is entitled to continue to receive weekly payments of compensation until—

- (a) an agreement with respect to the election is registered under section 76; or
- (b) an order of the Board is made with respect to the amount of compensation payable pursuant to the election,

whichever is sooner.

*[Section 24 amended by No. 44 of 1985 s. 9.]*

## **“Loss of”**

**25.** For the purpose of the table set out in Schedule 2 “loss of” includes—

- (a) “permanent loss of the use of”; and
- (b) “permanent loss of the efficient use of”, but in such case such percentage of the appropriate amount payable as is equal to the percentage of the diminution of the full efficient use, may be awarded, in lieu of the full amount.

**Subsequent injuries**

**26.** (1) When, by a compensable personal injury by accident, a worker has already suffered a permanent loss of any percentage of the full efficient use of—

any part or faculty of the body referred to in column 1 of the table set out in Schedule 2—

and by subsequent compensable personal injury by accident suffers further loss of the full efficient use of—

that part or faculty of the body—

the compensation payable under the provisions of that table in respect of each such subsequent injury shall be proportionate to any increase (resulting from that subsequent injury) in the percentage of loss of that full and efficient use, and the compensation payable shall be calculated at the rates applicable at the time of occurrence of each subsequent injury.

(2) Where a worker has received compensation payable under the provisions of that table for 100% of the loss of, or the permanent loss of the efficient use of, any part or faculty of the body referred to in column 1 of that table—

whether in one payment for permanent total loss of, or permanent total loss of the efficient use of—

that part or faculty of the body—

or in several payments, each of which has been made for a permanent partial loss of, or a permanent partial loss of the efficient use of—

that part or faculty of the body, then and in such case, the worker is not entitled to any further payment under the provisions of that table in respect of that part or faculty.

**Compensation in accordance with table at date of accident**

**27.** Notwithstanding the other provisions of this Act and in particular section 117, where any decision, ruling, order, award, judgment, settlement, or agreement was given or made by, or registered with, the Board, before 18 May 1978, on the basis that compensation payable for an injury under the table set out in Schedule 2 was in accordance with the amount indicated in column 2 of that table in respect of that injury at the date of the accident whereby that injury was caused to the worker, that decision, ruling, order, award, judgment, settlement, or agreement shall not be rescinded, altered, or amended, and the worker shall not be entitled to any further payment under the provisions of that table in respect of that injury, by reason that it was given, made, or registered on that basis.

### **Limit on compensation of worker electing**

**28.<sup>10</sup>** A worker who elects as provided by section 24 is not in any case (including the case of a worker suffering by the same accident more than one of the injuries mentioned in Schedule 2) entitled to more than the prescribed amount, in addition to payment of such expenses as are provided for in clauses 9, 17, 18, and 19 which clauses are hereby made applicable to each worker entitled to compensation under this Division until that worker so elects and an agreement is registered or an order of the Board is made with respect to the amount of compensation payable pursuant to the election.

*[Section 28 amended by No. 44 of 1985 s. 13.]*

### **Compensation while incapacity continues**

**29.<sup>10</sup>** Section 24 does not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the injuries referred to in section 24 unless he elects under that section and an agreement is registered or an order of the Board is made with respect to the amount of compensation payable pursuant to the election.

*[Section 29 amended by No. 44 of 1985 s. 14.]*

### **Compensation payable before election**

**30.<sup>10</sup>** Subject to section 28, when a worker elects under section 24 any amount of compensation that was paid or payable to him for any period of incapacity resulting from the injuries referred to in section 24 and occurring before he so elects and an agreement is registered or an order of the Board is made with respect to the amount of compensation payable pursuant to the election shall not be deducted from the amount payable in accordance with the table set out in Schedule 2.

*[Section 30 amended by No. 44 of 1985 s. 15.]*

### **Schedule 2 interpretation**

**31.** In the application of the table set out in Schedule 2 the following apply—

- (a) loss of arm includes such loss resulting from injury to the shoulder;
- (b) loss of leg includes such loss resulting from injury to the hip;
- (c) if an eye or foot or other member is deemed lost or permanently and wholly useless or a finger has lost 2 joints, that constitutes the total loss of the eye, foot, member, or finger;
- (d) except in the case of eyes, determination of a percentage of loss is not to be made while using artificial aids;

- (e) determination of loss of sight is to be made on a corrective basis and item 5 of Schedule 2 shall not apply where loss of binocular vision is caused solely by the total loss of sight or substantial loss of sight of one eye.

*Division 3—Disability—Specified Industrial Diseases*

**Compensation of worker dying from or affected by certain industrial diseases. Schedule 3**

**32.** Where a worker is disabled from earning full wages by reason of suffering from, or his death is caused by, any disease, except pneumoconiosis, mesothelioma, or lung cancer, mentioned in column 1 of Schedule 3 and the disease is or was due to the nature of any employment in which the worker was employed at any time within one year previous to the date of the disablement, whether under one or more employers, a disability, being that disease, of the worker occurs and this Act applies to that disability subject, however, to this Division.

**Pneumoconiosis, mesothelioma or lung cancer. Schedule 3**

**33.** Where a worker is disabled from earning full wages by reason of suffering from, or his death is caused by,

- (a) pneumoconiosis;
- (b) on and after 8 May 1970, mesothelioma; or
- (c) on and after the date on which this section comes into operation, lung cancer,

and the disease is, or was, due to the nature of any employment in which the worker was employed at any time previous to the date of the disablement and it is shown to the satisfaction of the Board that, since he was last employed in the State in any employment of that nature, the worker—

- (a) has not been absent from the State for a period of, or periods aggregating, more than 6 months; or
- (b) having been absent from the State for a period of, or periods aggregating, more than 6 months, has not during that period or those periods been employed in any employment of that nature,

a disability, being pneumoconiosis, mesothelioma, or lung cancer, as the case may be, of the worker occurs and this Act applies to that disability subject, however, to this Division.

**Worker suffering from chronic bronchitis and pneumoconiosis**

**34.** Whenever a worker becomes disabled from earning full wages, by reason of suffering from chronic bronchitis in association with pneumoconiosis, he is deemed to be so disabled by pneumoconiosis and this Act applies subject, however, to this Division; but a worker who, after receiving compensation pursuant to this section, is subsequently

employed in any process entailing exposure to mineral dusts harmful to the lungs whether by the same or any other employer, is not entitled to any further compensation or benefit, in respect of any period of incapacity due to pneumoconiosis of any kind or to the aggravation or acceleration of any such disease, arising from his subsequent employment in that process.

### **Worker suffering from lung cancer and pneumoconiosis**

35. Whenever after the proclaimed date a worker becomes disabled from earning full wages by reason of suffering from lung cancer in association with that form of pneumoconiosis known as asbestosis he is deemed to be so disabled by pneumoconiosis and this Act applies subject, however, to this Division: but a worker who, after receiving compensation pursuant to this section, is subsequently employed in any process entailing substantial exposure to asbestos dust whether by the same or any other employer, is not entitled to any further compensation or benefit, in respect of any period of incapacity due to asbestosis or to the aggravation or acceleration of such disease, arising from his subsequent employment in that process.

### **Reference to medical panel**

36. (1) Whenever a claim is made by a worker for compensation under section 33 or 34, the employer shall within 14 days of the making of the claim send particulars of the claim to the Commission, and the Executive Director shall refer the question of the worker's condition and fitness for employment to a medical panel comprising 2 or 3 of the following—

- (a) a Mines Medical Officer as defined in the *Mines Regulation Act 1946*;
- (b) a physician, specializing in occupational diseases, and, a physician specializing in diseases of the chest, nominated from time to time by the Permanent Head of the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Occupational Health, Safety and Welfare Act 1984*.

(2) An employer who fails to comply with subsection (1) commits an offence.

[Section 36 amended by No. 28 of 1984 s. 101; No. 44 of 1985 s. 17; No. 33 of 1986 s. 4; No. 86 of 1986 s. 5.]

### **Oral submission by medical practitioner**

37. On a reference under section 36 any medical practitioner who has examined or treated the worker on his own behalf or has examined him on behalf of the employer may attend and make oral submissions to the medical panel, and the Executive Director shall make arrangements with the medical panel to give such a medical practitioner the opportunity to

attend, and, where such a medical practitioner does so attend the Mines Medical Officer shall so certify to the Executive Director, and the practitioner shall be paid from the General Fund such witness fee as he would have been entitled to receive if he had attended the Workers' Compensation Board to give evidence in a hearing before that Board.

[Section 37 amended by No. 86 of 1986 s. 5.]

### **Questions for determination by a medical panel**

**38.** (1) On a reference under section 36, the medical panel, following such examination and tests as it may require, having given the opportunity for oral submissions to be made, and having considered such oral submissions as have been made pursuant to section 37, and perused such certificates of other medical practitioners as either party may in person or by his solicitor or agent tender to that medical panel, shall thereupon consider and determine the following questions—

- (a) is the worker suffering from pneumoconiosis, mesothelioma or lung cancer?
- (b) if so, is he thereby disabled from earning full wages?
- (c) to what extent if any does—
  - (i) pneumoconiosis;
  - (ii) mesothelioma;
  - (iii) lung cancer,
 cause impairment of his ability to undertake physical effort?
- (d) what other, if any, disease or physical condition is contributing to his disablement and to what extent?
- (e) is the worker fit for work? If so, at what level—light, moderate, or heavy?

(2) The determination of the medical panel shall, as far as is practicable in each case, be in the form and contain answers to the questions prescribed.

(3) Where the medical panel comprises 2 members who fail to agree on its determination the Executive Director shall add a third member to the panel in accordance with section 36.

(4) The determination of the medical panel or a majority of its members is final and conclusive and binding on the worker, on his employer, and on any tribunal in which such determination is relevant.

[Section 38 amended by No. 44 of 1985 s. 18; No. 86 of 1986 s. 5.]

### **Worker disabled by tuberculosis and pneumoconiosis**

**39.** Subject to this Division, where a worker is disabled from earning full wages, by reason of suffering from tuberculosis in association with pneumoconiosis, and any of those diseases is, or was, due to the nature of any employment in which the worker was employed at any time prior to the date of disablement, that person is deemed to be totally incapacitated



for work, during such period as the tuberculosis is active, and, thereafter, for a further period of 3 months or for the period that he is unemployed, whichever period is the shorter, and, during that period and further period, the person is—

- (a) if in receipt of payments under the Tuberculosis Allowance (Commonwealth) Scheme, established under the *Tuberculosis Act 1948* of the Commonwealth, entitled to compensation in weekly payments equal to the maximum weekly income permissible under that Scheme; and
- (b) if not in receipt of payments mentioned in paragraph (a), entitled to such compensation as that to which he would be entitled, if totally incapacitated by pneumoconiosis.

### **When death is deemed disablement**

40. The death of the worker is, if there has been no previous period of incapacity in respect of which the employer is or has been liable under this Division, deemed to be the disablement.

### **Last employer liable but may join others**

41. (1) Subject to subsections (2), (3), and (4) the compensation is recoverable from the employer who last employed the worker during the period of one year mentioned in section 32, or, in the case of pneumoconiosis, mesothelioma, or lung cancer, who last employed the worker, in the employment to the nature of which the disease is, or was, due.

(2) The worker or his dependants shall, if so required, furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during that period of one year, or in the case of pneumoconiosis, mesothelioma, or lung cancer, at any time previous to the date of disablement, as he or they may possess.

(3) If that employer alleges that the disease was in fact contracted whilst the worker was in the employment of some other employer and not whilst in his employ, he may join such other employer as a party to the proceedings, and if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during that period of one year, or in the case of pneumoconiosis, mesothelioma, or lung cancer, at any time previous to the date of disablement, employed the worker in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in proceedings under this Act for settling the amount of the compensation.

(5) Where an employer has been insured by more than one insurer, then those insurers shall be entitled to be heard upon any application to have liability apportioned between them in terms of subsection (4).

### **Relevant earnings**

42. The amount of the compensation shall be calculated with reference to the earnings of the worker under the employer from whom the compensation is recoverable.

### **Employer to whom notice to be given**

43. The employer to whom notice of the disablement is to be given is the employer from whom compensation is recoverable under section 41 (1) and that notice may be given notwithstanding that the worker has voluntarily left the employment of that employer.

### **Disease deemed due to nature of employment**

44. If the worker at or immediately before the disablement was employed in any process mentioned in column 2 of Schedule 3 and produces a certificate from a medical practitioner that the disease contracted is the disease or one of the diseases in column 1 set opposite the description of the process, such disease shall be deemed to have been due to the nature of the employment, unless the employer proves the contrary.

### **Additions to Schedule 3**

45. (1) The Governor may, by Order in Council published in the *Gazette*, declare that any other disease or process or disease and process shall be included in Schedule 3.

(2) Every such Order in Council shall on the expiration of 3 months from the date of such publication, and while in force, have the same effect as if the disease or process or disease and process named therein were inserted in that Schedule, and this Division shall be read and construed accordingly.

(3) Before any such Order in Council is published in the *Gazette* it shall be laid before both Houses of Parliament; and, if either House of Parliament passes a resolution disallowing any such Order in Council, of which resolution notice has been given at any time within 14 sitting days of such House after the Order in Council has been laid before it, such Order in Council shall thereupon cease to have effect.

### **Compensation limited to prescribed amount**

46. (1) Notwithstanding any provisions of the *Mine Workers' Relief Act 1932* or any other provisions of this Act, the compensation payable to a worker in respect of any period or periods of total or partial incapacity

due, or deemed due, solely to pneumoconiosis, arising, or deemed to arise, out of or in the course of employment in a process, described in column 2 of Schedule 3 as, any process entailing exposure to mineral dusts harmful to the lungs, or to that disease in combination with any other disease, shall not in any case exceed the prescribed amount; and the provisions of this section shall apply whether the period or periods of incapacity occur or result while the worker is employed by the same employer or by different, successive employers.

(2) A worker who has received the full amount of compensation—

that was the maximum amount of his employer's liability to him under this Act, as it existed at the time of the payment,

in respect of pneumoconiosis or that disease in combination with any other disease, and who is subsequently employed in any process entailing exposure to mineral dusts harmful to the lungs, shall not in any circumstances be entitled to further compensation or benefit for any period of incapacity due to pneumoconiosis, or to that disease in combination with any other disease.

(3) A supplementary amount paid under Schedule 5 clause 4 or 8 is not compensation for the purpose of this section.

[Section 46 amended by No. 104 of 1984 s. 3.]

### Certain workers not to benefit

47. Where at the time of a worker's disablement within the meaning of this Division—

- (a) he is or was employed or was last employed in, on, or about a mine within the meaning of the *Mines Regulation Act 1946*;
- (b) the disease by which he is or was disabled is one of the diseases by reason whereof he would be liable, if found to be suffering from that disease, to be prohibited under or by virtue of the regulations made under the *Mines Regulation Act 1946*, from being employed, or from continuing to be employed, in, on, or about a mine within the meaning of that Act; and
- (c) he was employed or was last employed, in, on, or about a mine under the authority of a provisional certificate issued to him by a medical practitioner under the regulations made under the *Mines Regulation Act 1946*,

and at or after that time—

- (d) the worker is found upon examination by a Mines Medical Officer as defined in the *Mines Regulation Act 1946* to have been suffering from the disease by which he is or was so disabled at the time when the provisional certificate was issued to him, and such medical officer so certifies in writing,

then, notwithstanding that the disease by which the worker is or was disabled is one of the diseases mentioned in column 1 of Schedule 3 liable to be contracted by the worker in the course of his employment in, on, or about a mine, and notwithstanding anything to the contrary contained elsewhere in this Act, neither the worker nor any dependant of the worker shall be entitled to claim or recover any workers' compensation from any employer under or by virtue of this Act in respect of that disablement.

### Notification of disease

48. (1) Whenever it comes to the knowledge of an employer that any worker employed by him is suffering from a disease mentioned in Schedule 3, the employer shall within 7 days send written notice to that effect to the Executive Director, and the notice shall state the name and address of the worker and the time the disablement began.

Penalty—\$100.

(2) Whenever a notice under subsection (1) relates to a disease mentioned in Schedule 3 and marked with an asterisk, the Executive Director shall forward a copy of the notice to the Permanent Head of the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Health Act 1911*.

(3) It is the duty of every medical practitioner who attends a patient suffering from a disease mentioned in Schedule 3, and which he has reason to believe was contracted by reason of the nature of his employment, to notify in writing the Permanent Head of the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Health Act 1911* of the case within 14 days after such attendance on a patient.

Penalty—\$100.

[Section 48 amended by No. 28 of 1984 s. 102; No. 86 of 1986 s. 5.]

### *Division 4—Disability—Specified Losses of Functions*

#### **Disablement due to loss of function. Schedule 4**

49. Where a worker is disabled from earning full wages by reason of suffering from a loss of function described in column 1 of Schedule 4 and the disability is due to the nature of any employment in which the worker was employed at any time within 3 years previous to the date on which the worker becomes disabled from earning full wages a disability, being that loss of function, of the worker occurs and this Act applies to that disability subject, however, to this Division.

### **Ascertainment of percentage of hearing loss**

**50.** (1) Subject to this section, in ascertaining, for the purposes of this Act, the percentage of the diminution of hearing in respect of noise induced hearing loss of a worker who is over the prescribed age, it shall be conclusively presumed that his loss of hearing is, to the extent of the prescribed number of decibels for each complete year of his age in excess of the prescribed age, to be attributed to presbycusis.

(2) For the purposes of this section—

- (a) the prescribed age is 50 years; and
- (b) the prescribed number of decibels is one-half or, where some other number is prescribed, the number so prescribed.

(3) Regulations made for the purposes of subsection (2) (b) may prescribe different numbers of decibels in respect of different methods of ascertaining the extent of diminution of hearing, and any number thereby prescribed may be or include a fraction.

(4) Nothing in this section applies in a case of total loss of hearing of either ear.

### **Compensation recoverable from last employer**

**51.** (1) Subject to subsections (2), (3), and (4) the compensation is recoverable from the employer who last employed the worker during the period of 3 years mentioned in section 49 in the employment to the nature of which the loss of function is, or was, due.

(2) The worker shall, if so required, where possible furnish that employer with the names and addresses of all the other employers who employed him in the employment during the period of 3 years mentioned in section 49.

(3) If that employer alleges that the loss of function was in fact caused whilst the worker was in the employment of some other employer and not whilst in his employ, he may join such other employer as a party to the proceedings, and if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable.

(4) If the loss of function is of such a nature as to be caused by a gradual process, any other employers who during the period of 3 years mentioned in section 49, employed the worker in the employment to the nature of which the loss of function was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in proceedings under this Act for settling the amount of the compensation.

(5) Where an employer has been insured by more than one insurer, those insurers shall be entitled to be heard on any application to have the liability apportioned between them in terms of subsection (4).

## **How compensation calculated**

**52.** The amount of weekly payment of compensation shall be calculated and varied with reference to the earnings of the worker under the employer from whom the compensation is recoverable.

## **Employer to whom notice given**

**53.** The employer to whom notice of the disablement is to be given is the employer from whom compensation is recoverable under section 51 (1) and that notice may be given notwithstanding that the worker has voluntarily left the employment of that employer.

## **Loss of function deemed due to nature of employment**

**54.** If the worker at or immediately before the disablement was employed in any process mentioned in column 2 of Schedule 4 and produces a certificate from a medical practitioner that the loss of function contracted is the loss or one of the losses in column 1 set opposite the description of the process, such loss of function shall be deemed to have been due to the nature of the employment, unless the employer proves the contrary.

## **Additions to Schedule 4**

**55.** (1) The Governor may, by Order in Council published in the *Gazette*, declare that any other loss of function or process or loss of function and process shall be included in Schedule 4.

(2) Every such Order in Council shall on the expiration of 3 months from the date of such publication, and while in force, have the same effect as if the loss of function or process or loss of function and process named therein were inserted in that Schedule, and this Division shall be read and construed accordingly.

(3) Before any such Order in Council is published in the *Gazette* it shall be laid before both Houses of Parliament; and, if either House of Parliament passes a resolution disallowing any such Order in Council, of which resolution notice has been given at any time within 14 sitting days of such House after the Order in Council has been laid before it, such Order in Council shall thereupon cease to have effect.

*Division 5—Commencement, Review, Suspension, and  
Cessation of Payments*

**Entitlement to weekly payments ceasing on account of age**

**56.** Subject to the exceptions in Schedule 5, an entitlement of a worker to weekly payments of compensation for incapacity for work resulting from a disability under this Act ceases—

- (a) if the disability occurs on or before the date on which the worker attains the age of 64—on attaining the age of 65; or
- (b) if the disability occurs after the date on which the worker attains the age of 64—on the date one year after the disability occurs.

**Saving as to expenses**

**57.** Nothing in section 56 affects the liability of an employer for, and the entitlement of a worker to compensation payable under Schedule 2, and expenses as are provided for in clauses 9, 17, 18, and 19 but subject to the limitation on those expenses as provided for in clause 17 (1).

**Commencement of weekly payments**

**58.** (1) Except as provided in this section, the first of the weekly payments for total or partial incapacity under this Act shall be made by the employer not later than 14 days after the worker—

- (a) has complied with the requirements of section 130 and has served on the employer a certificate in or to the effect of the form prescribed containing substantially the information sought therein and signed by a medical practitioner; or
- (b) has served on the employer a certificate from a medical practitioner that the worker is unfit for work because of a recurrence of the disability referred to in the first work caused injury certificate,

and subsequent payments shall be made on the employer's usual pay days.

(2) Subject to section 75, an employer who disputes his liability to pay compensation under this Act may, within the period of 14 days referred to in subsection (1) or such extended time as may be ordered by the Board or Chairman of the Board, apply to the Board for an order that the subsection shall not apply and the application shall be heard and determined as an application in chambers with the right of both parties to be heard, and the application of the subsection shall be suspended, pending the results of that hearing and determination.

(3) On the hearing of the application referred to in subsection (2) the Board—

- (a) may dismiss or adjourn the application on such terms as it thinks fit and if it dismisses the application it may make such order as to the modification of the application of subsection (1) as it thinks fit and thereupon that subsection applies and has effect accordingly; or
- (b) if it considers that a genuine dispute exists concerning the liability of the employer to pay compensation under this Act, may order that subsection (1) shall not apply and thereupon that subsection shall not apply.

(4) Where the first of weekly payments for total or partial incapacity under this Act has not been made in accordance with subsection (1) and the employer has not made an application to the Board in accordance with subsection (2), the worker may apply to the Board for such weekly payments to be made and the application shall be heard and determined as an application in chambers with the right of both parties to be heard.

(5) On the hearing of an application referred to in subsection (4) for such weekly payments to be made the Board shall satisfy itself as to all the evidence provided by the worker to the employer whereupon the Board—

- (a) if it considers that the evidence is satisfactory for the purposes of subsection (1), may—
  - (i) order that weekly payments including arrears to the date of the hearing shall be paid out of the General Fund and shall order that the employer forthwith pay to the Commission for the General Fund the amount of such payments together with an additional 10% of such amount; or
  - (ii) make an order as to weekly payments by the employer to the worker on such terms as it thinks fit;
- (b) if it considers that the evidence is not satisfactory for the purposes of subsection (1), may dismiss or adjourn the application on such terms as it thinks fit; or
- (c) if it considers a genuine dispute exists concerning the liability of the employer to pay compensation under this Act, may order that the worker proceed by way of a substantive application.

(6) The fact that an application has been dismissed under subsection (3) or subsection (5), as the case may be, shall not be taken into account by the Board in any other proceedings under this Act.

### **Notice on return to work with other employer**

**59.** (1) Where a worker who has claimed, or is receiving weekly payments for incapacity, commences work with an employer other than the employer from whom the worker has claimed or is receiving those



weekly payments, the worker shall within 7 days give notice accordingly to the employer from whom he has claimed or is receiving those weekly payments.

(2) Where the employer liable to pay compensation or his insurer so requests, the worker shall supply particulars of the date he commenced employment, the wage, salary or, other remuneration payable to him and any other particulars that may have a bearing upon the worker's right to continue to receive compensation or as to the amount thereof.

(3) The employer liable to pay compensation or his insurer shall notify the worker of his obligations under this section.

(4) Subject to subsection (5), a worker who fails to comply with his obligations under this section commits an offence.

Penalty: \$200.

(5) A person shall not be convicted of an offence against subsection (1) unless it is proven that the employer liable to pay compensation or his insurer has complied with subsection (3) before the alleged offence was committed.

### **Application for discontinuance or reduction of weekly payments**

**60.** (1) Where weekly payments are made to a worker pursuant to section 58, the employer may apply to the Board at any time for an order that such payments be discontinued or reduced.

(2) If the employer satisfies the Board that there is a genuine dispute as to liability to pay compensation or as to the proper amount of such weekly payments, and in either case of the grounds of the dispute, the Board may order that the payments be suspended for such time as the Board directs or be discontinued or be reduced to such amount as it thinks proper or it may dismiss the application.

(3) Such an application shall be heard and determined as an application in chambers with the right of both parties to be heard.

### **Unlawful discontinuance of weekly payments**

**61.<sup>11</sup>** (1) Subject to subsection (7) and section 84, where weekly payments of compensation for total or partial incapacity are made to a worker under this Act, they shall not be discontinued or diminished without the consent of the worker or an order of the Board unless the worker has returned to work or a medical practitioner has certified that the worker has wholly or partially recovered or that the incapacity is no longer a result of the disability and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with at least 21 clear days' prior notice of the intention of the employer to discontinue the weekly payments or to diminish them by such amount as

is stated in the notice, has been served by the employer upon the worker and unless within that period the worker has not made an application to the Board under subsection (3).

(2) Weekly payments of compensation for total or partial incapacity shall not be discontinued or reduced pursuant to subsection (1) unless the notice referred to in that subsection contains a clear statement—

- (a) informing the worker of the effect of failing to make an application under subsection (3) within the time referred to therein;
- (b) informing the worker that he may obtain information from the Commission as to the ways and means available to him to establish or protect his rights in respect of his disability; and
- (c) containing such other information as may be prescribed.

(3) A worker who disputes the right of his employer to discontinue or diminish the weekly payments referred to in subsection (1) may, within the period of notice given under that subsection or, if the employer fails to give the notice required under that subsection, within the period of 21 days or such further time as the Board may allow from the day on which the weekly payments were discontinued or diminished, apply to the Board for an order that the weekly payment shall not be discontinued or diminished and the application shall be heard and determined as an application in chambers with the right of both parties to be heard.

(4) Upon the hearing of an application referred to in subsection (3) the Board shall, where the case requires, take into account matters referred to in clause 8, and may—

- (a) adjourn the application on such terms as it thinks fit;
- (b) dismiss the application in which case the weekly payments may be discontinued or diminished, as the case may be; or
- (c) make an order as to weekly payments by the employer to the worker on such terms as it thinks fit.

(5) Subject to subsection (7), weekly payments shall not be discontinued or diminished otherwise than in accordance with this Act.

Penalty: \$500.

(6) A conviction for an offence that is a contravention of subsection (5) shall not affect any liability for the making of weekly payments of compensation under this Act.

(7) Subsections (1) and (2) do not apply to a discontinuance of payments—

- (a) on payment in full of the prescribed amount;
- (b) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, on the worker reaching the age at which his entitlement to compensation ceases; or
- (c) on suspension of payments in accordance with section 64, 65, 70, or 72; or

- (d) on failure to comply with section 69 by a worker who does not reside in the State.

*[Section 61 amended by No. 44 of 1985 s. 20.]*

### **Review of weekly payments**

62. Any weekly payment may be reviewed by the Board at the request either of the employer or of the worker, and on such review, may be ended, diminished, or increased subject to any maximum provided, as from such date as the Board, having regard to the past or present condition of the worker, sees fit.

### **No compensation during suspension**

63. Where under this Act a right to compensation is lawfully suspended, no compensation is payable in respect of the period of suspension unless the Board otherwise orders.

### **Medical examinations**

64. Where a worker has given notice of a disability he shall, if so required by the employer, submit himself for examination by a medical practitioner provided and paid by the employer, and, if he, without reasonable excuse, proof of which is on him, refuses to submit himself to such an examination, or in any way obstructs it, his right to compensation, and to take or prosecute any proceeding under this Act shall be suspended until such an examination has taken place, and shall cease unless he submits himself for examination within one month after being required to do so.

### **Periodical medical examination**

65. Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a medical practitioner provided and paid by the employer, and if he, without reasonable excuse, proof of which is on him, refuses to submit himself to such an examination, or in any way obstructs it, his right to such weekly payments shall be suspended until such examination has taken place, and shall cease unless he submits himself for examination within one month after being required to do so.

### **Regulations as to such an examination**

66. A worker shall not be required to submit himself for examination by a medical practitioner under section 64 or 65 otherwise than in accordance with the regulations, nor at more frequent intervals than are prescribed.

**Lump sum in redemption of weekly payments**

**67.** (1) Nothing in this section shall be construed as preventing agreements for the redemption of a liability for incapacity being made and registered pursuant to Division 7.

(2) Where permanent total or permanent partial incapacity has resulted from a disability other than mesothelioma and any weekly payment has been continued for not less than 6 months, the liability for the incapacity may, on application by or on behalf of the employer or the worker, be redeemed by the payment of a lump sum to be settled, in default of agreement, by the Board, and such lump sum may be ordered by the Board to be paid to or invested or otherwise applied for the benefit of the person entitled to the lump sum.

(3) On exercising the jurisdiction to order redemption by payment of a lump sum under subsection (2) on the application of a worker, the Board shall be satisfied that the worker has special need of the lump sum instead of the continuance of the weekly payments and other benefits or that any other circumstances of the case justify making an order for that redemption and, where the Board has ordered that the total liability of the employer in respect of weekly payments shall exceed the prescribed amount, the Board shall be satisfied that the employer consents to redemption by way of a lump sum, the intention being that an order for redemption shall be made not as a matter of course but only when the special circumstances of the case commend themselves to the Board as justifying the making of an order for redemption.

(4) Where permanent incapacity has resulted from mesothelioma and any weekly payment has been made, or the worker is entitled to any weekly payment, the liability for the incapacity shall, on the application of the worker, be redeemed by the payment of a lump sum to be settled, in default of agreement, by the Board, and such lump sum may be ordered by the Board to be paid to or invested or otherwise applied for the benefit of the person entitled to the lump sum.

(5) Where the Board orders redemption of the liability to pay compensation by payment of a lump sum under this section, or an agreement for the redemption of a liability for incapacity is made and registered under Division 7—

(a) the worker is not entitled to further compensation; and

(b) clauses 9, 10, 17, 18, and 19 cease to apply to the worker,

for the disability from which the incapacity resulted.

*[Section 67 amended by No. 44 of 1985 s. 21.]*

### **Calculation of lump sum**

**68.** (1) When the Board orders redemption as provided in section 67 (2) and (3) and the Board has not ordered that the total liability of the employer in respect of weekly payments shall exceed the prescribed amount, the lump sum shall be calculated by taking the amount that is equal to—

- (a) the then prescribed amount less the amount of weekly payments made; or
- (b) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, the weekly payments at the rate to which he is entitled at the date of the order for the period from that date to the date when the weekly payments would cease by reason of age,

whichever is the less, and discounting that amount so taken in accordance with a compound discount table prescribed by regulations.

(2) When the Board orders redemption as provided in section 67 (2) and (3) and the Board has ordered that total liability of the employer in respect of weekly payments shall exceed the prescribed amount, the lump sum shall be calculated by taking the amount that is equal to the total amount of the liability so ordered less the amount of weekly payments made and discounting the amount so taken in accordance with a compound discount table prescribed by regulations.

(3) When the Board orders redemption as provided in section 67 (4), the lump sum shall be calculated by taking the amount that is equal to the prescribed amount less weekly payments, if any, made and discounting the amount so taken in accordance with a compound discount table prescribed by regulations.

(4) A reference in this section to “a compound discount table” shall be construed as including a reference to any formula or formulae prescribed for use in conjunction with such a compound discount table.

*[Section 68 amended by No. 44 of 1985 s. 22.]*

### **Worker not residing in the State**

**69.** Subject to this Act, if a worker receiving a weekly payment does not reside in the State he is entitled to receive the amount of the weekly payments accruing due so long as he proves, in such a manner and at such intervals as may be prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

### **Reference to medical panel**

**70.** (1) Where pursuant to section 64 or 65 a worker has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, the employer or the worker, as the case may be, shall within 14 days after such examination furnish

the other with a copy of the report of that practitioner as to the worker's condition, and, after the copy of the report is so furnished, in the event of no agreement being reached between the employer and the worker as to the worker's condition or fitness for employment, the Executive Director on application being made, in the manner prescribed, by either party, may, on payment by the applicant of such fee as is prescribed, refer the matter to a medical panel constituted as under section 145.

(2) The party who desires the reference of a matter to a medical panel shall make the application within one month after the date of the receipt by him of a copy of the medical report furnished to him by the other party.

(3) The medical panel to whom the matter is so referred shall, in such manner as is prescribed, give a certificate as to the condition of the worker, and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate is conclusive evidence as to the matters so certified.

(4) Where no agreement can be reached between the employer and the worker as to whether or to what extent the incapacity of the worker is due to the disability, this section, subject to any regulations, applies as if the question were a question as to the condition of the worker.

(5) If a worker, on being required to do so, refuses without reasonable excuse, proof of which is on him, to submit himself for examination by a medical panel to whom the matter has been so referred or in any way obstructs the examination, his right to compensation or to take or prosecute any proceeding under this Act or, in the case of a worker in receipt of a weekly payment, his right to that weekly payment, is suspended until such an examination has taken place.

(6) Where following such examinations and tests as may be required by the medical panel, it is of the opinion that specialist treatment is desirable the worker shall, if required by his employer, obtain treatment from a specialist selected by the worker from those whose names appear on the Register of Specialists maintained under section 146, and the employer shall be liable for the full cost of the specialist treatment and for necessary hospital charges incurred by the worker in connection with that treatment.

(7) If a worker, on being required to obtain treatment from a specialist pursuant to subsection (6) refuses, without reasonable excuse, proof of which is on him, to select a specialist or to undergo treatment, his right to compensation or to take or prosecute any proceeding under this Act shall be suspended until he selects a specialist and undergoes the treatment.

*[Section 70 amended by No. 86 of 1986 s. 5.]*

### **Recovery of payments**

**71.** Where the Commission, an employer, or an insurer has paid compensation or expenses to a worker or dependant and that person was not lawfully entitled to that payment or to any part of the amount of that payment, the Commission, employer, or insurer, as the case may be, may

apply to the Board for an order that compensation or expenses so paid be refunded, and the Board has jurisdiction to hear and determine such an application and to make any order in relation thereto or any part thereof as it considers appropriate in the circumstances.

### **Suspension of payments**

**72.** (1) A worker's entitlement to weekly payments of compensation under this Act is suspended—

- (a) during any period that the worker is serving a sentence of imprisonment; and
- (b) during any period that the worker being required by the Commission to undertake rehabilitation treatment or training—
  - (i) refuses to do so;
  - (ii) ceases to do so before the medical practitioner in charge of the treatment or training authorizes such cessation; or
  - (iii) in the opinion of such medical practitioner does not reasonably co-operate in or regularly attend for such rehabilitation treatment or training.

(2) The worker's entitlement to compensation is suspended from the date on which the Executive Director certifies in writing to the existence of any ground for suspension specified in subsection (1) until the date from which he certifies that ground for suspension no longer exists.

(3) A certificate of the Executive Director issued pursuant to subsection (2) is binding on the worker, the employer, and his insurer but may be reviewed by the Board on the application of any one of the parties.

(4) Where the ground for suspension is a ground specified in subsection (1) (b) and that ground continues to exist for one month from the date of the Executive Director's certificate of its existence or such time as the Board otherwise directs then the worker's entitlement to further compensation for the disability in respect of which he was required to undertake rehabilitation treatment or training ceases.

[Section 72 amended by No. 86 of 1986 s. 5.]

### *Division 6—Disputes Between Employers*

#### **Worker entitled but dispute between employers**

**73.** (1) Where there is a dispute between employers as to liability but no dispute that the worker is entitled to compensation from some employer for a fresh disability or the recurrence of an old disability the employer of the worker at the time of the latest disability or recurrence is liable to pay compensation under this Act until the Board has determined that some other employer is liable.

(2) The worker or his dependants, if so required by the employer first liable to pay compensation, shall furnish to him the name and address of any employer in whose employment the worker was when any like disability previously occurred, as he or they may possess.

(3) If the worker has filed an application for compensation, the respondent employer shall join as a party any other employer whom he alleges is liable to pay the compensation.

(4) If the worker has not filed an application the employer first liable to pay compensation may make an application to the Board, in accordance with the rules, for an order that some other employer is liable to pay compensation.

(5) If the Board finds that it was a recurrence and not a fresh disability, it may order that other employer to pay to the applicant employer the amount of compensation paid to the worker and to pay any further compensation to which the worker is entitled.

### **Dispute between insurers**

74<sup>12</sup>. (1) Where a worker is entitled to compensation for a fresh disability or the recurrence of an old disability from an employer but there is a dispute between insurers as to which insurer is liable to indemnify that employer, the insurer of the employer of the worker at the time of the latest disability or recurrence is liable to indemnify the employer until the Board has determined that some other insurer is liable.

(1a) An employer or insurer may make an application to the Board, in accordance with the rules, to determine a dispute between insurers notwithstanding any term or condition of any policy of insurance providing for some other means of settling disputes.

(2) The Board shall determine which insurer is liable and may make such order as it thinks proper for the reimbursement of one insurer by the other and for the indemnity of the employer in respect of his liability under this Act.

*[Section 74 amended by No. 44 of 1985 s. 23.]*

### **Restriction of application**

75. Section 58 (2) does not apply to a case to which section 73 applies.



*Division 7—Agreements*

**Registration of memorandum of agreement**

**76.** (1) Subject to section 92 (h), where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act by agreement, or any agreement, whether purporting to be made under this Act or not, has been entered into whereby a worker agrees to compound any claim or right to compensation under this Act, a memorandum thereof shall be sent, in manner prescribed, by any party interested, to the Registrar, who shall, on being satisfied as to its genuineness, and, where the agreement provides for the payment of compensation or other moneys, as to the adequacy of the amount thereof, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as an award or order made by the Board.

(2) No such memorandum shall be recorded before 7 days after the despatch by the Registrar of notice to the parties interested.

(3) No agreement between a worker and an employer has any force or validity if it exempts the employer wholly or partially from any liability for compensation to which the worker is or may subsequently become entitled under this Act, and notwithstanding any such agreement, a worker may recover from his employer any compensation to which he is, or subsequently becomes, so entitled, but the foregoing provisions of this subsection have no application to agreements for the redemption of the liability to pay compensation for a disability duly recorded under this section.

(4) Where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer proves that the worker has in fact returned to work and is no longer incapacitated, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Board, under the circumstances, may think just.

(5) The Board may at any time rectify the register.

(6) Upon receipt of a memorandum for registration, the Registrar shall examine it in order to satisfy himself as to the genuineness of the agreement and as to the adequacy of the amount of any compensation or other moneys payable thereunder, and if it appears to the Registrar as the result of such examination or as the result of any information which he considers sufficient that an agreement as to the redemption of the liability to pay compensation by a lump sum or an agreement as to the amount of compensation payable to the worker or to a person under any legal disability or to dependants, ought not to be registered by reason of the agreement having been obtained by fraud or undue influence or other improper means, or by reason that the amount of compensation payable under the agreement is inadequate or excessive, he shall refuse to record

the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the Board, which shall make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Board thinks just.

(7) For the purpose of carrying out his duties under subsection (6) the Registrar may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation payable under the agreement the Registrar may require the employer to have the worker examined by a medical practitioner nominated by the Registrar, at the expense of the employer, in any case where the Registrar is of the opinion that a report from such medical practitioner will assist him in determining the matter of the adequacy or inadequacy of the amount of the compensation.

(8) The Board may, upon application being made by either party within 6 months after a memorandum of an agreement as to the redemption of the liability to pay compensation for a disability by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to the Board's satisfaction that the agreement was obtained by fraud or undue influence or other improper means, or that the amount of compensation payable under the agreement is inadequate or excessive, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Board thinks just.

(9) Where a memorandum has been recorded under this section the Register shall without fee issue a certificate of the memorandum and the recording on application by any party concerned.

(10) Subject to this Act the certificate is evidence of the subject matter referred to in the certificate before any court or other tribunal or person in respect of proceedings to enforce compliance with the subject matter of the memorandum and for all other purposes under this Act.

### **Registration obligatory**

77. An agreement to which section 76 is applicable shall not be binding on or enforceable against the parties or admitted as valid unless it is registered as provided in this Division.

### **Effect of non-registration of agreement**

78. An agreement as to the redemption of the liability to pay compensation for a disability by a lump sum if not registered in accordance with this Act does not, nor does the payment of the sum payable under the agreement exempt the person by whom the compensation is payable from liability to continue to pay it; and an agreement as to the amount of

compensation to be paid to a person under legal disability or to dependants, if not so registered, does not, nor does the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation.

*Division 8—Other Matters Affecting Compensation*

**Wilful and false representation**

**79.** Where it is proved that the worker has, at the time of seeking or entering employment in respect of which he claims compensation for a disability, wilfully and falsely represented himself as not having previously suffered from the disability the Board may in its discretion refuse to award compensation which otherwise would be payable.

**Effect on annual leave, long service leave, and sick leave**

**80.** (1) Compensation is payable in accordance with this Act to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of such period any payment, allowance, or benefit for annual leave or long service leave under any Act of the Commonwealth or of the State, any industrial award or industrial agreement under any such Act, or any other industrial agreement applicable to his employment, and the amount of compensation so payable shall be the amount which would have been payable to the worker had he not received or been entitled to receive in respect of such period any such payment, allowance, or benefit.

(2) A worker is not entitled to receive from any employer payments for sick leave entitlements for any period for which he receives weekly payments of compensation for disability under this Act, and where the first-mentioned payments are made and the second-mentioned payments are subsequently made in respect of the same period, the worker shall reimburse to the employer the first-mentioned payments and the employer shall reinstate the worker's sick leave entitlements as a credit to the extent that the worker does so reimburse the employer.

(3) To the extent, if any, that a worker fails to reimburse an employer as required by subsection (2), the employer may sue and recover the relevant amount, and to the extent of recovery the employer shall reinstate as a credit the sick leave entitlements.

**Effect on public holidays**

**81.** Notwithstanding any provision that applies to or in relation to the employment of a worker apart from this Act, where during any period in respect of which weekly payments are payable pursuant to this Act a public holiday occurs, an employer shall not be liable to make any payment to the worker in respect of that holiday other than payment for that day as a part of those weekly payments.

**Recovery of cost of services rendered**

**82.** Where a person or authority has rendered to or provided for a worker any services for the cost of which the employer is liable to pay to the worker under this Act—

- (a) the employer may pay to that person or authority the whole or any part of the amount owing to him or it and such a payment shall, to the extent of the amount paid, be a discharge of the liability of the employer to the worker under this Act and of the liability of the worker to that person or authority for the services; and
- (b) if the whole or any part of the amount owing to that person or authority is not paid he or it has, in respect thereof, the same rights and remedies against the employer as the worker has.

**Industrial award and partial incapacity**

**83.** (1) Notwithstanding any industrial award or industrial agreement, other than any award or certified agreement made under the *Conciliation and Arbitration Act 1904* of the Commonwealth, where a worker is disabled from earning full wages by reason of a disability for which compensation is or has been payable under this Act, he may be employed at such wage, being such proportion of the full wage for work in the same employment, as he and the employer may agree as being appropriate to his earning capacity having regard to the nature and extent of his disability.

(2) In default of agreement as to the appropriate proportion in any case that proportion may be determined by the Board.

**Worker not to be prejudiced by resuming work**

**84.** Where a worker who has been incapacitated by disability resumes or attempts to resume work, and is unable, on account of the disability, to work or continue to work, the resumption or attempted resumption of work by him shall not deprive him of any entitlement to compensation under this Act which he otherwise had.

**PART IV—CIVIL PROCEEDINGS IN ADDITION TO OR INDEPENDENT OF THIS ACT****Saving re motor vehicle cases**

**85.** Nothing in this Part affects the operation of sections 29 and 29A of the *Motor Vehicle (Third Party Insurance) Act 1943*, and this Part shall be read subject to those sections of that Act.

**Saving re independent liability**

**86.** Except as expressly provided by this Act, nothing in this Act affects any liability that exists independently of this Act.

### **Notice to worker to commence action**

87. Where a worker has received compensation under this Act, if, after the expiration of 12 months from the date on which he received, or, as the case may be, first received, payment of compensation, the worker has not commenced proceedings against the employer for the recovery of damages independently of this Act, the employer may, by notice in writing, require the worker to commence those proceedings, within 42 days after the service on him of the notice and, unless the worker, within that period—

- (a) commences those proceedings; or
- (b) notifies the employer, by notice in writing, that he does not intend to take proceedings for damages,

the employer may apply to the District Court, in the manner provided by Rules of Court, for an order that the worker commence those proceedings within such time as the court may direct.

### **Order by District Court**

88. Upon the hearing of an application under section 87, the District Court may—

- (a) order that the worker commence proceedings for damages independently of this Act, within such time as it may direct;
- (b) adjourn the proceedings for such period or indefinitely (with liberty to either party to apply), upon such terms and conditions as it thinks fit; or
- (c) make such other order or give such directions as it thinks fit,

and upon the hearing of any adjourned application the court has the same powers with regard to that application as it has on an original application.

### **District Court's powers**

89. The District Court has power to extend any period limited for the commencement of proceedings by an order made under section 88, if the application for the extension is made prior to the expiration of that period.

### **Worker's right extinguished**

90. Where the worker agrees in writing with his employer or the insurer or notifies the employer that he does not intend to take proceedings for damages independently of this Act or does not commence those proceedings within the period, or any extension of the period, limited by an order of the District Court, his right to take those proceedings is, without affecting his right to compensation under this Act, extinguished.

**Where action brought for injury for which compensation is payable under this Act**

**91.** If an action is brought to recover damages independently of this Act, and it is determined in such action that the disability is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the court in which the action is tried shall assess that compensation, or refer the assessment of the compensation to the Board, and shall deduct from that compensation all the costs which have been caused by the plaintiff bringing the action, instead of taking proceedings under this Act, and shall enter judgment accordingly.

**Both damages and compensation not recoverable**

**92.** Where in respect of a disability an action is brought by a worker for damages independently of this Act against his employer or against some other person (referred to in this section as "the defendant") or against both of them—

- (a) if the court decides the action should succeed, then after damages have been ascertained but before judgment is entered for the worker in the action, the worker shall be given a reasonable opportunity to elect whether to have judgment or to discontinue the action;
- (b) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer only or against the employer and the defendant, there shall be deducted from the amount of the judgment and be paid to the employer a sum representing the amount (after apportionment in respect of any contributory negligence of the worker) actually recoverable by the worker by way of weekly or lump sum compensation, medical and other expenses paid pursuant to this Act, but where liability is apportioned between the employer and the defendant the defendant's liability to pay to the worker shall be reduced accordingly;
- (c) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the defendant only or is settled by the acceptance of money paid into court by the defendant the payments and expenses referred to in paragraph (b) shall be a first charge on the judgment or the amount of money paid into court and the defendant shall be bound to pay the amount of the compensation, and medical and other expenses to the employer and the judgment shall be *pro tanto* discharged by such payment, or the amount due under the charge shall be paid out of court to the employer or his authorized agent, as the case may be;
- (d) if the action is discontinued the worker shall pay the costs of the employer or of the defendant or of each of them or such part of those costs as the court thinks fit;

- (e) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer or the defendant or both or is settled by the acceptance of money paid into court by the employer or the defendant or by both of them the worker shall not commence or continue proceedings for, or in relation to, compensation under this Act in respect of the same disability;
- (f) if a worker's claim for damages against the employer or the defendant is settled by agreement otherwise than by a judgment, an acceptance of an offer to consent to judgment, or an acceptance of money paid into court—
  - (i) the employer or the defendant shall file a memorandum of the terms of the settlement with the Board within 3 months of the date of its execution by the worker;
  - (ii) the worker shall not commence or continue a claim for compensation under this Act in respect of the same disability unless the Registrar disapproves of the settlement within 6 weeks of the agreement for settlement being filed with the Board;
  - (iii) the Registrar shall not disapprove of the agreement unless he is satisfied the agreement was induced by fraud or misrepresentation or that it would clearly be for the worker's benefit to disapprove of it;
  - (iv) the Registrar if he disapproves of the settlement shall serve notice in writing of his disapproval on each of the parties to the settlement of his decision and of the reasons for his disapproval by pre-paid post to the address of the party set out in the settlement or the last known address of a party, within 14 days of the making of his decision;
- (g) where a claim for compensation is commenced or continued after the Registrar disapproves of a settlement referred to in paragraph (f), the amount recovered or recoverable under such settlement shall be brought into account in reduction of the worker's entitlement to compensation;
- (h) Part III Division 7 does not apply to an agreement for settlement referred to in this section.

**Remedies against stranger**

**93.** (1) Where the disability for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof but neither the employer nor any person for whose negligence the employer is legally responsible was negligent—

- (a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation and shall bring to account in reduction of his entitlement to compensation the amount recovered by way of damages;
- (b) the employer is entitled to be indemnified by the person whose negligence caused the disability to the worker (in this section called "the defendant") to the full extent of the employer's liability to pay compensation under this Act, whether or not the defendant has discharged his liability to pay damages to the worker by judgment or by settlement or otherwise.

(2) If there were—

- (a) negligence by the employer or by some person for whose negligence the employer is legally responsible which caused or contributed to the worker's disability, the extent of the indemnity of the employer by the defendant is reduced by the proportion that the employer's negligence and that of any person for whose negligence the employer is responsible bears to 100%;  
or
- (b) negligence by the worker which caused or contributed to the worker's disability, the extent of the indemnity of the employer by the defendant is reduced by the proportion that the worker's negligence bears to 100%.

(3) All question as to the right or amount of any such indemnity may, in default of agreement between the employer and the defendant, at the instance of the employer, be determined by the Board in any action brought by the worker before the Board.

(4) If the defendant has paid the whole or any part of the damages to the worker in respect of the disability caused or contributed to by the defendant and the defendant is required to and has indemnified the employer for the payment of any compensation paid to the worker in respect of the same disability, the defendant may sue and recover from the worker the amount so paid to the employer not exceeding the amount of damages paid to the worker by the defendant.

(5) If the worker has been successful in proceedings to recover damages against the defendant and does not recover the full amount of such damages and any portion of the compensation under this Act paid by the employer to the worker has not been refunded to the employer out of the damages, then the employer may, at his own expense and in the name of



the worker and upon giving the worker an indemnity against all costs and expenses, sue and recover from the defendant the amount of any balance of such damages then remaining unpaid, but any damages so recovered from the defendant in excess of the amount of compensation paid to the worker under this Act shall be payable to and received by the worker.

**PART V—WORKERS' COMPENSATION AND  
REHABILITATION COMMISSION**

*[Heading to Part V substituted by No. 86 of 1986 s. 7.]*

*Division 1—Constitution, Purposes, and Powers*

**Establishment of Commission**

94. (1) On and after the day on which the *Acts Amendment (Workers' Compensation and Assistance) Act 1986* comes into operation, the body corporate that was hitherto established under this Act by the name of the "Workers' Assistance Commission" is preserved and continues in existence as a body corporate under and subject to the provisions of this Act to be called the "Workers' Compensation and Rehabilitation Commission", but so that the corporate identity of the body corporate and its rights and obligations are not thereby affected.

(2) The Commission—

- (a) is a body corporate with perpetual succession and a common seal;
- (b) may acquire, hold, and dispose of real and personal property;
- (c) may sue and be sued in its corporate name; and
- (d) may, subject to the directions of the Minister, exercise and discharge the powers, authorities, functions, and duties conferred or imposed upon it by this Act.

*[Section 94 amended by No. 86 of 1986 s. 8.]*

**Composition of Commission**

95. (1) The Commission is to consist of—

- (a) one person appointed by the Governor on the recommendation of the Minister as a member and Chairman of the Commission and referred to as a nominee member;
- (b) the Executive Director as a member; and
- (c) 5 persons appointed by the Governor, on the recommendation of the Minister as members of the Commission and referred to as nominee members of whom—
  - (i) one shall be a person experienced in management affairs in commerce or industry, or both;
  - (ii) one shall be a person experienced in trade union affairs;

- (iii) one shall be a person experienced in insurance business but not employed in the State Government Insurance Commission or the State Government Insurance Corporation.
- (iv) one shall be a person employed in The State Government Insurance Commission or the State Government Insurance Corporation; and
- (v) one shall be a medical practitioner employed in the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Occupational Health, Safety and Welfare Act 1984*.

(2) The person appointed as Chairman of the Commission is to be a public servant who in the opinion of the Minister has had administrative experience at a senior level.

(3) Before making recommendations for the purposes of subsection (1) (c) (i), (ii), (iii), (iv), and (v), respectively, the Minister may, in writing, request the following—

- (a) the body known as The Confederation of Western Australian Industry (Incorporated);
- (b) the body known as the Trades and Labor Council of Western Australia;
- (c) the body known as the Western Australian Regional Advisory Board of the Insurance Council of Australia Limited;
- (d) the State Government Insurance Commission;
- (e) the Permanent Head of the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Occupational Health, Safety and Welfare Act 1984*,

respectively, to submit the name of a person, or the names of such number of persons as is specified in the request, who, or each of whom, has the required qualification and is willing to act as a member.

(4) The Governor may, on the recommendation of the Minister—

- (a) appoint a person as deputy of the member who is the Executive Director; and
- (b) as deputy of a nominee member a person qualified for appointment to the office of that nominee member, and subsection (3) applies in respect of such a recommendation with such modifications as are necessary.

(5) In the absence, for any reason, of a member from a meeting of the Commission his appointed deputy may attend the meeting and while so attending has all the powers, authorities, functions, and duties of the member.

[Section 95 amended by No. 28 of 1984 s. 103; No. 33 of 1986 s. 4; No. 51 of 1986 Schedule 3 (10); No. 86 of 1986 s. 5.]

### **Term of office**

**96.** (1) Subject to this Act, a nominee member holds office for such period not exceeding 3 years as is specified in the instrument of his appointment but is eligible for reappointment.

(2) The Minister on such terms as he thinks fit may grant leave of absence to a nominee member.

(3) A nominee member may resign his office by writing signed by him and delivered to the Minister but the resignation does not have effect until accepted by the Minister.

(4) The Governor may terminate the appointment of a nominee member—

- (a) for mental or physical disability, inefficiency or for misbehaviour; or
- (b) for other good cause, whether the events or circumstances giving rise to that good cause occurred before, on, or after the date on which the appointment took effect.

(5) If a nominee member—

- (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) absents himself except on leave granted by the Minister from 3 consecutive meetings of the Commission;
- (c) being a person holding an appointment or qualification described in section 95 (1) (c) (iv) or (v), ceases to hold that appointment or qualification;
- (d) resigns and his resignation is accepted; or
- (e) has his appointment terminated pursuant to subsection (4),

the office of that nominee member becomes vacant.

(6) Where the office of a nominee member becomes vacant otherwise than by effluxion of time, the Governor may, on the recommendation of the Minister appoint to the vacant office for the unexpired part of the term of the office a person who is eligible for appointment to that office and section 95 (3) applies in respect of such a recommendation with such modifications as are necessary.

### **Meetings**

**97.** (1) The Commission shall hold such meetings at such times and places as are necessary to enable it to exercise and discharge the powers, authorities, functions, and duties conferred or imposed upon it under this Act and the Minister may at any time require the Chairman to convene a meeting of the Commission to consider such matters as the Minister specifies.

(2) The Chairman is to preside at all meetings of the Commission at which he is present and in his and his deputy's absence the members present may appoint one of their members to preside.

(3) At a meeting of the Commission 5 members constitute a quorum.

(4) Any question arising at a meeting is to be decided by a majority of the members present and voting.

(5) The member presiding at a meeting has a deliberative vote and in the event of an equality of votes also has a casting vote.

(6) The Commission is to cause accurate minutes to be kept of its proceedings at meetings.

(7) To the extent that it is not prescribed the Commission may determine its own procedure.

### **Defects not to invalidate proceedings**

**98.** An act, proceeding, or determination of the Commission is not invalid on the ground only of a vacancy in the office of a member or of any defect in the appointment of a member or his deputy.

### **Conditions of appointment**

**99.** (1) A member, other than the Executive Director, is not required to devote the whole of his time to the duties of his office.

(2) A member other than one who is in the Public Service is to be paid such fees and allowances as may be fixed by the Minister on the recommendation of the Public Service Board.

*[Section 99 amended by No. 86 of 1986 s. 5.]*

### **Functions of Commission**

**100.** The functions of the Commission are to administer this Act and without limiting the generality of the foregoing—

- (a) to control and administer the General Fund and the Trust Fund;
- (b) where necessary or desirable, to participate in research into the causes, incidence, and methods of prevention of accidents, injuries, losses of functions, and diseases in respect of which compensation may be payable under this Act;
- (c) where necessary or desirable, to assist in encouraging the prevention or minimizing of accidents, injuries, losses of functions, and diseases in respect of which compensation may be payable under this Act;
- (d) to co-ordinate arrangements for workers suffering injuries, losses of functions, or disease, in respect of which compensation is or may be payable under this Act, to undertake rehabilitative occupational or vocational training, remedial treatment, health recovery courses, or work under special conditions, or to receive pre-employment medical examination and occupational guidance;
- (e) to co-ordinate arrangements generally to secure the care, supervision, and assistance of workers suffering injury, loss of function, or disease in respect of which compensation is or may be payable under this Act;

- (f) to obtain from all insurers and self-insurers information and returns enabling the Commission to compile and record such statistics, records, and reports as it considers desirable for the better administration of this Act;
- (g) where necessary or desirable, to assist in investigating all matters relating to accidents, injuries, losses of functions, or diseases in respect of which compensation is or may be payable under this Act, to study the causes and various methods of treatment and the results of treatment of such accidents, injuries, losses of functions, and diseases;
- (h) formulating recommendations and preparing estimates for submission to Parliament of the cost of providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary disablement from a compensable disability so as to minimize or remove any handicap suffered by the worker;
- (i) to provide registry and support services to the Board; and
- (j) the Commission shall provide the Committee with such statistics, records, reports, and other information as the Committee may reasonably require to enable it to perform its obligations under section 151 (a).

## **Powers**

**101.** The Commission may do all things that are necessary, expedient, or desirable to be done for or in connection with the performance of its functions and without limiting the generality of the foregoing or the powers expressly conferred elsewhere in this Act the Commission has power—

- (a) subject to section 102, to perform any of its functions by its officers or to provide facilities for others to do things to further the performance of any function or to arrange with others to provide facilities and to do any things to further the performance of any function and for any of those purposes to pay fees and allowances and to contribute towards expenses;
- (b) to publish such information and findings as in the opinion of the Commission would further the performance of its functions;
- (c) with the written approval of the Treasurer, to invest moneys from the General Fund in such investments or securities, and subject to such conditions, as are specified in the instruments of approval;
- (ca) to purchase, sell, lease, take on lease, mortgage, exchange or otherwise acquire, deal in or dispose of real and personal property;
- (cb) to improve, develop or alter real property;
- (d) to institute and maintain proceedings in the name of the Commission for any alleged breach of this Act;
- (e) to determine whether an insurer should be permitted to—
  - (i) refuse the insurance of an employer against all or any liability under this Act and, if so, upon what terms; or

- (ii) cancel a policy of insurance and, if so, upon what terms and, in any event, upon the term that the cancellation be effective as between the parties to the policy, irrespective of the terms of the policy and whether or not the policy was effected prior to the coming into operation of this Division; and
- (f) to delegate such of its functions and powers as it thinks fit to the Executive Director, or any other member, or any group of members of the Commission, but not this power of delegation and delegation of a power does not prevent its exercise by the Commission.

*[Section 101 amended by No. 104 of 1984 s. 4; No. 86 of 1986 s. 5.]*

### **Borrowings by the Commission**

**101A.** (1) Subject to this Act the Commission may, with the prior approval of the Treasurer, borrow such moneys as it thinks necessary from time to time for carrying out its functions.

(2) The Commission shall not exercise the powers conferred by this section unless a proposal in writing showing—

- (a) the terms and particulars of the proposed loan;
- (b) the rate of interest to be paid on that loan;
- (c) the purpose to which the money borrowed is to applied; and
- (d) the manner in which the loan is to be repaid,

shall first be submitted by it on the recommendation of the Minister to, and approved by, the Treasurer.

(3) Any moneys borrowed by the Commission under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.

*[Section 101A inserted by No. 104 of 1984 s. 5.]*

### **Guarantees of borrowings**

**101B.** (1) The Treasurer is hereby authorized to guarantee—

- (a) the repayment of any amount borrowed from time to time under section 101A; and
- (b) the payment of interest and such other charges in respect of such borrowings as he has approved.

(2) Before a guarantee is given by the Treasurer under this section, the Commission shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.

(3) The Treasurer shall cause any money required for fulfilling any guarantee given by him under this section to be paid out of the Consolidated Revenue Fund which, to the extent necessary, is hereby

appropriated accordingly and the Treasurer shall cause any amounts received or recovered from the Commission or otherwise in respect of moneys so paid by him to be paid into the Consolidated Revenue Fund.

[Section 101B inserted by No. 104 of 1984 s. 5.]

### **Limitation on powers**

**102.** Apart from co-ordinating arrangements in the matters referred to in section 100 (d) and (e) the Commission or its officers shall not provide facilities or perform services for or in respect of those matters unless directed to do so by the Minister.

### **Inspection of wage and salary declarations**

**103.** (1) The Commission may authorize persons as inspectors to make enquiries for the purposes of this Act and, without limiting the generality thereof, to make inquiries as to the aggregate amount of wages, salary, and other forms of remuneration paid by, and the number of employees engaged by, any employer who has been exempted pursuant to section 164, or by any employer required by the conditions of any policy or contract of insurance or by section 160 (2) to disclose such information during any specified period.

(2) An inspector authorized under this section shall produce written authority from the Chairman of the Commission when making investigations in the execution of his duties under this Act, and upon production thereof may make any such inquiries and require production of, and inspect, any books, accounts, and records as may be necessary to ascertain the aggregate amount of wages paid by the employer and the number of employees engaged.

(3) Every inspector shall, before entering on the performance of his duties under this Act, take and subscribe before a justice of the peace an oath or affirmation to the effect that he will not, except for the purposes of this Act, and the exercise of his duties hereunder, disclose to any person any information acquired by him in his official capacity, and every inspector who wilfully acts in contravention commits an offence.

Penalty: \$200.

(4) Any employer, his servant or agent, or any person whatsoever who obstructs, hinders, prevents, or interferes with any inspector in the exercise of the powers conferred upon him by this section, or who refuses or fails to produce for the inspection of any inspector any books, accounts or records when requested by such inspector, and obliged under this section to do so, commits an offence.

Penalty: \$200.

(5) Whenever as a result of an inspection or otherwise it is shown that an employer has either wilfully or inadvertently understated to his insurer the aggregate amount of wages paid or the number of employees

engaged, whereby he has become liable to pay by way of premium a lesser amount than he would otherwise, then the Commission may sue and recover from such employer the full amount of the premium which could have been charged, less any amount already paid to the insurer in respect of such insurance and shall pay any moneys so recovered less any reasonable costs incurred in the recovery, to the insurer.

### **Returns**

**103A.** An insurer or self-insurer who refuses or fails to furnish to the Commission, within such reasonable time as is specified by the Commission, any information or return requested in writing by the Commission in order to enable it to compile and record such statistics, records and reports as it considers desirable for the better administration of this Act, commits an offence.

Penalty: \$2 000.

[Section 103A inserted by No. 44 of 1985 s. 24.]

### **Publishing and furnishing information**

**104.** The Commission may—

- (a) from time to time, publish information for the guidance of the public on workers' compensation matters; and
- (b) when requested, furnish workers and employers with information in respect of ways and means available to them to establish or protect their rights or perform their obligations under this Act,

but in so doing shall not give, or purport to give, legal advice.

### *Division 2—Accounts and Audit*

#### **Application of *Financial Administration and Audit Act 1985***

**105.** The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

[Section 105 substituted by No. 98 of 1985 Schedule 1.]

### *Division 3—Workers' Compensation and Rehabilitation General Fund*

[Heading to Division 3 substituted by No. 86 of 1986 s. 7.]

### **General Fund**

**106.** (1) For the purposes of this Act, there shall be established and kept at the Treasury an account to be called Workers' Compensation and Rehabilitation General Fund.



(2) There shall be paid into the General Fund—

- (a) all moneys standing at credit in the Workers' Compensation Board Fund immediately before the coming into operation of this section;
- (b) all moneys, other than moneys payable to the Workers' Compensation and Rehabilitation Trust Fund, whether from levies, contributions, penalties, fines, interest or other sources, received by or for the Commission in the exercise of its functions under this Act; and
- (c) all moneys borrowed by the Commission under section 101A.

(3) There shall be paid from the General Fund—

- (a) all moneys required for the salaries of members of the Commission and of the Board and their respective staffs;
- (b) compensation payable by the General Fund to a worker pursuant to this Act;
- (c) the costs of rehabilitation of workers paid pursuant to Part IX;
- (ca) interest on and repayments of money borrowed by the Commission under section 101A and charges in respect of such borrowings;
- (d) the costs of and incidental to proceedings instituted by the Commission under this Act; and
- (e) all other moneys, except those payable from the Trust Fund, required by the Commission and the Board for carrying out their respective functions under this Act.

[Section 106 amended by No. 79 of 1983 s. 3; No. 104 of 1984 s. 6; No. 86 of 1986 s. 9.]

## Estimates

**107.** (1) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*, the Commission shall in each year prepare an estimate of the amount necessary to be raised by way of levies and contributions payable to the General Fund to carry out its functions under this Act; and, as soon as practicable after the preparation of the estimate, the Commission shall submit it to the Minister and it shall not have any force or effect unless and until it is approved by the Minister.

(2) If the General Fund is in surplus at the commencement of the year for which the estimate is being prepared, the estimate shall be calculated by deducting from the estimated expenditures the sum of—

- (a) the estimated receipts of the General Fund from all sources other than the levy and contributions; and
- (b) the balance of the General Fund at the commencement of the year.

(3) If the General Fund is in deficit at the commencement of the year for which the estimate is being prepared, the estimate shall be calculated by deducting the estimated receipts of the General Fund arising from all sources other than the levy and contributions, from the sum of—

- (a) the estimated expenditure; and
- (b) the balance of the General Fund at the commencement of the year.

(4) In calculating the estimate, the actuarially determined requirements for reserves and provisions to be deducted from the actual balance of the General Fund to determine whether the General Fund is in surplus or deficit and both the estimated increase required in reserves over that year and depreciation are to be included in the estimated expenditure of the General Fund.

*[Section 107 amended by No. 98 of 1985 Schedule 1.]*

## **Total contributions**

**108.** For any one year the Commission may levy as total contributions to the General Fund an amount equal to the estimate for that year.

## **Contributions to General Fund by insurers**

**109.** (1) Each insurer shall contribute annually to the General Fund a sum amounting to a percentage to be fixed by the Commission of the total amount of the premium income (whether received by or owing to the insurer) of the insurer in respect of the year ended 30 June then last past in respect of insurance of employers against their liability to pay compensation under this Act, and their liability under any other law in respect of persons employed by them, excluding any part of the premiums actually paid by way of reinsurance to any other insurer contributing under this Act, and the percentage shall be uniform for all insurers.

(2) A contribution referred to in subsection (1) or (4) shall be paid on 1 October in each year or on such other days as the Commission determines unless it exceeds \$15 000, in which case it may be paid in quarterly instalments on 1 October, 1 January, 1 April and 1 June in each year or on such other days as the Commission may determine, and where it, or any instalment of it, is not so paid the Commission may sue and recover the amount of the contribution or instalment, as the case may be, from the insurer or self-insurer without affecting the liability of the insurer or self-insurer, as the case may be, to a penalty under sub section (3).

(2a) The Commission shall give insurers and self-insurers at least 30 days written notice of any day determined under subsection (2).

(3) If any contribution referred to in subsection (1) or (4) or any instalment of it is not paid on or before any day prescribed or determined under subsection (2) the insurer, or self-insurer as the case may be, commits an offence.

Penalty: \$2 000.

(4) A self-insurer shall, in respect of any period for which contributions to the General Fund are payable by insurers, pay such contribution to the General Fund as the Commission considers reasonable, assessed upon the wages, salaries, or other remuneration, including amounts paid to workers employed under an agreement to perform—

- (a) a specified quantity of work for a specified sum;
- (b) work on piece rates;
- (c) work on a bonus or commission system; or
- (d) work on any other system for payment by results,

paid by the self-insurer to workers during that period, having regard to the premium payable for insurance by employers engaged in the same or any similar trade, occupation, calling, or industry, and the employer shall upon demand and within such time as the Commission may specify supply the Commission with such particulars of the wages, salaries, or other remuneration paid by him during that period as are required by the Commission.

(4a) If a self-insurer furnishes particulars to the Commission under subsection (4) which are false in any material particular, the self-insurer is guilty of an offence.

Penalty: \$2 000.

(4b) Any self-insurer failing to send particulars to the Commission within the time specified under subsection (4) commits an offence and is liable to a daily penalty not exceeding \$100.

(5) In the month of July of each year or at such other time as the Commission may appoint, every insurer shall send a return showing the amount of the premium income (whether received by or owing to the insurer) in respect of insurance of employers against their liability to pay compensation under this Act and their liability under any other law in respect of persons employed by them during the year ended 30 June then last past, excluding any part of that premium income actually paid by way of reinsurance to any other insurers contributing under this Act, together with a statutory declaration by the insurer or his or its manager, secretary, or agent in the State, that he has carefully examined the return and to the best of his knowledge, information, and belief the return is a true return of that amount.

(6) Any insurer failing to send the return in that month or by such other time as the Commission shall appoint, as the case may be, commits an offence and is liable to a daily penalty not exceeding \$100.

(7) If an insurer sends a return which is false in any material particular, the insurer is guilty of an offence.

Penalty: \$2 000.

[Section 109 amended by No. 44 of 1985 s. 25.]

#### *Division 4—Workers' Compensation and Rehabilitation Trust Fund*

[Heading to Division 4 substituted by No. 86 of 1986 s. 7.]

### **Trust Fund**

**110.** (1) For the purposes of this Act, there shall be established and kept at the Treasury an account to be called Workers' Compensation and Rehabilitation Trust Fund.

(2) There shall be paid into the Trust Fund—

- (a) all moneys in, or required to be paid but not paid into, the custody of the Board, pursuant to clause 1A of the First Schedule of the repealed Act immediately before the coming into operation of this section; and
- (b) all moneys paid into the custody of the Commission pursuant to clause 6.

(3) Moneys in the Trust Fund shall become one common fund to be kept at the Treasury to be invested by the Commission.

(4) Investments made from the Trust Fund shall not be made on account of or belong to any particular person.

(5) Interest or income earned by such investments shall be paid into the Trust Fund.

(6) The Commission may, with the written approval of the Treasurer, invest moneys from the Trust Fund in such investments or securities, and subject to such conditions, as are specified in the instrument of approval.

(7) The Commission with the approval of the Treasurer shall fix from time to time—

- (a) the rate of interest payable to the respective persons entitled to money in the Trust Fund in accordance with an order of the Board; and
- (b) the proportion of the costs of administration of the Trust Fund and investments from it to be charged to the respective persons entitled to money in the Trust Fund.

(8) There shall be paid from the Trust Fund—

- (a) to the Commission all money required for the cost of its administration; and

- (b) to or on behalf of the respective persons entitled to money in the Trust Fund, the amount apportioned to them respectively in accordance with an order of the Board, plus interest payable, and less charges made, under subsection (7).

[Section 110 amended by No. 86 of 1986 s. 10.]

### *Division 5—Ministerial Control*

#### **Ministerial directions**

111. The Minister may from time to time give directions to the Commission with respect to its functions, powers, and duties, either generally or with respect to a particular matter, and the Commission shall give effect to those directions.

## **PART VI—WORKERS' COMPENSATION BOARD**

### *Division 1—Constitution, Jurisdiction, and Powers*

#### **Workers' Compensation Board**

112. (1) The Workers' Compensation Board established under the repealed Act, is, under that name, hereby continued in existence subject to this Act, and—

- (a) is a Court of Record and shall have an official seal;
- (b) is a Court within the meaning of the term "Court" in the *Evidence Act 1906*, and the provisions thereof apply, with such modifications as are necessary to the Board and any member and officer of it; and
- (c) is an inferior Court within the meaning of the term "inferior Court" in the *Vexatious Proceedings Restriction Act 1930*.

(2) The Board is to consist of 3 members appointed by the Governor on the recommendation of the Minister.

(3) Of the 3 members—

- (a) one is to be a Judge, and Chairman, of the Board; and
- (b) 2 are to be referred to as nominee members.

(4) A person is not eligible for appointment to the office of Chairman of the Board unless he is a practitioner as defined by the *Legal Practitioners Act 1893* of not less than 8 years' practice and standing.

(5) Subject to this Act, the Chairman of the Board is entitled to hold office during good behaviour but the Governor may, upon the address of both Houses of Parliament, remove the Chairman from his office.

(6) Of the 2 nominee members—

- (a) one shall be a person experienced in management affairs in commerce or industry, or both; and
- (b) one shall be a person experienced in trade union affairs.

(7) Before making recommendations under subsection (2) for appointments of persons qualified as provided in subsection (6) (a) and (b), respectively, the Minister may, in writing, request the bodies known as—

(a) The Confederation of Western Australian Industry (Incorporated); and

(b) the Trades and Labor Council of Western Australia,

respectively, to submit the name of a person, or the names of such number of persons as is specified in the request, who, or each of whom, has the required qualification and is willing to act as a nominee member.

(8) Subject to this Act, a nominee member is entitled to hold office for such term of not less than 5 years or more than 10 years as is specified in the instrument of his appointment but is eligible for re-appointment.

(9) The Governor may terminate the appointment of a nominee member—

(a) for mental or physical disability or for misbehaviour; or

(b) for other good cause, whether the events or circumstances giving rise to that good cause occurred before, on, or after the date on which the appointment took effect.

(10) The Chairman or a nominee member may resign his office by writing signed by him and delivered to the Governor, but the resignation does not have effect until accepted by the Governor.

(11) The Chairman of the Board shall retire from his office upon attaining the age of 70 years, and each nominee member of the Board shall retire on the day on which he attains the age of 65 years, unless he is granted retiring leave, in which case he shall retire on the expiration of that leave.

(12) If a nominee member—

(a) is an undischarged bankrupt or a person whose property is subject to an order of arrangement under the laws relating to bankruptcy;

(b) resigns and his resignation is accepted; or

(c) has his appointment terminated pursuant to subsection (9),

the office of that nominee member becomes vacant.

(13) Where the office of a nominee member becomes vacant otherwise than by effluxion of time, the Governor may, on the recommendation of the Minister appoint to the vacant office for the unexpired part of the term of the office a person who is eligible for appointment to that office and subsection (7) applies in respect of such a recommendation with such modifications as are necessary.

(14) Where, for any reason, the Chairman of the Board is or is expected to be absent from duty or declines to deal with any matter, the Governor, on the recommendation of the Minister, may appoint to be an Acting

Chairman of the Board a person qualified for appointment as Chairman of the Board, to perform the duties of the Chairman when he is so absent or so declines.

(15) The Governor may, on the recommendation of the Minister, appoint as a deputy of a nominee member a person qualified for appointment to the office of that nominee member to perform the duties of the nominee member during any period he is, for any reason, absent from duty, and subsection (7) applies in respect of such a recommendation with such modifications as are necessary.

(16) An Acting Chairman and the deputy of a nominee member, in performing duties as provided by subsections (14) and (15) respectively, have, subject to subsection (19), the same jurisdiction, powers, duties, rights, and immunities and are subject to the same rules and conditions as the Chairman of the Board or the nominee member respectively would have or would be subject to in performing those duties.

(17) An appointment as an Acting Chairman of the Board or as a deputy of a nominee member, and an act, matter, or thing done in performing duties as provided by subsections (14) and (15) respectively or to fill a vacancy in office on the Board shall not be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

(18) The Chairman of the Board is in relation to his office as Judge of the Board entitled to—

- (a) the style and title of "His Honour"; and
- (b) like salary, allowances and reimbursements, leave of absence, pension rights, and rights under the *Superannuation and Family Benefits Act 1938* to that which a District Court Judge, other than the Chairman of Judges, is entitled in relation to his office.

(19) In respect of his office, an Acting Chairman, each nominee member, and each deputy of a nominee member is entitled to such remuneration, allowances, and leave of absence as is determined in relation to him by the Governor.

(20) A member of the Board shall not engage in any business or occupation for remuneration other than that of his office on the Board without the consent of the Minister.

(21) Each person appointed to be the Chairman, an Acting Chairman, a nominee member, or a deputy of a nominee member of the Board shall before proceeding to discharge the duties of his office, take before the Governor an oath or affirmation of allegiance and an oath or affirmation of office in accordance with the forms set out in Schedule 6.

(22) At any meeting of the Board at which all 3 members are present, the determination of a majority of members shall be the determination of the Board, but the Chairman alone shall determine any questions of law.

(23) Subject to subsection (24), the Chairman and one other member of the Board shall be a quorum and shall have all the powers and duties conferred upon the Board by this Act.

(24) The Chairman of the Board may hear and determine any interlocutory proceeding or application in Chambers or make any order or determination by consent.

(25) The Registrar, at the direction of the Chairman of the Board, may perform duties in respect of the powers conferred on the Chairman by subsection (24), but things done in the performance of those duties are subject to review by the Chairman.

*[Section 112 amended by No. 79 of 1983 s. 4.]*

**[113.** *Section 113 repealed by No. 79 of 1983 s. 5.]*

### **Registrar**

**114.** (1) There shall be a Registrar and Deputy Registrar of the Board.

(2) The Registrar shall keep a register and all necessary records in the prescribed form and containing the prescribed particulars of all claims for compensation received by the Board and of determinations and orders of the Board upon or arising out of all those claims.

*[Section 114 amended by No. 44 of 1985 s. 26.]*

### **Power to take oaths, etc.**

**114A.** (1) The Registrar has authority to take and administer oaths and affirmations for the purposes of this Act and to take affidavits and depositions required for use in or before the Board.

(2) Any affidavit to be used in or before the Board shall and may be sworn before the Registrar, a Commissioner for taking affidavits in the Supreme Court or a justice.

*[Section 114A inserted by No. 44 of 1985 s. 27.]*

### **Jurisdiction of Board**

**115.** (1) Subject to this Act, the Board has exclusive jurisdiction to examine, hear, and determine all matters and questions arising in or out of claims for compensation under this Act and all questions as to the right or amount of indemnity referred to in section 93 (3).



(2) Subject to this Act, the Board has exclusive jurisdiction to examine, hear, and determine any difference or dispute—

- (a) between 2 or more employers as to the liability to pay compensation to a worker or between 2 or more insurers as to the liability to indemnify an employer and in either case the extent of such liability; and
- (b) between an employer and an insurer as to the liability of the insurer to indemnify the employer in respect of the employer's liability to pay compensation to a worker notwithstanding any term or condition in the policy of insurance to some other effect.

### **Determination final**

**116.** Subject to this Act, a determination of the Board under this Act is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board may not be restrained by injunction, prohibition, or other process or proceedings in any court or by removal by *certiorari* or otherwise in any court, nor may any action be maintained or brought against the Board or any member of the Board in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.

### **Board may reconsider decision**

**117.** Nothing in section 116 prevents the Board from reconsidering any matter which has been dealt with by it or from rescinding, altering, or amending any decision or order previously made, all of which the Board has authority to do.

### **Board to determine on substantial merits**

**118.** (1) In the hearing and determination of every question the Board, the Chairman of the Board, any member of the Board, and the Registrar shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms and is not bound by legal precedent or its own decisions and rulings in any other matter nor by any rules of evidence but may inform its or his mind on any matter in such a way as it or he regards as just, but in considering a question as to whether a person who resides outside the State is a dependant of a worker, the Board shall require proof by or including documentary evidence that the worker has, wholly or in part as the case may be, supported the person and shall not accept as sufficient proof a statutory declaration or affidavit unsupported by documentary evidence to that effect.

(2) The granting of relief or redress under this Act is not necessarily to be restricted to the specific claim made nor to the subject matter of the claim.

(3) Any person who is a party to any question for hearing and determination under this Act may appear in person or by a legal practitioner authorized to practise as such by the *Legal Practitioners Act 1893* or by other agent duly appointed in writing for that purpose and permitted by the Board to appear and subject to this Act every party appearing by a representative is bound by the acts of his representative.

(4) A person, other than a legal practitioner authorized to practise as such by the *Legal Practitioners Act 1893*, shall not demand or receive any fee or reward for representing a party to proceedings before the Board.

Penalty: \$1 000.

(5) Where a person receives a fee or reward in contravention of subsection (4), the person who paid or gave the reward may sue and recover it from the person who received it, without affecting the liability of the first-mentioned person to a penalty under subsection (4).

### **Inquiries**

**119.** The Chairman of the Board may request the Commission to make inquiries in respect of any matter relating to the exercise, or performance of the functions, powers, and duties of the Board, and the Board may act upon a report of the Commission in respect of that matter.

### **Certified copies etc., of Board's records to be evidence**

**120.** Every copy or extract from an entry of any book or record of the Board and of any document filed with the Board certified by the Registrar to be a true copy or extract shall be received in any court as evidence of the matter so certified without proof of the Registrar's appointment, authority, or signature.

### **Enumeration of certain matters of jurisdiction**

**121.** Without limiting the generality of section 115 (1), exclusive jurisdiction of the Board shall extend to determining—

- (a) whether a disability has arisen within the meaning of this Act;
- (b) the existence and degree of disablement of a worker;
- (c) the permanence of a disability or its duration;
- (d) the degree of diminution of earning capacity by reason of a disability;
- (e) the amount of weekly earnings of a worker;
- (f) the amounts of any refunds or adjustments of assessments which in its discretion it considers proper to make;
- (g) the existence and extent of dependency;
- (h) whether any person or aggregation of persons is or is not an employer of a worker within the meaning of this Act and if so whether such worker is or is not entitled to compensation under this Act;

- (i) the existence, for the purpose of this Act, of any relationship of any member of the family of a worker;
- (j) all cases of permanent partial or total incapacity, and making awards of compensation within the limits prescribed by this Act as may appear proper after taking into consideration all the circumstances of the case;
- (k) the modification of weekly payments when a partially incapacitated worker resumes or is capable of resuming any employment other than his former employment;
- (l) whether the circumstances of any particular case justify the making of an order for redemption of the liability to pay compensation for a disability by payment of a lump sum; and
- (m) liability of any person in respect of the expenses of medical, surgical, dental, physiotherapy, or chiropractic attendance and treatment on a worker suffering from a disability at the suit of any person by whom they have been incurred or at the suit of any person entitled to receive payment in respect of them.

### **Order as to total liability**

**122.**<sup>13</sup> (1) Where the Board considers that a disability to a worker that is compensable under this Act has resulted in his permanent total incapacity for work, it may, subject to this section, make such order as to the total liability of the employer for the incapacity as the Board thinks proper in the circumstances if—

- (a) an order for redemption of the liability for the incapacity has not already been made under this Act; and
- (b) the total weekly payments by way of compensation payable under clause 7 for that disability have reached the prescribed amount.

(2) The Board shall not make an order in the exercise of its discretion under subsection (1) unless it considers an order ought to be made, having regard to the social and financial circumstances of the worker, his reasonable financial needs, and his capacity to meet those needs from any source available to him.

(3) The total liability of the employer ordered under this section shall not exceed the lesser of—

- (a) the sum of \$50 000; or
- (b) weekly payments at the rate to which the worker was entitled at the time when the total weekly payments for his disability reached the prescribed amount—
  - (i) for the period of the expectation of life of the worker; or
  - (ii) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, up to the date when weekly payments would cease by reason of age,

whichever is the shorter.

(4) In making an order under this section, the Board—

- (a) shall order weekly payments at such rate as it thinks proper in the circumstances having regard to the matters referred to in subsection (2), but not at a rate that exceeds the rate to which the worker was entitled at the time when the total weekly payments for his disability reached the prescribed amount; and
- (b) may order payment of an amount for arrears of such weekly payments from the time when the total weekly payments for the worker's disability reached the prescribed amount to the date of the order.

[Section 122 substituted by No. 85 of 1986 s. 8.]

### **Orders relating to payment of compensation in respect of persons under legal disability or who are dependants**

**123.** The Board may order that compensation, which cannot be immediately paid to any person under a legal disability to give an effective discharge for payment, or which is payable to any dependants of a deceased worker, shall be paid to the Commission and the manner in which it shall be applied, and after it is so paid there shall be liberty to apply to the Board by or on behalf of the person entitled in respect of the manner in which it is applied.

### **Particular details in order or agreement for a lump sum payment**

**124.** An order of the Board, including a consent order, or an agreement registered under Part III Division 7, for a lump sum payment shall specify the amount of any part of that lump sum that is for one or more of the following—

- (a) weekly payments of compensation, by redemption or otherwise;
- (b) compensation payable under Schedule 2, in which case the percentage loss of use shall also be specified;
- (c) redemption amount under Schedule 5 clause 4;
- (d) supplementary amount under Schedule 5 clause 2, 4 or 8;
- (e) expenses as are provided for in clauses 9, 17, 18, and 19,

as the case requires.

[Section 124 amended by No. 104 of 1984 s. 7.]

### **Publication of Board's findings**

**125.** (1) In respect of substantive applications to the Board, other than those which under this Act may be heard in Chambers, there shall, subject to the written consent of the Attorney General, be a quarterly publication, issued under the authority of the Board, of such orders,

rulings, and decisions of the Board made in the quarter to which the publication relates as the Chairman of the Board considers to be of significance in respect of the law, and its practice and procedure, under this Act.

(2) In respect of substantive applications under the repealed Act, there may, subject to the written consent of the Attorney General, be a publication, issued under the authority of the Board under this Act, of such orders, rulings, and decisions of the Board under the repealed Act, as the Chairman of the Board under this Act considers to be of significance in respect of the law, and its practice and procedure, under this Act.

**Medical practitioners, dentists, chiropractors or physiotherapists may be prohibited from charging or receiving professional fees**

126. On holding an inquiry under section 127, the Board has power to preclude a medical practitioner, dentist, chiropractor, or physiotherapist, from charging, receiving, recovering, or retaining all or any part of expenses, or fees for treatment or attendance on any worker with respect to any disability for which the worker is seeking to receive, is receiving, or has received compensation under this Act.

**Board may hold inquiries**

127. (1) The Board may, upon a complaint in writing made within 12 months after the occurrence giving rise to such complaint, by—

- (a) the Commission;
- (b) the worker;
- (c) the employer; or
- (d) a member of the worker's family or, where the case requires, the guardian of the member, when for any reason considered sufficient by the Board the worker is unable to make the complaint himself,

hold an inquiry into the conduct of any medical practitioner, dentist, chiropractor, or physiotherapist with respect to the treatment of or attendance on the worker, or to the expenses or fees charged for such treatment or attendance by the medical practitioner, dentist, chiropractor, or physiotherapist, or any other matter concerning the conduct of a medical practitioner, dentist, chiropractor, or physiotherapist, in relation to a worker who is seeking to receive, is receiving, or has received compensation under this Act.

(2) When holding an inquiry under this section into the conduct of a medical practitioner, the Board shall comprise, as well at least as its own quorum, 2 medical practitioners nominated by the Medical Board constituted under the *Medical Act 1894*, and appointed by the Governor.

(3) When holding an inquiry under this section into the conduct of a dentist the Board shall comprise, as well at least as its own quorum, 2 dentists nominated by the Dental Board of Western Australia constituted under the *Dental Act 1939*, and appointed by the Governor.

(4) When holding an inquiry under this section into the conduct of a chiropractor the Board shall comprise, as well at least as its own quorum, 2 chiropractors nominated by the Chiropractors Registration Board constituted under the *Chiropractors Act 1964*, and appointed by the Governor.

(5) When holding an inquiry under this section into the conduct of a physiotherapist the Board shall comprise, as well at least as its own quorum, 2 physiotherapists nominated by the Physiotherapists' Registration Board constituted under the *Physiotherapists Act 1950*, and appointed by the Governor.

(6) A medical practitioner, dentist, chiropractor, or physiotherapist who sits as a member of the Workers' Compensation Board shall be entitled to the prescribed fees and allowances in respect of sitting as a member.

(7) If upon the inquiry the matter of the complaint is proved to its satisfaction, the Board may do any one or more of the following—

- (a) order the medical practitioner, dentist, chiropractor, or physiotherapist to pay a fine not exceeding \$100;
- (b) order the medical practitioner, dentist, chiropractor, or physiotherapist to make repayment of such amount with respect to the fees charged by him;
- (c) make such other order for the purposes of section 126,

as the Board considers just, and effect shall be given to the order.

(8) The amount of any fine imposed under subsection (7) (a) may be recovered under the *Justices Act 1902* as if it were a fine imposed by a court of petty sessions.

(9) Where the Board orders the repayment of any amount under subsection (7) (b), the person who had paid that amount may sue and recover it.

(10) The Board may allow a complaint made under this section to be amended at any time before the completion of its inquiry into the matter of the complaint upon such terms as the Board considers just.

(11) For the purposes of this section—

- (a) "treatment of or attendance on any worker" means medical or surgical, dental, chiropractic, or physiotherapy, as the case may be, treatment of or attendance on any worker with respect to any disability for which the worker is receiving or is entitled to receive or has received compensation under this Act; and
- (b) "compensation" includes not only money payable to a worker in lieu of earnings but also other benefits for a disability to which a worker is entitled under this Act.

### **Board may regard illegal contracts of employment as valid**

**128.** If in any proceedings for the recovery under this Act of compensation for a disability it appears to the Board that the contract under which the disabled worker was engaged at the time when the disability occurred was illegal, the Board may, if, having regard to all the circumstances of the case it thinks proper to do so, deal with the matter as if the disabled person had at that time been a worker under a valid contract.

### **Fees, costs and charges *re* proceedings**

**129.** (1) Subject to this section, the Board may make such order for fees, costs, and charges in respect of proceedings before the Board, or matters under this Act which are resolved by agreement, as it thinks just, and may assess the amount of those fees, costs, and charges.

(2) All fees, costs, and charges as between the parties shall, in default of assessment by the Board or agreement between the parties, be taxed by a taxing officer of the Board but the taxation may be reviewed by the Board on the application of either party.

(3) Fees, costs, or charges shall not be allowed unless they are sanctioned by the rules.

(4) Where a worker is a party in any proceedings before the Board in respect of his disability or alleged disability, or matters incidental thereto, or in any matter under this Act which is resolved by agreement, fees, costs, or charges shall not be payable by the worker to another party to those proceedings unless the Board is satisfied that—

- (a) the worker's participation in the proceedings was frivolous, vexatious, fraudulent, or without reasonable cause; or
- (b) the worker or his representative, without reasonable cause, is responsible for causing to the Board or the other party, or both, any one or more of the following—
  - (i) inconvenience;
  - (ii) delay;
  - (iii) expense.

(5) Fees, costs, and charges of proceedings before the Board, and any matter under this Act which is resolved by agreement, as between legal practitioner and client may be taxed by a taxing officer of the Board, but the taxation may be reviewed by the Board on the application of the legal practitioner or client.

(6) Where in any proceedings before the Board or in any matter under this Act which is resolved by agreement costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default the Board may make against any legal practitioner whom it considers to be responsible (whether personally or through a servant or agent) an order—

- (a) disallowing the costs, as between the legal practitioner and his client;
- (b) directing the legal practitioner to repay his client costs which

the client has been ordered to pay to any other party to the proceedings; and

- (c) directing the legal practitioner personally to indemnify any other than his client against costs payable by the party indemnified.

(7) An order under subsection (6) shall not be made against a legal practitioner without giving him a reasonable opportunity to appear before the Board and show cause why the order should not be made, unless any proceedings before the Board cannot conveniently proceed, and fail or are adjourned without useful progress being made—

- (a) because of the failure of the legal practitioner to attend in person or by a proper representative; or
- (b) because of the failure of the legal practitioner to deliver any document for the use of the Board which ought to have been delivered, or to be prepared with any proper evidence or account, or otherwise to proceed.

(8) The Board before making an order under subsection (6) may refer the matter to a taxing officer of the Board for inquiry and report.

(9) The Board may direct that notice of any proceedings or order against a legal practitioner under subsection (6) shall be given to his client in such manner as may be specified in the direction.

*[Section 129 amended by No. 44 of 1985 s. 29.]*

### *Division 2—Proceedings of the Board*

#### **Requirements for taking proceedings**

**130.** (1) Proceedings for the recovery under this Act of compensation for a disability shall not be maintainable unless—

- (a) a notice of the occurrence of the disability has been given as soon as practicable after its happening; and
- (b) the claim for compensation with respect to such disability has been made within 12 months from the occurrence of the disability or, in case of death, within 12 months from the time of death;

but—

- (c) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the State, or other reasonable cause; and
- (d) the failure to make a claim within the period mentioned in paragraph (b) shall not be a bar to the maintenance of such proceedings, if it is shown that the employer has not been



prejudiced in his defence by such failure, or if it is found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

(2) Notice in respect of a disability under this Act shall give the name and address of the person disabled, and shall state in ordinary language the cause of the disability and the date and place at which the disability occurred, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.

(5) When the employer is the Crown in right of the the State notice shall be served on the State Crown Solicitor, at Perth, or the manager of the work upon which the workman was employed at the time of the accident.

### **Worker making statement to employer or insurer**

**131.** Where a worker, after a disability has occurred, makes a statement in writing, in relation to the disability to his employer or to an insurer or to any person acting on behalf of the employer or insurer, the statement shall not be admitted in evidence if tendered by the employer or insurer or used by the employer or insurer in substantive proceedings before the Board unless the employer or insurer has at least 28 days before the hearing of those proceedings supplied to the worker or to a solicitor or agent acting on behalf of the worker in the proceedings a copy in writing of the statement.

### **Employer having report relating to a worker**

**132.** Where an employer or insurer has in his possession a copy of a report relating to a worker who has suffered a disability, being a report by—

- (a) a medical practitioner, by whom the worker has been referred to another medical practitioner for treatment or tests related to the disability;
- (b) a medical practitioner who has treated the worker for the disability; or
- (c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the disability,

and the worker's claim is disputed, the employer or insurer shall at the request of the worker or a solicitor or agent acting for him in the proceedings and within 7 days of such request supply to the worker, solicitor or agent, as the case may be, a copy of the report.

**Evidence of communication between worker and officer of Commission**

**133.** Evidence of any communication between a worker and a person employed by the Commission and acting in the capacity of a social worker or rehabilitation counsellor is not admissible in proceedings before the Board unless, during the course of the proceedings, the worker consents to the evidence being so admitted.

**Proceedings before the Board**

**134.** (1) Except in prescribed cases or circumstances, or both, proceedings before the Board shall be conducted in public.

(2) The Board may—

- (a) adjourn the proceedings to any time or place;
- (b) summon a medical referee to sit with the board as an assessor; and
- (c) submit to a medical panel for report any matter which the Board considers material to any question arising out of the proceedings.

**Payment of compensation awarded**

**135.** Any sum awarded as compensation shall, unless paid into the custody of the Commission and in the absence of any order, be paid on the receipt of the person to whom it is payable under any agreement, award, or order.

*Division 3—Appeals and Cases Stated***Appeal**

**136.** (1) A party to any proceedings before the Board who is dissatisfied with a final determination or order of the Board may appeal from the determination or order to the Full Court of the Supreme Court.

(2) A party to any proceedings before the Board who is dissatisfied with a determination or order of the Board which is not a final determination or order may by leave of the Supreme Court or a Judge of the Supreme Court appeal to the Full Court.

**Procedure and jurisdiction**

**137.** (1) An appeal under section 136 shall be made in such manner and within such time as an appeal from a judgment or order of the Supreme Court or a Judge of the Supreme Court may be made to the Full Court and in all respects the jurisdiction, powers and subject to Rules of Court the practice and procedure of the Full Court in the appeal shall be

the same as though the appeal were an appeal to the Full Court from a judgment or order of the Supreme Court or a Judge of the Supreme Court.

(2) The Full Court has jurisdiction to hear and determine the appeal accordingly and to make such orders as it thinks fit with regard to the appeal and to the costs of and incidental to the hearing and determination of it.

### **Board may state case**

**138.** (1) When a question of law arises in any proceedings before the Board, the Board may of its own motion state a case for the decision of the Full Court of the Supreme Court on that question.

(2) A case may be stated under this section notwithstanding that an award, order, direction, or decision has been made or given by the Board.

### **Indemnity as to costs**

**139.** Where the Board has stated a case for the decision of the Full Court of the Supreme Court, the Board may in its absolute discretion indemnify any of the parties against the costs or part of the costs of any proceedings resulting from a case being stated and any moneys payable to a party by reason of that indemnity when certified by the Board as payable shall be paid by the Commission out of the General Fund.

### **Powers of Full Court**

**140.** The Full Court of the Supreme Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to that case and to the costs of and incidental to the consideration and determination of it.

### **Supplementary Board**

**140A.** In this Division, unless the context otherwise requires, "Board" includes a Supplementary Workers' Compensation Board constituted under this Act before the coming into operation of the *Workers' Compensation and Assistance Amendment Act (No. 2) 1983*<sup>1</sup>.

[Section 140A substituted by No. 79 of 1983 s. 6.]

## *Division 4—Enforcement*

### **Awards of the Board**

**141.** A certificate of the Board in the form and containing the particulars prescribed showing an award or order in favour of one party against another or a certificate of the Registrar of the Board in the form

and containing the particulars prescribed of a memorandum of agreement, and the recording of it, as to the amount of compensation payable, may be produced to the Registrar or other proper officer of the District Court.

### **Payments from the General Fund**

**142.** Where the Commission has paid from the General Fund an amount required to satisfy an award or order the Commission may produce to the Registrar or other proper officer of the District Court—

- (a) a certificate of the Board in the form, and containing the particulars, prescribed showing that amount; and
- (b) a certificate of the Commission in the form, and containing the particulars, prescribed showing that section 174 applies and the payment has been made.

### **Fees, costs, and charges**

**143.** Where pursuant to an award or order of the Board fees, costs, and charges are payable by one party to another—

- (a) a certificate of the Board in the form, and containing the particulars, prescribed;
- (b) an agreement between the parties; or
- (c) a certificate of the taxing officer of the Board in the form, and containing the particulars, prescribed, or if his taxation of fees, costs, and charges has been reviewed by the Board, a certificate of the Board in the form, and containing the particulars, prescribed,

as the case requires, as to the amount of those fees, costs, and charges, may be produced to the Registrar or other proper officer of the District Court.

### **Effect of producing certificate**

**144.** (1) On production of a certificate as mentioned in section 141, 142, or 143, the Registrar or other proper officer of the District Court shall forthwith register the same by entering the particulars of the certificate in a book to be kept by such an officer and to be called "Register of Workers' Compensation Judgments".

(2) From the date of registration the certificate shall be a record of the District Court, and shall have the same force and effect in all respects as a judgment of that court, and the like proceedings (including proceedings in bankruptcy or insolvency) may be taken upon the certificate as if payment of the amount under this Act in terms of the certificate was ordered by a judgment of the District Court, and interest shall be payable under the certificate at a like rate to the rate, if any, applicable to an order for payment of such an amount in a judgment of the District Court.

(3) A certificate shall not be so registered after the lapse of 12 months from the date on which the amount became due and payable under this Act, unless leave in that behalf has first been obtained from the District Court.

(4) The District Court may, upon being satisfied that the registration was reasonably justified under the circumstances, order that the fees, costs, and charges of registration and other proceedings under this Division be assessed by that court, but not exceeding the amount, if any, prescribed, be paid by the person by whom the amount the subject of the certificate is payable to the person to whom it is payable in terms of the certificate.

(5) Any order under subsection (4) shall be deemed to be incorporated with the certificate, and the amount payable under the order to be payable under the certificate.

(6) Execution shall not be issued or other proceedings taken upon such a certificate unless an affidavit is first filed in the District Court made by the person to whom the amount is payable in terms of the certificate or by some other person cognizant of the facts of the case, stating that the amount for which the execution is proposed to be issued is actually due and unpaid, and execution shall not be issued for a larger amount than that sworn to.

(7) The District Court shall, in respect of execution upon the certificate and enforcement of payment of the amount in terms of the certificate, have the same control and jurisdiction in relation to that certificate as if that amount was payable under a judgment of the District Court.

(8) The District Court may on the application of any person by whom the amount is payable in terms of the certificate, order a stay of proceedings on such a certificate.

(9) An order under subsection (8) may be made on such terms as to giving security, or to making application to the Board to set aside the certificate, or otherwise, as to the District Court may seem fit.

(10) When—

- (a) such a certificate is registered in the District Court;
- (b) any execution is issued or other proceedings are taken in the District Court upon the certificate; or
- (c) satisfaction of the amount in terms of the certificate in whole or in part is entered in the District Court upon the certificate,

the Registrar or other proper officer of the District Court shall forthwith give notice to that effect in writing under the seal of the District Court to the Registrar of the Board.

## PART VII—MEDICAL PANELS AND THE REGISTER OF SPECIALISTS

**Board may refer to medical panel *re* Schedule 2 injuries**

**145.** When any question arises as to the loss of, or the permanent loss of the efficient use of, any of the parts or faculties of the body referred to in column 1 of Schedule 2, or to the degree of that loss, the Board may refer the question to a medical panel of 3 medical practitioners, registered under the *Medical Act 1894*, and the determination of the question by them, or by the majority of them, shall be final and binding on the worker and his employer, and on any tribunal hearing a matter in which any such determination is relevant.

**Medical Board shall prepare and maintain "Register of Specialists"**

**146.** (1) The Medical Board appointed pursuant to the *Medical Act 1894*, shall for the purposes of this Act, prepare and maintain a register to be called "Register of Specialists", containing the names of all qualified medical practitioners practising in Western Australia who have made a special study of some particular branch of medicine or surgery and who are recognized by the Medical Board as specialists in that particular branch, and shall furnish the Commission with a list containing the names of specialists recorded in the register and the particular branch of the profession in which each has specialized and shall also immediately advise the Commission of any name added to or removed from the register.

(2) Where the Medical Board is of the opinion that a medical practitioner, whose name appears in the Register of Specialists as a specialist in a particular branch of medicine or surgery, has ceased to be a specialist in that branch, the Medical Board may remove his name from the register.

(3) No action shall be maintained or brought against the Medical Board or any member of that Board by reason of any thing done or omitted in good faith in the discharge of the duties imposed by this section.

## PART VIII—PREMIUM RATES COMMITTEE

**Premium Rates Committee**

**147.** (1) For the purposes of this Act there is established a committee by the name of Premium Rates Committee.

(2) The Committee is to consist of—

- (a) the Auditor General as a member and Chairman;
- (b) the managing director of the State Government Insurance Commission as a member;
- (c) the Executive Director as a member;

(d) 3 other members appointed by the Governor, on the recommendation of the Minister, and referred to as nominee members of whom—

- (i) one shall be a person experienced in management affairs in commerce or industry, or both;
- (ii) one shall be a person experienced in trade union affairs; and
- (iii) one shall be a person experienced in insurance business but not employed in The State Government Insurance Commission or the State Government Insurance Corporation;

(3) Before making recommendations for the purposes for subsection (2) (d) (i), (ii), and (iii) respectively, the Minister may, in writing, request the bodies known as—

- (a) The Confederation of Western Australian Industry (Incorporated);
- (b) the Trades and Labor Council of Western Australia; and
- (c) the Western Australian Regional Advisory Board of the Insurance Council of Australia Limited,

respectively, to submit the name of a person, or the names of such number of persons as is specified in the request, who, or each of whom, has the required qualification and is willing to act as a nominee member.

(4) The Governor may, on the recommendation the Minister,—

- (a) appoint a person as deputy of an *ex officio* member; and
- (b) appoint as deputy of a nominee member a person qualified for appointment to the office of that nominee member, and subsection (3) applies in respect of such a recommendation which such modifications as are necessary.

(5) In the absence, for any reason, of a member from a meeting of the Committee his appointed deputy may attend the meeting and while so attending has all the powers, authorities, functions, and duties of a member.

[Section 147 amended by No. 51 of 1986 Schedule 3 (10); No. 86 of 1986 s. 5.]

### **Term of appointment**

**148.** Subject to this Act, a nominee member is entitled to hold office for such period not exceeding 3 years as is specified in the instrument of his appointment but is eligible for reappointment.

### **Vacancies**

**149.** (1) A nominee member may resign his office by writing signed by him and delivered to the Minister but the resignation does not have effect until accepted by the Minister.

(2) The Governor may terminate the appointment of a nominee member—

- (a) for mental or physical disability or for misbehaviour; or
- (b) for other good cause, whether the events or circumstances giving rise to that good cause occurred before, on, or after the date on which the appointment took effect.

(3) If a nominee member—

- (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) absents himself except on leave granted by the Minister from 3 consecutive meetings of the Committee;
- (c) resigns and his resignation is accepted; or
- (d) has his appointment terminated pursuant to subsection (2),

the office of that nominee member becomes vacant.

(4) Where the office of a nominee member becomes vacant otherwise than by effluxion of time, the Governor may, on the recommendation of the Minister, appoint to the vacant office for the unexpired part of the term of the office a person who is eligible for appointment to that office and section 147 (3) applies in respect of such a recommendation with such modifications as are necessary.

(5) The Committee shall hold such meetings at such times and places as are necessary to enable it to exercise and discharge the powers, authorities, functions, and duties conferred or imposed upon it under this Act and the Minister may at any time require the Chairman to convene a meeting of the Committee to consider such matters as the Minister specifies.

(6) The Chairman is to preside at all meetings of the Committee at which he is present and in his and his deputy's absence the members present may appoint one of their members to preside.

(7) At a meeting of the Committee 4 members constitute a quorum.

(8) Any question arising at a meeting is to be decided by a majority of the members present and voting.

(9) The member presiding at a meeting has a deliberative vote and in the event of an equality of votes has a casting vote.

(10) The Committee is to cause accurate minutes to be kept of its proceedings at meetings.

(11) To the extent that it is not prescribed the Committee may determine its own procedure.

(12) An act, proceeding, or determination of the Committee is not invalid on the ground only of vacancy in the office of a member or any defect in the appointment of a member or his deputy.



### **Conditions of appointment**

**150.** (1) A member is not required to devote the whole of his time to the duties of his office.

(2) A nominee member is to be paid such fees and allowances as may be fixed by the Minister on the recommendation of the Public Service Board.

### **Fixing premiums**

**151.** For the purpose of fixing premium rates to be charged for insurance in respect of all insurable risks under this Act, the following provisions apply—

(a) the Committee shall from time to time—

(i) fix categories of businesses or groups of businesses each with a different insurable risk and specify the types of business or occupation within each category;

(ii) on the basis formulated pursuant to paragraph (b) fix the appropriate recommended premium rate for each category; and

(iii) fix an additional industrial disease premium to cover claims in respect of pneumoconiosis and mesothelioma arising from employment in any mine or mining operation and claims in respect of other industrial diseases as may be specified by the Minister from time to time by notice published in the *Gazette*, which industrial disease premium shall be paid by employers in categories to be specified by the Committee pursuant to paragraph (c) in respect of such claims;

(b) formulate a basis expressed as a loss ratio for a category on which basis the Committee may fix for each category a recommended premium rate pursuant to paragraph (a) (ii); and

(c) the Committee<sup>14</sup> may specify each category of businesses being a category fixed by the Committee under paragraph (a) (i) or a category specially fixed by the Minister the employers within which category are liable to pay the industrial disease premium at a rate specified by the Committee for that category.

[Section 151 amended by No. 44 of 1985 s. 30.]

### **Loading not to exceed 50%**

**152.** An insurer shall not charge a loading on a recommended premium rate of more than 50% of that rate.

### Fixing maximum

**153.** Subject to section 152, the Commission may, on the recommendation of the committee, set the maximum permissible loading or the maximum permissible discount which may be charged or given in respect of a recommended premium rate.

### Minimum premiums

**153A.**<sup>15</sup> The Committee may recommend a minimum premium for a policy or for any kind or description of policy, of insurance against liability to pay compensation under this Act, and an insurer may, notwithstanding sections 152 and 153, charge the premium so recommended or a lesser premium.

*[Section 153A inserted by No. 33 of 1986 s. 6.]*

### Appeals

**154.** (1) An employer who is dissatisfied with—

- (a) the category in which his business is specified under section 151 (a)(i); or
- (b) the amount of the premium which an insurer assesses as required to insure him under this Act at the time of issue or renewal of the policy,

may appeal against the classification to the Minister or against the assessment to the Committee in the manner and within the time provided in subsections (2) and (4).

(2) Within one month of being informed of the classification or assessment to which he objects the employer may give written notice of appeal—

- (a) where it is against classification, to the Minister, the Committee, and the insurer; or
- (b) where it is against assessment, to the committee and the insurer,

stating the grounds of his objection and the classification or assessment, as the case may be, he seeks.

(3) Notwithstanding the notice of appeal the employer is to pay the premium as assessed by the insurer and the insurer is to issue or renew the policy.

(4) The Minister or the Committee, as the case requires, may fix a time and place for the hearing of an appeal pursuant to subsection (1) and laying down his or its own procedure may hear and determine the appeal and in the case of the Minister decide the proper classification or in the case of the Committee decide the proper assessment of the premium not exceeding that assessment initially sought by the insurer.

(5) If the effect of a decision on the appeal is that a lesser sum is payable by way of premium than that already paid to the insurer the insurer shall forthwith repay to the employer the amount of the overpayment and if he does not do so the employer may sue and recover the amount from the insurer.

(6) If an insurer other than The State Government Insurance Commission is not willing to continue to insure the employer for the premium determined on an appeal pursuant to subsection (4), the insurer may upon giving notice to the employer and to The State Government Insurance Commission and upon paying to that Commission that part of the premium so determined and paid as is proportionate to the unexpired period of the policy assign the insurer's interests and obligations under the policy to The State Government Insurance Commission which Commission shall accept the assignment and become as from but excluding the day of the assignment the employer's insurer under the assigned policy.

(7) After an assignment pursuant to subsection (6) has occurred The State Government Insurance Commission may appeal as provided in subsection (8) against the continuation in any subsequent renewal of the policy of a classification or assessment which has been decided by the Committee pursuant to subsection (4).

(8) An appeal under subsection (7)—

- (a) against the continuation of a classification shall be to the Minister and is constituted by giving written notice of appeal to the Minister, the Committee, and the employer;
- (b) against the continuation of an assessment shall be to the Committee and is instituted by giving written notice of appeal to the Committee and the employer,

and the written notice shall state the grounds of The State Government Insurance Commission's objections and the classification or assessment, as the case may be, that Commission seeks.

(9) The Minister or the Committee, as the case requires, may fix a time and place for the hearing of an appeal pursuant to subsection (7) and laying down his or its own procedure may hear and determine the appeal and reconsider and in the case of the Minister decide the proper classification or in the case of the Committee decide the proper assessment of the premium not exceeding that assessment initially sought by The State Government Insurance Commission.

(10) The decision on an appeal provided for in subsection (1) or subsection (7) is final and binding on the parties thereto.

*[Section 154 amended by No. 51 of 1986 Schedule 3 (10).]*

#### PART IX—REHABILITATION

##### **Notification of period of incapacity exceeding 12 weeks**

**155.** (1) An insurer or a self-insurer shall, not later than the expiration of the prescribed period, give to the Commission in writing the prescribed particulars with respect to a worker whose period of incapacity the insurer or self-insurer knows has exceeded a period of 12 weeks, or

knows has exceeded, in sum, 12 weeks during any period of 12 months commencing on or after the coming into operation of section 31 of the *Workers' Compensation and Assistance Amendment Act 1985*<sup>1</sup> in respect of which notice has not already been given.

(2) In subsection (1), "prescribed period" means—

- (a) where the period of 12 weeks' incapacity expired before the date of the coming into operation of this section—the period of 21 days that next succeeds that date;
- (b) where the period of 12 weeks' incapacity expires after that date but before the expiration of the period of 21 days that next succeeds that date—the period of one month that next succeeds that date; and
- (c) where the period of 12 weeks' incapacity expires more than 21 days after that date—the period of 7 days that next succeeds that period of 12 weeks.

(3) An insurer or a self-insurer who fails to comply with subsection (1) commits an offence.

Penalty: \$1 000.

[*Section 155 amended by No. 44 of 1985 s. 31.*]

### **Further inquiries**

**156.** The Commission may make such further inquiries and obtain such information as it thinks appropriate regarding the worker's disability, his incapacity, and the prognosis in respect of that disability or incapacity.

[*Section 156 amended by No. 44 of 1985 s. 32.*]

### **Worker may be required to attend medical examination**

**157.** (1) The Commission may at any time, and shall at least once during every period of 12 months for which a worker is incapacitated; require the worker to attend a specialist for medical examination and assessment of the means and prospects of rehabilitation and to attend for such assessment on other professional groups, associations, or organizations approved by the Commission for that purpose.

(2) The Commission may at any time require the worker to undertake treatment by way of rehabilitation or a programme of occupational or vocational training.

[*Section 157 amended by No. 44 of 1985 s. 33.*]

## **Rehabilitation programme**

**158.** (1) The Commission may—

- (a) co-ordinate a programme for the worker's rehabilitation, and occupational and vocational training;
- (b) obtain estimates of the likely cost of and authorize expenditure not exceeding \$2 000 on a programme of occupational and vocational training;
- (c) obtain estimates of the likely cost of and authorize expenditure not exceeding \$2 000 for aids, appliances, services or other items of expenditure to assist the rehabilitation of the worker.

(2) The Commission may—

- (a) extend, modify, suspend, or terminate a programme;
- (b) authorize expenditure exceeding \$2 000 for occupational and vocational training in any case it considers it appropriate to do so;
- (c) authorize expenditure exceeding \$2 000 for aids, appliances, services or other items of expenditure to assist the rehabilitation of the worker.

*[Section 158 amended by No. 85 of 1986 s. 9.]*

## **Co-ordinating facilities**

**159.** The Commission may make arrangements with other persons or authorities for the use of facilities for the training and treatment of workers and for co-ordinating the use of available facilities.

## **PART X—INSURANCE**

### *Division 1—Liability of Employers and Insurers*

## **Employer to obtain insurance**

**160.** (1) Subject to this Act, every employer shall obtain from an incorporated insurance office approved by the Minister and shall keep current a policy of insurance for the full amount of his liability to pay compensation under this Act to any worker employed by him including any increase in amount occurring during currency of the policy.

(2) An employer obliged by this section to effect or renew a policy of insurance shall, on applying to an incorporated insurance office, for that purpose, furnish to that office an estimate, made to the best of that employer's knowledge, information and belief, of the aggregate amount of wages, salaries, or other remuneration to be paid to the employer's workers including any amounts paid to workers employed under an agreement to perform—

- (a) a specified quantity of work for a specified sum;

(b) work on piece rates; or

(c) work on a bonus or commission system for payment by results, over the period for which the policy is to be effected or renewed; and shall forthwith after the termination of that period furnish a statement of the aggregate amount of those wages paid in fact and shall include in that statement every sum paid during that period to an employee in respect of overtime worked by the employee, and such employer shall verify the particulars furnished in such statement by a statutory declaration made by the employer under section 106 of the *Evidence Act 1906*.

(2a) Where an employer applying to an incorporated insurance office under subsection (2) is a company, that employer shall, in relation to each of its workers who is—

(a) a director of the company; and

(b) engaged or employed by or working for the company, furnish to that office, in addition to the information required to be furnished by that employer to that office under subsection (2)—

(c) the name of the worker; and

(d) in relation to that worker in particular, the information, verified as required under subsection (2), that the employer is required under that subsection to furnish in relation to the employer's workers.

(3) Any incorporated insurance office which has received the approval of the Minister under section 161—

(a) shall, unless permitted by the Commission to refuse insurance, or the continuance of insurance, of the liability mentioned in subsection (1), wholly or in part or to treat a policy of insurance as void, insure any employer requesting it for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him; or

(b) if permitted by the Commission to refuse insurance of that liability in part, shall issue a policy of insurance for the residue of that liability.

Penalty: \$2 000.

(4) Where a policy of insurance obtained by an employer from an approved insurance office under this section has lapsed, and—

(a) the employer is not insured against his liability to pay compensation under this Act;

(b) the employer has incurred liability to pay compensation under this Act after the lapsing of the policy of insurance; and

(c) not more than 7 days have elapsed from the time when the Commission received from that approved insurance office a statement in respect of the lapsed policy under section 171 (1) (b),

the approved insurance office shall, notwithstanding the lapse of the policy of insurance, be liable to indemnify the employer in respect of that liability as if the liability were incurred during the term of the policy of insurance.

[Section 160 amended by No. 44 of 1985 s. 34; No. 85 of 1986 s. 10.]

### **Penalty—issue or renewal of policy without approval**

**161A.** An incorporated insurance office shall not issue or renew a policy insuring an employer against his liability to pay compensation under this Act unless the incorporated insurance office is approved by the Minister under section 161 and the approval is not suspended at the time of the issue or renewal of the policy or has not been revoked by the Minister.

Penalty: \$2 000.

[Section 161A inserted by No. 44 of 1985 s. 35.]

### **Approvals**

**161.** (1) For the purpose of this Part "incorporated insurance office" includes any duly incorporated company carrying on business in the State under the *Insurance Act 1973* of the Commonwealth.

(2) An approval of an incorporated insurance office granted by the Minister under the repealed Act and current immediately before the coming into operation of this Part continues by virtue of this Act and is deemed to be an approval granted under this section.

(3) The Minister may grant approval to an incorporated insurance office which makes application to become approved under this section.

(4) The Commission may at any time, and shall if and when so directed by the Minister, investigate the material and financial resources available to an incorporated insurance office which has applied for, or has been granted, approval under subsection (3).

(5) Where an incorporated insurance office, being approved—

- (a) fails or refuses to comply with the requirements of this Act;
- (b) fails, or refuses to comply with the requirements of the *Employers' Indemnity Supplementation Fund Act 1980*<sup>16</sup>;
- (c) fails in the opinion of the Minister on the advice of the Commission, to have sufficient material and financial resources available to it to discharge its obligations for the purposes of this Act; or
- (d) so requests,

the Minister may revoke or suspend and thereafter withhold his approval of that office, but may not do so in any other case.

**The State Government Insurance Commission sole insurer against certain industrial diseases**

**162.** (1) The State Government Insurance Commission is the only insurer authorized to issue or renew a policy insuring an employer against his liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151 (a) (iii).

(2) Nothing in subsection (1) affects the rights and liabilities of the parties to any contract of insurance existing immediately before the day on which this Part comes into operation for the period of the contract unexpired immediately before that day.

*[Section 162 amended by No. 51 of 1986 Schedule 3 (10).]*

**Payment of industrial disease premium and issue of policy**

**163.** An employer required to pay an industrial disease premium under this Act shall pay that premium to The State Government Insurance Commission which is bound to issue a policy insuring the employer against his liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151 (a) (iii).

*[Section 163 amended by No. 51 of 1986 Schedule 3 (10).]*

**Exempt employer**

**164.** (1) Notwithstanding section 160 if an employer or group of employers prove to the satisfaction of the Minister that such employer or group has established an adequate fund for insurance against liability under this Act having regard to the number of workers employed and the category of insurable risk of the employer's or the group's business or businesses and has deposited at the Treasury securities charged with all payments to become due under such liability the Governor may exempt such employer or group from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151 (a) (iii).

(2) An exemption granted under section 13 of the repealed Act and current immediately before the day on which this Part comes into operation is deemed to be an exemption granted under this Part and subject to review as provided by section 165.

**Review of exemptions**

**165.** (1) On or before 30 June 1982 and thereafter at least once in each period of one year and also when so required by the Minister the Commission shall review all exemptions granted pursuant to section 164.

(2) After a review the Minister may require an increase or permit a decrease in the value of the securities deposited at the Treasury pursuant to section 164 (1) by an employer or group of employers having regard to—

- (a) the number of workers then employed by the employer or group;



- (b) the current category of the insurable risks of the business or businesses of the employer or group;
- (c) the claims experience since the last review of the employer or group; or
- (d) any change in the extent of the liability to pay compensation under this Act since the last review.

(3) The Minister may after a review recommend to the Governor that an exemption be cancelled—

- (a) for any reason which seems to him to justify doing so in the interests of securing the workers' entitlements to compensation; or
- (b) because of a failure to deposit at the Treasury any securities directed by the Minister to be deposited under subsection (4) (b),

and the Governor may then cancel the exemption.

(4) Where—

- (a) under subsection (2) the Minister permits a decrease in the value of the securities deposited at the Treasury by an employer or group of employers the Minister may order that those securities no longer required to be deposited at the Treasury be discharged from the charge and returned to the employer or the group, as the case may be;
- (b) the Minister requires an increase in the value of securities deposited by an employer or group of employers—
  - (i) the Minister may direct the employer or group to deposit at the Treasury such securities charged with all payments to become due under the employer's or group's liability under this Act, in addition to the securities already deposited, as the Minister determines; or
  - (ii) the Minister may direct that the securities deposited at the Treasury by that employer or group of employers be discharged from the charge and returned to the employer or group and that the employer or group deposit at the Treasury further securities to the value determined by the Minister charged with all payments to become due under the employer's or group's liability under this Act.

*[Section 165 amended by No. 44 of 1985 s. 36.]*

### **Other cancellations**

**166.** Where an employer who is exempt, or who is one of a group of employers who is exempt, under section 164, fails or refuses to comply

with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*<sup>16</sup>, the Governor may cancel the exemption of or in respect of that employer.

### **Effect of cessation of exemption**

**167.** Each employer including a member of a group of employers who ceases to be exempt under section 164 shall forthwith insure as required by section 160.

### **Cessation of exemption**

**168.** Where an employer or group of employers which is exempt under section 164—

- (a) applies to the Minister for a revocation of such exemption and for the return of securities lodged by it or them with the Treasury discharged from the charge referred to in section 164 (1); or
- (b) proves to the satisfaction of the Minister that—
  - (i) the employer or group, as the case may be, has ceased to employ workers; or
  - (ii) he or they have obtained from an approved incorporated insurance office a policy of insurance for the full amount of liability to pay compensation under this Act to all workers employed by him or them; and
  - (iii) there are no outstanding claims for compensation; or
  - (iv) satisfactory provision has been made for discharging any outstanding claims for compensation,

the Governor may by Order in Council revoke the exemption and order that the securities be discharged from the charge and returned to the employer or the group, as the case may be.

### **Forms of policy**

**169.** The Governor may determine the form in which any policy of insurance made obligatory under this Act is to be effected and upon a form being so determined any policy in respect of which it is determined shall insofar as it relates to insurance or indemnity under this Act be effected, or in the case of an existing policy renewed in that form.

### **Penalty—uninsured worker**

**170.** (1) An employer who fails to comply with section 160 (1) commits an offence and is liable to a penalty of \$1 000 in respect of each worker employed by him to whom the offence relates; and that employer commits a separate and further offence in respect of each week after the day of conviction during which section 160 (1) is not complied with by

him in respect of a worker to whom the original offence related, and is liable in respect of each such separate and further offence to a penalty of \$1 000 for each such worker; and in addition subsection (2) applies.

(2) Where an employer is convicted of an offence referred to in subsection (1), that employer shall pay to the General Fund an amount which the Executive Director of the Commission certifies is equal to the insurance premium avoided, and the Commission may sue and recover that amount from the convicted employer for the General Fund, and on recovery the Commission shall pay that amount into the General Fund.

(3) A complaint for an offence under this section may be made at any time within 2 years from the time when the matter of complaint arose.

(4) In any prosecution for an offence under this section, proof that the employer, not being a self-insurer, having been served under section 172A with a notice requiring him to produce for inspection a policy of insurance referred to in section 160 (1) obtained by him and in force at a specified date or between specified dates, has not produced that policy and that the time stated in the notice for such production has expired shall be *prima facie* evidence that at that specified date or between those specified dates, as the case may be, the employer had failed to comply with section 160 (1) and the burden of showing that he had complied with section 160 (1) shall rest on the employer.

(5) Where a body corporate commits an offence mentioned in subsection (1), every director or other officer concerned in the management of the body corporate commits the like offence unless he proves that the offence was committed by the body corporate without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence by the body corporate as he ought to have exercised having regard to the nature of his functions in that capacity and to all of the circumstances.

[Section 170 amended by No. 44 of 1985 s. 37; No. 33 of 1986 s. 7; No. 86 of 1986 s. 5.]

### Insurance offices to furnish certain statements

**171.** (1) Every approved insurance office shall within 14 days of the close of each calendar month transmit to the Commission—

- (a) a statement in the prescribed form giving details of each employer who has during the month in question effected or renewed a policy or contract of insurance with the insurance office concerned against liability under this Act; and
- (b) a statement in the prescribed form giving details of each employer in respect of whom the insurance office concerned has during the month in question marked in its books as lapsed a policy or contract of insurance under this Act.

(2) Such a statement shall be signed by a responsible officer of the insurance office concerned.

(3) A person, except with the express authority of the Commission, shall not have access to, inspect, or peruse any such statement, and the information contained therein shall be treated as strictly confidential and shall not, except for the purposes of this Act, be disclosed to any person.

Penalty: \$200.

(4) If any statement required by this section is false in any particular to the knowledge of any person who signs it, that person commits an offence.

Penalty: \$2 000.

[Section 171 amended by No. 44 of 1985 s. 38.]

### **Minister may authorize persons to inquire if employers have obtained insurance**

**172.** (1) A person authorized in writing by the Minister in that behalf may make such inquiry from any employer whose name does not appear in any statement required under section 171 (1) (a) or whose name does not appear in any statement required under section 171 (1) (b) (unless in the latter case the employer's name appears in any statement required under section 171 (1) (a) ), as may be necessary, to ascertain whether such an employer has obtained and kept current a policy of insurance as required by section 160.

(2) A person authorized by the Minister under this section shall produce his written authority from the Minister, when interrogating such an employer in the execution of his duties under this Act.

(3) A person authorized by the Minister under this section shall, before entering on the performance of his duties under this Act, take and subscribe before a Justice of the Peace an oath or affirmation to the effect that he will not, except for the purposes of this Act and the exercise of his duties thereunder, disclose to any person any information acquired by him in his official capacity, and a person who wilfully does so commits an offence.

Penalty: \$200.

(4) A person who obstructs, hinders, prevents, or interferes with any person so authorized in the exercise of the powers conferred upon him by this section, or who refuses or fails to produce for the inspection of any person so authorized any policy or contract of insurance when requested by such person, and obliged under this section to do so, commits an offence.

Penalty: \$200.

### **Inspection of policy**

**172A.** A person authorized in writing by the Minister under section 172 may by notice in writing require an employer, not being a self-insurer—

- (a) to produce, on or before the day specified in the notice, for inspection by that person, a policy of insurance as required by section 160 obtained by the employer and in force at such date or between such dates, as the notice specifies; and
- (b) to furnish such particulars in relation thereto as the notice may specify.

*[Section 172A inserted by No. 44 of 1985 s. 39.]*

### **Workers' rights against insurer**

**173.** (1) Where during the currency of a contract between an employer and an insurer in respect of the employers' liability under this Act to a worker the employer dies, or in the case of a corporation other than a company which has commenced to be wound up, ceases to exist or the employer cannot be found or no longer resides in Australia or in a Territory within Australia, then in any such circumstance—

- (a) the worker has the same rights and remedies against the insurer; and
- (b) the insurer has, to the extent of his liability under the contract, the same liability to the worker and the same rights and remedies in respect of the liability,

that the employer otherwise would have had under the contract.

(2) Where, under subsection (1), the liability of the insurer of an employer is less than that which the liability of the employer to the worker would have been, the worker may proceed for the balance against the personal representative of the employer.

### **Payment to worker from General Fund**

**174.** Where—

- (a) compensation in accordance with this Act is due by an employer to a worker (other than a worker in respect of whom refusal of insurance is permitted pursuant to this Act);
- (b) the employer is not insured against his liability to pay compensation to the worker under this Act or the case is one to which section 173 (2) applies; and
- (c) the employer does not pay the compensation due within 30 days of the obtaining of an award by the worker or his representative,

the Commission shall pay to the worker from the General Fund the amount required to satisfy the award and any award for costs in respect thereof, and the Commission may sue and recover that amount from the employer.

*Division 2—Insurance by Principals, Contractors,  
and Sub-Contractors*

**Principal and contractor, and sub-contractors deemed employers**

**175.** (1) Where a person (in this section referred to as the principal) contracts with another person (in this section referred to as the contractor) for the execution of any work by or under the contractor and, in the execution of the work, a worker is employed by the contractor, both the principal and the contractor are, for the purposes of this Act, deemed to be employers of the worker so employed and are jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

(2) The principal is entitled to indemnity from the contractor for the principal's liability under this section.

(3) The principal is not liable under this section unless the work on which the worker is employed at the time of the occurrence of the disability is directly a part or process in the trade or business of the principal.

(4) Where the principal and the contractor are jointly and severally liable under this section, a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.

(5) Where compensation is claimed from or proceedings are taken against the principal, in the application of this Act a reference to the employer shall be read as a reference to the principal except where, for the purpose of calculating the amount of compensation, a reference is made to the earnings of a worker, the reference shall be read as a reference to the earnings of the worker under the contractor.

(6) For the purposes of this section, where sub-contracts are made—

- (a) "principal" includes the original principal for whom the work is being done and each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work;
- (b) "contractor" includes the original contractor and each sub-contractor; and
- (c) a principal's right to indemnity is a right against each contractor standing between the principal and the worker.

(7) Where the disability does not occur in respect of premises on which the principal has undertaken to execute the work or which are otherwise under his control or management subsections (1) to (6) inclusive do not apply.

PART XI—REGULATIONS, RULES, AND PRACTICE NOTES

**Regulations, rules and practice notes**

**176.** (1) The Governor with respect to any of the following purposes may make regulations, and the Chairman of the Board with respect to any of the following purposes that relate to the Board may, subject to the regulations, make rules—

- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act;
- (b) fixing scales of fees to be paid and scales of costs and charges in respect of any action or proceeding before the Board;
- (c) fixing scales of fees to be paid to medical specialists and other medical practitioners for attendance on and treatment of workers suffering disabilities which are compensable under this Act when those fees are not determined by agreement between the Australian Medical Association Western Australian Branch and insurers approved under this Act;
- (d) fixing the scales of fees to be paid to dentists for attendance on and treatment of workers suffering disabilities which are compensable under this Act in cases where those fees are not determined by agreement between the Australian Dental Association (W.A. Branch) and insurers approved under this Act;
- (e) fixing scales of fees to be paid to physiotherapists for attendance on and treatment of workers suffering disabilities which are compensable under this Act in cases where those fees are not determined by agreement between the Western Australian Branch of the Physiotherapists Association and insurers approved under this Act;
- (f) fixing scales of fees to be paid to chiropractors for attendance on and treatment of workers suffering disabilities which are compensable under this Act in cases where those fees are not determined by agreement between the Chiropractors Registration Board and insurers approved under this Act;
- (g) with respect to matters of general or special application, which may apply to both employers and workers, for the prevention or minimizing of occurrences of disability in employment or places of employment within the State;
- (h) regulating the practice and procedure of the Board and providing for the effective exercise of jurisdiction by the Board and especially, but without limiting the general power to make regulations and rules under this Act, with reference to—
  - (i) the times and places for sittings of the Board and any person so authorized;

- (ii) the listing of proceedings and the giving of directions, on summons or otherwise, as to the listing of proceedings;
- (iii) cases or circumstances, or both, in which proceedings before the Board may be heard in chambers;
- (iv) the issue of a summons to a party to proceedings before the Board, or to any other person, requiring him to attend and give evidence before the Board and, where required in the summons, to bring documents to the Board;
- (v) the taking of evidence, and the manner of taking evidence, in respect of proceedings before the Board, including a requirement that evidence shall be taken on oath or affirmation;
- (vi) the allowances to witnesses;
- (vii) provisions, in respect of parties to proceedings and matters in issue before the Board, for the discovery and inspection of documents, the admission and production of documents, the delivery of and answers to interrogatories, and the request for and supply of further and better particulars, for regulating the practice of those procedures, and for the Board, upon the application of a party to the proceedings, making an order to compel another party to the proceedings to comply with those provisions;
- (viii) provisions for matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of the expert evidence, and in relation thereto—
  - (I) provisions for the imposition of differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
  - (II) provisions for conferring a discretionary authority;
- (i) prescribing penalties not exceeding \$200 for any non-compliance with or any contravention of any regulation or rule;
- (j) regulating the meetings and proceedings of the Commission, the Board, and the Committee;
- (k) providing for the fees and expenses payable with respect to establishing and maintaining registers;
- (l) prescribing scales of the maximum amount of commission or brokerage for insurance brokers in respect of workers' compensation insurance business;



- (m) fixing the maximum amount payable for reasonable expenses incurred in respect of funeral expenses under clause 4 or clause 17 (2), the purchase or supply of a wheeled chair or similar appliance under clause 17 (4), and travelling and accommodation expenses under clause 19;
- (n) fixing the maximum amount of a sum that may be assessed as the value of board and lodging under clause 15;
- (o) providing for any matters which by this Act are required or permitted to be prescribed or which may be necessary or convenient to regulate (either generally or in any particular case) for giving effect to this Act.

(2) A regulation or rule may require any matter or thing to be verified by statutory declaration.

(3) Subject to this Act, the Chairman of the Board may issue and publish practice notes for the guidance of persons having business in the Board.

(4) To the extent that forms are not prescribed—

- (a) the Chairman of the Board may, in practice notes, determine the forms to be used for the Board's purposes; and
- (b) the Executive Director may, by notice in the *Gazette*, determine the forms to be used for other purposes of this Act.

(5) Any regulations or rules made pursuant to subsection (1) may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom, or any of the tables, standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution, the International Standards Organization, the National Acoustics Laboratory, or other like body specified in the regulations or rules.

[Section 176 amended by No. 44 of 1985 s. 40; No. 86 of 1986 s. 5.]

## PART XII—MISCELLANEOUS

### Public Service

**177.** (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Commission and the Board by this Act or any other Act, the Commission and the Board with the approval of the Public Service Board appointed under the *Public Service Act 1978* may make use of the services of any of the officers and employees of the Public Service.

(2) The Executive Director, the Registrar, and other officers of the Commission and the Board shall be appointed under and subject to the *Public Service Act 1978*.

(3) The duties of the officers of the Commission shall include such duties as are prescribed and as are directed by the Commission.

(4) The duties of the officers of the Board shall include such duties as are prescribed and as are directed by the Chairman of the Board.

*[Section 176 amended by No. 86 of 1986 s. 5.]*

### **Agreements and receipts under this Act exempt from stamp duty**

**178.** Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or the repealed Act, and any receipt given for or upon the payment of any money payable under this Act, or the repealed Act, or under any such agreement, shall be exempt from all stamp duties chargeable under the *Stamp Act 1921*.

### **Order for detention of ship**

**179.** (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in the State or in any waters within the territorial jurisdiction of the State, the District Court may, upon its being shown to the court by the Commission applying summarily that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the State, issue an order directed to the bailiff of that court requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security to be approved by the District Court to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon.

(2) The bailiff may detain the ship in accordance with the order.

(3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the District Court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State if it has an office in the State at which service of process can be effected.

(5) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the offence, commits an offence.

Penalty: \$2 000.

(6) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required to detain the ship, the owner and the master of the ship shall each be liable to pay a further penalty at the rate of \$200 for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

### **Judicial notice**

**180.** All courts and all persons acting judicially shall take notice of—

- (a) the seal of the Board;
- (b) the seal of the Commission;
- (c) the official signature of a person holding or acting in—
  - (i) an office under any provision of the *Workers' Compensation Act 1912-1981* in force from time to time before the repeal of that Act; or
  - (ii) an office under any provision of this Act in force from time to time,

and the appointment and official character of any such person.

### **Prohibition of contracting out**

**181.** Except as provided by this Act, its provisions apply notwithstanding any contract to the contrary.

### **Deductions towards compensation not lawful**

**182.** (1) An employer or any person on his behalf, or an insurer or any person on its behalf, shall not, directly or indirectly, take or receive any money from any worker whether by way of deduction from wages or otherwise, in respect of any liability of an employer to pay compensation under this Act.

(2) Where money is so taken or received from any worker, whether with the consent of such worker or not, he may sue and recover the amount of that money from the employer, insurers, or person who took or received it.

### **Payments not assignable**

**183.** A payment of compensation, or a sum paid by way of redemption thereof, is not capable of being assigned, charged or attached, and shall not pass to another person by operation of the law, nor shall any claim be set off against such payment or sum, except in respect of voluntary advances of future compensation made by an employer or insurer with the approval of the Board.

## Protection of officials

**184.** Neither the Commission nor the Board nor any member of either of them or any person discharging any duty in pursuance of this Act is liable to any suit or action or to pay any claim or demand made or brought by or on behalf of any person with respect to anything lawfully done or omitted by the Commission or the Board or the member or the person discharging the duty in pursuance of this Act.

## Contempt of Board

**185.** [(1) *repealed.*]

(2) In respect of proceedings of the Board, a person shall not—

- (a) wilfully insult or disturb a member or an officer of the Board;
- (b) interrupt the proceedings of the Board;
- (c) use insulting language towards a member or an officer of the Board;
- (d) by writing or speech use words calculated—
  - (i) to influence improperly a member or an officer of the Board or a witness before the Board;
  - (ii) to bring the Board or a member or an officer of the Board into disrepute.

Penalty: \$500 or 12 months' imprisonment, or both.

[Section 185 amended by No. 79 of 1983 s. 7.]

## Obstruction

**186.** (1) A person who in respect of proceedings before the Board—

- (a) after having been duly summoned to attend, without reasonable excuse, proof of which is on him, fails to attend and give evidence or produce a document as and when required to do so under this Act;
- (b) being present and having been called to give evidence, without lawful excuse, refuses to swear or affirm as a witness or to answer any question or to allow a document to be examined as and when required to do so under this Act; or
- (c) having been sworn or affirmed as a witness, in answering a question as and when required to do so under this Act fails to answer truthfully to the best of his knowledge, information, and belief,

commits an offence.

Penalty: \$500 or 6 months' imprisonment.

(2) A person who—

- (a) resists or obstructs a person in the performance of a duty imposed or the exercise of a power conferred under this Act; or

(b) wilfully misleads a person in any particular likely to affect the exercise of a duty so imposed or a power so conferred, commits an offence.

Penalty: \$200.

### **Proceedings for contempt or obstruction**

**187.** (1) Proceedings for offences under section 185 or 186 (1) may be instituted only by the Registrar and then only by direction of the Chairman of the Board and shall be instituted in and dealt with summarily by the District Court.

(2) Proceedings for offences under section 186 (2) may be instituted—

- (a) if the offence is alleged to have been committed against the Minister or a person authorized to act on his behalf or against a member or officer of the Commission or a person authorized to act on its behalf, only by the Executive Director and then only by direction of the Minister or the Commission, as the case requires; or
- (b) if the offence is alleged to have been committed against the Board, a member or an officer of the Board, or a person authorized to act on the Board's behalf, only by the Registrar and then only by direction of the Board,

and shall be instituted in and dealt with summarily by the District Court.

[Section 187 amended by No. 86 of 1986 s. 5.]

### **Fraud**

**188.** A person who fraudulently obtains or fraudulently attempts to obtain any benefit under this Act, by malingering or by making any false claim or statement, and any person who, by a false statement or other means, aids or abets a person in so obtaining or attempting to obtain, commits an offence.

### **General penalty**

**189.** A person who commits an offence against this Act for which no special penalty is provided by this Act is liable to a penalty of \$500.

### **Fines**

**190.** A penalty imposed for an offence against this Act shall, notwithstanding the *Fines and Penalties Appropriation Act 1909*, be paid to the General Fund for use by the Commission.

### **Penalties not affected**

**191.** Nothing in this Act affects any proceedings for a fine or penalty under the enactments relating to mines, factories, or workshops, or the application of such a fine or penalty.

**Jurisdiction in recovery actions**

**192.** Where a right conferred by this Act is expressed in terms that a person "may sue and recover", an action to do so may be instituted in the District Court which is hereby vested with exclusive jurisdiction to hear and determine such an action.

**PART XIII—REPEAL, SAVINGS, AND TRANSITIONAL****Interpretation**

**193.** In this Part—

"former Board" means the Workers' Compensation Board constituted under the repealed Act;

"former Supplementary Board" means the Workers' Compensation Supplementary Board constituted under the repealed Act;

"new Board" means the Workers' Compensation Board continued and constituted under this Act;

"new Supplementary Board" means the Workers' Compensation Supplementary Board continued and constituted under this Act.

"proclaimed date" means the date on which this Part comes into operation.<sup>1</sup>

**Repeal**

**194.** The *Workers' Compensation Act 1912-1981* is repealed.

**Operation of *Interpretation Act 1918*<sup>8</sup>**

**195.** The *Interpretation Act 1918*<sup>8</sup>, and in particular sections 15 and 16 of that Act, apply to and in respect of the repealed Act except to the extent that this Act provides otherwise.

**No renewal of liability or entitlement**

**196.** Nothing in this Act renews a liability that had been discharged, or an entitlement which had been extinguished, under the repealed Act.

**Moneys paid under repealed Act taken into account**

**197.** Where by virtue of section 4 there is under this Act—

(a) liability to pay compensation or to pay for the provision of other benefits, or both; and

(b) entitlement to receive compensation or other benefits, or both, for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys paid or required to be paid under the repealed Act for or in relation to the same disability shall be taken into account and deemed to be moneys paid or required to be paid under this Act, the intention being that for or in relation to the same disability a liability and an entitlement under the 2 Acts merge into a liability and entitlement under and subject to this Act.

### **Weekly payments after the age of 64**

**198.** Notwithstanding sections 4 and 56 and Schedule 5 clause 2 but subject to Schedule 5 clause 3, where a worker who is aged 64 or more on the date on which those sections come into operation, has been in receipt of, or was entitled to receive, weekly payments of compensation for incapacity resulting from disability under the repealed Act until immediately before that date, in respect of any incapacity resulting from that disability on or after that date, that worker is entitled to weekly payments of compensation until—

- (a) the amount of the total of weekly payments under the repealed Act and this Act becomes equal to the prescribed amount; or
- (b) one year after sections 4 and 56 come into operation,

whichever is the sooner.

### **Compensation for injuries mentioned in Schedule 2**

**199.** Where on or after the date on which section 4 comes into operation a worker elects under section 24 in respect of an injury which was caused by an accident that occurred before that date the compensation payable for the injury shall be in accordance with the amount indicated in column 2 of the Second Schedule of the repealed Act in respect of that injury at the date of the accident, but otherwise Division 2 of Part III applies to and in respect of compensation payable for that injury.

### **Child's allowance**

**200.** Where any weekly amount is payable on or after the proclaimed date under item (II), (III) or (IV) of clause 1 (a) (i) of the First Schedule of the repealed Act, that weekly amount shall be increased to be at each time when it is so payable the equivalent of a child's allowance payable under this Act at that time.

### **Continuation**

**201.** (1) On and after the proclaimed date—

- (a) each person who, immediately before the proclaimed date, held office on the former Board or the former Supplementary Board shall be deemed to have been appointed under and subject to this Act to the corresponding office on the new Board or the new Supplementary Board, as the case may be, and shall be deemed to have been so appointed on the day on which he was appointed to that office under the repealed Act, and—
  - (i) a person who, immediately before the proclaimed date, held office as Chairman of the former Board, is a Judge of the new Board and shall be deemed to have been appointed as such under and subject to this Act; and
  - (ii) a person who, immediately before the proclaimed date, held office as Chairman of the former Supplementary Board, is a Judge of the new Supplementary Board and shall be deemed to have been appointed as such under and subject to this Act;

- (b) a person referred to in paragraph (a) is not required to take oaths or affirmations as provided by section 112 or 113 before performing his duties under this Act;
- (c) each registration of a memorandum of agreement which, immediately before the proclaimed date, was in force under the repealed Act shall be deemed to have been made under this Act and shall continue in force under this Act subject to the repealed Act;
- (d) a memorandum of agreement made but not registered for the purposes of the repealed Act may be registered under this Act and if it is registered shall have force under this Act subject to the repealed Act;
- (e) each award, order, or decision which, immediately before the proclaimed date, was in force under the repealed Act shall continue in force under this Act subject to the repealed Act;
- (f) a memorandum of agreement continued in force under paragraph (c) or having force under paragraph (d), or an award or order or a decision continued in force under paragraph (e), may be reviewed under this Act subject to the repealed Act;
- (g) all applications, matters, and proceedings commenced under the repealed Act pending or in progress immediately before the proclaimed date may be continued, completed, or enforced under this Act subject to the repealed Act and subject to section 4 of this Act;
- (h) applications, matters, and proceedings in respect of rights, duties, obligations, and liabilities arising under the repealed Act before the proclaimed date may be instituted, continued, completed, or enforced under this Act subject to the repealed Act and subject to section 4 of this Act;
- (i) all moneys which, pursuant to applications, matters, and proceedings completed under paragraphs (g) or (h), would have been payable to the Workers' Compensation Board Fund under section 27 of the repealed Act shall be paid to the Commission for the General Fund;
- (j) all moneys which, pursuant to applications, matters, and proceedings completed under paragraphs (g) or (h), would have been payable into the custody of the Board under clause 1A of the repealed Act shall be paid into the custody of the Commission for the benefit of those entitled in accordance with the order of the Board, and the Commission shall place the moneys in the Trust Fund;
- (k) all policies of insurance in respect of liability for compensation and other benefits which, immediately before the proclaimed date, were in force shall be deemed to have been obtained in respect of liability for compensation and other benefits under this Act and shall, subject to this Act, continue in force accordingly until the expiry date specified in the policy.



(2) Where a person is deemed to have been appointed under subsection (1), he shall continue to retain his existing and accruing rights including his rights, if any, under the *Judges' Salaries and Pensions Act 1950* or the *Superannuation and Family Benefits Act 1938* as if his service under and subject to the repealed Act were service under and subject to this Act.

### **References to the Board, the Supplementary Board, or officers**

**202.** A reference, however expressed, in any other Act or in any regulation, notice, or statutory instrument of any kind made, published, or in force under this or any other Act to the Workers' Compensation Board, the Workers' Compensation Supplementary Board, or to officers of those former Boards shall, unless the contrary intention appears, be read and construed as a reference to the corresponding term in this Act.

### **Exercise of powers before certain provisions come into operation**

**203.** (1) Where a provision of this Act has not come into operation and that provision would, if it had come into operation, confer a power or right to—

- (a) make an instrument of a legislative or administrative character;
- (b) give, serve, or file a notice or other document;
- (c) appoint a person to a specified office;
- (d) establish a specified body of persons, whether incorporated or not; or
- (e) do any other thing for the purposes of this Act,

then, unless the contrary intention appears in or in respect of that provision, the power, right, or duty may notwithstanding that that provision has not come into operation, but subject to subsections (2) and (3), be exercised or performed at any time after the passing of this Act to the extent that it is necessary or expedient for the purpose of bringing this Act, or specified provisions of this Act, into operation, or giving full effect to this Act, or specified provisions of this Act, when or after that provision comes into operation.

(2) Where a power, right, or duty to make an instrument of a legislative or administrative character, or to give, serve, or file a notice or other document, is exercised or performed as provided in subsection (1), that instrument, notice, or document shall take effect—

- (a) on the day on which the provision referred to in subsection (1) comes into operation; or
- (b) on the day on which it would have taken effect, if at the time when the instrument was made or the notice or document was given, served, or filed, the provision referred to in subsection (1) had come into operation,

whichever is the later.

(3) Where a power to appoint a person to a specified office, or to establish a specified body of persons, is exercised as provided in subsection (1), the person so appointed may act in that office and receive salaries, remuneration, and allowances, if any, applicable to that office, or, as the case may be, the body so established may meet and perform and exercise or perform its functions, powers, and duties but only for the purpose referred to in subsection (1), but for the purposes of any provision as to the duration of the term of office that term is deemed not to commence until the provision referred to in subsection (1) comes into operation.

## SCHEDULES

### SCHEDULE 1

#### *Compensation Entitlements*

#### **Death—dependants wholly dependent**

1. Where death results from the disability and the worker leaves any dependants wholly dependent upon his earnings—

- (1) (a) in respect and for the benefit only of all those dependants, if any, who are not of the kind referred to in subclause (2), (3), or (4) a sum equal to 85% of the notional residual entitlement of the worker;

but if a worker dies leaving—

- (b) a spouse or mother or a spouse and mother wholly dependent upon his earnings, whether or not there are other dependants wholly dependent upon his earnings, there shall be a minimum amount payable being a sum equal to the aggregate weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with this Schedule as at the date of the worker's death for a period of one year after that date;
- (c) in the event of there being more than one dependant wholly dependent on his earnings the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by the Board;
- (2) in respect and for the benefit only of each of those dependants, if any, who is a child, or step-child, under the age of 16 years, a child's allowance weekly until the child attains that age;
- (3) in respect and for the benefit only of each of those dependants, if any, who is a full time student child or step-child, and has attained the age of 16 years but is under the age of 21 years, a child's allowance weekly until the child attains the age of 21 years or ceases to be a full time student, whichever is the sooner;
- (4) in respect and for the benefit only of each of those dependants who is a child, or step-child, of any age, whether a full time student or otherwise who, by reason of circumstances the Board in its absolute discretion decides, should receive continued support, a child's allowance weekly until such time as the Board orders,

but if a worker dies leaving—

- (5) only a dependant or dependants wholly dependent upon his earnings who, apart from this subclause, would be entitled to a child's allowance under subclause (2), (3), or (4), the compensation entitlement of that dependant or those dependants is whichever of the following—

- (a) a sum equal to 25% of the notional residual entitlement of the worker;

(b) a child's allowance under subclause (2), (3), or (4) as the case may be, the Board determines as likely to be in the best interests of that dependant or those dependants, and—

(c) in the event of the Board determining a sum under paragraph (a) and there is more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by the Board.

**Death—partial dependants not children**

2. Where death results from the disability and the worker does not leave a dependant wholly dependent upon his earnings (other than a dependant of a kind referred to in clause 1 (2), (3), or (4)) but leaves a dependant (other than of a kind referred to in clause 1 (2), (3), or (4)) in part dependent on his earnings such sum to each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by the Board by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such sum or the total of such sums, as the case requires, shall not exceed a sum equal to 85% of the notional residual entitlement.

**Death—partial dependants children**

3. Where death results from the disability and the worker does not leave a dependant wholly dependent upon his earnings but leaves a dependant of a kind referred to in clause 1 (2), (3), or (4), partly dependent on his earnings such weekly sum only for each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by the Board by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such weekly sum shall not in any case exceed the child's allowance which would be payable weekly if the dependant were wholly dependent.

**Death—no dependant**

4. Where death results from the disability and the worker leaves no dependant, the reasonable expenses of his medical attendance and also funeral expenses, including all cemetery board charges, but, in the case of funeral expenses, not exceeding an amount prescribed, the cost of which may be awarded to and upon the application of any person by whom the expenses were properly incurred, or to whom the whole or any part of the expenses is owed.

**Death—where not resulting from the disability but weekly payments had been made**

5. Where a worker has been in receipt of, or was entitled to receive, weekly payments for not less than 6 months immediately preceding his death and an order for redemption has not been made pursuant to section 67 and the worker dies but the death does not result from the disability—

(1) and the worker leaves any spouse, child, or step child wholly dependent upon his earnings—

(a) in respect of and for the benefit only of all those dependants—

(i) 85% of the amount, if any, which would have been payable as a lump sum if the Board had ordered redemption pursuant to section 67 immediately before the worker's death; or

(ii) 85% of the aggregate of weekly payments for total incapacity of the worker at a rate calculated and varied as at the date of the worker's death for a period of one year after the worker's death,

whichever is the greater; and

(b) in the event of there being more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by the Board;

- (2) and if the worker does not leave any spouse, child, or step-child wholly dependent upon, or supported by, his earnings but leaves any spouse, child or step-child in part dependent upon his earnings—

(a) in respect of and for the benefit only of all those dependants—

(i) such sum as may be agreed upon, or in default of agreement, may be determined by proceedings under this Act, to be reasonable and proportionate to the total of the loss of any necessary financial support suffered by all those dependants; or

(ii) the amount which would have been payable if subclause (1) applied, whichever is the less, and

- (b) in the event of there being more than one such dependant, the amount is to be apportioned between them according to the respective losses of any necessary financial support suffered by them, which apportionment is to be determined by the Board.

### **Payments to Commission**

6. Any amount payable by an employer or his insurer pursuant to section 123 and clauses 1, 2, 3, or 5 shall be paid into the custody of the Commission and, where the case requires, be apportioned for the benefit of those entitled in accordance with the order of the Board, and after the amount is so paid there shall be liberty to apply to the Board by or on behalf of any one of those entitled in respect of the manner in which that amount or any part of it is applied.

### **Amount of compensation in case of total or partial incapacity**

7. (1) Subject to section 56 and subclause (3) when total incapacity for work results from the disability a weekly payment during the incapacity equal to the weekly earnings of the worker calculated and varied in accordance with this Schedule.

(2) Subject to section 56 and subclause (3), where partial incapacity for work results from the disability, a weekly payment during the partial incapacity equal to the amount by which the total weekly earnings of the worker calculated and varied in accordance with this Schedule would exceed the weekly amount exclusive of payments for the items referred to in clause 11 (3), (4), and (5) which he is earning or is able to earn in some suitable employment or business after the occurrence of the disability.

(3) An entitlement of a worker to weekly payments for a disability under this Act ceases if and when the total weekly payments for that disability reaches the prescribed amount, unless the Board makes an order to the contrary under section 122, and there shall be no revival of, or increase in, that entitlement upon any subsequent increase in the prescribed amount.

(4) Nothing in subclause (3) affects the liability of an employer for, and the entitlement of a worker to, expenses as are provided for in clauses 9, 17, 18, and 19 but subject to the limitations on those expenses as provided in clause 17 (1).

(5) Unless otherwise authorized by the Commission, compensation shall be paid by the employer to the worker at the employer's usual place of payment of wages on the employer's usual pay days or, at the request of the worker shall be sent by prepaid post to the worker's address.

(6) A worker when fulfilling any requirement of the Commission made under section 157, is deemed for the purposes of this clause to be totally incapacitated.

### **Deemed total incapacity**

8. Where a worker who has so far recovered from his disability as to be fit for employment of a certain kind satisfies the Board that he has taken all reasonable steps to obtain, and has failed to obtain, that employment and that the failure is a consequence, wholly or

mainly, of the disability, the Board may, without limiting its powers of review, order that the worker's incapacity be treated, or continue to be treated, as total incapacity, for such period, and subject to such conditions, as the order may provide.

### **No incapacity—medical expenses**

9. Where a total or partial incapacity for work does not result from the disability but the worker is obliged to obtain medical or surgical, dental, physiotherapy or chiropractic advice or treatment, clauses 17, 18, and 19 apply in so far as they may be made applicable.

### **Absence from work for medical attendance**

10. Where absence from work arises from a necessary attendance for a medical or like purpose that is authorized or required under this Act or from an unavoidable delay in the provision, repair, or replacement of any artificial aid of the kinds referred to in clause 17 and without which the worker is unable to work, the employer shall pay a weekly payment or portion thereof at a rate equivalent to the rate that applies for total or partial incapacity.

### **Weekly earnings**

11. Subject to clauses 12, 13, 14, 15, and 16, for the purposes of this Act "weekly earnings" means—

- (1) where the work performed by the worker in the employment in which the disability occurs is, at the time the disability occurs, subject to an industrial award or industrial agreement or, if it is not so subject but there is an industrial award or industrial agreement which applies to work of the same type or which can be fairly applied to the work, the total wages, salary or other remuneration payable, or which would have been payable if the industrial award or industrial agreement to which the work was subject at the time the disability occurred were still in operation, at the time of the incapacity, for a week's work in such employment, under the industrial award or industrial agreement plus any over award or service payment payable on a regular basis as part of the worker's wages, salary or other remuneration;
- (2) where a person is working under an agreement to perform—
  - (a) a specified quantity of work for a specified sum;
  - (b) work on piece rates;
  - (c) work on a bonus or commission system; or
  - (d) work under any other system for payment by results,

the wages, salary, or other remuneration that is, at the time of the incapacity, prescribed, apart from that agreement, for a week's work in the employment in which the disability occurs, under an industrial award or industrial agreement relevant to such employment or, if there is no industrial award or industrial agreement so relevant, under an industrial award or industrial agreement pertaining to that type of work which can be fairly applied plus any over award or service payment payable on a regular basis as part of the worker's wages, salary or other remuneration,

but excluding in each case referred to in subclauses (1) and (2)—

- (3) overtime, being any payment for the hours in excess of the number of hours stated in the industrial award or industrial agreement as ordinary hours which constitute a week's work; and
- (4) any bonus or incentive, shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance,

and where the work performed by the worker in the employment in which the disability occurs is such that neither subclause (1) or (2) applies, the weekly earnings of the worker means—

- (5) the normal wage, salary, or other remuneration calculated on a weekly basis payable to the worker under his contract of employment exclusive of payment for overtime or for the items referred to in subclause (4).

### **Part time worker**

12. In respect of employment to which clause 11 (1) or (2) applies, in the case of a part time worker employed solely in the employment in which the disability occurs, a proportionate deduction shall be made in such weekly earnings to the extent that the hours worked by him each week are less than the number of hours stated in the industrial award or industrial agreement as ordinary hours which constitute a week's work.

### **Concurrent contracts**

13. In respect of employment to which clause 11 (1) or (2) applies, in the case of a worker who had entered into concurrent contracts of service with 2 or more employers under which he worked at one time for one such employer and at another time for another such employer and—

- (1) under which the total number of hours worked each week by him are less than the number of hours stated in the industrial award or agreement relating to the employment in which the disability occurs as ordinary hours which constitute a week's work, a proportionate deduction shall be made in such weekly earnings to the extent the total number of hours worked by him are so less; or
- (2) under which the total number of hours worked by him, discounting in respect of each of the employments the exclusions referred to in clause 11 (3) and (4), are equal to or more than the number of hours stated in the industrial award or industrial agreement relating to the employment in which the disability occurs as ordinary hours which constitute a week's work, no deduction shall be made.

### **Casual or seasonal worker**

14. In the case of a casual or a seasonal or other worker who is ordinarily employed for only part of the year, "weekly earnings" means that fraction of the worker's weekly earnings calculated and varied in accordance with this Schedule as represents the same ratio that the number of weeks that he normally works each year bears to 52.

### **Board and lodging**

15. Where the remuneration of a worker consists of wages with board or board and lodging, the wages or the earnings of the worker shall, for the purposes of this Act, be deemed to be the amount of the wages with the addition of the value of such board or board and lodging to be assessed, but such board or board and lodging shall not be assessed at a sum exceeding a sum prescribed for the purposes of this clause.

### **Variation of weekly payments**

16. (1) The weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any variation in the provisions of the relevant industrial award or industrial agreement made after the disability occurs, or, where weekly earnings are calculated under clause 11 (5), the weekly earnings shall be varied from the date and to the extent of any variation the worker would have been entitled to receive in the normal course of his employment.

(2) Where a relevant industrial award or industrial agreement becomes redundant or obsolete the weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any percentage increase in wages ordered in a National Wage Decision made under the *Conciliation and Arbitration Act 1904* of the Commonwealth as a result, *inter alia*, of consumer price index movements.

**Payment of medical and other expenses**

17.<sup>17, 18</sup> In addition to weekly payments of compensation payable, a sum is payable equal to the reasonable expenses incurred in respect of—

- (1) first aid and ambulance or other service to carry the worker to hospital or other place for medical treatment; medicines and medical requisites; medical or surgical attendance and treatment, including where necessary, medical or surgical attendance and treatment by specialists; dental attendance and treatment; physiotherapy or chiropractic attendance and treatment; other attendance and treatment by way of rehabilitation; charges for hospital treatment and maintenance, in accordance with clause 18 but not including charges for a nursing home unless a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance which cannot be administered in the worker's domestic environment; the provision of hearing aids, artificial teeth, artificial eyes, and where the disability renders their use necessary, spectacles or contact lenses, but not exceeding, in the aggregate, a sum equal to 20% of the prescribed amount, unless clause 18A applies, and there shall be no revival of, or increase in, the entitlement to such expenses upon any subsequent increase in the prescribed amount;
- (2) funeral expenses, including all cemetery board charges, in the event of the death of the worker, but not exceeding an amount prescribed;
- (3) the repair or replacement, including such services by way of consultations, examinations, or prescriptions as are reasonably rendered by medical practitioners, dentists, or other qualified persons in connection with the repair or replacement of a hearing aid, an artificial limb, artificial teeth, artificial eyes, spectacles, or contact lenses damaged or destroyed by accident arising out of or in the course of the worker's employment, or whilst the worker is acting under the employer's instructions, whether or not, except in the case of artificial teeth, personal injury is caused to the worker;
- (4) the purchase or supply of a wheeled chair or similar appliance, where the worker has suffered the loss of both legs or is paralysed in both legs by reason of a disability suffered by a worker but not exceeding an amount prescribed;
- (5) the cost of any surgical appliance or of an artificial limb that complies with the standards laid down by the Commonwealth Repatriation Artificial Limb and Appliance Centre, if such an appliance or artificial limb is capable of relieving any disablement incurred by the worker by reason of a disability suffered by a worker; and
- (6) in the case of personal injury by accident arising out of or in the course of the worker's employment, or whilst acting under the employer's instructions, the reasonable cost of any necessary repair or replacement of clothing damaged or destroyed at the time of the accident.

**Hospital charges**

18. (1) The hospital charges mentioned in clause 17 (1) for treatment and maintenance of the worker in a hospital shall, subject to subclause (2) of this clause, be as provided under the *Hospitals Act 1927* in relation to such cases.

(2) Where, on the reasonable medical advice in the interests of the health of the worker or where by reason of the unavailability of hospital accommodation, or in the discretion of the Board in any other case, the worker occupies more expensive hospital accommodation than that to which the prescribed charges refer the Board may, on the application of the worker, determine that a rate higher than those prescribed shall be the rate for hospital charges.

**Payment of additional expenses**

18A.<sup>18</sup> (1) Where the worker has incurred reasonable expenses referred to in subclause (1) of clause 17 in excess of the maximum amount provided for by that subclause, the Board may, subject to subclause (2), if it considers that the maximum amount is

inadequate, allow such additional sum, but not exceeding \$50 000, as it thinks proper in the circumstances.

(2) The Board shall not allow an additional sum in the exercise of its discretion under subclause (1) unless it considers that such a sum ought to be allowed, having regard to the social and financial circumstances of the worker, his reasonable financial needs, and his capacity to meet his reasonable expenses referred to in subclause (1) from any source available to him including weekly payments payable under clause 7 or section 122.

### Travelling

19. (1) Where a worker is required by his employer, his employer's duly authorized agent or medical, or like adviser, or is advised by his own medical or like adviser, to travel from the place where he resides to a hospital or other place for treatment, or attendance of a kind referred to in clause 17; then, in addition to the compensation payable to such worker under this Schedule, the employer shall pay all reasonable fares and expenses incurred by the worker in such travelling and return, and the reasonable cost of meals and lodging necessarily incurred by the worker while away from his home for the purpose of such treatment, massage, or medical examination not exceeding an amount or amounts prescribed.

(2) In any case where no medical or like adviser is available and a worker travels for treatment, or attendance of a kind referred to in clause 17 without being so required or advised, the employer shall be liable as prescribed in subclause (1), if the worker proves such travelling was necessary in the circumstances of the case.

(3) The amounts to cover the cost of meals and lodging shall not be payable to any worker who has no dependants, unless a worker has incurred costs for meals and lodging in excess of that which he would have incurred had he remained at his home, and then only to the amount of that excess.

[Schedule 1 amended by No. 44 of 1985 s. 41; No. 85 of 1986 s. 12.]

## SCHEDULE 2<sup>19</sup>

### TABLE OF COMPENSATION PAYABLE

<i>Column 1 Item</i>	<i>Nature of Injury</i>	<i>Column 2 Ratio which the sum payable herein bears to the prescribed amount. %</i>
	<b>EYES</b>	
1.	Total loss of sight of both eyes .....	100
2.	Total loss of sight of an only eye .....	100
3.	Total loss of sight of one eye.....	50
4.	Total loss of sight on one eye and serious diminution of the sight of the other eye .....	75
5.	Loss of binocular vision.....	50
	<b>HEARING</b>	
6.	Total loss of hearing .....	75
	<b>SPEECH</b>	
7.	Total loss of power of speech .....	75
	<b>BODY AND MENTAL</b>	
8.	Permanent and incurable loss of mental capacity resulting in total inability to work .....	100
9.	Total and incurable paralysis of the limbs or of mental powers .	100



Column 1 Item	Nature of Injury	Column 2 Ratio which the sum payable herein bears to the prescribed amount.
	<b>SENSORY</b>	
10.	Total loss of sense of taste and smell .....	50
11.	Total loss of taste .....	25
12.	Total loss of smell .....	25
	<b>ARM</b>	
13.	Loss of arm at or above elbow .....	90
14.	Loss of arm below elbow .....	80
	<b>HAND</b>	
15.	Loss of both hands .....	100
16.	Loss of a hand and foot .....	100
17.	Loss of hand or thumb and four fingers .....	80
18.	Loss of thumb .....	35
19.	Loss of forefinger .....	17
20.	Loss of middle finger .....	13
21.	Loss of ring finger .....	9
22.	Loss of little finger .....	6
23.	Total loss of movement of joint of thumb .....	17
24.	Total loss of distal phalanx of thumb .....	20
25.	Total loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx ..	15
26.	Total loss of distal phalanx of forefinger .....	10
27.	Total loss of distal phalanx of —middle finger .....	8
	—ring finger .....	6
	—little finger .....	4
	<b>LEG</b>	
28.	Loss of leg at or above knee .....	70
29.	Loss of leg below knee .....	65
	<b>FEET</b>	
30.	Loss of both feet .....	100
31.	Loss of foot .....	65
32.	Loss of great toe .....	20
33.	Loss of any other toe .....	8
34.	Loss of two phalanges of any other toe .....	5
35.	Loss of phalanx of great toe .....	8
36.	Loss of phalanx of any other toe .....	4
	<b>MISCELLANEOUS</b>	
37.	Loss of genitals .....	50
38.	Severe facial scarring or disfigurement to a maximum of .....	80
39.	Severe bodily, other than facial, scarring or disfigurement to a maximum of .....	50

## SCHEDULE 3

## SPECIFIED INDUSTRIAL DISEASES

<i>Column 1</i> <i>Description of Disease</i>	<i>Column 2</i> <i>Description of Process</i>
*Arsenic, phosphorus, lead, mercury or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds.
*Anthrax	Wool-combing; wool-sorting; handling of hides, skins, wool, hair, bristles, or carcasses; loading and unloading or transport of merchandise containing anthrax organisms.
Communicable diseases	Employment in an occupation or in a situation exposing the worker to infection by the intermediate hosts of any communicable disease or by agencies transmitting any communicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the particular vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed.
*Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others)	Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds.
Poisoning by a homologue of benzol	Any process involving the use of homologue of benzol.
*Poisoning by carbon bisulphide	Any process involving the use of carbon bisulphide or its preparations or compounds.
Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series	Any process involving the use of a halogen derivative or a hydrocarbon of the aliphatic series.
*Poisoning by nitrous fumes	Any process in which nitrous fumes are evolved.
*Poisoning by fluorine	Any process in which fluorine is used.
*Poisoning by cyanogen compounds	Any process in which cyanogen compounds are used.
*Poisoning by carbon monoxide	Any process in which carbon monoxide is used, or evolved.
*Leptospirosis; endemic typhus, scrub typhus, Brill's disease, swineherds disease, plague, mite dermatitis and scrub itch	Employment in an occupation or in a situation exposing the worker to infection with a specific disease transmissible from animal to man where the specific infection associated with occupation or situation develops within its known incubation period and can be reasonably presumed to have occurred in the course of such employment.
*Chrome ulceration	Any process involving the use of chromic acid or bichromate of ammonium, potassium, or sodium, or their preparations.

*Column 1  
Description of Disease*

*Column 2  
Description of Process*

Effects of insolation	Work entailing prolonged exposure to sunlight.
Effects of electrical currents	Workers exposed to electrical currents.
Any dermatosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn	Any industrial process.
Epitheliomatous cancer or ulceration of skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.	Handling of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products, or residues of those substances.
*Pneumoconiosis	Any process entailing exposure to mineral dusts harmful to the lungs.
Mesothelioma	Any process entailing substantial exposure to asbestos dust.
Pathological manifestation due to— (a) radium and other radioactive substances; (b) X-rays; (c) lasers.	Any process involving exposure to the action of radium, radioactive substances, X-rays or lasers.
Hepatitis B	Employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank.
Lung cancer	Any process entailing heavy exposure to asbestos dust.
Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust	Any process entailing exposure to cotton, flax, hemp or sisal dust.
Occupational asthma caused by sensitizing agents or irritants inherent to the work process	Any process entailing exposure to sensitizing agents or irritants inherent to that process.
Extrinsic allergic alveolitis caused by the inhalation of organic dusts	Any process entailing exposure to organic dusts.
Diseases caused by alcohols, glycols or ketones	Any process entailing exposure to alcohols, glycols or ketones.
Diseases caused by the asphyxiants carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulfide	Any process in which carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulfide is used.

\* See section 48 (2)

[Schedule 3 amended by No. 44 of 1985 s. 43.]

## SCHEDULE 4

## SPECIFIED LOSSES OF FUNCTIONS

<i>Column 1</i> <i>Loss of Function</i>	<i>Column 2</i> <i>Description of Process</i>
Noise induced hearing loss	Any work process involving continued exposure to excessive noise.
Effects of vibration (including Raynaud's phenomenon and dead hand)	Use of vibratory tools, implements and appliances.
Compressed air illness	Any process carried on in compressed air.

SCHEDULE 5<sup>20</sup>

Section 56.

EXCEPTIONS TO CESSATION OF WEEKLY  
PAYMENTS BY REASON OF AGE1. *Interpretation*

## (1) In this Schedule—

“proclaimed date” means the date on which this Schedule comes into operation;

“redemption amount” means—

- (a) the sum of \$20 000 varied annually on 1 July, commencing 1 July 1983 and thereafter on the accumulative sum in accordance with such percentage change in the weighted average minimum award rate for adult males under the Western Australian State Awards published by the Australian Bureau of Statistics as occurs between 1 April in the calendar year preceding the variation and 31 March in the calendar year of the variation; or

- (b) a sum equivalent to the prescribed amount less the amount of weekly payments made,

whichever is the less;

“supplementary amount” means—

- (a) in relation to a worker with a dependent spouse, the sum of \$34.50;

- (b) in relation to a worker without a dependent spouse, the sum of \$20,

or such higher amounts as are respectively prescribed.

## (2) Schedule 1 shall be read and construed subject to this Schedule.

2. *Incapacity for Work Resulting from Disabilities Other than Pneumoconiosis and Mesothelioma*

Where the worker shows to the satisfaction of the employer or, in the case of dispute, the Board that, if incapacity resulting from the disability had not occurred, he would have continued to be a worker after attaining the age of 65, he shall be entitled to the supplementary amount as a weekly payment during any period of total incapacity resulting from the disability in the time he would have been a worker, but in any case—

- (a) not beyond the time when he attains the age of 70 years; and

- (b) subject to Schedule 1 clause 7 (3).

3. *Incapacity for Work Resulting from Disabilities of Pneumoconiosis and Mesothelioma—Weekly Payments*

(1) This clause shall be read and construed subject to the qualification on entitlement in section 34 and subject to sections 46 and 47.

(2) In this clause “weekly payments” means weekly payments of compensation calculated and varied in accordance with Schedule 1.

(3) Subject to the provisions of this Schedule and to Schedule 1 clause 7 (3), where a worker aged 65 or more on the proclaimed date had suffered one of those disabilities before that date and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that disability under the repealed Act, in respect of any incapacity resulting from that disability on or after the proclaimed date he is entitled to receive weekly payments.

(4) Subject to the provisions of this Schedule and Schedule 1 clause 7 (3), where a worker who attains or has attained the age of 65 after the proclaimed date has or had suffered one of those disabilities before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the day he attains or attained that age he is entitled to receive weekly payments.

(5) Subject to the provisions of this Schedule, where a worker attains or has attained the age of 65 after the proclaimed date and one of those disabilities of the worker occurs or has occurred on or after his attaining that age, in respect of any incapacity arising from that disability he is entitled to receive weekly payments.

(6) Subject to the provisions of this Schedule, where a worker was aged 65 or more on the proclaimed date and one of those disabilities of the worker occurs on or after the day on which the *Workers' Compensation and Assistance Amendment Act 1984*<sup>1</sup> comes into operation, in respect of any incapacity arising from that disability he is entitled to receive weekly payments.

(7) Subject to the provisions of this Schedule, where a worker aged 65 or more on the proclaimed date suffers from one of those disabilities and the disability occurred on or after the proclaimed date but before the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*<sup>1</sup>, in respect of any incapacity resulting from that disability he is entitled to receive—

- (a) a lump sum payment equivalent to the value of weekly payments he would have received prior to the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*<sup>1</sup> if he had been entitled to receive such weekly payments from the time the disability occurred but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
- (b) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to paragraph (a), does not exceed the aggregate of 52 such weekly payments.

4. *Election to take Redemption Amount as Lump Sum or Supplementary Amount Weekly*

A worker entitled to receive weekly payments of compensation under clause 3 may elect during his lifetime and while he is so entitled and—

- (a) where he receives payments under clause 3 (3), within 3 months of the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*<sup>1</sup>;
- (b) where he receives payments under clause 3 (4), within the period ending on the date that is—
  - (i) 3 months after the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*<sup>1</sup>; or

- (ii) one year after he becomes or became entitled to receive payments, whichever date is the later;
- (c) where he receives payments under clause 3 (5)—
  - (i) if, at the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*<sup>1</sup>, he has received such payments for a period of not less than one year, within 3 months of the coming into operation of that Act; or
  - (ii) in any other case, within the period of one year from the time when he became or becomes entitled to receive weekly payments;
- (d) where he receives payments under clause 3 (6), within the period of one year from the time when he becomes entitled to receive weekly payments; or
- (e) where he receives—
  - (i) only a lump sum payment under clause 3 (7), at the time of receiving that lump sum payment; or
  - (ii) a lump sum payment and weekly payments under clause 3 (7), before receiving the aggregate of 52 weekly payments,

to receive the redemption amount as a lump sum or to receive the supplementary amount weekly during his lifetime from the date he so elects and the employer shall be liable to pay compensation accordingly and not in accordance with clause 3.

#### 5. *Requirements for Election under Clause 4*

- (1) A worker elects for the purposes of clause 4 if, and only if—
  - (a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant disability; and
  - (b) that form is filed with the Board, and a copy of it is served on the employer, by or on behalf of the worker.
- (2) A form of election shall not be binding upon a worker unless the Registrar is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's, and the worker's dependents', future entitlement to compensation under this Act.
- (3) Where the Registrar is not satisfied in accordance with subclause (2), he shall within 7 days notify the employer and the worker accordingly.

#### 6. *Effect of Receiving the Redemption Amount as a Lump Sum*

From the date a worker receives the redemption amount as a lump sum—

- (a) section 67 does not apply;
- (b) for the disability from which the incapacity resulted—
  - (i) the worker is not entitled to further compensation; and
  - (ii) clauses 9, 10, 17, 18 and 19 of Schedule 1 cease to apply to the worker; and
- (c) clauses 1, 2, 3, 4, 5 and 17 (2) of Schedule 1 shall not apply in respect of the worker's death.

#### 7. *Effect of Receiving Supplementary Amount*

From the date a worker commences to receive a supplementary amount weekly—

- (a) section 67 does not apply;
- (b) if his death results from the disability and a dependent spouse survives him—
  - (i) the dependent spouse is entitled to receive, and the employer is liable to pay into the custody of the Commission for the benefit of the spouse, as a lump sum the aggregate of the supplementary amount for a worker with a dependent spouse at the rate applicable at the date of death for a

period of 3 years, and after the amount is so paid there shall be liberty to apply to the Commission by or on behalf of the dependent spouse in respect of the manner in which that amount or any part of it is applied;

- (ii) the dependent spouse is also entitled to receive, and the employer is liable to pay weekly, from the date of the worker's death and during the dependent spouse's lifetime, the supplementary amount at the rate for a worker without a dependent spouse;

and

- (c) clauses 1, 2, 3, 4, 5 and 17 (2) of Schedule 1 do not apply in respect of the worker's death.

### *8. Payment of Supplementary Amount*

(1) An employer is not liable to pay compensation in accordance with clause 3 to a worker who does not make an election within the time specified in clause 4 but is liable to pay that worker the supplementary amount weekly during his lifetime from the last day on which the worker was entitled to make an election.

(2) A worker who—

- (a) receives a lump sum payment under clause 3 (7) (a);
- (b) is not entitled to receive weekly payments under clause 3 (7) (b); and
- (c) does not elect to take the redemption amount as a lump sum at the time of receiving the payment referred to in paragraph (a),

is entitled to receive a further lump sum payment equivalent to the value of the supplementary amounts weekly he would have been entitled to receive during the period commencing one year after his disability occurred and ending on the day on which he is entitled to make an election under clause 4 (e) (i) and thereafter he is entitled to receive the supplementary amount weekly during his lifetime.

*[Schedule 5 amended by No. 104 of 1984 s. 8.]*

## SCHEDULE 6

Ss. 112, 113.

### OATHS AND AFFIRMATIONS

#### 1. ALLEGIANCE

(a) Oath:

I,....., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law.

So help me God.

or

(b) Affirmation:

I,....., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law.

(Note:—The name of the reigning Sovereign for the time being is to be substituted from time to time).

#### 2. OFFICE

(a) Oath:

I, ..... , do swear that I will well and truly serve in the office of (Chairman, Acting Chairman, nominee member, or deputy of a nominee member, as the case

may be) of the Workers' Compensation Board and that I will do right to all manner of people according to law, without fear or favour, affection, or ill-will. So help me God.

or

(b) Affirmation:

I, ....., do solemnly and sincerely affirm and declare that I will well and truly serve in the office of (Chairman, Acting Chairman, nominee member, or deputy of a nominee member, as the case may be) of the Workers' Compensation Board and that I will do right to all manner of people according to law, without fear or favour, affection, or ill-will.

[Schedule 6 amended by No. 79 of 1983 s. 8.]

## NOTES

<sup>1</sup>. This reprint is a compilation as at 6 February 1987 of the *Workers' Compensation and Assistance Act 1981* <sup>21, 22</sup> and includes all amendments effected by the other Acts referred to in the following Table.

### Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Workers' Compensation and Assistance Act 1981</i>	86 of 1981	23 November 1981	3 May 1982 (see <i>Gazette</i> 8 April 1982 p. 1205)	Part XIII repeal, savings and transitional
<i>Workers' Compensation and Assistance Amendment Act 1983</i>	16 of 1983	7 November 1983	7 November 1983	Section 3 transitional
<i>Workers' Compensation and Assistance Amendment Act (No. 2) 1983</i>	79 of 1983	22 December 1983	22 December 1983	Section 9 transitional
<i>Health Legislation Amendment Act 1984, Part XXIV</i>	28 of 1984	31 May 1984	1 July 1984	Part XXV savings and transitional
<i>Workers' Compensation and Assistance Amendment Act 1984</i>	104 of 1984	19 December 1984	19 December 1984	Section 9 transitional <sup>19</sup> , section 10 validation and ratification <sup>19</sup>



Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Workers' Compensation and Assistance Amendment Act 1985</i>	44 of 1985	20 May 1985	Sections 3(3), 4 to 9, 13 to 18, 21, 22, 24, 27 to 37, 39 to 43: 28 June 1985 (see <i>Gazette</i> 14 June 1985 p. 2134); section 25: 1 July 1985 (see s. 2 (3)); section 20: 25 October 1985 (see <i>Gazette</i> 25 October 1985 p. 4100); section 23: 7 February 1986 (see <i>Gazette</i> 7 February 1986 p. 425); Section 38: 25 July 1986 (see <i>Gazette</i> 25 July 1986 p. 2453); balance (other than sections 10, 11, 12, 19, 44 and 45) <sup>19</sup> on 20 May 1985	Section 3 (2) validation <sup>3</sup> ; section 4 (2) saving <sup>9</sup> ; section 16 transitional <sup>10</sup> ; section 20 (2) saving <sup>11</sup> ; section 23 (2) saving <sup>12</sup> ; section 30 (2) transitional <sup>14</sup> ; section 41 (2) transitional <sup>16</sup> ; section 42 (2) transitional <sup>17</sup> ;
<i>Acts Amendment (Financial Administration and Audit) Act 1985, Schedule 1</i>	98 of 1985	4 December 1985	1 July 1986	Section 4 savings and transitional
<i>Workers' Compensation and Assistance Amendment Act 1986</i>	33 of 1986	1 August 1986	1 August 1986	Section 6 (2) validation <sup>15</sup>
<i>State Government Insurance Commission Act 1986, Schedule 3 (10)</i>	51 of 1986	5 August 1986	1 January 1987 (see <i>Gazette</i> 19 December 1986 p. 4859)	Schedule 4 saving validation and transitional
<i>Workers' Compensation and Assistance Amendment Act (No. 2) 1986</i>	85 of 1986	5 December 1986	Act, other than sections 7 and 11, 5 December 1986 <sup>22</sup>	Section 8 (2) application <sup>13</sup> ; section 12 transitional <sup>17</sup>
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986</i>	86 of 1986	5 December 1986	2 January 1987	Section 5 (2) transitional

<sup>2</sup> Came into operation 3 May 1982; see *Gazette* 8 April 1982 p. 1205.

<sup>3</sup> Section 3 (2) of Act No. 44 of 1985 reads as follows—

“(2) Any act, matter or thing done or purported to be done, or duty performed or purported to be performed under the provisions of the principal Act before the coming into operation of section 3 (1) by a person appointed as Deputy Registrar of the Board under the *Public Service Act 1978* is and always has been as valid as if section 3 (1) had been enacted at the time the act, matter or thing was done or duty was performed. ”.

<sup>4</sup> Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for “The Western Australian Industrial Commission” which was changed by Act No. 94 of 1984.

<sup>5</sup> Under the *Reprints Act 1984* section 7 (3) (h) this short title was substituted for “*Industrial Arbitration Act 1979*” which was changed by Act No. 94 of 1984.

<sup>6</sup> Repealed by Act No. 94 of 1984 s. 83.

<sup>7</sup> Repealed by *Mining Act 1978* now see *Western Australian Coal Industry Tribunal Act 1978* s. 5.

<sup>8</sup> Now see the *Interpretation Act 1984*.

<sup>9</sup> Section 4 (2) of Act No. 44 of 1985 reads as follows—

“(2) Nothing in this section in any way affects or limits the operation of the principal Act in relation to a disability to or the death of a person if that person, at any time before the coming into operation of this section, received compensation under the principal Act in respect of that disability or death and the principal Act shall continue to apply to the liability for and the right to compensation in respect of that disability or death as if this section had not been enacted.”.

<sup>10</sup> Section 16 of Act No. 44 of 1985 reads as follows—

“16. Sections 24, 28, 29 and 30 of the principal Act, as amended by sections 9, 13, 14 and 15 respectively of this Act, apply to and in respect of any election of a worker made in accordance with section 24 of the principal Act on or after the day on which this section comes into operation and to and in respect of the compensation payable pursuant to that election; but an election made under section 24 of the principal Act before that day, and the compensation payable pursuant to that election, shall not be affected by the amendments effected by sections 9, 13, 14 and 15 of this Act.”.

<sup>11</sup> Section 20 (2) of Act No. 44 of 1985 reads as follows—

“(2) Nothing in this section affects or limits the operation of section 61 (3) of the principal Act in relation to applications made under that provision with respect to weekly payments of compensation which were discontinued or diminished before the coming into operation of this section and section 61 (3) shall continue to apply to those applications as if this section had not been enacted.”.

<sup>12</sup> Section 23 (2) of Act No. 44 of 1985 reads as follows—

“(2) Section 74 of the principal Act shall—

- (a) where the latest disability or recurrence of the worker occurs on or after the coming into operation of this section<sup>1</sup>—apply as amended by this section; and
- (b) except as provided in paragraph (a)—continue to apply notwithstanding the coming into operation of this section as if this section had not been enacted.”.

<sup>13</sup> Section 8 (2) of Act No. 85 of 1986 reads as follows—

“(2) The application of section 122 of the principal Act as amended by subsection (1) extends to any case where an application under that section was made, but an order thereon had not been made by the Board, before the commencement of this section.”.

<sup>14</sup> Section 30 (2) of Act No. 44 of 1985 reads as follows—

“(2) A category of business specified by the Minister under section 151 (c) of the principal Act before the coming into operation of this section is deemed to have been specified by the Committee.”.

<sup>15</sup> Section 6 (2) of Act No. 33 of 1986 reads as follows—

“(2) Any minimum premium recommended by the Committee for the purposes of Part VIII of the principal Act before the commencement of this section is deemed to be, and always to have been, lawfully recommended by the Committee and properly chargeable by an insurer.”.

<sup>16</sup> Under the *Reprints Act 1984* section 7 (3) (h) this short title was substituted for “*Workers' Compensation Supplementation Fund Act 1980*” which was changed by Act No. 49 of 1982.

17. Section 41 (2) of Act No. 44 of 1985 reads as follows—

“ (2) Clause 17 of Schedule 1 of the principal Act as amended by subsection (1) applies to and in respect of liability and the extent of liability to pay, and entitlement and the extent of entitlement to receive, benefits for such expenses as are provided for in that clause incurred before, on or after the coming into operation of this section but nothing in subsection (1) shall revive or increase the entitlement to such expenses where a worker had received a sum equal to 10% of the prescribed amount or such further amount as the Board had allowed under that clause before the coming into operation of this section. ”.

18. Section 12 (2) of Act No. 85 of 1986 reads as follows—

“ (2) The application of clause 17 (1) of Schedule 1 of the principal Act as amended by subsection (1) and of clause 18A inserted in that Schedule by that subsection extends to any case where an application for expenses referred to in clause 17 (1) was made, but an order thereon had not been made by the Board, before the commencement of this section. ”.

19. Section 42 (2) of Act No. 44 of 1985 reads as follows—

“ (2) Notwithstanding any provision of the principal Act and in particular section 117 of the principal Act, where any decision, ruling, order, award, judgment, settlement or agreement was given or made by, or registered with the Board before the coming into operation of this section, on the basis that compensation payable for an injury under item 29 of the table set out in Schedule 2 to the principal Act was in accordance with the amount indicated in column 2 of that table in respect of that injury at the date of the accident whereby that injury was caused to the worker, that decision, ruling, order, award, judgment, settlement or agreement shall not be rescinded, altered or amended, and the worker shall not be entitled to any further payment under the provisions of that table in respect of that injury, by reason that it was given, made or registered on that basis. ”.

20. Sections 9 and 10 of Act No. 104 of 1984 read as follows—

“ 9. (1) In this section “the amended Schedule” means Schedule 5 to the principal Act as amended by section 8 of this Act.

(2) Nothing in section 8 renews a liability that has been discharged or an entitlement that has been extinguished, under Schedule 5 to the principal Act.

(3) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has elected to take the redemption amount as a lump sum or a supplementary amount weekly under Schedule 5 clause 3 to the principal Act.

(4) Where there is under the amended Schedule—

(a) liability to pay compensation or to pay for the provision of other benefits or both; and

(b) entitlement to receive compensation or other benefits, or both,

for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid or required to be paid under Schedule 5 to the principal Act shall be taken into account and deemed to be moneys paid or required to be paid under the amended Schedule.

10. (1) In this section “the amended Schedule” means Schedule 5 to the principal Act as amended by section 8 of this Act.

(2) Where moneys have been paid by The State Government Insurance Office established under the *State Government Insurance Office Act 1938* to a person on behalf of an employer before the coming into operation of this Act and such payment would have been authorized if clause 3 (7) and clause 4 or 8 of the amended Schedule

had been in operation at the time the payment was made—

- (a) where the payment is expressed to be equivalent to weekly payments of compensation that payment shall be, and shall be deemed always to have been, as valid as if clause 3 (7) of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met;
- (b) where the payment is expressed to be equivalent to weekly payments of compensation and a redemption amount as a lump sum, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3 (7) and clause 4 of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met; or
- (c) where the payment is expressed to be equivalent to weekly payments of compensation and weekly supplementary amounts, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3 (7) and clause 4 or 8, whichever is appropriate, of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met.

(3) Notwithstanding section 77 and 181 of the principal Act, any deed of release signed by a person in respect of a payment referred to in subsection (2) is declared to be legal and binding upon that person and may be filed with the Workers' Compensation Board.

(4) A form of election signed by a person in relation to a payment referred to in subsection (2) (b) or (2) (c) may be filed with the Workers' Compensation Board and is deemed to be, and to always have been, as valid and as effective as it would have been if it had been signed, filed and served in accordance with the provisions of the principal Act as amended by this Act.

(5) Where there is under the amended Schedule—

- (a) liability to pay compensation or to pay for the provision of benefits or both; and
- (b) entitlement to receive compensation or other benefits, or both,

to and by a person who has received a payment referred to in subsection (2) for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid as a payment referred to in subsection (2) shall be taken into account and be deemed to be moneys paid under the amended Schedule.

(6) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has received a payment referred to in subsection (2) (b) or (2) (c). ”.

<sup>21</sup>. As at 6 February 1987 sections 10, 11, 12, 19, 44 and 45 of the *Workers' Compensation and Assistance Amendment Act 1985* (No. 44 of 1985) were not in operation.

<sup>22</sup>. As at 6 February 1987 sections 7 and 11 of the *Workers' Compensation and Assistance Amendment Act (No. 2) 1986* were not in operation.