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WESTERN AUSTRALIA

**WORKERS' COMPENSATION AND
REHABILITATION ACT 1981**

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WORKERS' COMPENSATION AND REHABILITATION 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' Compensation and Rehabilitation Commission and dispute resolution bodies, and for related purposes.

[Long title amended by No. 96 of 1990 s.4; No. 48 of 1993 s.28.]

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Workers' Compensation and Rehabilitation Act 1981*¹.

[Section 1 amended by No. 96 of 1990 s.5.]

Commencement

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

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;
- (c) to promote safety measures in and in respect of employment aimed at preventing or minimizing occurrences of disabilities; and
- (d) to make provision for the hearing and determination by the dispute resolution bodies of disputes between parties involved in workers' compensation matters in a

manner that is fair, just, economical, informal and quick.

[Section 3 amended by No. 72 of 1992 s.4; No. 48 of 1993 s.28.]

General application

4. (1) In this section “**proclaimed date**” means the date on which this section comes into operation².

(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;

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- (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 —

“approved insurance office” means an insurance office approved under section 161;

“approved rehabilitation provider” means a person approved under section 156A as a rehabilitation provider or the Commission;

“approved treatment” means occupational therapy, clinical psychology, speech therapy and any treatment of a kind approved by the Minister for the purposes of this definition by notice published in the *Gazette*;

“child’s allowance” in clause 1 (2), (3), and (4) means —

- (a) for the financial year ending on 30 June 1982, the amount of \$15.37;
- (b) for any financial year ending after 30 June 1982 but before 1 July 1985, the amount obtained by varying the child’s allowance for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences; and

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- (c) for any subsequent financial year, the nearest multiple of 10 cents to the amount obtained by varying the child's allowance for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying the child's allowance for the preceding financial year in accordance with the regulations (with an amount that is 5 cents more than a multiple of 10 cents being rounded off to the next highest multiple of 10 cents);

"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*³;

"compensation magistrate's court" means a compensation magistrate's court established in accordance with Part VI;

"conciliation officer" means a conciliation officer appointed in accordance with Division 1A of Part V;

"contract of insurance" includes a cover note;

"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;

"Director" means the Director of Conciliation and Review appointed in accordance with Division 1A of Part V;

"Directorate" means the Directorate of Conciliation and Review established in accordance with Division 1A of Part V;

"disability" means —

- (a) a personal injury by accident arising out of or in the course of the employment, or whilst the

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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 significant 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 significant degree; or
- (e) a disabling loss of function to which Part III Division 4 applies,

but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in subsection (4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable and harsh on the part of the employer;

“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;

“dispute resolution body” means a review officer or compensation magistrate's court and in sections 84F and 84H includes a conciliation officer;

"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;

"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 Commission⁴ constituted under the *Industrial Relations Act 1979*⁵ of Western Australia;
- (b) an award or a certified agreement made under the *Conciliation and Arbitration Act 1904*⁶ of the Commonwealth;
- (c) an award or agreement made under the *Public Service Arbitration Act 1966*⁷ of Western Australia; or
- (d) an award of the Western Australian Coal Industry Tribunal⁸ constituted under the *Mining Act 1904*⁹ 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 assessment panel" means a medical assessment panel constituted under Part VII;

“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 mine¹⁰ for the purposes of Part 9 of the *Mines Regulation Act Regulations 1976*;

“minimum award rate” means the weighted average minimum award rate for adult males under Western Australian State Awards, as published by the Australian Statistician;

“noise induced hearing loss” means a noise induced loss or diminution of a worker’s hearing that is permanent and is due to the nature of any employment in which the worker was employed, other than a personal injury by accident;

“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;

“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 —

- (a) for the financial year ending on 30 June 1994, the amount of \$100 000; and
- (b) for any subsequent financial year, the nearest whole number of dollars to the amount obtained by varying the prescribed amount for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying the prescribed amount for the preceding financial year in accordance with the regulations (with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars);

“rehabilitation” includes, but is not limited to, vocational rehabilitation;

“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 significant degree;

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- (d) the employment which contributed and contributed to a significant 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;

“review officer” means a review officer appointed in accordance with Division 1A of Part V;

“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 146¹¹; 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*;

“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;

“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;

"vocational rehabilitation" means, in relation to workers who have suffered a disability compensable under this Act, the progressive and co-ordinated use of measures for counselling, occupational and vocational training and retraining, work assessment, and the use of aids, appliances, services or other means to facilitate the restoration of those workers to the fullest capacity for gainful employment of which they are capable;

"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) *repealed*]

[(3) *repealed*]

(4) For purposes of the definition of "disability", the matters are as follows —

- (a) the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment;
- (b) the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment; and

- (c) the worker's expectation of —
 - (i) a matter; or
 - (ii) a decision by the employer in relation to a matter,

referred to in paragraph (a) or (b).

(5) In determining whether the employment contributed, or contributed to a significant degree, to the contraction, recurrence, aggravation or acceleration of a disease for purposes of the definitions of "disability" and "relevant employment", the following shall be taken into account —

- (a) the duration of the employment;
- (b) the nature of, and particular tasks involved in, the employment;
- (c) the likelihood of the contraction, recurrence, aggravation or acceleration of the disease occurring despite the employment;
- (d) the existence of any hereditary factors in relation to the contraction, recurrence, aggravation or acceleration of the disease;
- (e) matters affecting the worker's health generally; and
- (f) activities of the worker not related to the employment.

[Section 5 amended by No. 79 of 1983 s.2; No. 44 of 1985 s.3; No. 51 of 1986 s.46 (2); No. 85 of 1986 s.4; No. 86 of 1986 ss.5 and 6; No. 21 of 1987 s.3; No. 36 of 1988 s.4; No. 96 of 1990 s.6; No. 72 of 1992 s.16 (3); No. 48 of 1993 ss.18, 21, 28 and 29.]

**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 clergy

9. In this Act “**worker**” includes a member of the clergy of the Anglican Church of Australia being a bishop, or a member of the

clergy licensed by the bishop, of a diocese of the church in the State and, for the purpose of this Act, the Anglican Archbishop of Perth is deemed to be the employer.

[Section 9 inserted by No. 72 of 1992 s.5.]

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.¹² (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

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- (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*⁶ 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*¹³ 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 —

- (a) who is not a worker referred to in subsection (2), but who holds a judicial or other statutory office; or
- (b) who is a member of the Governor's Establishment within the meaning of the *Governor's Establishment Act 1992*,

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; No. 40 of 1992 s.13.]

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 503¹⁴ 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.

Personal injury by accident arising out of or in course of employment

19. (1) Without limiting the generality of section 18, a worker shall be treated as having suffered personal injury by accident arising out of or in the course of the worker's employment if the injury occurs —

- (a) during the worker's attendance at a place for educational purposes if —
 - (i) the attendance is required by the worker's terms of employment or apprenticeship; or
 - (ii) the attendance is for the purpose of, or in connection with, the worker's employment with the employer and the employer agrees to the attendance;
- (b) during the attendance at a place for treatment or attendance of a kind referred to in clause 17 of Schedule 1; or
- (c) during the attendance at a place for the purpose of receiving payment of compensation to which the worker is entitled under this Act.

(2) A worker shall not be treated as having suffered personal injury by accident arising out of or in the course of the worker's employment if the worker suffers an injury —

(a) during a journey —

- (i) between a place of residence of the worker and the worker's place of employment;
- (ii) between a place of residence of the worker and a place mentioned in subsection (1); or
- (iii) if the worker has more than one place of residence, between those places;

or

(b) during a journey arising out of or in the course of the worker's employment if the injury is incurred during, or after, any substantial interruption of, or substantial deviation from, the journey, made for any reason unconnected with the worker's employment or attendance mentioned in subsection (1).

(3) In subsection (2) —

“place of residence” includes a place of temporary residence;

“substantial interruption” *prima facie* includes any interruption of the journey for a period of more than one hour.

[Section 19 inserted by No. 48 of 1993 s.30.]

[20. Repealed by No. 48 of 1993 s.31.]

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

24.¹⁵ Notwithstanding Schedule 1, in respect of compensable personal injuries by accident, if the worker himself so elects during his lifetime as provided by section 24B, 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.

[Section 24 amended by No. 44 of 1985 s.9; No. 36 of 1988 s.5.]

Lump sum compensation for noise induced hearing loss

24A. (1) Subject to Schedule 7 and this section, a worker suffering from noise induced hearing loss shall be entitled to compensation for that loss under item 6 of the table set out in Schedule 2 if the worker so elects as provided by section 24B, but the compensation payable for that hearing loss shall, subject to the provisions of this Act relating to Schedule 2, be in accordance with the percentage ratio of the prescribed amount indicated in column 2 of the table set out in Schedule 2 in respect of item 6 at the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred, irrespective of when the worker so elects.

(2) A worker is entitled to compensation under this section only in respect of noise induced hearing loss incurred after the date on which this section comes into operation and —

- (a) in respect of the worker's first election under this section, where that noise induced hearing loss is at least a 10% loss of hearing; and

- (b) in respect of a subsequent election by the worker under this section after a successful first election under paragraph (a) —
 - (i) where that noise induced hearing loss is at least a further 5% loss of hearing; or
 - (ii) where the worker has reached the age of 65 years or on the worker's retirement from work before that age, where that noise induced hearing loss is any further percentage of loss of hearing.

(3) Nothing in subsection (2) operates to stop a worker who —

- (a) has retired from work before attaining the age of 65 years;
- (b) has made a successful election under subsection (2) (b) (ii); and
- (c) subsequently returns to work,

from making an election under subsection (2) (b) in respect of further loss of hearing.

(4) A worker is not entitled to compensation under this section in respect of noise induced hearing loss incurred after the worker has attained the age of 65 years.

(5) In subsection (2), loss of hearing means percentage loss of hearing calculated in accordance with the National Acoustic Laboratory Tables prescribed.

(6) Schedule 7 applies and noise induced hearing loss shall be ascertained and measured for the purposes of this section in accordance with that Schedule.

[Section 24A inserted by No. 36 of 1988 s.6.]

Election under section 24 or 24A

24B. (1) A worker elects for the purposes of section 24 or 24A (1) where —

- (a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant injury or hearing loss; and
- (b) that form of election is filed with the Directorate, and a copy of it is served by or on behalf of the worker on the employer who, in the case of an election for the purposes of section 24A, shall be the employer who last employed the worker in employment to the nature of which noise induced hearing loss is due.

(2) A form of election referred to in subsection (1) is not binding upon a worker unless the Director is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's future entitlements to compensation under this Act.

(3) If not satisfied in accordance with subsection (2), the Director shall within 7 days notify the employer and the worker accordingly.

(4) Subject to this Act, a worker who elects as provided by subsection (1) is entitled to continue to receive any weekly payments of compensation to which he or she is entitled until —

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

whichever is sooner.

(5) Where a worker makes an election under subsection (1) for the purposes of section 24A, this Division shall apply as if the noise induced hearing loss in respect of which the election was made was a compensable personal injury by accident arising out of or in the course of the worker's employment and for that purpose a reference in this Division to the time or date of the personal injury by accident shall, in respect of compensable noise induced hearing loss, be construed as a reference to the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred.

*[Section 24B inserted by No. 36 of 1988 s.6; amended
by No. 48 of 1993 s.28.]*

"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 Workers' Compensation Board in existence immediately before 1 January 1994, 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.

[Section 27 amended by No 48 of 1993 s.28.]

Limit on compensation of worker electing

28.¹⁵ A worker who elects under section 24B 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 a dispute resolution body is made with respect to the amount of compensation payable pursuant to the election.

[Section 28 amended by No. 44 of 1985 s.13; No. 36 of 1988 s.7; No. 48 of 1993 s.28.]

Compensation while incapacity continues

29.¹⁵ Sections 24 and 24A do not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the injuries referred to in those sections unless the worker elects under section 24B and an agreement is registered or an order of a dispute resolution body is made with respect to the amount of compensation payable pursuant to the election.

[Section 29 amended by No. 44 of 1985 s.14; No. 36 of 1988 s.8; No. 48 of 1993 s.28.]

Compensation payable before election

30.¹⁵ Subject to section 28, when a worker elects under section 24B, 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 or 24A and occurring before he so elects and an agreement is registered or an order of a dispute resolution body 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; No. 36 of 1988 s.9; No. 48 of 1993 s.28.]

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 a dispute resolution body 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.

[Section 33 amended by No. 48 of 1993 s.28.]

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, or in relation to, 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 physicians who specialize in diseases of the chest or in occupational diseases where at least one of the physicians specializes in diseases of the chest, all of whom are to be nominated by the Executive Director.¹⁶

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

(3) The Chairman of a medical panel shall be appointed by the Minister on the nomination of the Executive Director.

[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; No. 96 of 1990 s.7; No. 48 of 1993 s.32¹⁶.]

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 medical panel 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 to give evidence in a hearing in a compensation magistrate's court.

[Section 37 amended by No. 86 of 1986 s.5; No. 30 of 1993 s.13; No. 48 of 1993 s.28.]

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, or was, the worker suffering from pneumoconiosis, mesothelioma or lung cancer?
- (b) if so, is, or was, the worker thereby disabled from earning full wages?
- (c) to what extent if any does, or did —
 - (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, or was, contributing to the worker's disablement or death and to what extent?
- (e) is, or was, the worker fit for work? If so, at what level — light, moderate, or heavy?

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(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; No. 48 of 1993 s.33.]

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 physician who specializes in diseases of the chest 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 physician 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.

[Section 47 amended by No. 30 of 1993 s.13.]

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 chief executive officer¹⁷ 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*.

(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 chief executive officer¹⁷ 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* 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; No. 21 of 1987 s.4.]

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.

[50. *Repealed by No. 36 of 1988 s.10.*]

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).

Claims procedure — insured employer

57A. (1) This section applies where —

- (a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 84I (1) (b); and
- (b) the worker suffering the disability has served on the employer a certificate signed by a medical practitioner —
 - (i) in or to the effect of the form prescribed containing substantially the information sought in the form; or

- (ii) to the effect that the worker is unfit for work because of a recurrence of a disability in respect of which a certificate as referred to in subparagraph (i) has previously been served,

and the employer is indemnified by a policy of insurance against his liability to pay the compensation claimed.

(2) Where, in the circumstances mentioned in subsection (1), an employer fails to make a claim under and in accordance with his policy of insurance before the expiration of 3 full working days of his insurer after the day on which the circumstances mentioned in subsection (1) arose or, where the making of a claim within that time would not be reasonably practicable, as soon as reasonably practicable thereafter, the insurer may, in a Local Court, sue and recover from the employer, as a debt due, any amount that, under the policy of insurance, he is liable to pay by way of indemnity in respect of the first 3 working days for which weekly payments are claimed by the worker and section 192¹⁸ does not apply in relation to the action.

(3) Upon an employer making a claim as mentioned in subsection (2), the insurer shall, before the expiration of 14 days after the claim was made by the employer —

- (a) notify the worker to whom the claim relates and the employer that liability is accepted in respect of the weekly payments claimed;
- (b) subject to section 75, notify the employer and the worker that liability is disputed in respect of all or any of the weekly payments claimed and of the reasons why it is disputed, subject to the insurer not being prejudiced in any subsequent proceedings relating to the claim by the reasons stated in the notice; or
- (c) notify the Director, the employer and the worker that a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is

not able to be made within the time allowed by this subsection and of the reasons why the decision is not able to be so made,

and that notification shall be in or to the effect of the form prescribed containing substantially the information required.

(3a) If within 10 days after the Director is notified under paragraph (c) of subsection (3) that a decision is not able to be made, the insurer has not —

- (a) notified the worker to whom the claim relates, the employer and the Director that liability is accepted in respect of the weekly payments claimed; or
- (b) subject to section 75, notified the employer, the worker and the Director that liability is disputed in respect of all or any of the weekly payments claimed and of the reasons why it is disputed,

the claim by the worker shall be deemed to be disputed.

(4) Where the Director has requested an insurer to do so, the insurer shall cause each notification to the Director under subsection (3) (c) to be accompanied by a means specified by the Director for conveying to the Director, in a machine-readable form so specified, the information contained in the notification.

(5) Where an insurer fails to comply with subsection (3) in respect of a claim for weekly payments under this Act, the worker who made the claim is, by force of this subsection, entitled to the weekly payments claimed and the insurer is liable to indemnify the employer in respect of those weekly payments, but either the employer or the insurer may apply to the Directorate for a determination under subsection (6).

(6) On an application under subsection (5) the Directorate may determine the entitlement that the worker would have but for the operation of subsection (5), and thereupon the entitlement of the worker is as so determined by the Directorate but without

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affecting his entitlement under subsection (5) in respect of the period before that determination.

(7) An employer shall make the first of the weekly payments as soon as practicable after —

- (a) he is notified that the insurer accepts the claim or the time prescribed by subsection (3) expires without the employer having received any notification as required by that subsection from the insurer; and
- (b) the worker has complied with the requirements of section 84I or, on an application made under section 58, the Directorate has ordered the commencement of weekly payments under this subsection notwithstanding that those requirements have not been complied with,

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

(8) An employer who having received a payment from an insurer in respect of the employer's liability to make a weekly payment to a worker fails to make that weekly payment to the worker in accordance with subsection (7) commits an offence.

Penalty: \$2 000.

[Section 57A inserted by No. 96 of 1990 s.8; amended by No. 72 of 1992 s.6; No. 48 of 1993 ss. 28 and 34.]

Claims procedure — self-insurer or uninsured employer

57B. (1) This section applies where —

- (a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 84I (1) (b); and

- (b) the worker suffering the disability has served on the employer a certificate signed by a medical practitioner —
 - (i) in or to the effect of the form prescribed containing substantially the information sought in the form; or
 - (ii) to the effect that the worker is unfit for work because of a recurrence of a disability in respect of which a certificate as referred to in subparagraph (i) has previously been served,

and the employer (whether in contravention of section 160, in accordance with an exemption under section 164, as a result of the insurer declining to indemnify the employer, or otherwise) is not indemnified by a policy of insurance against his liability to pay the compensation claimed.

(2) In the circumstances mentioned in subsection (1), an employer shall, before the expiration of 14 days after those circumstances arose —

- (a) if liability to make the weekly payments claimed is accepted, subject to subsection (6), make the first of those weekly payments;
- (b) if liability to make the weekly payments claimed is disputed, subject to section 75, notify the worker to that effect and of the reasons why it is disputed, subject to the employer, or the insurer if the insurer subsequently agrees to indemnify the employer, not being prejudiced in any subsequent proceedings relating to the claim by the reasons stated in the notice; or
- (c) if unable to make a decision within the time allowed by this subsection as to whether or not liability to make the weekly payments claimed is to be accepted,

notify the Director and the worker to that effect and of the reasons why the decision is not able to be so made,

and any such notification shall be in or to the effect of the form prescribed containing substantially the information required.

(2a) If within 10 days after the Director is notified under subsection (2) (c) that a decision is not able to be made, the employer has not —

- (a) if liability to make the weekly payments claimed is accepted, notified the Director accordingly and, subject to subsection (6), made the first of those weekly payments; or
- (b) subject to section 75, notified the worker and the Director that liability is disputed in respect of all or any of the weekly payments claimed and of the reasons why it is disputed,

the claim by the worker shall be deemed to be disputed.

(2b) When an insurer declines to indemnify an employer against the employer's liability to pay the compensation claimed, the insurer shall, before the expiration of 14 days after the claim was made by the employer, notify the Commission to that effect and of the reasons for declining to indemnify.

(3) Where the Director has requested an employer to do so, the employer shall cause each notification to the Director under subsection (2) (c) to be accompanied by a means specified by the Director for conveying to the Director, in a machine-readable form so specified, the information contained in the notification.

(4) Where an employer fails to comply with subsection (2) upon a worker claiming compensation by way of weekly payments under this Act, the worker is, by force of this subsection, entitled to the weekly payments claimed and the employer shall, subject to subsection (6), forthwith make the first

of those weekly payments, but the employer may apply to the Directorate for a determination under subsection (5).

(5) On an application under subsection (4) the Directorate may determine the entitlement that the worker would have had but for the operation of subsection (4), and thereupon the entitlement of the worker is as so determined by the Directorate but without affecting his entitlement under subsection (4) in respect of the period before that determination.

(6) An employer is not required under subsection (2) or (4) to make any weekly payment unless —

- (a) the worker has complied with the requirements of section 84I; or
- (b) on an application made under section 58, the Directorate has ordered the commencement of weekly payments under this section notwithstanding that those requirements have not been complied with.

(7) After the first of the weekly payments, subsequent weekly payments to which a worker is entitled shall be made on an employer's usual pay days.

[Section 57B inserted by No. 96 of 1990 s.8; amended by No. 72 of 1992 s.7; No. 48 of 1993 ss.28 and 35.]

Notification to Commission

57C. (1) This section applies in respect of a claim made by a worker for compensation by way of weekly payments that was made after the day fixed by the Minister for the purpose of this section by notice published in the *Gazette*.

(2) Where an employer makes a claim to his insurer as referred to in section 57A (2) and weekly payments to which the worker is entitled are commenced the insurer shall, as soon as practicable but in any event before the expiration of 21 days after

the day on which the weekly payments were commenced, send to the Commission notification in accordance with subsection (5) of the matter to which the claim relates.

(3) Where section 57B applies and weekly payments to which the worker is entitled are commenced the employer shall, as soon as practicable but in any event before the expiration of 21 days after the day on which the weekly payments were commenced, send to the Commission notification in accordance with subsection (5) of the matter to which the claim relates.

(4) An insurer or employer who has given notification under subsection (2) or (3) in respect of a claim shall send to the Commission notification in accordance with subsection (5) of the discontinuance of weekly payments as soon as practicable after the weekly payments are discontinued, except that where it appears likely that there will be any further payment of compensation under this Act to the worker arising from the disability to which the claim relates, the notification required under this subsection shall be sent as soon as practicable after it appears that all such payments have been made.

(5) Notification required to be made in accordance with this subsection shall be in the form prescribed containing substantially the information required and, in the case of a notification under subsection (2) or (3), include an estimate of whether or not the incapacity of the worker is expected to be for a period exceeding 4 weeks and shall, where the Commission has so requested, be accompanied by a means specified by the Commission for conveying to the Commission, in a machine-readable form so specified, the details of the information and the estimate.

Penalty: \$1 000.

[Section 57C inserted by No. 96 of 1990 s.8.]

Confidentiality

57D. (1) Subject to subsection (2), a person, except with the express authority of the Commission, shall not have access to, inspect, or peruse any information given under section 57C to the Commission, and that information shall be treated as strictly confidential and shall not, except for the purposes of this Act, be disclosed to any person.

Penalty: \$1 000.

(2) An employer may request that information provided under section 57C, whether by him or an insurer, in respect of compensation claimed by a worker from that employer be disclosed to another insurer or prospective insurer, and subsection (1) does not apply to the disclosure of information in accordance with that request.

[Section 57D inserted by No. 96 of 1990 s.8.]

Directorate may determine liability

58. (1) Where, in the circumstances mentioned in section 57A (1) —

- (a) a period of 17 days has elapsed since those circumstances arose and the worker has not received the first of the weekly payments claimed; or
- (b) whether or not the period mentioned in paragraph (a) has elapsed, notification has been given by the insurer —
 - (i) under section 57A (3) (b) or 57A (3a) (b), that liability is disputed; or

- (ii) under section 57A (3) (c), that a decision as to liability is not able to be made within the time allowed,

the Directorate may, on the application of the worker hear and determine the question of liability to make the weekly payments claimed.

(2) Where in the circumstances mentioned in section 57B (1) —

- (a) a period of 17 days has elapsed since those circumstances arose and the worker has not received the first of the weekly payments claimed; or
- (b) whether or not the period mentioned in paragraph (a) has elapsed, notification has been given by the employer —
 - (i) under section 57B (2) (b) or 57B (2a) (b), that liability is disputed; or
 - (ii) under section 57B (2) (c), that a decision as to liability is not able to be made within the time allowed,

the Directorate may, on the application of the worker hear and determine the question of liability to make the weekly payments claimed.

(2a) Where under section 57A (3a) or 57B (2a) a claim by a worker is deemed to be disputed, the Directorate may order the employer to make an application for the Directorate to hear and determine the question of liability to make the weekly payments claimed.

(3) An employer may, in the circumstances mentioned in section 57A (1) or section 57B (1), make application for the Directorate to hear and determine the question of liability to

make the weekly payments claimed, and the Directorate may hear and determine the matter.

[(4) *repealed*]

(5) On a hearing under subsection (1), (2), (2a) or (3) the Directorate shall satisfy itself as to all the evidence before it whereupon the Directorate —

(a) if it considers that the evidence is satisfactory to establish liability to make weekly payments, may —

(i) make an order that weekly payments including arrears to the date of the hearing shall be paid out of the General Fund and that the employer shall forthwith pay to the Commission for the General Fund the amount of such payments together with an additional 10 per cent of that amount; or

(ii) make an order as to weekly payments by the employer to the worker on such terms as it sees fit;

or

(b) if it considers that the evidence is not satisfactory to establish liability to make weekly payments, may dismiss or adjourn the application on such terms as it sees fit.

(6) The fact that an application has been dismissed under subsection (5) shall not be taken into account by the Directorate in any other proceedings under this Act.

[Section 58 inserted by No. 96 of 1990 s.9; amended by No. 72 of 1992 s.8; No. 48 of 1993 s.28.]

Information as to remunerated work

59. (1) This section applies to a worker who has claimed or is receiving weekly payments of compensation from an employer (**"the employer"**).

(2) A worker who commences remunerated work (other than work with the employer) after making a claim for weekly payments of compensation, is to, within 7 days of —

- (a) commencing the work; or
- (b) receiving notification under subsection (3),

whichever is the later, inform in writing the employer or the employer's insurer of the commencement of the work.

Penalty: \$500.

(3) The employer or the employer's insurer is to notify in writing a worker of the worker's obligations under subsection (2).

(4) A worker is not to be convicted of an offence under subsection (2) unless the employer or the employer's insurer has complied with subsection (3).

(5) The employer or the employer's insurer may, in writing, request a worker to provide the following particulars of remunerated work (other than work with the employer) commenced after the making of the worker's claim for weekly payments of compensation —

- (a) the date of commencement of the work;
- (b) the title, classification or description of the work;
- (c) the remuneration for the work; and
- (d) the name and address of the person (if any) for whom the work is performed.

(6) A worker is to provide in writing the particulars requested under subsection (5) within 7 days of the date of the request.

Penalty: \$500.

(7) If the particulars provided by the worker under subsection (6) establish that the worker has commenced remunerated work, the employer or the employer's insurer may discontinue or reduce the worker's weekly payments of compensation in accordance with the particulars.

(8) The employer or the employer's insurer must not discontinue or reduce a worker's weekly payments of compensation under subsection (7) otherwise than in accordance with the particulars provided by the worker under subsection (6).

Penalty: \$2 000.

(9) Subject to sections 57A, 57B and 58, if —

- (a) a worker has claimed but has not received from the employer, weekly payments of compensation;
- (b) the worker provides particulars under subsection (6);
- (c) the particulars establish that the worker has commenced remunerated work,

the employer or the employer's insurer may make a decision in accordance with the particulars as to whether or not weekly payments of compensation are to be made for the period to which the particulars relate, and if so, the amount of the weekly payments.

(10) A worker who disputes the discontinuance or reduction of weekly payments of compensation under subsection (7) may apply to the Directorate for an order that the weekly payments be reinstated.

[Section 59 inserted by No. 72 of 1992 s.9; amended by No. 48 of 1993 s.28.]

Application for discontinuance or reduction of weekly payments

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

(2) If the employer satisfies the Directorate 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 Directorate may order that the payments be suspended for such time as the Directorate directs or be discontinued or be reduced to such amount as it thinks proper or it may dismiss the application.

[Section 60 amended by No. 96 of 1990 s.10; No. 72 of 1992 s.10; No. 48 of 1993 s.28.]

Unlawful discontinuance of weekly payments

61.¹⁹ (1) Subject to subsections (7) and (8) 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 reduced without the consent of the worker or an order of the Directorate 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 reduce 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 Directorate 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 reduce 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 Directorate may allow from the day on which the weekly payments were discontinued or reduced, apply to the Directorate for an order that the weekly payment shall not be discontinued or reduced.

[(3a) repealed]

(4) Upon the hearing of an application referred to in subsection (3) the Directorate shall —

- (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 reduced, 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.

(4a) Upon the hearing of an application referred to in subsection (3) the Directorate —

- (a) may, where the case requires, take into account whether reasonable steps to facilitate the rehabilitation of the worker have been taken on the part of the employer and of the worker, and for the purposes of determining the application, accordingly treat the worker's incapacity as being of such degree as it sees fit; and
- (b) shall, where the case requires, take into account matters referred to in clause 8.

(5) Subject to subsections (7) and (8), weekly payments shall not be discontinued or reduced otherwise than in accordance with this Act.

Penalty: \$2 000.

(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, 72, or 145D; or
- (d) on failure to comply with section 69 by a worker who does not reside in the State.

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(8) Subsections (1) and (2) do not apply to a discontinuance or reduction of weekly payments of compensation under section 59 (7).

[Section 61 amended by No. 44 of 1985 s.20; No. 96 of 1990 s.11; No. 72 of 1992 ss.11 and 12; No. 48 of 1993 s.28.]

Review of weekly payments

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

[(2) repealed]

[Section 62 amended by No. 96 of 1990 s.12; No. 72 of 1992 s.13; No. 48 of 1993 s.28.]

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 Directorate otherwise orders.

[Section 63 amended by No. 48 of 1993 s.28.]

Medical examinations

64. (1) 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

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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.

(2) Subsection (1) does not apply in relation to an election made by the worker for the purposes of section 24 to receive compensation in accordance with that section for permanent loss of the full efficient use of the back, neck or pelvis.

[Section 64 amended by No 48 of 1993 s.28.]

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 medical 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) *repealed*]

(2) Where permanent total 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, subject to subsection (3), be redeemed by the payment of a lump sum to be settled, in default of agreement, under Part IIIA, and such lump sum may be ordered under Part IIIA to be paid to or invested or otherwise applied for the benefit of the person entitled to the lump sum.

(3) A liability for incapacity mentioned in subsection (2) may not be redeemed by payment of a lump sum, whether by agreement or otherwise, unless —

- (a) the worker has attained the age of 55 years; or
- (b) the worker will use the sum for a purpose prescribed by regulation,

and the worker has special need of the lump sum instead of the continuance of the weekly payments and other benefits or any other circumstances of the case justify the redemption and, where it has been ordered that the total liability of the employer in respect of weekly payments is to exceed the prescribed amount, the employer's consent to the redemption is required, the intention being that liability for incapacity not be redeemed as a matter of course but only when the special circumstances of the case justify the 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, under Part IIIA, and such lump sum may be ordered under Part IIIA to be paid to or invested or otherwise applied for the benefit of the person entitled to the lump sum.

(5) Where an order is made for 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; No. 48 of 1993 s.36.]

Calculation of lump sum

68. (1) Where the liability for an incapacity may be redeemed under section 67 (2) and (3) and it has not been 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) the weekly payments at the rate to which the worker 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) Where the liability for an incapacity may be redeemed under section 67 (2) and (3) and it has been 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) Where the liability for an incapacity is to be redeemed under 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; No. 48 of 1993 s.37.]

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 assessment 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 medical 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 medical condition the matter may be referred by the Director for determination by a medical assessment panel if either party so requests in the manner prescribed and on payment of the prescribed fee.

(2) The party who desires the reference of a matter to a medical assessment panel shall make the request 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) *repealed*]

(4) Where no agreement can be reached between the employer and the worker as to whether the disability is a fresh disability or the recurrence of an old disability or 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 medical condition of the worker.

[Section 70 amended by No. 86 of 1986 s.5; No. 96 of 1990 s.13; No. 48 of 1993 s.28.]

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 Directorate for an order that compensation or expenses so paid be refunded, and the Directorate 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.

[Section 71 amended by No. 48 of 1993 s.28.]

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 Directorate to undergo rehabilitation as specified by the Directorate —
 - (i) refuses to do so;
 - (ii) ceases to do so before so authorized by the person providing the rehabilitation; or
 - (iii) does not, in the opinion of a medical practitioner to whom the Commission has, on the recommendation of a rehabilitation provider, referred the matter, reasonably co-operate in, or regularly attend for, such vocational rehabilitation.

(2) The worker's entitlement to compensation is suspended from the date on which the 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 Director issued pursuant to subsection (2) is binding on the worker, the employer, and his insurer.

(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 Director's certificate of its existence or such time as the Directorate otherwise directs, then the worker's entitlement to further compensation for the disability in respect of which he was required to undergo rehabilitation ceases.

[Section 72 amended by No. 86 of 1986 s.5; No. 96 of 1990 s.14; No. 48 of 1993 s.28.]

[Division 5A repealed by No. 48 of 1993 s.28.]

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 question of which employer is liable or how liability is to be apportioned between employers has been resolved.

[N.B. *Clause 30 of Schedule 1 of Act No. 48 of 1993 amended this subsection, however that amendment was made redundant by the amendment effected by clause 16 of that Schedule.*]

(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 wholly or partially liable to pay the compensation.

(4) If the worker has not filed an application the employer first liable to pay compensation may refer to the Director for conciliation under Part IIIA the question of whether some other employer is wholly or partially liable to pay compensation.

[N.B. *Clause 28 of Schedule 1 of Act No. 48 of 1993 amended this subsection, however that amendment was made redundant by the amendment effected by clause 16 of that Schedule.*]

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

(6) If the dispute between employers is in respect of liability to pay compensation for noise induced hearing loss under section 24A, the Commission shall provide a conciliation officer, review officer or court dealing with the dispute under Part IIIA with copies of the results of any relevant audiometric tests stored by the Commission under clause 5 (2) of Schedule 7.

[N.B. *Clause 30 of Schedule 1 of Act No. 48 of 1993 amended this subsection, however that amendment was made redundant by the amendment effected by clause 16 of that Schedule.*]

[Section 73 amended by No. 36 of 1988 s.11; No. 96 of 1990 s.16; No. 48 of 1993 s.28.]

Dispute between insurers

74.²⁰ (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 liability 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 a dispute resolution body has otherwise determined.

(1a) An employer or insurer may make an application to the Directorate, 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.

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(2) A dispute resolution body shall determine which insurer is liable or how liability is to be apportioned and may make such order as it thinks proper for the reimbursement of one insurer by another 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; No. 96 of 1990 s.17; No. 48 of 1993 s.28.]

Apportionment under sections 73 and 74

74A. Liability shall not be so apportioned under section 73 or 74 that part of the liability to pay compensation, or indemnify an employer in respect of compensation, relates to a disability that occurred before the commencement of section 16 of the *Workers' Compensation and Assistance Amendment Act 1990*¹.

[Section 74A inserted by No. 96 of 1990 s.18.]

Obligation to make weekly payments preserved

75. Where an employer is liable under section 73 (1) to pay compensation under this Act, neither that employer nor his insurer shall give notification under section 57A (3) (b) or (c) or 57B (2) (b) or (c) in respect of weekly payments claimed, but nothing in this section affects the right to make an application under section 73 (4) in relation to the matter.

[Section 75 inserted by No. 96 of 1990 s.19.]

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 Director, 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 Directorate.

(2) No such memorandum shall be recorded before 7 days after the despatch by the Director 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 Directorate, under the circumstances, may think just.

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

(6) A memorandum received for registration shall be examined as to —

(a) the genuineness of the agreement;

- (b) the adequacy of the amount of any compensation or other moneys payable under the agreement; and
- (c) in the case of an agreement as to the redemption of the liability to pay compensation by a lump sum (**"a redemption agreement"**), whether there is sufficient compliance with section 67,

and if it appears to the Director as the result of such examination or as the result of any information which the Director considers sufficient that a redemption agreement 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, or in the case of a redemption agreement by reason of there being insufficient compliance with section 67, the Director shall refuse to record the memorandum of the agreement sent for registration, and in that case shall refer the matter to a compensation magistrate's court which shall make such order (including an order as to any sum already paid under the agreement) as the court thinks just.

(7) For the purpose of carrying out his duties under subsection (6) the Director 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 Director may require the employer to have the worker examined by a medical practitioner nominated by the Director, at the expense of the employer, in any case where the Director 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 Directorate 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 or in the case of a redemption agreement that there is insufficient compliance with section 67, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Directorate thinks just.

(9) Where a memorandum has been recorded under this section the Director 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.

[Section 76 amended by No. 48 of 1993 ss.28 and 38.]

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 a dispute resolution body may in its discretion refuse to award compensation which otherwise would be payable.

[Section 79 amended by No. 48 of 1993 s.28.]

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 pay

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*⁶ 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 Directorate.

[Section 83 amended by No. 48 of 1993 s.28.]

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.

Employer to keep position available during worker's incapacity

84AA. (1) Where a worker who has been incapacitated by disability attains partial or total capacity for work in the 12 months from the day the worker becomes entitled to receive weekly payments of compensation from the employer, the employer shall provide to the worker —

- (a) the position the worker held immediately before that day if it is reasonably practicable to provide that position to the worker; or
- (b) if the position is not available, or if the worker does not have the capacity to work in that position, a position —

- (i) for which the worker is qualified; and

- (ii) that the worker is capable of performing,

most comparable in status and pay to the position mentioned in paragraph (a).

Penalty: \$5 000.

(2) The requirement to provide a position mentioned in subsection (1) (a) or (b) does not apply if the employer proves that the worker was dismissed on the ground of serious or wilful misconduct.

(3) Where, immediately before the day mentioned in subsection (1), the worker was acting in, or performing on a temporary basis the duties of, the position mentioned in paragraph (a) of that subsection, that subsection applies only in respect of the position held by the worker before taking the acting or temporary position.

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(4) For the purpose of calculating the 12 months mentioned in subsection (1), any period of total capacity for work is not to be included.

[Section 84AA inserted by No. 48 of 1993 s.39.]

PART IIIA — DISPUTE RESOLUTION

[Part IIIA inserted by No. 48 of 1993 s.22.]

Division 1 — General

[Heading inserted by No. 48 of 1993 s.22.]

Definitions

84A. In this Part, unless the contrary intention appears —

“conciliation” means procedures taken by a conciliation officer under Division 2 for the resolution of a dispute;

“dispute” means a dispute in connection with a claim for compensation under this Act and includes —

- (a) a dispute as to liability to make or continue to make weekly payments of compensation;
- (b) a dispute between employers as to liability;
- (c) a dispute between insurers as to liability to indemnify an employer;

“review” means procedures taken by a review officer under Division 3 for the resolution of a dispute.

[Section 84A inserted by No. 48 of 1993 s.22.]

Exclusive jurisdiction

84B. Proceedings for the resolution of a dispute are not capable of being brought other than under this Part.

[Section 84B inserted by No. 48 of 1993 s.22.]

Dependants

84C. In considering a question as to whether a person who resides outside the State is a dependant of a worker, a dispute resolution body is to require proof by or including documentary evidence that the worker has, wholly or in part as the case may be, supported the person and is not to accept as sufficient proof a statutory declaration or affidavit unsupported by documentary evidence to that effect.

[Section 84C inserted by No. 48 of 1993 s.22.]

Relief or redress not restricted to claim

84D. 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.

[Section 84D inserted by No. 48 of 1993 s.22.]

Order as to total liability

84E. (1) Where a dispute resolution body considers that a disability to a worker that is compensable under this Act has resulted in the permanent total incapacity for work of the worker, it may, subject to this section, make such order as to the total liability of the employer for the incapacity as the dispute resolution body 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) A dispute resolution body is not to 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 and the reasonable financial needs of the worker.

(3) The total liability of the employer ordered under this section is not to 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 the disability of the worker 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, a dispute resolution body —

- (a) is to 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 the disability of the worker 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 84E inserted by No. 48 of 1993 s.22.]

s. 84F

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

84F. (1) A dispute resolution body 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, is to be paid to the Commission and the manner in which it is to be applied.

(2) After compensation referred to in subsection (1) is paid application may be made to the dispute resolution body by or on behalf of the person entitled to vary the manner in which it is applied.

[Section 84F inserted by No. 48 of 1993 s.22.]

Particular details in order or agreement for a lump sum payment

84G. An order of a dispute resolution body, including a consent order, or an agreement registered under Division 7 of Part III, for a lump sum payment is to 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 is also to 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 84G inserted by No. 48 of 1993 s.22.]

Dispute resolution body may regard illegal contracts of employment as valid

84H. If in any proceedings for the recovery under this Act of compensation for a disability it appears to a dispute resolution body that the contract under which the disabled worker was engaged at the time when the disability occurred was illegal, the dispute resolution body 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.

[Section 84H inserted by No. 48 of 1993 s.22.]

Requirements for taking proceedings

84I. (1) Proceedings for the recovery under this Act of compensation for a disability are not maintainable unless —

- (a) a notice of the occurrence of the disability has been given in writing in or to the effect of the prescribed form containing substantially the information required 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 is not 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 or her 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) is not a bar to the maintenance of such proceedings, if it is shown that the employer has not been prejudiced in his or her 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 is to give the name and address of the person disabled, and is to state in ordinary language the cause of the disability and the date and place at which the disability occurred, and is to 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) When 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 —

- (a) the Crown in right of the State, notice in respect of a disability under this Act is to be served on the State Crown Solicitor, at Perth, or the manager of the work on which the worker was employed at the time of the accident;
- (b) the Governor under the *Governor's Establishment Act 1992*, notice in respect of a disability under this Act is to be served on the Official Secretary within the meaning of that Act;

- (c) the President of the Legislative Council, notice in respect of a disability under this Act is to be served —
 - (i) in the case of a worker who is a member of the Department of the Legislative Council, on the Clerk of the Legislative Council; or
 - (ii) in the case of a worker who is an electorate officer, on the Director-General;
 - (d) the Speaker of the Legislative Assembly, notice in respect of a disability under this Act is to be served —
 - (i) in the case of a worker who is a member of the Department of the Legislative Assembly, on the Clerk of the Legislative Assembly; or
 - (ii) in the case of a worker who is an electorate officer, on the Director-General;
- or
- (e) the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, notice in respect of a disability under this Act is to be served, in the case of a worker who is a member of —
 - (i) the Department of the Parliamentary Reporting Staff, on the Chief Hansard Reporter;
 - (ii) the Department of the Parliamentary Library, on the Parliamentary Librarian; or
 - (iii) the Joint House Department, on the Executive Officer of the Joint House Department,

as the case requires.

(6) A reference in subsection (5) (c), (d) or (e) to an expression that is defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* is a reference to that expression as so defined.

[Section 84I inserted by No. 48 of 1993 s.22.]

Worker making statement to employer or insurer

84J. Where a worker, after a disability has occurred, makes a statement in writing, in relation to the disability to the employer of the worker or to an insurer or to any person acting on behalf of the employer or insurer, that statement is not to be admitted in evidence if tendered by the employer or insurer or used by the employer or insurer in proceedings before a dispute resolution body 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.

[Section 84J inserted by No. 48 of 1993 s.22.]

Provision of certain documents before commencement of proceedings

84K. (1) A worker who has suffered a disability, or such a worker's solicitor or agent, may request the worker's employer at the time the disability occurred, or that employer's insurer, to provide the person making the request with a copy of such relevant documents as are in the possession of or under the control of the employer and the insurer.

(2) A request under subsection (1) may be made at any time after the occurrence of the disability and before the matter is referred for conciliation.

(3) A request under subsection (1) is to be complied with within 7 days after it is received.

(4) In subsection (1), **“relevant document”** means —

- (a) any contract of service or apprenticeship to which the worker is a party;
- (b) any contract for service to which the worker is a party;
- (c) records of wages or other remuneration paid to the worker;
- (d) any report relevant to the disability by a medical practitioner who has treated the worker for the disability;
- (e) any report by a medical practitioner who has conducted tests or investigations on the worker in relation to the disability;
- (f) any report by a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (d) or (e) in connection with treatment of, or tests related to, the disability;
- (g) any report by a vocational rehabilitation provider in relation to the worker;
- (h) any notice of occurrence of the disability given under section 84I (1) (a);
- (i) any claim for compensation with respect to the disability made under section 84I (1) (b).

(5) In this section, **“disability”** includes alleged disability.

[Section 84K inserted by No. 48 of 1993 s.22.]

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s. 84L

Evidence of communication between worker and officer of Commission

84L. 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 a dispute resolution body unless, during the course of the proceedings, the worker consents to the evidence being so admitted.

[Section 84L inserted by No. 48 of 1993 s.22.]

Payment of compensation awarded

84M. Any sum awarded as compensation, unless paid into the custody of the Commission and in the absence of any order, is to be paid on the receipt of the person to whom it is payable under any agreement, award, or order.

[Section 84M inserted by No. 48 of 1993 s.22.]

Division 2 — Conciliation

[Heading inserted by No. 48 of 1993 s.22.]

Referral for conciliation

84N. Any party to a dispute may, by application, refer the dispute to the Director for conciliation.

[Section 84N inserted by No. 48 of 1993 s.22.]

Allocation of matters

84O. The Director is to make arrangements as to the conciliation officer who is to conciliate in connection with a particular dispute or class of disputes referred for conciliation.

[Section 84O inserted by No. 48 of 1993 s.22.]

When and how conciliation is to take place

84P. (1) Conciliation by a conciliation officer is to commence within 14 days after the day on which a dispute is referred to the Director for conciliation.

(2) The conciliation officer is to act fairly, economically, informally and quickly in making all reasonable efforts to bring the parties to the dispute to agreement.

(3) The conciliation officer is to act according to the substantial merits of the case without regard to technicalities or legal forms or precedent.

[Section 84P inserted by No. 48 of 1993 s.22.]

Powers

84Q. (1) The conciliation officer may require a party to the dispute to —

- (a) attend at a meeting with the conciliation officer;
- (b) answer questions put by the conciliation officer;
- (c) produce documents to the conciliation officer, or consent to another person who has relevant documents producing them to the conciliation officer;
- (d) attend at a conciliation conference at which the conciliation officer and any other party to the dispute is present.

(2) During conciliation a person is not entitled to be represented by a legal practitioner but the conciliation officer and each other party to the dispute may agree to the person being so represented.

[Section 84Q inserted by No. 48 of 1993 s.22.]

Medical issues

84R. (1) If required to do so under Part VII, a conciliation officer is to refer a question as to the nature or extent of a disability, or as to whether a disability is permanent or temporary, for determination by a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to questions 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.

[Section 84R inserted by No. 48 of 1993 s.22.]

Medical and other expenses

84S. A conciliation officer may order an employer or insurer to pay to a worker any sum payable under clause 17 if the amount of the payment does not exceed 2% of the prescribed amount.

[Section 84S inserted by No. 48 of 1993 s.22.]

Interpreters

84T. (1) Where a person who is involved in a conciliation as a party or in any other capacity is not reasonably fluent in English, the person may communicate through an interpreter.

(2) In a conciliation, a person may present any written submission or evidence in a language other than English if it is accompanied by a translation into English and a declaration on oath by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

[Section 84T inserted by No. 48 of 1993 s.22.]

Failure to attend

84U. If a party to a dispute who has been required to attend before a conciliation officer does not do so, the absence of the person does not preclude the making of any order that could be made if the person had attended.

[Section 84U inserted by No. 48 of 1993 s.22.]

Payments under direction etc. not admission of liability

84V. (1) The fact that a person pays or continues to pay compensation in accordance with an order or recommendation under this Division or does not proceed for the review of such an order is not an admission of liability by the person.

(2) Revocation of, or refusal to revoke, an order under this Division is not a finding as to liability in respect of the matter concerned.

[Section 84V inserted by No. 48 of 1993 s.22.]

Offences

84W. (1) A person who, in connection with a conciliation, makes a statement that the person knows to be false or misleading in a material particular commits an offence and is liable to a fine of \$2 000.

(2) A person who fails to comply with a requirement or order of a conciliation officer commits an offence and is liable to a fine of \$2 000.

[Section 84W inserted by No. 48 of 1993 s.22.]

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s. 84X

Costs

84X. Each party to a dispute referred for conciliation bears the party's own costs.

[Section 84X inserted by No. 48 of 1993 s.22.]

Review

84Y. (1) A conciliation officer is to refer a dispute for review if any of the parties so requests.

(2) If a conciliation officer refers a dispute for review the conciliation officer may make an order that weekly payments be made by the employer to the worker.

(3) A conciliation officer is not to order that weekly payments be made for a period that exceeds 10 weeks.

(4) A conciliation officer may vary or revoke an order previously made by that officer under this Division.

[Section 84Y inserted by No. 48 of 1993 s.22.]

Division 3 — Review

[Heading inserted by No. 48 of 1993 s.22.]

Allocation of matters

84Z. The Director is to make arrangements as to the review officer who is to deal with a particular matter or class of matters referred for review.

[Section 84Z inserted by No. 48 of 1993 s.22.]

When and how review is to take place

84ZA. (1) Review by a review officer is to commence within 14 days after the day on which a matter is referred for review, or as soon as practicable thereafter.

(2) The review officer is to act fairly, economically, informally and quickly in resolving the dispute whether by bringing the parties to agreement or otherwise.

(3) The review officer is to act according to the substantial merits of the case without regard to technicalities or legal forms or precedent.

(4) Subject to the rules, the review officer may give directions as to the conduct of the proceedings.

[Section 84ZA inserted by No. 48 of 1993 s.22.]

Powers

84ZB. (1) The review officer may —

- (a) by summons signed by the review officer, require —
 - (i) any person to attend before the review officer;
 - (ii) the production before the review officer of any document;
- (b) inspect any document produced, and retain it for such reasonable period as it is required, and make copies of the document or any of its contents;
- (c) require any person to swear to truly answer all questions relating to a matter before the review officer that are put to the person by the review officer (and for that purpose the review officer or another officer

employed in the Directorate and assisting the review officer may administer any oath or affirmation); and

- (d) require any person attending before the review officer (whether or not the person has been summoned to attend) to answer any relevant question put by the review officer.

(2) A person is not excused from complying with a requirement under subsection (1) to swear, or to answer any question, on the ground that the answer to the question might be incriminating or render the person liable to a penalty, but an answer given by the person is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Part arising out of the false or misleading nature of that answer.

(3) In the course of the review the review officer may —

- (a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact from the transcript; and
- (b) adopt, as the review officer thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the review.

[Section 84ZB inserted by No. 48 of 1993 s.22.]

Offences

84ZC. A person who —

- (a) having been served with a summons to attend before the review officer, fails without reasonable excuse (proof of which lies upon that person) to attend in obedience to the summons;

- (b) having been served with a summons to produce before the review officer any document, fails without reasonable excuse (proof of which lies upon that person) to comply with the summons;
- (c) misbehaves before the review officer, wilfully insults the review officer, or interrupts the proceedings;
- (d) fails without reasonable excuse (proof of which lies upon that person) to swear, or to answer any question, when required to do so by the review officer;
- (e) in connection with a review, makes a statement that the person knows to be false or misleading in a material particular; or
- (f) fails to comply with a requirement or order of a review officer,

commits an offence and is liable to a fine of \$2 000.

[Section 84ZC inserted by No. 48 of 1993 s.22.]

Rules of evidence not to apply

84ZD. (1) The review officer is not bound by rules of evidence, but may inform himself or herself on any matter in such manner as the review officer thinks fit.

(2) The review officer may refer any technical or specialized matter to an expert and accept that expert's report as evidence.

(3) The review officer who obtains an expert's report is to call the expert for examination on the subject matter of the report if a party to the proceedings so requests.

[Section 84ZD inserted by No. 48 of 1993 s.22.]

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s. 84ZE

Representation permitted

84ZE. A party is entitled to be represented by a legal practitioner at any proceedings before a review officer if —

- (a) all parties to the dispute agree to legal practitioners appearing and being heard at the proceedings; or
- (b) the review officer is of the opinion that a question of law is raised or is likely to be raised or argued at the proceedings and allows legal practitioners to appear and be heard at the proceedings.

[Section 84ZE inserted by No. 48 of 1993 s.22.]

Orders generally

84ZF. (1) The review officer may make such order as may be appropriate for giving effect to a decision made in the review.

(2) The review officer may confirm, vary or revoke an order made by a conciliation officer.

[Section 84ZF inserted by No. 48 of 1993 s.22.]

Weekly payments

84ZG. If a review officer determines that a person ordered by a conciliation officer to make weekly payments is not liable to make payments at all or is liable to make payments at a lesser rate —

- (a) the worker who received the payments is not required to make a refund unless the review officer so orders under paragraph (b);

(b) the review officer may —

- (i) order the worker concerned to refund the whole or a specified part of the payments if satisfied that the claim for compensation was wholly or partly fraudulent or was made without reasonable cause; or
- (ii) order any other party to the dispute whom the review officer determines was liable for the whole or any part of the payments to reimburse the person who made the payments.

[Section 84ZG inserted by No. 48 of 1993 s.22.]

Medical issues

84ZH. (1) If required to do so under Part VII, a review officer is to refer a question as to the nature or extent of a disability, or as to whether a disability is permanent or temporary, for determination by a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to questions 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.

[Section 84ZH inserted by No. 48 of 1993 s.22.]

Reasons for decisions

84ZI. Where, within 14 days after the review officer makes a decision or order in the proceedings, a party to the proceedings requests the review officer to do so, the review officer is to give that party, in writing —

- (a) the officer's findings of fact;

- (b) the reasons for the officer's decision; and
- (c) information as to appeal rights that may be available to the parties under this Act.

[Section 84ZI inserted by No. 48 of 1993 s.22.]

Interpreters

84ZJ. (1) Where a person who is involved in a review as a party or in any other capacity is not reasonably fluent in English, the person may communicate through an interpreter.

(2) In a review, a person may present any written submission or evidence in a language other than English if it is accompanied by a translation into English and a declaration on oath by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

[Section 84ZJ inserted by No. 48 of 1993 s.22.]

Failure to attend

84ZK. If a party to a dispute who has been required to attend before a review officer does not do so, the absence of the person does not preclude the making of any order that could be made if the person had attended.

[Section 84ZK inserted by No. 48 of 1993 s.22.]

Costs

84ZL. (1) Each party to the proceedings bears the party's own costs unless the review officer orders otherwise.

(2) An agreement is not to be made for a legal practitioner or other person to receive, for appearing for or acting on behalf of

a person in the proceedings, any greater reward than is provided for —

(a) in the case of a legal practitioner, by a determination in force under section 58W of the *Legal Practitioners Act 1893*; or

(b) in the case of any other person, by the regulations.

(3) An agreement made contrary to this section is void.

[Section 84ZL inserted by No. 48 of 1993 s.22.]

Case may be referred to compensation magistrate's court

84ZM. Where a question of law arises in the proceedings or the review officer believes that it is appropriate to do so because of the complexity of issues, the officer may elect not to make an order and, in accordance with the rules of court, refer the matter to a compensation magistrate's court for determination.

[Section 84ZM inserted by No. 48 of 1993 s.22.]

Appeal

84ZN. (1) Subject to this section, a decision or order of a review officer is not open to question or review in any court, and proceedings by or before a review officer 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.

(2) A party to the proceedings who is dissatisfied with a decision or order of the review officer may, where a question of law is involved, appeal to a compensation magistrate's court against the decision or order.

(3) An appeal or application for leave to appeal under subsection (2) is to be made in accordance with the rules of court

within one month after the making of the decision or order concerned, but the review officer or court may, if satisfied that it is just and reasonable in the circumstances to do so, extend the period within which the appeal or application may be made.

(4) Without limiting any other powers of the court on dealing with the appeal, where under this section an appeal has been made, or an application has been made for leave to appeal, against a decision or order, the review officer or court may —

- (a) suspend the operation or effect of the order or decision until the determination of the appeal;
- (b) revoke any suspension ordered by it under paragraph (a).

[Section 84ZN inserted by No. 48 of 1993 s.22.]

***Division 4 — Determination by compensation
magistrate's court***

[Heading inserted by No. 48 of 1993 s.22.]

Referred matters

84ZO. On hearing a matter referred to it under section 84ZM, a compensation magistrate's court has jurisdiction to make such orders as it thinks fit with regard to the matter and to the costs of and incidental to the hearing and determination of it.

[Section 84ZO inserted by No. 48 of 1993 s.22.]

Appeal

84ZP. On hearing an appeal made under section 84ZN, a compensation magistrate's court may —

- (a) affirm, vary, or quash the decision or order appealed against, or substitute, and make in addition, any

decision or order that should have been made in the first instance;

- (b) make any further or other order, as to costs or otherwise, as it thinks fit.

[Section 84ZP inserted by No. 48 of 1993 s.22.]

Costs as between representative and client

84ZQ. (1) An agreement is not to be made for a legal practitioner or other person to receive, for appearing for or acting on behalf of a person in proceedings before a compensation magistrate's court, any greater reward than is provided for —

- (a) in the case of a legal practitioner, by a determination in force under section 58W of the *Legal Practitioners Act 1893*; or

- (b) in the case of any other person, by the regulations.

- (2) An agreement made contrary to this section is void.

[Section 84ZQ inserted by No. 48 of 1993 s.22.]

Medical issues

84ZR. (1) If required to do so under Part VII, a compensation magistrate's court is to refer a question as to the nature or extent of a disability, or as to whether a disability is permanent or temporary, to a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to questions as to the permanent or other loss of the efficient use of any part or faculty of the body referred to in column 1 of the table set out in Schedule 2.

[Section 84ZR inserted by No. 48 of 1993 s.22.]

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s. 84ZS

Time for application

84ZS. An application under section 84ZT is to be made within 6 years from the time of the alleged contravention or failure to comply.

[Section 84ZS inserted by No. 48 of 1993 s.22.]

Enforcement of orders etc. upon conciliation or review

84ZT. (1) Where a person fails to comply with an order made by a conciliation officer or review officer —

- (a) the Director; or
- (b) a worker, a dependant of a worker, an insurer, an employer or any other person to whom the order applies,

may apply in the prescribed manner to a compensation magistrate's court for the enforcement of the order.

(2) On the hearing of an application under subsection (1) the compensation magistrate's court may, by order —

- (a) if a contravention or failure to comply is proved, issue a caution or impose such penalty as the compensation magistrate's court considers appropriate but not exceeding \$1 000 in the case of a body corporate and \$250 in any other case; or
- (b) dismiss the application,

and, subject to subsection (3), the order may in any case be with or without costs.

(3) In proceedings under this section costs are not to be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the

compensation magistrate's court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

(4) An order as to costs shall specify the name of the person liable to pay the costs and the name of the person to whom the costs are payable.

(5) Where in any proceedings brought under subsection (1) against an employer it appears to the compensation magistrate's court that a worker employed by that employer has not been paid by that employer the amount which the worker was entitled to be paid under an order of a review officer, the compensation magistrate's court is to, subject to subsection (6), order that employer to pay to that worker the amount by which the worker has been underpaid.

(6) An order may only be made under subsection (5) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings.

(7) Unless otherwise prescribed the practice and procedure to be observed before a compensation magistrate's court under this section are those observed in civil proceedings.

[Section 84ZT inserted by No. 48 of 1993 s.22.]

Division 5 — Cases stated and appeals to Supreme Court

[Heading inserted by No. 48 of 1993 s.22.]

Magistrate may state case

84ZU. (1) When a question of law arises in any proceedings before a compensation magistrate's court under Division 4, the court may state a case for the decision of the Supreme Court on that question.

(2) A case may be stated under this section notwithstanding that an order, direction, or decision has been made or given by the compensation magistrate's court.

[Section 84ZU inserted by No. 48 of 1993 s.22.]

Indemnity as to costs

84ZV. (1) Where a compensation magistrate's court has stated a case for the decision of the Supreme Court, the compensation magistrate's court may in its absolute discretion indemnify any of the parties against the costs or part of the costs of the proceedings resulting from a case being stated.

(2) Any moneys payable to a party by reason of an indemnity under subsection (1) when certified by the magistrate's court as payable are to be paid by the Commission out of the General Fund.

[Section 84ZV inserted by No. 48 of 1993 s.22.]

Appeal

84ZW. A party to proceedings before a compensation magistrate's court under Division 4 may, by leave of the Supreme Court, appeal to the Supreme Court against a decision of the compensation magistrate's court on a question of law.

[Section 84ZW inserted by No. 48 of 1993 s.22.]

Full Court

84ZX. If a case is stated or an appeal is made under this Division, it is to be heard and determined by the Full Court of the Supreme Court.

[Section 84ZX inserted by No. 48 of 1993 s.22.]

Procedure and jurisdiction

84ZY. (1) An appeal under this Division may 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.

(3) The Full 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.

[Section 84ZY inserted by No. 48 of 1993 s.22.]

Division 6 — Enforcement of compensation magistrate's court orders etc.

[Heading inserted by No. 48 of 1993 s.22.]

Regulations

84ZZ. Subject to sections 84ZZA and 84ZZB, a judgment, order, direction or other decision of a compensation magistrate's court made under Division 4 may be enforced in accordance with regulations made under section 176 (1).

[Section 84ZZ inserted by No. 48 of 1993 s.22.]

Property liable to execution

84ZZA. (1) Subject to this section, all property belonging to any individual or body bound by an order or direction of a compensation magistrate's court, including, in the case of a body, property held by trustees for such a body, is available in or towards the satisfaction of the order or direction.

(2) All goods protected from seizure on an execution under a judgment of a Local Court are protected against seizure under this Act to the extent to which such goods are from time to time protected from such seizure under the *Local Courts Act 1904*.

(3) A compensation magistrate's court may, on the application of the individual or body entitled to claim the enforcement of an order or direction, make such order or give such direction, or both, as are considered necessary, and any such order or direction, or both has effect accordingly.

[Section 84ZZA inserted by No. 48 of 1993 s.22.]

Sheriff, bailiffs, and members of Police Force to be officers of court

84ZZB. (1) The Sheriff of Western Australia, the bailiff of the District Court, the bailiffs of Local Courts, and all members of the Police Force are deemed to be officers of a compensation magistrate's court, and are to exercise the powers and perform the duties prescribed under this Act.

(2) For the purpose of carrying out the provisions of this Act, in relation to any proceedings before a compensation magistrate's court and in relation to the making, carrying out and enforcing of any order or direction of a compensation magistrate's court, officers of a compensation magistrate's court are, except where otherwise provided in the regulations, to exercise the same powers and perform the same duties as they may exercise and perform in relation to any judgment, order, conviction, or

direction of the Supreme Court or any Local Court or court of summary jurisdiction.

(3) All prison officials are to obey and carry out the writs, warrants, and orders of a compensation magistrate's court so far as they are addressed to them.

(4) Any writ or warrant of execution may, subject to this Act, be declared, by regulations, to have effect against any property (including land under the *Transfer of Land Act 1893*) as a writ of *feri facias*, and it has effect in respect of such property accordingly.

[*Section 84ZZB inserted by No. 48 of 1993 s.22.*]

**PART IV — CIVIL PROCEEDINGS IN ADDITION TO OR
INDEPENDENT OF THIS ACT**

Division 1 — General

[Heading inserted by No. 48 of 1993 s.4 (1).]

Saving — 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 — independent liability

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

Costs between solicitor and client in common law actions

87. (1) This section applies to an action for damages independently of this Act if Division 2 applies to the awarding of damages in the action (whether or not an award of damages is affected).

(2) An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person —

- (a) in an action to which this section applies; or
- (b) in respect of an application for a declaration under section 11 of the *Workers' Compensation and Rehabilitation Amendment Act 1993*,

any greater reward than is provided for by a determination in force under section 58W of the *Legal Practitioners Act 1893*.

(3) An agreement is void —

- (a) if it is made contrary to this section; or
- (b) if it would have been contrary to this section if it had been made after the commencement of section 4 of the *Workers' Compensation and Rehabilitation Amendment Act 1993*.

[Section 87 inserted by No. 48 of 1993 s.4 (2).]

[88, 89, 90. Repealed by No. 48 of 1993 s.4 (2).]

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 Directorate, 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.

[Section 91 amended by No. 48 of 1993 s.28.]

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 Directorate 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 Director disapproves of the settlement within 6 weeks of the agreement for settlement being filed with the Directorate;
 - (iii) the Director 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 Director 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 Director 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.

[Section 92 amended by No. 48 of 1993 s.28.]

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 questions 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 Directorate in any action brought by the worker before the Directorate.

(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.

[Section 93 amended by No. 48 of 1993 s.28.]

***Division 2²¹ — Constraints on awards of
common law damages***

[Heading inserted by No. 48 of 1993 s.4 (3).]

Definitions for this Division

93A. In this Division —

“AMA Guides” means the edition of the Assessment of Disability Guide published by the Western Australian Branch of the Australian Medical Association Incorporated which is prescribed in the regulations;

“Amount A” means —

- (a) for the financial year ending on 30 June 1994, the amount of \$200 000; and
- (b) for any subsequent financial year, the nearest multiple of \$1 000 to the amount obtained by varying Amount A for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying Amount A for the preceding financial year in accordance with the regulations (with an amount that is \$500 more than a multiple of

\$1 000 being rounded off to the next highest multiple of \$1 000);

“Amount B” means —

- (a) for the financial year ending on 30 June 1994, the amount of \$5 000; and
- (b) for any subsequent financial year, the nearest multiple of \$500 to the amount obtained by varying Amount B for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying Amount B for the preceding financial year in accordance with the regulations (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500);

“damages” does not include —

- (a) any sum required or authorized to be paid under an award or industrial agreement within the meaning of the *Industrial Relations Act 1979*;
- (b) any sum payable under a superannuation scheme or any life or other insurance policy; or
- (c) any amount paid in respect of costs incurred in connection with legal proceedings;

“future pecuniary loss” means pecuniary loss other than that which has already been incurred at the time when the amount of that loss is required to be determined by a court;

“non-pecuniary loss” means —

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

[Section 93A inserted by No. 48 of 1993 s.4 (3).]

Application of this Division

93B. (1) This Division applies to the awarding of damages against a worker's employer independently of this Act in respect of a disability suffered by a worker if —

- (a) the disability was caused by the negligence or other tort of the worker's employer; and
- (b) compensation has been paid or is payable in respect of the disability under this Act, or would have been paid or be payable but for section 22.

(2) This Division applies even if the damages resulting from the negligence or other tort of the worker's employer are sought to be recovered in an action for breach of contract or other action.

(3) This Division does not apply to the awarding of —

- (a) damages to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies;
- (b) exemplary or punitive damages; or

- (c) damages of a class that is excluded by the regulations from the application of this Division.

(4) A reference in this section to the worker's employer includes a reference to a person for whose acts the employer is vicariously liable.

[Section 93B inserted by No. 48 of 1993 s.4 (3).]

Limit on powers of courts

93C. If this Division applies a court is not to award damages to a person contrary to this Division.

[Section 93C inserted by No. 48 of 1993 s.4 (3).]

No damages unless death or serious disability

93D. (1) Damages can only be awarded if the disability results in the death of the worker or it is a serious disability.

(2) A disability is a serious disability if, and only if —

- (a) the degree of disability would, if assessed as prescribed in subsection (3), be 30% or more; or
- (b) the future pecuniary loss resulting from the disability is of an amount that is at least equal to the prescribed amount.

(3) For the purposes of subsection (2) (a), the degree of disability of a worker is to be assessed —

- (a) so far as Schedule 2 provides for such a disability, as a percentage equal to the percentage of the prescribed amount that is provided for by that Schedule as read with section 25;

- (b) to the extent, if any, that paragraph (a) does not apply, as the degree of permanent impairment assessed in accordance with the AMA Guides;
- (c) to the extent, if any, that neither paragraph (a) nor (b) applies, in accordance with the regulations,

or if more than one of paragraphs (a), (b) and (c) applies, as the cumulative sum of the percentages assessed in accordance with those paragraphs.

(4) Proceedings in which damages are sought are not to be commenced without the leave of the District Court.

(5) Leave is to be given if —

- (a) the disability results in the death of the worker or the parties agree that the degree of the worker's disability would, if assessed as prescribed in subsection (3), be 30% or more;
- (b) on a reference under subsection (7) or (8) it is determined that the degree of the worker's disability would, if assessed as prescribed in subsection (3), be 30% or more; or
- (c) the court determines that the worker is likely to have future pecuniary loss resulting from the disability of an amount that is at least equal to the prescribed amount.

(6) If there is a dispute as to whether the degree of disability would, if assessed as prescribed in subsection (3), be 30% or more, the question may be referred to the Director.

(7) A question referred to the Director under subsection (6) is to be referred for determination by a medical assessment panel except in a case to which subsection (8) applies.

(8) A question referred to the Director under subsection (6) that relates to a disability mentioned in section 33, 34 or 35 is to be referred to a medical panel for determination as described in section 36 and so far as applicable this Act applies in relation to the reference as if it were a reference under section 36 except that the only question to be considered and determined on the reference is the question that was referred.

[Section 93D inserted by No. 48 of 1993 s.4 (3).]

Restrictions on damages for non-pecuniary loss

93E.²¹ (1) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.

(2) The maximum amount of damages that may be awarded for non-pecuniary loss is Amount A, but the maximum amount may be awarded only in a most extreme case.

(3) No entitlement to damages is created by subsection (1) or (2) and those subsections are subject to section 93D and any other law that prevents or limits the awarding of damages.

(4) An issue as to the amount of damages for non-pecuniary loss that may be awarded is to be determined by reference to Amount A as in effect on the date on which the determination is made.

[Section 93E inserted by No. 48 of 1993 s.4 (3).]

Restrictions on damages for gratuitous provision of home care services

93F.²¹ (1) This section limits the damages that may be awarded for the value of gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance that

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have been or are to be provided to the person in whose favour the award is made by a member of the same household or family as the person.

(2) No damages are to be awarded for the value of the services if the services would have been or would be provided to the person even if the person had not suffered the disability.

(3) If the services are provided or to be provided for not less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated on a weekly basis at the rate of —

- (a) the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Western Australia for the relevant quarter; or
- (b) if the Australian Statistician fails or ceases to make the estimate referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations.

(4) In paragraph (a) of subsection (3) **“the relevant quarter”** means the quarter in which the services were provided or, if at the date of the award an estimate as referred to in that paragraph is not available to the court for that quarter or the services are yet to be provided, the most recent quarter for which such an estimate is available to the court at the date of the award.

(5) If the services are provided or to be provided for less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated at an hourly rate of one-fortieth of the weekly rate that would be applicable under subsection (3) if the services were provided or to be provided for not less than 40 hours per week.

(6) If the amount of damages that may be awarded under subsection (3) or (5) is Amount B or less, no damages are to be awarded for the value of the services provided or to be provided.

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(7) The issue of whether damages may be awarded for the value of gratuitous services is to be determined by reference to Amount B as in effect on the date on which the determination is made.

[Section 93F inserted by No. 48 of 1993 s.4 (3).]

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

[Heading to Part V inserted 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*¹ 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.

(3) Notwithstanding subsection (1), the Commission may use and operate under the name "WorkCover Western Australia", which it may abbreviate as "WorkCover WA" or "WorkCover".

(4) A person other than the Commission who uses or operates under the name mentioned in subsection (1), or any

name that is so similar that it is likely to be misunderstood as referring to the Commission, commits an offence.

[Section 94 amended by No. 86 of 1986 s.8; No. 48 of 1993 s.40.]

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.

(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)²²;
- (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 s.46 (2); No. 86 of 1986 s.5; No. 96 of 1990 s.20.]

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 Commissioner²³.

[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 make available upon request to employers such services or other assistance as it considers appropriate to facilitate the arranging of rehabilitation and to act as a rehabilitation provider;
- (da) to promote the rehabilitation of workers suffering a disability in respect of which compensation is or may be payable under this Act and to disseminate to workers and others information concerning rehabilitation;
- (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;
- (fa) to keep under review the sufficiency of the information provided to the Commission by insurers and self-insurers, and whether or not criteria developed by the Commission for assessing the performance of insurers and self-insurers are being met;

- (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 support services to any medical panel established under section 36 and to any medical assessment panel; and
- (j) to 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).

[Section 100 amended by No. 96 of 1990 s.21; No. 48 of 1993 s.28.]

Advisory committees

100A. (1) The Commission may at any time and when so requested by the Minister shall appoint advisory committees to assist it in the performance of its functions and duties.

(2) Subject to this section, an advisory committee shall consist of such number of persons as are appointed by the Commission.

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(3) Subject to the direction of the Commission an advisory committee may determine its own procedures.

(4) The members of advisory committees are entitled to be paid such fees and allowances as may be determined by the Minister on the recommendation of the Public Service Commissioner.

(5) The fees and allowances mentioned in subsection (4) shall be paid by the Commission out of the General Fund.

(6) In appointing persons to be members of advisory committees under this section the Commission shall, as far as is practicable, appoint persons experienced in management affairs in commerce or industry (or both), persons experienced in trade union affairs, persons with experience relevant to the kinds of matters to be considered by the committee concerned, and such other persons as the Commission considers appropriate.

[Section 100A inserted by No. 96 of 1990 s.22.]

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;
- (aa) to charge for the provision of any service that it makes available such fees as it determines;

- (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,

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but not its functions under section 154 nor 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; No. 96 of 1990 s.23.]

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 be 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 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 Fund.

*[Section 101B inserted by No. 104 of 1984 s.5;
amended by No. 6 of 1993 s.11.]*

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

103.²⁴ (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 may make any such inquiries and require production of, and inspect, any books, accounts, documents and records as is necessary to carry out his duties under this Act.

(2a) An inspector shall, upon being requested to do so by any person in relation to whom he has exercised, or is about to exercise, any of his powers under this section, produce written authority from the Chairman of the Commission before exercising or further exercising any power under this section in relation to that person.

(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, documents 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, salary and other forms of remuneration 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 —

- (a) may provide to the insurer information as to the wages, salary, and other forms of remuneration paid by, and the number of employees engaged by, the employer and the category for the purpose of premium rates in which those employees are engaged; and
- (b) may sue and recover from the employer the full amount of the premium that 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.

[Section 103 amended by No. 21 of 1987 s.6; No. 96 of 1990 s.24.]

Returns

103A. A person being or having been 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;
amended No. 96 of 1990 s.25.]*

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 1A — Conciliation and Review Directorate

[Heading inserted by No. 48 of 1993 s.23.]

Establishment

104A. (1) There is to be established a Conciliation and Review Directorate consisting of the Director of Conciliation and Review, and such conciliation officers, review officers, and other staff as are required for the performance of the functions given by this Act to those officers.

(2) The officers in the Conciliation and Review Directorate are to be officers of the Commission appointed in accordance with section 177.

(3) A person is not to become the Director, a conciliation officer, or a review officer without the approval of the Minister.

[Section 104A inserted by No. 48 of 1993 s.23.]

Responsibility

104B. (1) The Director is the principal officer of the Directorate and is responsible to the Executive Director in administrative matters concerning the Directorate but in matters concerning the resolution of disputes the Director is responsible directly to the Minister.

(2) Neither a conciliation officer nor a review officer is subject to direction as to the decision to be given in a particular matter.

[Section 104B inserted by No. 48 of 1993 s.23.]

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 inserted by No. 98 of 1985 s.3.]

Division 3 — Workers' Compensation and Rehabilitation General Fund

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

General Fund

106. (1) For the purposes of this Act, there shall be established and maintained an account to be called the Workers'

Compensation and Rehabilitation General Fund and that account shall be kept —

- (a) at the Treasury; or
- (b) at a bank approved by the Treasurer under section 21 of the *Financial Administration and Audit Act 1985*.

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

[(a) deleted]

- (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;
- (c) all moneys borrowed by the Commission under section 101A; and
- (d) any moneys required to be paid into the General Fund under section 6A (1) of the *Employers' Indemnity Supplementation Fund Act 1980*.

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

- (a) all moneys required for the salaries of members of the Commission and of its staff;
- (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;
- (da) any moneys required to be paid into the Employers' Indemnity Supplementation Fund under section 6A (2) of the *Employers' Indemnity Supplementation Fund Act 1980*;
- (e) all other moneys, except those payable from the Trust Fund, required by the Commission and dispute resolution bodies for carrying out their respective functions under this Act; and
- (f) any other moneys so required to be paid under this Act or any other enactment.

[Section 106 amended by No. 79 of 1983 s.3; No. 104 of 1984 s.6; No. 86 of 1986 s.9; No. 96 of 1990 s.26; No. 1 of 1993 s.14; No. 48 of 1993 s.28.]

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, both the estimated increase required in reserves over that year and depreciation may be included in the estimated expenditure of the General Fund.

[Section 107 amended by No. 98 of 1985 s.3; No. 96 of 1990 s.27.]

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 equal to —

- (a) the amount prescribed for the purposes of this subsection; or
- (b) 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, which percentage shall be uniform for all insurers,

whichever is the greater.

(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 subsection (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, contribute to the General Fund a sum equal to —

- (a) the amount prescribed for the purposes of this subsection; or

- (b) such contribution as the Commission considers reasonable, assessed upon the wages, salaries, or other remuneration, including amounts paid to workers employed under an agreement to perform —
- (i) a specified quantity of work for a specified sum;
 - (ii) work on piece rates;
 - (iii) work on a bonus or commission system; or
 - (iv) 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,

whichever is the greater, and the self-insurer 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; No. 85 of 1986 s.7.]

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

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

Trust Fund

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

- (a) at the Treasury; or
- (b) at a bank approved by the Treasurer under section 21 of the *Financial Administration and Audit Act 1985*.

(2) There shall be paid into the Trust Fund all moneys paid into the custody of the Commission under clause 6.

(3) Moneys in the Trust Fund shall become one common fund 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 a dispute resolution body; 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 a dispute resolution body, plus interest payable, and less charges made, under subsection (7).

[Section 110 amended by No. 86 of 1986 s.10; No. 96 of 1990 s.28; No. 48 of 1993 s.28.]

Division 5 — Ministerial Control

Minister may give directions

111. (1) The Minister may give directions in writing to the Commission with respect to the performance of its functions, either generally or in relation to a particular matter, and the Commission shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 111 inserted by No. 72 of 1992 s.14.]

Minister to have access to information

111A. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —

- (a) to have information in the possession of the Commission; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

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

- (a) request the Commission to furnish information to the Minister;
- (b) request the Commission to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and furnish it to the Minister.

(3) The Commission shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

- (4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Commission;

“parliamentary purposes” means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 111A inserted by No. 72 of 1992 s.14.]

PART VI — COMPENSATION MAGISTRATE'S COURTS

[Heading inserted by No. 48 of 1993 s.24.]

Establishment of compensation magistrate's courts

112. (1) The Governor may by proclamation establish a compensation magistrate's court at any place within the State.

(2) A compensation magistrate's court is a court of record and has an official seal.

(3) The Governor may by proclamation disestablish a compensation magistrate's court.

(4) When a compensation magistrate's court is disestablished, all proceedings pending in the court and all records of the court are to be transferred to such other compensation magistrate's court as the Governor directs in the proclamation referred to in subsection (3).

(5) Notwithstanding subsection (1), a compensation magistrate's court may sit and act at any time and place notified in the prescribed manner.

[Section 112 inserted by No. 48 of 1993 s.24.]

Constitution of compensation magistrate's courts

113. (1) A compensation magistrate's court is to be constituted by a compensation magistrate.

(2) The Governor may, on the recommendation of the Chief Stipendiary Magistrate, appoint a person holding office as a magistrate to be a compensation magistrate.

(3) A compensation magistrate ceases to hold office upon —

- (a) ceasing to hold office as a magistrate; or
- (b) resigning office by written notice addressed to the Governor.

(4) The Governor may, on the recommendation of the Chief Stipendiary Magistrate, appoint a person to act in the office of a compensation magistrate for any period during which that compensation magistrate is, or is expected to be, for any reason unable to perform the functions of a compensation magistrate.

(5) If the compensation magistrate's court has not completed the hearing and determination of any proceeding or application before the magistrate constituting that court ceases to be a compensation magistrate or acting compensation magistrate, that magistrate is deemed notwithstanding that cessation to continue to hold office until that hearing and determination is completed.

(6) In this section "**Chief Stipendiary Magistrate**" has the meaning given by the *Stipendiary Magistrates Act 1957*.

[Section 113 inserted by No. 48 of 1993 s.24.]

Clerks of compensation magistrate's court

114. (1) Each compensation magistrate's court is to have a clerk who is an officer of the Public Service.

(2) A compensation magistrate may perform any function of a clerk of a compensation magistrate's court constituted by that compensation magistrate.

(3) The clerk of a compensation magistrate's court has in relation to that court like powers to those of a clerk of petty sessions acting under the *Justices Act 1902* in relation to the court of petty sessions to which the clerk is attached.

[Section 114 inserted by No. 48 of 1993 s.24.]

Jurisdiction of compensation magistrate's courts

115. (1) A compensation magistrate's court is a court of summary jurisdiction with jurisdiction to —

- (a) hear and determine any case referred under section 84ZM;
- (b) hear and determine any appeal under section 84ZN;
- (c) hear and determine any application made to it under and in accordance with this Act; and
- (d) hear and determine complaints under section 188A.

(2) A compensation magistrate's court has in the exercise of its jurisdiction under this Act like powers to those of a magistrate sitting as a court of summary jurisdiction.

(3) In the absence of evidence to the contrary, anything done by a compensation magistrate's court is to be taken to have been done within its jurisdiction.

[Section 115 inserted by No. 48 of 1993 s.24.]

Compensation magistrate's court to determine on substantial merits

116. In the hearing and determination of matters referred to in section 115 (1) (a), (b) and (c) a compensation magistrate's court is to 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 mind on any matter in such a way as it regards as just.

[Section 116 inserted by No. 48 of 1993 s.24.]

Determination final

117. Subject to this Act, a determination of a compensation magistrate's court is final and conclusive and is not open to question or review in any court, and proceedings by or before a compensation magistrate's court 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.

[Section 117 inserted by No. 48 of 1993 s.24.]

Compensation magistrate's court may reconsider decision

118. Nothing in section 117 prevents a compensation magistrate's court from reconsidering any matter which has been dealt with by it or from revoking, altering, or amending any decision or order previously made, all of which a compensation magistrate's court has authority to do.

[Section 118 inserted by No. 48 of 1993 s.24.]

Fund to bear cost of compensation magistrate's courts

119. The Commission is to pay from the General Fund to the Consolidated Fund such amount as the Treasurer directs in respect of the cost to the State of providing compensation magistrate's courts.

[Section 119 inserted by No. 48 of 1993 s.24.]

PART VII — MEDICAL ASSESSMENT PANELS

[Heading inserted by No. 48 of 1993 s.25.]

Exclusion

145. A medical assessment panel does not have jurisdiction to deal with a question that is within the jurisdiction of a medical panel established under section 36.

[Section 145 inserted by No. 48 of 1993 s.25.]

Questions that have to be referred

145A. (1) A question is to be referred for determination by a medical assessment panel under section 84R, 84ZH or 84ZR if and, subject to subsection (2), only if —

- (a) there is a conflict of medical opinion on the question between —
 - (i) a medical practitioner engaged by the worker; and
 - (ii) a medical practitioner provided and paid by the employer, or each medical practitioner so provided and paid if there is more than one of them;
- and
- (b) one of the parties wishes the proceedings to continue.

(2) A question as to the degree of permanent loss of the full efficient use of the back, neck or pelvis is to be referred for

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determination by a medical assessment panel under section 84R, 84ZH or 84ZR if —

- (a) the employer does not agree to pay an amount claimed by the worker by way of an election made for the purposes of section 24; and
- (b) the worker requests that the question be so referred.

[Section 145A inserted by No. 48 of 1993 s.25.]

Register for panel membership

145B. (1) The Director is to keep a register containing the names of medical practitioners approved under subsection (2) who are willing to be selected for a medical assessment panel.

(2) The Minister may, with the consent of the practitioner and after consultation with the Western Australian Branch of the Australian Medical Association Incorporated and other medical profession organisations, approve of the name of a medical practitioner being included in the register.

(3) A practitioner is only eligible to be registered under this section if practising in a clinical capacity.

[Section 145B inserted by No. 48 of 1993 s.25.]

Panel to be constituted

145C. (1) On a question being referred for determination by a medical assessment panel, the Director is to select 2 or 3 medical practitioners who are registered under section 145B to be the panel that is to determine the question.

(2) Of the members of the panel —

- (a) at least one is to be a specialist in the particular branch of medicine or surgery that is relevant to the question; and
- (b) at least one is to be a general practitioner.

(3) A medical practitioner who has treated or examined the worker concerned in a professional capacity is not eligible to be a member of the panel.

(4) The Director is to nominate one of the members of the panel to be its Chairman.

[Section 145C inserted by No. 48 of 1993 s.25.]

Procedures

145D. (1) In determining the question the panel is to act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms and is not bound by rules of practice nor evidence.

(2) The panel may, for the purposes of assisting it in determining the question, require the worker concerned to —

- (a) attend before the panel;
- (b) answer questions put by the panel;
- (c) produce documents to the panel, or consent to another person who has relevant documents producing them to the panel;
- (d) submit to medical examination by the panel,

but the panel is not authorized to treat the worker or require that the worker be treated.

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(3) Powers given by subsection (2) to a panel are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.

(4) A person is not entitled to be represented in proceedings before a medical panel.

(5) If the worker concerned, without reasonable excuse (proof of which is on the worker) —

- (a) refuses to comply with a requirement made by the panel under subsection (2) (a), (b) or (c); or
- (b) on being required to submit to examination by the panel, refuses to do so or in any way obstructs the examination,

the Director may issue a certificate to that effect whereupon the worker's 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, to that weekly payment, is suspended until the Director certifies that the suspension is removed.

[Section 145D inserted by No. 48 of 1993 s.25.]

Determinations

145E. (1) If the members of the panel are not in unanimous agreement as to a question, the question is to be determined in accordance with the opinion of at least 2 members of the panel.

(2) The determination is to be made as soon as is practicable but in any event within 28 days after the day on which a medical examination of the worker concerned is carried out by the panel.

(3) The determination and the reasons for making it are to be given in writing signed by the Chairman in a form approved by the Director, and are to be given to the Director within 7 days after the day on which the determination is made.

(4) The Director is to give the determination and reasons to the person who referred the question to the panel and the worker concerned within 3 days after the day on which the Director receives them.

(5) Unless rescinded under section 145F, the determination, or if the determination is varied under that section the determination as varied, is final and binding on the worker and his employer and on any court or tribunal hearing a matter in which any such determination is relevant and the written determination given under subsection (3) is, in the absence of evidence that the determination was so rescinded or varied, conclusive evidence as to the matters determined.

[Section 145E inserted by No. 48 of 1993 s.25.]

Review

145F. (1) If at least 60 days after the determination is made a person who is affected by the determination satisfies the Director that there is any new evidence that could not have been submitted to the panel and would be likely to affect the determination of the question if it were to be reconsidered by the panel the Director may again refer the question to the panel.

(2) The panel may refer to anything that was available to it when previously determining the matter as well as doing anything that it could do if the question were referred to it for determination in the first instance.

(3) The panel may vary its previous determination or rescind it and make a new determination.

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(4) Sections 145D and 145E and this section also apply in relation to a determination under this section.

[Section 145F inserted by No. 48 of 1993 s.25.]

Remuneration

145G. (1) A member of a medical assessment panel is entitled to such fees and allowances as may be determined by the Minister.

(2) The fees and allowances mentioned in subsection (1) shall be paid by the Commission out of the General Fund.

[Section 145G inserted by No. 48 of 1993 s.25.]

[146. Repealed by No. 48 of 1993 s.25.]

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)²²;

- (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 of 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 with 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 s.46 (2);
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

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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 Commissioner²³.

Fixing premiums

151.²⁵ 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 classes 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 or group of categories on which basis the Committee may fix for each category a recommended premium rate pursuant to paragraph (a) (ii); and

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- (c) the Committee may specify classes of employers specially fixed by the Minister the employers within which class are liable to pay the industrial disease premium at a rate specified by the Committee for that class.

[Section 151 amended by No. 44 of 1985 s.30; No. 96 of 1990 s.30.]

Report as to rates

151A. (1) Where under section 151 (a) (ii) the Committee fixes any recommended premium rate it shall, as soon as practicable thereafter, prepare and make available to any person upon request a report as to —

- (a) the actuarial basis of any recommended premium rate fixed; and
- (b) the comparative claims experience of the different businesses or groups of businesses concerned.

(2) A report under subsection (1) shall not contain information identifying or enabling the identification of any employer.

[Section 151A inserted by No. 96 of 1990 s.31.]

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 loading or discount

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.²⁶ 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 type of business or occupation on the basis of which an insurer charges the premium required to insure him under this Act;
- (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 Commission 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 Commission, 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 Commission 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 its own procedure may hear and determine the appeal and in the case of the Commission 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 pursuant to subsection (4).

(8) An appeal under subsection (7) —

- (a) against the continuation of a classification shall be to the Commission and is constituted by giving written notice of appeal to the Commission, 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 Commission 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 its own procedure may hear and determine the appeal and reconsider and in the case of the Commission 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 s.46 (2); No. 96 of 1990 s.32.]

PART IX — REHABILITATION**Notice of certain periods of incapacity**

155. (1) For the purposes of this section, “**the relevant day**” means the day of the commencement of section 33 of the *Workers' Compensation and Assistance Amendment Act 1990*¹.

(2) An insurer or a self-insurer shall, unless exempted under subsection (6) from the requirement to do so, not later than the expiration of 7 days after he acquires the knowledge referred to in paragraph (a) or (b), give to the Commission notice in writing, containing the prescribed particulars, with respect to —

- (a) a worker whose period of incapacity the insurer or self-insurer knows to have exceeded 4 consecutive weeks; or
- (b) a worker whose periods of incapacity during any period of 12 months or less the insurer or self-insurer knows to have exceeded, in sum, 12 weeks.

(3) Subsection (2) does not apply in relation to a period of incapacity with respect to which notice has already been given under this section or section 155 as in force before the relevant day.

[(4) *Omitted under the Reprints Act 1984 s.7 (4) (e).*]

(5) An insurer or a self-insurer failing to comply with subsection (2) commits an offence.

Penalty: \$1 000.

(6) The Commission may, in writing, exempt an insurer or a self-insurer from the requirement to comply with subsection (2), either absolutely or subject to such conditions as it sees fit to impose, and any such exemption has effect according to its tenor until revoked by the Commission.

(7) The Commission may, where a worker suffers a disability compensable under this Act, require the employer of that worker to take reasonable steps to facilitate the rehabilitation of the worker.

[Section 155 inserted by No. 96 of 1990 s.33.]

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.]

Approval of rehabilitation providers

156A. (1) The Commission may, in writing, and subject to such conditions, if any, as it sees fit to impose, approve as a rehabilitation provider any person the Commission considers capable of satisfactorily providing vocational rehabilitation, and may revoke any such approval.

(2) In considering whether or not to approve a person as a rehabilitation provider, to impose conditions on any such approval, or to revoke any such approval, the Commission —

- (a) may have regard to performance criteria established by an advisory committee under section 100A, and to the advice of such a committee in a particular case; and
- (b) shall, in the case of the revocation of an approval that is subject to conditions, have regard to whether or not there had been compliance with the conditions.

[Section 156A inserted by No. 96 of 1990 s.34.]

Rehabilitation of workers

157.²⁷ (1) A dispute resolution body may at any time require a worker who is incapacitated to undergo rehabilitation as specified by a dispute resolution body and, without limiting the matters that may be specified by a dispute resolution body under this subsection, a dispute resolution body may specify that the worker undergo vocational rehabilitation provided by a different rehabilitation provider selected by the worker.

(2) The Commission shall, upon request, provide to workers, employers and other persons information as to the persons who, under section 156A, are approved rehabilitation providers.

(3) Where a person providing vocational rehabilitation —

- (a) is not an approved rehabilitation provider; or
- (b) is an approved rehabilitation provider but contravenes a condition imposed in respect of his approval,

the amount of any fee or other reward paid in respect thereof shall not be regarded as a reasonable expense incurred in respect of vocational rehabilitation for the purposes of clause 17 (1a).

(4) Where a fee or other reward is paid for the provision of vocational rehabilitation mentioned in subsection (3) by a person who —

- (a) not being approved as a rehabilitation provider, held himself out as being so approved; or
- (b) being approved as a rehabilitation provider subject to any condition, contravenes any such condition,

the person who paid the fee or other reward may recover as a debt due from that person the amount of the fee or other reward paid.

[Section 157 inserted by No. 96 of 1990 s.35; No. 48 of 1993 s.28.]

Further vocational rehabilitation payments may be authorized

158. Where a worker has no further entitlement under clause 17 to compensation in respect of expenses incurred in undergoing vocational rehabilitation, the Commission may authorize payment from the General Fund of so much of the costs of any further vocational rehabilitation as it thinks fit, but not exceeding in a particular case an amount of \$2 000.

[Section 158 inserted by No. 96 of 1990 s.36.]

Rehabilitation services by employers

158A. The Commission may encourage and promote the establishment by an employer or a group of employers of rehabilitation services for workers of that employer, or workers of any employer of that group, as the case requires, and may authorize payment from the General Fund of such amount as it thinks fit in a particular case, on such terms as it thinks fit, on providing support and incentives to the establishment of such services.

[Section 158A inserted by No. 96 of 1990 s.36.]

Rehabilitation policy and guidelines

158B. The Commission shall promote the establishment by employers or groups of employers of rehabilitation policies and vocational rehabilitation guidelines.

[Section 158B inserted by No. 96 of 1990 s.36.]

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 approved insurance office 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 approved 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 not including any amount paid by way of compensation under this Act but 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.

(2a) Where an employer applying to an approved 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) An approved insurance office —

- (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 or contract 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 or contract of insurance; and

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- (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 or contract under section 171 (1) (b),

the approved insurance office shall, notwithstanding the lapse of the policy or contract 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 or contract of insurance.

[Section 160 amended by No. 44 of 1985 s.34; No. 85 of 1986 s.10; No. 96 of 1990 s.37.]

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) The requirements for an incorporated insurance office to be approved under this section are that it is able to meet the requirements mentioned in subsection (3).

(3) The requirements for an incorporated insurance office that is approved under this section to remain so approved are that it —

- (a) has material and financial resources available to it that the Minister, on the advice of the Commission, considers sufficient to enable it to discharge its obligations for the purposes of this Act;
- (b) maintains in the State an office having such resources and authority as the Minister considers satisfactory for the expeditious handling of claims;
- (c) provides a standard of service to employers and, on behalf of employers, to workers that the Minister, on the advice of the Commission, considers satisfactory;
- (d) complies with the time limits and other requirements imposed under this Act and the *Employers' Indemnity Supplementation Fund Act 1980*;
- (e) consistently maintains a standard of detail and accuracy in the information required under this Act to be provided by it that is satisfactory to the Minister; and
- (f) otherwise discharges its obligations under or for the purposes of this Act to a standard that the Minister, on the advice of the Commission, considers satisfactory.

(4) Where an incorporated insurance office applies to the Minister for the grant or renewal of approval under this section, the Minister may, if he is satisfied that it meets the requirements for an incorporated insurance office to be or remain approved, as the case may be, grant or renew the approval, as the case requires, and, in granting or renewing the approval, attach such conditions, if any, as he sees fit to the approval.

(5) Subject to subsection (6), an approval under this section ceases to have effect, unless sooner renewed, at the expiration of 5 years after the day on which the approval was granted or, where it has been previously renewed under this section, at the expiration of 5 years after the day on which it was last renewed.

(6) Notwithstanding subsection (5) but subject to subsection (7), an approval granted or deemed to be granted under this section and current immediately before the day of the commencement of section 38 of the *Workers' Compensation and Assistance Amendment Act 1990*¹ continues to have effect for a period of one year after that day and, unless renewed under this section, thereafter is of no effect.

(7) Where an approved insurance office —

(a) fails in the opinion of the Minister to meet the requirements mentioned in subsection (3) or to comply with any condition attached to its approval; or

(b) so requests,

the Minister may revoke or suspend his approval under this section of that office, but may not do so in any other case.

[Section 161 amended by No. 96 of 1990 s.38.]

**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 s.46 (2).]

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 s.46 (2).]

Exempt employer

164. (1) Notwithstanding section 160 if an employer or group of employers has deposited at the Treasury securities approved by the Commission that are charged with all payments to become due under the employer's or group's liability for which insurance would, if there were no exemption, be required by this Act, 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 under this Act for any industrial disease of the kinds referred to in section 151 (a) (iii).

(1a) In deciding whether an exemption should be given under subsection (1), regard may be had to the number of workers employed and the category of the insurable risks of the business or businesses of the employer or group, whether the employer or group has established a fund for insurance against liability for which insurance would, if there were no exemption, be required by this Act, and the material and financial resources available in the State to the employer, or each employer of the

group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*.

(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.

[Section 164 amended by No. 96 of 1990 s.39.]

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;
- (ba) whether or not the employer or group is maintaining a fund for insurance against liability for which insurance would, but for the exemption, be required by this Act;
- (bb) the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*;

- (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; No. 96 of 1990 s.40.]

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*²⁸, 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 insurance office a policy of insurance in compliance with section 160 (1),
- and that —
- (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.

[Section 168 amended by No. 96 of 1990 s.41.]

Forms of policy

169. The Governor may, on the recommendation of the Commission, 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.

[Section 169 amended by No. 96 of 1990 s.42.]

Penalty — uninsured worker

170. (1) An employer who —

- (a) fails to comply with section 160 (1) or (2); or
- (b) gives in an estimate or statement furnished under section 160 (2) any information or particular that he knows to be false in any material particular,

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) or (2), as the case may be, 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) The court convicting an employer of an offence under subsection (1) shall, in addition to any other penalty imposed in respect of the offence under subsection (1) but subject to subsection (2a), order that the employer pay to the General Fund an amount equal to the total of any insurance premiums payment of which the court is satisfied the employer has, at any time during the period of 5 years before the conviction, avoided by failing to obtain insurance as required by section 160 (1), failing to furnish an estimate or statement as required by section 160 (2), or giving any false information or particular in any such estimate or statement.

(2a) In making an order under subsection (2) requiring the payment of an amount determined by reference to insurance premiums payment of which has been avoided, an amount that has been taken into account in making a previous such order shall not be again taken into account.

(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; No. 96 of 1990 s.43.]

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;

- (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; and
- (c) where the Commission has requested the insurance office to do so, a means specified by the Commission for conveying to the Commission, in a machine-readable form so specified, the details referred to in paragraphs (a) and (b), together with a statement certifying the accuracy of the details so conveyed.

(2) Such a statement shall be signed by a responsible officer of the insurance office concerned.

(3) Subject to subsection (3a), 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.

(3a) A person who is a principal within the meaning of that term in section 175 may, in writing, request the Commission to disclose information as to the currency of a policy or contract of insurance required by this Act for the liability of a person who is, in relation to the person requesting the information, a contractor within the meaning of that term in that section, and the Commission may, where it is satisfied that the information is not to be used for a purpose unconnected with the objects of this Act, in writing, disclose the information requested (which may include information as to the period for which the policy or contract, if any, remains in force).

(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; No. 96 of 1990 s.44.]

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, upon being requested to do so, produce his written authority from the Minister before interrogating, or continuing to interrogate, an employer referred to in subsection (1) 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.

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(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.

[Section 172 amended by No. 96 of 1990 s.45.]

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.]

Worker's rights against insurer

173. (1) Where during the currency of a contract between an employer and an insurer in respect of the employer's liability under this Act to a worker the employer dies, or in the case of a corporation has commenced to be, or is, wound up, ceases to exist or the employer cannot be found or no longer resides in Australia or in a Territory within Australia or has ceased to carry on the business, or business of the kind, to which that contract related, 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 employer, or in the bankruptcy or liquidation of the employer, or against the personal representative of the employer.

[Section 173 amended by No. 72 of 1992 s.19.]

Payment to worker from General Fund

174. (1) 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 or the employer's insurer declines to indemnify the employer against the worker's claim for compensation; 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 and, until it so recovers that amount,

may exercise any rights of the employer under this Act in relation to the payment of that award.

(2) Where by reason of section 175 more than one person is liable as an employer to pay compensation under this Act to a worker, the reference in subsection (1) to the employer shall be read as a reference to each person so liable, and the rights of the Commission against the employer under that subsection are exercisable against those persons jointly and severally and a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.

(3) Where a worker suffers disability of a kind mentioned in section 32 or 33 and compensation in accordance with this Act is due by an employer to the worker but —

- (a) the identity of the employer's insurer, if any, is not known; or
- (b) the employer's insurer has ceased to operate in Australia,

an order may be made under Part IIIA that the Commission pay to the worker from the General Fund the amount required to satisfy an award obtained by the worker or the worker's representative and any award for costs in respect of the award.

(4) If the identity of the insurer is ascertained after payment has been made under subsection (3), the Commission may sue and recover the amount paid from the insurer, to the extent that its insured may have sued for and recovered that amount under the policy of insurance.

(5) The payment mentioned in subsection (3) shall be made to the worker or the worker's representative within 30 days of the date of the award.

(6) Where an employer is or may be uninsured and —

- (a) is not defending a claim brought by a worker, the Commission has a right to become a party to the proceedings and if it does so, may exercise the rights of the employer under this Act in those proceedings; or
- (b) is defending a claim brought by a worker, the Commission has a right to intervene in the proceedings and if it does so, shall assist in the determination.

(7) The Commission may sue for and recover from the employer fees, costs and charges incurred by the Commission under subsection (6) (a), whether or not the Commission was successful in the proceedings.

[Section 174 amended by No. 85 of 1986 s.11; No. 96 of 1990 s.46; No. 72 of 1992 s.20; No. 48 of 1993 s.41.]

Insurer may not refuse to indemnify in certain circumstances

174A. (1) If under a policy of insurance the insurer may refuse, but for this section, to indemnify an employer against the employer's liability to pay compensation claimed under this Act on the ground of an act or omission by or on behalf of the employer but the act or omission did not cause or contribute to the disability for which compensation is claimed, the insurer may not refuse to indemnify the employer but the insurer's liability to indemnify the employer is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the act or omission.

(2) The onus of proving that the insurer's interests were prejudiced by the act or omission by or on behalf of the employer and the extent of that prejudice is on the insurer.

[Section 174A inserted by No. 72 of 1992 s.21.]

***Division 2 — Insurance by Principals, Contractors,
and Sub-Contractors***

Principal contractor and sub-contractor 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 —

(a) prescribing such forms as may be necessary or expedient for the purposes of this Act;

[(b) *deleted*]

[(ba) *deleted*]

[(c) to (f) *deleted.*]

(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) *deleted*]

(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 agents and

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.

(1a) The Governor, on the recommendation of the Commission, may make regulations —

- (a) fixing scales of fees to be paid to —
 - (i) medical specialists and other medical practitioners;
 - (ii) dentists;
 - (iii) physiotherapists;
 - (iv) chiropractors;
 - (v) occupational therapists;
 - (vi) clinical psychologists;
 - (vii) speech therapists; and

(viii) persons providing treatment of a kind approved for the purposes of the definition of "approved treatment" in section 5 (1),

for attendance on, and treatment of, workers suffering disabilities that are compensable under this Act;

(b) fixing scales of fees to be paid to approved rehabilitation providers.

(1b) The Commission shall not recommend the making of any regulation under subsection (1a) unless it has first negotiated with the relevant body, if any, and, for that purpose, where the regulation is in respect of fees to be paid to —

- (a) medical specialists or other medical practitioners, the relevant body is the Australian Medical Association Western Australian Branch;
- (b) dentists, the relevant body is the Australian Dental Association (W.A. Branch);
- (c) physiotherapists, the relevant body is the Western Australian Branch of the Physiotherapists Association;
- (d) chiropractors, the relevant body is the Chiropractors Registration Board;
- (e) occupational therapists, the relevant body is the Western Australian Association of Occupational Therapists (Inc);
- (f) clinical psychologists, the relevant body is the Australian Psychological Society;
- (g) speech therapists, the relevant body is the Australian Association of Speech and Hearing;
- (h) persons providing treatment of a kind approved for the purposes of the definition of "approved treatment"

in section 5 (1), the relevant body is such body, if any, as is prescribed by regulations;

- (i) approved rehabilitation providers, the relevant body is such body, if any, as is prescribed by regulations.

(2) A regulation or rule may require any matter or thing to be verified by statutory declaration.

[(3) *repealed*]

[(4) *repealed*]

(5) Any regulations 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.

[Section 176 amended by No. 44 of 1985 s.40; No. 86 of 1986 s.5; No. 65 of 1987 s.34; No. 96 of 1990 s.47; No. 72 of 1992 s.22; No. 48 of 1993 s.28.]

PART XII — MISCELLANEOUS**Public Service**

177. (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Commission by this Act or any other Act, the Commission with the approval of the Public Service Commissioner²³ 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 and other officers of the Commission 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.

[Section 177 amended by No. 86 of 1986 s.5; No. 72 of 1992 s.16 (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 a compensation magistrate's court;
- (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.

[Section 180 amended by No. 48 of 1993 s.28.]

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 Directorate.

[Section 183 amended by No. 48 of 1993 s.28.]

Protection of officials

184. Neither the Commission nor a dispute resolution body 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 a dispute resolution body or the member or the person discharging the duty in pursuance of this Act.

[Section 184 amended by No. 48 of 1993 s.28.]

[185, 186, 187. Repealed by No. 48 of 1993 s.28.]

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.

Exclusive jurisdiction for offences

188A. (1) A compensation magistrate's court has jurisdiction to hear and determine under the *Justices Act 1902* complaints for any offences against this Act; and that jurisdiction is exclusive of any other court except where an appeal lies to that other court.

(2) Part VIII of the *Justices Act 1902* applies to matters referred to in subsection (1).

(3) Unless otherwise prescribed, the practice and procedure of a court of summary jurisdiction apply to and in relation to the exercise of the powers and jurisdiction of a compensation magistrate's court under this section.

(4) An order or other decision of a compensation magistrate's court made in the exercise of its jurisdiction under this section is to be enforced in accordance with the *Justices Act 1902*.

[Section 188A inserted by No. 48 of 1993 s.26.]

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.

[**192.** *Repealed by No. 48 of 1993 s.28.*]

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.¹

Repeal

194. The *Workers' Compensation Act 1912-1981* is repealed.

Operation of *Interpretation Act 1918*²⁹

195. The *Interpretation Act 1918*²⁹, 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 the notional residual entitlement of the worker;

but if a worker dies leaving —

- (b) a spouse or parent or a spouse and parent 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 a dispute resolution body;
- (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 a dispute resolution body in its absolute discretion decides, should receive continued support, a child's allowance weekly until such time as a dispute resolution body 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,

a dispute resolution body determines as likely to be in the best interests of that dependant or those dependants, and —

- (c) in the event of a dispute resolution body 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 a dispute resolution body.

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 a dispute resolution body 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 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 a dispute resolution body 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

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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) the amount, if any, which would have been payable as a lump sum if a dispute resolution body had ordered redemption pursuant to section 67 immediately before the worker's death; or

(ii) 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 a dispute resolution body;

(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

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- (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 a dispute resolution body.

Payments to Commission

6. Any amount payable by an employer or his insurer pursuant to section 84F 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 a dispute resolution body, and after the amount is so paid there shall be liberty to apply to a dispute resolution body 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 a dispute resolution

body makes an order to the contrary under section 84E, 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 a dispute resolution body 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 a dispute resolution body 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, a dispute resolution body 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 11A, 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).

Higher rate for first 4 weeks of disability in certain cases

11A. (1) This clause applies to incapacity for work resulting from a particular disability, and references to the period of incapacity mean, where 2 or more periods of incapacity for work result from the same disability, the total of those periods.

(2) For the purpose of calculating a worker's entitlement to a weekly payment during —

- (a) a period of total or partial incapacity for work that is not more than 4 weeks; or

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- (b) the first 4 weeks of a period of total or partial incapacity for work that is more than 4 weeks,

clause 11 is to be read as if, instead of excluding payment for overtime or for the items referred to in subclause (4) of that clause, it included such payments in the weekly earnings of the worker on the basis specified in subclause (3) of this clause except where or to the extent that their inclusion is prevented by subclause (5) of this clause.

(3) Subject to subclause (5), the weekly amount to be included as payment for overtime or for the items referred to in clause 11 (4) is the amount per week that the worker was paid for overtime, as referred to in clause 11 (3), and the items referred to in clause 11 (4), averaged over the period of 13 weeks before the period of incapacity commenced.

(4) If the worker was totally or partially incapacitated from working or for any other reason did not work during any part of the period of 13 weeks mentioned in subclause (3), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.

(5) An amount is only to be included as payment for overtime or for the items referred to in clause 11 (4) if the amount of the weekly earnings is less than the amount that the Australian Statistician publishes as the full time adult average weekly total earnings in Western Australia for a pay period ending in the month of February preceding the financial year in which the payment is to be made, and if the inclusion of the amount would result in the amount of the weekly earnings exceeding the amount so published, only so much is to be included as would bring the amount of the worker's weekly earnings up to the amount so published.

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*⁶ of the Commonwealth as a result, *inter alia*, of consumer price index movements.

Payment of medical and other expenses

17.^{30,31,32} 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; attendance and treatment that is approved treatment; 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, in so far as that attendance, treatment, or other item does not include vocational rehabilitation, but not exceeding, in the aggregate, a sum equal to

30% 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;

- (1a) vocational rehabilitation up to, but not exceeding, in the aggregate, a sum equal to 7% of the prescribed amount, and there shall be no revival of, or increase in, the entitlement under this subclause 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 a dispute resolution body in any other case, the worker occupies more expensive hospital accommodation than that to which the prescribed charges refer a dispute resolution body 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.^{31,32} (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, a dispute resolution body 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.

(1a) Where the worker is likely to incur reasonable expenses referred to in subclause (1) of clause 17 in excess of the maximum amount provided for by that subclause, a dispute resolution body may, subject to subclause (2), if it considers that the maximum amount is likely to be inadequate, allow such specific additional sum, but not exceeding \$50 000, as it thinks proper in the circumstances.

(2) A dispute resolution body shall not allow an additional sum in the exercise of its discretion under subclause (1) or (1a) unless it considers that such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

(2a) An application under subclause (1a) may be made at any time after the reasonable expenses referred to in subclause (1) of clause 17 incurred by the worker exceed 75% of the maximum amount provided for by that subclause.

[(3) repealed]

(4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, shall notify the worker when the reasonable expenses referred to in subclause (1) of clause 17 incurred by the worker exceed 75% of the maximum amount provided for by that subclause.

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; No. 96 of 1990 s.48; No. 72 of 1992 s.23; No. 48 of 1993 ss.19 and 28.]

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SCHEDULE 2³³

TABLE OF COMPENSATION PAYABLE

<i>Column 1</i>		<i>Column 2</i>
<i>Item</i>	<i>Nature of Injury</i>	<i>Ratio which the sum payable herein bears to the prescribed amount.</i>
		%
	EYES	
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 of one eye and serious diminution of the sight of the other eye	75
5.	Loss of binocular vision	50
	HEARING	
6.	Total loss of hearing	75
	SPEECH	
7.	Total loss of power of speech	75
	BODY AND MENTAL	
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
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SENSORY

10.	Total loss of sense of taste and smell	50
11.	Total loss of taste	25
12.	Total loss of smell	25

ARM

13.	Loss of arm at or above elbow	90
14.	Loss of arm below elbow	80

HAND

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

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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

LEG

28.	Loss of leg at or above knee	70
29.	Loss of leg below knee	65

FEET

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

BACKS, NECK AND PELVIS

36A.	Permanent loss of the full efficient use of the back (including thoracic and lumbar spine)	60
36B.	Permanent loss of the full efficient use of the neck (including cervical spine)	40

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36C. Permanent loss of the full efficient use of the pelvis	15
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MISCELLANEOUS

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 2 amended by No. 44 of 1985 s.42; No. 48 of 1993
s.20.]*

SCHEDULE 3

SPECIFIED INDUSTRIAL DISEASES

<i>Column 1</i>	<i>Column 2</i>
<i>Description of Disease</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.
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 derative 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.
Effects of insolation	Work entailing prolonged exposure to sunlight.

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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.

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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; No. 48 of 1993 s.42.]

SCHEDULE 4

SPECIFIED LOSSES OF FUNCTIONS

<i>Column 1</i>	<i>Column 2</i>
<i>Loss of Function</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^{34,35}

[Section 56]

**EXCEPTIONS TO CESSATION OF WEEKLY PAYMENTS BY
REASON OF AGE**

1. 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, mesothelioma and lung cancer

Where the worker shows to the satisfaction of the employer or, in the case of dispute, a dispute resolution body 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, mesothelioma and lung cancer — weekly payments

(1) This clause shall be read and construed subject to the qualifications on entitlement in sections 33 and 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.

(2a) Subclauses (3) to (7) apply only to the disabilities of pneumoconiosis and mesothelioma.

(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*¹ 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*¹, 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*¹ 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.

(8) Subject to the provisions of this Schedule and Schedule 1 clause 7 (3) —

(a) where a worker aged 65 or more on the relevant day had suffered the disability of lung cancer before that day and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that disability, in respect of any incapacity resulting from

that disability on or after the relevant day he is entitled to receive weekly payments;

- (b) where a worker who attains or has attained the age of 65 after the relevant day has or had suffered the disability of lung cancer 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;
- (c) where a worker who attains or has attained the age of 65 after the relevant day suffers or has suffered the disability of lung cancer on or after attaining that age, in respect of any incapacity arising from that disability he is entitled to receive weekly payments;
- (d) where a worker who was aged 65 or more on the relevant day suffers the disability of lung cancer on or after the relevant day, in respect of any incapacity arising from that disability he is entitled to receive weekly payments; and
- (e) where a worker would be entitled to receive weekly payments under paragraph (a), (b), (c) or (d) if the references in those paragraphs to "relevant day" were references to 28 June 1985, he is entitled to receive —
 - (i) a lump sum payment equivalent to the value of the weekly payments he would have received up until the "relevant day" but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
 - (ii) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to subparagraph (i), does not exceed the aggregate of 52 such weekly payments,

and for the purposes of this subclause, "**the relevant day**" means the day of the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990*¹.

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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*¹;
- (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*¹; 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*¹, 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 weekly payments under clause 3 (6) or clause 3 (8) (a), (b), (c) or (d), within the period of one year from the time when he becomes entitled to receive those payments; or
- (e) where he receives —
 - (i) only a lump sum payment under clause 3 (7) or 3 (8) (e), at the time of receiving that lump sum payment; or

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- (ii) a lump sum payment and weekly payments under clause 3 (7) or 3 (8) (e), 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 Directorate, 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 Director 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 dependants', future entitlement to compensation under this Act.

(3) Where the Director 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

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- (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) or 3 (8) (e) (i);
- (b) is not entitled to receive weekly payments under clause 3 (7) (b) or 3 (8) (e) (ii); 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.

9. Death of a worker prior to section 49 of *Workers' Compensation and Assistance Amendment Act 1990*¹.

(1) Where a worker who died prior to the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990*¹ would otherwise have been entitled to compensation or other benefits, or both, under clause 3 (8) (e), 4 (e) or 8 (2) in respect of incapacity resulting from the disability of lung cancer is survived by a dependent spouse, that spouse is entitled to receive any compensation or other benefits, and the employer is liable to pay the compensation or to pay for the provision of the other benefits, that the worker would have received or been entitled to receive up until the time of his death.

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(2) The payment of a supplementary amount weekly to a dependent spouse instead of to a worker under subclause (1) does not act to stop clause 7 (b) applying to that dependent spouse.

[Schedule 5 amended by No. 104 of 1984 s.8; No. 96 of 1990 s.49; No. 48 of 1993 s.28.]

[Schedule 6 repealed by No. 48 of 1993 s.28.]

SCHEDULE 7

[Section 24A]

NOISE INDUCED HEARING LOSS

Interpretation

1. In this Schedule —

“audiometric test” means an audiometric test carried out in accordance with clause 4 (1);

“prescribed workplace” means a workplace prescribed under clause 10;

“proclaimed date” means the date on which the *Workers' Compensation and Assistance Amendment Act 1988*¹ comes into operation.

Audiometric tests

2. (1) A worker employed in a prescribed work place shall undergo an initial audiometric test as soon as practicable but no later than —

(a) where the worker is employed in a prescribed workplace at the proclaimed date, 12 months after that date; or

(b) if the worker was not employed in a prescribed workplace at the proclaimed date, 12 months after the worker commences employment in a prescribed workplace.

(2) A worker employed in a prescribed workplace, or who has retired from work in a prescribed workplace within the last 3 months, who has not undergone an audiometric test for 12 months and who wishes to do so may request the employer, or in the case of a retired worker the worker's last employer, in writing to arrange for such a test and the employer shall, as soon as practicable, but not later than one month after the day that the request was received, arrange for the test to be held at the earliest date practicable.

(3) A worker who has retired from work and is subsequently employed in a prescribed workplace shall undergo an audiometric test within 3 months of commencing that employment.

(4) Any worker may undergo an audiometric test at any other time not referred to in this clause but clause 3 does not apply to that test.

Employer to arrange and pay for audiometric test

3. (1) The employer of a worker who is required, or who makes a request, to undergo an audiometric test under clause 2 shall —

- (a) arrange for the test;
- (b) bear the cost of the test and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings; and
- (c) give written notice to the worker in the prescribed form of the time and place of the test, where relevant, the requirement to undergo the test and any other particulars prescribed regarding the test.

(2) An employer who contravenes subclause (1) commits an offence.

Carrying out of audiometric tests

4. (1) An audiometric test shall be carried out in the prescribed manner by a person meeting the prescribed requirements and approved by the Executive Director.

(2) A person who carries out an audiometric test shall ensure that the results of the test prepared, or summarized, as prescribed are delivered to the Commission and to the worker tested within one month after the day of the test.

(3) Subject to subclause (2), a person who carries out an audiometric test shall ensure that the results of the test, and any

information derived from those results, are not communicated to any person other than at the written request of the worker tested or to —

- (a) the Executive Director; or
- (b) any other person prescribed in circumstances, if any, prescribed.

(4) A person who contravenes subclause (2) or (3) commits an offence.

Communication and storage of audiometric test results

5. (1) The Commission shall communicate the results of an audiometric test delivered to it under clause 4 (2) —

- (a) to the worker tested and, if the test results indicate that the worker may be entitled to compensation for noise induced hearing loss under section 24A, to the worker's employer; and
- (b) to the Directorate or a compensation magistrate's court, where required to do so under section 73 (6).

(1a) The Commission may communicate the results mentioned in subclause (1) or information from those results, to any other person if, and only if, the identity of the worker or employer to whom the results or information relates, is not revealed to that person.

(2) The Commission shall store the results of audiometric tests delivered to it under clause 4 (2) for the period prescribed and, subject to subclause (1), shall ensure that those results, and any information derived from them, remain confidential.

Reference to medical assessment panel

6. (1) Any question that arises under section 24A or this Schedule regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, may be referred by the Director to a medical assessment panel if —

- (a) a person performing a function under Part IIIA so requests;

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- (b) the worker claiming compensation or that worker's employer so requests in the manner prescribed and on payment of the prescribed fee.

[N.B. Clause 30 of Schedule 1 of Act No. 48 of 1993 amended this clause, however that amendment was made redundant by the amendment effected by clause 27 of that Schedule.]

(2) Where a question has been referred to a medical panel under subclause (1) —

- (a) the Director shall make such arrangements as are necessary to enable any medical practitioner who has examined or treated the worker, on the worker's own behalf or on behalf of the employer, and who makes a request to do so, to attend before the medical assessment panel and make oral submissions, and the medical practitioner shall be paid from the General Fund such witness fees as he or she would have been entitled to receive if he or she had attended to give evidence in a hearing before a compensation magistrate's court under Part IIIA; and
- (b) if the worker, on being required to do so, refuses without reasonable excuse, proof of which is on the worker, to submit to an examination by that panel, or obstructs the examination, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the examination takes place.

[N.B. Clause 30 of Schedule 1 of Act No. 48 of 1993 amended this clause, however that amendment was made redundant by the amendment effected by clause 27 of that Schedule.]

Re-test of person's hearing

7. (1) Where an audiometric test has been carried out on a worker and the worker or the employer, within 3 months after the day on which the results of the audiometric test are communicated to him or her, gives notice in the prescribed form to the Commission to the effect that the test results are disputed the Commission shall arrange for a re-test of the worker to be carried out in the prescribed manner.

(2) If a worker refuses without reasonable excuse, proof of which is on the worker, to submit to a re-test under subclause (1) or obstructs that re-test, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the re-test takes place.

(3) The costs of a re-test under this clause and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings shall be paid from the General Fund.

Determination of hearing loss

8. (1) The results of an audiometric test carried out on a worker and stored by the Commission under clause 5 are *prima facie* evidence of the level of hearing of the person at the date of the test.

(2) Where a comparison of the results of 2 audiometric tests stored by the Commission under clause 5 shows that a loss or diminution of the hearing of a worker has occurred, those results shall be *prima facie* evidence of the measure of loss or diminution of hearing of that worker between the dates of the tests.

(3) Where an audiometric test shows that a loss or diminution of hearing has been incurred by a worker but the worker has not undergone an earlier audiometric test then whether, and to what extent, that loss or diminution of hearing is compensable noise induced hearing loss may, in default of agreement between the worker and employer, be referred to the Director for conciliation under Part IIIA.

[N.B. Clause 30 of Schedule 1 of Act No. 48 of 1993 amended this clause, however that amendment was made redundant by the amendment effected by clause 27 of that Schedule.]

(4) If a worker —

- (a) undergoes an audiometric test within 3 months of the worker's employment being terminated, or in the case of a worker who has retired, the worker makes a request under clause 2 (2) within 3 months of retirement, then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A as if the person had

undergone the test before the termination of that employment, or on retirement; or

- (b) undergoes an audiometric test within 3 months before commencing employment then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A as if the worker had undergone the test at the commencement of that employment.

Audiometric test not conclusive proof that hearing loss is noise induced

9. The fact that the worker was under a duty or chose to undergo an audiometric test or other hearing test, shall not be conclusive proof that any loss or diminution of the worker's hearing is due to the nature of the employment in which the worker was employed.

Prescribed workplaces

10. Workplaces shall be prescribed for the purposes of this Schedule.

*[Schedule 7 inserted by No. 36 of 1988 s.12; amended by
No. 48 of 1993 ss.28 and 43.]*

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NOTES

¹ This reprint is a compilation as at 14 March 1994 of the *Workers' Compensation and Rehabilitation Act 1981* 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 ³⁴ ; section 10 validation and ratification ³⁴

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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); sections 10, 11, 12, 19, 44 and 45 repealed by No. 36 of 1988 section 13; balance: 20 May 1985	Section 3 (2) validation; section 4 (2) saving ¹² ; section 16 transitional ¹⁵ ; section 20 (2) saving ¹⁹ ; section 23 (2) saving ²⁰ ; section 41 (2) transitional ³⁰ ; section 42 (2) transitional ³³
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</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 ²⁶

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>State Government Insurance Commission Act 1986, section 46 (2)</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; sections 7 and 11: 22 May 1987 (see <i>Gazette</i> 22 May 1987 p.2167)	Section 8 (2) application; section 12 (2) transitional ³¹
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986</i>	86 of 1986	5 December 1986	2 January 1987	Section 5 (2) transitional
<i>Workers' Compensation and Assistance Amendment Act 1987</i>	21 of 1987	25 June 1987	23 July 1987	Section 6 (2) validation ³⁴
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987, Part VII</i>	65 of 1987	1 December 1987	12 February 1988 (see <i>Gazette</i> 12 February 1988 p.397)	
<i>Workers' Compensation and Assistance Amendment Act 1988</i>	36 of 1988	24 November 1988	1 March 1991 (see <i>Gazette</i> 1 March 1991 p.967)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Workers' Compensation and Assistance Amendment Act 1990</i>	96 of 1990	22 December 1990	8 March 1991 (see <i>Gazette</i> 8 March 1991 p.1030)	Section 30 (2) repeal ²⁵ Section 48 (2) saving ³² Section 50 transitional ²⁷ Section 51 transitional ³⁵
<i>Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992, Part 6</i>	40 of 1992	2 October 1992	3 November 1992 (see section 2 and <i>Gazette</i> of 3 November 1992 p.5389)	
<i>Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1992</i>	72 of 1992	15 December 1992	Sections 6, 7 and 8: 5 February 1993 (see <i>Gazette</i> 5 February 1993 p.975); balance 24 December 1992 (see <i>Gazette</i> 24 December 1992 p.6277)	
<i>Employers' Indemnity Supplement-ation Fund Amendment Act 1993, section 14</i>	1 of 1993	19 July 1993	19 July 1993	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Mines Regulation Amendment Act 1993</i>	30 of 1993	16 December 1993	24 December 1993 (see <i>Gazette</i> 24 December 1993 p.6796	
<i>Workers' Compensation and Rehabilitation Amendment Act 1993</i>	48 of 1993	20 December 1993	Parts 1, 2, and 3: 20 December 1993 (see section 2 (1)); sections 21, 23, 25, 28 (1) (only so far as it gives effect to Schedule 1 clauses 13, 14, 27 (a) (i), (b) (i) and (c) and 31) of Part 4, and Part 5 (other than sections 36, 37, 38, 41 and 43): 24 December 1993 (see <i>Gazette</i> 24 December 1993 p.6795); balance 1 March 1994 (see <i>Gazette</i> 24 December 1993 p.6795)	Section 4 (4) transitional ²¹ ; Division 2 of Part 2 transitional ³⁶ ; section 18 (3) validation ³⁷ ; section 19 (2) validation ³⁸ ; section 20 (2) validation ³⁹ ; section 27 (1) transitional ⁴⁰ ; section 28 (2) transitional ⁴¹ *Note ¹⁶

NB. The *Workers' Compensation and Rehabilitation Act 1981* was affected by s.3 (a) of the *Blood Donation (Limitation of Liability) Act 1985*.

² Came into operation 3 May 1982; see *Gazette* 8 April 1982 p.1205.

³ In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

⁴ Title (as changed by section 85 (3) of the *Acts Amendment and Repeal (Industrial Relations) Act (No.2) 1984* (Act No. 94 of 1984)) substituted under section 7 (3) (h) of the *Reprints Act 1984*.

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- ⁵ Short title (as changed by section 4 of the *Acts Amendment and Repeal (Industrial Relations) Act (No.2) 1984* (Act No. 94 of 1984)) substituted under section 7 (3) (h) of the *Reprints Act 1984*.
- ⁶ Now see *Industrial Relations Act 1988* of the Commonwealth.
- ⁷ Repealed by section 83 (e) of the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* (Act No. 94 of 1984).
- ⁸ This tribunal no longer exists.
Now see the Coal Industry Tribunal of Western Australia constituted under section 4 of the *Coal Industry of Western Australia Act 1992* (Act No. 37 of 1992).
- ⁹ Repealed by section 3 (1) (a) of the *Mining Act 1978* (Act No. 107 of 1978).
- ¹⁰ The definitions of "Class A mine" and "Class B mine" were deleted in the *Gazette* of 24 December 1993 p.6825.
- ¹¹ Repealed by section 25 of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993).
- ¹² Section 4 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* (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. ”
- ¹³ Act No. 70 of 1977.

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¹⁴ The effect of this section of this Act was removed by the *Western Australian Marine Act 1982* (Act No. 55 of 1982) section 135, subject to the savings provisions in section 135 (4) of that Act.

¹⁵ Section 16 of the *Workers' Compensation and Assistance Amendment Act 1985* (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. ”

¹⁶ See also section 13 of the *Mines Regulation Amendment Act 1993* (Act No. 30 of 1993).

¹⁷ Title amended pursuant to section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 31 (1) (f) of the *Acts Amendment (Public Service) Act 1987*.

¹⁸ Section 192 was repealed by section 28 of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993).

¹⁹ Section 20 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* (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. ”

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²⁰ Section 23 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* (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 — 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. ”.

²¹ Section 4(4) of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ (4) The provisions inserted by subsection (3) have no operation in relation to a cause of action in respect of which legal proceedings have been instituted before 4 p.m. on 30 June 1993 and, regardless of when legal proceedings are instituted, sections 93E and 93F of those provisions have no operation in relation to a cause of action arising wholly before 1 July 1993 but otherwise the provisions inserted by subsection (3) apply to causes of action arising before the commencement of this section in the same way as they apply to causes of action arising after that commencement. ”.

²² The Confederation of Western Australian Industry (Incorporated) no longer exists. Now see the Chamber of Commerce and Industry of Western Australia.

²³ Title amended pursuant to section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 31 (1) (g) of the *Acts Amendment (Public Service) Act 1987*.

²⁴ Section 6 (2) of the *Workers' Compensation and Assistance Amendment Act 1987* (Act No. 21 of 1987) 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 principal Act before the commencement of subsection (1) by a person appointed as an inspector under section 103 of

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that Act is and always has been as valid as if subsection (1) was in operation at the time the act, matter or thing was done or the duty was performed. ”.

²⁵ Section 30 (2) of the *Workers' Compensation and Assistance Amendment Act 1990* (Act No. 96 of 1990) reads as follows —

“ (2) The specification by the Committee of a category under section 151 (c) of the principal Act as in force before the commencement of this section is of no further effect, and section 30 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* is repealed. ”.

²⁶ Section 6 (2) of the *Workers' Compensation and Assistance Amendment Act 1986* (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. ”.

²⁷ Section 50 of the *Workers' Compensation and Assistance Amendment Act 1990* (Act No. 96 of 1990) reads as follows —

“ **50.** (1) The amendments effected by this Act that relate to rehabilitation do not apply in respect of a disability that occurred before the commencement of section 35 of this Act, and the principal Act shall apply in respect of any such disability as if the amendments effected by this Act that relate to rehabilitation had not been enacted.

(2) Without limiting subsection (1), the amendments effected by sections 8, 9 and 19 of this Act do not apply in respect of a claim that was made before the commencement of section 8 of this Act, and the principal Act shall apply in respect of any such claim as if the amendments effected by sections 8, 9 and 19 of this Act had not been enacted. ”.

²⁸ Short title (as changed by the *Workers' Compensation Supplementation Fund Amendment Act 1982* (Act No. 49 of 1982)) substituted under section 7 (3) (h) of the *Reprints Act 1984*.

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²⁹ Now see the *Interpretation Act 1984*.

³⁰ Section 41 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* (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. ”.

³¹ Section 12 (2) of the *Workers' Compensation and Assistance Amendment Act (No. 2) 1986* (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. ”.

³² Section 48 (2) of the *Workers' Compensation and Assistance Amendment Act 1990* (Act No. 96 of 1990) 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) revives or increases the entitlement to such expenses where a worker has received under that clause a sum equal to 20% of the prescribed amount, or such further amount as the Board has allowed under clause 18A of that Schedule, before the coming into operation of this section. ”.

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³³ Section 42 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* (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. ”

³⁴ Sections 9 and 10 of the *Workers' Compensation and Assistance Amendment Act 1984* (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,

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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*⁴² 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

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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 sections 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).
”.

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³⁵ Section 51 of the *Workers' Compensation and Assistance Amendment Act 1990* (Act No. 96 of 1990) reads as follows —

“ 51. (1) In this section “**the amended Schedule**” means Schedule 5 to the principal Act as amended by section 49 of this Act.

(2) 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 the disability of lung cancer, 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 clause 2 of 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.

”.

³⁶ Division 2 of Part 2 of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ ***Division 2 — Further transitional provisions***

Definitions

5. (1) In this Division —

“**affected person**” means a person having a notifiable cause;

“**improved statutory benefits**” means the benefits under the principal Act that would be applicable if the amendments made by this Act to Schedule 2 to the principal Act and to the prescribed amount had been made immediately before the date of the accident that caused the injury or the date of the audiometric test that showed that a loss or diminution of the worker's hearing had been incurred, as the case requires;

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"notifiable cause" means a cause of action that arose wholly before 1 July 1993 in respect of a disability for which, because of section 93D of the principal Act, damages are prevented from being awarded other than under this Division;

"preliminary questions", in relation to a notifiable cause, means —

- (a) whether or not a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on that cause; and
- (b) if the relevant employer or insurer would be likely to be found liable for damages, whether or not the damages that a court would be likely to award, but for section 93D of the principal Act, would be significant damages;

"relevant employer or insurer", in relation to a notifiable cause, means the employer against whom the affected person has the cause of action or the person insuring the employer against liability arising out of that cause;

"significant damages" means damages of which —

- (a) the amount attributable to non-pecuniary loss; or
- (b) the amount attributable to future pecuniary loss,

is equal to or more than \$25 000.

(2) Unless the contrary intention appears, expressions in this Division that are used in the principal Act have the same respective meanings in this Division as they have in the principal Act.

Registration of certain causes of action

6. (1) The Commission is to keep a register containing particulars of notifiable causes registered under this Division and persons who have those causes.

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(2) The Commission is to register a notifiable cause if it was notified of the cause before 5 p.m. on 29 July 1993.

(3) The Commission may, not later than 30 June 1994, register a notifiable cause if it is satisfied that there is good reason for notice of the cause not having been given until after 5 p.m. on 29 July 1993.

(4) The functions of this Commission under this section in respect of a notifiable cause are to be performed within 21 days after the day on which it is notified of the cause.

Appeals for registration

7. (1) A person seeking to have a notifiable cause registered under section 6 (3) who is dissatisfied with the decision of the Commission may appeal to the Minister against the decision.

(2) The Minister may dismiss or allow the appeal and, if the appeal is allowed, the Commission is to register the cause.

Certificate of registration

8. The Commission, upon registering a notifiable cause, is to give to the affected person a certificate to the effect that the cause is registered and within 21 days notify the relevant employer or insurer in writing accordingly.

Negotiations with employer or insurer

9. (1) Within 60 days after the day on which the affected person is given a certificate of registration of a cause of action, the affected person may submit to the relevant employer or insurer details of the claim for damages in respect of the disability from which the cause arose, together with a copy of the certificate.

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(2) The employer or insurer may, within 60 days after the day on which details of the claim are submitted in accordance with subsection (1) —

(a) notify the affected person in writing that the employer's liability is accepted and either —

(i) offer to pay to the affected person in settlement of the claim an amount specified in the notice; or

(ii) decline to pay on the grounds that the damages are not significant damages;

or

(b) notify the affected person in writing that the employer's liability is not accepted.

(3) Nothing in a notice under subsection (2) is admissible in court proceedings for the award of damages in respect of the disability.

(4) Without limiting the other matters that may be taken into account by a court but subject to section 12 (3) and (4), in making an order as to costs the court shall have regard to whether or not a person has acted within the time specified in this section.

Improved statutory benefits available if liability accepted

10. (1) An affected person who is notified under section 9 that liability is accepted may, whether or not damages are considered to be significant, discontinue proceedings, if any, in respect of the cause and opt for the improved statutory benefits.

(2) An offer made under section 9 (2) (a) (i) to an affected person lapses if the person opts for the improved statutory benefits.

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Consequences of filing certificate in court proceedings

11. (1) If an affected person —

- (a) has commenced court proceedings in respect of a registered cause (whether the cause was registered before or after the proceedings were commenced); and
- (b) has, within 90 days after the day on which the certificate was given, filed the certificate of registration in the proceedings and given a copy of the certificate to each other party to the proceedings,

the relevant employer or insurer may within 60 days after the day on which the certificate is filed, apply to a District Court Judge for a declaration as to the preliminary questions or either of those questions that is in dispute.

(2) If the relevant employer or insurer does not apply under subsection (1) to a District Court Judge within the time provided by that subsection, the affected person may —

- (a) discontinue the proceedings and opt for the improved statutory benefits; or
- (b) continue the proceedings and enjoy the exemption given by section 13 (1).

(3) If, on an application under subsection (1), the District Court Judge declares that a court would not be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause, this Division has no further application in relation to that cause.

(4) If, on an application under subsection (1), the District Court Judge declares that —

- (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
- (b) the damages that a court would be likely to award but for section 93D of the principal Act would not be significant damages,

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this Division has no further application in relation to that cause unless the affected person discontinues the proceedings and opts for the improved statutory benefits.

(5) If, on an application under subsection (1), the District Court Judge declares that —

- (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
- (b) the damages that a court would be likely to award but for section 93D of the principal Act would be significant damages,

the affected person may —

- (c) discontinue the proceedings and opt for the improved statutory benefits; or
- (d) continue the proceedings and enjoy the exemption given by section 13 (1).

Offer to settle

12. (1) If the proceedings are continued in the circumstances described in subsection (2) or (5) of section 11, the relevant employer or insurer is to make an offer to settle, or consent to judgment, in the proceedings.

(2) The offer is to be made within 60 days after —

- (a) the last day on which the application under section 11 (1) could have been made; or
- (b) the day on which the declaration under section 11 (5) was made,

as the case requires, unless the proceedings had been commenced less than 120 days before the day by which the offer would otherwise be required to be made in which case the offer is to be made within 120 days after the day on which the proceedings were commenced.

(3) If the offer is not accepted nor withdrawn and the court awards damages in an amount that is not more than

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120% of the amount offered, the costs of the proceedings are to be paid by the affected person.

(4) If the court awards damages in an amount that is more than 120% of the amount offered, the costs of the proceedings are to be paid by the relevant employer or insurer.

(5) If an offer is not made as required by this section or an offer is made but withdrawn, a nil amount is taken for the purposes of subsection (4) to have been offered.

Exemption from effect of section 93D

13. (1) If proceedings in respect of a cause are continued in the circumstances described in subsection (2) or (5) of section 11, section 93D of the principal Act has no operation in relation to the cause.

(2) Unless, in the proceedings continued, the court has decided that the disability did not result from the negligence or other tort of the employer, the affected person may, at any time, discontinue the proceedings and opt for the improved statutory benefits.

(3) If the court decides that the relevant employer or insurer is liable for damages but the damages are not significant damages, no damages are to be awarded but the affected person is to be taken to have opted under this Division for the improved statutory benefits.

Consequences of opting for improved statutory benefits

14. (1) An affected person opting for the improved statutory benefits is to do so by notice in writing given to the relevant employer or insurer and, if court proceedings have been commenced, a copy of the notice is to be filed in the proceedings.

(2) If under this Division an affected person opts for the improved statutory benefits, the benefits available to the person under the principal Act are the improved statutory benefits but otherwise this Division has no further application in relation to that cause.

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(3) Subsection (2) applies whether or not the full extent of the benefits to which a person would be entitled under the principal Act but for this section had already been received when the person opts for the improved statutory benefits.

Time limits for bringing proceedings

15. (1) If the time limited for bringing proceedings for a notifiable cause would, but for this subsection, expire or have expired at any time after 4 p.m. on 30 June 1993 but before the day that is 90 days after the day on which a certificate of the registration of that cause under this Division is given, the time for bringing those proceedings is extended to the day that is 90 days after the day on which the certificate is given.

(2) The extension of time given by subsection (1) does not limit any extension given by a court.

Fund to bear cost of declarations

16. The Commission is to pay from the General Fund to the Consolidated Fund such amount as the Treasurer directs in respect of the cost to the State of dealing with applications for declarations under this Division by a District Court Judge.

Leave not required if certificate filed

17. Section 93D (4) and (5) of the principal Act do not apply to the commencement of proceedings in respect of a registered cause if the certificate of registration was issued not more than 90 days before the proceedings are commenced and, when the proceedings are commenced, the certificate is filed.

³⁷ Section 18 (3) of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ (3) The increase in the prescribed amount effected by subsection (1) has effect on and from 1 July 1993.

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³⁸ Section 19 (2) of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ (2) The amendments made by subsection (1) have effect on and from 1 July 1993. ”.

³⁹ Section 20 (2) of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ (2) The amendments made by subsection (1) have effect on and from 1 July 1993. ”.

⁴⁰ Section 27 of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ **Transitional provision as to proceedings**

27. (1) On the commencement of section 24, all proceedings pending before the Board are to be transferred to the Director and dealt with as if they had been referred for conciliation.

(2) In this section —

“**Board**” has the meaning given to that expression by the principal Act as in force immediately before the commencement of section 24;

“**Director**” has the meaning given to that expression by the principal Act as amended by section 21. ”.

⁴¹ Section 28 (2) of the *Workers' Compensation and Rehabilitation Amendment Act 1993* (Act No. 48 of 1993) reads as follows: —

“ (2) Regulations may be made amending the principal Act (including any provision amended by Schedule 1) to deal with any matter of a transitional nature that arises from the amendments made by this Part or to deal with any matter that is consequential on or incidental to those amendments. ”.

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⁴² Repealed by section 46 (1) of the *State Government Insurance Commission Act 1986* (Act No. 51 of 1986). Now see the *State Government Insurance Commission Act 1986*.

