

WORKERS' COMPENSATION AND ASSISTANCE ACT 1981.

(No. 86 of 1981.)

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WORKERS' COMPENSATION AND ASSISTANCE.

No. 86 of 1981.

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

[Assented to 23 November 1981.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Workers' Compensation and Assistance Act 1981*. Short title.

Commence-
ment.

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

Purposes.

3. The purposes of this Act are—

(a) to make provision for the compensation of—

(i) workers who suffer a disability; and

(ii) certain dependants of those workers where the death of the worker results from such a disability;

(b) to promote the rehabilitation of those workers with a view to restoring them to the fullest capacity for gainful employment of which they are capable; and

(c) to promote safety measures in and in respect of employment aimed at preventing or minimizing occurrences of disabilities.

General
application.

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

(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 dis-

ability from which the incapacity resulted occurred or first occurred before, on, or after that date, but in the case of a disability which occurred before that date, only if that disability was, or was deemed to be, a compensable injury under the repealed Act;

- (v) for injuries mentioned in Schedule 2, whether the date of the accident whereby that injury was caused to the worker occurred before, on, or after that date, but in the case of an accident which occurred before that date only if that injury was an injury under the Second Schedule of the repealed Act;
- (vi) for death which occurs on or after the proclaimed date, where death resulted from a disability which occurred or first occurred before, on, or after the proclaimed date, but in the case of a disability which occurred before that date only if that disability was, or was deemed to be, a compensable injury under the repealed Act;
- (vii) for death which occurs on or after the proclaimed date, where death did not result from the disability but for the purposes of clause 5 the period of 6 months referred to in that clause commenced before, on, or after that date;
- (viii) for weekly amounts payable to children in respect of periods on and after the proclaimed date for death which occurred before, on, or after that date;
- (ix) for such expenses as are provided for in clauses 4, 9, 17, 18, and 19, incurred on and after the proclaimed date, and for amounts payable under

clause 10 for absences from work, on or after the proclaimed date whether the events or circumstances giving rise to those expenses or absences from work occurred or first occurred before, on, or after the proclaimed date, but in the case of events or circumstances which occurred before that date only if they would have given rise to payment of those expenses or for absences from work under the repealed Act;

- (b) applies to and in respect of rehabilitation of a worker under Part IX, whether the disability referred to in that Part occurred or first occurred before, on, or after the proclaimed date; and
- (c) applies to and in respect of the exercise of functions and powers and the performance of duties in relation, and incidental, to the matters referred to in paragraphs (a) and (b).

Interpreta-
tion.

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

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

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

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

“clause” means a clause of Schedule 1;

“Commission” means the Workers’ Assistance Commission constituted under this Act;

“Committee” means the Premium Rates Committee constituted under this Act;

“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;

“disability” means—

- (a) a personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer’s instructions;
- (b) a disabling disease to which Part III Division 3 applies;
- (c) a disease contracted by a worker in the course of his employment at or away from his place of employment

and to which the employment was a contributing factor and contributed to a recognizable degree;

(d) the recurrence, aggravation, or acceleration of any pre-existing disease where the employment was a contributing factor to that recurrence, aggravation, or acceleration and contributed to a recognizable degree; or

(e) a disabling loss of function to which Part III Division 4 applies;

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

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

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

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

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

“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);

“General Fund” means the Workers' Assistance General Fund established under this Act;

“hospital treatment” includes treatment by way of rehabilitation;

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

“industrial award” means—

- (a) an award, a consent award, or an order of The Western Australian Industrial Commission constituted under the Industrial Arbitration Act 1979 of Western Australia;
- (b) an award or a certified agreement made under the Conciliation and Arbitration Act 1904 of the Commonwealth;
- (c) an award or agreement made under the Public Service Arbitration Act 1966 of Western Australia; or
- (d) an award of the Western Australian Coal Industry Tribunal constituted under the Mining Act 1904 of Western Australia,

as the relevant employment requires;

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

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

“medical practitioner” means—

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

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

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

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

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

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

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

whichever is the less;

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

“Part” means a Part of this Act;

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

“prescribed amount” means the sum of \$46 000 varied annually on 1 July, commencing 1 July 1982, and thereafter on the cumulative sum in accordance with such percentage change in the weighted average minimum

award rate for adult males under Western Australian State Awards published by the Australian Bureau of Statistics as occurs between 1 April in the calendar year preceding the variation and 31 March in the calendar year of the variation but shall be \$58 885 indexed by that percentage change on the sum of \$46 000 annually until exceeded by that formula;

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

“relevant employment” means—

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

as the case requires;

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

"Schedule" means a Schedule to this Act;

"section" means a section of this Act;

"self-insurer" means employer whom, or employer belonging to a group of employers which, the Governor exempts under section 164 from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151 (a) (iii);

"ship" means any ship, vessel, boat, or other craft;

"specialist" means a medical practitioner—

- (a) who is resident in the State and whose name is on the Register of Specialists prepared and maintained in accordance with section 146; or
- (b) who is not resident in the State, but who is recognized as a specialist for the purposes of this Act by the Commission;

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

- (a) any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters; and
- (b) in the case of a male worker a woman, or in the case of a female worker a man, who although not legally married to the worker—
 - (i) lived with the worker on a permanent and *bona fide* domestic basis immediately before the death, if the

worker leaves any dependant who is the child of that union; or

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

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

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

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

“Supplementary Board” means a Supplementary Workers' Compensation Board constituted under this Act, or continued and constituted under this Act;

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

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

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

“treatment by way of rehabilitation” means any treatment of a kind approved by the Minister by notice published in the *Gazette*

for the purposes of the rehabilitation of workers who have suffered a disability compensable under this Act;

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

“Trust Fund” means the Workers’ Assistance Trust Fund established under this Act;

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

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

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

Commission to refuse insurance of that liability in respect of the members of the employer's family;

the term "worker" save as aforesaid, also includes—

- (a) any person to whose service any industrial award or industrial agreement applies; and
- (b) any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services,

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

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

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

Local and
other auth-
orities.

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.

7. (1) For the purposes of this Act a tributer, Tributers.
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.

8. In this Act "worker" includes a clergyman Baptist
Clergymen.
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.

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

10. At the request of the governing body of any Other
Clergymen.
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
persons
who are
contestants
in sporting
or athletic
activities.

11. Notwithstanding anything in section 5, 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.

Compensa-
tion not
payable in
certain cases.

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

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

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.

Continued operation of this Act where compensation previously paid.

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

Application to worker in employment of Crown.

(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.

(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.

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—

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

- (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.

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

Act to apply
as to
disability
to persons
employed on
Western
Australian
ships.

- (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.

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

- (a) the notice of disability and the claim for compensation may, except where the person disabled is the master, be served on the master of the ship as if he were the employer, but where the disability occurred and incapacity commenced on board the ship it is not necessary to give notice of the disability;
- (b) in the case of the death of the worker leaving no dependants, no compensation is payable if the owner of the ship is, under the Merchant Shipping Act 1894 of the United Kingdom, liable to pay the expenses of burial;
- (c) where incapacity for work results from the disability, the owner of the ship may deduct from the payment due to the disabled

worker under this Act any expenses of maintenance which the owner of the ship is, under the Merchant Shipping Act 1894 of the United Kingdom, liable to defray and has, in fact, defrayed;

(d) any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section 503 of the Merchant Shipping Act 1894 of the United Kingdom (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the provisions of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or disability; and

(e) section 174 (2) and (3) of the Merchant Shipping Act 1894 of the United Kingdom (which relates to the recovery of wages of seamen lost with their ship), apply in respect of proceedings for the recovery of compensation by the dependants of a worker lost with his ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation are in such a case maintainable if the claim is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

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.

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.

Liability of
employers to
workers for
disabilities.

19. (1) Without limiting the generality of section 18 but subject to subsections (2), (3), and (4), a worker is deemed to have suffered personal injury by accident arising out of or in the course of his employment where—

Worker
travelling.

(a) the worker suffers a personal injury without any substantial default or wilful act, on his part, while he is travelling on any regular, daily, or periodic journey, or on any other journey which the worker establishes to the satisfaction of the Board was reasonable in the circumstances for the worker to take—

- (i) between his place of residence and place of employment;
- (ii) between his place of residence or place of employment and any trade, technical, or other training school that he is required, by the terms of his employment or as an apprentice, to attend; or
- (iii) between any camp or place, where the worker is required by the terms of his employment, or is expected by his employer, to reside temporarily or where it is reasonably necessary or convenient that he shall temporarily reside for any purpose of his employment, and the worker's place of residence when not so

temporarily residing, if the journey is undertaken in accordance with the terms and conditions of his employment;

and

- (b) the injury arises out of, and in the course of, the journey,

unless the injury is incurred during, or after, any substantial interruption of, or substantial deviation from, the journey, made for any reason unconnected with his employment or with his attendance at the trade, technical, or other training school.

(2) Unless the injury results in death and subject to subsections (3) and (4), the burden of proving in any claim made pursuant to this section that there was not—

- (a) any substantial default or wilful act by the worker during; or
(b) any substantial interruption of; or
(c) any substantial deviation from,

the journey, is on the worker.

(3) An employer shall not be entitled to raise by way of defence to any claim made pursuant to this section any of the matters referred to in paragraphs (a), (b) and (c) of subsection (2) unless he has specially pleaded it as a defence in his answer to the claim filed with the Board and the worker or his representative is given at least 28 days notice of that defence.

(4) At any time before the hearing of any claim made pursuant to this section, upon an application by the worker heard and determined as an application in Chambers, the Board may, if satisfied that there is no reasonable basis for the employer to contest the application on any one or more of the grounds referred to in paragraphs (a), (b) and (c) of subsection (2), order that the burden of proving any one or more of those grounds shall be upon the employer.

(5) For the purposes of this section—

(a) a worker's journey from his place of residence shall be deemed to have commenced at, and the terminal point of his journey to his place of residence to be—

(i) if his place of residence is a flat or home unit in a residential flat building or home unit building—that exit of the flat or home unit whereby he departed on his journey from his place of residence, or that entrance of the flat or home unit whereby he entered or would but for injury have or may have entered his place of residence at the conclusion of his journey thereto, as the case may be;

(ii) in every other case where his place of residence is or is within a building or structure—that exit of the building or structure whereby he departed on his journey from his place of residence, or that entrance of the building or structure whereby he entered or would but for the injury have or may have entered his place of residence at the conclusion of his journey thereto, as the case may be;

(b) "substantial default" includes the consumption of alcoholic liquor or of a drug of addiction, or both, to an extent which impairs the proper functioning of the faculties and contributes to the happening of the injury; and

(c) "substantial interruption" *prima facie* includes any interruption of the journey for a period of more than one hour.

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

Travelling
and
"pick-up".

20. For the purposes of section 19, a place at which persons, ordinarily employed in a particular employment in relation to port or harbour operations at each port or harbour, customarily attend, by prior arrangement, for the purpose of being selected and engaged, and at which employers of port or harbour labour at each port or harbour customarily select and engage persons, for that employment is the place of employment of a person who attends there for the purpose of being selected and engaged or who is travelling between that place and his place of residence, in order to attend there, or by reason of having attended there, for that purpose; and such a person, while so attending or travelling, is deemed to be a worker under a contract of employment with the employer by whom he was last employed in that particular employment.

Compensa-
tion 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.*

24. (1) Notwithstanding Schedule 1, in respect of compensable personal injuries by accident, if the worker himself so elects during his lifetime as provided by subsection (2), the compensation payable for the injuries mentioned in column 1 of the table set out in Schedule 2 shall, subject to the provisions of this Act relating to Schedule 2, be the percentage ratios of the prescribed amount indicated in column 2 thereof, but the compensation payable for each such injury shall be in accordance with the percentage ratio of the prescribed amount indicated in that column in respect of such an injury at the date of the accident whereby that injury was caused to the worker, irrespective of when the worker so elects.

Compensation for injuries mentioned in Schedule 2.

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

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

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

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

"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.

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

Compensation in accordance with table at date of accident.

28. A worker who elects as provided by section 24 is not in any case (including the case of a worker suffering by the same accident more than one of the injuries mentioned in Schedule 2) entitled to more than the prescribed amount, in addition to payment of such expenses as are provided for in clauses 9, 17, 18, and 19 which clauses are hereby made applicable to workers entitled to compensation under this Division until they so elect.

Limit on compensation of worker electing.

29. Section 24 does not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the injuries referred to in section 24 unless he elects under that section.

Compensation while incapacity continues.

Compensation payable before election.

30. Subject to section 28, when a worker elects under section 24 any amount of compensation that was paid or payable to him for any period of incapacity resulting from the injuries referred to in section 24 and occurring before he so elects shall not be deducted from the amount payable in accordance with the table set out in Schedule 2.

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 two 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.

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

Pneumoconiosis
mesothelioma or
lung cancer.
Schedule 3.

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

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

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

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

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

Worker
suffering
from chronic
bronchitis
and pneumoconiosis.

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
pneumo-
coniosis.

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. Whenever a claim is made by a worker for compensation under section 33 or 34, the employer shall forthwith send particulars of the claim to the Commission, and the Manager shall refer the question of the worker's condition and fitness for employment to a medical panel comprising 2 or 3 of the following—

- (a) a Mines Medical Officer as defined in the Mines Regulation Act 1946;
- (b) a physician of the Public Health Department, specializing in occupational diseases, nominated from time to time by the Permanent Head of that Department;
- (c) a physician specializing in diseases of the chest, nominated from time to time by the Permanent Head of the Public Health Department.

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

Oral
submission
by medical
practitioner.

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—

Questions
for deter-
mination
by a
medical
panel.

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

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

(3) Where the medical panel comprises 2 members who fail to agree on its determination the Manager 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.

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.

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.

Last
employer
liable but
may join
others.

(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.

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.

Compensation limited to prescribed amount.

(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 3 is not compensation for the purpose of this section.

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

Certain workers not to benefit.

(a) he is or was employed or was last employed in, on, or about a mine within the meaning of the Mines Regulation Act 1946;

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

and at or after that time—

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

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

Notification
of disease.

48. (1) Whenever it comes to the knowledge of an employer that any worker employed by him is suffering from a disease mentioned in Schedule 3, the employer shall within 7 days send written notice

to that effect to the Manager, 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 Manager shall forward a copy of the notice to the Permanent Head of the Public Health Department.

(3) It is the duty of every medical practitioner who attends a patient suffering from a disease mentioned in Schedule 3, and which he has reason to believe was contracted by reason of the nature of his employment, to notify in writing the Permanent Head of the Public Health Department of the case within 14 days after such attendance on a patient.

Penalty—\$100.

Division 4.—Disability—Specified Losses of Functions.

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.

Disablement
due to loss
of function.
Schedule 4.

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

Ascertain-
ment of
percentage
of hearing
loss.

(2) For the purposes of this section—

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

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

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

Compensation recoverable from last employer.

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

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

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

(4) If the loss of function is of such a nature as to be caused by a gradual process, any other employers who during the period of 3 years mentioned in section 49, employed the worker in the employment to the nature of which the loss of

function was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in proceedings under this Act for settling the amount of the compensation.

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

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.

How compensation calculated.

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.

Employer to whom notice given.

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.

Loss of function deemed due to nature of employment.

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.

Additions to 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).

Commence-
ment of
weekly
payments.

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

- (a) has complied with the requirements of section 130 and has served on the employer a certificate in or to the effect of the form

prescribed containing substantially the information sought therein and signed by a medical practitioner; or

- (b) has served on the employer a certificate from a medical practitioner that the worker is unfit for work because of a recurrence of the disability referred to in the first work caused injury certificate,

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

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

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

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

(4) Where the first of weekly payments for total or partial incapacity under this Act has not been made in accordance with subsection (1) and the employer has not made an application to the Board in accordance with subsection (2), the worker may

apply to the Board for such weekly payments to be made and the application shall be heard and determined as an application in chambers with the right of both parties to be heard.

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

(a) if it considers that the evidence is satisfactory for the purposes of subsection (1), may—

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

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

(b) if it considers that the evidence is not satisfactory for the purposes of subsection (1), may dismiss or adjourn the application on such terms as it thinks fit; or

(c) if it considers a genuine dispute exists concerning the liability of the employer to pay compensation under this Act, may order that the worker proceed by way of a substantive application.

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

Notice on
return to
work with
other
employer.

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

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

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

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

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

Penalty: \$200.

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

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

Application
for discontinuance or
reduction
of weekly
payments.

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

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

Unlawful
discontinu-
ance of
weekly
payments.

61. (1) Subject to subsection (7) and section 84, where weekly payments of compensation for total or partial incapacity are made to a worker under this Act, they shall not be discontinued or diminished without the consent of the worker or an order of the Board unless the worker has returned to work or a medical practitioner has certified that the worker has wholly or partially recovered or that the incapacity is no longer a result of the disability and a copy of the certificate, in the form prescribed (which shall set out the grounds of the opinion of the medical practitioner) together with at least 21 clear days' prior notice of the intention of the employer to discontinue the weekly payments or to diminish them by such amount as is stated in the notice, has been served by the employer upon the worker and unless within that period the worker has not made an application to the Board under subsection (3).

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

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

(3) A worker who disputes the right of his employer to discontinue or diminish the weekly payments referred to in subsection (1) may within

the period of 21 days referred to in that subsection apply to the Board for an order that the weekly payment shall not be discontinued or diminished and the application shall be heard and determined as an application in chambers with the right of both parties to be heard.

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

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

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

Penalty: \$500.

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

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

- (a) on payment in full of the prescribed amount;
- (b) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, on the worker reaching the age at which his entitlement to compensation ceases; or
- (c) on suspension of payments in accordance with section 64, 65, 70, or 72; or
- (d) on failure to comply with section 69 by a worker who does not reside in the State.

Review of
weekly
payment.

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

No
compensa-
tion
during
suspension.

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

Medical
examina-
tions.

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

Periodical
medical
examination.

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

Regulations
as to such
an examina-
tion.

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.

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

Lump sum
in
redemption
of weekly
payments.

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

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

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

(5) Where the Board orders redemption as provided by subsections (2) and (3), or by subsection (4)—

- (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.

Calculation
of lump sum.

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

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

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

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

(3) When the Board orders redemption as provided in section 67 (4), the lump sum shall be calculated by taking the amount that is equal to the prescribed amount less weekly payments, if any,

made and discounting the amount so taken in accordance with a compound discount table prescribed by regulations.

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.

Worker not
residing in
the State.

70. (1) Where pursuant to section 64 or 65 a worker has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, the employer or the worker, as the case may be, shall within 14 days after such examination furnish the other with a copy of the report of that practitioner as to the worker's condition, and, after the copy of the report is so furnished, in the event of no agreement being reached between the employer and the worker as to the worker's condition or fitness for employment, the Manager on application being made, in the manner prescribed, by either party, may, on payment by the applicant of such fee as is prescribed, refer the matter to a medical panel constituted as under section 145.

Reference to
medical
panel.

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

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

(4) Where no agreement can be reached between the employer and the worker as to whether or to

what extent the incapacity of the worker is due to the disability, this section, subject to any regulations, applies as if the question were a question as to the condition of the worker.

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

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

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

Recovery of
payments.

71. Where the Commission, an employer, or an insurer has paid compensation or expenses to a worker or dependant and that person was not lawfully entitled to that payment or to any part of the amount of that payment, the Commission, employer, or insurer, as the case may be, may apply to the Board for an order that compensation or expenses so paid be refunded, and the Board has jurisdiction to hear and determine such an applica-

tion and to make any order in relation thereto or any part thereof as it considers appropriate in the circumstances.

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

(a) during any period that the worker is serving a sentence of imprisonment; and

(b) during any period that the worker being required by the Commission to undertake rehabilitation treatment or training—

(i) refuses to do so;

(ii) ceases to do so before the medical practitioner in charge of the treatment or training authorizes such cessation; or

(iii) in the opinion of such medical practitioner does not reasonably co-operate in or regularly attend for such rehabilitation treatment or training.

(2) The worker's entitlement to compensation is suspended from the date on which the Manager 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 Manager issued pursuant to subsection (2) is binding on the worker, the employer, and his insurer but may be reviewed by the Board on the application of any one of the parties.

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

Division 6.—Disputes Between Employers.

Worker
entitled
but dispute
between
employers.

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

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

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

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

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

Dispute
between
insurers.

74. (1) If the dispute is between insurers as to which insurer is liable to indemnify the employer, the employer may make an application to the Board, in accordance with the rules, to determine that issue notwithstanding any term or condition of any policy of insurance providing for some other means of settling disputes.

(2) The Board shall determine which insurer is liable and may make such order as it thinks proper

for the reimbursement of one insurer by the other and for the indemnity of the employer in respect of his liability under this Act.

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

Restriction
of
application.

Division 7.—Agreements.

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

Registration
of memo-
randum of
agreement.

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

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

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

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

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

(7) For the purpose of carrying out his duties under subsection (6) the Registrar may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation payable under the agreement the Registrar may require the employer

to have the worker examined by a medical practitioner nominated by the Registrar, at the expense of the employer, in any case where the Registrar is of the opinion that a report from such medical practitioner will assist him in determining the matter of the adequacy or inadequacy of the amount of the compensation.

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

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

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.

Registration
obligatory.

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

Effect of
non-registra-
tion of
agreement.

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 repre-
sentation.

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

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

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

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

worker's sick leave entitlements as a credit to the extent that the worker does so reimburse the employer.

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

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.

Effect on
public
holidays.

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—

Recovery
of cost of
services
rendered.

- (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.

83. (1) Notwithstanding any industrial award or industrial agreement, other than any award or certified agreement made under the Conciliation and Arbitration Act 1904 of the Commonwealth, where

Industrial
award and
partial
incapacity.

a worker is disabled from earning full wages by reason of a disability for which compensation is or has been payable under this Act, he may be employed at such wage, being such proportion of the full wage for work in the same employment, as he and the employer may agree as being appropriate to his earning capacity having regard to the nature and extent of his disability.

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

Worker not to be prejudiced by resuming work.

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

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

Saving re motor vehicle cases.

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

Saving re independent liability.

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

Notice to worker to commence action.

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

(a) commences those proceedings; or

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

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

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

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

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

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

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

Where action
brought for
injury
for which
compensa-
tion
is payable
under this
Act.

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

Both
damages and
compensa-
tion not
recoverable.

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

- (a) if the court decides the action should succeed, then after damages have been ascertained but before judgment is entered for the worker in the action, the worker shall be given a reasonable opportunity to elect whether to have judgment or to discontinue the action;
- (b) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer only or against the employer and the defendant, there shall be deducted from the amount of the judgment and be paid to the employer a sum representing the amount (after apportionment in respect of any contributory negligence of the worker) actually recoverable by the worker by way of weekly or lump sum compensation, medical and other expenses paid pursuant to this Act, but where liability is apportioned between the employer and the defendant the defendant's liability to pay to the worker shall be reduced accordingly;
- (c) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the defendant only or

is settled by the acceptance of money paid into court by the defendant the payments and expenses referred to in paragraph (b) shall be a first charge on the judgment or the amount of money paid into court and the defendant shall be bound to pay the amount of the compensation, and medical and other expenses to the employer and the judgment shall be *pro tanto* discharged by such payment, or the amount due under the charge shall be paid out of court to the employer or his authorized agent, as the case may be;

- (d) if the action is discontinued the worker shall pay the costs of the employer or of the defendant or of each of them or such part of those costs as the court thinks fit;
- (e) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer or the defendant or both or is settled by the acceptance of money paid into court by the employer or the defendant or by both of them the worker shall not commence or continue proceedings for, or in relation to, compensation under this Act in respect of the same disability;
- (f) if a worker's claim for damages against the employer or the defendant is settled by agreement otherwise than by a judgment, an acceptance of an offer to consent to judgment, or an acceptance of money paid into court—
 - (i) the employer or the defendant shall file a memorandum of the terms of the settlement with the Board within 3 months of the date of its execution by the worker;
 - (ii) the worker shall not commence or continue a claim for compensation under this Act in respect of the same disability unless the Registrar

disapproves of the settlement within 6 weeks of the agreement for settlement being filed with the Board;

- (iii) the Registrar shall not disapprove of the agreement unless he is satisfied the agreement was induced by fraud or misrepresentation or that it would clearly be for the worker's benefit to disapprove of it;
- (iv) the Registrar if he disapproves of the settlement shall serve notice in writing of his disapproval on each of the parties to the settlement of his decision and of the reasons for his disapproval by pre-paid post to the address of the party set out in the settlement or the last known address of a party, within 14 days of the making of his decision;
- (g) where a claim for compensation is commenced or continued after the Registrar disapproves of a settlement referred to in paragraph (f), the amount recovered or recoverable under such settlement shall be brought into account in reduction of the worker's entitlement to compensation;
- (h) Part III Division 7 does not apply to an agreement for settlement referred to in this section.

Remedies
against
stranger.

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

- (a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such

compensation, but shall not be entitled to recover both damages and compensation and shall bring to account in reduction of his entitlement to compensation the amount recovered by way of damages;

- (b) the employer is entitled to be indemnified by the person whose negligence caused the disability to the worker (in this section called "the defendant") to the full extent of the employer's liability to pay compensation under this Act, whether or not the defendant has discharged his liability to pay damages to the worker by judgment or by settlement or otherwise.

(2) If there were—

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

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

(4) If the defendant has paid the whole or any part of the damages to the worker in respect of the disability caused or contributed to by the defendant and the defendant is required to and has indemnified the employer for the payment of any compensation

paid to the worker in respect of the same disability, the defendant may sue and recover from the worker the amount so paid to the employer not exceeding the amount of damages paid to the worker by the defendant.

(5) If the worker has been successful in proceedings to recover damages against the defendant and does not recover the full amount of such damages and any portion of the compensation under this Act paid by the employer to the worker has not been refunded to the employer out of the damages, then the employer may, at his own expense and in the name of the worker and upon giving the worker an indemnity against all costs and expenses, sue and recover from the defendant the amount of any balance of such damages then remaining unpaid, but any damages so recovered from the defendant in excess of the amount of compensation paid to the worker under this Act shall be payable to and received by the worker.

PART V.—WORKERS' ASSISTANCE COMMISSION.

Division 1.—Constitution, Purposes, and Powers.

Establish-
ment of
Commission.

94. (1) For the purposes of this Act there is established a Commission by the name of Workers' Assistance Commission.

(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.

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 Manager 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 Office;
 - (iv) one shall be a person employed in The State Government Insurance Office; and
 - (v) one shall be a medical practitioner employed in the Public Health Department.

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

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

- (a) the body known as The Confederation of Western Australian Industry (Incorporated);
- (b) the body known as the Trades and Labor Council of Western Australia;

- (c) the body known as the Western Australian Regional Advisory Board of the Insurance Council of Australia Limited;
- (d) the Permanent Head of The State Government Insurance Office; and
- (e) the Permanent Head of the Public Health Department,

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 Manager; 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.

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.

97. (1) The Commission shall hold such Meetings.
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
proceed-
ings.

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 appoint-
ment.

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

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

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

Functions of
Commission.

- (a) to control and administer the General Fund and the Trust Fund;
- (b) where necessary or desirable, to participate in research into the causes, incidence, and methods of prevention of accidents, injuries, losses of functions, and diseases in respect of which compensation may be payable under this Act;
- (c) where necessary or desirable, to assist in encouraging the prevention or minimizing of accidents, injuries, losses of functions, and diseases in respect of which compensation may be payable under this Act;
- (d) to co-ordinate arrangements for workers suffering injuries, losses of functions, or disease, in respect of which compensation is or may be payable under this Act, to undertake rehabilitative occupational or vocational training, remedial treatment, health recovery courses, or work under special conditions, or to receive pre-employment medical examination and occupational guidance;
- (e) to co-ordinate arrangements generally to secure the care, supervision, and assistance of workers suffering injury, loss of function, or disease in respect of which compensation is or may be payable under this Act;
- (f) to obtain from all insurers and self-insurers information and returns enabling the Commission to compile and record such statistics, records, and reports as it considers desirable for the better administration of this Act;
- (g) where necessary or desirable, to assist in investigating all matters relating to accidents, injuries, losses of functions, or diseases in respect of which compensation

is or may be payable under this Act, to study the causes and various methods of treatment and the results of treatment of such accidents, injuries, losses of functions, and diseases;

- (h) formulating recommendations and preparing estimates for submission to Parliament of the cost of providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary disablement from a compensable disability so as to minimize or remove any handicap suffered by the worker;
- (i) to provide registry and support services to the Board; and
- (j) the Commission shall provide the Committee with such statistics, records, reports, and other information as the Committee may reasonably require to enable it to perform its obligations under section 151 (a).

Powers.

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

- (a) subject to section 102, to perform any of its functions by its officers or to provide facilities for others to do things to further the performance of any function or to arrange with others to provide facilities and to do any things to further the performance of any function and for any of those purposes to pay fees and allowances and to contribute towards expenses;
- (b) to publish such information and findings as in the opinion of the Commission would further the performance of its functions;

- (c) with the written approval of the Treasurer, to invest moneys from the General Fund in such investments or securities, and subject to such conditions, as are specified in the instrument of approval;
- (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 Manager, or any other member, or any group of members of the Commission, but not this power of delegation and delegation of a power does not prevent its exercise by the Commission.

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.

*Limitation
on powers.*

103. (1) The Commission may authorize persons as inspectors to make enquiries for the purposes of this Act and, without limiting the generality thereof, to make enquiries as to the aggregate

*Inspection
of wage and
salary
declarations.*

amount of wages, salary, and other forms of remuneration paid by, and the number of employees engaged by, any employer who has been exempted pursuant to section 164, or by any employer required by the conditions of any policy or contract of insurance or by section 160 (2) to disclose such information during any specified period.

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

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

Penalty: \$200.

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

Penalty: \$200.

(5) Whenever as a result of an inspection or otherwise it is shown that an employer has either wilfully or inadvertently understated to his insurer the aggregate amount of wages paid or the number of employees engaged, whereby he has become liable to pay by way of premium a lesser amount than he

would otherwise, then the Commission may sue and recover from such employer the full amount of the premium which could have been charged, less any amount already paid to the insurer in respect of such insurance and shall pay any moneys so recovered less any reasonable costs incurred in the recovery, to the insurer.

104. The Commission may—

Publishing
and
furnishing
information.

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

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

Division 2.—Accounts and Audit.

105. (1) The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

Accounts
and audit.

(2) The Auditor General shall inspect and audit the accounts and records of financial transactions of the Commission generally and in respect of the General Fund and the Trust Fund and records relating to assets of, or in the custody of, the Commission and shall have in respect of those accounts all powers conferred on the Auditor General by any law in force relating to the audit of public accounts.

(3) In every year the Commission shall, not later than 30 September, furnish financial statements and a report to the Minister upon the operation of this Act, and every such financial statement and report, together with the report of the Auditor General shall be laid, as soon as practicable, before both Houses of Parliament.

(4) The annual financial statements shall comprise—

- (a) a detailed statement of the income and expenditure of the General Fund;
- (b) a summary of the transactions against the Trust Fund;
- (c) a balance sheet for the Commission as at 30 June; and
- (d) such other accounts and records (if any) as are prescribed.

(5) The financial statements shall be prepared in such form as the Treasurer directs.

Division 3.—Workers' Assistance General Fund.

General
Fund.

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

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

- (a) all moneys standing at credit in the Workers' Compensation Board Fund immediately before the coming into operation of this section; and
- (b) all moneys, other than moneys payable to the Workers' Assistance 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.

- (3) There shall be paid from the General Fund—
- (a) all moneys required for the salaries of members of the Commission and of the Board and any Supplementary Board and their respective staffs;
 - (b) compensation payable by the General Fund to a worker pursuant to this Act;
 - (c) the costs of rehabilitation of workers paid pursuant to Part IX;
 - (d) the costs of and incidental to proceedings instituted by the Commission under this Act; and
 - (e) all other moneys, except those payable from the Trust Fund, required by the Commission, the Board, and any Supplementary Board for carrying out their respective functions under this Act.

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

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

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

(3) If the General Fund is in deficit at the commencement of the year for which the estimate is being prepared, the estimate shall be calculated by

deducting the estimated receipts of the General Fund arising from all sources other than the levy and contributions, from the sum of—

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

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

Total
contribu-
tions.

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.

Contribu-
tions
to General
Fund by
insurers.

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

(2) An annual contribution shall be paid on 1 October in each year or on such other day as the Commission determines unless in amount it exceeds \$15 000, in which case it may be paid in quarterly instalments on 1 October, January, April, and 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 annual contribution or the instalment, as the case may be, from the insurer without affecting the liability of the insurer to a penalty under subsection (3).

(3) If any annual contribution, or any instalment of it, payable by an insurer is not paid within 30 days after any day prescribed or determined the insurer commits an offence.

Penalty: \$2 000.

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

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

paid by the self-insurer to workers during that period, having regard to the premium payable for insurance by employers engaged in the same or any similar trade, occupation, calling, or industry, and the employer shall upon demand 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.

(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.

Division 4.—Workers' Assistance Trust Fund.

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

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

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

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

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

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

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

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

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

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

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

Division 5.—Ministerial Control.

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

PART VI.—WORKERS' COMPENSATION BOARD.

Division 1.—Constitution, Jurisdiction, and Powers.

Workers'
Compensa-
tion Board.

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

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

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

(3) Of the 3 members—

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

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

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

(6) Of the 2 nominee members—

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

- (b) one shall be a person experienced in trade union affairs.

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

- (a) The Confederation of Western Australian Industry (Incorporated); and
- (b) the Trades and Labor Council of Western Australia,

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

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

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

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

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

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

(12) If a nominee member—

- (a) is an undischarged bankrupt or a person whose property is subject to an order of arrangement under the laws relating to bankruptcy;
- (b) resigns and his resignation is accepted; or
- (c) has his appointment terminated pursuant to subsection (9),

the office of that nominee member becomes vacant.

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

(14) Where, for any reason, the Chairman of the Board is or is expected to be absent from duty, the Governor, on the recommendation of the Minister, may appoint to be an Acting Chairman of the Board a person qualified for appointment as Chairman of the Board, to perform the duties of the Chairman when he is so absent.

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

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

of the Board or the nominee member respectively would have or would be subject to in performing those duties.

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

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

(a) the style and title of "His Honour"; and

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

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

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

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

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

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

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

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

Power to
constitute
and appoint
Supplement-
ary Board.

113. (1) The Governor may from time to time appoint a Supplementary Workers' Compensation Board if he is satisfied that the Board is unable to deal expeditiously with all its business.

(2) A Supplementary Board shall be appointed and constituted in the same manner on the same terms and subject to the same conditions as the Board is constituted under this Act including provisions in respect of an Acting Chairman and deputies of nominee members, and including the provisions in respect of taking of oaths or affirmations, except that—

(a) the Chairman and the nominee members of the Supplementary Board shall hold office for such term not exceeding 5 years as is specified respectively in their instruments of appointment, but shall be eligible for re-appointment; and

(b) any one or all of them may be appointed on other than a full time basis, in which case—

- (i) a member so appointed is entitled to such remuneration, allowances, and leave of absence as is determined in relation to him by the Governor;
- (ii) a member so appointed may engage in any business or occupation for remuneration other than that of his office on the Board if, and only if, in doing so there would not be, and there would not tend to be, an interest in conflict with the powers and duties of his office; and
- (iii) a Chairman so appointed is not a Judge and in respect of his office is entitled to the designation only of "Chairman" and section 112 (18) does not apply to or in relation to him.

(3) A Supplementary Board appointed under this section shall perform such of the duties of the Board as are assigned to it by the Chairman of the Board, and the Chairman of a Supplementary Board shall perform such of the duties of the Chairman of the Board as are assigned to him by the Chairman of the Board.

(4) In performing any duties so assigned a Supplementary Board and the Chairman and members, an Acting Chairman, and deputies of a nominee member, of the Supplementary Board shall have the same jurisdiction, powers, duties, rights, and immunities and shall be subject to the same rules and conditions as the Board or its Chairman respectively would have or would be subject to in carrying out such duties.

(5) The Registrar and the other officers and staff of the Board shall be the registrar and the other officers and staff of a Supplementary Board and shall have the same powers, duties, rights, and

immunities in relation to any matter assigned to the Supplementary Board or its Chairman that they respectively would have had if such matter had been dealt with by the Board or its Chairman.

(6) All salaries, remuneration, allowances, and reimbursements payable to or in respect of a Supplementary Board shall be paid out of the same fund as the similar salaries, remuneration, allowances, or reimbursements payable to or in respect of the Board are paid.

(7) A member of the Board may with the consent of the Chairman of the Board act as and in the place of the corresponding member of a Supplementary Board and a member of a Supplementary Board may with the consent of the Chairman of the Board act as and in the place of the corresponding member of the Board.

Registrar.

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

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

Jurisdiction
of Board.

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

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

(a) between 2 or more employers as to the liability to pay compensation to a worker or between 2 or more insurers as to the liability to indemnify an employer and in either case the extent of such liability; and

- (b) between an employer and an insurer as to the liability of the insurer to indemnify the employer in respect of the employer's liability to pay compensation to a worker notwithstanding any term or condition in the policy of insurance to some other effect.

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

Determina-
tion final.

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

Board may
reconsider
decision.

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

Board to
determine on
substantial
merits.

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

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

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

Penalty: \$1 000.

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

Enquiries.

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

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

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

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

Enumeration
of certain
matters of
jurisdiction.

- (a) whether a disability has arisen within the meaning of this Act;
- (b) the existence and degree of disablement of a worker;
- (c) the permanence of a disability or its duration;
- (d) the degree of diminution of earning capacity by reason of a disability;
- (e) the amount of weekly earnings of a worker;
- (f) the amounts of any refunds or adjustments of assessments which in its discretion it considers proper to make;
- (g) the existence and extent of dependency;
- (h) whether any person or aggregation of persons is or is not an employer of a worker within the meaning of this Act and if so whether such worker is or is not entitled to compensation under this Act;
- (i) the existence, for the purpose of this Act, of any relationship of any member of the family of a worker;
- (j) all cases of permanent partial or total incapacity, and making awards of compensation within the limits prescribed by this Act as may appear proper after taking into consideration all the circumstances of the case;
- (k) the modification of weekly payments when a partially incapacitated worker resumes or is capable of resuming any employment other than his former employment;
- (l) whether the circumstances of any particular case justify the making of an order for redemption of the liability to pay compensation for a disability by payment of a lump sum; and
- (m) liability of any person in respect of the expenses of medical, surgical, dental, physiotherapy, or chiropractic attendance

and treatment on a worker suffering from a disability at the suit of any person by whom they have been incurred or at the suit of any person entitled to receive payment in respect of them.

Order as
to total
liability.

122. Where the Board considers that a disability to a worker that is compensable under this Act has resulted in his permanent total incapacity for work, it may make, unless an order for redemption of the liability for the incapacity by payment of a lump sum 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 but not exceeding—

- (a) the weekly payments at the rate to which he is entitled at the date of the order 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.

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

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

Particular
details in
order or
agreement
for a lump
sum
payment.

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

- (a) weekly payments of compensation, by redemption or otherwise;

- (b) compensation payable under Schedule 2, in which case the percentage loss of use shall also be specified;
- (c) redemption amount under Schedule 5 clause 3 (2), (3), or (4);
- (d) supplementary amount under Schedule 5 clause 2 or 3 (2), (3), or (4);
- (e) expenses as are provided for in clauses 9, 17, 18, and 19,

as the case requires.

125. (1) In respect of substantive applications to the Board, other than those which under this Act may be heard in chambers, there shall, subject to the written consent of the Attorney General, be a quarterly publication, issued under the authority of the Board, of such orders, rulings, and decisions of the Board made in the quarter to which the publication relates as the Chairman of the Board considers to be of significance in respect of the law, and its practice and procedure, under this Act.

Publication
of Board's
findings.

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

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

Medical
practi-
tioners,
dentists,
chiro-
practors,
or physio-
therapists
may be
prohibited
from
charging or
receiving
professional
fees.

Board
may hold
inquiries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) For the purposes of this section—

- (a) "treatment of or attendance on any worker" means medical or surgical, dental,

chiropractic, or physiotherapy, as the case may be, treatment of or attendance on any worker with respect to any disability for which the worker is receiving or is entitled to receive or has received compensation under this Act; and

- (b) "compensation" includes not only money payable to a worker in lieu of earnings but also other benefits for a disability to which a worker is entitled under this Act.

Board may
regard
illegal
contracts of
employment
as valid.

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

Fees, costs,
and charges
re proceed-
ings.

129. (1) Subject to this section, the Board may make such order for fees, costs, and charges in respect of proceedings before the Board as it thinks just, and may assess the amount of those fees, costs, and charges.

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

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

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

- (a) the worker's participation in the proceedings was frivolous, vexatious, fraudulent, or without reasonable cause; or

- (b) the worker or his representative, without reasonable cause, is responsible for causing to the Board or the other party, or both, any one or more of the following—
- (i) inconvenience;
 - (ii) delay;
 - (iii) expense.

(5) Fees, costs, and charges of proceedings before the Board as between legal practitioner and client may be taxed by a taxing officer of the Board, but the taxation may be reviewed by the Board on the application of the legal practitioner or client.

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

- (a) disallowing the costs, as between the legal practitioner and his client;
- (b) directing the legal practitioner to repay his client costs which the client has been ordered to pay to any other party to the proceedings; and
- (c) directing the legal practitioner personally to indemnify any other than his client against costs payable by the party indemnified.

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

- (a) because of the failure of the legal practitioner to attend in person or by a proper representative; or

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

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

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

Division 2.—Proceedings of the Board.

Require-
ments for
taking
proceedings.

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

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

but—

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

- (d) the failure to make a claim within the period mentioned in paragraph (b) shall not be a bar to the maintenance of such proceedings, if it is shown that the employer has not been prejudiced in his defence by such failure, or if it is found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

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

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

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

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

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

Worker
making
statement to
employer or
insurer.

Employer
having
report
relating to a
worker.

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

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

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

Evidence of
communication
between
worker and
officer of
Commission.

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

Proceedings
before the
Board.

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

(2) The Board may—

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

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

Payment of
compensa-
tion
awarded.

Division 3.—Appeals and Cases Stated.

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

Appeal.

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

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

Procedure
and
jurisdiction.

(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.

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

Board may
state case.

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

Indemnity
as to costs.

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

Powers of
Full Court.

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

Division 4.—Enforcement.

Awards of
the Board.

141. A certificate of the Board in the form and containing the particulars prescribed showing an award or order in favour of one party against another or a certificate of the Registrar of the Board in the form and containing the particulars prescribed of a memorandum of agreement, and the recording of it, as to the amount of compensation payable, may be produced to the Registrar or other proper officer of the District Court.

Payments
from the
General
Fund.

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

- (a) a certificate of the Board in the form, and containing the particulars, prescribed showing that amount; and

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

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

*Fees, costs,
and
charges.*

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

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

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

*Effect of
producing
certificate.*

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

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

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

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

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

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

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

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

(10) When—

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

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

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

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

Board may
refer to
medical
panel
re Schedule
2 injuries.

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

Medical
Board
shall
prepare and
maintain
"Register of
Specialists"

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

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

PART VIII.—PREMIUM RATES COMMITTEE.

Premium
Rates
Committee.

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

(2) The Committee is to consist of—

- (a) the Auditor General as a member and Chairman;
- (b) the Permanent Head of The State Government Insurance Office as a member;
- (c) the Manager 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 Office.

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

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

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

(4) The Governor may, on the recommendation 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.

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.

Term of appointment.

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.

Vacancies.

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

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

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

(3) If a nominee member—

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

the office of that nominee member becomes vacant.

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

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

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

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

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

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

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

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

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

(a) the Committee shall from time to time—

- (i) fix categories of businesses or groups of businesses each with a different insurable risk and specify the types of business or occupation within each category;
- (ii) on the basis formulated pursuant to paragraph (b) fix the appropriate recommended premium rate for each category; and
- (iii) fix an additional industrial disease premium to cover claims in respect of pneumoconiosis and mesothelioma arising from employment in any mine or mining operation and claims in

respect of other industrial diseases as may be specified by the Minister from time to time by notice published in the *Gazette*, which industrial disease premium shall be paid by employers in categories to be specified by the Minister pursuant to paragraph (c) in respect of such claims;

- (b) formulate a basis expressed as a loss ratio for a category on which basis the Committee may fix for each category a recommended premium rate pursuant to paragraph (a) (ii); and
- (c) the Minister may specify each category of businesses being a category fixed by the Committee under paragraph (a) (i) or a category specially fixed by the Minister the employers within which category are liable to pay the industrial disease premium at a rate specified by the Committee for that category.

Loading
not to
exceed 50%.

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

Fixing
maximum.

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

Appeals.

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

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

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

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

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

(b) where it is against assessment, to the Committee and the insurer,

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

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

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

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

(6) If an insurer other than The State Government Insurance Office 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 Office and upon paying to that Office 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 Office which Office 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 Office may appeal as provided in subsection (8) against the continuation in any subsequent renewal of the policy of a classification or assessment which has been decided by the Committee pursuant to subsection (4).

(8) An appeal under subsection (7)—

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

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

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

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

PART IX.—REHABILITATION.

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

Notification
of period of
incapacity
exceeding
12 weeks.

(2) In subsection (1), “prescribed period” means—

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

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

Penalty: \$1 000.

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

Further
inquiries.

157. (1) The Commission may at any time require the worker to attend a specialist for medical examination and assessment of the means and prospects of rehabilitation and to attend for such assessment on other professional groups, associations, or organizations approved by the Commission for that purpose.

Worker may
be required
to attend
medical
examina-
tion.

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

Rehabilita-
tion
programme.

158. (1) The Commission may—

- (a) co-ordinate a programme for the worker's rehabilitation, and occupational and vocational training;
- (b) obtain estimates of the likely cost of and authorize expenditure not exceeding \$2 000 on a programme of occupational and vocational training.

(2) The Commission may—

- (a) extend, modify, suspend, or terminate a programme;
- (b) authorize expenditure exceeding \$2 000 for occupational and vocational training in any case it considers it appropriate to do so.

Co-ordinat-
ing
facilities.

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

PART X.—INSURANCE.

Division 1.—Liability of Employers and Insurers.

Employer to
obtain
insurance.

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

(2) An employer obliged by this section to effect or renew a policy of insurance shall, on applying to an incorporated insurance office, for that purpose, furnish to that office an estimate, made to the best

of that employer's knowledge, information and belief, of the aggregate amount of wages, salaries, or other remuneration to be paid to the employer's workers including any amounts paid to workers employed under an agreement to perform—

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

over the period for which the policy is to be effected or renewed; and shall forthwith after the termination of that period furnish a statement of the aggregate amount of those wages paid in fact and shall include in that statement every sum paid during that period to an employee in respect of overtime worked by the employee, and such employer shall, if so requested by the insurer, verify the particulars furnished in such statement by a statutory declaration made by the employer under section 106 of the Evidence Act 1906.

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

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

Penalty: \$2 000.

161. (1) For the purpose of this Part Approvals.
“incorporated insurance office” includes any duly

incorporated company carrying on business in the State under the Insurance Act 1973 of the Commonwealth.

(2) An approval of an incorporated insurance office granted by the Minister under the repealed Act and current immediately before the coming into operation of this Part continues by virtue of this Act and is deemed to be an approval granted under this section.

(3) The Minister may grant approval to an incorporated insurance office which makes application to become approved under this section.

(4) The Commission may at any time, and shall if and when so directed by the Minister, investigate the material and financial resources available to an incorporated insurance office which has applied for, or has been granted, approval under subsection (3).

(5) Where an incorporated insurance office, being approved—

- (a) fails or refuses to comply with the requirements of this Act;
- (b) fails, or refuses to comply with the requirements of the Workers' Compensation Supplementation Fund Act 1980;
- (c) fails in the opinion of the Minister on the advice of the Commission, to have sufficient material and financial resources available to it to discharge its obligations for the purposes of this Act; or

(d) so requests,

the Minister may revoke or suspend and thereafter withhold his approval of that office, but may not do so in any other case.

162. (1) On and after the coming into operation of this Part, The State Government Insurance Office 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.

163. An employer required to pay an industrial disease premium under this Act shall pay that premium to The State Government Insurance Office 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).

Payment of industrial disease premium and issue of policy.

164. (1) Notwithstanding section 160 if an employer or group of employers prove to the satisfaction of the Minister that such employer or group has established an adequate fund for insurance against liability under this Act having regard to the number of workers employed and the category of insurable risk of the employer's or the group's business or businesses and has deposited at the Treasury securities charged with all payments to become due under such liability the Governor may exempt such employer or group from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151 (a) (iii).

Exempt employer.

(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.

165. (1) On or before 30 June 1982 and thereafter at least once in each period of one year

Review of exemptions.

and also when so required by the Minister the Commission shall review all exemptions granted pursuant to section 164.

(2) After a review the Minister may require an increase or permit a decrease in the value of the securities deposited at the Treasury pursuant to section 164 (1) by an employer or group of employers having regard to—

- (a) the number of workers then employed by the employer or group;
- (b) the current category of the insurable risks of the business or businesses of the employer or group;
- (c) the claims experience since the last review of the employer or group; or
- (d) any change in the extent of the liability to pay compensation under this Act since the last review.

(3) The Minister may after a review recommend to the Governor that an exemption be cancelled—

- (a) for any reason which seems to him to justify doing so in the interests of securing the workers' entitlements to compensation; or
- (b) because of a failure to deposit at the Treasury any additional securities required by the Minister,

and the Governor may then cancel the exemption.

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 Workers' Compensation Supplementation Fund Act 1980, 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.

168. Where an employer or group of employers which is exempt under section 164—

Cessation of exemption.

- (a) applies to the Minister for a revocation of such exemption and for the return of securities lodged by it or them with the Treasury discharged from the charge referred to in section 164 (1); or
- (b) proves to the satisfaction of the Minister that—
 - (i) the employer or group, as the case may be, has ceased to employ workers; or
 - (ii) he or they have obtained from an approved incorporated insurance office a policy of insurance for the full amount of liability to pay compensation under this Act to all workers employed by him or them; and
 - (iii) there are no outstanding claims for compensation; or
 - (iv) satisfactory provision has been made for discharging any outstanding claims for compensation,

the Governor may by Order in Council revoke the exemption and order that the securities be discharged from the charge and returned to the employer or the group, as the case may be.

169. The Governor may determine the form in which any policy of insurance made obligatory under this Act is to be effected and upon a form being so determined any policy in respect of which it is determined shall insofar as it relates to insurance or indemnity under this Act be effected, or in the case of an existing policy renewed in that form.

Forms of policy.

170. (1) An employer who fails to comply with section 160 (1) commits an offence and is liable to a penalty of \$500 in respect of each uninsured worker employed by him; and that employer commits a

Penalty—uninsured worker.

separate and further offence in respect of each week after the day of conviction during which the offence continues and is liable in respect of each such separate and further offence to a penalty of \$1 000, and in addition subsection (2) applies.

(2) Where an employer is convicted of an offence referred to in subsection (1), that employer shall pay to the General Fund an amount which the Manager of the Commission certifies is equal to the insurance premium avoided, and the Commission may sue and recover that amount from the convicted employer for the General Fund, and on recovery the Commission shall pay that amount into the General Fund.

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 showing the names, addresses, and occupations of each employer who has during the month in question effected a policy or contract of insurance with the insurance office concerned against liability under this Act; and
- (b) a statement showing the names, addresses, and occupations 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 of insurance under this Act.

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

(3) A person, except with the express authority of the Commission, shall not have access to, inspect, or peruse any such statement, and the information contained therein shall be treated as strictly confidential and shall not, except for the purposes of this Act, be disclosed to any person.

Penalty: \$200.

(4) If any statement required by this section is false in any particular to the knowledge of any person who signs it, that person commits an offence.

Penalty: \$2 000.

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 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.

Minister may authorize persons to inquire if employers have obtained insurance.

(2) A person authorized by the Minister under this section shall produce his written authority from the Minister, when interrogating such an employer in the execution of his duties under this Act.

(3) A person authorized by the Minister under this section shall, before entering on the performance of his duties under this Act, take and subscribe before a justice of the peace an oath or affirmation to the effect that he will not, except for the purposes of this Act and the exercise of his duties thereunder, disclose to any person any information acquired by him in his official capacity, and a person who wilfully does so commits an offence.

Penalty: \$200.

(4) A person who obstructs, hinders, prevents, or interferes with any person so authorized in the exercise of the powers conferred upon him by this section, or who refuses or fails to produce for the inspection of any person so authorized any policy or contract of insurance when requested by such person, and obliged under this section to do so, commits an offence.

Penalty: \$200.

Workers'
rights
against
insurer.

173. (1) Where during the currency of a contract between an employer and an insurer in respect of the employers' liability under this Act to a worker the employer dies, or in the case of a corporation other than a company which has commenced to be wound up, ceases to exist or the employer cannot be found or no longer resides in Australia or in a Territory within Australia, then in any such circumstance—

- (a) the worker has the same rights and remedies against the insurer; and
- (b) the insurer has, to the extent of his liability under the contract, the same liability to the worker and the same rights and remedies in respect of the liability,

that the employer otherwise would have had under the contract.

(2) Where, under subsection (1), the liability of the insurer of an employer is less than that which the liability of the employer to the worker would have been, the worker may proceed for the balance against the personal representative of the employer.

Payment to
worker from
General
Fund.

174. Where—

- (a) compensation in accordance with this Act is due by an employer to a worker (other than a worker in respect of whom refusal of insurance is permitted pursuant to this Act);
- (b) the employer is not insured against his liability to pay compensation to the worker under this Act or the case is one to which section 173 (2) applies; and
- (c) the employer does not pay the compensation due within 30 days of the obtaining of an award by the worker or his representative,

the Commission shall pay to the worker from the General Fund the amount required to satisfy the award and any award for costs in respect thereof, and the Commission may sue and recover that amount from the employer.

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

Principal
and
contractor,
and
sub-
contractors
deemed
employers.

175. (1) Where a person (in this section referred to as the principal) contracts with another person (in this section referred to as the contractor) for the execution of any work by or under the contractor and, in the execution of the work, a worker is employed by the contractor, both the principal and the contractor are, for the purposes of this Act, deemed to be employers of the worker so employed and are jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

(2) The principal is entitled to indemnity from the contractor for the principal's liability under this section.

(3) The principal is not liable under this section unless the work on which the worker is employed at the time of the occurrence of the disability is directly a part or process in the trade or business of the principal.

(4) Where the principal and the contractor are jointly and severally liable under this section, a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.

(5) Where compensation is claimed from or proceedings are taken against the principal, in the application of this Act a reference to the employer shall be read as a reference to the principal except where, for the purpose of calculating the amount of compensation, a reference is made to the earnings of a worker, the reference shall be read as a reference to the earnings of the worker under the contractor.

(6) For the purposes of this section, where sub-contracts are made—

- (a) "principal" includes the original principal for whom the work is being done and each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work;

- (b) "contractor" includes the original contractor and each sub-contractor; and
- (c) a principal's right to indemnity is a right against each contractor standing between the principal and the worker.

(7) Where the disability does not occur in respect of premises on which the principal has undertaken to execute the work or which are otherwise under his control or management subsections (1) to (6) inclusive do not apply.

Regulations,
rules
and
practice
notes.

PART XI.—REGULATIONS, RULES, AND
PRACTICE NOTES.

176. (1) The Governor with respect to any of the following purposes may make regulations, and the Chairman of the Board with respect to any of the following purposes that relate to the Board may, subject to the regulations, make rules—

- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act;
- (b) fixing scales of fees to be paid and scales of costs and charges in respect of any action or proceeding before the Board;
- (c) fixing scales of fees to be paid to medical specialists and other medical practitioners for attendance on and treatment of workers suffering disabilities which are compensable under this Act when those fees are not determined by agreement between the Australian Medical Association Western Australian Branch and insurers approved under this Act;
- (d) fixing the scales of fees to be paid to dentists for attendance on and treatment of workers suffering disabilities which are compensable under this Act in cases where those fees are not determined by agreement between the Australian Dental Association (W.A. Branch) and insurers approved under this Act;

- (e) fixing scales of fees to be paid to physiotherapists for attendance on and treatment of workers suffering disabilities which are compensable under this Act in cases where those fees are not determined by agreement between the Western Australian Branch of the Physiotherapists Association and insurers approved under this Act;
- (f) fixing scales of fees to be paid to chiropractors for attendance on and treatment of workers suffering disabilities which are compensable under this Act in cases where those fees are not determined by agreement between the Chiropractors Registration Board and insurers approved under this Act;
- (g) with respect to matters of general or special application, which may apply to both employers and workers, for the prevention or minimizing of occurrences of disability in employment or places of employment within the State;
- (h) regulating the practice and procedure of the Board and providing for the effective exercise of jurisdiction by the Board and especially, but without limiting the general power to make regulations and rules under this Act, with reference to—
 - (i) the times and places for sittings of the Board and any person so authorized;
 - (ii) the listing of proceedings and the giving of directions, on summons or otherwise, as to the listing of proceedings;
 - (iii) cases or circumstances, or both, in which proceedings before the Board may be heard in chambers;
 - (iv) the issue of a summons to a party to proceedings before the Board, or to any other person, requiring him to attend and give evidence before the

Board and, where required in the summons, to bring documents to the Board;

- (v) the taking of evidence, and the manner of taking evidence, in respect of proceedings before the Board, including a requirement that evidence shall be taken on oath or affirmation;
- (vi) the allowances to witnesses;
- (vii) provisions, in respect of parties to proceedings and matters in issue before the Board, for the discovery and inspection of documents, the admission and production of documents, the delivery of and answers to interrogatories, and the request for and supply of further and better particulars, for regulating the practice of those procedures, and for the Board, upon the application of a party to the proceedings, making an order to compel another party to the proceedings to comply with those provisions;
- (viii) provisions for matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of the expert evidence, and in relation thereto—
 - (I) provisions for the imposition of differing requirements depending on different classes

of cases, different classes of matters, or other different circumstances; and

(II) provisions for conferring a discretionary authority;

- (i) prescribing penalties not exceeding \$200 for any non-compliance with or any contravention of any regulation or rule;
- (j) regulating the meetings and proceedings of the Commission, the Board, and the Committee;
- (k) providing for the fees and expenses payable with respect to establishing and maintaining registers;
- (l) prescribing scales of the maximum amount of commission or brokerage for insurance brokers in respect of workers' compensation insurance business;
- (m) fixing the maximum amount payable for reasonable expenses incurred in respect of funeral expenses under clause 4 or clause 17 (2), the purchase or supply of a wheeled chair or similar appliance under clause 17 (4), and travelling and accommodation expenses under clause 19;
- (n) fixing the maximum amount of a sum that may be assessed as the value of board and lodging under clause 15;
- (o) providing for any matters which by this Act are required or permitted to be prescribed or which may be necessary or convenient to regulate (either generally or in any particular case) for giving effect to this Act.

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

(3) Subject to this Act, the Chairman of the Board may issue and publish practice notes for the guidance of persons having business in the Board.

(4) To the extent that forms are not prescribed—

- (a) the Chairman of the Board may, in practice notes, determine the forms to be used for the Board's purposes; and
- (b) the Manager may, by notice in the *Gazette*, determine the forms to be used for other purposes of this Act.

PART XII.—MISCELLANEOUS.

Public
Service.

177. (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Commission and the Board by this Act or any other Act, the Commission and the Board with the approval of the Public Service Board appointed under the Public Service Act 1978 may make use of the services of any of the officers and employees of the Public Service.

(2) The Manager, the Registrar, and other officers of the Commission and the Board shall be appointed under and subject to the Public Service Act 1978.

(3) The duties of the officers of the Commission shall include such duties as are prescribed and as are directed by the Commission.

(4) The duties of the officers of the Board shall include such duties as are prescribed and as are directed by the Chairman of the Board.

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.

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.

Order for
detention
of ship.

(2) The bailiff may detain the ship in accordance with the order.

(3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the District Court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State if it has an office in the State at which service of process can be effected.

(5) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the offence, commits an offence.

Penalty: \$2 000.

(6) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required to detain the ship, the owner and the

master of the ship shall each be liable to pay a further penalty at the rate of \$200 for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

Judicial
notice.

180. All courts and all persons acting judicially shall take notice of—

- (a) the seal of the Board;
- (b) the seal of the Commission;
- (c) the official signature of a person holding or acting in—
 - (i) an office under any provision of the Workers' Compensation Act 1912-1981 in force from time to time before the repeal of that Act; or
 - (ii) an office under any provision of this Act in force from time to time,

and the appointment and official character of any such person.

Prohibition
of contract-
ing out.

181. Except as provided by this Act, its provisions apply notwithstanding any contract to the contrary.

Deductions
towards
compensa-
tion 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.

183. A payment of compensation, or a sum paid by way of redemption thereof, is not capable of being assigned, charged or attached, and shall not pass to another person by operation of the law, nor shall any claim be set off against such payment or sum, except in respect of voluntary advances of future compensation made by an employer or insurer with the approval of the Board.

Payments
not
assignable.

184. Neither the Commission nor the Board nor any member of either of them or any person discharging any duty in pursuance of this Act is liable to any suit or action or to pay any claim or demand made or brought by or on behalf of any person with respect to anything lawfully done or omitted by the Commission or the Board or the member or the person discharging the duty in pursuance of this Act.

Protection
of officials.

185. (1) In this section and sections 186 and 187 "Board" includes a Supplementary Board.

Contempt
of Board.

(2) In respect of proceedings of the Board, a person shall not—

- (a) wilfully insult or disturb a member or an officer of the Board;
- (b) interrupt the proceedings of the Board;
- (c) use insulting language towards a member or an officer of the Board;
- (d) by writing or speech use words calculated—
 - (i) to influence improperly a member or an officer of the Board or a witness before the Board;
 - (ii) to bring the Board or a member or an officer of the Board into disrepute.

Penalty: \$500 or 12 months' imprisonment, or both.

Obstruction.

186. (1) A person who in respect of proceedings before the Board—

- (a) after having been duly summoned to attend, without reasonable excuse, proof of which is on him, fails to attend and give evidence or produce a document as and when required to do so under this Act;
- (b) being present and having been called to give evidence, without lawful excuse, refuses to swear or affirm as a witness or to answer any question or to allow a document to be examined as and when required to do so under this Act; or
- (c) having been sworn or affirmed as a witness, in answering a question as and when required to do so under this Act fails to answer truthfully to the best of his knowledge, information, and belief,

commits an offence.

Penalty: \$500 or 6 months' imprisonment.

(2) A person who—

- (a) resists or obstructs a person in the performance of a duty imposed or the exercise of a power conferred under this Act; or
- (b) wilfully misleads a person in any particular likely to affect the exercise of a duty so imposed or a power so conferred,

commits an offence.

Penalty: \$200.

Proceedings
for
contempt
or
obstruction.

187. (1) Proceedings for offences under section 185 or 186 (1) may be instituted only by the Registrar and then only by direction of the Chairman of the Board and shall be instituted in and dealt with summarily by the District Court.

(2) Proceedings for offences under section 186 (2) may be instituted—

- (a) if the offence is alleged to have been committed against the Minister or a person authorized to act on his behalf or against a member or officer of the Commission or a person authorized to act on its behalf, only by the Manager and then only by direction of the Minister or the Commission, as the case requires; or
- (b) if the offence is alleged to have been committed against the Board, a member or an officer of the Board, or a person authorized to act on the Board's behalf, only by the Registrar and then only by direction of the Board,

and shall be instituted in and dealt with summarily by the District Court.

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. Fraud.

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. General penalty.

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. Fines.

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. Penalties not affected.

Jurisdiction
in recovery
actions.

192. Where a right conferred by this Act is expressed in terms that a person "may sue and recover", an action to do so may be instituted in the District Court which is hereby vested with exclusive jurisdiction to hear and determine such an action.

PART XIII.—REPEAL, SAVINGS, AND TRANSITIONAL.

Interpreta-
tion.

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.

Repeal.

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

Operation
of Inter-
pretation
Act 1918.

195. The Interpretation Act 1918, 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 entitle-
ment.

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.

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—

Weekly payments after the age of 64.

- (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.

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.

Compensation for injuries mentioned in Schedule 2.

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

Child's allowance.

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.

Continua-
tion.

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
Supple-
mentary
Board, or
officers.

202. A reference, however expressed, in any other Act or in any regulation, notice, or statutory instrument of any kind made, published, or in force under this or any other Act to the Workers' Compensation Board, the Workers' Compensation Supplementary Board, or to officers of those former Boards shall, unless the contrary intention appears, be read and construed as a reference to the corresponding term in this Act.

Exercise of
powers before
certain
provisions
come into
operation.

203. (1) Where a provision of this Act has not come into operation and that provision would, if it had come into operation, confer a power or right to—

- (a) make an instrument of a legislative or administrative character;
- (b) give, serve, or file a notice or other document;
- (c) appoint a person to a specified office;
- (d) establish a specified body of persons, whether incorporated or not; or

- (e) do any other thing for the purposes of this Act,

then, unless the contrary intention appears in or in respect of that provision, the power, right, or duty may notwithstanding that that provision has not come into operation, but subject to subsections (2) and (3), be exercised or performed at any time after the passing of this Act to the extent that it is necessary or expedient for the purpose of bringing this Act, or specified provisions of this Act, into operation, or giving full effect to this Act, or specified provisions of this Act, when or after that provision comes into operation.

(2) Where a power, right, or duty to make an instrument of a legislative or administrative character, or to give, serve, or file a notice or other document, is exercised or performed as provided in subsection (1), that instrument, notice, or document shall take effect—

- (a) on the day on which the provision referred to in subsection (1) comes into operation;
or
(b) on the day on which it would have taken effect, if at the time when the instrument was made or the notice or document was given, served, or filed, the provision referred to in subsection (1) had come into operation,

whichever is the later.

(3) Where a power to appoint a person to a specified office, or to establish a specified body of persons, is exercised as provided in subsection (1), the person so appointed may act in that office and receive salaries, remuneration, and allowances, if any, applicable to that office, or, as the case may be, the body so established may meet and perform and exercise or perform its functions, powers, and duties but only for the purpose referred to in subsection (1), but for the purposes of any provision as to the duration of the term of office that term is deemed not to commence until the provision referred to in subsection (1) comes into operation.

SCHEDULES.

SCHEDULE 1.

Compensation Entitlements.

Death—
dependants
wholly
dependent.

1. Where death results from the disability and the worker leaves any dependants wholly dependent upon his earnings—

- (1) (a) in respect and for the benefit only of all those dependants, if any, who are not of the kind referred to in subclause (2), (3), or (4) a sum equal to 85% of the notional residual entitlement of the worker;

but if a worker dies leaving—

- (b) a spouse or mother or a spouse and mother wholly dependent upon his earnings, whether or not there are other dependants wholly dependent upon his earnings, there shall be a minimum amount payable being a sum equal to the aggregate weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with this Schedule as at the date of the worker's death for a period of one year after that date;
- (c) in the event of there being more than one dependant wholly dependent on his earnings the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by the Board;
- (2) in respect and for the benefit only of each of those dependants, if any, who is a child, or step-child, under the age of 16 years, a child's allowance weekly until the child attains that age;
- (3) in respect and for the benefit only of each of those dependants, if any, who is a full time student child or step-child, and has attained the age of 16 years but is under the age of 21 years, a child's allowance weekly until the child attains the age of 21 years or ceases to be a full time student, whichever is the sooner;
- (4) in respect and for the benefit only of each of those dependants who is a child, or step-child, of any age, whether a full time student or otherwise who, by reason of circumstances the Board in its absolute discretion decides, should receive continued support, a child's allowance weekly until such time as the Board orders,

but if a worker dies leaving—

- (5) only a dependant or dependants wholly dependent upon his earnings who, apart from this subclause, would be entitled to a child's allowance under subclause (2), (3), or (4), the compensation entitlement of that dependant or those dependants is whichever of the following—

(a) a sum equal to 25% of the notional residual entitlement of the worker;

(b) a child's allowance under subclause (2), (3), or (4) as the case may be,

the Board determines as likely to be in the best interests of that dependant or those dependants, and—

- (c) in the event of the Board determining a sum under paragraph (a) and there is more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by the Board.

2. Where death results from the disability and the worker does not leave a dependant wholly dependent upon his earnings (other than a dependant of a kind referred to in clause 1 (2), (3), or (4)) but leaves a dependant (other than of a kind referred to in clause 1 (2), (3), or (4)) in part dependent on his earnings such sum to each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by the Board by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such sum or the total of such sums, as the case requires, shall not exceed a sum equal to 85% of the notional residual entitlement.

Death—
partial
dependants
not
children.

3. Where death results from the disability and the worker does not leave a dependant wholly dependent upon his earnings but leaves a dependant of a kind referred to in clause 1 (2), (3), or (4), partly dependent on his earnings such weekly sum only for each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by the Board by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such weekly sum shall not in any case exceed the child's allowance which would be payable weekly if the dependant were wholly dependent.

Death—
partial
dependants
children.

4. Where death results from the disability and the worker leaves no dependant, the reasonable expenses of his medical attendance and also funeral expenses, including all cemetery board charges, but, in the case of funeral expenses, not exceeding an amount prescribed, the cost of which may be awarded to and upon the application of any person by whom the expenses were properly incurred, or to whom the whole or any part of the expenses is owed.

Death—
where not
resulting
from the
disability
but weekly
payments
had been
made.

5. Where a worker has been in receipt of, or was entitled to receive, weekly payments for not less than 6 months immediately preceding his death and an order for redemption has not been made pursuant to section 67 and the worker dies but the death does not result from the disability—

(1) and the worker leaves any spouse, child, or step child wholly dependent upon his earnings—

(a) in respect of and for the benefit only of all those dependants—

(i) 85% of the amount, if any, which would have been payable as a lump sum if the Board had ordered redemption pursuant to section 67 immediately before the worker's death; or

(ii) 85% of the aggregate of weekly payments for total incapacity of the worker at a rate calculated and varied as at the date of the worker's death for a period of one year after the worker's death,

whichever is the greater; and

(b) in the event of there being more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by the Board;

(2) and if the worker does not leave any spouse, child, or step-child wholly dependent upon, or supported by, his earnings but leaves any spouse, child or step-child in part dependent upon his earnings—

(a) in respect of and for the benefit only of all those dependants—

(i) such sum as may be agreed upon, or in default of agreement, may be determined by proceedings under

this Act, to be reasonable and proportionate to the total of the loss of any necessary financial support suffered by all those dependants; or

- (ii) the amount which would have been payable if subclause (1) applied,

whichever is the less, and

- (b) in the event of there being more than one such dependant, the amount is to be apportioned between them according to the respective losses of any necessary financial support suffered by them, which apportionment is to be determined by the Board.

6. Any amount payable by an employer or his insurer pursuant to section 123 and clauses 1, 2, 3, or 5 shall be paid into the custody of the Commission and, where the case requires, be apportioned for the benefit of those entitled in accordance with the order of the Board, and after the amount is so paid there shall be liberty to apply to the Board by or on behalf of any one of those entitled in respect of the manner in which that amount or any part of it is applied.

Payment to
Commission.

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.

Amount of
compensation
in case of
total or
partial
incapacity.

(2) Subject to section 56 and subclause (3), where partial incapacity for work results from the disability, a weekly payment during the partial incapacity equal to the amount by which the total weekly earnings of the worker calculated and varied in accordance with this Schedule would exceed the weekly amount exclusive of payments for the items referred to in clause 11 (3), (4), and (5) which he is earning or is able to earn in some suitable employment or business after the occurrence of the disability.

(3) An entitlement of a worker to weekly payments for a disability under this Act ceases if and when the total weekly payments for that disability reaches the prescribed amount, unless the Board has made or makes an order to the contrary under section 122, and there shall be no revival of, or increase in, that entitlement upon any subsequent increase in the prescribed amount.

(4) Nothing in subclause (3) affects the liability of an employer for, and the entitlement of a worker to, expenses as are provided for in clauses 9, 17, 18, and 19 but subject to the limitations on those expenses as provided in clause 17 (1).

(5) Unless otherwise authorised by the Commission, compensation shall be paid by the employer to the worker at the employer's usual place of payment of wages on the employer's usual pay days or, at the request of the worker, shall be sent by prepaid post to the worker's address.

(6) A worker when fulfilling any requirement of the Commission made under section 157, is deemed for the purposes of this clause to be totally incapacitated.

Deemed total incapacity.

8. Where a worker who has so far recovered from his disability as to be fit for employment of a certain kind satisfies the Board that he has taken all reasonable steps to obtain, and has failed to obtain, that employment and that the failure is a consequence, wholly or mainly, of the disability, the Board may, without limiting its powers of review, order that the worker's incapacity be treated, or continue to be treated, as total incapacity, for such period, and subject to such conditions, as the order may provide.

No incapacity—medical expenses.

9. Where a total or partial incapacity for work does not result from the disability but the worker is obliged to obtain medical or surgical, dental, physiotherapy or chiropractic advice or treatment, clauses 17, 18, and 19 apply in so far as they may be made applicable.

Absence from work for medical attendance.

10. Where absence from work arises from a necessary attendance for a medical or like purpose that is authorized or required under this Act or from an unavoidable delay in the provision, repair, or replacement of any artificial aid of the kinds referred to in clause 17 and without which the worker is unable to work, the employer shall pay a weekly payment or portion thereof at a rate equivalent to the rate that applies for total or partial incapacity.

Weekly earnings.

11. Subject to clauses 12, 13, 14, 15, and 16, for the purposes of this Act "weekly earnings" means—

(1) where the work performed by the worker in the employment in which the disability occurs is 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, 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; or

(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).

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.

Part time
worker.

13. In respect of employment to which clause 11 (1) or (2) applies, in the case of a worker who had entered into con-

Concurrent.
contracts.

current 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. 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.

Payment of
medical
and other
expenses.

17. In addition to weekly payments of compensation payable, a sum is payable equal to the reasonable expenses incurred in respect of—

- (1) first aid and ambulance or other service to carry the worker to hospital or other place for medical treatment; medicines and medical requisites; medical or surgical attendance and treatment, including

where necessary, medical or surgical attendance and treatment by specialists; dental attendance and treatment; physiotherapy or chiropractic attendance and treatment; other attendance and treatment by way of rehabilitation; charges for hospital treatment and maintenance, in accordance with clause 18 but not including charges for a nursing home unless a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance which cannot be administered in the worker's domestic environment; the provision of hearing aids, artificial teeth, artificial eyes, and where the disability renders their use necessary, spectacles or contact lenses, but not exceeding, in the aggregate, a sum equal to 10% of the prescribed amount, unless the Board finds, that in the particular circumstances of the case, the amount for such expenses is inadequate, and there shall be no revival of, or increase in, the entitlement to such expenses upon any subsequent increase in the prescribed amount;

- (2) funeral expenses, including all cemetery board charges, in the event of the death of the worker, but not exceeding an amount prescribed;
- (3) the repair or replacement, including such services by way of consultations, examinations, or prescriptions as are reasonably rendered by medical practitioners, dentists, or other qualified persons in connection with the repair or replacement of a hearing aid, an artificial limb, artificial teeth, artificial eyes, spectacles, or contact lenses damaged or destroyed by accident arising out of or in the course of the worker's employment, or whilst the worker is acting under the employer's instructions, whether or not, except in the case of artificial teeth, personal injury is caused to the worker;
- (4) the purchase or supply of a wheeled chair or similar appliance, where the worker has suffered the loss of both legs or is paralysed in both legs by reason of a disability suffered by a worker but not exceeding an amount prescribed;
- (5) the cost of any surgical appliance or of an artificial limb that complies with the standards laid down by the Commonwealth Repatriation Artificial Limb and Appliance Centre, if such an appliance or

artificial limb is capable of relieving any disablement incurred by the worker by reason of a disability suffered by a worker; and

- (6) in the case of personal injury by accident arising out of or in the course of the worker's employment, or whilst acting under the employer's instructions, the reasonable cost of any necessary repair or replacement of clothing damaged or destroyed at the time of the accident.

Hospital
charges.

18. (1) The hospital charges mentioned in clause 17 (1) for treatment and maintenance of the worker in a hospital shall, subject to subclause (2) of this clause, be as provided under the Hospitals Act 1927 in relation to such cases.

(2) Where, on the reasonable medical advice in the interests of the health of the worker or where by reason of the unavailability of hospital accommodation, or in the discretion of the Board in any other case, the worker occupies more expensive hospital accommodation than that to which the prescribed charges refer the Board may, on the application of the worker, determine that a rate higher than those prescribed shall be the rate for hospital charges.

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 2.

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 on 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 |
| | 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 |

SCHEDULE 2.—*continued.*

| <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> | <i>%</i> |
| 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 | | 60 |
| 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 |
| 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 3.

SPECIFIED INDUSTRIAL DISEASES.

| <i>Column 1</i> <i>Description of Disease</i> | <i>Column 2</i> <i>Description of Process</i> |
|---|--|
| *Arsenic, phosphorus, lead, mercury or other mineral poisoning | Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds. |
| *Anthrax | Wool-combing; wool-sorting; handling of hides, skins, wool, hair, bristles, or carcasses; loading and unloading or transport of merchandise containing anthrax organisms. |
| Communicable diseases | Employment in an occupation or in a situation exposing the worker to infection by the intermediate hosts of any communicable disease or by agencies transmitting any communicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the particular vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed. |
| *Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others) | Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds. |
| Poisoning by a homologue of benzol | Any process involving the use of a homologue of benzol. |
| *Poisoning by carbon bisulphide | Any process involving the use of carbon bisulphide or its preparations or compounds. |
| Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series | Any process involving the use of a halogen derivative or a hydrocarbon of the aliphatic series. |
| *Poisoning by nitrous fumes | Any process in which nitrous fumes are evolved. |

* See section 48 (2).

SCHEDULE 3—*continued.*

| <i>Column 1</i> <i>Description of Disease</i> | <i>Column 2</i> <i>Description of Process</i> |
|---|--|
| *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, swine-herds 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 bi-chromate of ammonium, potassium, or sodium, or their preparations. |
| Effects of insolation | Work entailing prolonged exposure to sunlight. |
| Effects of electrical currents | Workers exposed to electrical currents. |
| Any dematosis, 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. |

SCHEDULE 3—*continued.*

| <i>Column 1</i> <i>Description of Disease</i> | <i>Column 2</i> <i>Description of Process</i> |
|--|--|
| 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 | Any process involving exposure to the action of radium, radioactive substances, or X-rays. |
| Hepatitis B | Employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank. |
| Lung cancer | Any process entailing heavy exposure to asbestos dust. |

* See section 48 (2).

SCHEDULE 4.

SPECIFIED LOSSES OF FUNCTIONS.

| <i>Column 1</i> <i>Loss of Function</i> | <i>Column 2</i> <i>Description of Process</i> |
|---|---|
| Noise induced hearing loss | Any work process involving continued exposure to excessive noise. |
| Effects of vibration (including Raynaud's phenomenon and dead hand) | Use of vibratory tools, implements and appliances. |
| Compressed air illness. | Any process carried on in compressed air. |

SCHEDULE 5.

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 and Mesothelioma.*

Where the worker shows to the satisfaction of the employer or, in the case of dispute, the Board that, if incapacity resulting from the disability had not occurred, he would have continued to be a worker after attaining the age of 65, he shall be entitled to the supplementary amount as a weekly payment during any period of total incapacity resulting from the disability in the time he would have been a worker, but in any case—

(a) not beyond the time when he attains the age of 70 years; and

(b) subject to Schedule 1 clause 7 (3).

3. Incapacity for Work Resulting from Disabilities of Pneumoconiosis and Mesothelioma.

(1) This clause shall be read and construed subject to the qualification on entitlement in section 34 and subject to sections 46 and 47.

(2) Where a worker who is 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, that worker is entitled to weekly payments of compensation calculated and varied in accordance with Schedule 1, subject to Schedule 1 clause 7 (3); however, during his lifetime and while he is so entitled but within the period of one year from the time when he becomes so entitled on or after the proclaimed date, he may as provided by clause 4 of this Schedule elect to—

- (a) receive the redemption amount as a lump sum; or
- (b) 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 Schedule 1.

(3) Where a worker who attains the age of 65 after the proclaimed date had suffered one of those disabilities before he attained that age and, immediately before he attained 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 that age, that worker is entitled to weekly payments of compensation calculated and varied in accordance with Schedule 1, subject to Schedule 1 clause 7 (3); however, during his lifetime and while he is so entitled but within the period of one year from the time when he becomes so entitled on or after the day he attains the age of 65, he may as provided by clause 4 of this Schedule elect to—

- (a) receive the redemption amount as a lump sum; or
- (b) 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 Schedule 1.

(4) Where a worker who attains the age of 65 after the proclaimed date and one of those disabilities of the worker occurs on or after the day he attains that age, in respect of any incapacity resulting from that disability, he is entitled

to receive weekly payments of compensation calculated and varied in accordance with Schedule 1, subject to Schedule 1 clause 7 (3); however, during his lifetime and while he is so entitled but within the period of one year from the time when he becomes so entitled, he may as provided by clause 4 of this Schedule elect to—

- (a) receive the redemption amount as a lump sum; or
- (b) 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 Schedule 1.

4. *Requirements for Election for Clause 3 (2), (3), and (4) of this Schedule.*

(1) A worker elects for the purposes of clause 3 (2), (3), and (4) of this Schedule if, and only if—

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

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

(3) Where the Registrar is not satisfied in accordance with subclause (2), he shall within 7 days notify the employer and the worker accordingly.

5. *Effect of Election to Receive the Redemption Amount as a Lump Sum.*

If the worker elects under clause 3 of this Schedule to receive the redemption amount as a lump sum—

- (a) section 67 does not apply;
- (b) for the disability from which the incapacity resulted—
 - (i) the worker is not entitled to further compensation; and
 - (ii) clauses 9, 10, 17, 18, and 19 of Schedule 1 cease to apply to the worker; and
- (c) clauses 1, 2, 3, 4, 5, and 17 (2) of Schedule 1 shall not apply in respect of the worker's death.

6. *Effect of Election to Receive the Supplementary Amount.*

If the worker elects under clause 3 of this Schedule to receive the supplementary amount weekly from the date he so elects—

- (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.

SCHEDULE 6.

Ss. 112, 113.

OATHS AND AFFIRMATIONS.

1. ALLEGIANCE

- (a) Oath:
I, _____, do swear that
I will be faithful and bear true allegiance to
Her Majesty Queen Elizabeth the Second, Her
heirs and successors according to law.
So help me God.

or

- (b) Affirmation:
I, _____, do solemnly
and sincerely affirm and declare that I will be
faithful and bear true allegiance to Her Majesty

Queen Elizabeth the Second, Her Heirs and successors according to law.

(Note:—The name of the reigning Sovereign for the time being is to be substituted from time to time).

2. OFFICE

(a) Oath:

I,, do swear that I will well and truly serve in the office of (Chairman, Acting Chairman, nominee member, or deputy of a nominee member, as the case may be) of (the Workers' Compensation Board or the Supplementary Workers' Compensation Board, as the case may be) and that I will do right to all manner of people according to law, without fear or favour, affection, or ill-will. So help me God.

or

(b) Affirmation:

I, do solemnly and sincerely affirm and declare that I will well and truly serve in the office of (Chairman, Acting Chairman, nominee member, or deputy of a nominee member, as the case may be) of (the Workers' Compensation Board or the Supplementary Workers' Compensation Board as the case may be) and that I will do right to all manner of people according to law, without fear or favour, affection, or ill-will.