

Accident Compensation (Amendment) Act 1996

Act No. 7/1996

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Victoria

No. 7 of 1996

Accident Compensation (Amendment) Act 1996[†]

[Assented to 25 June 1996]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to amend the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993**.

2. Commencement

- (1) Sections 1, 2 and 32 come into operation on the day on which this Act receives the Royal Assent.
 - (2) Section 33 is deemed to have come into operation on 1 December 1992.
 - (3) Section 4 is deemed to have come into operation on 1 July 1995.
 - (4) Subject to sub-section (5), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
 - (5) If a provision referred to in sub-section (4) does not come into operation within a period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.
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**PART 2—AMENDMENT OF ACCIDENT COMPENSATION
ACT 1985**

3. Amendment of definitions

- (1) In section 5(1) of the **Accident Compensation Act 1985** the definition of "accredited interpreter" is **repealed**.
- (2) In section 5(1) of the **Accident Compensation Act 1985**, in the definition of "medical service"—
 - (a) in paragraph (b) for ", spectacle glasses or hearing aids" **substitute** "or spectacle glasses";
 - (b) after paragraph (b) **insert**—

"(ba) the provision and as may be necessary from time to time (including at the time of the injury) the repair, adjustment or replacement of hearing aids of a type approved by the Authority by a person or a class of persons approved by the Authority; and".
- (3) The **Accident Compensation Act 1985** as amended by section 3(2) applies to the repair, adjustment or replacement of hearing aids provided before the commencement of section 3(2) and to the provision, repair, adjustment or replacement of all hearing aids provided after that commencement.
- (4) In section 5(1) of the **Accident Compensation Act 1985**, in the definition of "remuneration"—
 - (a) after paragraph (e) **insert** "and";
 - (b) after paragraph (f) **omit** "and".

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- (5) In section 5(1) of the **Accident Compensation Act 1985**, in the definition of "self-insurer" after "body corporate" **insert** "or partnership".

4. Trainees

After section 5(4) of the **Accident Compensation Act 1985** **insert**—

- "(4A) A person who is a participant in a declared training program is deemed to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.
- (4B) The Governor in Council may by Order in Council published in the Government Gazette—
- (a) declare a training program which includes the provision of workplace based training to be a declared training program;
 - (b) specify a class of payments which are deemed to be remuneration paid or payable in respect of a participant in a declared training program.
- (4C) A payment which is deemed to be remuneration paid or payable in respect of a participant in a declared training program is deemed to be remuneration for the purposes of the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993** paid or payable by the person who provides the workplace based training.

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- (4D) The Landcare and Environment Action Program and the New Work Opportunities Program conducted by the Commonwealth of Australia are deemed to have been declared to be declared training programs.
- (4E) The training allowance payable to participants in the Landcare and Environment Action Program and the New Work Opportunities Program is deemed—
- (a) to be remuneration paid or payable in respect of a participant in a declared training program; and
 - (b) to be remuneration for the purposes of the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993** paid or payable by the person who provides the workplace based training."

5. Amendment of section 21—delegation

In section 21 of the **Accident Compensation Act 1985**—

- (a) in sub-section (5) **omit** "or sub-section (2)";
- (b) in sub-sections (6), (8) and (9) **omit** "or (2)".

6. Amendment of section 22

Sections 22(6) and 22(7) of the **Accident Compensation Act 1985** are repealed.

7. Repeal of spent provision

Sections 38 and 38A of the **Accident Compensation Act 1985** are repealed.

8. Amendment of section 43—Magistrates' Court jurisdiction

- (1) In section 43(1)(b) of the **Accident Compensation Act 1985** for "\$25 000" substitute "\$40 000".
- (2) In section 43(2) of the **Accident Compensation Act 1985** for "52 weeks" substitute "104 weeks".
- (3) The **Accident Compensation Act 1985** as amended by this section applies to and in respect of any proceedings commenced on or after this Act receives the Royal Assent.

9. Referral for conciliation

- (1) In sections 49(a) and 99AA(1)(a) of the **Accident Compensation Act 1985** for "referred to" substitute "referred for".
- (2) In sections 49(b)(ii) and 99AA(1)(b)(ii) of the **Accident Compensation Act 1985** for "to conciliation" substitute "for conciliation has been lodged with the Senior Conciliation Officer in accordance with section 55".

10. Amendment of section 50—costs where direction revoked

- (1) After section 50(2A) of the **Accident Compensation Act 1985** insert—
"(2B) If a direction of a Conciliation Officer under Division 2 of Part III is revoked by the County Court or Magistrates' Court in an application under section 60, unless the County Court or Magistrates' Court has made an order under section 60(4)(b), the County Court or Magistrates' Court must order that the costs of the worker are to be paid by the person who made the application and must not order that the costs of the person who
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made the application be paid by the worker."

- (2) Section 50 of the **Accident Compensation Act 1985** as amended by this section applies in respect of the revocation of a direction made on or after the commencement of this section, whether or not the application was made before, on or after that commencement.

11. Amendment of section 50—costs on settlement or compromise

- (1) After section 50(3) of the **Accident Compensation Act 1985** insert—

"(4) If a settlement or compromise is made in respect of proceedings in the County Court brought under this Act by a worker or claimant and the outcome achieved by the settlement or compromise could have been achieved by a judgment or decision made by the Magistrates' Court had the proceedings been brought in the Magistrates' Court, sub-sections (5) and (6) apply in respect of that settlement or compromise.

- (5) An agreement must not be entered into in respect of, or which forms part of, the settlement or compromise which provides that the worker or claimant or his or her legal practitioner is to receive directly or indirectly from the other party to the proceedings for or in respect of the legal practitioner appearing for or acting on behalf of the worker or claimant in the proceedings, an amount which exceeds the amount that the worker or claimant or legal practitioner could have been awarded if the scale of costs applicable in the Magistrates' Court applied.

(6) An agreement which does not comply with sub-section (5) is void but the validity of the settlement or compromise is not otherwise affected."

(2) Section 50 of the **Accident Compensation Act 1985** as amended by this section applies in respect of any settlement or compromise made on or after the commencement of this section.

12. *New section 50A inserted*

After section 50 of the **Accident Compensation Act 1985** insert—

"50A. *Costs liability of legal practitioner*

(1) This section is to be construed as being in addition to, and not in derogation from, section 78A of the **County Court Act 1958**.

(2) If the legal practitioner for a party to proceedings before the County Court brought under this Act whether personally or through a servant or agent, has—

(a) without reasonable cause, caused proceedings which could have been brought within the jurisdiction of the Magistrates' Court to be commenced in the County Court; or

(b) caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default—

the County Court may make an order as specified in sub-section (3).

(3) The County Court may order that—

(a) all or any of the costs between the legal practitioner and the client be disallowed or that the legal practitioner repay to

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- the client the whole or part of any money paid on account of costs; or
- (b) the legal practitioner pay to the client all or any of the costs which the client has been ordered to pay to any party; or
 - (c) the legal practitioner pay all or any of the costs payable by any party other than the client.
- (4) Without limiting sub-section (2), a legal practitioner is in default for the purposes of that sub-section if any proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, because the legal practitioner failed to—
- (a) attend in person or by a proper representative; or
 - (b) file any document which ought to have been filed; or
 - (c) lodge or deliver any document for the use of the Court which ought to have been lodged or delivered; or
 - (d) be prepared with any proper evidence or account; or
 - (e) otherwise proceed.
- (5) The County Court must not make an order under sub-section (3) without giving the legal practitioner a reasonable opportunity to be heard.
- (6) The County Court may order that notice of any proceeding or order against a legal practitioner under this section be given to the client in such manner as the County Court directs."
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13. Application of sections 58, 58A and 63

- (1) In section 58(1) of the **Accident Compensation Act 1985** for "Conciliation Officer's functions" **substitute** "functions and powers of a Conciliation Officer or the Senior Conciliation Officer".
- (2) In section 58A(1) of the **Accident Compensation Act 1985** after "Conciliation Officer" (where secondly occurring) **insert** "or as the Senior Conciliation Officer".
- (3) For section 63(6) of the **Accident Compensation Act 1985 substitute**—

"(6) A matter or thing done or omitted to be done by a member of a Medical Panel or the Convenor of the Medical Panels in the exercise of the functions and powers of a member of a Medical Panel or the Convenor does not, if the matter or thing was done or omitted in good faith, subject the member of a Medical Panel or the Convenor of the Medical Panels personally to any action, liability, claim or demand."

14. New section 63A inserted

After section 63 of the **Accident Compensation Act 1985 insert**—

"63A. Advisory functions

- (1) The Convenor of the Medical Panels—
 - (a) must advise the Minister in relation to any matter referred to the Convenor by the Minister; and
 - (b) may advise the Minister in relation to the operation and procedures of Medical Panels.
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- (2) The Convenor of the Medical Panels may constitute a Medical Panel consisting of such number of members as the Convenor considers appropriate, for the purpose of providing a report to the Convenor of the Medical Panels in respect of any matter referred to the Convenor of the Medical Panels under sub-section (1)(a)."

15. Amendment of section 65

After section 65(9) of the **Accident Compensation Act 1985** insert—

- "(10) The Convenor of the Medical Panels and a member of a Medical Panel has in the performance of his or her duties as the Convenor of the Medical Panels or as a member of a Medical Panel the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge."

16. Weekly payments

- (1) For section 93B(3) of the **Accident Compensation Act 1985** substitute—

"(3) The worker's entitlement to weekly payments under this section ceases after the expiry of the entitlement period within the meaning of sub-section (3A) unless the worker—

- (a) has a serious injury; or
- (b) is totally and permanently incapacitated.

- (3A) For the purposes of sub-section (3), "**entitlement period**" means an aggregate period of 104 weeks (whether consecutive or not) in respect of which a weekly payment has been paid or is payable to the worker."
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- (2) In section 93DA of the **Accident Compensation Act 1985** for "104 weeks" **substitute** "the entitlement period within the meaning of section 93B(3A)".
- (3) In section 114(9) of the **Accident Compensation Act 1985** for "104 weeks of incapacity" **substitute** "the entitlement period within the meaning of section 93B(3A)".
- (4) In section 114B(1)(a) of the **Accident Compensation Act 1985** for "104 weeks of incapacity" **substitute** "the entitlement period within the meaning of section 93B(3A)".
- (5) In section 114B(2) of the **Accident Compensation Act 1985** for "104 weeks of incapacity" (where twice occurring) **substitute** "the entitlement period within the meaning of section 93B(3A)".
- (6) For section 114B(3) of the **Accident Compensation Act 1985 substitute—**
"(3) Notwithstanding anything to the contrary in section 93B(3), until notice is given to a worker and the date specified in the notice has expired, the worker is deemed to be entitled to weekly payments under section 93B in respect of any period after the expiry of the entitlement period within the meaning of section 93B(3A) provided that the worker is but for the expiry of the entitlement period within the meaning of section 93B(3A) otherwise entitled to weekly payments."
- (7) For sections 114B(4) and 114B(5) of the **Accident Compensation Act 1985 substitute—**
"(4) Sub-sections (1)(b), (2) and (3) do not apply if the claim for weekly payments is made within the period of 56 days before the
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expiry of the entitlement period within the meaning of section 93B(3A).

- (5) If sub-section (4) applies and weekly payments are commenced, the entitlement to weekly payments in respect of any period after the expiry of the entitlement period within the meaning of section 93B(3A) must be determined in accordance with section 93B(3)."

(8) Despite section 4A of the **Accident Compensation Act 1985**—

- (a) the **Accident Compensation Act 1985** as in force after the commencement of this section applies in respect of the entitlement of a worker to weekly payments unless paragraph (b) applies; and
- (b) the **Accident Compensation Act 1985** as in force before the commencement of this section continues to apply in respect of the entitlement of a worker to weekly payments where the period of 104 weeks of incapacity has expired before the commencement of this section.

17. Amendment of section 96—pensions

(1) For section 96(1) of the **Accident Compensation Act 1985** substitute—

- "(1) The amount of any weekly payment payable to a worker under this Part must be reduced by the weekly amount of—
- (a) any disability, retirement or superannuation pension to which the worker becomes entitled after the occurrence of the injury whether or not the entitlement arises because of the injury; and

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(b) any redundancy or severance payment received by the worker after the occurrence of the injury."

(2) Section 96(1) of the **Accident Compensation Act 1985** as in force after the commencement of this section applies to and in respect of all weekly payments payable to a worker on or after the commencement of this section.

18. Amendment of section 96—eligible termination payments

For sections 96(2) and 96(3) of the **Accident Compensation Act 1985** substitute—

"(2) If a worker—

- (a) receives a lump sum amount on termination of employment by reason of redundancy or severance; or
- (b) receives a superannuation or retirement benefit lump sum amount that is an eligible termination payment for the purposes of the Income Tax Assessment Act 1936 of the Commonwealth which has not been deposited with a complying superannuation fund or a complying approved deposit fund or used to purchase an eligible annuity within the meaning of section 27A(1) of that Act; or
- (c) withdraws or redeems any part of the amount or the interest on the amount deposited with a complying superannuation fund or a complying approved deposit fund or used to purchase an eligible annuity within the

meaning of section 27A(1) of that Act—

the worker is not entitled to weekly payments under this Part during the specified period after the date on which he or she received, withdrew or redeemed the relevant amount or became eligible to receive weekly payments, whichever is the later.

- (3) The specified period for the purposes of sub-section (2) is a number of weeks determined by dividing the amount received, withdrawn or redeemed by the worker's pre-injury average weekly earnings as varied in accordance with section 100."

19. Amendment of section 96—access to funds

- (1) In section 96(2) of the **Accident Compensation Act 1985** for "If" **substitute** "Except as otherwise provided in sub-section (4), if".

- (2) After section 96(3) of the **Accident Compensation Act 1985** insert—

"(4) If a worker withdraws or redeems any part of the amount deposited or used under sub-section (2) which represents the worker's own contributions for the purpose of an approved capital expenditure within the meaning of sub-section (5), sub-section (2) does not apply in respect of that withdrawal or redemption.

- (5) For the purposes of sub-section (4) "**approved capital expenditure**" means capital expenditure approved by the Authority or by an authorised insurer or a self-insurer in accordance with guidelines issued by the Authority."

20. New section 96A inserted

After section 96 of the **Accident Compensation Act 1985** insert—

"96A. *Notification of entitlement to certain payments*

- (1) If a worker who is claiming weekly payments under this Part receives a pension or payment specified in section 96(1) or a lump sum amount specified in section 96(2), the worker must within 14 days of first receiving the pension, payment or lump sum amount give notice in writing to the person from whom weekly payments are being claimed of the nature, source and amount of the pension, payment or lump sum amount.
- (2) If a worker has received or is receiving a pension or payment specified in section 96(1) or a lump sum amount specified in section 96(2) or has withdrawn or redeemed any part of the amount deposited or used under section 96(2) at the time that the worker makes a claim for the payment of weekly payments under this Part, the worker must give notice in writing of the nature, source and amount of the pension, payment or lump sum amount or of the withdrawal or redemption at the same time that the claim is given, served or lodged.
- (3) A worker required to give notice in writing under sub-section (1) or (2) must within 14 days give notice in writing to the person from whom weekly payments are being claimed if there is any change in the amount of the pension, payment or lump sum amount or if he or she withdraws or redeems any part of the amount deposited or used under section 96(2).

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- (4) If an employer (not being a self-insurer or a subsidiary of a self-insurer) against whom a worker is claiming weekly payments under this Part becomes aware that the worker is, or may be, entitled to a pension or payment specified in section 96(1) or a lump sum amount specified in section 96(2), the employer must within 28 days of becoming so aware give notice in writing to the relevant authorised insurer or, if there is no relevant authorised insurer, to the Authority, of the entitlement.
- (5) If an employer (not being a self-insurer or a subsidiary of a self-insurer) against whom a worker makes a claim for the payment of weekly payments under this Part is at the time that the worker makes the claim aware that the worker is, or may be, entitled to a pension or payment specified in section 96(1) or a lump sum amount specified in section 96(2), the employer must within 28 days of the making of the claim give notice in writing to the relevant authorised insurer or, if there is no relevant authorised insurer, to the Authority, of the entitlement.
- (6) A reference in this section to claiming weekly payments includes making a claim, or claiming to be entitled to weekly payments, or receiving weekly payments.
- (7) A person who fails to comply with this section is guilty of an offence.
Penalty: 10 penalty units."
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21. Amendment of section 97

(1) After section 97(2) of the **Accident Compensation Act 1985** insert—

"(2AA) If a worker ceases to reside in Australia and subsequently claims to be entitled to the payment of weekly payments, the worker must in addition to establishing his or her entitlement satisfy the Authority, authorised insurer or self-insurer that the worker has a serious injury or is totally and permanently incapacitated or both."

(2) In section 97(3) of the **Accident Compensation Act 1985** for "who ceases to reside in Australia" **substitute** "to whom sub-section (2) or (2AA) applies".

(3) After section 97(4) of the **Accident Compensation Act 1985** insert—

"(4A) Despite sub-section (4), the Authority, authorised insurer or self-insurer is entitled to set-off against any weekly payments to which a worker is entitled any amount of compensation in the form of weekly payments previously paid to the worker if the worker was not entitled to receive that amount of compensation by virtue of section 96(1) or 96(2) and the worker has failed to give any notice in writing required under section 96A."

22. Section 97(6) substituted

For section 97(6) of the **Accident Compensation Act 1985** **substitute**—

"(6) If a worker is entitled to receive weekly payments under the **Workers Compensation Act 1958** and under this Act

at the same time, the sum of the rate of the weekly payments received under the **Workers Compensation Act 1958** and the rate of the weekly payments under this Act must not exceed the maximum rate of weekly payments specified in this Part and the amount of weekly payments payable under this Act is reduced accordingly."

23. Amendment of section 98—loss of hearing

- (1) In section 98(2AB) of the **Accident Compensation Act 1985** omit "on the recommendation of the convenor of the Medical Panels".
- (2) After section 98(2AB) of the **Accident Compensation Act 1985** insert—

"(2AC) An approval by the Minister for the purposes of sub-section (2AB)(a)(i) continues in force for the period not exceeding 12 months as is specified by the Minister in the approval unless revoked by the Minister."
- (3) Section 98 of the **Accident Compensation Act 1985** as amended by this section applies in respect of all determinations made on or after the commencement of this section.

24. Section 104 substituted

- (1) For section 104 of the **Accident Compensation Act 1985** substitute—

"104. Claims for compensation under sections 98 and 98A

 - (1) In addition to the requirements under section 103, a claim for compensation under section 98 or 98A must be given, served or lodged with a copy of all the medical reports—

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- (a) which the claimant intends to tender in any proceedings relating to the claim; or
 - (b) the substance of which the claimant intends to adduce in evidence in support of the entitlement of the claimant to compensation or as evidence of the extent of any relevant loss, impairment, disfigurement or pain and suffering in any proceedings relating to the claim.
- (2) The Authority, authorised insurer or self-insurer must within 60 days of receiving the claim—
- (a) accept or reject the claim; and
 - (b) advise the claimant of the decision; and
 - (c) if the decision is to accept the claim, advise the claimant of its offer based on its determination of the worker's entitlement to compensation; and
 - (d) give the claimant a copy of all the medical reports—
 - (i) which the Authority, authorised insurer or self-insurer intends to tender in any proceedings relating to the claim; or
 - (ii) the substance of which the Authority, authorised insurer or self-insurer intends to adduce in evidence in any proceedings relating to the claim.
- (3) If the claimant disputes the decision in respect of the claim, the claimant must not commence proceedings unless the claimant first refers the dispute for conciliation by a
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- Conciliation Officer in accordance with Division 2 of Part III and the Conciliation Officer has issued a certificate under sub-section (8).
- (4) If the Conciliation Officer considers that it is necessary for the purpose of settling the dispute, the Conciliation Officer may—
- (a) obtain a medical report in relation to the worker from a medical practitioner appointed under section 63(2);
 - (b) request the worker to submit to a medical examination conducted by that medical practitioner.
- (5) The costs of any medical report and medical examination under sub-section (4) are to be paid by the Authority, authorised insurer or self-insurer.
- (6) The Conciliation Officer must serve a copy of a medical report obtained under sub-section (4) with the certificate under sub-section (8).
- (7) If the Conciliation Officer is satisfied that all reasonable steps have been taken by the claimant to settle the dispute, the Conciliation Officer must issue a certificate under sub-section (8).
- (8) The certificate must—
- (a) certify that all reasonable steps have been taken by the claimant to settle the dispute; and
 - (b) identify all copies of medical reports provided in accordance with sub-sections (1) and (2) and any
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medical report obtained under sub-section (4); and

- (c) if any medical question has been referred by the Conciliation Officer under section 56(6) for an opinion by a Medical Panel, specify that opinion; and
 - (d) be served by post on all the parties to the dispute.
- (9) The Authority, authorised insurer or self-insurer must within 14 days after the certificate has been served on the Authority, authorised insurer or self-insurer make a final offer in writing in settlement or compromise of the claim.
- (10) If any medical question has been referred by the Conciliation Officer under section 56(6) for an opinion by a Medical Panel, the final offer must be consistent with that opinion.
- (11) If the Authority, authorised insurer or self-insurer fails to comply with sub-section (9), the Authority, authorised insurer or self-insurer is deemed to have made a final offer of nothing.
- (12) A party to any proceedings relating to a claim for compensation under section 98 or 98A cannot in evidence submit any medical evidence or tender a medical report or adduce evidence dependent on a medical report unless that evidence is disclosed by a medical report a copy of which has been provided to the other party in accordance with sub-section (1) or (2) or a copy of which has been provided in accordance with sub-section (8).
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- (13) Sub-section (12) does not affect the admissibility of the opinion of the Medical Panel.
- (14) For the purposes of this section if a medical report was oral, a copy of the medical report is to be taken to have been provided to the other party in accordance with sub-section (1) or (2) if notice in writing of the substance of the medical report is provided to the other party in accordance with sub-section (1) or (2).
- (15) In this section—
- "medical report"—**
- (a) means a statement on medical matters concerning the worker whether in writing or oral made by a medical practitioner; and
 - (b) includes any document which the medical practitioner intends should be read with a statement whether the document was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently.

104A. *Directions relating to claim for compensation under sections 98 and 98A*

- (1) For the purposes of section 104, the Minister may issue directions for or with respect to procedures for the resolution of disputes in connection with claims for compensation under sections 98 and 98A.
 - (2) The directions must be published in the Government Gazette.
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- (3) The directions apply to claims for compensation under sections 98 and 98A given, served or lodged after the publication of the directions.
 - (4) The parties to a dispute and their legal practitioners and agents must comply with the directions.
 - (5) The directions may specify that the failure to comply with a particular provision of the directions has the effect of suspending the claim or any proceeding relating to the claim until the provision is complied with."
- (2) In section 50(2A) of the **Accident Compensation Act 1985** for "98B" (where twice occurring) **substitute "104"**.
 - (3) Section 98B of the **Accident Compensation Act 1985** is **repealed**.
 - (4) The **Accident Compensation Act 1985** as in force before the commencement of this section continues to apply to any claim for compensation under section 98 or 98A of that Act which was given, served or lodged before that commencement if—
 - (a) before that commencement the claim has been referred to a Medical Panel under section 104(3) of the **Accident Compensation Act 1985** and the claimant has submitted to a medical examination in accordance with section 65 of that Act; or
 - (b) before that commencement any proceedings have been commenced in accordance with the **Accident Compensation Act 1985** in respect of the claim.
 - (5) The **Accident Compensation Act 1985** as in force on the commencement of this section applies
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to claims for compensation under section 98 or 98A of that Act which were given, served or lodged before the commencement and to which sub-section (4) does not apply with the following modifications—

(a) if within the period specified under section 104(2) of that Act as in force before that commencement, the authorised insurer, Authority or self-insurer has complied or has failed to comply with that section and the claim has not been referred to a Medical Panel under section 104(3) of that Act as in force before that commencement or has been so referred but the claimant has not submitted to a medical examination in accordance with section 65 of that Act, as if for section 104(3) there were substituted—

"(3) Notwithstanding sub-sections (1) and (2), any copies of medical reports provided to the other party by the Authority, authorised insurer or self-insurer or the worker within 120 days of the commencement of section 24 of the **Accident Compensation (Amendment) Act 1996** are to be taken to have been provided in accordance with sub-section (1) or (2).

(3A) The claimant must not commence proceedings in respect of the claim unless before the expiry of 30 days after the period specified in sub-section (3) the dispute has first been referred for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and the Conciliation Officer has issued a certificate under sub-section (8).";

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(b) if the period specified under section 104(2) of that Act as in force before that commencement has not expired and the authorised insurer, Authority or self-insurer has not complied with that section, as if—
after section 104(1) there were inserted—

"(1A) Notwithstanding sub-section (1), any copies of medical reports provided to the Authority, authorised insurer or self-insurer by the worker within 60 days of the commencement of section 24 of the **Accident Compensation (Amendment) Act 1996** are to be taken to have been provided to the other party in accordance with sub-section (1).";

in section 104(2) for "60 days of receiving the claim" there were substituted "120 days of the commencement of section 24 of the **Accident Compensation (Amendment) Act 1996**".

(6) The **Accident Compensation Act 1985** as in force on the commencement of this section applies to claims for compensation under section 98 or 98A of that Act which are given, served or lodged on or after the commencement.

25. Amendment of section 99—Family counselling

(1) After section 99(1)(a) of the **Accident Compensation Act 1985** insert—

"(aa) where death results from the injury or the injury is a prescribed injury the reasonable costs incurred in Australia of family counselling services provided to family members by a medical practitioner or

registered psychologist not exceeding \$1530 in respect of that death or injury; and".

(2) After section 99(1) of the **Accident Compensation Act 1985** insert—

(1A) In sub-section (1)(aa), "**family member**" means a spouse, parent, sibling or child of the worker.

(1B) Regulations under this Act may prescribe an injury to be a prescribed injury by reference to the degree of impairment resulting from the injury or the seriousness or severity of the injury.!

26. Amendment of section 99—reasonable costs

(1) After section 99(2)(b) of the **Accident Compensation Act 1985** insert—

"(ba) any guidelines issued by the Authority in respect of that service or provision;".

(2) After section 99(2) of the **Accident Compensation Act 1985** insert—

"(2A) Guidelines issued for the purposes of sub-section (2)(ba) may include transitional provisions in respect of the application of the guidelines to services or provisions without regard to when the injury occurred."

(3) Section 99B of the **Accident Compensation Act 1985** is **repealed**.

(4) In section 5(1) of the **Accident Compensation Act 1985**, in the definition of "occupational rehabilitation service", after "following services" **insert** "provided by a person who is approved by the Authority as a provider of an occupational rehabilitation service".

(5) The **Accident Compensation Act 1985** as in force on the commencement of this section applies

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to services or provisions rendered on or after that commencement.

27. Amendment of section 112

(1) For section 112(1) of the **Accident Compensation Act 1985** substitute—

"(1) The authorised insurer, Authority or a self-insurer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by an independent medical examiner provided and paid for by the authorised insurer, Authority or self-insurer."

(2) After section 112(4) of the **Accident Compensation Act 1985** insert—

'(5) In this section "**independent medical examiner**" means—

- (a) a medical practitioner; or
- (b) a registered physiotherapist; or
- (c) a registered chiropractor and osteopath;
or
- (d) a registered psychologist—

approved by the Authority for the purposes of this section.'

28. Amendment of section 114D

In section 114D(4) of the **Accident Compensation Act 1985** for "the commencement" substitute "making the payment".

29. Amendment of section 115

- (1) In section 115(1) of the **Accident Compensation Act 1985** omit "to the Authority, authorised insurer or self-insurer".
- (2) After section 115(1) of the **Accident Compensation Act 1985** insert—
 - "(1A) An application under this section must be made—
 - (a) if the liability to pay compensation lies with a self-insurer, to the self-insurer; or
 - (b) in any other case, to the Authority."
- (3) In section 115(2) of the **Accident Compensation Act 1985** for ", authorised insurer or self-insurer" substitute "or self-insurer (as the case may be)".
- (4) In section 115(5) of the **Accident Compensation Act 1985** for ", authorised insurer or self-insurer" (where twice occurring) substitute "or self-insurer (as the case may be)".
- (5) Section 115 of the **Accident Compensation Act 1985** as in force before the commencement of this section continues to apply to applications made under that section before that commencement.
- (6) Section 115 of the **Accident Compensation Act 1985** as in force on the commencement of this section applies to applications which are made under that section on or after that commencement.

30. Amendment of section 122—application of sub-section (1)

In section 122(2) of the **Accident Compensation Act 1985** for "suitable employment in accordance with that sub-section" substitute "employment in accordance with sub-section (1)(a) or suitable

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employment in accordance with sub-section (1)(b)".

31. Amendment of section 122

After section 122(3) of the **Accident Compensation Act 1985** insert—

"(4) The Authority must not commence proceedings against an employer under section 242(1) unless—

- (a) the Authority has given the employer notice in writing that the Authority intends to file a charge against the employer for failing to comply with sub-section (1) unless within the period of 60 days after service of the notice the employer can demonstrate to the Authority's satisfaction that it was not possible for the employer to comply with sub-section (1) at the time of the alleged offence; and
- (b) the employer fails within that period to provide any information or sufficient information to demonstrate to the Authority's satisfaction that it was not possible for the employer to comply with sub-section (1).

(4A) Sub-section (2) does not apply if the Authority has given notice in writing under sub-section (4)".

32. Amendment of section 135A

(1) After section 135A(2) of the **Accident Compensation Act 1985** insert—

"(2A) Subject to sub-section (2D), a worker may not bring proceedings in accordance with this section unless a determination of the

degree of impairment of the worker has been made under sub-section (3).

(2B) Subject to sub-section (2C), the Authority, authorised insurer or self-insurer must make a determination under sub-section (3) within 60 days of receiving a written application for a determination from the worker.

(2C) Despite sub-section (2B), if the application is received during the first 104 weeks after the injury, the Authority, authorised insurer or self-insurer may refuse to make a determination if the Authority, authorised insurer or self-insurer is not satisfied that the worker's injury has stabilised.

(2D) If the Authority, authorised insurer or self-insurer has not within 60 days of receiving the application advised the worker in writing—

(a) of the determination; or

(b) of the refusal to make a determination under sub-section (2C)—

the worker is entitled to bring proceedings in accordance with this section and to have the question of whether or not the injury in respect of which the worker is seeking to receive damages is a serious injury determined in the proceedings."

(2) Section 135A of the **Accident Compensation Act 1985** as amended by this section applies in respect of any proceedings brought on or after the commencement of this section.

33. Amendment of section 135A—"serious injury"

(1) After section 135A(3) of the **Accident Compensation Act 1985** insert—

"(3A) A decision by the Authority, authorised insurer or self-insurer that a worker has a serious injury for the purposes of section 93B is not to be taken to be a determination for the purposes of sub-section (3) unless the decision specifically states that it is to be taken to be a determination for the purposes of sub-section (3)."

- (3) This section does not affect the rights of the parties in any proceedings commenced and determined before 16 May 1996.

34. Amendment of section 141

- (1) After section 141(1) of the **Accident Compensation Act 1985** insert—

"(1A) For the purposes of this section if a holding company satisfies the requirements of sub-section (2) but does not itself employ any workers, the holding company is deemed to be an employer."

- (2) In section 141(2)(a) of the **Accident Compensation Act 1985** for "by it and each of its subsidiaries is not less than 500" **substitute** "on a full-time basis by it and each of its subsidiaries is not less than 500 or if it does not employ any workers in Victoria, the sum of the number of workers in Victoria employed on a full-time basis by each of its subsidiaries is not less than 500".

35. New section 142D inserted

After section 142C of the **Accident Compensation Act 1985** insert—

"142D. Provision relating to approvals

- (1) If any of the requirements for approval as a self-insurer cease to be met during the period of approval, the approval as a self-insurer may be revoked in accordance with this Part.
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- (2) An approval as a self-insurer—
- (a) may take effect from a date after the approval is given as is specified in the approval;
 - (b) may be subject to compliance with a condition precedent determined by the Authority.
- (3) An approval as a self-insurer may be subject to a term or condition which relates to the applicant before the applicant becomes a self-insurer.
- (4) This section applies in respect of any approval under this Part, whether made before, on or after the commencement of section 35 of the **Accident Compensation (Amendment) Act 1996**."

36. Amendment of section 144

In section 144 of the **Accident Compensation Act 1985** for "intention to refuse" substitute "Authority's intention to recommend that the Minister refuse".

37. Amendment of section 146

Sections 146(2) and 146(3) of the **Accident Compensation Act 1985** are repealed.

38. Amendment of section 148

In section 148(2) of the **Accident Compensation Act 1985**—

- (a) for "applies shall give notice to the Minister of the occurrence of circumstances referred to in that sub-section" substitute "or (3) applies must give notice of the occurrence of any of the circumstances referred to in sub-section (1) or (3) to the Authority within

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28 days of the occurrence of the circumstances";

- (b) at the end of the sub-section **insert**—
"Penalty: 100 penalty units".

39. Amendment of section 239

After section 239(1)(d) of the **Accident Compensation Act 1985 insert**—

"; or

- (e) in the case of paragraph (a), determining whether any of the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** are being contravened."

40. Section 239A substituted

For section 239A of the **Accident Compensation Act 1985 substitute**—

"239A. Certificate

A certificate purporting to be signed by an officer or employee of the Authority certifying as to the prescribed particulars relating to amounts (including amounts of compensation) paid or payable by the Authority or an authorised insurer under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** is evidence of the matters stated in the certificate and, in the absence of evidence to the contrary, is proof of those matters."

41. Amendment of section 240

In section 240(1) of the **Accident Compensation Act 1985**—

- (a) after "may" **insert** "with an interpreter or such other assistance as the person requires";
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- (b) in paragraph (a) **omit** "with an interpreter or such other assistance as the person requires,";

42. New section 240A inserted

After section 240 of the **Accident Compensation Act 1985** insert—

"240A. Warrants to enter and search

- (1) If a magistrate is satisfied, by the evidence on oath or by affidavit of the Authority, that there is reasonable ground for suspecting that there are on particular premises any books which are relevant in determining whether any of the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** are being contravened, the magistrate may issue a warrant authorising any member of the police force together with any other person named in the warrant—
- (a) to enter those premises (using such force as is necessary for the purpose);
 - (b) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises;
 - (c) to take possession of, or secure against interference, any books that appear to be so relevant; and
 - (d) to deliver any books, possession of which is so taken, into the possession of the Authority or a person authorised by the Authority to receive them.
-

- (2) A warrant under sub-section (1) must be in the prescribed form and must not be granted except in accordance with sub-section (1).
- (3) Where, under this section, a person takes possession of, or secures against interference, any books, that person or any person to whose possession they are delivered under sub-section (1)(d)—
- (a) may make copies of, or take extracts from, the books;
 - (b) may retain possession of the books for such period as is necessary to enable them to be inspected, and copies of, or extracts from, them to be made or taken, by or on behalf of the Authority; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.
- (4) A person must not—
- (a) refuse to permit any such search or seizure as is referred to in this section to be made; or
 - (b) assault, oppose, molest or obstruct any person employed or acting in the execution or under the authority of such warrant or aiding or assisting in the execution thereof.
- Penalty: 25 penalty units or imprisonment for 6 months."
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43. Amendment of section 242

In section 242(4)(a) of the **Accident Compensation Act 1985** for "102" substitute "101".

44. Amendment of sections 243 and 244

- (1) In section 243 of the **Accident Compensation Act 1985** after sub-section (2)(c)(ib) insert—
- "(ii) the Guardianship and Administration Board;
 - (iii) the Public Advocate;
 - (iiia) the Commissioner of State Revenue;"
- (2) In section 244(2)(c) of the **Accident Compensation Act 1985** for sub-paragraphs (ii) and (iii) substitute—
- "(ii) the Commissioner of State Revenue;"

45. Amendment of section 249

In section 249(2)(d) of the **Accident Compensation Act 1985** for "114(1)" substitute "111(1)".

46. Amendment of section 249B

After section 249B(3) of the **Accident Compensation Act 1985** insert—

- "(3A) Section 21A of the **Evidence Act 1958** applies to and in relation to a review under sub-section (3) as if the Authority or a delegate of the Authority conducting the review were the sole Commissioner issued with a commission by the Governor in Council."

47. New section 250A inserted

After section 250 of the **Accident Compensation Act 1985** insert—

'250A. Offences by bodies corporate

- (1) If an offence against this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, an officer of the body corporate or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.
- (2) If in any proceedings for an offence under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** it is necessary to establish the intention of a body corporate it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) In sub-section (1) "**officer**" in relation to a body corporate means—
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.'

48. Amendment of section 252

- (1) In section 252 of the **Accident Compensation Act 1985**, in sub-sections (1)(b) and (1)(d) for "lay informations" **substitute** "file charges".
- (2) For section 252(4) of the **Accident Compensation Act 1985 substitute—**
 - "(4) Despite any law to the contrary, proceedings may be instituted for an offence against—
 - (a) section 242(4)(d), 242(5), 248, 248A or 249, within 3 years after the alleged offence occurred;
 - (b) section 242(1), 242(3), 242(4)(b) or 242(4)(c) of this Act or section 7 or 57(5) of the **Accident Compensation (WorkCover Insurance) Act 1993** which is alleged to have occurred on or after the commencement of section 48 of the **Accident Compensation (Amendment) Act 1996**, within 3 years after the alleged offence occurred."

49. Indexed amounts substituted

In the **Accident Compensation Act 1985—**

- (a) in sections 5A(8), 5A(9)(b)(ii), 93A(2)(a)(ii), 93A(2)(b)(ii), 93B(1)(a)(i)(B), 93B(1)(a)(ii)(B), 93B(1)(b)(ii), 93C(1)(a)(ii), 93C(1)(b)(ii) and 93C(1)(c)(ii) for "\$603" **substitute** "\$650";
- (b) in sections 92(2)(a), 92(3) and 92(4) for "\$100 000" **substitute** "\$128 420";
- (c) in section 92(2)(b) for the amounts of compensation in Column 2 **substitute** in descending order—

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"\$24 470

\$22 870

\$21 310

\$19 720

\$18 140

\$16 540

\$14 970

\$13 410

\$11 840

\$10 260

\$ 8 690

\$ 7 120

\$ 5 530

\$ 5 530";

- (d) in sections 93B(1)(c)(ii) and 93C(1)(d)(ii) for "\$362" **substitute** "\$390";
 - (e) in sections 98(1)(a), 98(1)(b) and 98(3) for "\$93 080" **substitute** "\$100 300";
 - (f) in section 98A(1) for "\$50 000" **substitute** "\$53 880";
 - (g) in section 98A(2) for "\$10 000" **substitute** "\$10 770"
 - (h) in section 99(5) for "\$317" (where twice occurring) **substitute** "\$407";
 - (i) in section 125(1)(a)(iii) for "\$250" **substitute** "\$407";
 - (j) in section 125A(3)(c) for "\$378" **substitute** "\$407";
-

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- (k) in section 129B(7) for "\$5700" **substitute** "\$8090";
 - (l) in sections 135A(7)(a)(i) and 135A(7)(b)(i) for "\$29 860" **substitute** "\$32 170".
 - (m) in section 135A(7)(a)(ii) for "\$671 960" **substitute** "\$724 070";
 - (n) in section 135A(7)(b)(ii) for "\$298 640" **substitute** "\$326 380".

50. Supreme Court—limitation of jurisdiction

- (1) In section 63(1)(d) of the **Accident Compensation (WorkCover) Act 1992** after "1994" (where last occurring) **insert** "and as amended by sections 32 and 33 of the **Accident Compensation (Amendment) Act 1996**".
 - (2) In section 85(9) of the **Constitution Act 1975** after "1994" **insert** "and as amended by section 50(1) of the **Accident Compensation (Amendment) Act 1996**".
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**PART 3—AMENDMENT OF ACCIDENT COMPENSATION
(WORKCOVER INSURANCE) ACT 1993**

51. Amendment of section 7

- (1) In section 7(1) of the **Accident Compensation (WorkCover Insurance) Act 1993** for "has paid or is liable to pay rateable remuneration exceeding the exemption limit" substitute "employs a worker within the meaning of section 5(1) of the **Accident Compensation Act 1985**".
 - (2) For section 7(1A) of the **Accident Compensation (WorkCover Insurance) Act 1993** substitute—
 - "(1A) Subject to sub-section (1B), sub-section (1) does not apply in respect of a financial year or part of a financial year during which the employer has reasonable grounds for believing that the total rateable remuneration that the employer is or will be liable to pay during that financial year does not exceed the exemption limit.
 - (1B) Sub-section (1A) does not operate to exclude the application of sub-section (1) to an employer who employs an apprentice within the meaning of section 5(1) of the **Accident Compensation Act 1985**."
 - (3) For section 7(4) of the **Accident Compensation (WorkCover Insurance) Act 1993** substitute—
 - "(4) An employer in respect of which sub-section (1A) applies is deemed to have in force a policy of insurance under sub-section (1) with the Authority for the purposes of this Act during the period in respect of which sub-section (1A) applies."
 - (4) Section 7 of the **Accident Compensation (WorkCover Insurance) Act 1993** as amended
-

by this section applies to and in respect of the financial year commencing on 1 July 1996 and to each subsequent financial year.

(5) For section 55(2)(a) of the **Accident Compensation (WorkCover Insurance) Act 1993** substitute—

"(a) in respect of which section 7(1A) applies; or".

(6) In section 57(1) of the **Accident Compensation (WorkCover Insurance) Act 1993** for "whose rateable remuneration at the time of the relevant injury did not exceed the exemption limit" substitute " in respect of which at the time of the relevant injury section 7(1A) applies".

52. Amendment of section 13

In section 13 of the **Accident Compensation (WorkCover Insurance) Act 1993** after "had" insert "or did not have".

53. Amendment of section 16

In section 16(1)(c) of the **Accident Compensation (WorkCover Insurance) Act 1993** for "issued" substitute "which is in force".

54. Amendment of section 23

In section 23(3) of the **Accident Compensation (WorkCover Insurance) Act 1993** after "comply with" insert "a notice received under".

55. Amendment of section 25

(1) In section 25(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**—

(a) in paragraph (a) for ", 20 or 23" substitute "or 20 or a notice received under section 23(1) or 23(2)";

- (b) in paragraph (c) for "23(3)" **substitute** "23(4)";
 - (c) for "previously estimated or assessed (if any)" **substitute** "calculated on the basis of the employer's rateable remuneration previously estimated, assessed or certified, as the case requires".
- (2) For section 25(3) of the **Accident Compensation (WorkCover Insurance) Act 1993 substitute—**
- "(3) The Authority may remit the whole or any part of any default penalty imposed under this section.
 - (4) An authorised insurer may, in accordance with guidelines issued by the Authority, remit the whole or any part of any default penalty imposed under this section."

56. Amendment of section 49

After section 49(4) of the **Accident Compensation (WorkCover Insurance) Act 1993 insert—**

- '(5) This section extends to the Authority in respect of any rights under re-insurance arrangements entered into under section 34 as if a reference to "appropriate policy holders" includes a reference to the Authority.'

57. Amendment of section 57

After section 57(4) of the **Accident Compensation (WorkCover Insurance) Act 1993 insert—**

- "(5) An employer must not fail to comply with sub-section (2).
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Penalty: 10 penalty units for a first offence.
20 penalty units for a second or
subsequent offence."

58. Statute law revision

In the **Accident Compensation (WorkCover Insurance) Act 1993**—

- (a) in section 54(3) for "a authorised" **substitute** "an authorised";
 - (b) in section 65(2)(a) for "the Act" **substitute** "this Act";
 - (c) in section 66(1)(g) for "or substantially influence the exercise of" **substitute** ", or substantially influence the exercise of,";
 - (d) in section 70(1)(d) for "delivery" **substitute** "deliver";
 - (e) in section 72(2)(c) after "(c)" **insert** "may";
 - (f) in section 72(2)(d) after "(d)" **insert** "may".
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NOTES

† *Minister's second reading speech—*

Legislative Assembly: 16 May 1996

Legislative Council: 5 June 1996

The long title for the Bill for this Act was "to amend the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993** and for other purposes."

Constitution Act 1975:

Absolute majorities:

Legislative Assembly: 5 June 1996

Legislative Council: 20 June 1996