

WORKERS' COMPENSATION AND ASSISTANCE.

No. 44 of 1985.

AN ACT to amend the Workers' Compensation and Assistance Act 1981 and to validate certain matters.

[Assented to 20 May 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Workers' Compensation and Assistance Amendment Act 1985*.

Short title
and
citation.

(2) In this Act the Workers' Compensation and Assistance Act 1981 is referred to as the principal Act.

Act No. 86
of 1981 as
amended by
Acts Nos. 16
and 79 of
1983 and 28
and 104 of
1984.

Commence-
ment.

2. (1) Subject to subsections (2) and (3), this Act shall come into operation on the day on which it is assented to by the Governor.

(2) Sections 3 (3), 4 to 24 and 27 to 45 shall come into operation on such day as is or days as are respectively, fixed by proclamation.

(3) Section 25 shall come into operation on 1 July 1985.

Section 5
amended
and
validation.

3. (1) Section 5 of the principal Act is amended in subsection (1)—

(a) by inserting in the appropriate alphabetical position the following definition—

“ “Deputy Registrar” means the Deputy Registrar of the Workers’ Compensation Board; ”;

and

(b) in the definition of “Registrar” by inserting after “so acting” the following—

“ and except in section 187 also includes the Deputy Registrar ”.

(2) Any act, matter or thing done or purported to be done, or duty performed or purported to be performed under the provisions of the principal Act before the coming into operation of section 3 (1) by a person appointed as Deputy Registrar of the Board under the Public Service Act 1978 is and always has been as valid as if section 3 (1) had been enacted at the time the act, matter or thing was done or duty was performed.

(3) Section 5 of the principal Act is further amended—

(a) in subsection (1)—

(i) by inserting in their appropriate alphabetical positions the following definitions—

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

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

(ii) in the definition of “child’s allowance” by inserting after “and (4)” the following—

“ , subject to subsection (3), ”;

(iii) by deleting the definition of “clause” and substituting the following definition—

“ “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; ”;

and

(iv) in the definition of "ship" by inserting after "craft" the following—

“ and includes any man-made structure at sea, whether floating or fixed to the seabed ”; and

(b) by inserting after subsection (2) the following subsection—

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

(a) shall be disregarded if it is less than 5 cents;

(b) shall, if it is a whole number of cents divisible by 5 without remainder, be reckoned as the next higher whole number of cents that is divisible by 10 without remainder; or

(c) shall, if it is not referred to in paragraph (a) or (b), be reckoned as the nearest whole number of cents that is divisible by 10 without remainder. ”.

Section 10A
inserted and
transitional
provision.

4. (1) After section 10 of the principal Act the following section is inserted—

Exclusion of
certain
working
directors.

“ 10A. 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) 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.

5. Section 11 of the principal Act is amended by inserting after “section 5” the following—

Section 11 amended.

“ and subject to section 11A ”.

6. After section 11 of the principal Act the following section is inserted—

Section 11A inserted.

“ 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—

Jockeys.

(a) riding a horse in any race run under the management of a racing club registered with The Western Australian Turf Club; or

(b) engaged on a racecourse in riding work, or carrying out the usual duties of a jockey, for a trainer licensed by The Western Australian Turf Club,

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

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

Section 14
amended.

7. Section 14 of the principal Act is amended by inserting after subsection (2) the following subsection—

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

Section 16
amended.

8. Section 16 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (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. ”.

9. Section 24 of the principal Act is amended by inserting after subsection (4) the following subsection—

Section 24
amended.

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

(a) an agreement with respect to the election is registered under section 76; or

(b) an order of the Board is made with respect to the amount of compensation payable pursuant to the election,

whichever is sooner. ”.

10. After section 24 of the principal Act the following section is inserted—

Section 24A
inserted.

“ 24A. (1) Where a worker is suffering from noise induced hearing loss which is due to the nature of any employment in which the worker was employed—

Noise
induced
hearing
loss.

(a) after the coming into operation of section 10 of the Workers' Compensation and Assistance Amendment Act 1985; and

(b) at any time prior to the date of the registration of an agreement or the making by the Board of an order with respect to the amount payable pursuant to an election relating thereto made by the worker as provided by section 24,

then, subject to Schedule 7 and regulations made for the purposes of that Schedule, the worker shall be entitled to compensation for

that hearing loss under item 6 of Schedule 2 as if the loss were a compensable personal injury by accident arising out of or in the course of the employment.

(2) For the purposes of sections 24A, 25A and 26 and Schedule 7 "noise induced hearing loss" means a permanent loss or diminution of 10% or more of the faculty of hearing, as assessed by reference to the full efficient use of the faculty of hearing of a person, due to a work process involving continued exposure, or periods of continued exposure, to excessive noise but subject to section 54—

- (a) a loss of hearing shall not be taken to be a noise induced hearing loss or to be due to the nature of any employment by reason only that the employment is of a class where a worker is liable to be required to submit himself to audiometric testing under the provisions of Schedule 7 or the regulations made for the purposes of that Schedule; and
- (b) to the extent that any loss of hearing occurred in or by reason of circumstances whereby there was not or is not a liability to pay compensation under this Act the loss or diminution shall be excluded from the assessment in calculating compensation for noise induced hearing loss under item 6 of Schedule 2.

(3) Schedule 7 applies to and in respect of the audiometric testing of persons for the purposes of claims made pursuant to this section. ”.

11. After section 25 of the principal Act the following section is inserted—

Section 25A
inserted.

“ 25A. (1) For the purposes of calculating the amount of compensation payable in respect of any percentage of the diminution of the full efficient use of the hearing of a worker pursuant to Schedule 2, where the worker is suffering from noise induced hearing loss—

Ascertaining
levels of
compensa-
tion for
hearing
loss.

- (a) compensation shall be calculated at the rate applicable as at the date of the approved audiometric testing, or each such testing as the case may be, at which the percentage of diminution was ascertained as though it were the date of an accident by reason of which the diminution was caused;
- (b) where on the first occasion on which a person submits himself for approved audiometric testing any diminution of the full efficient use of the faculty of hearing is disclosed, that percentage of diminution shall be taken to be the initial level of loss by reference to which any entitlement for compensation shall be based;
- (c) subject to any determination of a medical panel constituted as under section 145, where approved audiometric testing of a worker has been carried out—
 - (i) in response to the requirement of the employer prior to or during the course of the employment; or
 - (ii) otherwise than in response to a requirement of the employer, within one month prior to or during the course of the employment,

and, whether or not in response to the requirement of the employer, within 3 months of that person ceasing that employment, and a report as to those tests furnished in accordance with the regulations is held by the Commission, the percentage of diminution of the full efficient use of the faculty of hearing disclosed by a comparison of the certificates contained in the respective reports, shall be *prima facie* evidence of the measure of loss of hearing to be taken into account in relation to the period of employment in respect of which the audiometric testing was done; and

- (d) unless the Board determines otherwise or the results of approved audiometric testing otherwise indicate, noise induced hearing loss shall be deemed to have occurred at a constant rate within the total number of years during which the worker was employed in a work process involving continued exposure, or periods of continued exposure, to excessive noise in employment with the employers who are required to pay compensation or make contribution.

(2) In this section "approved audiometric testing" means audiometric testing carried out in accordance with Schedule 7 and regulations made for the purposes of that Schedule. "

Section 26
amended.

12. Section 26 of the principal Act is amended by adding the following subsections—

- " (3) Where a worker suffers noise induced hearing loss for which he has received or becomes entitled to receive compensation,

and suffers subsequent noise induced hearing loss which is due to the nature of any employment in which the worker was employed, the compensation payable under Schedule 2 in respect of each such subsequent loss shall be proportionate to the percentage of loss of the full and efficient use of the faculty of hearing after that subsequent loss reduced by the percentage attributed to the preceding loss for which he has received or become entitled to receive compensation under that Schedule.

(4) A worker who has received or is entitled to receive compensation for noise induced hearing loss is not entitled to receive compensation under Schedule 2 for subsequent noise induced hearing loss which is due to the nature of any employment in which the worker was employed unless—

- (a) the percentage of loss of the full and efficient use of the faculty of hearing after that subsequent loss is at least 5% greater than the percentage attributed to the preceding loss for which he has received or is entitled to receive compensation; or
- (b) that worker has ceased to be employed in a work process involving continued exposure, or periods of continued exposure, to excessive noise. ”.

13. Section 28 of the principal Act is amended by deleting “workers entitled to compensation under this Division until they so elect” and substituting the following—

Section 28
amended.

“ each worker entitled to compensation under this Division until that worker so elects and an agreement is registered or an order of the Board is made with respect to the amount of compensation payable pursuant to the election ”.

Section 29
amended.

14. Section 29 of the principal Act is amended by inserting after "under that section" the following—

" and an agreement is registered or an order of the Board is made with respect to the amount of compensation payable pursuant to the election ”.

Section 30
amended.

15. Section 30 of the principal Act is amended by inserting after "he so elects" the following—

" and an agreement is registered or an order of the Board is made with respect to the amount of compensation payable pursuant to the election ”.

Transitional
—sections
24, 28, 29
and 30 of
principal
Act.

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.

Section 36
amended.

17. Section 36 of the principal Act is amended—

(a) by inserting before "Whenever" the subsection designation "(1)";

(b) by deleting "forthwith" and substituting the following—

" within 14 days of the making of the claim ”;

and

(c) by inserting the following subsection—

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

18. Section 38 of the principal Act is amended in subsection (1)— Section 38 amended.

(a) in paragraph (a) by deleting “or mesothelioma” and substituting the following—

“ , mesothelioma or lung cancer ”; and

(b) in paragraph (c) by deleting subparagraph (ii) and substituting the following subparagraphs—

“ (ii) mesothelioma;
(iii) lung cancer, ”.

19. Section 50 of the principal Act is repealed. Section 50 repealed.

20. (1) Section 61 of the principal Act is amended— Section 61 amended and transitional.

(a) in subsection (1) by deleting “, in the form prescribed”; and

(b) in subsection (3) by deleting “may within the period of 21 days referred to in that subsection” and substituting the following—

“ may, within the period of notice given under that subsection or, if the employer fails to give the notice required under that subsection, within the period of 21 days or such further time as the Board may allow from the day on which the weekly payments were discontinued or diminished, ”.

(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.

Section 67
amended.

21. Section 67 of the principal Act is amended in subsection (5) by deleting "redemption as provided by subsections (2) and (3), or by subsection (4)" and substituting the following—

" 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 ".

Section 68
amended.

22. Section 68 of the principal Act is amended by adding the following subsection—

" (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 74
amended
and
transitional.

23. (1) Section 74 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

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

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

(2) 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.

24. After section 103 of the principal Act the following section is inserted—

Section 103A inserted.

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

Returns.

Penalty: \$2 000. ”.

25. Section 109 of the principal Act is amended—

Section 109 amended.

(a) by repealing subsection (2) and substituting the following—

“ (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). ”;

- (b) by inserting after subsection (2) the following subsection—

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

- (c) by repealing subsection (3) and substituting the following subsection—

“ (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. ”;

- (d) in subsection (4) by inserting after “upon demand” the following—

“ and within such time as the Commission may specify ”; and

(e) by inserting after subsection (4) the following subsections—

“ (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. ”.

26. Section 114 of the principal Act is amended in subsection (1) by inserting after “Registrar” the following—

Section 114 amended.

“ and Deputy Registrar ”.

27. After section 114 of the principal Act the following section is inserted—

Section 114A inserted.

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

Power to take oaths etc.

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

28. Section 122 of the principal Act is repealed and the following section is substituted—

Section 122 repealed and substituted.

“ 122. (1) Where the Board considers that a disability to a worker that is compensable under this Act has resulted in his permanent

Order as to total liability.

total incapacity for work, it may make, unless an order for redemption of the liability for the incapacity has already been made under this Act, such order as to the total liability of the employer for the incapacity as the Board thinks proper in the circumstances.

(2) In making an order under this section, the Board may order weekly payments at such rate as it thinks proper in the circumstances but such rate shall not exceed the rate of weekly payments to which the worker is entitled at the date of the order.

(3) The total liability of the employer ordered under this section shall not exceed weekly payments at the rate to which the worker is entitled at the date of the order—

- (a) for the period of the expectation of life of the worker; or
- (b) 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. ”.

Section 129
amended.

29. Section 129 of the principal Act is amended—

(a) in subsection (1), by inserting after “proceedings before the Board” the following—

“ , or matters under this Act which are resolved by agreement, ”;

(b) in subsection (4), by inserting after “matters incidental thereto,” the following—

“ or in any matter under this Act which is resolved by agreement, ”;

(c) in subsection (5), by inserting after "before the Board" the following—

" , and any matter under this Act which is resolved by agreement, "; and

(d) in subsection (6), by inserting after "before the Board" the following—

" or in any matter under this Act which is resolved by agreement ".

30. (1) Section 151 of the principal Act is amended— Section 151 amended and transitional.

(a) in paragraph (a), by deleting "Minister" in the second place where it occurs in subparagraph (iii) and substituting the following—

" Committee "; and

(b) in paragraph (c), by deleting "Minister" in the first place where it occurs and substituting the following—

" Committee ".

(2) A category of business specified by the Minister under section 151 (c) of the principal Act before the coming into operation of this section is deemed to have been specified by the Committee.

31. Section 155 of the principal Act is amended in subsection (1) by deleting "knows to exceed 12 weeks" and substituting the following— Section 155 amended.

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

Section 156
amended.

32. Section 156 of the principal Act is amended by inserting after "inquiries" the following—

" and obtain such information ”.

Section 157
amended.

33. Section 157 of the principal Act is amended in subsection (1) by inserting after "at any time" the following—

" , and shall at least once during every period of 12 months for which a worker is incapacitated, ”.

Section 160
amended.

34. Section 160 of the principal Act is amended in subsection (2) by deleting ", if so requested by the insurer,".

Section 161A
inserted.

35. After section 160 of the principal Act the following section is inserted—

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 165
amended.

36. Section 165 of the principal Act is amended—

(a) in subsection (3) by deleting paragraph (b) and substituting the following paragraph—

" (b) because of a failure to deposit at the Treasury any securities directed by the Minister to be deposited under subsection 4 (b), ”; and

(b) by inserting after subsection (3) the following subsection—

“ (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 170
amended.

37. Section 170 of the principal Act is amended by inserting after subsection (2) the following subsections—

“ (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. ”.

Section 171
amended.

38. Section 171 of the principal Act is amended in subsection (1) by repealing paragraphs (a) and (b) and substituting the following paragraphs—

“ (a) a statement in the prescribed form giving details of each employer who has during the month in question effected or renewed

a policy or contract of insurance with the insurance office concerned against liability under this Act; and

- (b) a statement in the prescribed form giving details of each employer in respect of whom the insurance office concerned has during the month in question marked in its books as lapsed a policy or contract of insurance under this Act. ”.

39. The principal Act is amended by inserting after section 172 the following section—

Section 172A
inserted.

“ 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—

Inspection
of policy.

- (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. ”.

40. Section 176 of the principal Act is amended by inserting after subsection (4) the following subsection—

Section 176
amended.

“ (5) Any regulations or rules made pursuant to subsection (1) may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom, or

any of the tables, standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution, the International Standards Organization, the National Acoustics Laboratory, or other like body specified in the regulations or rules. ”.

Schedule 1
amended
and
transitional.

41. (1) Schedule 1 to the principal Act is amended—

(a) in clause 11 by deleting subclause (1) and substituting the following subclause—

“ (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;

(b) by repealing clause 16 and substituting the following clause—

Variation
of weekly
payments.

“ 16. (1) The weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any variation in the provisions of the relevant industrial award or industrial agreement made after the disability occurs, or, where weekly earnings are calculated under clause 11 (5), the weekly

earnings shall be varied from the date and to the extent of any variation the worker would have been entitled to receive in the normal course of his employment.

(2) Where a relevant industrial award or industrial agreement becomes redundant or obsolete the weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any percentage increase in wages ordered in a National Wage Decision made under the Conciliation and Arbitration Act 1904 of the Commonwealth as a result, *inter alia*, of consumer price index movements. "; and

(c) in clause 17, by deleting "10%" in subclause (1) and substituting the following—

" 20% ".

(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.

42. (1) Schedule 2 to the principal Act is amended in item 29 by deleting "60" and substituting the following—

Schedule 2
amended
and
transitional.

" 65 ".

(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.

Schedule 3
amended.

43. Schedule 3 to the principal Act is amended—

(a) in the item commencing "Pathological manifestation"—

(i) in column 1 by inserting after paragraph (b) the following—

" ;
(c) lasers; "; and

(ii) in column 2 by deleting "or X-rays"
and substituting the following—

" X-rays or lasers ";

(b) by inserting after the item commencing "Lung cancer" the following items—

" Bronchopulmonary Any process entailing
diseases caused by exposure to cotton,
cotton, flax, hemp or flax, hemp or sisal
sisal dust. dust.

Occupational asthma Any process entailing
caused by sensitising exposure to sensitising
agents or irritants agents or irritants
inherent to the work inherent to that
process. 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, 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.

44. Schedule 4 to the principal Act is amended in column 2 by inserting after "continued exposure" the following—

Schedule 4 amended.

" , or periods of continued exposure, "

45. The principal Act is amended by adding the following Schedule—

Schedule 7 added.

" SCHEDULE 7. ss. 24A, 25A.

AUDIOMETRIC TESTING.

Regulations.

1. Regulations made for the purposes of this Schedule may—

- (a) prescribe that the provisions of regulations made under the Noise Abatement Act 1972 in respect of matters related to hearing conservation in workplaces may be adopted and shall have effect for specified purposes of this Schedule;
- (b) prescribe the classes of worker, the classes of workplace, and the classes of employment to which specified provisions of this Schedule or of regulations adopted for the purposes of this Schedule are, or are not, to apply;

- (c) prescribe the procedures and methods of audiometric testing approved for the purposes of this Schedule and the persons or classes of person by whom approved audiometric testing may be carried out;
- (d) provide for the appointment of persons or bodies by or to whom or which approval or authorization is or may be given for the purposes of this Schedule;
- (e) prescribe tables and formulae to be used in determining the percentage of diminution of hearing;
- (f) prescribe different numbers of decibels in respect of specified levels of hearing and that such a number may be or include a fraction or percentage of a decibel; and
- (g) provide generally for matters related to the audiometric testing of workers who suffer, or are likely to suffer, noise induced hearing loss.

Manner of testing.

2. Audiometric testing pursuant to this Schedule—

- (a) shall be carried out in the prescribed manner;
- (b) shall be carried out by a prescribed person or a person from a prescribed class of persons; and
- (c) subject to clause 6, shall be carried out at the cost of the employer or prospective employer requiring the test to be taken,

and not otherwise.

Reports.

3. A person to whom a worker submits himself for audiometric testing pursuant to this Schedule—

- (a) shall record the results of the testing and cause a report thereon, in such form, con-

taining such certification, and within such period, if any, as is prescribed, to be furnished to the Commission; and

(b) shall not, subject to clause 4, furnish a copy, or disclose particulars, of that report to any person other than—

(i) the Commission;

(ii) the worker;

(iii) a person to whom the worker has requested, in writing, that the report be furnished or the particulars disclosed, as the case requires; or

(iv) a person specified in the regulations,

and a person who contravenes paragraph (b) commits an offence.

Certain reports may be furnished to employer.

4. Where a worker seeks employment, or is or was at the time of the employment to which the report relates employed, in a class of employment where for the purposes of any Act specified levels of hearing are, for considerations of safety, required as a condition of employment or continued employment, a copy of the report of an audiometric test may be furnished to the employer or prospective employer.

Reports to be retained by Commission.

5. The reports of audiometric testing furnished to the Commission under clause 3—

(a) shall be retained and preserved for the prescribed period by the Commission;

(b) are admissible as evidence in any proceedings or inquiry under this Act; and

(c) shall be made available, at the written request of the worker, to that worker or his personal medical practitioner.

Voluntary submission to testing.

6. Any person, not being a person required by an employer to do so, may submit himself for audiometric testing pursuant to this Schedule, but in any such case the employer shall not be required to provide the means for, or to pay for, the testing.

Form of requirement.

7. (1) Where a worker may be required by an employer or prospective employer to submit himself for audiometric testing under this Schedule, the requirement shall—

- (a) be made in writing;
- (b) specify the time and place at which the worker is to attend;
- (c) state that the cost of the testing will be borne by the employer and that the testing will be carried out by a person provided by the employer; and
- (d) where it is alleged that the employment is of a class where a specified level of hearing is to be a prerequisite for employment or continued employment, state that level and that the result of the test will be furnished to the employer,

and any question as to whether paragraph (d) applies may be referred to and determined by the Commission.

(2) A person is not liable to be required to submit himself to audiometric testing unless he is a person to whom clause 12 applies.

Reference to a Medical Panel.

8. Where—

- (a) application is made, by either party, to the Manager in the manner prescribed and on payment of the prescribed fee; or
- (b) the Board so determines,

any matter relating to an alleged diminution of hearing attributed to noise induced hearing loss, or to any audiometric testing carried out pursuant to this Schedule, may be referred by the Manager to a medical panel constituted as under section 145, and in any such case the provisions of section 70 apply as if the reference to the medical panel had been made under subsection (1) of that section pursuant to an examination by a medical practitioner.

Where worker fails to take test.

9. (1) Where a person who is liable to be and is required by an employer or prospective employer to submit himself for audiometric testing under this Schedule refuses or fails so to submit himself, without reasonable excuse proof of which is on him, then—

- (a) in a case where a specified level of hearing is prescribed pursuant to any Act as a prerequisite for employment or continued employment in a specified class of employment, the person shall be deemed not to be able to show that he possesses that specified level of hearing; and
- (b) in any other case, any percentage ratio of hearing loss from which he may suffer or have suffered shall, until the contrary is shown, be presumed not to be attributable to the employment in respect of which the test was required.

(2) A person who in any way obstructs audiometric testing to which he is required to submit himself under this Schedule shall be taken to have failed to submit himself to that test.

Where employer does not require worker to submit himself to required tests.

10. Where a person is or has been a worker in employment where the employer could have required the person to submit himself for audiometric testing pursuant to this Schedule or the regulations, and the employer did not require that person so to submit himself to such audiometric testing prior to, or during

the course of, that employment, and did or does not so require on that person ceasing employment, then that employer may be liable, subject to section 25A (1), for any noise induced hearing loss which—

- (a) is attributable to the employment; and
- (b) was or is not disclosed by a certificate contained in a report furnished to and held by the Commission pursuant to this Schedule.

Test after employment.

11. Where a person ceases employment, and within 3 months thereafter submits himself for audiometric testing pursuant to this Schedule whether or not required by an employer to do so, that testing shall have effect also as though it had been testing to which he had been required to submit himself by the employer in respect of the employment which had ceased.

Required audiometric testing.

12. (1) A person who is—

- (a) a worker of a class;
- (b) a worker in a workplace of a class; or
- (c) a worker in employment of a class,

to which regulations made for the purposes of this subclause apply shall, within 3 months of being required to do so by his employer, submit himself for audiometric testing pursuant to this Schedule.

(2) A person who seeks employment as a worker of a class, or in a workplace of a class, or in employment of a class to which regulations made for the purposes of this subclause apply may be required by the prospective employer to submit himself for audiometric testing pursuant to this Schedule.

(3) A person who has ceased to be a worker of a class, or in a workplace of a class, or in employment of a class to which any regulations made for the purposes of this clause applied may, within 3 months of ceasing that employment, be required by the former employer to submit himself for audiometric testing pursuant to this Schedule. ”.