



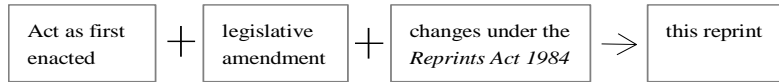
Western Australia

# **Employers' Indemnity Supplementation Fund Act 1980**

**Reprint 2: The Act as at 16 May 2003**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Employers' Indemnity Supplementation Fund Act 1980

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**Defined Terms**





Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 16 May 2003

## **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.]*

## **Part I — Preliminary**

### **1. Short title**

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

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

### **2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

“**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);

“**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;

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

“**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 body continued as the Insurance Commission of Western Australia under the *Insurance Commission of Western Australia 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;

**"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;

**"surcharge period"** means a period the commencement and expiry times of which are prescribed by the regulations;

**"the appropriate surcharge"** has the meaning given by section 14(2);

**"Treasurer"** means Treasurer of the State.

*[Section 3 amended by No. 26 of 1981 s. 3 (as amended by No. 88 of 1981 s. 3); No. 49 of 1982 s. 4; No. 51 of 1986 s. 46(2); No. 86 of 1986 s. 3; No. 1 of 1993 s. 4 and 13; No. 45 of 1996 s. 38; No. 2 of 2001 s. 4; No. 20 of 2003 s. 21.]*

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**4. Act not to apply to insurance for certain industrial diseases**

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 s. 4); 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.]*

### **5. Establishment and constitution of Employers' Indemnity Supplementation Fund**

- (1) The Commission shall establish and keep in an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, 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 credited to the Fund.

*[Section 5 amended by No. 26 of 1981 s. 7; No. 49 of 1982 s. 6; No. 49 of 1996 s. 64.]*

### **6. Investment of moneys of Fund**

The Commission —

- (a) may temporarily invest in such manner as the Treasurer approves any moneys standing to the credit of the Fund until those moneys are required for the purposes of this Act; and

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- (b) shall credit to 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; No. 49 of 1996 s. 64.]*

**6A.     Treasurer may direct payment of moneys to or from General Fund**

- (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 transfer the whole or any part of that excess to the General Fund for use in accordance with the provisions of the *Workers' Compensation and Rehabilitation Act 1981*.
- (2) Where moneys have been transferred to 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 transferred, be transferred from the General Fund to 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; amended by No. 49 of 1996 s. 64.]*

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

- (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 to be credited to the Fund; or

- (b) the Insurance Commission may, at the request of the Treasurer, advance to the Commission to be credited to the Fund from the Insurance Commission General Fund established under section 16 of the *Insurance Commission of Western Australia 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 credit the moneys so repaid, together with that interest, into the Insurance Commission General Fund established under section 16 of the *Insurance Commission of Western Australia 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 s. 5 and 7; No. 98 of 1985 s. 3; No. 51 of 1986 s. 46(2); No. 45 of 1996 s. 38; No. 49 of 1996 s. 64.]*

**8. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and

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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.]*

**10. Payments out of Fund**

The Commission may charge to 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 transferred under section 6A(1) to the General Fund (as defined in section 6A(3));
- (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 charged to 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; No. 49 of 1996 s. 64.]*

### **Part III — Administration of Fund**

#### **11. Commission to administer Fund**

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

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

#### **12. Evidence**

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.]*

#### **13. Powers of Commission**

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 to the Fund and such debts as may be owing to the Fund;
- (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; No. 49 of 1996 s. 64.]*

## **Part IV — Surcharges on employers' policies**

### **14. Employers to pay surcharge to insurers**

- (1) An employer who, during a surcharge period, obtains from an insurer an employer's policy providing any cover for liability of the employer arising during the surcharge period shall pay to the insurer the appropriate surcharge in respect of the employer's policy.
- (2) The appropriate surcharge is an amount equal to the prescribed percentage, at the time the policy was obtained, of the amount of any premium payable under the policy in respect of cover for liability of the employer arising during a surcharge period.
- (3) The percentage prescribed for the purposes of subsection (2) cannot exceed 5% and after 30 June 2006 cannot exceed 1%.
- (3a) Different percentages may be prescribed to apply during different parts of a particular surcharge period but only one percentage can apply at any particular time.
- (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 the amount of premium in respect of which the appropriate surcharge is payable is paid.

*[Section 14 amended by No. 2 of 2001 s. 5.]*



**15. Payment of amounts by insurers**

- (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
    - (ii) verified by a statutory declaration made by an officer of the insurer authorised in writing by the insurer for the purpose of this subparagraph.
- (2) A member of the staff of the Commission authorised 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 authorised 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 authorised 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.]*

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**16. Self-insurers to pay surcharge**

- (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 commencement of a surcharge period, within one month after that commencement; or
  - (b) in the case of an employer who becomes a self-insurer during a surcharge period, within one month after becoming a self-insurer,

and thereafter once in each succeeding period of 12 months any of which is during a surcharge period 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; No. 2 of 2001 s. 6.]*

*[17. Repealed by No. 2 of 2001 s. 7.]*

**18. Refunds**

- (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.

- (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 from moneys standing to the credit of the Fund an amount equal to the amount so paid by the insurer.
- (2a) The regulations may provide for refunds of amounts of surcharge paid if the surcharge period on the basis of which the surcharge was calculated is shortened.
- (3) If the Commission finds that there has been an overpayment credited to the Fund of an amount payable to the Commission under this Act, the Commission shall pay from moneys standing to the credit of the Fund to the person who made that overpayment a refund of the amount by which the amount so payable was overpaid and credited to the Fund.

*[Section 18 amended by No. 26 of 1981 s. 7; No. 49 of 1996 s. 64; No. 2 of 2001 s. 8.]*

## **Part V — Payment of claims**

### **19. Claims against Insurance Commission and insurers**

- (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.

- (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
  - (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*;

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

*[Section 19 amended by No. 26 of 1981 s. 6. (as amended by No. 88 of 1981 s. 5); No. 49 of 1982 s. 8; No. 51 of 1986 s. 46(2); No. 1 of 1993 s. 8 and 13.]*

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

**22. Payment of claims**

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.]*

**24. Effect of payment of claims**

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).]*

**25. Insurance Commission to be reimbursed out of Fund**

- (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 from moneys standing to the credit 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); No. 49 of 1996 s. 64.]*

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

## **Part VI — Insurers Advisory Committee**

### **27. Insurers Advisory Committee**

- (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).]*

### **28. Members of Committee**

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

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**29. Chairman**

- (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.

**30. Remuneration**

- (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 from moneys standing to the credit of the Fund for any expenses reasonably incurred by him in the performance of his duties or functions under this Act.

*[Section 30 amended by No. 49 of 1996 s. 64.]*

**31. Removal of member from office**

- (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).]*

**32. Meetings**

- (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.
- (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.

**33. Leave of absence**

- (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.

**34. Vacancy in membership**

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**

**35. Control of powers of liquidators of insurers**

- (1) The liquidator of an insurer may exercise his or her powers under section 477 of the Corporations Act with respect to any claim, judgment, order or award arising out of or in relation to an employer's policy issued by the insurer subject to the following —
- (a) the liquidator may not exercise his or her powers under section 477(1) of the Corporations Act without the authority of the Insurance Commission;
  - (b) section 477(1)(b) applies as if “subject to the provisions of section 556,” were deleted;
  - (c) section 477(2A) and (2B) apply as if the references in them to the approval of the Court, of the committee of inspection or of a resolution of the creditors were references to the approval of the Insurance Commission.
- (2) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to section 477 of that Act.

*[Section 35 inserted by No. 20 of 2003 s. 22.]*

**36. Payment into Fund of moneys recovered by liquidators**

- (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 556 of the Corporations Act, to the credit of the Fund.

- (2) If the liquidator of an insurer recovers any amount due to the insurer as a consequence of the payment, with moneys charged to 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 556 of the Corporations Act, to the credit of the Fund.
- (3) Subject to section 38A, this section has effect notwithstanding any agreement to the contrary, whenever made.
- (4) The payment of an amount referred to in subsection (1) or (2) is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to that Act to the extent to which the payment of the amount is governed by subsection (1) or (2).

*[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; No. 49 of 1996 s. 64; No. 2 of 2001 s. 9; No. 20 of 2003 s. 23.]*

**37. Rights of Commission against insurers**

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 standing to the credit of the Fund under this Act; and

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- (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; No. 49 of 1996 s. 64.]*

**38. Liquidators to notify Insurance Commission of dissolution of insurers**

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).]*

**38A. Commission may accept final payment from liquidator**

- (1) The Commission may accept from the liquidator of an insurer an amount, as agreed between the Commission and the liquidator, for crediting to 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 discharge any liability the liquidator might otherwise have to make payments under section 36.

*[Section 38A inserted by No. 1 of 1993 s. 12; amended by No. 49 of 1996 s. 64.]*

**39. Protection of members of Commission, Insurance  
Commission and members of Committee**

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).]*

**40. Regulations**

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.



## Notes

- <sup>1</sup> This reprint is a compilation as at 16 May 2003 of the *Employers' Indemnity Supplementation Fund Act 1980* and includes the amendments made by the other written laws referred to in the following table. This table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation Supplementation Fund Act 1980</i> <sup>2</sup>	80 of 1980	5 Dec 1980	8 May 1981 (see s. 2 and <i>Gazette</i> 8 May 1981 p. 1402)
<i>Workers' Compensation Supplementation Fund Amendment Act 1981</i>	26 of 1981	26 May 1981	s. 5 and 6(2): 26 May 1981 (see s. 2(1)); balance: 3 May 1982 (see s. 2(2) and <i>Gazette</i> 8 Apr 1982 p. 1205)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> of 25 Jun 1982 p. 2079)
<i>Workers' Compensation Supplementation Fund Amendment Act 1982</i>	49 of 1982	6 Sep 1982	6 Sep 1982
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>State Government Insurance Commission Act 1986</i> s. 46(2)	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986</i> s. 11	84 of 1986	5 Dec 1986	5 Dec 1986 (see s. 2)
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986</i> Pt. II	86 of 1986	5 Dec 1986	2 Jan 1987
<i>Employers' Indemnity Supplementation Fund Amendment Act 1993</i> <sup>3</sup>	1 of 1993	19 Jul 1993	19 Jul 1993 (see s. 2)

**Reprint of the *Employers' Indemnity Supplementation Fund Act 1980* as at 7 Dec 1994**  
(includes amendments listed above)

## **Employers' Indemnity Supplementation Fund Act 1980**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (ICWA) Act 1996 s. 38</i>	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Employers' Indemnity Supplementation Fund Amendment Act 2001</i>	2 of 2001	7 Jun 2001	7 Jun 2001 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 8</i>	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

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**Reprint 2: The *Employers' Indemnity Supplementation Fund Act 1980* as at 16 May 2003** (includes amendments listed above)

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<sup>2</sup> Now known as the *Employers' Indemnity Supplementation Fund Act 1980*; short title changed (see note under s. 1).

<sup>3</sup> The *Employers' Indemnity Supplementation Fund Amendment Act 1993* s. 5(2) and 15 read as follows:

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**5. Section 6 amended and transitional provision**

- (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).

**15. Saving**

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.

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**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
Chairman.....	3
Commission .....	3
Committee.....	3
compensation .....	19(5)
Corporations Act.....	3
damages .....	19(5)
employer .....	3
employer's policy.....	3
Fund .....	3
General Fund.....	6A(3)
Insurance Commission.....	3
insurer .....	3
liquidator.....	3
member .....	3
self-insurer .....	3
surcharge period.....	3
the appropriate surcharge .....	3
the employer's policy.....	3
the moneys advanced .....	7(3)
the moneys available.....	7(3)
Treasurer .....	3