

Reprinted under the
Reprints Act 1984 as
at 7 December 1994

WESTERN AUSTRALIA

**EMPLOYERS' INDEMNITY
SUPPLEMENTATION FUND
ACT 1980**

ARRANGEMENT

PART I — PRELIMINARY

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Act not to apply to insurance for certain industrial diseases	4

**PART II — EMPLOYERS' INDEMNITY SUPPLEMENTATION
FUND**

5.	Establishment and constitution of Employers' Indemnity Supplementation Fund	5
6.	Investment of moneys of Fund	5
6A.	Treasurer may direct payment of moneys to or from General Fund	6
7.	Treasurer or Insurance Commission may make advances to Fund in event of insufficiency of moneys	7

*Employers' Indemnity Supplementation
Fund Act 1980*

8.	Application of <i>Financial Administration and Audit Act 1985</i>	8
10.	Payments out of Fund	8

PART III — ADMINISTRATION OF FUND

11.	Board to administer Fund	10
12.	Evidence	10
13.	Powers of Board	10

PART IV — SURCHARGES ON EMPLOYERS' POLICIES

14.	Employers to pay surcharge to insurers	12
15.	Payment of amounts by insurers	13
16.	Self-insurers to pay surcharge	15
17.	Payments by employers and self-insurers to cease on expiry of period to be fixed	16
18.	Refunds	17

PART V — PAYMENT OF CLAIMS

19.	Claims against Insurance Commission and insurers	19
22.	Payment of claims	21
24.	Effect of payment of claims	22
25.	Insurance Commission to be reimbursed out of Fund	22

PART VI — INSURERS ADVISORY COMMITTEE

27.	Insurers Advisory Committee	23
28.	Members of Committee	23
29.	Chairman	24
30.	Remuneration	24
31.	Removal of member from office	25
32.	Meetings	25
33.	Leave of absence	26
34.	Vacancy in membership	26

*Employers' Indemnity Supplementation
Fund Act 1980*

PART VII — MISCELLANEOUS

35.	Powers of liquidators of insurers	27
36.	Payment into Fund of moneys recovered by liquidators	27
37.	Rights of Commission against insurers	28
38.	Liquidators to notify Insurance Commission of dissolution of insurers	29
38A.	Commission may accept final payment from liquidator	29
39.	Protection of members of Commission, Insurance Commission and members of Committee	30
40.	Regulations	30
	NOTES	31

Reprinted under the
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WESTERN AUSTRALIA

**EMPLOYERS' INDEMNITY
SUPPLEMENTATION FUND
ACT 1980**

**AN ACT to establish the Employers' Indemnity
Supplementation Fund for the payment of certain
claims for workers' compensation and for damages
arising from injury to, or the death of, a worker, and
for purposes incidental thereto or connected
therewith.**

[Long title inserted by No. 49 of 1982 s.2.]

s. 1

*Employers' Indemnity Supplementation
Fund Act 1980*

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Employers' Indemnity Supplementation Fund Act 1980*¹.

[Section 1 amended by No. 49 of 1982 s.3.]

Commencement

2. This Act shall come into operation on a date to be fixed by proclamation¹.

Interpretation

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

"appointed date" means date on which this Act comes into operation;

"Chairman" means member elected under section 29 to be the Chairman of the Committee;

"Commission" means Workers' Compensation and Rehabilitation Commission established by section 94 of the *Workers' Compensation and Rehabilitation Act 1981*;

"Committee" means Insurers Advisory Committee established by section 27 (1);

"employer" has the same meaning as it has in the *Workers' Compensation and Rehabilitation Act 1981*;

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 3

"employer's policy" means —

- (a) a policy of insurance providing —
 - (i) the cover required by section 160 of the *Workers' Compensation and Rehabilitation Act 1981*; and
 - (ii) cover for an employer's liability to pay damages at common law for injury to, or the death of, a worker employed by him;

and

- (b) a policy of insurance providing either of those forms of cover,

and where an employer has more than one employer's policy, as so defined, the expression **"the employer's policy"** extends to all such policies;

"Fund" means Employers' Indemnity Supplementation Fund established under section 5 (1);

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

"insurer" means incorporated insurance office approved under section 161 of the *Workers' Compensation and Rehabilitation Act 1981*;

"liquidator", in relation to an insurer, includes official manager, receiver or receiver and manager;

"member" means member of the Committee;

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 4

“self-insurer” means employer whom, or employer belonging to a group of employers which, the Governor exempts under section 164 of the *Workers' Compensation and Rehabilitation Act 1981* from the obligation to insure pursuant to that 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) of that Act;

“the appropriate surcharge” has the meaning given by section 14;

“Treasurer” means Treasurer of the State.

[Section 3 amended by No. 26 of 1981 s.3 (as amended by Act No. 88 of 1981); No. 49 of 1982 s.4; No. 51 of 1986 s.46 (2); No. 86 of 1986 s.3; No. 1 of 1993 ss.4 and 13.]

Act not to apply to insurance for certain industrial diseases

4. This Act does not apply to the insurance of an employer by the Insurance Commission under section 160 of the *Workers' Compensation and Rehabilitation Act 1981* against the liability of the employer to pay compensation under that Act for any industrial disease of the kinds referred to in section 151 (a) (iii) of that Act.

Section 4 inserted by No. 26 of 1981 s.4 (as amended by No. 88 of 1981); amended by No. 51 of 1986 s.46 (2); No. 1 of 1993 s.13.]

**PART II — EMPLOYERS' INDEMNITY
SUPPLEMENTATION FUND**

[Heading amended by No. 49 of 1982 s.5.]

**Establishment and constitution of Employers' Indemnity
Supplementation Fund**

5. (1) The Commission shall establish and keep in an account at the Treasury a fund to be known as the Employers' Indemnity Supplementation Fund.

(2) The Fund shall consist of —

- (a) moneys received by the Commission under Part IV or Part VII;
- (b) income derived from the investment under section 6 of moneys standing to the credit of the Fund;
- (c) moneys recovered by or on behalf of the Commission under this Act;
- (d) moneys advanced to the Fund; and
- (e) such moneys, other than moneys referred to in paragraphs (a), (b), (c) and (d), as are lawfully paid into the Fund.

[Section 5 amended by No. 26 of 1981 s.7; No. 49 of 1982 s.6.]

Investment of moneys of Fund

6. The Commission —

- (a) may temporarily invest in such manner as the Treasurer approves any moneys standing to the credit

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 6A

of the Fund until those moneys are required for the purposes of this Act; and

- (b) shall pay to the credit of the Fund all interest derived from investments made under this section.

[Section 6 amended by No. 98 of 1985 s.3; No. 1 of 1993 s.5.]

Treasurer may direct payment of moneys to or from General Fund

6A. (1) If the Treasurer is satisfied that the amount of moneys standing to the credit of the Fund exceeds the amount of moneys that is reasonably required for the purposes of this Act, the Treasurer may direct the Commission to pay the whole or any part of that excess into the General Fund for use in accordance with the provisions of the *Workers' Compensation and Rehabilitation Act 1981*.

(2) Where moneys have been paid into the General Fund under subsection (1), the Treasurer may, before making an advance under section 7 (1) (a), direct that an amount, not exceeding the amount of moneys so paid, be paid from the General Fund into the Fund to make up or partially make up the insufficiency referred to in section 7 (1).

(3) In this section —

“General Fund” means the Workers' Compensation and Rehabilitation General Fund established under section 106 of the *Workers' Compensation and Rehabilitation Act 1981*.

[Section 6A inserted by No. 1 of 1993 s.6.]

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 7

Treasurer or Insurance Commission may make advances to Fund in event of insufficiency of moneys

7. (1) If the Treasurer considers that the moneys standing to the credit of the Fund are at any time insufficient for the purposes of this Act —

- (a) the Treasurer may advance to the Commission for payment into the Fund; or
- (b) the Insurance Commission may, at the request of the Treasurer, advance to the Commission for payment into the Fund from the Insurance Commission General Fund established under section 16 of the *State Government Insurance Commission Act 1986*,

moneys sufficient for the time being to make up that insufficiency.

(2) Interest shall be payable on an advance made under subsection (1) at such rate and at such times as the Treasurer determines.

(3) As and when there are sufficient moneys standing to the credit of the Fund (in this section called "**the moneys available**") to enable moneys advanced under subsection (1) (in this subsection called "**the moneys advanced**") to be repaid, the Commission shall from the moneys available repay the moneys advanced, together with interest referred to in subsection (2) —

- (a) in the case of moneys so advanced by the Treasurer, to the Treasurer; or
- (b) in the case of moneys so advanced by the Insurance Commission, to the Insurance Commission and the Insurance Commission shall pay the moneys so repaid, together with that interest, into the Insurance Commission General Fund established under

s. 8

*Employers' Indemnity Supplementation
Fund Act 1980*

section 16 of the *State Government Insurance
Commission Act 1986*.

(4) Moneys advanced by the Treasurer or the Insurance Commission under subsection (1), together with interest thereon referred to in subsection (2), are, so long as those moneys and that interest remain unrepaid under subsection (3), a charge on the Fund.

[*Section 7 amended by No. 26 of 1981 ss.5 and 7;
No. 98 of 1985 s.3; No. 51 of 1986 s.46 (2).*]

Application of *Financial Administration and Audit Act 1985*

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

[*Section 8 inserted by No. 98 of 1985 s.3.*]

[9. *Repealed by No. 98 of 1985 s.3.*]

Payments out of Fund

10. The Commission may pay out of the Fund —

- (a) any amounts required by this Act to be paid in settlement of any claim made under this Act;
- (b) the amount of any expenses incurred by the Insurance Commission in the settlement of any claim made under this Act;
- (ba) any amount required to be paid under section 6A (1) into the General Fund (as defined in section 6A (3));

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 10

- (c) any amount required to be paid by way of repayment under section 7;
- (d) any amount payable under section 18;
- (e) any amounts required to be paid by way of reimbursement under section 25;
- (f) any amount required to be paid by way of reimbursement under section 30;
- (fa) any amounts required to be paid from the Fund under the *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986*; and
- (g) the amount of any costs and expenses incurred in, or in connection with, the administration of the Fund.

[Section 10 amended by No. 26 of 1981 s.7; No. 51 of 1986 s.42(6); No. 84 of 1986 s.11; No. 1 of 1993 s.7.]

PART III — ADMINISTRATION OF FUND

Board to administer Fund

11. The Commission shall have the direction, control and management of the Fund.

[Section 11 amended by No. 26 of 1981 s.7.]

Evidence

12. When a document purporting to bear the common seal of the Commission and the signatures of the members of the Commission is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that —

- (a) that document bears that common seal and those signatures; and
- (b) that seal was duly affixed to, and those signatures were duly inscribed on, that document.

[Section 12 amended by No. 26 of 1981 s.7.]

Powers of Board

13. The Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act and, in particular, without limiting the generality of the foregoing —

- (a) to take any action necessary to recover moneys payable into the Fund and such debts as may be owing to the Fund;

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 13

- (b) to incur any necessary legal and other costs in actions arising from the operation of the Fund; and
- (c) to refund any moneys that are refundable under this Act.

[Section 13 amended by No. 26 of 1981 s.7.]

PART IV — SURCHARGES ON EMPLOYERS' POLICIES

Employers to pay surcharge to insurers

14. (1) An employer who obtains from an insurer an employer's policy on or after the appointed date shall pay to the insurer the appropriate surcharge in respect of the employer's policy.

(2) An employer who has obtained from an insurer an employer's policy before the appointed date, which employer's policy is in force on the appointed date, shall pay to the insurer an amount that is a proportion, calculated in accordance with subsection (5), of the appropriate surcharge in respect of that employer's policy.

(3) For the purposes of this section and of section 17, the appropriate surcharge in relation to an employer's policy is an amount equal to 1% of the amount of the premium payable in respect of the employer's policy —

- (a) in the case of an employer's policy referred to in subsection (1), at the rate in force on the date specified in that employer's policy as the date on which insurance cover under that employer's policy begins; or
- (b) in the case of an employer's policy referred to in subsection (2), at the rate in force on the appointed date.

(4) An employer referred to in subsection (1) shall pay the appropriate surcharge —

- (a) if that employer pays any moneys to an insurer by way of premium in respect of an employer's policy before the date on which insurance cover under the employer's policy begins or the employer's policy is

renewable, on the date on which those moneys are paid;

- (b) if that employer pays any additional moneys to an insurer by way of premium, which payment is made as a result of an adjustment of premium, on the date on which those moneys are paid; or
- (c) in any case other than the cases referred to in paragraphs (a) and (b), on the date on which insurance cover under the employer's policy concerned begins or that employer's policy is renewable.

(5) The proportion of the appropriate surcharge payable by an employer referred to in subsection (2) shall be calculated in accordance with the formula $\frac{A}{365}$, in which A is the number of days in the period commencing on the appointed date and ending on the date on which the employer's policy concerned expires.

(6) An employer referred to in subsection (2) shall pay the appropriate surcharge not later than the date on which premiums in respect of the employer's policy concerned are adjusted by the insurer concerned.

Payment of amounts by insurers

15. (1) An insurer shall, within 21 days after the end of each month —

- (a) pay to the Commission all amounts received by the insurer under section 14 during that month; and
- (b) forward to the Commission a statement in writing —
 - (i) setting out the amounts received by the insurer by way of premiums in respect of employers' policies during that month and such other particulars, if any, as are prescribed; and

*Employers' Indemnity Supplementation
Fund Act 1980*

- (ii) verified by a statutory declaration made by an officer of the insurer authorized in writing by the insurer for the purpose of this subparagraph.

(2) A member of the staff of the Commission authorized in writing by the Chairman of the Commission for the purpose of this section —

- (a) may at any reasonable hour of the day enter the premises of an insurer and inspect any books or documents of the insurer relating to —

- (i) any amounts received by the insurer under section 14; or

- (ii) any statement forwarded to the Commission by the insurer under subsection (1);

but

- (b) is not authorized by this subsection to remain on any premises, or to inspect any book or documents, referred to in paragraph (a) if, on being requested by the person in charge of those premises to produce evidence in writing of his authority, he does not produce that evidence.

(3) A person shall not obstruct, threaten or intimidate a member of the staff of the Commission authorized under subsection (2) in the exercise of the powers conferred on him by that subsection.

Penalty: \$500.

[Section 15 amended by No. 26 of 1981 s.7.]

Self-insurers to pay surcharge

16. (1) A self-insurer shall pay to the Commission —
- (a) in the case of an employer who becomes a self-insurer before or on the appointed date, within one month from the appointed date; or
 - (b) in the case of an employer who becomes a self-insurer after the appointed date, within one month after he becomes a self-insurer,

and thereafter once in each succeeding period of 12 months an amount assessed by the Commission on the advice of the Committee.

(2) The amount assessed by the Commission under subsection (1) shall be an amount equal to the amount of the surcharge that would have been payable by the self-insurer under this Act in relation to an employer's policy obtained under section 160 of the *Workers' Compensation and Rehabilitation Act 1981* had he been an employer who was not a self-insurer.

(3) Nothing in this section affects the obligations of a self-insurer to pay the appropriate surcharge under section 14 in respect of an employer's policy providing cover for his liability to pay damages at common law for injury to, or the death of, a worker.

[Section 16 amended by No. 26 of 1981 s.7; No. 49 of 1982 s.7; No. 1 of 1993 s.13.]

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 17

Payments by employers and self-insurers to cease on expiry of period to be fixed

17. (1) Notwithstanding anything in this Act, if an employer's policy —

- (a) which was obtained during the surcharge period expires after the expiry of the surcharge period, the employer who obtained that employer's policy from an insurer shall pay to the insurer an amount that is a proportion, calculated in accordance with subsection (2), of the appropriate surcharge; or
- (b) is obtained at any time after the expiry of the surcharge period, the employer who obtained that employer's policy from an insurer is not required to pay to the insurer the appropriate surcharge or any part thereof,

in respect of that employer's policy.

(2) The proportion of the appropriate surcharge payable by an employer to whom subsection (1) (a) applies shall be calculated in accordance with the formula $\frac{B}{365}$, in which B is the number of days in the period commencing on the date on which the employer's policy concerned was obtained and ending on the date on which the surcharge period expires.

(3) Notwithstanding anything in this Act, a self-insurer —

- (a) shall, in respect of a period of 12 months which commenced during the surcharge period but which expires after the expiry of the surcharge period, pay to the Commission an amount that is a proportion, calculated in accordance with subsection (4), of the appropriate amount assessed under section 16; or

- (b) is not required in respect of a period of 12 months which commences after the expiry of the surcharge period, to pay to the Commission the appropriate amount assessed under section 16 or any part thereof.

(4) The proportion of the appropriate amount payable by a self-insurer to whom subsection (3) (a) applies shall be calculated in accordance with the formula $\frac{C}{365}$, in which C is the number of days in the period commencing on the date on which the period of 12 months referred to in that paragraph commenced and ending on the date on which the surcharge period expires.

(5) The Governor may by Order in Council published in the *Gazette* fix an expiry date for the purpose of the definition of "the surcharge period" in subsection (6).

(6) In this section —

"the surcharge period" means the period —

- (a) commencing on the appointed date; and
- (b) expiring on the expiry date fixed under subsection (5).

[Section 17 amended by No. 26 of 1981 s.7.]

Refunds

18. (1) If an employer is entitled to receive from an insurer a refund of an amount paid by way of premium in respect of an employer's policy, the insurer shall, in addition to any amount paid to the employer by way of refund of premium, pay to the employer by way of refund of the surcharge paid by the employer under section 14 an amount that represents a proportionate part of that surcharge.

s. 18

*Employers' Indemnity Supplementation
Fund Act 1980*

(2) When an insurer pays an amount by way of refund of surcharge under subsection (1), the Commission shall, on application by the insurer, pay to the insurer out of the Fund an amount equal to the amount so paid by the insurer.

(3) If the Commission finds that there has been an overpayment into the Fund of an amount payable to the Commission under this Act, the Commission shall pay out of the Fund to the person who made that overpayment a refund of the amount by which the amount so payable was overpaid into the Fund.

[Section 18 amended by No. 26 of 1981 s.7.]

PART V — PAYMENT OF CLAIMS

Claims against Insurance Commission and insurers

19. (1) If, on or after 1 January 1979 —
- (a) a final judgment has been given, or an order or award has been made, against an employer in respect of his liability under the *Workers' Compensation and Rehabilitation Act 1981* or at common law, for an injury to, or the death of, a worker employed by the employer;
 - (b) the liability of the employer under the judgment, order or award referred to in paragraph (a) is covered by an employer's policy; and
 - (c) the insurer who issued the employer's policy referred to in paragraph (b) is dissolved under a law of —
 - (i) the State; or
 - (ii) another State, or a Territory, of the Commonwealth,
- or is unable to provide the indemnity required by that employer's policy to be provided,

the person in whose favour the judgment, order or award referred to in paragraph (a) was given or made, as the case requires, or, if the employer against whom that judgment, order or award has been given or made has paid the amount of that judgment, order or award, that employer may make a claim against the Insurance Commission for payment or reimbursement, as the case requires, of the amount of that judgment, order or award.

*Employers' Indemnity Supplementation
Fund Act 1980*

- (2) If, on or after 1 January 1979 —
- (a) a person is entitled to make a claim against an employer, not being a claim relating to a judgment, order or award referred to in subsection (1), that the employer is liable to pay compensation under the *Workers' Compensation and Rehabilitation Act 1981*, or damages at common law, for an injury to, or the death of, a worker employed by the employer;
 - (b) the liability of the employer referred to in paragraph (a) to pay the compensation or damages referred to in that paragraph is covered by an employer's policy; and
 - (c) the insurer who issued the employer's policy referred to in paragraph (b) is dissolved under a law of —
 - (i) the State; or
 - (ii) another State, or a Territory, of the Commonwealth,or is unable to provide the indemnity required by that employer's policy to be provided,

the person referred to in paragraph (a) or, if the employer against whom that person is entitled to make the claim referred to in that paragraph has paid the amount of compensation or damages sought by that claim, that employer may make a claim against the Insurance Commission for payment or reimbursement, as the case requires, of the amount of compensation or damages referred to in paragraph (a).

(3) A person or employer making a claim under subsection (1) or (2) shall —

- (a) do so in writing; and

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 22

- (b) lodge the claim with the Insurance Commission, together with a copy of any judgment, order or award to which the claim relates.

[(4) *repealed*]

(5) In subsection (2) —

“compensation” includes —

- (a) an amount in settlement of a claim for compensation; and
- (b) all amounts payable under Schedule 1 to the *Workers' Compensation and Rehabilitation Act 1981*;

“damages” includes an amount in settlement of a claim for damages.

[Section 19 amended by No. 26 of 1981 s.6. (as amended by Act No. 88 of 1981); No. 49 of 1982 s.8; No. 51 of 1986 s.46 (2); No. 1 of 1993 ss.8 and 13.]

[20, 21. *Repealed by No. 1 of 1993 s.9.*]

Payment of claims

22. The Insurance Commission shall pay to a claimant such amount as is necessary to satisfy a claim lodged under section 19 (3).

[Section 22 inserted by No. 1 of 1993 s.10.]

[23. *Repealed by No. 1 of 1993 s.10.*]

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 24

Effect of payment of claims

24. When an amount is paid to a claimant under this Act in settlement of a claim thereunder, that payment operates to discharge the liability of the Insurance Commission.

[Section 24 amended by No. 51 of 1986 s.46 (2).]

Insurance Commission to be reimbursed out of Fund

25. (1) The Insurance Commission shall, within 14 days of the end of each month, submit to the Commission a return setting out all payments made, and expenses incurred, by the Insurance Commission under this Act during that month.

(2) The Commission shall, within 7 days of receiving a return submitted to it under subsection (1), reimburse the Insurance Commission out of the Fund in respect of all payments and expenses set out in that return.

[Section 25 amended by No. 26 of 1981 s.7; No. 51 of 1986 s.46 (2).]

[26. Repealed by No. 51 of 1986 s.46 (2).]

PART VI — INSURERS ADVISORY COMMITTEE

Insurers Advisory Committee

27. (1) There is hereby established a committee to be known as the Insurers Advisory Committee.

(2) The function of the Committee is to advise the Commission and the Insurance Commission, as required by this Act or at the request of the Commission or the Insurance Commission, as the case requires, in the performance of its functions or the exercise of its powers under this Act.

[Section 27 amended by No. 26 of 1981 s.7; No. 51 of 1986 s.46 (2).]

Members of Committee

28. (1) The Committee shall consist of 3 members appointed under subsection (2).

(2) Each member shall —

- (a) be appointed by the Minister from a panel of not less than 3 names submitted by the insurers or a majority of them;
- (b) subject to this Act, hold office for such period not exceeding 3 years as is specified in the instrument of his appointment; and
- (c) be eligible for reappointment.

(3) When a vacancy occurs in the membership of the Committee as a result of a member ceasing to hold office at any time before the expiry of the period of his appointment, the Minister may appoint as a member for the unexpired portion of

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 29

that period a person from a panel of not less than 3 names submitted by the insurers or a majority of them.

Chairman

29. (1) The members shall from time to time as occasion requires elect one of their number to be the Chairman of the Committee.

(2) Subject to subsection (4), the Chairman holds office for a period of one year from the date of his election under subsection (1), unless he sooner ceases to be a member, and is eligible for re-election.

(3) The Chairman shall, when he is elected under subsection (1), notify the Minister in writing of his election as Chairman.

(4) The Chairman may resign his office of Chairman by writing under his hand delivered to the Minister.

Remuneration

30. (1) Subject to this section, a member is not entitled to be paid in respect of duties or functions performed by him under this Act.

(2) A member is entitled to reimbursement out of the Fund for any expenses reasonably incurred by him in the performance of his duties or functions under this Act.

Removal of member from office

31. (1) The Minister may at any time remove a member from office for misbehaviour or physical or mental incapacity.

(2) The Minister shall remove a member from office if —

- (a) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) the member is convicted in Australia of an offence punishable by imprisonment for not less than one year;
- (c) the member is absent, without leave of absence granted under section 33, from 3 consecutive meetings of the Committee of which he has had prior notice; or
- (d) he is requested to do so by a majority of insurers present at a meeting of insurers convened by the Insurance Commission.

[Section 31 amended by No. 51 of 1986 s.46 (2).]

Meetings

32. (1) The Chairman shall, subject to subsection (2), convene each meeting of the Committee.

(2) The Minister may, by notice in writing given to each member, direct that a meeting of the Committee be held at the time and place specified in that notice.

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 33

(3) The Chairman shall preside at all meetings of the Committee and has a deliberative vote only thereat.

(4) At a meeting of the Committee, a quorum is constituted by the Chairman and one other member.

(5) Questions arising at a meeting of the Committee shall be determined by a majority of the votes of the members present and voting.

(6) Subject to this Act, the procedure of the Committee shall be as the Committee determines.

Leave of absence

33. (1) The Minister may grant leave of absence to the Chairman on such conditions as the Minister determines.

(2) The Chairman may grant leave of absence to another member for such period, not exceeding one year, and on such conditions as the Chairman determines.

Vacancy in membership

34. Subject to section 32 (4), the performance of the functions of the Committee is not affected by reason only of there being a vacancy in the membership of the Committee.

PART VII — MISCELLANEOUS

Powers of liquidators of insurers

35. The liquidator of an insurer may exercise his powers under section 236 of the *Companies Act 1961*² with respect to any claim, judgment, order or award arising out of or in relation to an employer's policy issued by the insurer as if —

- (a) the reference in that section to the authority of the Court or of the committee of inspection were a reference to the authority of the Insurance Commission; and
- (b) the words "subject to the provisions of section two hundred and ninety-two" were omitted from subsection (1) (b) of that section.

[Section 35 amended by No. 51 of 1986 s.46 (2).]

Payment into Fund of moneys recovered by liquidators

36. (1) If —

- (a) an insurer is, under a contract of reinsurance, insured against liability in respect of employers' policies issued by the insurer and that liability is incurred by the insurer;
- (b) any part of the liability of the insurer referred to in paragraph (a) is met by moneys paid by the Insurance Commission under this Act; and
- (c) an amount in respect of that part of the liability of the insurer referred to in paragraph (b) is received by the liquidator of that insurer from the reinsurer concerned,

the liquidator of the insurer referred to in paragraph (a) shall pay the amount so received from the reinsurer, after the deduction of any expenses of or incidental to getting in that amount, to the Commission, in priority to all payments in respect of the debts referred to in section 441 of the *Companies (Western Australia) Code*³, for payment into the Fund.

(2) If the liquidator of an insurer recovers any amount due to the insurer as a consequence of the payment, with moneys paid out of the Fund, of any part of a claim, judgment, order or award arising out of or in relation to an employer's policy issued by the insurer, that liquidator shall pay the amount so recovered, after the deduction of any expenses of or incidental to the recovery of that amount, to the Commission, in priority to all payments in respect of debts referred to in section 441 of the *Companies (Western Australia) Code*³, for payment into the Fund.

(3) Subject to section 38A, this section has effect notwithstanding any agreement to the contrary, whether made before, on or after the appointed date.

[Section 36 amended by No. 26 of 1981 s.7; No. 10 of 1982 s.28; No. 51 of 1986 s.46 (2); No. 1 of 1993 s.11.]

Rights of Commission against insurers

37. If —

- (a) an insurer is unable to provide to an employer the indemnity required to be provided by an employer's policy issued by the insurer;
- (b) any part of the liability of the employer referred to in paragraph (a) is met by moneys paid out of the Fund under this Act; and
- (c) the moneys referred to in paragraph (b), or part thereof, are or is not paid to the Commission under section 36,

the Commission has the same rights against the insurer referred to in paragraph (a) as the employer referred to in that paragraph to the extent that the moneys referred to in paragraph (b), or part thereof, are or is not paid to the Commission under section 36.

[Section 37 amended by No. 26 of 1981 s.7.]

Liquidators to notify Insurance Commission of dissolution of insurers

38. If the liquidator of an insurer applies to a court under a law of —

(a) the State; or

(b) another State, or a Territory, of the Commonwealth,

for an order that the insurer be dissolved, that liquidator shall notify the Insurance Commission in writing of the making of that application and shall serve on the Insurance Commission a copy of any order made by the court on that application.

[Section 38 amended by No. 51 of 1986 s.46 (2).]

Commission may accept final payment from liquidator

38A. (1) The Commission may accept from the liquidator of an insurer an amount, as agreed between the Commission and the liquidator, for payment into the Fund in full and final satisfaction of all rights, whether actual, contingent or prospective, that the Commission has or may have against the liquidator or the insurer under this Act.

(2) Without limiting the operation of subsection (1), where the Commission accepts an amount from the liquidator of an insurer under that subsection, the acceptance has effect to

*Employers' Indemnity Supplementation
Fund Act 1980*

s. 39

discharge any liability the liquidator might otherwise have to make payments under section 36.

[Section 38A inserted by No. 1 of 1993 s.12.]

Protection of members of Commission, Insurance Commission and members of Committee

39. An action or proceeding, civil or criminal, does not lie against a member of the Commission or of the Committee or against the Insurance Commission for or in respect of any act or thing done in good faith under or purportedly under this Act by that member or by the Insurance Commission.

[Section 39 amended by No. 26 of 1981 s.7; No. 51 of 1986 s.46 (2).]

Regulations

40. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.



*Employers' Indemnity Supplementation
Fund Act 1980*

NOTES

¹ This reprint is a compilation as at 7 December 1994 of the *Employers' Indemnity Supplementation Fund Act 1980* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Workers' Compensation Supplementation Fund Act 1980</i>	80 of 1980	5 December 1980	8 May 1981 (see <i>Gazette</i> 8 May 1981 p.1402)	Short title subsequently amended. (See note under section 1)
<i>Workers' Compensation Supplementation Fund Amendment Act 1981</i>	26 of 1981	26 May 1981	Sections 5 and 6 (2): 26 May 1981; balance: 3 May 1982 (see <i>Gazette</i> 8 April 1982 p.1205)	Amended by <i>Workers' Compensation and Assistance (Consequential Amendments) Act 1981</i> (Act No. 88 of 1981)
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2 and <i>Gazette</i> of 25 June 1982 p.2079)	

*Employers' Indemnity Supplementation
Fund Act 1980*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Workers' Compensation Supplementation Fund Amendment Act 1982</i>	49 of 1982	6 September 1982	6 September 1982	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	Section 4, savings and transitional
<i>State Government Insurance Commission Act 1986, section 46 (2)</i>	51 of 1986	5 August 1986	1 January 1987 (see <i>Gazette</i> 19 December 1986 p.4859)	Section 47, saving, validation and transitional provisions
<i>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986, section 11</i>	84 of 1986	5 December 1986	5 December 1986	
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986, section 3</i>	86 of 1986	5 December 1986	2 January 1987	

*Employers' Indemnity Supplementation
Fund Act 1980*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Employers' Indemnity Supplementation Fund Amendment Act 1993</i>	1 of 1993	19 July 1993	19 July 1993	Section 5 (2) transitional ⁴ ; section 15 saving ⁵

² In respect of matters arising after 1 July 1982 and before 1 January 1991 the operation of the *Companies Act 1961* is subject to the provisions of Part III of the *Companies (Application of Laws) Act 1981*. Also see section 28 of the *Companies (Consequential Amendments) Act 1982*. In respect of matters arising after 1 January 1991, the operation of the *Companies Act 1961* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

³ In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

⁴ Section 5 (2) of the *Employers' Indemnity Supplementation Fund Amendment Act 1993* (Act No. 1 of 1993) reads as follows —

“ (2) The Commission as defined in the principal Act may deal with investments made under section 6 of the principal Act before the commencement of this Act as if those investments had been made under that section as amended by subsection (1). ”

⁵ Section 15 of the *Employers' Indemnity Supplementation Fund Amendment Act 1993* (Act No. 1 of 1993) reads as follows —

“ **Saving**

15. Notwithstanding the amendments and repeals effected by sections 8, 9 and 10 of this Act, sections 20, 21, 22 and 23 of the principal Act as in force immediately before the commencement of this Act continue to apply in respect of claims that had been lodged with the liquidator of an insurer under section 19 (4) of the principal Act before the commencement of this Act as if this Act had not been enacted. ”

