

Version No. 154
Workers Compensation Act 1958
No. 6419 of 1958

Version incorporating amendments as at 1 July 2010

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An Act to consolidate the Law relating to Compensation to
Workers for Injuries arising out of or in the Course of their
Employment.

BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):

1 Short title and commencement

Nos 5601 s. 1,
5676 s. 4(2)(a).

- (1) This Act may be cited as the **Workers Compensation Act 1958** and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

*	*	*	*	*	
					S. 1(2) amended by Nos 8084 s. 4(2)(a), 8727 s. 3(1), 8733 s. 24(2), 9297 ss 10(2), 11(m), 9613 s. 3(a), 9683 s. 2(a)–(c), repealed by No. 10191 s. 270(1).

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s. 1A

S. 1A
inserted by
No. 10191
s. 257,
substituted by
No. 83/1987
s. 109(1).

1A Application of Act

- (1) Despite anything to the contrary in this Act—
 - (a) this Act applies to and in relation to an injury to a worker—
 - (i) before the appointed day arising out of or in the course of employment before the appointed day; or
 - (ii) after the appointed day arising out of or in the course of employment solely before the appointed day; and
 - (b) this Act does not apply to or in relation to an injury to a worker on or after the appointed day arising out of or in the course of employment on or after the appointed day.
- (2) Nothing in this section prevents a worker from being entitled to compensation under this Act in respect of a disease due to the nature of any employment in which the worker was employed before the appointed day if the worker was not employed in employment of that nature on or after the appointed day.
- (3) This Act shall be read together with the **Accident Compensation Act 1985**.

S. 1AA
inserted by
No. 37/1992
s. 7.

1AA Compensation for death of worker

- (1) Compensation for the death of a worker is not payable under this Act if compensation for the death of the worker has been paid under the **Accident Compensation Act 1985**.
- (2) If a claim for compensation in respect of the death of a worker is made under the **Accident Compensation Act 1985**, a claim must not be made under this Act by any dependant of the worker unless the claim made under the **Accident Compensation Act 1985** is withdrawn or is rejected.

- (3) Subsection (1) does not affect the application of the principle referred to in section 129B(6)(a) of the **Accident Compensation Act 1985**.
- (4) This section applies in relation to deaths occurring on or after the appointed day but nothing in this section affects any payment of compensation made before the day on which section 7 of the **Accident Compensation (Further Amendment) Act 1992** comes into operation.

1B Construction of references

S. 1B
inserted by
No. 10191
s. 257.

Any reference to this Act or to any provision of this Act in any other Act (except the **Accident Compensation Act 1985**) or in any regulation notice legal or other proceeding instrument document or other writing of any kind whatsoever shall, so far as relates to any matter to which this Act pursuant to section 1A(1)(a) does not apply and if not inconsistent with the context or subject-matter, be deemed and taken to be a reference to the **Accident Compensation Act 1985** or the corresponding provision of that Act.

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;

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s. 2

(b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation rule order application claim determination award assessment certificate appointment policy reference arrangement fund notice judgment appeal proceeding liability or right made effected issued granted given presented accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.

No. 5676 s. 15.
S. 2(3)
amended by
No. 8181
s. 2(1)(Sch.
item 191).

(3) Notwithstanding the repeal by this Act of the **Workers Compensation Act 1953** and the **Workers Compensation (Amendment) Act 1953** the provisions of section fifteen of the former Act as re-enacted by section eight of the latter Act shall continue in operation and be given effect according to their tenor so long as the circumstances require; and without limiting the operation of the foregoing provisions of this subsection it is hereby declared that the provisions of the said section fifteen as so re-enacted are as reproduced in the Second Schedule to this Act.

S. 2(4)
inserted by
No. 8417 s. 2.

(4) Notwithstanding anything to the contrary in any rule of law or construction the provisions of this Act as in force immediately before the commencement of the **Workers Compensation Act 1973** so far as they relate to rates or amounts of compensation, shall apply with respect to every payment of compensation made on or after the 6th March, 1973 irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation and—

- (a) notwithstanding that an award for a lesser rate or amount may have been made by the Board before the commencement of the **Workers Compensation Act 1973**; and
- (b) notwithstanding that payments at a lesser rate or of a lesser amount may have been made before the commencement of the **Workers Compensation Act 1973**—

and every policy of accident insurance or indemnity which operated to indemnify an employer against claims which arose under the Act before the commencement of the **Workers Compensation Act 1973** shall notwithstanding anything to the contrary therein be read and construed as fully insuring or indemnifying the employer against the increased liability incurred by reason of the provision made by the **Workers Compensation Act 1973**.

2A Transitional—1975 amendments—compensation

S. 2A
inserted by
No. 8733 s. 2.

- (1) The provisions of this Act, so far as they relate to amounts of compensation payable in accordance with the Table appended to subsection (1) of section 11 in respect of an injury of a worker shall—
 - (a) where the injury occurs on or after the 1st day of July, 1975 and before the commencement of section 3 of the **Workers Compensation (Amendment) Act 1982**—
apply as amended by the **Workers Compensation (Amendment) Act 1975**;
and
 - (b) except as provided by paragraph (a)—
continue to apply where the injury occurred before the 1st day of July, 1975,
notwithstanding the commencement of section 7 of the **Workers Compensation**

S. 2A(1)(a)
amended by
No. 9840
s. 2(a).

S. 2A(1)(b)
amended by
No. 9840
s. 2(b).

s. 2A

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- (**Amendment**) **Act 1975** as in force immediately before the said commencement.
- (2) The provisions of this Act, so far as they relate to amounts of compensation payable in respect of the death of a worker shall—
- (a) where the death of a worker occurs on or after the 1st day of July, 1975—apply as amended by the **Workers Compensation (Amendment) Act 1975**; and
 - (b) except as provided by paragraph (a)—continue to apply notwithstanding the commencement of section 6 of the **Workers Compensation (Amendment) Act 1975** as in force immediately before the said commencement.
- (3) Notwithstanding anything to the contrary in any rule of law or construction, the provisions of this Act as amended by the **Workers Compensation (Amendment) Act 1975**, so far as they relate to rates or amounts of compensation payable otherwise than in respect of the death of a worker or in accordance with the Table appended to subsection (1) of section 11, shall apply with respect to every payment of compensation made on or after the 1st day of July, 1975 irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation and notwithstanding that compensation had accrued or was payable before the 1st day of July, 1975 but was unpaid before that date or that—
- (a) an award for a lesser rate or amount may have been made by the Board before the said day; or
 - (b) payment at a lesser rate or of a lesser amount may have been made before the said day.
-

2B Transitional—1975 amendments—insurance

- (1) This section applies to a policy of accident insurance or indemnity operating to insure or indemnify an employer against claims under this Act.
- (2) Subject to subsections (3) and (4), a policy shall not insure or indemnify the employer against any additional amount payable by him by virtue of the provisions of the **Workers Compensation (Amendment) Act 1975**.
- (3) Where the employer is not entitled to be recompensed from the Fund for any additional amount payable by him the policy shall insure or indemnify the employer for that amount.
- (4) Subsection (3) shall not be construed as having required an employer to be insured or indemnified in respect of any amount in respect of which an employer had elected not to be insured or indemnified pursuant to the provisions of section 72(1)(a) as in force before the appointed day.
- (5) In this section and in section 2C—

S. 2B
inserted by
No. 8733 s. 2,
substituted by
No. 9297 s. 2.

S. 2B(4)
amended by
No. 10191
s. 258(1)(a)
(i)–(iii).

additional amount means an amount by which the sum payable as compensation under this Act as in force immediately before 1 July 1975 in respect of an injury of a worker arising out of or in the course of the employment of the worker before 1 July 1975 is increased by virtue of a provision of the **Workers Compensation (Amendment) Act 1975**;

employer means an employer who was required to obtain a policy of accident insurance or indemnity pursuant to section 72(1)(a) as in force before the appointed day.

S. 2B(5) def. of
employer
substituted by
No. 10191
s. 258(1)(b).

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s. 2C

S. 2B(5) def. of
Fund
repealed by
No. 10191
s. 258(1)(b).

S. 2C
inserted by
No. 8733 s. 2,
substituted by
No. 9297 s. 2.

S. 2C(2)
amended by
No. 10191
s. 258(2)(a).

S. 2C(3)
amended by
Nos 10191
s. 258(2)(b),
50/1994
s. 110(a).

S. 2C(4)
amended by
Nos 10191
s. 258(2)(c),
50/1994
s. 110(b).

2C Transitional—1975 amendments—recompense etc.

- (1) Where an additional amount is payable by an employer as compensation by virtue of section 2A(3), so far as it relates to rates of compensation, the employer shall, subject to subsections (2), (3) and (4), be entitled to be recompensed from the Fund for that additional amount.
- (2) Where in pursuance of the provisions of section 72(1)(a) as in force before the appointed day an employer had elected not to be indemnified or insured in respect of the first \$500 of any claim for compensation, subsection (1) shall not entitle him to be recompensed from the Fund in respect of that first \$500.
- (3) Where in pursuance of this Act the Board has made, the Tribunal has made or the County Court makes (as the case may be) an award with the consent of the parties to the proceedings before it and the amount of compensation awarded exceeds \$25 930, subsection (1) shall not entitle the employer to be recompensed from the Fund in respect of the amount by which the amount awarded exceeds \$25 930.
- (4) Where in pursuance of clause 1(b)(iii) under the heading "The Clauses Referred To" in section 9, the Board has determined, the Tribunal has determined or the County Court determines (as the case may be) that the total liability of an employer exceeds \$25 930, subsection (1) shall not entitle the employer to be recompensed from the Fund in respect of the amount by which the total liability of the employer exceeds \$25 930.

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s. 2C

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- (5) An insurer may, and shall if required by the Authority to do so, pay on behalf of an employer any additional amount payable as compensation by virtue of section 2A(3), so far as it relates to rates of compensation. **S. 2C(5) amended by Nos 10191 s. 258(2)(d), 50/1994 s. 110(c).**
- (6) Subsection (5) shall not be construed as permitting the Authority to require an insurer to pay or the insurer to pay the first \$500 of any claim in respect of which the employer had elected not to be indemnified or insured pursuant to the provisions of section 72(1)(a) as in force before the appointed day. **S. 2C(6) amended by Nos 10191 s. 258(2)(e) (i)-(iii), 50/1994 s. 110(c).**
- (7) Subject to subsections (8) and (9), where an insurer pays or is required to pay an amount under subsection (5), the insurer shall be entitled to be recompensed from the Fund for that additional amount.
- (8) Where in pursuance of this Act the Board has made, the Tribunal has made or the County Court makes (as the case may be) an award with the consent of the parties to the proceedings before it and the amount of compensation awarded exceeds \$25 930, subsection (7) shall not entitle the insurer to be recompensed from the Fund in respect of the amount by which the amount awarded exceeds \$25 930. **S. 2C(8) amended by Nos 10191 s. 258(2)(f), 50/1994 s. 110(a).**
- (9) Where in pursuance of clause 1(b)(iii) under the heading "The Clauses Referred To" in section 9, the Board has determined, the Tribunal has determined or the County Court determines (as the case may be) that the total liability of an employer exceeds \$25 930, subsection (7) shall not entitle the insurer to be recompensed from the Fund in respect of the amount by which the total liability exceeds \$25 930. **S. 2C(9) amended by Nos 10191 s. 258(2)(g), 50/1994 s. 110(b).**
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s. 2C

(10) Where in respect of an injury of a worker an employer or insurer—

- (a) has been recompensed from the Fund in pursuance of subsection (1) or subsection (7); and
- (b) has recovered by virtue of section 62 an amount of damages in respect of that injury—

the employer or insurer shall forthwith pay into the Fund an amount equal to an amount calculated in accordance with the formula $\frac{A \times B}{C}$ where—

A is the amount that has been recompensed from the Fund;

B is the amount recovered by virtue of section 62; and

C is the total amount of compensation payable under this Act.

(11) Where—

S. 2C(11)
amended by
Nos 10191
s. 258(2)(h),
50/1994
s. 110(d).

- (a) in pursuance of section 9(2) the County Court awards a lump sum in respect of an injury of a worker arising out of or in the course of the employment of the worker before 1 July 1975; and

S. 2C(11)(a)
amended by
Nos 10191
s. 258(2)(h),
50/1994
s. 110(d).

- (b) the County Court considers that the worker's total or partial incapacity for work resulting from that injury continues or will continue after 30 June 1975—

S. 2C(11)(b)
amended by
Nos 10191
s. 258(2)(h),
50/1994
s. 110(d).

the County Court shall specify—

- (c) the period of total or partial incapacity for which the award is calculated;

- (d) the weekly payment used to calculate the sum awarded for the period of total or partial incapacity ending on 30 June 1975; and
- (e) the weekly payment used to calculate the sum awarded for the period of total or partial incapacity commencing on and from 1 July 1975.

2D Transitional—1979 amendments—compensation

S. 2D
inserted by
No. 9297 s. 2.

- (1) Subject to subsection (2) but notwithstanding anything to the contrary in any other provision of this Act or in any rule of law or construction, the provisions of this Act as amended by section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** so far as they relate to the rates or amounts of compensation payable in accordance with the clauses under the heading "The Clauses Referred To" in section 9 in respect of an injury of a worker shall apply with respect to every payment of compensation made on or after the commencement of this section, whether the date of the occurrence of the injury was before or is on or after the commencement of this section and irrespective of the origin of the injury or disease giving rise to the compensation, and notwithstanding the fact that compensation had accrued or was payable before the said commencement but was unpaid before that date or that—
 - (a) an award for a lesser rate or amount may have been made by the Board before the said date; or
 - (b) payment at a lesser rate or of a lesser amount may have been made before that date.
- (2) Notwithstanding anything to the contrary in this Act or in any rule of law or construction, where the rates or amounts of compensation payable in

s. 2D

accordance with the clauses under the heading "The Clauses Referred To" in section 9 in respect of an injury of a worker are increased or decreased in any year pursuant to the provisions of section 9(3), the rates and amounts of compensation as so increased or decreased shall apply in respect of every payment of compensation accruing on or after 1 July in that year whether the date of the occurrence of the injury was before or is on or after that date and irrespective of the origin of the injury or disease giving rise to the compensation, and notwithstanding the fact that—

S. 2D(2)(a)
amended by
Nos 10191
s. 258(3),
50/1994
s. 110(e).

- (a) an award for a lesser rate or amount may have been made by the Board, the Tribunal or the County Court (as the case may be) before that date; or
 - (b) payments at a lesser rate or of a lesser amount may have been made before that date.
- (3) The provisions of this Act, so far as they relate to rates or amounts of compensation payable in accordance with the clauses under the heading "The Clauses Referred To" in section 9 in respect of the death of a worker, shall—
- (a) where the death occurs on or after the commencement of this section—apply as amended by section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979**; and
 - (b) except as provided by paragraph (a)—continue to apply notwithstanding the commencement of section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** as in force immediately before the said commencement.

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- (4) Where the rates or amounts of compensation payable in accordance with the clauses under the heading "The Clauses Referred To" in section 9 in respect of the death of a worker are increased or decreased in accordance with the provisions of section 9(3), the rates or amounts of compensation shall—
- (a) where the death occurs on or after the date of the increase or decrease—apply as so increased or decreased; and
 - (b) except as provided by paragraph (a)—continue to apply notwithstanding the increase or decrease as in force immediately before the increase or decrease.

2E Transitional—1979 amendments—insurance

S. 2E
inserted by
No. 9297 s. 2.

- (1) This section applies to a policy of accident insurance or indemnity operating to insure or indemnify an employer against claims under this Act.
- (2) Subject to subsections (3) and (4), a policy shall not insure or indemnify the employer against any additional amount payable by him by virtue of the provisions of section 2D(1) or section 2D(2).
- (3) Where the employer is not entitled to be recompensed from the Fund for any additional amount payable by him, the policy shall insure or indemnify the employer for that amount.
- (4) Subsection (3) shall not be construed as having required an employer to be insured or indemnified in respect of an amount in respect of which an employer had elected not to be insured or indemnified pursuant to the provisions of section 72(1)(a) as in force before the appointed day.

S. 2E(4)
amended by
No. 10191
s. 258(4)
(a)–(c).

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s. 2F

S. 2F
inserted by
No. 9297 s. 2.

2F Transitional—1979 amendments—recompense to employer

S. 2F(1)
amended by
No. 9613
s. 4(a).

- (1) Where an additional amount is payable by an employer as compensation by virtue of section 2D(1) or section 2D(2) so far as it relates to rates of compensation the employer shall, subject to subsections (1A), (2), (3) and (4), be entitled to be recompensed from the Fund for that additional amount.

S. 2F(1A)
inserted by
No. 9613
s. 4(b).

- (1A) An employer shall not be entitled to be recompensed from the Fund for an additional amount in respect of an injury of a worker occurring after 1 July 1982.

S. 2F(2)
amended by
No. 10191
s. 258(5)(a).

- (2) Where in pursuance of section 72(1)(a) as in force before the appointed day an employer had elected not to be insured or indemnified in respect of the first \$500 for a claim of compensation, subsection (1) shall not entitle him to be recompensed from the Fund in respect of that first \$500.

S. 2F(3)
amended by
Nos 10191
s. 258(5)(b),
50/1994
s. 110(a).

- (3) Where in pursuance of this Act the Board has made, the Tribunal has made or the County Court makes (as the case may be) an award with the consent of the parties to the proceedings before it, and the amount of the compensation awarded exceeds \$36 960, or (as the case requires) that amount as increased or decreased in accordance with the provisions of section 9(3), subsection (1) shall not entitle the employer to be recompensed from the Fund in respect of the amount by which the amount awarded exceeds \$36 960, or (as the case requires) that amount as increased or decreased in accordance with the provisions of section 9(3).

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- (4) Where, in pursuance of clause 1(b)(iii) under the heading "The Clauses Referred To" in section 9 the Board has determined, the Tribunal has determined or the County Court determines (as the case may be) that the total liability of an employer exceeds \$36 960, or (as the case requires) that amount as increased or decreased in accordance with section 9(3), subsection (1) shall not entitle the employer to be recompensed from the Fund in respect of the amount by which the total liability of the employer exceeds \$36 960 or (as the case requires) that amount as increased or decreased in accordance with section 9(3).

S. 2F(4)
amended by
Nos 10191
s. 258(5)(c),
50/1994
s. 110(b).

2G Transitional—1979 amendments—recompense to insurer

S. 2G
inserted by
No. 9297 s. 2.

- (1) An insurer may, and shall, if required by the Authority to do so, pay on behalf of an employer any additional amount payable as compensation by virtue of section 2D(1) or section 2D(2), so far as it relates to rates of compensation.
- (2) Subsection (1) shall not be construed as permitting the Authority to require an insurer to pay or the insurer to pay the first \$500 of any claim in respect of which the employer had elected not to be insured or indemnified pursuant to the provisions of section 72(1)(a) as in force before the appointed day.
- (3) Subject to subsections (3A), (4) and (5), where an insurer pays or is required to pay an amount under subsection (1), the insurer shall be entitled to be recompensed for that additional amount from the Fund.
- (3A) An insurer shall not be entitled to be recompensed from the Fund for an amount paid or required to be paid under subsection (1) on behalf of an employer which relates to any additional amount

S. 2G(1)
amended by
Nos 10191
s. 258(6)(a),
50/1994
s. 110(c).

S. 2G(2)
amended by
Nos 10191
s. 258(6)(b)
(i)–(iii),
50/1994
s. 110(c).

S. 2G(3)
amended by
No. 9613
s. 5(a).

S. 2G(3A)
inserted by
No. 9613
s. 5(b).

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payable in respect of an injury of a worker occurring after 1 July 1982.

S. 2G(4)
amended by
Nos 10191
s. 258(6)(c),
50/1994
s. 110(a).

- (4) Where in pursuance of this Act the Board has made, the Tribunal has made or the County Court makes (as the case may be) an award with the consent of the parties to the proceedings before it and the amount of compensation awarded exceeds \$36 960, or (as the case requires) that amount as increased or decreased in accordance with the provisions of section 9(3), subsection (3) shall not entitle the insurer to be recompensed from the Fund in respect of the amount by which the amount awarded exceeds \$36 960, or (as the case requires) that amount as increased or decreased in accordance with the provisions of section 9(3).

S. 2G(5)
amended by
Nos 10191
s. 258(6)(d),
50/1994
s. 110(b).

- (5) Where, in pursuance of clause 1(b)(iii) under the heading "The Clauses Referred To" in section 9, the Board has determined, the Tribunal has determined or the County Court determines (as the case may be) that the total liability of an employer exceeds \$36 960, or (as the case requires) that amount as increased or decreased in accordance with section 9(3), subsection (3) shall not entitle the insurer to be recompensed from the Fund in respect of the amount by which the total liability of the employer exceeds \$36 960 or (as the case requires) that amount as increased or decreased in accordance with section 9(3).

S. 2H
inserted by
No. 9297 s. 2.

2H Transitional—1979 amendments—payments into the Fund

Where in respect of an injury of a worker an employer or insurer—

- (a) has been recompensed from the Fund in pursuance of section 2F(1) or section 2G(3);
and

(b) has recovered, by virtue of section 62, an amount of damages in respect of that injury—

the employer or insurer shall forthwith pay into the Fund an amount equal to an amount calculated in accordance with the formula $\frac{A \times B}{C}$ where—

A is the amount that has been recompensed from the Fund;

B is the amount recovered by virtue of section 62; and

C is the total amount of compensation payable under this Act.

2J Transitional—1979 amendments—determinations by the County Court

S. 2J inserted by No. 9297 s. 2.

(1) Where—

S. 2J(1) amended by Nos 10191 s. 258(7), 50/1994 s. 110(d).

(a) in pursuance of section 9(2) the County Court awards a lump sum in respect of an injury of a worker arising out of or in the course of the employment of the worker before the commencement of this section; and

S. 2J(1)(a) amended by Nos 10191 s. 258(7), 50/1994 s. 110(d).

(b) the County Court considers that the worker's total or partial incapacity for work resulting from that injury will continue on and after the commencement of this section—

S. 2J(1)(b) amended by Nos 10191 s. 258(7), 50/1994 s. 110(d).

the County Court shall specify—

(c) the period of total or partial incapacity for which the award is calculated;

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- (d) the weekly payment used to calculate the sum awarded for the period of total or partial incapacity ending immediately before the commencement of this section; and
- (e) the weekly payment used to calculate the sum awarded for the period of total or partial incapacity commencing on and from the commencement of this section.

S. 2J(2)
amended by
Nos 10191
s. 258(7),
50/1994
s. 110(d).

(2) Where—

- (a) the rates or amounts of compensation payable in accordance with the clauses under the heading "The Clauses Referred To" in section 9 are increased or decreased in accordance with the provisions of section 9(3);
- (b) in pursuance of section 9(2) the County Court awards a lump sum in respect of an injury of a worker arising out of or in the course of the employment of the worker before the date on which the rates or amounts of compensation are increased or decreased; and
- (c) the County Court considers that the worker's total or partial incapacity for work resulting from that injury will continue on and after the date of the increase or decrease—

S. 2J(2)(b)
amended by
Nos 10191
s. 258(7),
50/1994
s. 110(d).

S. 2J(2)(c)
amended by
Nos 10191
s. 258(7),
50/1994
s. 110(d).

the County Court shall specify—

- (d) the period of total or partial incapacity for which the award is calculated;
- (e) the weekly payment used to calculate the sum awarded for the period of total or partial incapacity ending immediately before the date of the increase or decrease; and

- (f) the weekly payment used to calculate the sum awarded for the period of total or partial incapacity commencing on and from the date of the increase or decrease.

**2K Transitional—1975 and 1979 amendments—
operation of section 72(1)(a)**

S. 2K
inserted by
No. 9297 s. 2,
amended by
No. 10191
s. 258(8)(a)(b).

An employer is not guilty of an offence against the provisions of section 72(1)(a) as in force before the appointed day by reason only of the fact that a policy of accident insurance or indemnity obtained by him does not insure or indemnify him in respect of an additional amount within the meaning of section 2L or section 2B(5) if the amount is an amount in respect of which the employer or the insurer is entitled to be recompensed from the Fund.

2L Transitional—definitions

S. 2L
inserted by
No. 9297 s. 2.

In sections 2E to 2J inclusive—

additional amount means—

- (a) in relation to any increase in the rates or amounts of compensation by virtue of the provisions of section 2D(1)—an amount by which the sum payable as compensation under this Act as in force immediately before the commencement of this section in respect of an injury of a worker arising out of or in the course of the employment of the worker before the said commencement is increased by virtue of the provisions of section 2D(1); and
- (b) in relation to any increase in the rates or amounts of compensation by virtue of the provisions of section 2D(2)—an amount by which the sum payable as compensation under this Act as in force

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immediately before the date of the increase in respect of an injury of a worker arising out of or in the course of the employment of the worker before that date is increased by virtue of the provisions of section 2D(2);

S. 2L def. of *employer* substituted by No. 10191 s. 258(9).

employer means an employer who was required to obtain a policy of accident insurance or indemnity pursuant to section 72(1)(a) as in force before the appointed day.

S. 2L def. of *Fund* repealed by No. 10191 s. 258(9).

* * * * *

Nos 5601 s. 3, 5676 ss 2, 3.

3 Definitions

- (1) In this Act unless inconsistent with the context or subject-matter—

accident insurance means insurance against liability in relation to workers compensation to which employers are subject under this or any other Act or at common law or otherwise;

S. 3(1) def. of *Authority* inserted by No. 50/1993 s. 112(1)(a).

Authority means the Victorian WorkCover Authority;

S. 3(1) def. of *Board* amended by No. 10191 s. 259(1)(a).

Board means the Workers Compensation Board established under this Act as in force before the appointed day;

S. 3(1) def. of *Commission* inserted by No. 10191 s. 259(1)(b), amended by No. 50/1994 s. 111(a).

Commission means the Accident Compensation Commission established under the **Accident Compensation Act 1985** as in force before the commencement of section 9 of the **Accident Compensation (WorkCover) Act 1992**;

dependants means such persons as were wholly mainly or in part dependent upon the earnings of the worker at the time of the death or who would but for the incapacity due to the injury have been so dependent;

S. 3(1) def. of *dependants* substituted by No. 7292 s. 2(a).

disease includes any physical or mental ailment disorder defect or morbid condition whether of sudden or gradual development and also includes the aggravation acceleration exacerbation or recurrence of any pre-existing disease as aforesaid;

S. 3(1) def. of *disease* amended by No. 9297 s. 3(1)(a).

employer includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship or otherwise the latter shall for the purposes of this Act be deemed to continue to be the employer of the worker whilst he is working for that other person;

Fund means the WorkCover Authority Fund established under the **Accident Compensation Act 1985**;

S. 3(1) def. of *Fund* inserted by No. 10191 s. 259(1)(c), substituted by No. 50/1994 s. 111(b).

Government department includes any Government department heretofore or hereafter created and also the State Transport Authority, Metropolitan Transit Authority and the State Rivers and Water Supply Commission;

S. 3(1) def. of *Government department* amended by Nos 8181 s. 2(1)(Sch. item 192), 8353 s. 19, 9549 s. 2(1)(Sch. item 255), 9921 s. 255.

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S. 3(1) def. of
injury
substituted by
Nos 7292
s. 2(b), 9297
s. 3(1)(b),
amended by
No. 9372 s. 2.

injury means any physical or mental injury, and without limiting the generality of the foregoing includes—

- (a) a disease contracted by a worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor and contributed to a recognizable degree; and
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was a contributing factor and contributed to a recognizable degree to that recurrence, aggravation, acceleration, exacerbation or deterioration—

and for the purposes of this interpretation the employment of a worker shall be taken to include any travelling referred to in section 8(2);

S. 3(1) def. of
insurer
amended by
No. 10089
s. 4(1).

insurer means the State Insurance Office or any company approved by the Governor in Council as an insurer for the purposes of this Act;

S. 3(1) def. of
medical practitioner
repealed by
No. 23/1994
s. 118(Sch. 1
item 59.1(a)).

* * * * *

member of a family means wife or husband father mother grandfather grandmother step-father step-mother son daughter grandson granddaughter step-son step-daughter brother sister half-brother half-sister and for the purposes of this Act includes any person who

stands in loco parentis to another person and also that other person;

midwife means a person registered under the Health Practitioner Regulation National Law—

S. 3(1) def. of *midwife* inserted by No. 13/2010 s. 51(Sch. item 60.1).

- (a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and
- (b) in the register of midwives kept for that profession;

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 60.1).

outworker means a person to whom articles or materials are given out to be made up cleaned washed altered ornamented finished or repaired or adapted for sale in his own home or in other premises not under the control or management of the person who gave out the materials or articles;

place of practice means the consulting rooms of the registered medical practitioner;

S. 3(1) def. of *place of practice* inserted by No. 41/2006 s. 31(b).

port includes place or harbour;

prescribed means prescribed by this Act or the regulations or the rules;

S. 3(1) def. of *prescribed* inserted by No. 10191 s. 259(1)(d).

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S. 3(1) def. of
*registered
chiropractor*
inserted by
No. 13/2010
s. 51(Sch.
item 60.1).

registered chiropractor means a person registered under the Health Practitioner Regulation National Law to practise in the chiropractic profession (other than as a student);

S. 3(1) def. of
*registered
dentist*
inserted by
No. 13/2010
s. 51(Sch.
item 60.1).

registered dentist means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division

S. 3(1) def. of
*registered
medical
practitioner*
inserted by
No. 23/1994
s. 118(Sch. 1
item 59.1(b)),
amended by
No. 97/2005
s. 182(Sch. 4
item 54),
substituted by
No. 13/2010
s. 51(Sch.
item 60.2).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of
*registered
optometrist*
inserted by
No. 13/2010
s. 51(Sch.
item 60.1).

registered optometrist means a person registered under the Health Practitioner Regulation National Law to practise in the optometry profession (other than as a student);

S. 3(1) def. of
*registered
osteopath*
inserted by
No. 13/2010
s. 51(Sch.
item 60.1).

registered osteopath means a person registered as under the Health Practitioner Regulation National Law to practise in the osteopathy profession (other than as a student);

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registered physiotherapist means a person registered as a physiotherapist under the Health Practitioner Regulation National Law;

S. 3(1) def. of *registered physiotherapist* inserted by No. 13/2010 s. 51(Sch. item 60.1).

registered podiatrist means a person registered under the Health Practitioner Regulation National Law to practise in the podiatry profession (other than as a student);

S. 3(1) def. of *registered podiatrist* inserted by No. 13/2010 s. 51(Sch. item 60.1).

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S. 3(1) def. of *Registrar* substituted by No. 10191 s. 259(1)(d), repealed by No. 50/1994 s. 111(c).

* * * * *

S. 3(1) def. of *rules* inserted by No. 10191 s. 259(1)(d), repealed by No. 50/1994 s. 111(c).

seaman means a worker employed as a master officer seaman apprentice or in any other capacity whatever on board a ship by the owner or charterer thereof;

ship includes any ship vessel boat or other craft;

* * * * *

S. 3(1) defs of *Tribunal* and *Tribunal Fund* inserted by No. 10191 s. 259(1)(e), repealed by No. 50/1993 s. 112(1)(b).

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S. 3(1) def. of
*the appointed
day*
inserted by
No. 10191
s. 259(1)(e).

the appointed day means the appointed day within
the meaning of the **Accident Compensation
Act 1985**;

S. 3(1) def. of
*the Previous
Funds*
inserted by
No. 41/2006
s. 31(a).

the Previous Funds means the Insurers Guarantee
and Compensation Supplementation Fund
and the Workers Supplementation Fund
established under this Act as in force prior to
the appointed day;

S. 3(1) def. of
Tribunal
inserted by
No. 50/1994
s. 111(d).

Tribunal means the Accident Compensation
Tribunal established under the **Accident
Compensation Act 1985** as in force before
the commencement of section 6 of the
**Accident Compensation (WorkCover) Act
1992**;

S. 3(1) def. of
worker
amended by
Nos 7292
s. 2(c), 8271
s. 2(a).

worker does not include an outworker; but save as
aforesaid means any person (including a
domestic servant) who has entered into or
works under a contract of service or
apprenticeship or otherwise with an
employer whether by way of manual labour
clerical work or otherwise and whether the
contract is expressed or implied is oral or in
writing.

- (2) Any reference to a worker who has been injured
shall where the worker is dead include a reference
to his legal personal representative or to his
dependants or other person to whom or for whose
benefit compensation is payable.
- (3) As between a tributer or sub-tributer and the
lessee or owner of any mine or claim the tributer
or sub-tributer (as the case may be) shall for the
purposes of this Act be deemed to be working
under a contract of service with such lessee or
owner and such lessee or owner shall for the said

purposes be deemed to be the employer of such tributer or sub-tributer within the meaning of this Act.

In this subsection the expressions *claim lessee* *mine sub-tributer* and *tributer* have respectively the same meanings as in Part I or (if the case so requires) Part II of the **Mines Act 1958**.

- (4) Notwithstanding anything in this Act or any law where—
- (a) any person (in this subsection referred to as "the principal") in the course of or for the purposes of his trade or business enters into a contract with any other person or persons (in this subsection referred to as "the contractor") under which the contractor agrees—
 - (i) to fell trees or cut firewood and deliver the timber or firewood obtained therefrom to the principal; or
 - (ii) to fell trees or cut scrub on land in the occupation of the principal; or
 - (iii) to clear such land of stumps or logs; and
 - (b) the contractor does not either sublet the contract or employ workers or although employing workers actually performs any part of the work himself—

the contractor shall for the purposes of this Act be deemed to be working under a contract of service with an employer and the principal shall for the said purposes be deemed to be the employer of the contractor within the meaning of this Act.

- (5) Notwithstanding anything in this Act or any law, where a person engaged in driving a vehicle used for carrying passengers for reward has the use of

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that vehicle pursuant to a contract of bailment (not being a bona fide contract for the purchase of the vehicle whether by hire purchase or otherwise) under which he is required to pay any sum or sums (whether of fixed amount or proportionate to mileage or receipts or otherwise) for the use thereof, then for the purposes of this Act—

S. 3(5)(a)
amended by
No. 8804
s. 3(a).

(a) such person shall be deemed to be working under a contract of service with an employer; and

S. 3(5)(b)
amended by
No. 8804
s. 3(b).

(b) the person from whom the use of the vehicle is obtained under the said contract of bailment shall be deemed to be that employer.

S. 3(5)(c)
repealed by
No. 8271
s. 2(b).

* * * * *

(6) Notwithstanding anything in this Act or any law where any person (in this subsection referred to as *the principal*) in the course of and for the purposes of his trade or business enters into a contract with any other person (in this subsection referred to as the *contractor*)—

(a) under or by which the contractor agrees to perform any work not being work incidental to a trade or business regularly carried on by the contractor in his own name or under a firm or business name; and

(b) in the performance of which the contractor does not either sublet the contract or employ workers or although employing workers actually performs some part of the work himself—

then for the purposes of this Act the contractor shall be deemed to be working under a contract of service with an employer and the principal shall be deemed to be that employer.

(6A) Notwithstanding anything in this Act a share farmer shall be deemed to be a worker for the purposes of this Act, if and only if—

S. 3(6A)
inserted by
No. 9215
s. 2(1).

- (a) he is employed under a contract with the owner of the land under which he is entitled to receive as consideration whether in cash or in kind or partly in cash and partly in kind less than one-third of the income derived from the land; or
- (b) he is employed under a contract in writing which provides that the owner of the land shall be liable to pay compensation under this Act in respect of any injury arising out of or in the course of any work carried out by him in the performance of the contract.

(6B) A share farmer is not a worker for the purposes of this Act unless he is deemed to be a worker by virtue of subsection (6A).

S. 3(6B)
inserted by
No. 9215
s. 2(1).

(6C) A member of a share farmer's family who is employed by or assists the share farmer whether for remuneration or otherwise in the performance of the duties of the share farmer whether pursuant to the contract between the share farmer and the owner of the land or otherwise shall be deemed not to be a worker in the employ of the owner of the land by reason of the performance of such duties.

S. 3(6C)
inserted by
No. 9215
s. 2(1).

(6D) For the purposes of subsections (6A), (6B) and (6C)—

S. 3(6D)
inserted by
No. 9215
s. 2(1).

income in relation to land means the gross value of the production derived from the land;

owner in relation to land includes any person who is in possession of, or entitled to the receipt of the rents and profits from the land;

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primary production shall mean agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, cultivation of soils, gathering in of crops or rearing of livestock;

share farmer means a person who is under contract to the owner of land to perform any work in relation to land used substantially for primary production and who is to be remunerated in whole or in part by receiving a share of the income, whether in cash or in kind, derived from the land.

- (7) Notwithstanding anything in this Act or any law, where any person is ordinarily engaged in any employment in connexion with which persons customarily attend certain pre-arranged places in this Act called ***places of pick-up*** at which employers select and engage persons for employment, any such person shall be deemed, while in attendance at any such place of pick-up for the purpose of being so selected or while travelling thereto from his place of residence, or (where he fails to be so selected) while travelling from such place of pick-up to his place of residence, to be working under a contract of service with an employer, and the employer who last employed him in his customary employment shall be deemed to be that employer.

S. 3(7A)
inserted by
No. 9134 s. 2.

- (7A) Nothing in this Act shall operate to make an employer liable to pay compensation for an injury received after the commencement of the **Workers Compensation (Special Provisions) Act 1978** by a person who is engaged by that employer to participate as a contestant in any sporting or athletic activity if that injury is received while he is—

- (a) participating as a contestant in any sporting or athletic activity;
- (b) engaged in training or preparing himself with a view to his so participating; or
- (c) travelling between his place of residence and the place at which he is so participating or so engaged—

and if under the contract pursuant to which he does any of these things or any other contract with that employer he is not entitled to any remuneration other than the remuneration for the doing of those things.

- (7B) For the purposes of subsection (7A) *person* does not include a person engaged to participate as a rider or driver in horse, pony or trotting races at race-meetings within the meaning of the **Racing Act 1958** on a racecourse licensed under that Act or on lands otherwise authorized for the holding of race meetings under Part I of that Act.

S. 3(7B)
inserted by
No. 9134 s. 2.

- (7C) A pupil at a school within the meaning of Part IVA of the **Education Act 1958** who is employed pursuant to an arrangement within the meaning of that Part shall for the purposes of this Act be deemed to be a worker employed by the employer whilst he is employed pursuant to the arrangement.

S. 3(7A)
inserted by
No. 9136
s. 3(2), re-
numbered as
s. 3(7C) by
No. 9297
s. 4(1)(a),
substituted by
No. 9993
s. 19(2).

- (7D) The employer of a pupil employed pursuant to an arrangement referred to in subsection (7C) shall in respect of—

- (a) any liability to pay compensation under this Act in respect of an injury caused to the pupil; and
- (b) any other liability to pay damages with respect to the death of or the personal injury to the pupil in circumstances arising out of

S. 3(7B)
inserted by
No. 9136
s. 3(2), re-
numbered as
s. 3(7D) by
No. 9297
s. 4(1)(b),
amended by
Nos 9297
s. 4(1)(b),
10089 s. 4(1),
10191
s. 259(2)(a).

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his employment pursuant to that arrangement—

be deemed to hold a policy of insurance with the State Insurance Office for the full amount of such liability but otherwise having the same provisions as policies issued by it to employers who obtained policies from it in accordance with section 72(1)(a) as in force before the appointed day.

S. 3(7DA)
inserted by
No. 10156
s. 5(a).

(7DA) A student at a technical and further education college specified in Schedule 3 to the **Post-Secondary Education Act 1978** who is employed pursuant to an arrangement within the meaning of Division 5A of Part III of that Act shall for the purposes of this Act be deemed to be a worker whilst that student is employed pursuant to the arrangement.

S. 3(7DB)
inserted by
No. 10156
s. 5(a),
amended by
No. 10191
s. 259(2)(b).

(7DB) The employer of a student employed pursuant to an arrangement referred to in subsection (7DA) shall in respect of—

- (a) any liability to pay compensation under this Act in respect of an injury caused to the student; and
- (b) any other liability to pay damages with respect to the death of or the personal injury to the student in circumstances arising out of the employment of that student pursuant to that arrangement—

be deemed to hold a policy of insurance with the State Insurance Office for the full amount of that liability but otherwise having the same provisions as policies issued by it to employers who obtained policies from it in accordance with section 72(1)(a) as in force before the appointed day.

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* * * * *

S. 3(7C)
inserted by
No. 9136
s. 3(2), re-
numbered as
s. 3(7E) by
No. 9297
s. 4(1)(c),
amended by
Nos 9297
s. 4(1)(d),
10089 s. 4(1),
10156 s. 5(b),
repealed by
No. 10191
s. 259(2)(c).

(7F) The employer of an apprentice shall in respect
of—

S. 3(7F)
inserted by
No. 9297
s. 4(2),
amended by
Nos 10089
s. 4(1), 10191
s. 259(2)(d).

(a) any liability to pay compensation under this
Act in respect of injury occurring to the
apprentice during the period of indemnity;
and

(b) any other liability to pay damages in respect
of the death of or personal injury to the
apprentice, being death or injury that occurs
during the period of indemnity, in
circumstances arising out of such
employment—

be deemed to hold a policy of insurance with the
State Insurance Office for the full amount of that
liability but otherwise having the same provisions
as the provisions of policies issued by the State
Insurance Office to employers who obtained
policies from it in accordance with section
72(1)(a) as in force before the appointed day.

* * * * *

S. 3(7G)(7H)
inserted by
No. 9297
s. 4(2),
repealed by
No. 10191
s. 259(2)(e).

Workers Compensation Act 1958
No. 6419 of 1958

s. 3

S. 3(7J)
inserted by
No. 9297
s. 4(2),
amended by
No. 10089
s. 4(1).

(7J) An insurer (other than the State Insurance Office) shall not be subject to any civil or criminal liability by reason only of the fact that he fails in whole or in part to satisfy any claim made in respect of an apprentice, where the claim is one in respect of which the employer is indemnified under a policy deemed to be held under subsection (7F).

S. 3(7K)
inserted by
No. 9297
s. 4(2),
amended by
No. 10089
s. 4(1),
repealed by
No. 10191
s. 259(2)(e).

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S. 3(7M)
inserted by
No. 9297
s. 4(2),
repealed by
No. 10191
s. 259(2)(e).

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S. 3(7N)
inserted by
No. 9297
s. 4(2),
amended by
No. 10191
s. 259(2)(f).

(7N) In subsections (7F) and (7J), *apprentice* means—

- (a) an applicant for apprenticeship within the meaning of the **Industrial Training Act 1975** who was employed on probation on 1 January 1979;
- (b) an apprentice within the meaning of the **Industrial Training Act 1975** whose indentures of apprenticeship were executed by his employer on 1 January 1979;
- (c) an applicant for apprenticeship within the meaning of the **Industrial Training Act 1975** or an apprentice within the meaning of that Act, being an applicant or apprentice who commenced or commences employment as an apprentice (whether on probation or not) after 1 January 1979; and

- (d) an applicant for apprenticeship within the meaning of the **Industrial Training Act 1975** or an apprentice within the meaning of that Act, being an applicant or apprentice whose employment commenced or commences before, on or after the commencement of section 4 of the **Workers Compensation (Miscellaneous Provisions) Act 1979**.
- (7P) For the purposes of subsections (7F) and (7J), the period of indemnity—
- (a) in relation to a person to whom paragraph (a) or paragraph (b) of the interpretation of *apprentice* in subsection (7N) applies—is the period of twelve months commencing on 1 January 1979;
- (b) in relation to a person to whom paragraph (c) of the interpretation of *apprentice* in subsection (7N) applies—is the period of twelve months commencing on the day on which the person commenced or commences employment as an apprentice; and
- (c) in relation to a person to whom paragraph (d) of the interpretation of *apprentice* in subsection (7N) applies—is the period falling on or after the commencement of section 4 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** excluding any period of indemnity applicable in respect of the apprentice under paragraph (a), (b) or (c) during which the apprentice is travelling between his place of residence or place of employment and any trade, technical or other training school which he is required to attend as an apprentice or is in attendance at any such school.

S. 3(7P)
inserted by
No. 9297
s. 4(2),
amended by
No. 10191
s. 259(2)(f).

Workers Compensation Act 1958
No. 6419 of 1958

s. 3

S. 3(7Q)
inserted by
No. 9297
s. 4(2),
amended by
No. 10089
s. 4(1).

(7Q) Notwithstanding anything to the contrary in the **State Insurance Office Act 1984**, the State Insurance Office shall be and be deemed always to have been authorized to make payments out of the State Insurance Fund in respect of the amount of—

- (a) any liability of the employer to pay compensation under this Act in respect of injury occurring to an apprentice within the meaning of paragraph (a), (b) or (c) of the interpretation of *apprentice* in subsection (7N) during the period commencing on 1 January 1979 and ended immediately prior to the commencement of section 4 of the **Workers Compensation (Miscellaneous Provisions) Act 1979**;
- (b) any other liability of the employer to pay damages in respect of the death of or personal injury to an apprentice mentioned in paragraph (a), being death or injury that occurred during the period commencing on 1 January 1979 and ending immediately prior to the commencement of section 4 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** in circumstances arising out of the employment of the apprentice; and
- (c) any administrative or other expenses incurred by the State Insurance Office in discharging any liability mentioned in paragraph (a) or paragraph (b).

S. 3(7Q)(c)
amended by
No. 10089
s. 4(1).

S. 3(7R)
inserted by
No. 9297
s. 4(2),
amended by
No. 10089
s. 4(1).

(7R) There shall be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly) in such sums and at such times as the Treasurer of Victoria directs any amount or amounts necessary to reimburse the State Insurance Office for such payments out of

the State Insurance Fund as are mentioned in subsection (7Q).

(7S) Notwithstanding anything to the contrary in this Act or the regulations or in any policy of accident insurance or indemnity, the following provisions shall apply to every policy of accident insurance or indemnity operating to insure or indemnify an employer against claims under this Act and against any other liability of the employer to pay damages in respect of the death of or personal injury to a worker in circumstances arising out of the employment of the worker—

S. 3(7S)
inserted by
No. 9297
s. 4(2).

(a) the policy shall not insure or indemnify and shall be deemed never to have insured or indemnified the employer for any claim in respect of which—

(i) the employer is deemed to hold a policy with the State Insurance Office under subsection (7F); or

S. 3(7S)(a)(i)
amended by
No. 10089
s. 4(1).

(ii) any payment mentioned in subsection (7Q) has been made from the State Insurance Fund to the employer; and

S. 3(7S)(a)(ii)
amended by
No. 10089
s. 4(1).

(b) a premium is not and shall be deemed never to have been payable in respect of an apprentice within the meaning of paragraph (a), (b) or (c) of the interpretation of *apprentice* in subsection (7N) for the appropriate period of indemnity under subsection (7P).

(8) Any reference in this Act to the payment of compensation under or in accordance with this Act shall be deemed to include a reference to the payment of compensation or benefits under any scheme which was certified under the **Workers' Compensation Act 1928**.

S. 3(8)
inserted by
No. 8733
s. 3(1).

s. 3A

S. 3A
inserted by
No. 9136
s. 4(1).

3A Secretaries of co-operative societies

- (1) In this section *society* means a society registered under the **Co-operative Housing Societies Act 1958** or the **Co-operation Act 1958** and includes an association of co-operative societies or a union of co-operative associations registered under the **Co-operation Act 1958**.
- (2) For the purposes of this Act but subject to subsection (3)—
 - (a) a person who is the secretary of one society only shall be deemed to be a worker and the society shall be deemed to be his employer; and
 - (b) a person who is secretary of more than one society shall be deemed to be a worker and those societies shall be deemed to be his employer.
- (3) Subsection (2) does not operate to deem a person who is the secretary of a society to be a worker nor the society to be his employer if that person is entitled to receive as secretary of the society—
 - (i) payment of his expenses only; or
 - (ii) payment of his expenses and a sum not exceeding \$200 per annum—or if he is not entitled to receive any payment as secretary of the society.

Nos 5601 s. 4,
5950 s. 2, 6017
s. 18.

4 Workers employed by the Crown etc.¹

S. 4(1)
substituted by
No. 8733 s. 4.

- (1) This Act shall apply to workers employed by or under the Crown or any Government department in all cases where this Act would apply if the employer were a private person.

(1A) For the purposes of this Act—

- (a) a responsible Minister of the Crown;
- (b) a member of the Legislative Council or the Legislative Assembly;
- (c) a person holding any judicial or other public office to which he is appointed by the Governor in Council (not being an office of member of a corporation institution or body or the governing body thereof prescribed for the purposes of subsection (1B))—

shall be deemed to be a worker employed by or under the Crown.

S. 4(1A)
inserted by
No. 8733 s. 4.

(1B) For the purposes of this Act any person being the holder of any prescribed office as member of any public or other corporation institution or body or of the governing body thereof shall be deemed to be a worker employed thereby or thereunder.

S. 4(1B)
inserted by
No. 8733 s. 4.

(1C) For the purposes of this Act every member of the police force or member of the Retired Police Reserve of Victoria shall be deemed to be employed by the Crown under a contract of service, and notwithstanding any rule of law to the contrary, that contract of service and the relationship of master and servant shall be deemed to exist between the Crown and each member of the police force or member of the Retired Police Reserve of Victoria in respect of the exercise and performance by him of all his powers and duties as such a member, whether arising at common law or under any statute or by the instructions of his superiors or otherwise.

S. 4(1C)
inserted by
No. 8733 s. 4.

(2) All proceedings for or in respect of claims under this Act against the Crown or any Government department shall be taken in accordance with the provisions of this Act as if the claim were against a private person:

Workers Compensation Act 1958
No. 6419 of 1958

s. 4

S. 4(2)
Proviso
amended by
Nos 10191
s. 270(2)(a),
67/1992
s. 64(11)(a) (as
amended by
No. 50/1993
s. 111(2)(c)).

Provided that the County Court or Administrative Appeals Tribunal may make rules providing for any matter or thing necessary or convenient to be provided for with respect to claims against the Crown or any Government department or any matter arising out of any such claim.

S. 4(3)
amended by
Nos 10191
s. 270(2)(b),
31/1994
s. 3(Sch. 1
item 67).

- (3) Notwithstanding anything in this Act any sum payable under this Act in respect of any claim against the Crown or any Government department or in respect of premiums payable before the appointed day by the Crown or any Government department may with the authority of the responsible Minister of the Crown administering the department concerned be paid out of any moneys available for the purpose, or out of any accident or insurance fund or fund in the nature of an accident or insurance fund established pursuant to any Act of Parliament and available for the purpose or out of moneys otherwise available for the purpose.
- (4) The exercise and performance of the powers duties or functions of any body of persons corporate or unincorporate shall for the purposes of this Act be treated as the trade or business of such corporation or body of persons. In this subsection ***body of persons unincorporate*** does not include an unincorporate body of persons temporarily associated together for any purpose other than that of personal gain which employs workers for a period not exceeding three consecutive days.

PART I—EMPLOYERS' LIABILITY

Division 1—Liability to pay compensation

5 Employers' liability

Nos 5601 s. 5,
5676 s. 4(1).

- (1) If in any employment personal injury arising out of or in the course of the employment is caused to a worker his employer shall subject as hereinafter mentioned be liable to pay compensation in accordance with the provisions of this Act.
- (2) If personal injury deemed under section 8(2)(b)(v) to arise out of or in the course of the employment is caused to a worker who has a contract of employment with more than one employer, his employers shall be liable to pay compensation in equal shares in accordance with the provisions of this Act.

S. 5(2)
repealed by
No. 8084
s. 4(1)(a),
new s. 5(2)
inserted by
No. 9613 s. 6.

5A Nominal defendant

S. 5A
inserted by
No. 8733 s. 5.

- (1) Where the employer of the worker—
 - (a) cannot be identified; or
 - (b) is dead or cannot be found or (in the case of a company) has been wound up—

S. 5A(1)
amended by
Nos 10191
s. 260(1)(a),
67/1992
s. 64(11)(a).

any claim for compensation shall be made against a nominal defendant to be named by the County Court or Administrative Appeals Tribunal.

- (1A) Without affecting the generality of subsection (1), where the employer cannot be found at the last-known place of abode of the employer or the last place of business at which the worker was employed by the employer, the employer shall be deemed to be unable to be found and the said subsection shall apply to and in relation to the worker accordingly.

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No. 6419 of 1958
Part I—Employers' Liability

s. 5A

S. 5A(2)
substituted by
No. 9136
s. 2(1)(a).

(2) The nominal defendant shall not be liable to pay any compensation but—

S. 5A(2)(a)
amended by
No. 10191
s. 260(1)(b)(i).

(a) where the policy of accident insurance or indemnity held by the employer in accordance with section 72(1)(a) as in force before the appointed day or that policy as extended indemnifies the employer in respect of his liability to pay the compensation concerned or any part thereof, the compensation or the part concerned shall be paid by the insurer; and

S. 5A(2)(b)
amended by
Nos 10191
s. 260(1)(b)(i)
(ii), 67/1992
s. 64(11)(d) (as
amended by
No. 50/1993
s. 111(2)(e)),
50/1994 s. 112.

(b) where the policy of accident insurance or indemnity held by the employer in accordance with section 72(1)(a) as in force before the appointed day or that policy as extended does not indemnify the employer in respect of his liability to pay the compensation concerned or any part thereof, the compensation or the part concerned shall be paid out of the Fund.

S. 5A(2A)
inserted by
No. 9136
s. 2(1)(a),
amended by
Nos 10191
s. 260(1)(a)(c),
67/1992
s. 64(11)(a)(d)
(as amended
by No.
50/1993
s. 111(2)(e)),
50/1994 s. 112.

(2A) Where the insurer with whom the employer was insured at the relevant time cannot be determined to the satisfaction of the County Court or Administrative Appeals Tribunal, the compensation shall be paid out of the Fund.

S. 5A(3)
amended by
No. 9613
s. 3(b).

(3) Nothing in subsections (1) and (2) shall apply to or in relation to the payment of compensation in accordance with Division 3 or 3A of this Part.

- (4) The provisions of subsections (3), (4) and (5) of section 16 shall apply to and in relation to nominal defendants named by the County Court or Administrative Appeals Tribunal for the purposes of this section.

S. 5A(4)
amended by
Nos 10191
s. 260(1)(a),
67/1992
s. 64(11)(a).

5AA Payments by employer not admission of liability

A payment or payments made by an employer to a worker by way of weekly payments or in respect of medical hospital nursing or ambulance services shall not be taken to be an admission by the employer of his liability to pay compensation if under the terms of the policy of accident insurance or indemnity held by him in accordance with section 72(1)(a) as in force before the appointed day or that policy as extended the payment or payments are made in respect of any liability to pay compensation for which the employer is not entitled to be indemnified by the insurer.

S. 5AA
inserted by
No. 9136
s. 2(1)(b),
amended by
No. 10191
s. 270(3).

6 Injury due to serious and wilful misconduct

If it is proved that the injury to a worker is attributable to his serious and wilful misconduct (including being under the influence of intoxicating liquor) any compensation claimed in respect of that injury shall unless the injury results in death or serious and permanent disablement be disallowed and if it is proved that the injury to a worker was deliberately self-inflicted no compensation shall be payable under this Act.

Nos 5601 s. 6,
5676 s. 4(3).

S. 6
amended by
No. 9683
s. 3(a)(b).

* * * * *

S. 6(2)–6(5)
repealed.²

7 Victorian workers injured outside Victoria

Where any employer who resides or has a place of business in Victoria engages a worker in Victoria then, if personal injury is caused to such a worker outside Victoria under such circumstances that if the injury had occurred in Victoria he or his

Nos 5601 s. 7,
5676 s. 4(2)(b).

S. 7
substituted by
Nos 7292 s. 3,
9613 s. 7.

s. 7A

dependants would have been entitled to compensation under this Act, the worker and, in the case of the death of the worker, his dependants shall subject to this Act be entitled to compensation in accordance with this Act.

S. 7A
inserted by
No. 7292 s. 3.

7A Public servants injured outside Victoria

- (1) Where a worker is employed by the Crown in right of the State of Victoria or by any Government Department of the State of Victoria or by any public statutory body constituted by or under the law of Victoria then, if personal injury is caused to such a worker outside Victoria under such circumstances that if the injury had occurred in Victoria he or his dependants would have been entitled to compensation under this Act, the worker and, in the case of the death of the worker, his dependants shall subject to this Act be entitled to compensation in accordance with this Act.
- (2) Where a worker employed by the Crown in right of the State of Victoria or by any Government Department of the State of Victoria or by any public statutory body constituted by or under the law of Victoria is directed to work for or under the direction of any other person outside Victoria the Crown Government Department or public statutory body by which he was so directed shall for the purposes of this Act be deemed to continue to be the employer of that worker while he is working under that direction.

S. 7B
inserted by
No. 9683 s. 4.

7B Entitlement to compensation under the law of another State etc.

- (1) Where personal injury is caused to a worker which gives him a right to claim compensation or a right of action in respect of any injury under the law of any State (other than Victoria) territory or country under such circumstances that if he had no such right to claim compensation or right of

action he or his dependants would be entitled to compensation under this Act, the worker and in the case of the death of the worker his dependants shall—

- (a) subject to subsection (4), where no compensation or damages has already been paid or recovered and no award of compensation or judgment for damages has already been made given or entered in respect of the injury under any law of any State (other than Victoria) territory or country—be entitled to compensation in accordance with the provisions of this Act as if he or his dependants had no such right to claim compensation or right of action under the law of any State (other than Victoria) territory or country;
- (b) subject to paragraph (e), where compensation or damages has already been paid or recovered or an award of compensation or judgment for damages has already been made given or entered in respect of the injury under any law of any State (other than Victoria) territory or country and the amount of compensation or damages paid or the award or judgment is equal to, or exceeds, the compensation which would have been payable under this Act if he or his dependants had no such right to claim compensation or right of action under the law of any State (other than Victoria) territory or country—not be entitled to compensation under this Act;
- (c) where compensation or damages has already been paid or recovered for an award of compensation or judgment for damages has already been made given or entered in respect of the injury under any law of any

- State (other than Victoria) territory or country and the amount of compensation or damages paid or the award or judgment is less than the compensation which would have been payable under this Act if no compensation or damages or award or judgment in his favour had been made given or entered in respect of the injury under any law of any State (other than Victoria) territory or country—be entitled to compensation being an amount equal to the difference between the amount of compensation or damages paid or of the award or judgment and the amount of compensation which would have been payable under this Act if he or his dependants had no right to claim compensation or right of action under any law of any State (other than Victoria) territory or country;
- (d) subject to paragraph (e), where a payment into court has been accepted by the worker or his dependants in proceedings or a settlement or compromise of a claim has been made in respect of the injury under any law of, or in, any State (other than Victoria) territory or country and the amount of the payment into court settlement or compromise is equal to, or exceeds, the compensation which would have been payable under this Act if he or his dependants had no such right to claim compensation or right of action under the law of any State (other than Victoria) territory or country—not be entitled to compensation under this Act;
- (e) where a judgment or order for damages has been satisfied only in part, or where a payment into court has been accepted by the

worker or his dependants in proceedings or a settlement or compromise of a claim has been made in respect of the injury under any law of, or in, any State (other than Victoria) territory or country and the amount of the judgment or order satisfied, payment into court, settlement or compromise of the claim is less than the compensation which would have been payable under this Act if no judgment or order, payment into court, settlement or compromise had been made in respect of the injury under any law of, or in, any State (other than Victoria) territory or country—be entitled to an amount of compensation equal to the difference between the amount of the judgment or order satisfied, payment into court, settlement or compromise and the amount of compensation which would have been payable under this Act if he or his dependants had no right to claim compensation or right of action under the law of any State (other than Victoria) territory or country.

- (2) If a person receives compensation under any provision of this Act in respect of any injury and subsequently compensation or damages are obtained by him or an award of compensation or damages in his favour is made given or entered or a payment into court is accepted by him or a claim is settled or compromised in his favour in respect of the injury under any law of, or in, any State (other than Victoria) territory or country then the employer shall be entitled to recover from that person the amount of the compensation paid by the employer pursuant to this Act or an amount equal to the compensation or damages or payment obtained or made settled or compromised (whichever is the lesser amount).

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s. 7B

S. 7B(3)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

-
- (3) Any dispute under subsection (2) shall be determined by the County Court or Administrative Appeals Tribunal whose decision shall be final.
- (4) Where any person has a right to claim compensation or a right of action in respect of any injury under the law of, or in, any State (other than Victoria) territory or country he shall not be entitled to claim compensation in respect of the injury under this Act unless he makes a statutory declaration setting out any amounts of compensation or damages already paid or recovered, any award or compensation or judgment for damages already made given or entered, any payment into court he has accepted, or any settlement or compromise of any claim, or any claim for compensation or action for damages pending in respect of the injury under the law of, or in, any State (other than Victoria) territory or country.
- (5) Any amount recovered or to be recovered by a worker under the law of any State (other than Victoria) territory or country as compensation or damages in respect of personal injury shall be presumed, unless the worker produces satisfactory evidence to the contrary, to be compensation or damages for the same injury in respect of which the worker claims compensation or a right of action under this Act.
- (6) Compensation shall not be payable pursuant to this section or section 5 if compensation has already been paid or is payable under any scheme certified under the **Workers' Compensation Act 1928**.

8 Injury in course of employment

Nos 5601 s. 8,
5676
ss 4(2)(c), 5.

(1) For the purposes of this Act an injury shall be deemed to arise out of or in the course of his employment notwithstanding that the worker was at the time when the injury happened acting in contravention of any statutory or other regulation applicable to his employment, or that he was acting without instructions from his employer if such act was done by the worker for the purposes of and in connexion with his employer's trade or business.

(2) Without limiting the generality of the provisions of section five of this Act but subject to the provisions of subsection (1) of section six of this Act an injury to a worker shall be deemed to arise out of or in the course of the employment if the injury occurs—

S. 8(2)
amended by
No. 9613
s. 8(a).

(a) while the worker on any working day on which he has attended at his place of employment pursuant to his contract of employment—

(i) is present at his place of employment;
or

(ii) having been so present, is temporarily absent therefrom on that day during any ordinary recess and does not during any such absence voluntarily subject himself to any abnormal risk of injury;
or

(b) while the worker—

(i) is travelling between his place of residence and place of employment; or

(ii) is travelling between his place of residence or place of employment and any trade technical or other training school which he is required to attend by

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the terms of his employment or as an apprentice or which he is expected by his employer to attend, or is in attendance at any such school; or

S. 8(2)(b)(iii)
amended by
Nos 7292 s. 4,
23/1994
s. 118(Sch. 1
item 59.2).

- (iii) is travelling between his place of residence or place of employment and any other place for the purpose of obtaining a medical certificate or receiving medical surgical or hospital advice attention or treatment or of receiving payment of compensation in connexion with any injury for which he is entitled to receive compensation or for the purpose of submitting himself for examination by a registered medical practitioner pursuant to any provision of this Act or any requirement made thereunder, or is in attendance at any place for any such purpose; or

S. 8(2)(b)(iv)
substituted by
No. 9613
s. 8(b).

- (iv) is travelling between his place of residence and a place of pick-up; or

S. 8(2)(b)(v)
inserted by
No. 9613
s. 8(b).

- (v) who has a contract of employment with more than one employer, is travelling on any working day on which he has attended at his place of employment pursuant to his contract of employment with one employer between that place and his place of employment pursuant to his contract of employment with another employer;

S. 8(2)(b)
Proviso
amended by
Nos 8181
s. 2(1)(Sch.
item 193),
10191
s. 270(14)(b),
67/1992
s. 64(11)(a).

Provided that any injury incurred while so travelling is not incurred during or after—

any substantial interruption of or substantial deviation from his journey made for a reason unconnected with his employment or unconnected with his attendance at the school or place (as the

case may be) which interruption or deviation the County Court or Administrative Appeals Tribunal having regard to all the circumstances considers would ordinarily have materially added to the risk of injury; or

any other break in his journey which the County Court or Administrative Appeals Tribunal, having regard to all the circumstances, considers would ordinarily have materially added to the risk of injury.

(2A) Where—

S. 8(2A)
inserted by
No. 9297
s. 5(1).

- (a) an employer is required under this Act in respect of the death or injury of a worker (being death or injury that was caused by or arose out of the use of a motor car in Victoria while the worker was travelling on a journey referred to in paragraph (b) of subsection (2)) to pay an amount of compensation;
- (b) the amount or any part of the amount so payable is not an amount in respect of which the employer is insured or indemnified under the terms of a policy of accident insurance or indemnity; and
- (c) the Motor Accidents Board would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make payments in respect of the death or injury under the **Motor Accidents Act 1973**—

the Motor Accidents Board shall, notwithstanding anything to the contrary in section 15 or section 59 or in any other provision of the **Motor Accidents Act 1973**, be liable to make payment to the employer in accordance with subsection (2C).

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S. 8(2B)
inserted by
No. 9297
s. 5(1).

(2B) Where—

- (a) an insurer is required under a policy of accident insurance or indemnity to indemnify or insure an employer in respect of the amount or any part of the amount of the employer's liability to pay compensation under this Act in respect of the death or injury of a worker (being death or injury that was caused by or arose out of the use of a motor car in Victoria while the worker was travelling on a journey referred to in paragraph (b) of subsection (2)); and
- (b) the Motor Accidents Board would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make payments in respect of the death or injury under the **Motor Accidents Act 1973**—

the Motor Accidents Board shall, notwithstanding anything to the contrary in section 15 or section 59 or in any other provision of the **Motor Accidents Act 1973**, be liable to make payments to the insurer in accordance with subsection (2D).

S. 8(2C)
inserted by
No. 9297
s. 5(1).

(2C) The amount of any payment to be made to the employer by the Motor Accidents Board shall be an amount equal to—

S. 8(2C)(a)
amended by
No. 10191
s. 270(4)(a).

- (a) any amount of compensation payable under this Act (other than any amount recoverable from the Fund and any amount in respect of which the employer is insured or indemnified under the policy of accident insurance or indemnity); or
- (b) the total amount of the payments which the Motor Accidents Board would, if no compensation were payable under this Act in respect of the death or injury, have been

liable to make under the **Motor Accidents Act 1973** in respect of that death or injury—

whichever is the lesser.

(2D) The amount of any payment to be made to an insurer by the Motor Accidents Board shall be an amount equal to—

S. 8(2D)
inserted by
No. 9297
s. 5(1).

(a) any amount of compensation payable under this Act (other than any amount recoverable from the Fund) in respect of which the insurer is required to insure or indemnify the employer under the policy of accident insurance or indemnity; or

S. 8(2D)(a)
amended by
No. 10191
s. 270(4)(a).

(b) the total amount of the payments which the Motor Accidents Board would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make under the **Motor Accidents Act 1973** in respect of that death or injury less any amount payable to the employer pursuant to the provisions of subsection (2C)—

whichever is the lesser.

(2E) The provisions of the **Motor Accidents Act 1973** relating to application for and determination of payments in respect of the death or injury of a person shall apply to payments which the Motor Accidents Board is liable to make under subsection (2A) or (2B), as if the employer or insurer were the injured person or (in the case of the death of the injured person) a spouse or child of the deceased wholly, mainly or in part dependent upon the earnings of the deceased (as the case requires), and as if in section 22 of that Act the requirement that an application to the Board be made within six years after the date of the accident had been deleted.

S. 8(2E)
inserted by
No. 9297
s. 5(1),
amended by
No. 10191
s. 270(4)(b).

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S. 8(2F)
inserted by
No. 9297
s. 5(1).

(2F) Notwithstanding anything to the contrary in section 59 of the **Motor Accidents Act 1973**, moneys standing to the credit of any account kept by the Motor Accidents Board under that Act may be applied for the purpose of making any payment which the Board is liable to make by virtue of the provisions of subsections (2A) and (2B).

S. 8(2G)
inserted by
No. 9297
s. 5(1),
amended by
No. 111/1986
s. 180(3)
(Sch. 2
item 9).

(2G) In subsections (2A) to (2F), a reference to the Motor Accidents Board is a reference to the Motor Accidents Board established under the **Motor Accidents Act 1973** and includes a reference to the Transport Accident Commission as the successor in law of that Board.

S. 8(2H)
inserted by
No. 9297
s. 5(1).

(2H) Subsections (2A) to (2G) inclusive do not apply in respect of the death or injury of a worker that occurs before the commencement of the **Workers Compensation (Miscellaneous Provisions) Act 1979**.

(3) Any reference in the last preceding subsection to *place of employment* shall where there is no fixed place of employment be deemed to include a reference to the whole area scope or ambit of the employment.

Division 2—Compensation generally and for specified injuries

Nos 5601 s. 9,
5676
ss 4(2)(d),
6(1)(2), 7, 8,
5715 s. 2(a)(b).

9 Compensation for death and incapacity for work

(1) Where the worker's death results from or is materially contributed to by the injury the compensation shall be a sum in accordance with the provisions of the clauses appended to this section.

S. 9(2)
amended by
Nos 10191
s. 261(a),
67/1992
s. 64(11)(b).

(2) Except as is provided in section eleven of this Act, where the worker's total or partial incapacity for work results from or is materially contributed to by the injury the compensation shall be a weekly

payment during the incapacity in accordance with the provisions of the said clauses unless the County Court in its absolute discretion, upon the application of either party in any proceedings before the County Court relating to the compensation, awards a lump sum in redemption of the employer's liability for future weekly payments, and any lump sum so awarded shall be of such amount as appears to the County Court to be just and reasonable having regard to the probable duration of the incapacity and to such other factors as the County Court thinks relevant.

- (3) Notwithstanding anything to the contrary in this section, on 1 July in any relevant year and thereafter until the rates and amounts of compensation payable under this Act are again increased or decreased in accordance with this subsection, a reference in any of the clauses under the heading "The Clauses Referred To" in this section to a rate or amount of compensation payable under this Act shall be deemed to be a reference to³—
- (a) in the case of a relevant year mentioned in paragraph (a) or paragraph (b) of subsection (4)—the sum of that rate or amount or (as the case requires) that rate or amount as increased or decreased in accordance with the provisions of this subsection and an amount equal to the prescribed proportion of that rate or amount or that rate or amount as so increased or decreased (as the case requires); and
 - (b) in the case of a relevant year mentioned in paragraph (c) or paragraph (d) of subsection (4)—the difference between that rate or amount or (as the case requires) that rate or amount as increased or decreased in accordance with the provisions of this

S. 9(3)
inserted by
No. 9297
s. 6(2).

subsection and an amount equal to the prescribed proportion of that rate or amount or that rate or amount as so increased or decreased (as the case requires).

S. 9(4)
inserted by
No. 9297
s. 6(2).

- (4) For the purposes of subsection (3)—
- (a) any year after the year in which section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** comes into operation shall be a relevant year if average weekly earnings for that year are higher than for the year in which section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** comes into operation or the last previous relevant year (whichever last occurs);
 - (b) any year after the first relevant year mentioned in paragraph (a) shall be a relevant year if the average weekly earnings for that year are higher than for the last previous relevant year;
 - (c) any year after the year in which section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** comes into operation shall be a relevant year if the average weekly earnings for that year are lower than for the year in which section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** comes into operation or the last previous relevant year (whichever last occurs); and
 - (d) any year after the first relevant year mentioned in paragraph (c) shall be a relevant year if the average weekly earnings for that year are lower than for the last previous relevant year.

(5) In this subsection and in subsections (3) and (4)—

S. 9(5)
inserted by
No. 9297
s. 6(2).

average weekly earnings means—

S. 9(5) def. of
*average
weekly
earnings*
substituted by
No. 9747
s. 2(a).

- (a) in relation to the year 1982—the average weekly earnings of all male employés for Australia published by the Australian Statistician on 15 June 1982 in respect of the December quarter of the year 1981; and
- (b) in relation to any subsequent year—the latest average weekly earnings as at 15 June of all male employés for Australia published by the Australian Statistician in respect of the December quarter of the year immediately preceding;

prescribed proportion—

- (a) in relation to the first relevant year (if any) mentioned in paragraph (a) of subsection (4)—means the fraction represented by the formula $\frac{A - B}{B}$ where—

A is the average weekly earnings for that year; and

B is the average weekly earnings for the year in which section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** comes into operation or the last previous relevant year mentioned in subsection (4) (whichever last occurs);

- (b) in relation to any subsequent relevant year mentioned in paragraph (b) of subsection (4)—means the fraction represented by the formula $\frac{(A - B)}{B}$

where—

A is the average weekly earnings for that year; and

B is the average weekly earnings for the last previous relevant year mentioned in subsection (4);

- (c) in relation to the first relevant year (if any) mentioned in paragraph (c) of subsection (4)—means the fraction represented by the formula $\frac{(B - A)}{B}$

where—

A is the average weekly earnings for that year; and

B is the average weekly earnings for the year in which section 6 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** comes into operation or the last previous relevant year mentioned in subsection (4) (whichever last occurs); and

- (d) in relation to any subsequent relevant year mentioned in paragraph (d) of subsection (4)—means the fraction represented by the formula $\frac{(B - A)}{B}$

where—

A is the average weekly earnings for that year; and

B is the average weekly earnings for the last previous relevant year mentioned in subsection (4).

Provided that in the foregoing paragraphs of this interpretation B means, in respect of the year 1982, the amount published by the Australian Statistician on 15 June 1982 as the average weekly earnings per employed male unit for Australia, seasonally adjusted, for the December quarter of the year 1980 as adjusted to the series of statistics referred to in the average weekly earnings published by him on 15 June 1982 as the New Series (average weekly earnings of all male employes for Australia) by reference to the index numbers appearing therein for determining the relationship of previous statistics to that New Series.

S. 9(5)
Proviso
inserted by
No. 9747
s. 2(b).

- (5A) If the variation of an amount by operation of this section has the effect of reducing the amount—
- (a) the variation is deemed not to have taken effect, except for the purposes of the application of this section; and
 - (b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year, that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.
- (6) Where it is necessary for the purposes of subsections (3) to (5) to calculate an amount that consists of or includes a fraction of a whole number, the amount shall be deemed to have been calculated in accordance with this section if the calculation is made to the nearest whole number.

S. 9(5A)
inserted by
No. 50/1994
s. 113.

S. 9(6)
inserted by
No. 9297
s. 6(2).

The Clauses Referred To

1. Amount of compensation

The amount of compensation shall be ascertained as follows—

(a) where death results from or is materially contributed to by the injury—

(i) if the worker leaves any dependants wholly or mainly dependent upon his earnings the amount of compensation shall be the sum of \$138 809 together with the appropriate additional sum specified in Column 2 of the Table to this subparagraph in the case of each child under the age and having the status mentioned in Column 1 of that Table who was wholly or mainly dependent upon the earnings of the worker at the time of the death or would but for the incapacity have been so dependent and who is a claimant in the proceedings for an award of compensation in respect of the death.

S. 9 cl. 1(a)(i)
substituted by
No. 7292
s. 5(1)(a),
amended by
Nos 8084
s. 2(a)(i), 8271
s. 3(a)(i), 8733
s. 6(a)(i)–(iii),
9297
s. 6(1)(a)(i)(ii),
9372 s. 3,
102/2004
s. 46(1)(a)(2).

Column 1	Column 2
<i>Years of Age</i>	<i>Amounts of Compensation</i>
	\$
Under 1	33 863
Under 2	31 668
Under 3	29 486
Under 4	27 305
Under 5	25 118
Under 6	22 933
Under 7	20 749
Under 8	18 564

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Column 1	Column 2
<i>Years of Age</i>	<i>Amounts of Compensation</i>
	\$
Under 9	16 385
Under 10	14 195
Under 11	12 012
Under 12	9 825
Not under 12 but under 16	7 643
Not under 16 but under 21 (full-time students)	7 643

- (ii) if the worker does not leave any such dependants as aforesaid but leaves any dependants in part dependent upon his earnings, the amount of the compensation shall be such sum (not exceeding in any case the amount of \$138 809) as in the opinion of the County Court is reasonable and appropriate to the injury to the said dependants;
- (iii) where the worker, being under the age of twenty-one years at the time of the injury, leaves no dependants but immediately before the injury was contributing towards the maintenance of the home of the members of his family, then such members of his family shall be deemed to be dependants of the worker in part dependent on his earnings and the provisions of the last preceding subparagraph shall apply accordingly;

S. 9 cl. 1(a)(ii)
amended by
Nos 7292
s. 5(1)(b), 8084
s. 2(a)(ii), 8271
s. 3(a)(ii), 8733
s. 6(b)(i), 9297
s. 6(1)(b),
10191
s. 261(b)(viii),
67/1992
s. 64(11)(b),
102/2004
s. 46(1)(a).

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S. 9 cl. 1(a)(iv)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

(iv) no amounts paid or payable before the death of the worker as weekly payments in respect of his total or partial incapacity for work resulting from the injury shall be taken into consideration in calculating the amount of compensation payable as aforesaid upon his death but any sum paid before the death of the worker in redemption of the liability for future weekly payments or in respect of an injury for which compensation is payable under section eleven of this Act (except so much thereof as in the opinion of the County Court is referable to compensation for total or partial incapacity before the death) shall be deducted from the amount payable as aforesaid upon the death;

(b) where incapacity for work results from or is materially contributed to by the injury—

S. 9 cl. 1(b)(i)
amended by
Nos 7292
s. 5(1)(c), 8084
s. 2(b)(i), 8271
s. 3(b)(i), 8733
s. 6(c)(i)–(vi),
9297
s. 6(1)(c)(i)–(v),
102/2004
s. 46(1)(b)–(e).

(i) in the case of total incapacity for work, the compensation shall be a weekly payment during the incapacity of an amount equal to the aggregate of the following sums—

the sum of \$442 in respect of the worker; and

The Clauses Referred to—continued

where applicable, the sum of \$124 in respect of the wife or husband of the worker or any relative standing in loco parentis to the children under sixteen years of age of the worker if the wife or husband or relative is wholly or mainly dependent on the earnings of the worker at the time of the injury or becomes so dependent during the incapacity or if the worker marries or a relative comes to stand in loco parentis to any such children during the incapacity and the wife or husband of the worker or the relative so standing becomes so dependent during the incapacity; and

where applicable, the sum of \$42 in respect of each child under the age of sixteen years who has been born and is wholly or mainly dependent on the earnings of the worker at the time of the injury or is born and becomes wholly or mainly so dependent during the incapacity—

and;

where applicable, the sum of \$42 in respect of each child of or over the age of 16 years

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The Clauses Referred to—continued

but under the age of 21 years
(being a full-time student)
who is wholly or mainly
dependent on the earnings of
the worker at the time of the
injury but not exceeding in
any case the amount of the
average weekly earnings of
the worker before the injury
or the amount of \$651
whichever is the lesser
amount;

S. 9 cl. 1(b)
Proviso
amended by
Nos 7292
s. 5(1)(d), 8084
s. 2(b)(i),
substituted by
No. 8733 s. 6,
amended by
Nos 9297
s. 6(1)(c)(vi),
102/2004
s. 46(1)(f)(g).

Provided that in the case of a
worker who is under the age of
21 years at the time of the injury
the amount of the weekly payment
while the worker continues to be
under that age shall be the sum of
\$325 in respect of the worker and,
where applicable, additional sums
as aforesaid in respect of the wife
or husband or relative as aforesaid
and any children as aforesaid but
not exceeding in any case the
amount of the average weekly
earnings of the worker before the
injury or the amount of \$562
whichever is the lesser amount;

- (ii) in the case of partial incapacity for
work, the compensation shall be a
weekly payment during the
incapacity of such amount as
bears the same ratio to the amount
of the weekly payment which
would be payable if the worker
were totally incapacitated for
work as the worker's loss of

The Clauses Referred to—continued

weekly earnings bears to the
amount of the average
weekly earnings of the
worker before the injury;

In this subparagraph *loss of
weekly earnings* means the
difference between the amount of
the average weekly earnings of the
worker before the injury and the
average weekly amount which the
worker is earning or is able to earn
in some suitable employment or
business after the injury;

- (iii) the total liability of an employer
in respect of compensation under
either or both of the last two
preceding subparagraphs (i) and
(ii) of this paragraph (b) shall not
exceed \$154 717 except in the
case of a worker whose injury, in
the judgment of the County Court,
results in—

S. 9 cl. 1(b)(iii)
amended by
Nos 7292
s. 5(1)(e), 8084
s. 2(b)(ii), 8271
s. 3(b)(ii), 8733
s. 6(e), 9297
s. 6(1)(d),
10191
s. 261(b)(viii),
67/1992
s. 64(11)(b),
102/2004
s. 46(1)(h).

permanent and total disablement
for work; or

permanent and partial disablement
for work, and such partial
disablement is established by the
worker to be of a major degree—

in either of which cases the
County Court may in its discretion
make such determination with
respect to the said total liability of
the employer as the County Court
thinks proper in the
circumstances; but in exercising
its discretion to award a lump sum

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in redemption of the employer's liability for future weekly payments the County Court shall not in any case take into account any amount which might have become payable beyond the amount of \$36 960, if the worker had continued to receive compensation by weekly payments throughout the incapacity;

S. 9 cl. 1(b)(iv) substituted by No. 10100 s. 4, amended by Nos 10191 s. 261(b)(i), 67/1992 s. 64(11)(c).

(iv) an employer shall provide suitable employment for his injured worker during the worker's partial incapacity for work but, if the employer fails to do so, the worker shall be compensated as if his incapacity for work were total, unless—

(A) where an order is made under section 85(3) or where section 102 applies, the Authority;

(B) in any other case, the insurer—

provides, or arranges for, such suitable employment having regard to the worker's incapacity and place of abode;

S. 9 cl. 1(b)(iva) inserted by No. 10100 s. 4, amended by Nos 10191 s. 261(b)(ii) (viii), 67/1992 s. 64(11)(b)(c).

(iva) without in any way limiting or derogating from the powers of the County Court conferred by this Act, the question whether suitable employment within the meaning of subparagraph (iv) has been

The Clauses Referred to—continued

provided by an employer, the Authority or the insurer (as the case may be) shall be determined by the County Court;

- (ivb) where a worker does not accept suitable employment which has been provided or arranged for him in accordance with subparagraph (iv), the worker shall, subject to the provisions of this Act, be entitled to compensation only for partial incapacity;

S. 9
cl. 1(b)(ivb)
inserted by
No. 10100 s. 4.

- (v) where a worker has so far recovered from the injury as to be fit for employment but only of a more limited kind or kinds than before the injury and proves to the satisfaction of the County Court that the worker has taken all reasonable steps to obtain and has failed to obtain employment of any such kind and that failure to obtain such employment is a consequence wholly or mainly of the injury (including the physical disfigurement of the worker), then, notwithstanding any other provision of this Act or any earlier order award determination or decision made by the County Court in the worker's case the County Court may order that the incapacity shall continue to be treated as total incapacity for such period and subject to such conditions as the County Court

S. 9 cl. 1(b)(v)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

The Clauses Referred to—continued

imposes and upon the making of any such order compensation in accordance with this Act shall be paid accordingly;

- (vi) where pursuant to the foregoing provisions of this paragraph a weekly payment becomes payable in respect of a child who is born and becomes dependent on the earnings of the worker during the incapacity that payment shall be required to be made only from the time of the birth.

2. Determination of questions of dependency

S. 9 cl. 2(1)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

- (1) Any question as to who is a dependant shall be settled by the County Court and the amount payable to each dependant shall also be settled by the County Court.
- (2) Where there are both total and partial dependants nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.
- (3) In determining whether any child is dependent on the earnings of the worker or the degree to which any child is dependent on the earnings of the worker no regard shall be had to any child endowment payments which have been or may be made in respect of the child under the Commonwealth Act known as the Social Services Act 1947–1957 or any amendment thereof or any Act in substitution therefor, but every such determination shall be made as if no such payment has been or will be made.

The Clauses Referred to—continued

- (4) Notwithstanding anything to the contrary in this Act—
- (a) any child of the worker (including a child of the worker born out of wedlock) who is under the age of sixteen years at the time of the death of the worker or other relevant time shall unless the contrary is proved be deemed and taken to be a dependant of the worker (where that fact is relevant) and to be wholly dependent on his earnings at the time of his death or other relevant time; and
 - (b) the wife of the worker, if a statutory declaration made by her has been delivered to the employer to the effect that she was wholly mainly or in part dependent on the earnings of the worker at the time of the injury which gave rise to his death or at any other relevant time, shall unless the contrary is proved be deemed and taken to be a dependant of the worker (where that fact is relevant) and to be dependent on his earnings at the time of the death or other relevant time to the extent stated in the statutory declaration; and
 - (c) in determining whether a wife was wholly mainly or in part dependent on the worker at the time of the death of the worker or other relevant time no regard shall be had, to any moneys which the wife had earned or was earning by her own personal exertion or to any savings arising from any such earnings.

S. 9 cl. 2(4)
inserted by
No. 7292
s. 5(2).

The Clauses Referred to—continued

3. Disregard payments from friendly society etc.

In computing or otherwise determining the amount of compensation payable under any of the provisions of this Act no regard shall be had to any sum paid or payable under any contract of assurance or insurance (including a contract made with any friendly or other benefit society or association or any trade union) or out of any relief superannuation or sustentation fund or other fund (whether statutory or otherwise) of the like nature.

4. Average weekly earnings

In this Act any reference to the average weekly earnings of a worker before the injury shall, subject to the following rules, be taken to refer to his average weekly earnings during the period of twelve months preceding the injury if he has been so long employed by the same employer, but, if not, then for any lesser period during which he has been so employed, and in the ascertainment of such average weekly earnings the following rules shall be observed—

- (a) in computing average weekly earnings amounts paid for overtime worked by the worker shall be included;
- (b) where, by reason of the shortness of time during which the worker has been in the employment of his employer or the terms of the employment, it is impracticable at the time of the injury to compute the average weekly earnings of the worker under that employer, regard may be had to the average weekly amount which during

The Clauses Referred to—continued

the twelve months previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

- (c) where the worker had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer or where the worker's employment has been of a casual nature his average weekly earnings shall be computed as if his earnings under all such contracts or in the employment of his several employers were earnings in the employment of the employer for whom he was working at the time of the injury;

- (d) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury uninterrupted by absence from work due to illness or other unavoidable cause, and the worker shall be deemed to have been employed in a new grade of employment whenever his rate of payment has been lawfully increased or decreased;

S. 9 cl. 4(d)
amended by
No. 7292
s. 6(1).

The Clauses Referred to—continued

- (e) where the employer has been accustomed to pay to the worker any sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings;
- (f) where the worker delivers to the employer a statement in writing verified by statutory declaration setting out the amount of his earnings during any period such statement shall be prima facie evidence that that amount was the earnings of the worker during that period.

5. Payments, allowances etc. by employer

In fixing the amount of any weekly payment regard shall be had to any payment allowance or benefit the worker may receive from the employer during the period of his incapacity.

S. 9 cl. 5A
inserted by
No. 10100 s. 5.

5A. Commencement of weekly payments

- (1) Subject to subclause (2), an employer shall commence making weekly payments as soon as is practicable after the commencement of the incapacity in respect of which they are payable, and in any case not more than 21 days after the worker has provided to the employer—
 - (a) a certificate from a registered medical practitioner, certifying that the worker has an incapacity for work and specifying the nature of the injury which is the cause of that incapacity; and

S. 9
cl. 5A(1)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 59.3(a)).

The Clauses Referred to—continued

- (b) a claim in writing for compensation in respect of that incapacity together with the following particulars of the claim—
- (i) the name, residential address and date of birth of the worker;
 - (ii) the nature and alleged cause of the injury in respect of which the claim is made and the place where and the date on which that injury happened;
 - (iii) the date of the commencement of the incapacity for work which resulted from or was materially contributed to by that injury where this date is different from the date of the injury;
 - (iv) the name and residential address of all persons who in relation to the worker are a wife, husband, relative or child who is wholly or mainly dependent on the earnings of the worker within the meaning of clause 1(b)(i) and the nature of the relationship to the worker of each person so named and the date of birth of each child so named.
- (1A) It shall not be necessary for a worker to provide both the documents referred to in subclause (1) at the same time and where the worker provides the documents at different times the period of 21 days shall commence on the day after the day on which the remaining document was provided.

S. 9
cl. 5A(1)(b)
substituted by
No. 41/2006
s. 32(1).

S. 9 cl. 5A(1A)
inserted by
No. 10191
s. 261(b)(iii).

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S. 9 cl. 5A(2)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

(2) Any employer who disputes his liability, or the extent of his liability, to make weekly payments under this Act to a worker may within the period of 21 days referred to in subclause (1) apply to the County Court for an order that he is not required to commence making weekly payments.

(3) Where an employer makes an application under subclause (2) in relation to a worker, the provisions of subclause (1) shall be suspended in relation to that worker pending the determination of the application.

S. 9 cl. 5A(4)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

(4) Upon the hearing of an application made under subclause (2), the County Court may—

(a) adjourn the application upon such terms as it thinks fit;

(b) if it considers that there is a genuine dispute as to whether the employer is liable to make weekly payments—uphold the application;

S. 9
cl. 5A(4)(c)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

(c) if it considers that there is a genuine dispute as to the extent of the employer's liability to make weekly payments—

(i) uphold the application in relation to so much of the weekly payments as is in dispute; and

(ii) order that subclause (6) shall apply to the balance of the weekly payments with such modifications as the County Court considers are necessary; or

The Clauses Referred to—continued

- (d) if it considers there is no genuine dispute as to the liability, or the extent of the liability, of the employer to make weekly payments—dismiss the application.
- (5) In this clause ***genuine dispute*** does not include a dispute as to a worker's capacity for employment.
- (6) Where an application made under subclause (2) is dismissed, the employer shall—
 - (a) commence making weekly payments to the worker; and
 - (b) pay to the worker an amount equal to—
 - (i) the total of all outstanding weekly payments; and
 - (ii) interest at a rate determined by the County Court for the purposes of this subclause not exceeding the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983** upon each outstanding weekly payment, from the time when that payment would have been payable until the money is paid.
- (7) In subclause (6) ***outstanding weekly payment*** means a weekly payment which the employer, if an application under subclause (2) had not been made, would have been required to pay to the worker within the period commencing on the day of the

S. 9
cl. 5A(6)(b)
amended by
Nos 10191
s. 261(b)(iv)
(viii), 67/1992
s. 64(11)(b).

S. 9
cl. 5A(6)(b)(ii)
amended by
No. 41/2006
s. 32(2).

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commencement of the incapacity and concluding immediately before the day on which the application is dismissed.

- (8) For the purposes of this Act a payment made under paragraph (b) of subclause (6) shall be deemed to be compensation payable under this Act.

S. 9 cl. 5A(9)
amended by
Nos 10191
s. 261(b)(viii)
(ix), 67/1992
s. 64(11)(b).

- (9) Where—

- (a) an application made under subclause (2) is dismissed; and
- (b) the County Court is of the opinion that the applicant made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so—

the County Court may impose a penalty of an amount not exceeding 10 penalty units on the applicant.

S. 9 cl. 5A(10)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

- (10) Where—

S. 9
cl. 5A(10)(a)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

- (a) an application made under subclause (2) is heard by a person authorized to hear the application and is not heard by the County Court;
- (b) the application is dismissed; and
- (c) the person hearing the application is of the opinion that the applicant may have made the application without reasonable grounds for doing so, and

The Clauses Referred to—continued

knowing that he had no reasonable
grounds for doing so—

the person hearing the application shall refer
the matter to the County Court for
determination under subclause (9).

(11) An employer who—

S. 9 cl. 5A(11)
amended by
No. 10191
s. 261(b)(ix).

- (a) fails to commence to make weekly
payments pursuant to this clause; or
- (b) where the operation of subclause (1) is
suspended by the making of an
application under subclause (2) and the
application is dismissed or an order is
made under paragraph (c) of subclause
(4), fails to commence to make weekly
payments or to pay any other amount
payable under subclause (6) or under
that order—

shall be guilty of an offence against this Act
and liable to a penalty not exceeding
10 penalty units.

(12) The fact that an application under
subclause (2) has been upheld or dismissed
shall not be taken into account by the County
Court in any proceedings other than
proceedings under this clause or under
clause 6A.

S. 9 cl. 5A(12)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

6. Review of weekly payment

- (1) Any weekly payment may be reviewed at the
request either of the employer or of the
worker, and on such review may be ended,
diminished, or increased subject to the
provisions of this Act, and the amount of
payment shall be settled by the County
Court.

S. 9 cl. 6(1)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

The Clauses Referred to—continued

- (2) Where the review takes place more than three months after the injury the amount of the weekly payment may be increased to such an amount as would have been awarded if the average weekly earnings of the worker before the injury had been the same as the average weekly earnings which he would probably have been earning at the date of the review if he had remained uninjured.

S. 9 cl. 6A
inserted by
No. 10100
s. 6(1).

6A. Return to work

- (1) Where a worker who is receiving weekly payments for total or partial incapacity returns to work the following provisions apply—
- (a) where the worker returns to work other than with the employer by whom compensation is payable, the worker shall forthwith notify that employer of the fact that he has returned to work;
 - (b) a worker who fails to comply with paragraph (a) shall be guilty of an offence against this Act; and
 - (c) whether or not the worker returns to work with the employer by whom compensation is payable, that employer is entitled to end or diminish the making of weekly payments from the day on which the worker returns to work.

The Clauses Referred to—continued

(2) Subject to subclause (4), where a worker to whom subclause (1) applies—

S. 9 cl. 6A(2)
amended by
No. 83/1987
s. 109(2)(a).

(a) within three months after he returns to work ceases to work by reason of incapacity for work resulting from, or materially contributed to by, the original injury; and

(b) provides to the employer by whom compensation was payable—

S. 9
cl. 6A(2)(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 59.3(b)).

(i) a certificate from a registered medical practitioner, certifying that the worker has an incapacity for work and specifying the nature of the injury which is the cause of that incapacity; and

(ii) an application by the worker for the resumption of weekly payments—

the employer by whom compensation was payable shall as soon as is practicable, and in any case not more than 21 days after he has received the certificate and application, recommence making weekly payments for total or partial incapacity (as the case may be) for the period commencing on the day on which the worker again ceased to work.

(2A) It shall not be necessary for a worker to whom subclause (1) applies to provide both the documents referred to in subclause (2)(b) at the same time and where the worker provides the documents at different times the period of 21 days shall commence on the day after the day on which the remaining document was received by the employer.

S. 9 cl. 6A(2A)
inserted by
No. 10191
s. 261(b)(v).

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(3) Where—

S. 9
cl. 6A(3)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 59.3(b)).

- (a) under subclause (2) a worker provides a certificate from a registered medical practitioner to the employer by whom compensation was payable; and
- (b) during the period after the worker returned to work he worked for an employer other than the employer by whom compensation was payable—

the worker shall provide a copy of the certificate and application to the employer with whom the worker returned to work.

S. 9 cl. 6A(4)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

(4) An employer who—

- (a) receives an application by a worker made under subclause (2); and
- (b) asserts that the incapacity for work does not result from and is not materially contributed to by the original injury—

may within the period of 21 days referred to in subclause (2) apply to the County Court for an order that he is not required to recommence making weekly payments.

(5) Where an employer makes an application under subclause (4) in relation to a worker, the provisions of subclause (2) shall be suspended in relation to that worker pending the determination of that application.

S. 9 cl. 6A(6)
inserted by
No. 10191
s. 261(b)(viii),
amended by
No. 67/1992
s. 64(11)(b).

- (6) Upon the hearing of an application made under subclause (4) the County Court may—
 - (a) adjourn the application upon such terms as it thinks fit;

The Clauses Referred to—continued

- (b) if it considers that there is a genuine dispute as to whether the incapacity for work resulted from or was materially contributed to by the original injury—order that the suspension of the worker's right to weekly payments shall continue in respect of so much of the weekly payments as is the subject of the genuine dispute and upon the making of such an order the suspension of the worker's right to weekly payments shall continue accordingly; or
 - (c) if it considers there is no genuine dispute as to whether the incapacity for work resulted from or was materially contributed to by the original injury—dismiss the application.
- (7) Where an application made under subclause (3) is dismissed, the employer shall—
- (a) recommence making weekly payments to the worker for total or partial incapacity (as the case may be); and
 - (b) pay to the worker an amount equal to—
 - (i) the total of all outstanding weekly payments; and
 - (ii) interest at a rate determined by the County Court for the purposes of this subclause not exceeding the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983** upon each outstanding weekly payment,

S. 9
cl. 6A(7)(b)
amended by
Nos 10191
s. 261(b)(vi)
(viii), 67/1992
s. 64(11)(b).

S. 9
cl. 6A(7)(b)(ii)
amended by
No. 41/2006
s. 32(2).

The Clauses Referred to—continued

calculated from the time when that payment would have been payable until the money is paid.

(8) In subclause (7) ***outstanding weekly payment*** means a weekly payment which the employer, if an application under subclause (3) had not been made, would have been required to pay to the worker within the period commencing on the day when the worker again ceased to work and concluding immediately before the day on which the application is dismissed.

(9) For the purposes of this Act a payment made under paragraph (b) of subclause (7) shall be deemed to be compensation payable under this Act.

(10) Where—

(a) an application made under subclause (3) is dismissed; and

(b) the County Court is of the opinion that the applicant made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so—

the County Court may impose a penalty of an amount not exceeding 10 penalty units on the applicant.

S. 9 cl. 6A(10)
amended by
Nos 10191
s. 261(b)(viii)
(ix), 67/1992
s. 64(11)(b).

S. 9 cl. 6A
(10)(b)
amended by
No. 67/1992
s. 64(11)(b).

The Clauses Referred to—continued

(11) Where—

- (a) an application made under subclause (3) is heard by a person authorized to hear the application and is not heard by the County Court;
- (b) the application is dismissed; and
- (c) the person hearing the application is of the opinion that the applicant may have made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so—

the persons hearing the application shall refer the matter to the County Court for determination under subclause (10).

(12) An employer who—

- (a) fails to recommence to make weekly payments for total or partial incapacity (as the case may be) pursuant to this clause; or
- (b) where the operation of subclause (2) is suspended by the making of an application under subclause (3) and the application is dismissed, fails to recommence to make weekly payments for total or partial incapacity (as the case may be) or to pay an amount payable under paragraph (b) of subclause (7)—

shall be guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units.

S. 9 cl. 6A(11)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b) (as
amended by
No. 50/1993
s. 111(2)(d)(i)).

S. 9 cl. 6A(12)
amended by
No. 10191
s. 261(b)(ix).

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S. 9 cl. 6A(13)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

- (13) The fact that an application made under subclause (3) has been upheld or dismissed shall not be taken into account by the County Court in any proceedings other than proceedings under this clause.

S. 9 cl. 6B
inserted by
No. 10100 s. 7.

6B. Late payment

S. 9 cl. 6B(1)
amended by
No. 50/1994
s. 114(1).

- (1) Where—
- (a) an employer fails to make any weekly payment on or before the day on which he is required to do so; and
 - (b) the obligation of the employer to make that weekly payment has not at any time been suspended under clause 5A or 6A—

the employer shall pay to the worker in respect of each weekly payment so unpaid in addition to any other payment the employer is required to make under this Act interest at the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983** on each unpaid weekly payment for the period during which it is unpaid.

- (2) For the purposes of this Act an amount payable under subclause (1) shall be deemed to be compensation payable under this Act.

S. 9 cl. 6C
inserted by
No. 48/1986
s. 33(1),
amended by
No. 50/1994
s. 114(2)(a).

6C. Order for weekly payments

If an employer fails to commence or recommence making weekly payments to a worker under clause 5A or clause 6A and has not within the period specified in those clauses made an application to the County Court for an order that he or she is not

The Clauses Referred to—continued

required to commence or recommence making weekly payments, the worker may apply to the County Court for an order that the making of weekly payments be commenced or recommenced.

7. Cessation etc. of weekly payments

- (1) An employer shall not otherwise than in pursuance of an order of the County Court end or diminish a weekly payment except where—
- (aa) the compensation that has been paid by the employer under this Act (including weekly payments) in respect of the particular injury of the worker to which the weekly payments relate—
- (i) was not paid pursuant to an award of the County Court; and
- (ii) was not paid in respect of any liability for which the employer is entitled to be indemnified under the terms of the policy of accident insurance or indemnity held by the employer in accordance with section 72(1)(a) as in force before the appointed day or that policy as extended;
- (a) he is entitled to do so under clause 6A;
- (b) the weekly earnings of a worker in receipt of a weekly payment in respect of partial incapacity have actually been increased; or

S. 9 cl. 7(1)
amended by
Nos 10191
s. 261(b)(viii),
67/1992
s. 64(11)(b).

S. 9 cl. 7(1)(aa)
inserted by
No. 9136
s. 2(1)(c),
amended by
Nos 10191
s. 261(b)(vii)
(viii), 67/1992
s. 64(11)(b).

S. 9 cl. 7(1)(a)
substituted by
No. 10100
s. 6(2).

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S. 9 cl. 7(1)(c)
amended by
Nos 7292
s. 6(2)(a)(b),
8733 s. 6(f)(g),
10191
s. 261(b)(viii),
83/1987
s. 109(2)(b),
67/1992
s. 64(11)(b),
23/1994
s. 118(Sch. 1
item 59.3
(c)–(e)),
50/1994
s. 114(2)(b)(c).

- (c) the registered medical practitioner who has examined the worker pursuant to subsection (2) of section 27 has certified that the worker has (specifying which) wholly recovered or substantially recovered from the effects of the injury or that the incapacity is no longer due wholly or substantially to the injury and a copy of the certificate (which shall set out the grounds of the opinion of the registered medical practitioner) together with notice of the intention of the employer at the expiration of 28 clear days from the date of the service of the notice to end the weekly payment or to diminish it by such amount (being not more than 50 per centum thereof) as is stated in the notice has within 28 days after the examination been served by the employer upon the worker personally or in such manner as may be ordered by the County Court:

Provided that—

- (i) in the last mentioned case—if before the expiration of the said 28 clear days the worker sends to the employer the report of a registered medical practitioner (which report shall set out the grounds of his opinion) disagreeing with the certificate so served by the employer, the weekly payment shall not be ended or diminished except in accordance with such report or, if and so far as the employer so

The Clauses Referred to—continued

disputes such report, except in accordance with the certificate given by the medical referee pursuant to subsection (5) of section twenty-seven of this Act;

- (ii) where an application has been made pursuant to subsection (4) of section twenty-seven of this Act to refer the dispute to a medical referee, it shall be lawful for the employer pending the settlement of the dispute to pay into the custody of the County Court—

where the notice was a notice to end the weekly payment—the whole of each weekly payment becoming payable in the meantime;

where the notice was a notice to diminish the weekly payment—so much of each weekly payment so payable as is in dispute—

and the sums so paid into the custody of the County Court shall on the settlement of the dispute be paid to the employer or to the worker according to the effect of the certificate of the medical referee or, if the effect of that certificate is disputed, as is determined by the County Court; and

The Clauses Referred to—continued

- (iii) nothing in this clause shall be construed as authorizing an employer to end or diminish a weekly payment in any case in which, or to an extent to which, apart from this paragraph he would not be entitled to do so;
- (iv) every notice of intention given by an employer pursuant to this paragraph shall inform the worker in the manner and form prescribed by rules under the **County Court Act 1958** that if the worker fails to send to the employer the report of the registered medical practitioner as aforesaid within 28 clear days the employer will, subject to this clause, be entitled to end or diminish the weekly payment;
- (v) if any dispute arises between a worker and an employer in relation to or in connexion with the operation of the foregoing provisions of this subclause the dispute shall, upon the application of the employer or of the worker, be heard and determined by the County Court.

S. 9 cl. 7(1A)
inserted by
No. 7292
s. 6(2)(c).

- (1A) The ending or diminishing of a weekly payment by an employer shall not, where the worker remains partially incapacitated for work, be regarded as having been made in accordance with the provisions of this clause unless the employer without further award continues to pay to the worker such weekly payments for partial incapacity as are

The Clauses Referred to—continued

payable pursuant to subparagraph (ii) of paragraph (b) of clause one in the circumstances of the case.

- (2) If any weekly payment is ended or diminished otherwise than in accordance with the foregoing provisions of this clause the employer shall be guilty of an offence against this Act.

S. 9 cl. 7(2)
amended by
No. 7292
s. 6(2)(d).

- (3) An employer who fails to make a weekly payment payable under this Act before the expiry of 7 days after the end of the week in respect of which it is payable shall be guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units.

S. 9 cl. 7(3)
substituted by
No. 10100 s. 8,
amended by
No. 10191
s. 261(b)(ix).

- (4) A weekly payment may be made by post by properly addressing, prepaying and posting to the worker a letter containing a cheque for the amount of the weekly payment and for all the purposes of this Act payment shall be deemed to have been made when the letter was posted.

S. 9 cl. 7(4)
inserted by
No. 10100 s. 8.

* * * * *

S. 9 cl. 8
repealed by
No. 41/2006
s. 32(3).

10 Worker ceasing to reside in Australia

If a worker receiving a weekly payment ceases to reside in Australia he shall thereupon cease to be entitled to receive any weekly payment unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the worker shall be entitled to receive quarterly the amount of the weekly payments

No. 5601 s. 10.
S. 10
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

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accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules made by the County Court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

Nos 5601
s. 11, 5676
s. 9.

11 Compensation for specified injuries

S. 11(1)
amended by
No. 9840
s. 3(1)(a)(b)
(as amended
by No. 10100
s. 16).

- (1) Notwithstanding anything in the foregoing provisions of this Act as to the rate of compensation, but subject to the following provisions of this section, the amount of compensation payable for any injury mentioned in the first column of the Table appended to this subsection shall, subject to the said Table, be the amount which is the percentage set out opposite such injury in the second column of the said Table of the maximum amount payable under Clause 1(a)(ii) of The Clauses Referred To in section 9 at the time of the injury.

S. 11(1) Table
substituted by
Nos 7292
s. 7(1), 8084
s. 3, 8271 s. 4,
8733 s. 7,
amended by
No. 9840
s. 3(2)(a)–(v).

THE TABLE REFERRED TO

<i>Injury</i>	<i>Percentage</i>
Total loss of the sight of both eyes	100
Total loss of the sight of an only eye	100
Loss of both hands	100
Loss of both feet	100
Loss of a hand and a foot	100
Total and incurable loss of mental powers involving inability to work	100
Total and incurable paralysis of the limbs or of mental powers	100
Total loss of the right arm or of the greater part of the right arm	80
Total loss of the left arm or of the greater part of the left arm	75

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THE TABLE REFERRED TO—*continued*

<i>Injury</i>	<i>Percentage</i>
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	70
Total loss of the same for the left hand and arm	65
Total loss of a leg	75
Total loss of a foot	65
Total loss of the lower part of the leg	70
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	75
Total loss of hearing	65
Total loss of the hearing of one ear	20
Total loss of the sight of one eye	40
Loss of binocular vision	40
Total loss of the thumb of the right hand	30
Total loss of the thumb of the left hand	26
Total loss of the forefinger of the right hand	21
Total loss of the forefinger of the left hand	18
Total loss of two joints of the forefinger of the right hand	16
Total loss of two joints of the forefinger of the left hand	12
Total loss of a joint of the thumb	16
Total loss of the first joint of the forefinger of the right hand	10
Total loss of the first joint of the forefinger of the left hand	9
Total loss of the first joint of the middle or little or ring finger of either hand	6
Total loss of the middle finger of either hand	12
Total loss of the little or ring finger of either hand	11
Total loss of two joints of the middle finger of either hand	10
Total loss of two joints of the little or ring finger of either hand	9
Total loss of the great toe of either foot	22

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THE TABLE REFERRED TO—*continued*

<i>Injury</i>	<i>Percentage</i>
Total loss of a joint of the great toe of either foot	10
Total loss of any other toe	6
Total loss of a joint of any other toe	2
Partial loss of the sight of both eyes or of an only eye	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of the sight of one eye	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of the hearing of both ears or of an only ear	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of hearing measured without any hearing aid.
Partial loss of the hearing of one ear	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of hearing measured without any hearing aid.

For the purposes of this Table—

- (a) the total loss of a limb hand foot finger thumb toe or joint or any part thereof shall be deemed to include the permanent total loss of the use of such limb hand foot finger thumb toe joint or part; and
- (b) where a worker habitually uses his left hand and arm to perform work usually performed by a worker with his right hand and arm the compensation payable for the loss of such left arm or the greater part of the arm or for the total loss of the left hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the left hand shall be such amount as would have been payable for a similar loss in respect of his right arm or the part or parts thereof, but in any such case the compensation for the loss of the right arm or the greater part of that arm or for the total loss of

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the right hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the right hand shall be such amount as would have been payable for a similar loss in respect of his left arm or the part or parts thereof if he did not habitually use his left hand and arm to perform work usually performed by a worker with his right hand and arm.

Where a worker suffers on the same occasion more than one of the injuries mentioned in this Table he shall not in any case be entitled to receive as compensation under this section and this Table more than the maximum amount payable under Clause 1(a)(ii) of The Clauses Referred To in section 9 at the time of injury.

- (2) Where a worker suffers any injury—
- (a) which as to the major part thereof consists of an injury for which compensation is payable under the said Table; or
 - (b) which consists of a lesser but substantial degree of any injury for which compensation is payable under the said Table—
- the injury shall, subject to the following provisions of this section, be regarded as an injury for which compensation based on the said Table shall be payable, and the County Court may award as compensation such amount as, having regard to the provisions of the said Table, appears to be just and proportionate to the degree of injury suffered.
- (3) Nothing in the foregoing provisions of this section or in the said Table shall limit the amount of compensation payable for any injury during any period of incapacity due to illness resulting from that injury, and the amount of compensation payable pursuant to the foregoing provisions of this section and the said Table shall be payable in addition to any weekly payments payable in respect of incapacity due to that illness.

S. 11(2)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

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S. 11(4)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

(4) Where a worker has suffered an injury for which compensation would, but for the provisions of this subsection, be payable under the foregoing provisions of this section, and it appears to the County Court—

(a) that the amount of compensation which would be so payable would be substantially less than the amount of compensation which would be payable under the provisions of subsection (2) of section nine of this Act if compensation were assessable under that subsection; and

S. 11(4)(b)
amended by
No. 7292
s. 7(2).

(b) that, because of the nature of his injury in relation to the nature of his former usual employment, the amount of compensation under the foregoing provisions of this section would be inadequate—

then the County Court may award compensation pursuant to the provisions of the said subsection (2) of section nine without regard to the foregoing provisions of this section and the said Table.

Division 3—Compensation for industrial diseases

Nos 5601
s. 12, 5676
ss 4(2)(e), 6(3),
5715 s. 7.

12 Disease due to employment

(1) Where—

S. 12(1)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 59.4).

(a) a registered medical practitioner certifies that a worker is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed; or

(b) the death of a worker is caused or is materially contributed to by any disease—

and the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of disablement, then

subject to the provisions hereinafter contained the worker or his dependants shall be entitled to compensation under this Act as if the disease were a personal injury arising out of or in the course of that employment and the disablement shall be treated as the happening of the injury.

- (2) Where a certificate has been given under and for the purposes of the last preceding subsection, then any claim arising thereon or in connexion therewith shall not be barred, avoided or invalidated by reason only of any defect, omission or irregularity, whether of substance or form in the certificate if, upon proceedings for the determination of the claim, the County Court or Administrative Appeals Tribunal is satisfied, on such material as seems to it adequate and without regard to the rules of evidence, that the worker is or was suffering from a disease, that he is or was thereby disabled from earning full wages at the work at which he was employed and that the disease was due to the nature of the employment.
- (3) Nothing in subsection (2) prevents the application of Part 3.10 of the **Evidence Act 2008** to proceedings referred to in that subsection.

S. 12(2)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

S. 12(3)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 67).

12A Certificate by a registered medical practitioner

After examination of the worker, the registered medical practitioner must give the worker—

- (a) a certificate of disablement in the form approved by the Authority; or
- (b) a certificate in the form approved by the Authority that the registered medical practitioner is not satisfied that the worker is entitled to a certificate of disablement.

S. 12A
inserted by
No. 41/2006
s. 33.

No. 5601 s. 13.

13 False representation

If it is proved that the worker has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease compensation shall not be payable.

No. 5601 s. 14.

14 From which employer compensation recoverable

The compensation shall be recoverable from the employer who last employed the worker prior to the date of disablement in the employment to the nature of which the disease was due, and notice of the death or disablement shall be given to that employer and may be so given notwithstanding that the worker has voluntarily left his employment:

Provided that—

- (a) the worker or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment prior to the date of disablement as he or they may possess, and if such information is not furnished or is not sufficient to enable that employer to take proceedings under the next following proviso that employer upon proving that the disease was not contracted whilst the worker was in his employment shall not be liable to pay compensation;
- (b) if that employer alleges that the disease was in fact contracted whilst the worker was in the employment of some other employer and not whilst in his employment he may join such other employer as a party to the proceedings before the County Court or Administrative Appeals Tribunal and if the

S. 14(b)
Proviso
amended by
Nos 10191
s. 270(14)(b),
67/1992
s. 64(11)(a).

allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

- (c) if the disease is of such a nature as to be contracted by a gradual process any other employers who prior to the date of disablement employed the worker in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as in default of agreement may be determined by the County Court or Administrative Appeals Tribunal in proceedings for settling the amount of the compensation.

S. 14(c)
Proviso
amended by
Nos 10191
s. 270(14)(b),
67/1992
s. 64(11)(a).

15 Notice of death or disablement

Nos 5601
s. 15, 5676
s. 4(2)(f).

The notice of the death or disablement shall be sufficient if it is given in the same manner as notice of an injury may be given under this Act and if it conveys to the employer that the worker is suffering from the said disease and that the said disease is due to the nature of the employment and if it is accompanied by a copy of the certificate given pursuant to section twelve of this Act.

16 Nominal defendant

No. 5601 s. 16.

- (1) Where the employer of the worker—

- (a) cannot be identified; or
(b) is dead or cannot be found or (in the case of a company) has been wound up—

any claim for compensation shall be made against a nominal defendant to be named by the County Court or Administrative Appeals Tribunal.

S. 16(1)
substituted by
Nos 8733
s. 8(a), 9613
s. 9,
amended by
Nos 10191
s. 260(2)(a),
67/1992
s. 64(11)(a).

Workers Compensation Act 1958
No. 6419 of 1958
Part I—Employers' Liability

s. 16

S. 16(1A)
inserted by
No. 9613 s. 9.

(1A) Without affecting the generality of subsection (1), where the employer cannot be found at the last known place of abode or the registered office of the employer or the last place of business at which the worker was employed by the employer, the employer shall be deemed to be unable to be found and subsection (1) shall apply to and in relation to the worker accordingly.

S. 16(2)
amended by
Nos 8733
s. 8(b), 10191
s. 260(2)(a)(b),
67/1992
s. 64(11)(a)(d)
(as amended
by No.
50/1993
s. 111(2)(e)),
50/1994 s. 112.

(2) The nominal defendant shall not be liable to pay any compensation but the same shall be paid by the insurer with whom the employer was insured at the relevant time in respect of liability to pay compensation under this Act or, if such insurer cannot be determined to the satisfaction of the County Court or Administrative Appeals Tribunal, then out of the Fund.

S. 16(3)
inserted by
No. 6986 s. 4,
amended by
Nos 10191
s. 260(2)(a),
67/1992
s. 64(11)(a),
107/1997
s. 76(1).

(3) A nominal defendant named by the County Court or Administrative Appeals Tribunal for the purposes of this section who is not an insurer with which the employer was insured at the relevant time shall be entitled to such amount as the County Court or Administrative Appeals Tribunal thinks proper for his costs and expenses in that behalf.

S. 16(4)
inserted by
No. 6986 s. 4,
substituted by
Nos 10191
s. 260(2)(c),
67/1992
s. 64(11)(d) (as
amended by
No. 50/1993
s. 111(2)(e)),
amended by
No. 50/1994
s. 112.

(4) An amount under subsection (3) shall be paid out of the Fund.

Workers Compensation Act 1958
No. 6419 of 1958
Part I—Employers' Liability

s. 17

* * * * *

S. 16(5)
inserted by
No. 6986 s. 4,
substituted by
No. 10089
s. 4(1),
amended by
Nos 10191
s. 260(a)(d),
67/1992
s. 64(11)(a),
repealed by
No. 50/1994
s. 115.

17 Production of section 12 certificate

No. 5601 s. 17.

The worker or his legal personal representative or dependants shall if so required by writing produce for inspection by the employer the certificate given pursuant to section twelve of this Act.

18 Calculation of compensation

No. 5601 s. 18.

The amount of the compensation shall be calculated with reference to the earnings of the worker while at work under the employer from whom the compensation is recoverable.

19 References to medical referee

No. 5601 s. 19.

If an employer or a worker is aggrieved by the action of a registered medical practitioner in giving or refusing to give a certificate of disablement for the purposes aforesaid or by the contents of any certificate given as aforesaid the matter shall in accordance with section 19A be referred to the County Court and the decision of the County Court shall be final.

S. 19
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b),
23/1994
s. 118(Sch. 1
item 59.5),
41/2006 s. 34.

* * * * *

S. 19(a)
repealed by
No. 41/2006
s. 34.

Workers Compensation Act 1958
No. 6419 of 1958
Part I—Employers' Liability

s. 19A

S. 19(b)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b),
repealed by
No. 41/2006
s. 34.

S. 19A
inserted by
No. 41/2006
s. 35.

* * * *

19A Reference under section 19

- (1) If the action of a registered medical practitioner is, or the contents of a certificate are to be, referred to the County Court under section 19—
 - (a) if the aggrieved person is the person named as the employer in the certificate of disablement that person must within 21 days of the receipt by that person of notice of disablement or if that person requires in writing the production of the certificate for inspection, within 21 days of it being produced, apply in the form approved by the Authority to the Registrar of the County Court for reference of the matter to the County Court;
 - (b) if the aggrieved person is the person named as the worker in the relevant certificate, that person must, within 21 days of the date of the certificate by which or by the contents of which that person is aggrieved, apply in the form approved by the Authority to the Registrar of the County Court for reference of the matter to the County Court.
- (2) The Registrar of the County Court may for good cause extend the time for making an application under subsection (1) for not more than 7 days.

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- (3) An application under subsection (1) must be accompanied by—
 - (a) if the worker is the applicant, the certificate of the medical practitioner; or
 - (b) if the employer is the applicant, the notice of disablement and a copy of the certificate of the medical practitioner.
 - (4) The applicant must also file with the Registrar of the County Court any copies of the application and other documents, as the Registrar of the County Court requires, for the use of the other party and the County Court.
 - (5) The Registrar of the County Court must refer the matter to the County Court.

19B Procedure relating to references under section 19

**S. 19B
inserted by
No. 41/2006
s. 35.**

- (1) If the Registrar of the County Court is satisfied that the worker is able to travel, the Registrar of the County Court must make and forward to the worker an order that the worker attend upon the inquiry to be held by the County Court.
- (2) The Registrar of the County Court must refer the matter to the County Court by—
 - (a) making an order of reference in the form approved by the Authority; and
 - (b) bringing the matter before the County Court in the manner, in so far as the nature of the proceedings may allow, in which contested proceedings are generally brought before the County Court.
- (3) The Registrar of the County Court must forward to both parties a copy of the order of reference and to the respondent a copy of the document filed with the Registrar of the County Court.

- (4) The procedure to be followed by the County Court, in so far as the nature of the proceedings may allow, must be the same as that followed upon the hearing and determination by it of contested matters.
- (5) If the worker is unable to travel to attend upon the hearing of the County Court, the worker must submit to an examination or examinations at the times and places as may be ordered by the County Court.

No. 5601 s. 20.
S. 20
amended by
Nos 10191
s. 270(14)(b),
23/1994
s. 118(Sch. 1
item 59.6).

20 Date of disablement

The date of disablement shall be deemed to be such date as the registered medical practitioner certifies as the date on which the disablement commenced or if he is unable to certify such a date the date on which the certificate is given:

Provided that—

- (a) if the County Court allows an appeal against a refusal by a registered medical practitioner to give a certificate of disablement or against the contents of any such certificate the date of disablement shall be such date as the County Court may determine; or
- (b) where a worker dies without having obtained a certificate of disablement or is at the time of death not in receipt of a weekly payment on account of disablement the date of death shall be deemed to be the date of disablement.

S. 20 Proviso
amended by
Nos 67/1992
s. 64(11)(b),
23/1994
s. 118(Sch. 1
item 59.6),
41/2006 s. 36.

21 Proclamation of diseases

- (1) In section 22, *proclamation* means a proclamation made or amended under this section as this section was in force before the appointed day.

No. 5601 s. 21.
S. 21
amended by
Nos 7292
s. 12(2)(a),
8733 s. 9(1),
substituted by
No. 10191
s. 270(5),
amended by
No. 41/2006
s. 37 (ILA
s. 39B(1)).

- (2) The list of diseases proclaimed under this section as in force prior to the appointed day is contained in the Third Schedule.

S. 21(2)
inserted by
No. 41/2006
s. 37.

22 Proclaimed diseases deemed to be due to employment

No. 5601 s. 22.

- (1) Without limiting or affecting the generality of section twelve of this Act, if a worker within five years prior to the date of the disablement was employed in any process or occupation specified in the said proclamation (as in force at the date of the disablement) and the disease contracted is a disease specified in the said proclamation (as in force at the said date) in relation to the said process or occupation, then the disease shall be deemed to have been due to the nature of that employment unless the employer proves the contrary.

- (2) For the purposes of the last preceding subsection a disease contracted by a worker shall be deemed to be a disease specified in the proclamation in relation to a process or occupation if the County Court or Administrative Appeals Tribunal is satisfied that the disease so contracted is substantially the same disease as the disease so specified, notwithstanding that the words used in describing the disease in the certificate of

S. 22(2)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

disablement are not identical with those used in the proclamation.

No. 5601 s. 23.
S. 23
amended by
Nos 7455
s. 9(a),
23/1994
s. 118(Sch. 1
item 59.7).

23 Regulations

The Governor in Council may make regulations as to the duties of and fees to be paid to registered medical practitioners (including dentists) in relation to the giving of certificates under this Act and the carrying out of other functions connected with the operation of this Act and prescribing for the purposes of section twenty-six of this Act fees for all or any of the services referred to in subsection (2) of the said section other than fees for any of such services which are prescribed by or under the **Hospitals and Charities Act 1958**.

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S. 24
amended by
No. 23/1994
s. 118(Sch. 1
item
59.8(a)(b)),
repealed by
No. 41/2006
s. 38.

Nos 5601
s. 25, 5676
s. 4(2)(g).

25 Saving as to personal injury

Nothing in this Act as to compensation in respect of a disease shall affect the rights of a worker to receive compensation in respect of a disease if the disease is a personal injury within the meaning of this Act.

Pt 1 Div. 3A
(Heading and
ss 25A–25J)
inserted by
No. 9613
s. 2(1).

Division 3A—Industrial deafness

S. 25A
inserted by
No. 9613
s. 2(1).

25A Definitions

In this Division—

industrial deafness means any condition of deafness caused by exposure continued

exposure or periods of continued exposure to industrial noise;

incapacity in relation to industrial deafness includes inability to engage in the worker's own or other suitable employment because of an immediate and substantial risk of increasing the industrial deafness to a level of material disability.

25B Industrial deafness due to employment

S. 25B
inserted by
No. 9613
s. 2(1).

Where any worker is suffering from industrial deafness which is due to the nature of any employment in which the worker was employed at any time prior to the date of giving a notice of the injury then subject to the provisions hereinafter contained the worker or his dependants shall be entitled to compensation under this Act as if the deafness were a personal injury arising out of or in the course of the employment.

25C Compensation payable only under Divisions 3A and 4

S. 25C
inserted by
No. 9613
s. 2(1).

- (1) Compensation shall not be payable for industrial deafness otherwise than pursuant to this Division and Division 4 of this Part.
- (2) Industrial deafness shall for the purposes of section 13 be deemed to be a disease and that section shall apply accordingly.
- (3) In applying the provisions of Division 4 of this Part to industrial deafness *incapacity* shall have the same meaning as in this Division and *incapacitated* shall have a corresponding meaning.

s. 25D

S. 25D
inserted by
No. 9613
s. 2(1).

25D From which employer compensation recoverable

The compensation under this Division shall be recoverable from the employer who last employed the worker prior to the date on which the claim is made in the employment to the nature of which the industrial deafness is claimed by the worker to be due in whole or in part and notice of the injury shall be given to that employer notwithstanding that the worker has left his employment:

Provided that—

S. 25D
Proviso
amended by
Nos 10191
s. 270(14)(a)
(b), 67/1992
s. 64(11)(a).

- (a) the worker or his dependants if so required shall by statutory declaration furnish that employer with such information as to the names and addresses of all the other employers who employed him in such employment prior to the said date as he or they may possess;
- (b) if that employer alleges that the industrial deafness was caused, aggravated, accelerated or exacerbated in some other employment undertaken by the worker within a period of ten years prior to the date of the claim, he may join such other employer or employers as party or parties to the proceedings before the County Court or Administrative Appeals Tribunal and, if the employer on whom the claim was made proves that the industrial deafness was not caused, aggravated, accelerated or exacerbated in his employment he shall not be liable to pay compensation and the compensation shall be paid by the party so joined who, in the opinion of the County Court or Administrative Appeals Tribunal, last employed the worker in employment which caused, aggravated, accelerated or exacerbated the industrial deafness;

- (c) if other employers have been joined in the proceedings, then upon proof that the worker had been employed by them or any of them within a period of ten years prior to the date of the claim in a process or occupation or in conditions which the County Court or Administrative Appeals Tribunal finds were of such a nature as to cause, aggravate, accelerate or exacerbate industrial deafness, then each of those other employers shall be liable to make to the employer from whom compensation is recoverable such contributions as in default of agreement may be determined by the County Court or Administrative Appeals Tribunal in proceedings for settling the amount of the compensation.

25E Nominal defendant

S. 25E
inserted by
No. 9613
s. 2(1).

- (1) Where the employer of a worker—
- (a) cannot be identified; or
 - (b) is dead or cannot be found or in the case of a company has been wound up—

S. 25E(1)
amended by
Nos 10191
s. 260(3)(a),
67/1992
s. 64(11)(a).

the notice of the injury shall be given to a nominal defendant to be named by the County Court or Administrative Appeals Tribunal.

- (2) Without affecting the generality of subsection (1), where the employer cannot be found at the last-known place of abode or the registered office of the employer or the last place of business at which the worker was employed by the employer, the employer shall be deemed to be unable to be found and the said subsection shall apply to and in relation to the worker accordingly.

Workers Compensation Act 1958
No. 6419 of 1958
Part I—Employers' Liability

s. 25E

S. 25E(3)
amended by
Nos 10191
s. 260(3)(a)(b),
67/1992
s. 64(11)(a)(d)
(as amended
by No.
50/1993
s. 111(2)(e)),
50/1994 s. 112.

(3) The nominal defendant shall not be liable to pay any compensation but the same shall be paid by the insurer with whom the employer was insured at the relevant time in respect of liability to pay compensation under this Act or, if such insurer cannot be determined to the satisfaction of the County Court or Administrative Appeals Tribunal, then out of the Fund.

S. 25E(4)
amended by
Nos 10191
s. 260(3)(a),
67/1992
s. 64(11)(a),
107/1997
s. 76(2).

(4) A nominal defendant named by the County Court or Administrative Appeals Tribunal for the purposes of this section who is not an insurer with which the employer was insured at the relevant time shall be entitled to such amount as the County Court or Administrative Appeals Tribunal thinks proper for his costs and expenses in that behalf.

S. 25E(5)
substituted by
Nos 10191
s. 260(3)(c),
67/1992
s. 64(11)(d) (as
amended by
No. 50/1993
s. 111(2)(e)),
amended by
No. 50/1994
s. 112.

(5) An amount under subsection (4) shall be paid out of the Fund.

S. 25E(6)
substituted by
No. 10089
s. 4(1),
amended by
Nos 10191
s. 260(3)(a),
67/1992
s. 64(11)(a),
repealed by
No. 50/1994
s. 115.

* * * * *

25F Deafness deemed to have occurred at a constant rate

S. 25F
inserted by
No. 9613
s. 2(1).

- (1) Unless the County Court determines otherwise industrial deafness shall be deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment with the employers who are required to pay compensation or make contribution under section 25D.
- (2) Where the industrial deafness or a proportion thereof has occurred in circumstances not creating any liability to pay compensation under this Act then that deafness or proportion of deafness shall be excluded from the assessment of deafness for the purposes of calculating compensation under this Division.
- (3) Notwithstanding the provisions of subsection (1) the date of injury shall be deemed to be—
 - (a) the last day of the worker's employment in the service of the employer from whom compensation is recoverable pursuant to section 25D and if the employment was not continuous, then a separate claim shall be deemed to have been made in respect of each period of such employment; or
 - (b) in the case where at the date of the claim the worker is still employed in the service of an employer from whom compensation is recoverable pursuant to section 25D the date of injury shall be deemed to be the date of the notice of the injury.

S. 25F(1)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

Workers Compensation Act 1958
No. 6419 of 1958
Part I—Employers' Liability

s. 25G

S. 25G
inserted by
No. 9613
s. 2(1).

25G Compensation in accordance with sections 9 and 11

- (1) Compensation for industrial deafness shall be in accordance with the provisions of section 9 and section 11.

S. 25G(2)
repealed by
No. 9840 s. 4.

* * * *

S. 25GA
inserted by
No. 10100
s. 9(1).

25GA Transitional—presumption under previous section 25G(2)

- (1) On and after the commencement of this section—
(a) an award of compensation; or
(b) an amendment of an award of compensation—

pursuant to this Act for industrial deafness shall, irrespective of when the injury occurred, be made as if section 25G(2) as inserted into this Act by the **Workers Compensation (Amendment) Act 1981** had not been inserted by that Act, and had never formed part of this Act.

S. 25GA(2)
amended by
Nos 10191
s. 270(14)(a),
50/1994 s. 116.

- (2) Where the County Court, upon application by a party to an award of compensation to which this subsection applies, is of the opinion that the award was reduced by reason of the conclusive presumption under section 25G(2) as inserted into this Act by the **Workers Compensation (Amendment) Act 1981**, the County Court shall amend the award by substituting for that amount the amount which it considers would have been specified if section 25G(2) had not been inserted by that Act, and had never formed part of this Act.
- (3) Subsection (2) applies to an award of compensation pursuant to this Act for industrial deafness made on or after 14 January 1983 and before the insertion of subsection (2) into this Act.

25H Prior injury

S. 25H
inserted by
No. 9613
s. 2(1).

- (1) In this section *prior injury* means industrial deafness for which the worker has received or become entitled to receive compensation for loss of hearing.
- (2) If a worker, after having on one or more occasions (whether before or after the commencement of section 2 of the **Workers Compensation (Amendment) Act 1981**) suffered a prior injury, suffers a further loss of hearing in respect of industrial deafness he shall be deemed to have suffered a further injury.
- (3) A worker who suffers a further injury referred to in subsection (2) shall be entitled to receive in respect of that further injury, in addition to any other compensation payable under this Division a percentage, calculated in accordance with subsection (4) of the amount that would have been payable for a total loss of hearing.
- (4) The percentage referred to in subsection (3) shall be the difference between the total percentage of loss of hearing in respect of industrial deafness from which the worker was suffering immediately after the injury in respect of which the claim is made and the total percentage of the loss of hearing in respect of industrial deafness immediately after the prior injury (or in the case of more than one prior injury) the latest of the prior injuries.

s. 25I

S. 25I
inserted by
No. 9613
s. 2(1),
amended by
No. 9840
s. 5(1)(2).

S. 25I(1)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b) (as
amended by
No. 50/1993
s. 111(2)(d)(ii)).

25I Finality of awards

- (1) Notwithstanding the provisions of section 28(4) every award of the County Court for the payment of compensation for industrial deafness, other than an award which specified leave to apply in the event of an appellate court decision or legislative change, shall be a final award in respect of the percentage of the diminution of the worker's hearing on the date of the award and all such awards made after the commencement of this Division shall state the percentage of diminution of the worker's hearing in respect of industrial deafness at the date of the award in relation to which the amount of the compensation is assessed.
- (2) In the case of an award referred to in subsection (1) which specified leave to apply in the event of an appellate court decision or legislative change the County Court shall, upon the application of either party to the award, amend the award by substituting for the amount of compensation specified in the award such amount as the County Court considers would have been specified had the provisions of this Division as in force at the time of the application for amendment of award been in force when the award was made.

S. 25I(2)
inserted by
No. 9840
s. 5(2),
amended by
Nos 10100
s. 9(2), 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

S. 25J
inserted by
No. 9613
s. 2(1),
amended by
No. 9840
s. 5(1).

25J Extinguishment of rights

An award for compensation for industrial deafness made pursuant to section 11 shall fully extinguish all rights of the worker to compensation for industrial deafness pursuant to that section up to the date thereof but shall not prevent the worker

from obtaining compensation for further industrial deafness suffered after that date.

Division 4—Compensation for medical and like services

26 Liability for medical etc. services and burial etc. costs

Nos 5601
s. 26, 5676
ss 4(2)(h), 6(4),
10, 5715 s. 3.

(1) Where—

- (a) an employer is liable to pay compensation under any provision of this Act in respect of the death incapacity or disablement of a worker resulting from or materially contributed to by injury or disease; or
- (b) the death of a worker results from or is materially contributed to by injury or disease and no compensation is payable under any other provision of this Act by reason only that the worker leaves no dependants; or
- (c) a worker suffers injury and no compensation is payable under any other provision of this Act by reason only that the worker is not incapacitated either totally or partially for any period—

then the employer shall be liable to pay as compensation—

- (i) the reasonable costs of the medical, hospital, nursing and ambulance services incurred by reason of the injury or (in the case of disablement caused by disease) by reason of the disease on and after the date of the disablement; and
- (ii) where death results from the injury or disease—the reasonable costs of burial or cremation.

(2) In this section unless inconsistent with the context or subject-matter—

(a) ***ambulance service*** means the conveying of the worker by whatever reasonable means for the purpose of his receiving medical or hospital services or to his place of residence after receiving or seeking either of such services;

S. 26(2)(b)
substituted by
No. 50/1994
s. 117.

(b) ***hospital*** means—

(a) a public hospital, denominational hospital, private hospital or day procedure centre within the meaning of the **Health Services Act 1988**; or

(b) any hospital situated outside Victoria;

S. 26(2)(c)
amended by
Nos 7455
s. 9(b)(i),
23/1994
s. 118(Sch. 1
item 59.9(a)).

(c) ***hospital service*** includes maintenance attendance and treatment in any hospital and the provision by any hospital of medical attendance and treatment and of nursing attendance and of medicines and medical surgical and other curative materials appliances or apparatus and of other usual and necessary hospital services (whether with respect to the treatment of the injury or disease of the worker or with respect to the industrial rehabilitation of the worker) but does not include medical care and attention provided by a registered medical practitioner who is authorized to charge fees pursuant to the provisions of section 70A of the **Hospitals and Charities Act 1958** or dental care or attention provided by a dentist who is authorized to charge fees pursuant to the said provisions;

(d) *medical service* includes—

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| (i) attendance examination or treatment of any kind by a registered medical practitioner registered dentist registered optometrist registered physiotherapist registered chiropractor or registered osteopath or registered podiatrist; | S. 26(2)(d)(i) amended by Nos 9297 s. 7(1), 23/1994 s. 118(Sch. 1 item 59.9(b)), 63/1996 s. 98(Sch. item 5), 78/1997 s. 97(Sch. item 4.1). |
| (ii) the provision and the repair adjustment or replacement (as may from time to time become necessary) of skiagrams crutches artificial members eyes or teeth or spectacle glasses or hearing aids including (without limiting the generality of the foregoing) the repair or replacement of crutches artificial members eyes or teeth or spectacle glasses or hearing aids destroyed or damaged at the time of the injury giving rise to the claim; | S. 26(2)(d)(ii) amended by No. 8733 s. 10(a)(i). |
| (iii) the provision to or for the worker otherwise than as a patient in a hospital of medical or surgical aids to rehabilitation or treatment or assistance for or with respect to his industrial rehabilitation or of curative appliances or apparatus; | S. 26(2)(d)(iii) amended by No. 7455 s. 9(b)(ii). |
| (iv) the provision by a registered pharmacist of medicines or curative apparatus appliances or materials; and | S. 26(2)(d)(iv) amended by No. 9549 s. 2(1)(Sch. item 256). |

Workers Compensation Act 1958
No. 6419 of 1958
Part I—Employers' Liability

s. 26

S. 26(2)(d)(v)
amended by
Nos 8733
s. 10(a)(ii),
9297 s. 7(2),
23/1994
s. 118(Sch. 1
item 59.9(c)),
78/1997
s. 97(Sch.
item 4.1).

S. 26(2)(e)
substituted by
No. 13/2010
s. 51(Sch.
item 60.3).

S. 26(2)(f)
amended by
Nos 7455
s. 9(b)(iii),
9613 s. 10(a).

- (v) the provision by a registered medical practitioner dentist optometrist physiotherapist chiropractor and osteopath or registered podiatrist of any certificate or report required by the worker or his legal personal representative or dependants for any purpose relating to the operation of this Act;
- (e) **nursing service** means a nursing or midwifery service rendered by a nurse or midwife, otherwise than at a hospital or as a member of the nursing staff of a hospital;
- (f) **reasonable**, in respect of costs (other than burial and cremation costs) or claims, means reasonable having regard not only to the service or provision actually rendered but also to the necessity of that service or provision in the circumstances of the case and also to any regulations made under section twenty-three of this Act and also to any fees fixed by or under the **Hospitals and Charities Act 1958**.
- (3) Any employer who has made adequate arrangements to provide workers in his employment with gratuitous medical hospital nursing or ambulance services shall, to the extent of the value of such services, be deemed to have discharged his liability under this section.
- (4) The payment of the reasonable costs of any service hereinbefore referred to or of burial or cremation shall be made by the employer to the person or body of persons lawfully entitled to payment therefor:
- Provided that, if the liability to that person or body of persons has already been discharged in whole or in part by a payment by the worker or

any other person (whether legally liable to make such payment or not) then the employer shall pay the amount by which the liability has been so discharged to the worker (or his legal personal representative or dependants) or to the other person by whom the liability was so discharged (as the case requires).

- (5) Where the worker or his legal personal representative or dependants by reason of any prior contract agreement or arrangement made by the worker or by reason of his being a contributor or subscriber to any institution fund or scheme is or are entitled to any of the services hereinbefore referred to or to the workers' burial or cremation free of charge or at a reduced rate or charge, the payment by the employer in respect of the reasonable cost of that service or burial or cremation shall not thereby be reduced, but, after payment of the amount (if any) actually owing to the person or body of persons lawfully entitled to payment therefor, the balance of the reasonable cost thereof shall be paid to the worker or (as the case requires) to his legal personal representative or dependants.
- (6) The compensation payable under this section shall be in addition to any compensation payable under any other provision of this Act, and no limit imposed on the amount of compensation by any other provision of this Act shall limit or in any manner affect the amount of compensation payable under this section, nor shall the amount of compensation payable under any other provision of this Act be limited or affected by reason only that compensation is also payable under this section.

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S. 26(7)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

(7) Any question whether any claim for payment under this section is a proper claim or as to the reasonableness of the amount of any such claim shall, if not settled by agreement of all the persons affected, be determined by the County Court or Administrative Appeals Tribunal upon the application of the employer or any claimant, and the County Court or Administrative Appeals Tribunal may order payment by the employer in accordance with any such determination.

S. 26(8)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

(8) Every order made by the County Court or Administrative Appeals Tribunal under this section shall be deemed an award of compensation under this Act and the provisions of this Act shall apply thereto accordingly.

S. 26(9)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

(9) The payment of the whole of the reasonable costs of any service or burial or cremation pursuant to this section, whether by agreement or upon an order of the County Court or Administrative Appeals Tribunal, shall wholly and finally discharge the worker or his legal personal representative or dependants (as the case may be) and every other person from all liability whatsoever in respect of the costs of that service or burial or cremation.

S. 26(10)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

(10) The jurisdiction of the County Court or Administrative Appeals Tribunal in respect of claims for payment of the costs of any service or burial or cremation under this section shall be exclusive; and no action suit or other proceeding by any person against the worker or his legal personal representative or any of his dependants for the payment or recovery of any costs which an employer is liable to pay under this section shall be entertained by any court.

- (11) The reasonable costs of burial or cremation of any worker shall not exceed such amount or amounts as are fixed for the purposes of this section by order or successive orders of the Governor in Council published in the Government Gazette.
- S. 26(11) inserted by No. 8733 s. 10(b), amended by No. 9297 s. 7(3), substituted by No. 9613 s. 10(b).
- (12) Where a worker dies more than 80 kilometres from his usual place of residence, notwithstanding subsection (11) the County Court or Administrative Appeals Tribunal may, if it so determines order an amount to be paid by an employer with respect to that part of the cost of transporting the body to the burial or cremation that relates to transporting the body from the place of death to 80 kilometres from that residence.
- S. 26(12) inserted by No. 9613 s. 10(b), amended by Nos 10191 s. 270(14)(a), 67/1992 s. 64(11)(a).

Division 5—Medical examinations of workers

27 Medical examinations

Nos 5601
s. 27, 5676
s. 4(2)(i).

- (1) Where the worker has given notice of an injury he shall if so required by the employer submit himself for examination by a registered medical practitioner provided and paid by the employer and if he refuses to submit himself to such examination or in any way obstructs the same his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation shall be suspended until such examination has taken place.
- S. 27(1) amended by No. 23/1994 s. 118(Sch. 1 item 59.10(a)).
- (2) Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a registered medical practitioner provided and paid by the employer. If the worker refuses to submit himself to such examination, or in any way
- S. 27(2) amended by No. 23/1994 s. 118(Sch. 1 item 59.10(a)).

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obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

S. 27(3)
amended by
No. 23/1994
s. 118(Sch. 1
item 59.10(b)),
substituted by
No. 41/2006
s. 39.

- (3) A worker can not be required to submit to an examination by a registered medical practitioner under subsection (1) or (2) otherwise than in accordance with subsections (3A), (3B) and (3C).

S. 27(3A)
inserted by
No. 41/2006
s. 39.

- (3A) If a worker has given notice of an injury or is in receipt of weekly payments the worker can not be required to submit to an examination by a registered medical practitioner provided by the employer except at reasonable hours.

S. 27(3B)
inserted by
No. 41/2006
s. 39.

- (3B) A worker in receipt of weekly payments can not, after an initial examination, be required to submit to an examination by a registered medical practitioner provided by the employer more frequently than once every 3 months.

S. 27(3C)
inserted by
No. 41/2006
s. 39.

- (3C) Despite subsection (3A), a worker may be required to submit to one additional examination by a registered medical practitioner provided by the employer if an application is made to the County Court for a review of a weekly payment or for redemption of a weekly payment.

S. 27(4)
amended by
Nos 10/191
s. 270(14)(a),
67/1992
s. 64(11)(a),
23/1994
s. 118(Sch. 1
item 59.10(b)).

- (4) Where a worker has so submitted himself for examination by a registered medical practitioner, or has been examined by a registered medical practitioner selected by himself, and the employer or the worker (as the case may be) has, within six days after such examination, furnished the other with a copy of the report of that practitioner as to the worker's condition, then, in the event of no agreement being come to between the employer and the worker as to the worker's condition or fitness for employment, the registrar, on application being made to the County Court or

Administrative Appeals Tribunal by both parties, may, on payment by the applicant of such fee (not exceeding \$4⁴) as is prescribed by any rules made by the County Court or Administrative Appeals Tribunal, refer the matter to a medical referee.

- (5) The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Governor in Council, give a certificate as to the condition of the worker and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matter so certified.
- (6) Where no agreement can be come to between the employer and the worker as to whether or to what extent the incapacity of the worker is due to the injury, the provisions of this section shall, subject to any regulations made by the Governor in Council, apply as if the question were a question as to the condition of the worker.
- (7) If a worker, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation or, in the case of a worker in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.
- (8) The County Court or Administrative Appeals Tribunal may make rules for prescribing the manner in which documents are to be furnished or served and applications made under this section and the forms to be used for those purposes and, subject to the consent of the Treasurer of Victoria,

S. 27(8)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

as to the fee to be paid under subsection (4) of this section.

Division 6—Payment of compensation under awards, &c.

No. 5601 s. 28.

28 Purported payments; awards by consent

S. 28(1)
amended by
Nos 8733
s. 3(3)(a), 9075
s. 5(2).

- (1) No payment (other than a weekly payment to a worker or a payment of the costs of medical, hospital, nursing or ambulance services or of burial or cremation) shall be deemed to be a payment of compensation, or in valid compromise of any claim, under this Act unless—

S. 28(1)(a)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

- (a) the payment is made pursuant to an award of the County Court; or

S. 28(1)(b)
amended by
Nos 8733
s. 3(3)(b),
10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

- (b) the County Court orders that the payment is to be deemed a payment of compensation, or in valid compromise of a claim, under this Act.

S. 28(2)
amended by
Nos 8733
s. 3(3)(c),
10191
s. 270(6)
(14)(a),
67/1992
s. 64(11)(b).

- (2) If any person, otherwise than in accordance with an award of the County Court, makes any payment (other than a weekly payment as aforesaid or a payment of the costs of any service or burial or cremation as aforesaid) in purported payment of compensation, or in purported compromise of any claim, under this Act, then—
- (a) the person who makes the payment; and
- (b) (if that person is an employé or agent of the employer concerned or of that employer's insurer) the employer or insurer (as the case may be)—

shall be severally guilty of an offence against this Act and liable for a first offence to a penalty of not more than 20 penalty units and for any subsequent offence to a penalty of not more than 50 penalty units:

Provided that it shall be a defence to any prosecution for any such offence that the County Court has ordered that the payment is to be deemed a payment in full settlement of compensation in accordance with, or in valid compromise of the whole claim under, this Act.

S. 28(2)
 Proviso
 amended by
 Nos 8733
 s. 3(3)(d),
 10191
 s. 270(14)(a),
 67/1992
 s. 64(11)(b).

- (3) If the parties desire to compromise matters in dispute upon any claim for compensation under this Act the County Court may after such investigation as it thinks proper make an award by consent of the parties.

S. 28(3)
 amended by
 Nos 8733
 s. 3(3)(e),
 10191
 s. 270(6)
 (14)(a),
 67/1992
 s. 64(11)(b).

- (4) Where any award under this Act has been made by consent of the parties the County Court may upon any grounds which appear to the County Court to be sufficient re-open the matter and alter set aside or confirm the award.

S. 28(4)
 amended by
 Nos 8733
 s. 3(3)(e),
 10191
 s. 270(14)(a),
 67/1992
 s. 64(11)(b).

* * * * *

S. 28(5)
 repealed by
 No. 8733
 s. 3(3)(f).

29 Payment by instalments; interim awards

No. 5601 s. 29.
 S. 29
 amended by
 No. 7292
 s. 8(a).

- (1) Where the County Court makes any award under any provision of this Act the County Court may in such award direct that any amount ordered to be paid shall be paid by instalments and may

S. 29(1)
 amended by
 Nos 10191
 s. 270(14)(a),
 67/1992
 s. 64(11)(b).

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prescribe such conditions as to payment as the County Court thinks fit.

S. 29(2)
inserted by
No. 7292
s. 8(b),
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

- (2) Where in respect of any claim the County Court determines that compensation is payable under this Act but is unable presently to ascertain the total amount of the compensation payable the County Court, if satisfied that the total amount payable is not less than a specific sum, may make an interim award for payment of the whole or any part of that sum; and the making of any such interim award shall not preclude the County Court from later making in respect of the same claim a further interim award or a final award or prejudice the rights of either of the parties in respect of any such further or final award.

S. 29(3)
inserted by
No. 7292
s. 8(b),
substituted by
No. 8733 s. 11,
amended by
Nos 9613
s. 11, 10191
s. 270(7)
(14)(a),
67/1992
s. 64(11)(b),
41/2006 s. 40.

- (3) The County Court may order that any award for the payment of compensation shall carry interest at a rate not exceeding the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983** from the time when the proceedings were instituted or such later time as is fixed by the County Court until the money is paid, and the interest shall be deemed to be compensation payable pursuant to the award.

No. 5601 s. 30.

30 Compensation inalienable

- (1) Subject to this Act compensation under this Act (including a weekly payment or sum paid by way of redemption thereof) shall be absolutely inalienable whether by way or in consequence of sale assignment charge execution insolvency⁵ attachment legal process or by operation of law or otherwise howsoever nor shall any claim be set off against the same.

S. 30(2)
repealed by
No. 8733
s. 3(4).

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31 Penalties not affected

No. 5601 s. 31.

Nothing in this Act shall affect any proceeding for a penalty under the enactments relating to mines or factories and shops or employers and employes or the application of any such penalty.

31A Transitional provision

S. 31A
inserted by
No. 41/2006
s. 41.

If a period during which interest is required to be calculated under this Part commenced before 12 August 1995, the rate of interest to be applied to any part of the period—

- (a) that occurred before the commencement of the Workers Compensation (Interest Rates) Regulations 1992, is the rate of interest prescribed by the Workers Compensation Regulations 1985 as in force before that commencement;
- (b) after the commencement of the Workers Compensation (Interest Rates) Regulations 1992, but before 12 August 1995 is the rate of interest prescribed by the Workers Compensation Regulations 1985 as amended by the Workers Compensation (Interest Rates) Regulations 1992;
- (c) from 12 August 1995 but before 1 July 2006, is the rate of interest prescribed by the Workers Compensation Regulations 1995;
- (d) from 1 July 2006, is the rate determined in accordance with this Act.

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Division 7—Payments under schemes under the 1928 Act

No. 5601
ss 32, 33.
Pt 1 Div. 7
(Heading and
ss 32, 33)
amended by
Nos 7292
s. 12(2)(b),
8733 s. 12,
substituted as
Pt 1 Div. 7
(Heading and
s. 32) by
No. 10191
s. 262.

32 Payments in case of death

Any sum payable in the case of death under any
scheme certified under the **Workers
Compensation Act 1928** shall be paid into the
Fund pending any determination award or order of
the County Court.

S. 32
substituted by
No. 10191
s. 262,
amended by
No. 50/1994
s. 116.

S. 33
repealed by
No. 10191
s. 262.

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**Division 8—Administration by the State Trust Corporation
 of Victoria⁶**

No. 5601
 ss 34–40.
 Pt 1 Div. 8
 (Heading and
 ss 34–40)
 amended by
 Nos 7292
 s. 12(2)
 (c)–(e)(3)(a),
 8733 ss 12, 13,
 9075 s. 5(2),
 10087
 s. 3(1)(Sch. 1
 item 338),
 substituted as
 Pt 1 Div. 8
 (Heading and
 ss 34–37) by
 No. 10191
 s. 262,
 amended by
 Nos 50/1993
 s. 112(1)(c),
 50/1994
 s. 118(1)(a).

**34 Certain payments to be administered by the State
 Trust Corporation of Victoria**

S. 34
 substituted by
 No. 10191
 s. 262.

(1) The following payments of compensation shall be
 paid to the State Trust Corporation of Victoria to
 be administered by the State Trust Corporation of
 Victoria in accordance with this Act—

S. 34(1)
 amended by
 Nos 83/1987
 s. 109(3)(a),
 50/1993
 s. 112(1)(d)(i),
 50/1994
 s. 118(1)(a).

(a) any payment under section 9(1) or 11 to a
 person under the age of 18 years;

S. 34(1)(a)
 amended by
 No. 83/1987
 s. 109(3)(b).

(b) unless the County Court otherwise
 determines, any sum payable under
 section 9(1), to a person of or over the age
 of 18 years; and

S. 34(1)(b)
 amended by
 No. 50/1993
 s. 112(1)(d)(ii).

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S. 34(1)(c)
amended by
No. 50/1993
s. 112(1)(d)(ii).

(c) any other payment of compensation where on an application to the County Court the County Court considers that it would be in the best interests of the worker.

S. 34(2)
amended by
Nos 83/1987
s. 109(3)(c),
50/1993
s. 112(1)(d)(ii).

(2) The County Court in making a determination on an application under subsection (1)(c) may impose any conditions, restrictions or limitations it considers appropriate on the duration and termination of the administration.

S. 35
substituted by
No. 10/191
s. 262.

35 Powers of the State Trust Corporation of Victoria in relation to administration

S. 35(1)
amended by
Nos 83/1987
s. 109(4)(a),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

(1) Except as otherwise provided in section 34, any amount of money administered by the State Trust Corporation of Victoria under this Act may be invested, applied or otherwise dealt with in any manner that the State Trust Corporation of Victoria thinks fit for the benefit of the person entitled to that money.

S. 35(2)
amended by
Nos 83/1987
s. 109(4)(a),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

(2) The State Trust Corporation of Victoria shall not in administering any amount of money under this Act be bound by any law relating to the administration of trust funds by trustees but shall act in good faith.

S. 35(3)
repealed by
No. 83/1987
s. 109(4)(b).

* * * * *

S. 35(4)
amended by
Nos 83/1987
s. 109(4)(a)(c),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

(4) If the amount of money administered by the State Trust Corporation of Victoria on behalf of any person becomes less than an amount of money determined by the State Trust Corporation of Victoria the amount shall be paid out to that person.

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S. 35(5)
amended by
Nos 83/1987
s. 109(4)(d),
67/1992
s. 64(11)(d) (as
amended by
No. 50/1993
s. 111(2)(e)),
50/1993
s. 112(1)(d)
(i)(e),
repealed by
No. 50/1994
s. 118(1)(b).

* * * * *

S. 35(6)
repealed by
No. 83/1987
s. 109(4)(b).

36 Power of the State Trust Corporation of Victoria to make determinations

S. 36
substituted by
No. 10191
s. 262.

(1) The State Trust Corporation of Victoria may on the application of any person on whose behalf any amount of money is administered under this Act determine any dispute in relation to the administration.

S. 36(1)
amended by
Nos 83/1987
s. 109(5)(a),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

(2) If a deceased worker leaves more than one dependant the State Trust Corporation of Victoria after having regard to the circumstances of the various dependants and any variations in the circumstances from time to time may determine to—

S. 36(2)
amended by
Nos 83/1987
s. 109(5)(a),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

(a) apply or otherwise deal with any money administered by the State Trust Corporation of Victoria in a manner which the State Trust Corporation of Victoria considers will for the time being be most beneficial to the dependants;

S. 36(2)(a)
amended by
Nos 83/1987
s. 109(5)(a),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

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S. 36(3)
amended by
Nos 83/1987
s. 109(5)(a),
50/1993
s. 112(1)(d)(i),
50/1994
s. 118(1)(a).

- (b) make a payment to any dependant;
- (c) provide for any two or more dependants collectively; or
- (d) exclude any dependant from participating in any benefit.

(3) If on an application to the State Trust Corporation of Victoria by an interested party it appears to the State Trust Corporation of Victoria that because of—

- (a) the neglect of any children by the spouse of the deceased worker or of a relative standing in the place of a parent in relation to any children of the deceased worker under the age of 16 years;
- (b) a variation in the circumstances of the various dependants; or
- (c) any other sufficient cause—

a determination as to the apportionment between several dependants of any amount of compensation or as to the manner in which any amount of compensation payable to any dependant is to be invested, applied or otherwise dealt with should be varied, the State Trust Corporation of Victoria may make any determination for the variation of the previous determination as the State Trust Corporation of Victoria in the circumstances of the case considers appropriate.

S. 36(4)
repealed by
No. 83/1987
s. 109(5)(b).

* * * * *

- (5) Any person who objects to any determination made by the State Trust Corporation of Victoria may appeal to the County Court which may make a new determination.

S. 36(5)
amended by
Nos 50/1993
s. 112(1)(d)
(i)(ii), 50/1994
s. 118(1)(a).

37 Transitional provisions in respect of payments into the custody of the Board

S. 37
substituted by
No. 10191
s. 262.

- (1) On and from the appointed day, all moneys paid into the custody of the Board pursuant to this Division as in force before that day shall be administered by the Tribunal in accordance with this Act.
- (2) For the purposes of subsection (1), the moneys shall be paid to the Tribunal or, where any of the moneys were before the appointed day invested, the investments shall be transferred to and vest in the Tribunal.
- (3) The Board, the Registrar of the Board, the Tribunal and the Registrar of the Tribunal shall do and are hereby empowered to do all such acts and things as are necessary for the purposes of this section.
- (4) No right interest or claim in or with respect to any money paid into the custody of the Board pursuant to this Division as in force before the appointed day shall abate or be in any way prejudicially affected by reason of this section.
- (5) All other acts matters or things of a continuing nature made done or commenced by or on behalf of or in relation to the Board or the Registrar of the Board with respect to moneys paid into the custody of the Board pursuant to this Division as in force before the appointed day and immediately before that day of any force or effect or capable of acquiring any force or effect by virtue of this Act as in force before that day shall be deemed and

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taken to have been made done or commenced by
or on behalf of or in relation to the Tribunal and
the Registrar of the Tribunal respectively.

- (6) Any reference to the Board or the Registrar of the
Board with respect to moneys paid into the
custody of the Board pursuant to this Division as
in force before the appointed day in any Act
regulation notice demand order legal or other
proceeding contract lease mortgage agreement
instrument document or any writing of any kind
whatsoever shall, so far as relates to any period
after the appointed day and if not inconsistent
with the context or subject-matter, be deemed and
taken to refer to the Tribunal and the Registrar of
the Tribunal respectively.

Ss 38–40
repealed by
No. 10191
s. 262.

* * * * *

PART II—PROCEEDINGS UNDER THE ACT

Division 1—Notice of injuries and claims

41 Time for taking proceedings

Nos 5601
s. 41, 5676
s. 4(2)(k).

Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable—

- (a) unless notice of the injury has been given as soon as practicable after the happening thereof and before the worker has voluntarily left the employment in which he was injured, but he shall not be deemed to have voluntarily left the employment in any case where by reason of the injury he was unable to continue in the employment; and
- (b) unless the claim for compensation with respect to the injury has been made within six months from the occurrence of the injury, or in case of death within six months from the time of death:

Provided that—

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

-
- (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the failure to make such claim within the said period or that such failure was occasioned by mistake absence from Victoria or other reasonable cause; and
 - (c) without limiting the generality of the meaning of the expression "reasonable cause" in the last preceding paragraph of this proviso—
 - (i) the making of any payment to a worker which he believes to be a payment of compensation under this Act; or
 - (ii) any conduct on the part of the employer or his insurer or agent, or on the part of an employé of any of them purporting to act on behalf of the employer, whereby the worker is led to believe that compensation under this Act will or will probably be paid to him or whereby he is led to believe that he is not entitled to any such compensation—

shall be deemed to be included in the meaning of that expression.

42 Notice may be written or oral

Nos 5601
s. 42, 5676
s. 4(2)(l).

Notice in respect of an injury under this Act—

- (a) may be given either in writing or orally and either to the employer (or if there is more than one employer to one of such employers) or to any foreman or other official under whose supervision the workman is employed or to any person designated for the purpose by the employer;
- (b) shall give the name and address of the person injured; and
- (c) shall state in ordinary language the cause of the injury and the date on which the injury happened.

43 Service

No. 5601 s. 43.

- (1) The notice if given in writing may be served by delivering it to the person on whom it is to be served or by sending it by post in a registered letter addressed to him at his residence or place of business.
- (2) Where the employer is the Crown the notice if given in writing may be served by delivering it to the Victorian Government Solicitor or by sending it by post in a registered letter addressed to the Victorian Government Solicitor or by delivering it to the manager for the time being of the work on which the worker was injured.
- (3) Where the employer is a body of persons corporate or unincorporate the notice if given in writing may be served by delivering it at the office or one of the offices of the employer or by sending it by post in a registered letter addressed to the employer at one of the offices of the employer.

S. 43(2)
amended by
No. 46/1998
s. 7(Sch. 1).

Nos 5601
s. 44, 5676
s. 4(2)(m).

S. 44(1)
amended by
Nos 8733
s. 14, 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

44 Notice of claims

- (1) When any claim for compensation (not being a claim for weekly payments by a worker or a claim for the payments of the costs of medical hospital nursing or ambulance services or of burial or cremation) is made to any employer, the employer shall within fourteen clear days after the making of the claim give to the registrar notice in writing that such claim has been made, setting out such particulars of the claimant, the worker in respect of whom the claim is made and the alleged injury or disease out of which the claim arises and other relevant matters as are prescribed by rules made by the County Court.
- (2) Upon receipt by the registrar of any such notice proceedings for the settlement of the claim shall be deemed to have been instituted by the claimant.
- (3) In any such proceedings the County Court may make any order determination or award which it is empowered to make upon any proceedings under this Act.
- (4) Any employer who fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence against this Act.

S. 44(2)
amended by
No. 83/1987
s. 109(6).

S. 44(3)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

Nos 5601
s. 45, 5676
s. 4(2)(n), 5715
s. 2(c).

45 Defects in notices; injury book

S. 45(1)
repealed by
No. 10191
s. 270(8)(a).

* * * * *

- (2) The want of or any defect or inaccuracy in the notice of an injury required by this Act shall not be a bar to the maintenance of proceedings for the

recovery of compensation under this Act where
the employer is the owner of a mine or quarry or
the occupier of a factory shop or office—

* * * * *

S. 45(2)(a)
repealed by
No. 10191
s. 270(8)(b).

- (b) if the injury has been reported by or on
behalf of the employer to an inspector of
mines or factories; or
- (c) if the injury has been entered in any register
of injuries kept by or on behalf of the
employer at the mine quarry factory shop or
office; or
- (d) if the injury has been treated in an
ambulance room at the mine quarry factory
shop or office.

- (3) (a) For facilitating the giving of notice of injury
for the purposes of this Act, a book of
injuries shall be kept at every mine quarry
factory shop or office in which the specified
particulars of injuries happening to persons
employed at the mine quarry factory shop or
office may be entered by the injured
workman or some other person acting on his
behalf, and an entry in such book, if made as
soon as practicable after the happening of the
injury, shall be sufficient notice of the injury
for the purposes of this Act.
- (b) The book shall be kept at such place as to be
readily accessible at all reasonable times to
any injured worker who was employed at the
mine quarry factory shop or office and any
person bona fide acting on his behalf.

S. 45(3)(a)
amended by
No. 41/2006
s. 42(1).

- (3A) It is sufficient compliance with subsection (3) if a
register of injuries is kept in accordance with

S. 45(3A)
inserted by
No. 41/2006
s. 42(2).

section 101 of the **Accident Compensation Act 1985**.

S. 45(4)
amended by
No. 10191
s. 270(8)(c).

- (4) In the event of any non-compliance with the provisions of this section the owner agent or manager of the mine or quarry or the occupier of the factory shop or office shall be liable to a penalty of not more than 5 penalty units.

New s. 46
inserted by
No. 48/1986
s. 35.

46 Enforcement of awards

- (1) This section applies to and in relation to any award of compensation made—

S. 46(1)(a)
amended by
Nos 67/1992
s. 64(11)(b),
50/1994
s. 119(a).

- (a) by the Workers Compensation Board under this Act as in force before the appointed day or by the Tribunal, Administrative Appeals Tribunal or the County Court under this Act on or after the appointed day; and
- (b) in respect of the death, incapacity and disablement of a worker or the costs of medical, hospital, nursing or ambulance services or of cremation or burial; and
- (c) against an employer whose liability in respect of that death, incapacity or disablement or those costs is covered—

S. 46(1)(c)(i)
amended by
No. 50/1993
s. 112(1)(f).

- (i) by a policy of insurance or indemnity in accordance with this Act as in force before the appointed day; or
- (ii) by the terms of a scheme in respect of which a certificate was before the appointed day in force under this Act.

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- (2) Where any payment under an award remains unpaid for a period of not less than one month after the due date for payment, the person or the agent of the person in whose favour the award was made may apply to the County Court for payment out of the Fund.
- S. 46(2) amended by Nos 67/1992 s. 64(11)(b) (as amended by No. 50/1993 s. 111(2)(d)(iii)) (d) (as amended by No. 50/1993 s. 111(2)(e)), 50/1994 s. 112.
- (3) The County Court may order that all or any of the payments to be made under the award (whether payable at the date of the order or to become payable after) are to be paid out of the Fund if the County Court is satisfied that—
- S. 46(3) substituted by No. 83/1987 s. 109(7), amended by Nos 67/1992 s. 64(11)(b), 50/1994 s. 119(b).
- (a) a copy of the award—
- (i) has been served on the employer; or
- (ii) has not been served on the employer because the employer cannot be found, is dead or has been wound-up; and
- (b) the worker has attempted to obtain from the employer reasons for the non-payment of the payment under the award; and
- (c) the payment under the award has not been made.
- * * * * *
- S. 46(4) repealed by No. 83/1987 s. 109(7).
- (5) Where any amounts are paid out of the Fund under an order under subsection (3) the Authority is entitled to recover the amounts so paid—
- S. 46(5) amended by Nos 67/1992 s. 64(11)(c), 50/1994 s. 119(c)(d).
- (a) from the insurer to the extent of the amount which the insurer would but for this section have been liable to pay to the employer under the policy and the balance from the employer; or
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Workers Compensation Act 1958
No. 6419 of 1958
Part II—Proceedings under the Act

s. 46

(b) in the case of a scheme in respect of which a certificate was before the appointed day in force under this Act, from the employer—

in any court of competent jurisdiction as a civil debt recoverable summarily together with any costs incurred by the Authority in connection therewith and together with interest thereon at the prescribed rate.

S. 46(6)
amended by
No. 50/1994
s. 119(e).

(6) The rules under the **County Court Act 1958** may make provision for or with respect to the notices to be given by applicants and generally the practice and procedure in respect of applications under subsection (2).

S. 46(7)
amended by
No. 67/1992
s. 64(11)(b)(c),
repealed by
No. 50/1994
s. 119(f).

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S. 46(8)
repealed by
No. 50/1994
s. 119(f).

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S. 46(9)
amended by
No. 67/1992
s. 64(11)(c).

(9) An employer is not indemnified in respect of any money recoverable by the Authority from an insurer under subsection (5).

Pt 2 Divs 2–5
repealed.⁷

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PART III—MISCELLANEOUS

Division 1—Seamen

59 Injuries to seamen employed on Victorian ships

Nos 5601
s. 59, 5676
s. 4(2)(a).

- (1) This Act applies in respect of an injury happening to a seaman employed on a Victorian ship as defined in this section if the injury arises out of or in the course of his employment and happens within this State or within the jurisdiction of this State.
- (2) In this Act the term *Victorian ship* means any ship which is—
 - (a) registered in this State; or
 - (b) owned by a body corporate established under the laws of this State or having its principal office or place of business in this State or is in the possession of any such body corporate by virtue of a charter; or
 - (c) owned by any person or body corporate whose chief office or place of business in respect of the management of such ship is in this State or is in the possession of any such person or body corporate by virtue of a charter; or
 - (d) owned by the Crown in respect of the Government of this State, or is in the possession of the Crown in that respect by virtue of a charter.
- (3) The application of this Act in respect of injuries happening to seamen as provided by this section shall be subject to the following modifications—

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- (a) the notice of injury and the claim for compensation may except where the person injured is the master be served on the master of the ship as if he were the employer, but where the injury happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the injury;
 - (b) in the case of the death of a seaman the claim for compensation shall be made within six months after the news of the death has been received by the claimant;
 - (c) in the case of a ship lost with all hands the claim for compensation shall be made within eighteen months after the date when the ship is deemed under this section to have been lost with all hands;
 - (d) in the case of the death of a seaman leaving no dependants no compensation shall be payable if the owner or charterer of the ship is under any Act in force in Victoria liable to pay the expenses of burial or cremation;
 - (e) no weekly payments shall be payable in respect of any period during which the owner or charterer of the ship is under any other Act in force in Victoria liable to defray the expenses of maintenance of an injured seaman;
 - (f) compensation shall be paid in full in all cases notwithstanding any limitation of liability in any other law, but any limitation of liability imposed by any other law on the owner or charterer of the ship shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger—as if the indemnity were damages for loss of life or personal injury;
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- (4) Without prejudice to any other means of proof available—
- (a) a ship shall be deemed to have been lost with all hands on board if it is shown by some official return produced out of official custody or by other evidence that the ship on which the seaman in respect of whom the compensation is claimed was employed has twelve months or upwards before the institution of the proceedings left a port of departure and has not been heard of within twelve months of that departure;
 - (b) in the case of a ship lost with all hands a duplicate agreement or list of the crew made out and produced by the proper officer shall if produced out of official custody be in the absence of proof to the contrary sufficient evidence that the seamen therein named as belonging to the ship were on board at the time of the loss.

Division 2—Contractors and sub-contractors

60 Sub-contracting

No. 5601 s. 60.

- (1) (a) Where any person (in this section referred to as the principal contractor) in the course of or for the purposes of his trade or business contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal contractor the principal contractor shall be liable to pay to any worker employed in the execution of the work any compensation under this Act which he would have been liable to pay if that worker and all other workers employed in

the execution of the work had been immediately employed by him.

- (b) Where compensation is claimed from or proceedings are taken against the principal contractor then in the application of this Act references to the principal contractor shall be substituted for references to the employer except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.
- (c) In the case of sub-contracts the words ***principal contractor*** shall extend to and include not only the original principal contractor but also each contractor who constitutes himself a principal contractor with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work, and the word ***contractor*** shall extend to and include not only the original contractor but also each sub-contractor, and each principal contractor's right to indemnity shall include a right against every contractor standing between him and the contractor by whom the worker was employed at the time when the injury occurred.

S. 60(2)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

- (2) When the principal contractor is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by the County Court or Administrative Appeals Tribunal.

- (3) Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal contractor.
- (4) The foregoing provisions of this section shall not apply in any case where any two or more persons in combination (herein referred to as a co-operating party) or any person on behalf of any co-operating party enter or enters into a contract for any work in a gold mine or a coal mine and the members of the co-operating party personally engage in such work; but the members of the co-operating party shall for the purposes of this Act be deemed workers within the meaning of this Act and the person with whom the members of such co-operating party or any person on its behalf have or has entered into a contract as aforesaid shall for the purposes of this Act be deemed to be an employer within the meaning thereof.

Division 3—Insolvency of employer

61 Insolvency of employer⁸

No. 5601 s. 61.
S. 61
amended by
No. 6455
s. 2(1)(Sch. 1
Pt 2 item 15)
(as amended
by No. 6505
s. 2).

- (1) Where any employer had entered into a contract with any insurers in respect of any liability under this Act to any worker then in the event of the employer becoming insolvent or bankrupt or making a composition or arrangement with his creditors or if the employer is a company in the event of the company having commenced to be wound up the rights of the employer against the insurers as respects that liability shall (notwithstanding anything in the enactments

S. 61(1)
amended by
No. 10191
s. 270(9).

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s. 61

relating to insolvency and the winding up of companies) be transferred to and vest in the worker, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, but so that the insurers shall not be under any greater liability to the worker than they would have been under to the employer.

- (2) If the liability of the insurers to the worker is less than the liability of the employer to the worker the worker may prove for the balance in the insolvency liquidation or winding up.

S. 61(3)(4)
repealed by
No. 6839
s. 4(1)(Sch. 1
Pt 2 item 8).

* * * * *

- (5) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company but the liability of the company so wound up shall attach to the reconstructed company or (as the case requires) to the other company with which the company so wound up is amalgamated.

Division 4—Action brought independently of this Act

Pt 3 Div. 4
(Heading and
s. 62)
substituted as
Pt 3 Div. 4
(Heading and
ss 62–70) by
No. 9683 s. 5.

No. 5601 s. 62.
S. 62
amended by
Nos 7292
s. 9(a)–(c),
8084 s. 4(1)(c),
8733 s. 3(5)(a)
(i)–(iv)(b), 9136
s. 5(a)(i)–(iii),
9297 s. 5(2),
substituted by
No. 9683 s. 5.

62 Remitting of cases etc.

- (1) Where, within the time limited for taking proceedings under this Act, an action is brought to recover damages independently of this Act for injury, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but—

S. 62(1)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

- (a) the court in which the action is tried; or
(b) if the determination is the determination (on an appeal by either party) by an appellate tribunal—that tribunal—

shall remit the case to the County Court or Administrative Appeals Tribunal for the assessment of the compensation.

- (2) An assessment of the compensation pursuant to subsection (1) shall be for an amount not less than the compensation which would have been payable under this Act if no action had been brought to recover damages independently of this Act for the injury.

- (3) Subject to this Act if it is determined in any proceedings under this Act that the injury is one for which the employer is not liable under this Act the determination shall not prevent an action being brought in respect of such injury independently of this Act.

Nos 5601
s. 63, 5676
s. 4(2)(p).
S. 63
substituted by
No. 9683 s. 5.

63 Application of section 62

- (1) Where, within the time limited for the taking of proceedings under this Act, an action is brought to recover damages independently of this Act in respect of an injury giving rise to a claim for compensation under this Act and it is determined in that action that—
- (a) damages are recoverable independently of this Act subject to such reduction as is mentioned in section 26(1) of the **Wrongs Act 1958**; and
 - (b) the employer would have been liable to pay compensation under this Act—

section 62 shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with section 62, no damages shall be recoverable in the action.

- (2) Where a worker has recovered compensation under this Act or any corresponding previous enactment in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 26 of the **Wrongs Act 1958** from some person other than the employer (*the third part*), any right conferred by this Division on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section 60, to be indemnified by the third party shall be limited to a right to be indemnified in

respect of such part only of the sum paid or payable by the person as bears to the total sum so paid or payable the same proportion as the reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault.

- (3) Where either before or in an action brought to recover damages independently of this Act for injury, a judgment in favour of the worker for damages against the employer or the third party has been satisfied wholly or a claim has been settled fully the County Court or Administrative Appeals Tribunal shall refuse to make any award in favour of the worker or his dependants (as the case may be) for any damages caused by that injury.
- (4) In an action brought to recover damages independently of this Act for damages for an injury or death, or in the case of an appeal against the judgment in such an action, the worker may, before the expiration of a period of 28 days after judgment or the determination of the appeal (as the case requires), abandon the judgment.
- (5) Where a worker abandons the judgment pursuant to subsection (4), section 62 shall apply in all respects as if the action had been dismissed and if the worker chooses to have compensation assessed and awarded in accordance with section 62, no damages shall be recoverable in the action.
- (6) Judgment shall not be abandoned pursuant to subsection (4) except within 28 days of the judgment being entered or in the case of an appeal within 28 days of the determination of the appeal.

S. 63(3)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a),
29/2006
s. 3(Sch. 1
item 39.1).

s. 63A

- (7) The worker shall give notice of abandonment to the defendant or respondent in writing.
- (8) For the purposes of this section *worker* includes personal representative or the person bringing the action under Part III of the **Wrongs Act 1958** (as the case requires).

S. 63A
inserted by
No. 9683 s. 5.

63A Acceptance of compensation under this Act

- (1) Subject to section 70, nothing in this Act shall affect the right of any person to take and prosecute any proceedings against an employer or any other person whether he has accepted payment of compensation under this Act or not.
- (2) Subject to sections 63 and 70 where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer (which other person is called *the third party*) to pay damages in respect thereof proceedings may be taken both against the third party and against any person liable to pay compensation under this Act for such compensation.

S. 63B
inserted by
No. 9683 s. 5.

63B Where judgment unsatisfied

Where the worker has obtained a judgment in any proceedings to recover damages against the employer or a third party and judgment remains unsatisfied in whole or in part the worker shall be entitled to claim compensation under this Act but not for an amount greater than the amount by which such judgment remains unsatisfied, any moneys so recovered by way of compensation shall for the purposes of such judgment be deemed to be moneys recovered under such judgment and the amount owing thereunder shall be reduced accordingly.

64 Where judgment satisfied

S. 64
inserted by
No. 9683 s. 5.

Where a judgment or order for damages in favour of a worker and against his employer or the third party has been satisfied in whole or a payment into court by the employer or the third party has been accepted for an injury or a claim has been settled or compromised for which compensation would have been payable under this Act—

- (a) the right to compensation under this Act shall be reduced by an amount equal to the amount recovered under the judgment, payment into court, settlement or compromise, as the case may be;
- (b) the right of a worker to further weekly payments under this Act shall thereupon cease or determine;
- (c) the County Court or Administrative Appeals Tribunal may refuse to make any award in favour of the worker for any damage caused by an injury if it is satisfied that the judgment for such damages, payment into court, settlement or compromise, as the case may be, was in respect of the damage caused by such injury.

S. 64(c)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(a).

65 Reduction of judgment by compensation

S. 65
inserted by
No. 9683 s. 5.

- (1) Where a judgment or order for damages in favour of a worker is to be entered or made in any court in respect of the injury of the worker in proceedings independent of this Act against an employer by whom payments of compensation have already been made in respect of that injury under this Act, the amount of the judgment or order shall be reduced by the amounts of payments made in respect of the period to which the judgment or order for damages relates.

- (2) Where damages recoverable independently of this Act are subject to such reduction as is mentioned in section 26(1) of the **Wrongs Act 1958** such reduction shall be calculated after the reduction under subsection (1) (if any) has been made.

S. 66
inserted by
No. 9683 s. 5.

66 Where judgment against third party

- (1) Subject to section 70 where a judgment or order for damages in favour of a worker is to be entered or made in any court in respect of the injury of the worker in proceedings independent of this Act against a third party for whose acts or defaults the worker's employer is not responsible and payments of compensation have already been made in respect of that injury by the employer, then—
- (a) (if pursuant to any rules of the court made in that behalf the employer has joined in the proceedings) a judgment or order in favour of the employer may be entered or made in respect of an amount equivalent to the payments of compensation made and the amount of the judgment or order in favour of the worker may be reduced by the corresponding amount accordingly;
- (b) (if the employer has not joined in the proceedings but it is made to appear to the court that the payments of compensation have been made) the amount of the judgment or order shall be reduced by the amount of the payments made, and in any such case the employer shall be entitled to be indemnified for the payments and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting shall be entitled to be indemnified by the third party for such proportion of the amount of the compensation paid as is appropriate to

S. 66(1)(b)
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b).

the degree to which the injury was attributable to the act default or negligence of the third party and all questions as to the right to and the amount of any such indemnity shall in default of agreement be settled by action or if the parties consent by the County Court—

but where the amount of the judgment or order in favour of the worker is not so reduced, the employer shall be entitled to be indemnified for the payments so made by the third party reduced to the same extent (if any) as the damages in favour of the worker are reduced by virtue of section 26(1) of the **Wrongs Act 1958**, and the third party shall, if he has so indemnified the employer, be entitled to retain or (as the case requires) to recover from the worker in any court of competent jurisdiction as a civil debt recoverable summarily an amount equivalent to the amount of payments so made, and where any amount is retained in accordance with the provisions of this paragraph the judgment or order to the extent of that amount, be deemed to have been satisfied.

- (2) Where under subsection (1) a judgment or order is made in favour of the employer or an indemnity is payable the judgment or order in favour of the employer or the indemnity is to be reduced by an amount equal to any amount recoverable by the employer or a person called upon to pay the indemnity from the Motor Accidents Board under section 8 and the judgment or order in favour of the worker shall be reduced accordingly.

s. 67

S. 67
inserted by
No. 9683 s. 5,
amended by
Nos 10191
s. 270(14)(a),
67/1992
s. 64(11)(b),
50/1994
s. 120(1).

67 Indemnity by third party⁹

Where the injury for which compensation has been paid and which is not recoverable under section 8 from the Motor Accidents Board was caused under circumstances creating a legal liability against a third party to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting shall be entitled to be indemnified by the third party for such proportion of the amount of the compensation paid as is appropriate to the degree to which the injury was attributable to the act default or negligence of the third party and all questions as to the right to and the amount of any such indemnity shall in default of agreement be settled by action or if the parties consent by the County Court.

S. 68
inserted by
No. 9683 s. 5.

68 Payment into court

- (1) Where in an action for damages brought by a worker independently of this Act in respect of injury to the worker against a person for whose acts or defaults the employer of the worker is not responsible an amount is lodged or paid into court by or on behalf of that person in accordance with the Rules of the Court in which the action was brought and the amount is accepted by the worker, the worker shall refund immediately to the person by whom the compensation was paid where that person has not recovered and is not entitled to recover under section 8 from the Motor Accidents Board, an amount equivalent to the amounts of payments of compensation received under this Act in respect of the injury or the amount accepted, whichever is the lesser.

- (2) Where pursuant to the provisions of subsection (1) moneys are required to be refunded but are not refunded in accordance with that subsection, the person entitled to the refund may recover the money in any court of competent jurisdiction as a civil debt recoverable summarily.
- (3) Notwithstanding anything to the contrary in this Act the employer shall not be indemnified in respect of any moneys already paid by him to the worker by way of compensation under this Act where the worker is required to refund an amount equivalent to those moneys pursuant to subsection (1).

69 Settlement by third party

S. 69
inserted by
No. 9683 s. 5.

Where a claim by a worker independent of this Act for damages in respect of the injury of the worker against a person for whose acts or defaults the employer of the worker is not responsible has been settled or compromised without regard to the fact that payments of compensation had been made by the employer under this Act, then the person by whom payment was made upon the settlement or compromise of the claim shall, if he is subsequently required under the provisions of this Act to indemnify the employer for the payments so made, be entitled to recover from the worker in any court of competent jurisdiction as a civil debt recoverable summarily an amount equivalent to the amount of payments so made.

70 Reduction of compensation by damages under Wrongs Act 1958

S. 70
inserted by
No. 9683 s. 5.

- (1) Subject to subsection (3) where any award in favour of a person or persons for whose benefit an action for damages is permitted to be brought under Part III of the **Wrongs Act 1958** has been made under this Act in respect of the death of a worker, any judgment, order for damages,

settlement or compromise made or entered in respect of the death of a worker in an action for damages under Part III of the **Wrongs Act 1958** shall be reduced by the amount of the award under this Act.

- (2) Subject to subsection (3) where a judgment, order for damages, settlement or compromise has been made or entered in an action for damages under Part III of the **Wrongs Act 1958**, any award under this Act in favour of any person or persons for whose benefit the action for damages under Part III of the **Wrongs Act 1958** is permitted to be brought, in respect of the worker's death shall be reduced by—

- (a) the amount mentioned in clause 1(a)(i) under the heading "The Clauses Referred To" in section 9 or that amount as increased or decreased in accordance with the provisions of section 9(3); or
- (b) the amount of the judgment, order, settlement or compromise—

whichever is the lesser.

- (3) Subsections (1) and (2) do not apply to or in relation to the death of a worker which occurred before 1 December 1979.

Pt 3 Div. 5
(Heading)
repealed by
No. 9683
s. 5.¹⁰

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Division 6—Liability of insurer

Pt 3 Div. 6
(Heading)
amended by
No. 8727
s. 3(1),
substituted by
No. 10191
s. 264(1).

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S. 64
re-numbered
as s. 71 by
No. 9683 s. 6,
repealed by
No. 10191
s. 264(2).

* * * * *

Ss 65–71
amended by
Nos 6803 ss 2,
3, 6986 s. 5,
7063 s. 3, 7152
s. 2(2), 7228
s. 7(Sch. 4
Pt 47),
repealed by
No. 8727
s. 3(1).

71A Liability of insurer

S. 71A
inserted by
No. 10100
s. 11.

- (1) This section applies where in any legal proceedings (whether instituted before or after the commencement of section 11 of the **Workers Compensation (Amendment) Act 1984**) it is necessary to determine whether any insurer or which of 2 or more insurers is liable under a policy of insurance or indemnity to indemnify an employer against any liability of the employer in relation to workers compensation under this or any other Act or at common law or otherwise in respect of a worker.
- (2) Where this section applies, for the purposes of the determination the policy of insurance or indemnity shall be deemed to extend to indemnify the employer against any liability in relation to workers compensation under this or any other Act

s. 72A

or at common law or otherwise which arises from the employment by the employer of the worker during the currency of the policy, whether or not that liability arises during the currency of the policy and whether or not that liability arises during the employment of the worker by the employer.

Pt 3 Div. 7
(Heading)
substituted by
No. 10191
s. 264(3).

Division 7—Insurance policies and transitional provisions

S. 72
amended by
Nos 7292
s. 10(1), 8733
s. 20, 9136
s. 2(1)(d)(e),
9613 s. 12,
10089 s. 4(1),
repealed by
No. 10191
s. 264(5).

* * * *

S. 72A
inserted by
No. 10191
s. 264(4).

72A Extension of policies

- (1) Where an insurer continues for a period ending on or before the appointed day the indemnity provided to an employer under a policy of insurance or indemnity, being a policy the indemnity under which would otherwise cease to be provided at or after 4.00 p.m. on 30 June 1985 and before the appointed day, that continuation shall be deemed to be an extension of that policy and not to be a renewal of that policy.
- (2) Subsection (1) applies notwithstanding anything to the contrary in this Act or the regulations or the policy of insurance or indemnity and whether or not any matters applying to the policy relating to the premium or any other matter are varied in relation to the extension.

72B Termination of policies

Subject to section 72A, the enactment of the **Accident Compensation Act 1985** does not affect or limit any right, whether under a policy of insurance or indemnity or otherwise—

S. 72B
inserted by
No. 10191
s. 264(4).

- (a) of an employer to recover from an insurer the whole or any part of a premium or other amount paid in respect of a period of insurance commencing before and ending after the appointed day; or
- (b) of an insurer to collect or recover from an employer the whole or any part of a premium or other amount payable in respect of a period of insurance ending on or before the appointed day.

72C Proof of identity

An insurer may require evidence as to the identity of the person killed or injured in respect of whom a claim for compensation is made.

S. 72C
inserted by
No. 41/2006
s. 43.

Division 8—Regulations

Pt 3 Div. 8
(Heading)
amended by
No. 10191
s. 265(1).

73 Regulations

No. 5601 s. 74.

- (1) The Governor in Council may subject to the provisions of this Act make regulations—

* * * * *

S. 73(1)
(a)–(da)
repealed.¹¹

- (db) for the refund by or recovery from insurance of money paid in circumstances in which no premium is or was payable by virtue of the provisions of section 3(7S)(b);

S. 73(1)(db)
inserted by
No. 9297
s. 4(3),
amended by
No. 9549
s. 2(1)(Sch.
item 258).

Workers Compensation Act 1958
No. 6419 of 1958
Part III—Miscellaneous

s. 73

S. 73(1)(e)
substituted by
No. 9613 s. 13,
amended by
No. 23/1994
s. 118(Sch. 1
item 59.11).

(e) for prescribing forms for use between any of the following classes: worker employer insurer and registered medical practitioner, before and after a claim for compensation has been made in respect to such claims and matters incidental thereto and any such form or forms to the like effect shall be sufficient in law;

S. 73(1)(ea)
inserted by
No. 10100
s. 12.

(ea) for prescribing the particulars of claim to be provided with a claim for compensation;

S. 73(1)(f)
repealed by
No. 10191
s. 265(2)(a).

* * * * *

- (g) for prescribing the form of and the particulars to be contained in the register;
- (h) for any purpose for which this Act authorizes regulations to be made; and
- (i) generally as to any matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

S. 73(2)
amended by
No. 10191
s. 265(2)(b).

(2) Such regulations may prescribe penalties not exceeding 10 penalty units for any contravention thereof.

S. 73(3)
repealed by
No. 6886 s. 3.

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Division 9—Returns showing compensation paid

74 Returns

Nos 5601
s. 75, 5676
s. 12, 5715
s. 4.

- (1) Every insurer who before the appointed day issued policies of insurance or indemnity indemnifying employers against their liability in relation to workers compensation under this Act or any other Act or at common law or otherwise shall, on or before such day in every year as is specified in that behalf in regulations made under this Act, furnish to the Authority a return in the prescribed form setting out in respect of any period prescribed such particulars as are prescribed by the regulations with respect to—

S. 74(1)
amended by
Nos 8353
s. 19, 9613
s. 14, 9921
s. 255, 10191
s. 266(a)
(i)–(iv),
50/1994 s. 121.

- (a) the amount of the premiums paid by employers in respect of such policies;
- (b) the method by which such premiums are assessed in relation to wages paid to workers;
- (c) the claims made under such policies and, in particular, the claims made in respect of the deaths of workers, in respect of injuries specified in the Table appended to subsection (1) of section eleven of this Act, in respect of injuries occurring during journeys to and from the place of employment, and in respect of medical hospital nursing and ambulance services and burial and cremation;
- (d) the nature of the injuries or diseases in respect of which claims were made;

Workers Compensation Act 1958
No. 6419 of 1958
Part III—Miscellaneous

s. 75

S. 74(1)(e)
amended by
No. 7332
s. 2(Sch. 1
item 124).

(e) the nature and amounts of the payments of compensation made; and

(f) such other matters as the Governor in Council thinks fit—

and the State Transport Authority or the Metropolitan Transit Authority and every employer in respect of whom a certificate of a scheme of compensation was before the appointed day in force under this Act shall furnish to the Authority a return of the like particulars, so far as they are respectively applicable in the cases of those Authorities and the said employers, and at the like times and intervals.

S. 74(2)
amended by
No. 10191
s. 266(b).

(2) Every such insurer or employer who contravenes or fails to comply with the provisions of the last preceding subsection shall be guilty of an offence and liable to a penalty of not more than 10 penalty units.

Division 10—Offences

No. 5601 s. 76.
S. 75
amended by
No. 7292
s. 10(2)(a)–(c).

75 Malingering

S. 75(1)
amended by
No. 10191
s. 270(10).

(1) Every person attempting to obtain fraudulently any benefit under this Act shall be guilty of an offence and shall be liable to a penalty of not more than 15 penalty units or imprisonment for three months or both.

S. 75(2)
inserted by
No. 7292
s. 10(2)(d),
amended by
No. 10191
s. 270(10).

(2) Without limiting the generality of subsection (1) of this section every person who, whether by the making of any false certificate or report or by the furnishing of any untrue or misleading information or otherwise, attempts to obtain

fraudulently any benefit under this Act for any other person shall be guilty of an offence and shall be liable to a penalty of not more than 15 penalty units or imprisonment for three months or both.

76 Prosecutions

No. 5601 s. 77.

- (1) Without derogating from any right which any other person may have to institute a prosecution for an offence against this Act, the Authority may prosecute for any offence against this Act.

S. 76(1)
amended by
No. 10191
s. 270(11)(a),
substituted by
No. 48/1986
s. 36,
amended by
No. 50/1994
s. 121.

- (1A) The costs of any prosecution by the Authority (including any costs which may be awarded against the Authority) are deemed to be a part of the administrative costs of the Authority.

S. 76(1A)
inserted by
No. 48/1986
s. 36,
amended by
No. 50/1994
s. 121.

- (2) For the purposes of the last preceding subsection the costs of any prosecution shall include the costs of any appeal against any order or decision made or given upon such prosecution and the costs of any proceedings by which any such order or decision is sought to be quashed set aside stayed or otherwise called in question in any court.

S. 76(2)
amended by
No. 57/1989
s. 3(Sch.
item 222.1).

- (3) Any amount recovered as a penalty for an offence against this Act shall be paid into the Fund.

S. 76(3)
inserted by
No. 10191
s. 270(11)(b).

77 General penalty

No. 5601 s. 78.

Where by any provision of this Act an offence is created and no penalty is expressly provided in respect thereof, every person liable for such offence shall be liable to a penalty of not more than 10 penalty units for a first offence and of not more than 20 penalty units for any subsequent offence against that provision.

S. 77
amended by
No. 10191
s. 270(12).

Workers Compensation Act 1958
No. 6419 of 1958
Part III—Miscellaneous

s. 78

Pt 3
Divs 11, 12
repealed.¹²

* * * *

Pt 4 (Heading
and ss 80–90)
amended by
Nos 6986 s. 6,
7292
ss 12(1)(2)(f)
(g)(h)(i)(3)
(c)(d), 13, 14,
8165 s. 15,
8181
s. 2(1)(Sch.
item 194),
8353 s. 19,
8733 ss 9(2),
12,
21–23, 9136
s. 2(1)(f), 9297
s. 11(e)–(j),
9372 s. 4(1),
9549
s. 2(1)(Sch.
items 260–
262), 9613
ss 15, 16, 9902
s. 2(1)(Sch.
item 278),
9921 s. 255,
10089 s. 4(1),
10100 ss 13,
14(1)(2), 15,
substituted as
Pt 4 (Heading
and ss 80–84)
by No. 10191
s. 267,
repealed by
No. 50/1994
s. 115.

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PART IVA—CERTAIN PAYMENTS OUT OF THE FUND

Pt 4A
(Heading)
inserted by
No. 10191
s. 267,
amended by
No. 29/2006
s. 3(Sch. 1
item 39.2).

85 Payments out of Fund where employer uninsured

S. 85
substituted by
No. 10191
s. 267.

- (1) This section applies to and in relation to any award of compensation made—
- (a) under this Act (whether before, on or after the appointed day) or any corresponding previous enactment;
 - (b) in respect of the death incapacity and disablement of a worker or the costs of medical hospital nursing or ambulance services or of cremation or burial; and
 - (c) against an employer whose liability in respect of that death incapacity or disablement or those costs is not or may not be covered or is not fully covered—
 - (i) by a policy of insurance or indemnity in accordance with this Act as in force before the appointed day; or
 - (ii) by the terms of a scheme in respect of which a certificate was before the appointed day in force under this Act.
- (2) Where any payment under an award remains unpaid for a period of not less than one month after the due date for payment, the person or the agent of the person in whose favour the award was made may apply to the County Court for payment out of the Fund.

S. 85(2)
amended by
No. 50/1994
s. 122(a).

Workers Compensation Act 1958
No. 6419 of 1958
Part IVA—Certain Payments out of the Fund

s. 85

S. 85(3)
substituted by
No. 83/1987
s. 109(7),
amended by
No. 50/1994
s. 122(b)(i)(ii).

(3) The County Court may order that all or any of the payments to be made under the award (whether payable at the date of the order or to become payable after) are to be paid out of the Fund if the County Court is satisfied that—

- (a) a copy of the award—
 - (i) has been served on the employer; or
 - (ii) has not been served on the employer because the employer cannot be found, is dead or has been wound-up; and
- (b) the worker has attempted to obtain from the employer reasons for the non-payment of the payment under the award; and
- (c) the payment under the award has not been made.

S. 85(4)
repealed by
No. 83/1987
s. 109(7).

* * * * *

S. 85(4A)
inserted by
No. 48/1986
s. 34,
substituted by
No. 50/1994
s. 122(c).

(4A) In any proceedings before the County Court or the Administrative Appeals Tribunal in relation to compensation under this Act, the Authority is entitled to appear before the Court or Tribunal (as the case requires) if the Authority believes that as a result of the determination of the proceedings the Fund may become liable for payments under this section.

S. 85(5)
amended by
No. 50/1994
s. 122(d)(i)(ii).

(5) Where any amounts are paid out of the Fund pursuant to an order under subsection (3) the Authority shall on behalf of the Fund be entitled—

S. 85(5)(a)
amended by
No. 41/2006
s. 44.

- (a) to recover—
 - (i) the amounts so paid from the employer in question; or

- (ii) if it is proved that a valid policy of accident insurance or indemnity was in force at the time of the occurrence of the injury in respect of which the award was made—the amounts so paid, from the insurer, to the extent of the amount which the insurer would but for this section have been liable to pay to the employer under the policy and the balance from the employer—

in any court of competent jurisdiction as a civil debt recoverable summarily together with any costs incurred by the Authority in connexion therewith and together with interest thereon at the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983**; and

- (b) to obtain from the Supreme Court a declaration as to whether or not a valid policy of accident insurance or indemnity was in force at the time of the occurrence of the injury in respect of which the award was made.
- (6) The rules may make provision for or with respect to the notices to be given by applicants and, generally, the practice and procedure in respect of applications under subsection (2).

* * * * *

S. 85(7)(8)
repealed by
No. 50/1994
s. 122(e).

- (9) An employer shall not be indemnified in respect of any moneys recoverable by the Authority from an insurer pursuant to subsection (5)(a)(ii).

S. 85(9)
amended by
No. 50/1994
s. 122(f).

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No. 6419 of 1958
Part IVA—Certain Payments out of the Fund

s. 85

S. 85(10)
amended by
No. 50/1994
s. 122(d)(i)(ii).

- (10) The provisions of this Act relating to the review, redemption, reduction or termination of weekly payments of compensation, the service of notices, contribution from other employers or other persons and the obtaining of medical examinations shall apply in respect of amounts payable out of the Fund under this section as if the Authority were an employer and the amounts were amounts payable by the employer under an award of compensation.

Ss 86–90
repealed by
No. 10191
s. 267.

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Workers Compensation Act 1958
No. 6419 of 1958

Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

s. 91

**PART V—PROVISIONS RELATING TO THE ACCIDENT
COMPENSATION FUND AND THE INSURERS GUARANTEE
AND COMPENSATION SUPPLEMENT FUND**

Pt 5 (Heading)
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(1).

Division 1—Transitional and general provisions

Pt 5 Div. 1
(Heading)
substituted by
No. 10191
s. 268(1).

91 Definition

In this Division—

the previous Fund means the Insurers Guarantee
and Compensation Supplementation Fund
established under this Part as in force before
the appointed day.

S. 91
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(2).

**92 Insurers Guarantee and Compensation
Supplementation Fund to be transferred to Accident
Compensation Fund**

S. 92
inserted by
No. 8733
s. 24(1),
amended by
No. 8804 s. 2,
substituted by
No. 10191
s. 268(2).

- (1) On and from the appointed day, the previous Fund
shall for all purposes become and be part of the
Fund.
- (2) For the purposes of subsection (1)—
 - (a) all moneys standing to the credit of the
previous Fund immediately before the
appointed day shall be transferred to and
stand to the credit of the Fund; and
 - (b) any securities in which moneys standing to
the credit of the previous Fund were invested
before the appointed day shall be vested in
the Commission and those investments shall
be deemed to have been made by the
Commission pursuant to the **Accident
Compensation Act 1985**.

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s. 93

Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

- (3) The Commission and the Treasurer shall do and are hereby empowered to do all such acts and things as are necessary for the purposes of this section.
- (4) No right interest or claim in or with respect to the previous Fund shall abate or be in any way prejudicially affected by reason of this section.
- (5) All other acts matters or things of a continuing nature made done or commenced by or on behalf of or in relation to the Treasurer with respect to the previous Fund and immediately before the appointed day of any force or effect or capable of acquiring any force or effect by virtue of this Act as in force before the appointed day shall be deemed and taken to have been made done or commenced by or on behalf of or in relation to the Commission.
- (6) Any reference to the previous Fund or to the Treasurer with respect to the previous Fund in any Act regulation notice demand order legal or other proceeding contract lease mortgage agreement instrument document or any writing of any kind whatsoever shall, so far as relates to any period after the appointed day and if not inconsistent with the context or subject-matter, be deemed and taken to refer to the Fund and the Commission respectively.

93 Payments into the Fund

There shall be paid into the Fund any moneys received or recovered by or on behalf of the Authority in the exercise of the rights powers and duties conferred and imposed upon it by this Part.

S. 93
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(2),
amended by
No. 50/1994
s. 121.

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No. 6419 of 1958

Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

s. 94

94 Recovery of moneys

Any amount payable to the Authority under this Division as in force on and from the appointed day or to the Treasurer under this Division as in force before the appointed day may be recovered by the Authority as a civil debt recoverable summarily in any court of competent jurisdiction.

S. 94
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(2),
amended by
No. 50/1994
s. 121.

95 Refund of overpayments

Where on or after the appointed day the Authority finds that any surcharge payable under this Part as in force before the appointed day had been overpaid the Authority may refund the amount by which the surcharge was overpaid.

S. 95
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(2),
amended by
No. 50/1994
s. 121.

96 Obligations under this Part

S. 96
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(2).

- (1) The Authority shall set aside in the Fund sufficient moneys to meet its obligations under this Part and sections 2B and 2C.
- (2) For the purpose of meeting its obligations under this Part and sections 2B and 2C, the Authority may use moneys in the Fund received as levies under the **Accident Compensation Act 1985** or as consideration for re-insurance under the **Accident Compensation (WorkCover Insurance) Act 1993**.
- (3) In the accounts and records of the Fund transactions pursuant to this Part and sections 2B and 2C shall be shown separately from other transactions.

S. 96(1)
amended by
No. 50/1994
s. 121.

S. 96(2)
amended by
No. 50/1994
ss 121, 123.

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Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

s. 98

S. 97
inserted by
No. 8733
s. 24(1),
amended by
No. 10089
s. 4(1),
repealed by
No. 10191
s. 268(2).

* * * *

S. 98
inserted by
No. 8733
s. 24(1).

98 Payments out of Fund

(1) There shall be paid out of the Fund—

S. 98(1)(b)
amended by
Nos 10089
s. 4(1), 10191
s. 268(3)(c),
50/1994 s. 121.

S. 98(1)(c)
amended by
Nos 10089
s. 4(1), 10191
s. 268(3)(c),
50/1994 s. 121.

S. 98(1)(d)
amended by
Nos 9297
s. 11(k), 10191
s. 268(3)(a).

S. 98(1)(f)
amended by
No. 10191
s. 268(3)(b).

- (a) the amount of any claim award or judgment to which this Part applies in respect of which indemnity is not provided as required by the relevant policy of accident insurance or indemnity;
- (b) the amounts of any legal or other costs and expenses incurred by the Authority in respect of any claim award or judgment to which this Part applies;
- (c) the amounts of any premiums payable in respect of any contracts of indemnity entered into by the Authority under section 104;
- (d) the amounts of any costs and expenses incurred in the administration of this Part and the exercise of any power under section 100C;
- (e) the amount of any refund due under this Part; and
- (f) any other moneys which this Part or section 2B or 2C authorizes to be paid out of the Fund.

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Insurers Guarantee and Compensation Supplement Fund

s. 98

- (1A) Nothing in this Part shall be taken to require or authorize payment out of the Fund of the amount of any claim award or judgment under paragraph (a) of subsection (1) where an injury is incurred more than 28 days from the date of a winding-up order in relation to the relevant insurer made by the Supreme Court.
- (2) Nothing in this Part shall be taken to require or authorize payment out of the Fund of the amount of any claim award or judgment to which this Part applies if any proceeding or step required to enforce payment of that amount by the relevant insurer can no longer be taken because of any failure on the part of the employer or any other person to take it within the time allowed by law.
- (3) To the extent of amounts paid out of the Fund in respect of any claim award or judgment to which this Part applies (including costs incurred by the Authority), the Authority shall—
- (a) in any case where, if the indemnity to be provided under the relevant policy of accident insurance or indemnity had been provided by the relevant insurer or any other person, the relevant insurer or that person would have been entitled to recover any sum under any contract or arrangement for re-insurance—be entitled to the benefit of and may exercise the rights and powers of the relevant insurer or that person under that contract or arrangement so as to enable the Authority to recover from the re-insurer and retain the amount due under that contract or arrangement; and
- (b) to the extent that recovery is not made from a re-insurer pursuant to paragraph (a)—be a creditor of and have the same rights against the relevant insurer or any other person as

S. 98(1A)
inserted by
No. 9613 s. 17,
amended by
No. 57/1989
s. 3(Sch. item
222.2).

S. 98(3)
amended by
Nos 10089
s. 4(1), 10191
s. 268(3)(c),
50/1994 s. 121.

S. 98(3)(a)
amended by
Nos 10089
s. 4(1), 10191
s. 268(3)(c),
50/1994 s. 121.

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Insurers Guarantee and Compensation Supplement Fund

s. 98A

the employer concerned would have had if the indemnity required to be provided by the policy of accident insurance or indemnity was not provided.

S. 98A
inserted by
No. 9610 s. 2,
substituted by
No. 10191
s. 268(4),
repealed by
No. 50/1994
s. 115,
new s. 98A
inserted by
No. 41/2006
s. 45.

98A Additional amounts paid under section 2A

- (1) An insurer who is required to pay an additional amount on behalf of an employer as compensation by virtue of section 2A(3) in respect of an injury arising out of or in the course of employment of a worker before 1 July 1975 must—
 - (a) give the information specified in subsection (2) to the Authority; and
 - (b) certify that it is true and correct.
- (2) The information is—
 - (a) the claim number of the insurer;
 - (b) the name of the employer;
 - (c) the date of injury of the worker;
 - (d) the rate of compensation payable as at 30 June 1975;
 - (e) the rate of compensation payable from 1 July 1975.

S. 98B
inserted by
No. 41/2006
s. 45.

98B Recompense from the Fund for additional amounts paid under section 2A

An application to the Authority for recompense from the Fund for an additional amount paid on behalf of an employer as compensation by virtue of section 2C(1) in respect of an injury arising out of or in the course of employment of a worker before 1 July 1975 must be lodged with or forwarded to the Authority in the form approved by the Authority.

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s. 99

99 Advances from Public Account

S. 99
inserted by
No. 8733
s. 24(1).

- (1) Where the Fund is insufficient to meet any payment required by this Part to be made out of the Fund, the Minister may make temporary advances to the Fund out of the Public Account, but the total of any such advances outstanding shall not exceed \$250 000 at any time.
- (2) When any such temporary advance is made out of the Public Account, the amount of the advance together with interest at such rate as the Minister determines shall be a first charge on the Fund, and shall be recouped to the Public Account progressively as moneys are paid into the Fund.

S. 99(1)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 30)).

S. 99(2)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 30)).

100 Transitional

S. 100
inserted by
No. 8733
s. 24(1),
substituted by
No. 10191
s. 268(5).

- (1) This section applies notwithstanding that during the period commencing on 28 June 1983 and ending immediately before the appointed day the Treasurer did not, under section 100A as in force during that period, delegate all or any of the Treasurer's powers and functions in relation to the administration of the previous Fund.
- (2) For the purposes of this Act as in force during the period commencing on 28 June 1983 and ending on 17 September 1984—
 - (a) the Treasurer shall be deemed to have delegated, under section 100A as in force during that period, to the Insurance Commissioner under the **State Insurance Office Act 1975** all of the Treasurer's powers and functions in relation to the administration of the previous Fund; and

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- (b) nothing done by the Insurance Commissioner during that period in relation to the administration of the previous Fund shall be invalid by reason only that the Treasurer did not make that delegation.
- (3) For the purposes of this Act as in force during the period commencing on 18 September 1984 and ending immediately before the appointed day—
 - (a) the Treasurer shall be deemed to have delegated, under section 100A as in force during that period, to the State Insurance Office under the **State Insurance Office Act 1984** all of the Treasurer's powers and functions in relation to the administration of the previous Fund (except the Treasurer's powers under section 100C as in force during that period); and
 - (b) nothing done by the State Insurance Office during that period in relation to the administration of the previous Fund shall be invalid by reason only that the Treasurer did not make that delegation.

S. 100A
inserted by
No. 9297
s. 11(l),
amended by
No. 10089
s. 4(1),
repealed by
No. 10191
s. 268(5).

* * * * *

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Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

s. 100B

100B Auditor's certificate

S. 100B
inserted by
No. 9297
s. 11(l).

- (1) Within 14 days after completion of the audit of an insurer's accounts for each financial year, the insurer shall send to the Authority a statement by a registered company auditor within the meaning of the Corporations Act certifying that—

S. 100B(1)
amended by
Nos 9699
s. 23, 10191
s. 268(6)(a),
50/1994 s. 121,
44/2001
s. 3(Sch.
item 129).

- (a) the auditor has examined the accounting records kept by the insurer in relation to any entitlement of the insurer to recover from the Fund pursuant to section 2C;

S. 100B(1)(a)
substituted by
No. 10191
s. 268(6)(b).

- (b) in his opinion—

* * * * *

S. 100B(1)
(b)(i)(ii)
repealed by
No. 10191
s. 268(6)(c).

- (iii) the accounting records accurately represent any entitlement of the insurer to be recompensed from the Fund; and

- (iv) any claims made by the insurer to be recompensed from the Fund are based on the insurer's entitlement as shown in the accounting records.

- (2) A statement under subsection (1)—

- (a) shall be in writing;
- (b) shall be in or to the effect of the prescribed form;
- (c) shall be signed by the auditor; and
- (d) shall relate to the period of 12 months ended on the preceding 30 June.

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Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

s. 100C

S. 100C
inserted by
No. 9297
s. 11(l).

100C Inspection of insurer's records

S. 100C(1)
amended by
Nos 9613
s. 19, 10089
s. 4(1), 10191
s. 268(7)(a)(b),
50/1994 s. 121.

- (1) An insurer shall when requested to do so by the Authority or a person authorized in writing in that behalf by the Authority, forthwith produce to that person such books and records as are kept by the insurer in relation to claims which arise under the Act as are specified by the person requiring the production.
- (2) A person to whom a document is produced under subsection (1) may examine the document in relation to any matter under this Part or under sections 2B or 2C and may take copies of or extracts from the document.
- (3) An insurer who without reasonable excuse fails or refuses to produce a document in accordance with a requirement made under subsection (1) shall be guilty of an offence against this Act.

Division 2—Payments from Fund

S. 101
inserted by
No. 8733
s. 24(1),
amended by
No. 10191
s. 268(8).

101 Claims etc. to which Part applies

This Part applies to any claim award or judgment against an employer in respect of personal injury to a worker arising out of or in the course of his employment whether before or after the commencement of this Act being a claim award or judgment under this Act or at common law in respect of which the employer is entitled to be indemnified against his liability under a policy of accident insurance or indemnity obtained from an insurer before the appointed day.

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Insurers Guarantee and Compensation Supplement Fund

s. 102

102 Failure to provide indemnity

Where any indemnity required by this Act as in force before the appointed day to be provided under a policy of accident insurance or indemnity is not provided in respect of any claim award or judgment to which this Part applies the Authority shall have the same rights powers duties and liabilities in respect of the claim award or judgment as the relevant insurer would have had if the insurer had provided the required indemnity.

S. 102
inserted by
No. 8733
s. 24(1),
amended by
Nos 10089
s. 4(1), 10191
s. 268(9)(a)(b),
50/1994 s. 121.

103 Notice of claims etc.

Where an insurer is unable to provide any indemnity required by this Act as in force before the appointed day to be provided by a policy of accident insurance or indemnity in respect of any claim award or judgment to which this Part applies, the insurer or any person holding in relation to the insurer the office of liquidator, receiver or receiver and manager, or official manager shall forthwith notify the Authority of any such claim award or judgment, and make available to the Authority any books or papers relevant thereto.

S. 103
inserted by
No. 8733
s. 24(1),
amended by
Nos 10089
s. 4(1), 10191
s. 268(10)
(a)(b), 50/1994
s. 121.

103A Winding up of insurer

The liquidator of an insurer which has been wound-up shall notify the Authority of the winding up order within seven days of the making thereof and provide the Authority with the names and addresses of all employers holding policies of accident insurance or indemnity with that insurer.

S. 103A
inserted by
No. 9613 s. 18,
amended by
Nos 10089
s. 4(1), 10191
s. 268(11),
50/1994 s. 121.

Workers Compensation Act 1958
No. 6419 of 1958

Part V—Provisions Relating to the Accident Compensation Fund and the
Insurers Guarantee and Compensation Supplement Fund

s. 103B

S. 103B
inserted by
No. 9613 s. 18.

103B Notices and advertisement of winding up

S. 103B(1)
amended by
Nos 10089
s. 4(1), 10191
s. 268(12)(a),
50/1994 s. 121.

- (1) The Authority shall within 21 days of the winding up order referred to in section 103A—
 - (a) notify in writing those employers holding policies of accident insurance or indemnity of whom he has notice pursuant to section 103A of the winding up order together with a brief statement of the effect the order has on the employer's policy of accident insurance or indemnity; and
 - (b) place a notice in a daily newspaper circulating generally throughout Victoria specifying the date of the winding up order of the insurer together with a brief statement of the effect of the order on employers' policies of accident insurance or indemnity with the relevant insurer.

S. 103B(1)(b)
amended by
No. 29/2006
s. 3(Sch. 1
item 39.3).

S. 103B(2)
amended by
Nos 10089
s. 4(1), 10191
s. 268(12)
(a)(b), 50/1994
s. 121.

- (2) All costs incurred by the Authority in administering subsection (1) shall be paid out of the Fund.

S. 104
inserted by
No. 8733
s. 24(1),
amended by
Nos 9549
s. 2(1)(Sch.
item 263),
10089 s. 4(1),
10191
s. 268(13),
50/1994 s. 121.

104 Contract of indemnity

- (1) The Authority may enter into a contract with any person under which the Authority is to be indemnified to the extent and in the manner provided by the contract against the liability of the Authority under this Part.

**PART VI—PROVISIONS RELATING TO THE ACCIDENT
COMPENSATION FUND AND THE WORKERS
SUPPLEMENTATION FUND**

Pt 6 (Heading)
inserted by
No. 9297
s. 10(1),
substituted by
No. 10191
s. 269(1).

105 Definitions

S. 105
inserted by
No. 9297
s. 10(1).

In this Part—

employer's policy means a policy of accident
insurance or indemnity providing indemnity
against claims made by any worker in
respect of any injury arising out of or in the
course of the employment of the worker;

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S. 105 def. of
Fund
repealed by
No. 10191
s. 269(2)(a).

statutory premium element means so much of any
premium paid in respect of an employer's
policy as is attributable to indemnity
provided by the employer's policy against
claims under this Act or at common law;

the previous Fund means the Workers
Supplementation Fund established under this
Part as in force before the appointed day.

S. 105 def. of
*the previous
Fund*
inserted by
No. 10191
s. 269(2)(b).

106 Contributions

S. 106
inserted by
No. 9297
s. 10(1).

- (1) An employer who has obtained an employer's
policy shall be liable to pay the prescribed
contribution.

S. 106(1)
amended by
No. 10191
s. 269(3).

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Workers Supplementation Fund

s. 106

- (2) The prescribed contribution shall be such percentage of the statutory premium element (not exceeding 40 per centum) as is prescribed.
- (3) The prescribed contribution shall be paid to the insurer—
 - (a) where any moneys are paid to the insurer by way of premium in respect of an employer's policy before the day specified in the policy as the day on which insurance cover begins—on the payment of those moneys; and
 - (b) in any other case—
 - (i) on the day specified in the policy as the day on which insurance cover begins; or
 - (ii) if the insurer in writing so requires, on the payment after the day mentioned in subparagraph (i) of any moneys to the insurer by way of premium in respect of an employer's policy.
- (4) The prescribed contribution shall be calculated on the basis of the premium payable at the rate in force on the day specified in the employer's policy as the day on which insurance cover begins.
- (5) A contribution payable under this section shall be levied and collected for and on behalf of Her Majesty.
- (6) An insurer shall disclose to an employer the amount of the statutory premium element of any amount payable by way of premium in respect of an employer's policy.

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s. 106

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- (7) An employer who receives a refund of any amount paid by way of statutory premium element in respect of an employer's policy shall be entitled to be refunded from the Fund, a corresponding refund in respect of any contribution levied in respect of the statutory premium element so refunded.
- (8) Notwithstanding anything to the contrary in this section, the following provisions shall apply to and in relation to an employer's policy obtained before the date of commencement of section 10 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** and in force at the date of commencement of that provision—
- (a) the employer who obtained the policy shall be liable to pay by way of contribution to the Fund a proportion of the prescribed contribution, being a proportion represented by the formula $\frac{A}{366}$ where A is the number of days in the period commencing on and from the date of commencement of section 10 of the **Workers Compensation (Miscellaneous Provisions) Act 1979** and ending on the day before the day on which the policy is renewable;
 - (b) the contribution mentioned in paragraph (a) shall be payable to the insurer not later than the day on which premiums in respect of the employer's policy are adjusted by the insurer;
 - (c) for the purposes of calculating the contribution payable under paragraph (a), the prescribed contribution shall be calculated on the basis of the premium payable at the rate in force on the date of commencement of section 10 of the **Workers Compensation (Miscellaneous Provisions) Act 1979**; and
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- (d) a reference in section 107 to employers' policies shall be read and construed as if it included a reference to an employer's policy to which this subsection applies and as if a reference to moneys paid by way of premium included a reference to contributions received under this subsection.

S. 107
inserted by
No. 9297
s. 10(1).

107 Payment of contributions

S. 107(1)
amended by
Nos 10191
s. 269(4),
50/1994 s. 121.

- (1) Within fourteen days after the end of every month an insurer shall send to the Authority a statement in the prescribed form setting out the amounts representing the statutory premium element of all amounts received by the insurer by way of premium in respect of employers' policies during that month and such other particulars (if any) as are prescribed.

- (2) The statement shall be verified by a statutory declaration made by the appropriate officer of the insurer.

S. 107(3)
amended by
Nos 10191
s. 269(4),
50/1994 s. 121.

- (3) The insurer shall at the same time pay to the Authority the amount of any contributions payable in respect of moneys received during that month.

S. 108
inserted by
No. 9297
s. 10(1),
substituted by
No. 10191
s. 269(5),
amended by
No. 50/1994
s. 121.

108 Recovery of moneys

Any amount payable to the Authority under this Part as in force on and from the appointed day or to the Treasurer under this Part as in force before the appointed day may be recovered by the Authority as a civil debt recoverable summarily in any court of competent jurisdiction.

109 Overpayments

Where the Authority finds that any contribution payable under this Part has been overpaid, it may refund the amount by which the contribution was overpaid.

S. 109
inserted by
No. 9297
s. 10(1),
amended by
Nos 10191
s. 269(6)(a)(b),
50/1994 s. 121.

110 Workers Supplementation Fund to be transferred to Accident Compensation Fund

- (1) On and from the appointed day, the previous Fund shall for all purposes become and be part of the Fund.
- (2) For the purpose of subsection (1)—
 - (a) all moneys standing to the credit of the previous Fund immediately before the appointed day shall be transferred to and stand to the credit of the Fund; and
 - (b) any securities in which moneys standing to the credit of the previous Fund were invested before the appointed day shall be vested in the Commission and those investments shall be deemed to have been made by the Commission pursuant to the **Accident Compensation Act 1985**.
- (3) The Commission and the Treasurer shall do and are hereby empowered to do all such acts and things as are necessary for the purposes of this section.
- (4) No right interest or claim in or with respect to the previous Fund shall abate or be in any way prejudicially affected by reason of this section.
- (5) All other acts matters or things of a continuing nature made done or commenced by or on behalf of or in relation to the Treasurer with respect to the previous Fund and immediately before the appointed day of any force or effect or capable of

S. 110
inserted by
No. 9297
s. 10(1),
substituted by
No. 10191
s. 269(7).

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Workers Supplementation Fund

s. 111

acquiring any force or effect by virtue of this Act as in force before the appointed day shall be deemed and taken to have been made done or commenced by or on behalf of or in relation to the Commission and shall have effect and may be continued and completed by or on behalf of or in relation to the Commission.

- (6) Any reference to the previous Fund or to the Treasurer with respect to the previous Fund in any Act regulation notice demand order legal or other proceeding contract lease mortgage agreement instrument document or any writing of any kind whatsoever shall, so far as relates to any period after the appointed day and, if not inconsistent with the context or subject-matter, be deemed and taken to refer to the Fund and the Commission respectively.

S. 111
inserted by
No. 9297
s. 10(1),
substituted by
No. 10191
s. 269(7),
amended by
No. 50/1994
s. 121.

111 Payments into the Fund

There shall be paid into the Fund any moneys received or recovered by or on behalf of the Authority in the exercise of the rights powers and duties conferred and imposed upon it by this Part.

S. 111A
inserted by
No. 10191
s. 269(7).

111A Obligations under this Part

S. 111A(1)
amended by
No. 50/1994
s. 121.

- (1) The Authority shall set aside in the Fund sufficient moneys to meet its obligations under this Part and sections 2E, 2F, 2G and 2H.

S. 111A(2)
amended by
No. 50/1994
ss 121, 123.

- (2) For the purpose of meeting its obligations under this Part and sections 2E, 2F, 2G and 2H, the Authority may use moneys in the Fund received as levies under the **Accident Compensation Act 1985** or as consideration for re-insurance under the **Accident Compensation (WorkCover Insurance) Act 1993**.

- (3) In the accounts and records of the Fund transactions pursuant to this Part and sections 2E, 2F, 2G and 2H shall be shown separately from other transactions.

112 Payments out of the Fund

There shall be paid out of the Fund—

- (a) the amount of any costs and expenses incurred in the administration of this Part including the exercise of any power under section 117;
- (b) the amount of any refund due under this Part; and
- (c) any other moneys which this Act authorizes to be paid out of the Fund.

S. 112
inserted by
No. 9297
s. 10(1),
amended by
No. 10191
s. 269(8).

112A Additional amounts paid under section 2G

- (1) An insurer who may be required to pay an additional amount on behalf of an employer as compensation by virtue of section 2D(1) or 2D(2) in respect of an injury arising out of or in the course of employment of a worker must—
- (a) give the information specified in subsection (2) to the Authority; and
 - (b) certify that it is true and correct.
- (2) The information is—
- (a) the claim number of the insurer;
 - (b) the name of the employer;
 - (c) the date of injury of the worker;
 - (d) the appropriate compensation rate.

S. 112A
inserted by
No. 41/2006
s. 46.

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Workers Supplementation Fund

s. 112B

S. 112B
inserted by
No. 41/2006
s. 46.

**112B Recompense from the Fund for additional amounts
paid under section 2G**

An application to the Authority for recompense from the Fund for an additional amount paid on behalf of an employer as compensation by virtue of section 2G(1) in respect of any injury arising out of or in the course of employment of a worker must be lodged with or forwarded to the Authority in the form approved by the Authority.

S. 113
inserted by
No. 9297
s. 10(1),
substituted by
No. 10191
s. 269(9).

**113 Provisions in respect of moneys previously advanced
from the Insurers Guarantee and Compensation
Supplementation Fund**

S. 113(1)
amended by
No. 50/1994
s. 121.

(1) If at any time the moneys set aside in the Fund pursuant to section 96 are insufficient to meet any payment required to be made under Part V or section 2B or 2C the Authority may transfer to those moneys from the moneys set aside in the Fund pursuant to section 111A such amount as is necessary to meet the payment.

S. 113(2)
amended by
No. 48/1986
s. 37.

(2) Subsection (1) shall cease to apply at the time when the amounts in total transferred are equal to the amounts in total which would, if this section had not been amended by the **Accident Compensation Act 1985**, have been recouped, pursuant to this section as in force before the appointed day, from the previous Fund to the Insurers Guarantee and Compensation Supplementation Fund (established under Part V as in force before the appointed day).

114 Transitional

S. 114
inserted by
No. 9297
s. 10(1),
substituted by
No. 10191
s. 269(10).

- (1) This section applies notwithstanding that during the period commencing on 28 June 1983 and ending immediately before the appointed day the Treasurer did not, under section 115 as in force during that period, delegate all or any of the Treasurer's powers and functions in relation to the administration of the previous Fund.
- (2) For the purposes of this Act as in force during the period commencing on 28 June 1983 and ending on 17 September 1984—
 - (a) the Treasurer shall be deemed to have delegated, under section 115 as in force during that period, to the Insurance Commissioner under the **State Insurance Office Act 1975** all of the Treasurer's powers and functions in relation to the administration of the previous Fund; and
 - (b) nothing done by the Insurance Commissioner during that period in relation to the administration of the previous Fund shall be invalid by reason only that the Treasurer did not make that delegation.
- (3) For the purposes of this Act as in force during the period commencing on 18 September 1984 and ending immediately before the appointed day—
 - (a) the Treasurer shall be deemed to have delegated under section 115 as in force during that period, to the State Insurance Office under the **State Insurance Office Act 1984** all of the Treasurer's powers and functions in relation to the administration of the previous Fund (except the Treasurer's powers under section 100C as in force during that period); and

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- (b) nothing done by the State Insurance Office during that period in relation to the administration of the previous Fund shall be invalid by reason only that the Treasurer did not make that delegation.

S. 115
inserted by
No. 9297
s. 10(1),
amended by
No. 10089
s. 4(1),
repealed by
No. 10191
s. 269(10).

* * * * *

S. 116
inserted by
No. 9297
s. 10(1).

116 Auditor's certificate

S. 116(1)
amended by
Nos 9699
s. 23, 10191
s. 269(11),
50/1994 s. 121,
44/2001
s. 3(Sch.
item 129).

- (1) Within 14 days after the completion of the audit of an insurer's accounts for each financial year, the insurer shall send to the Authority a statement by a registered company auditor within the meaning of the Corporations Act certifying that—

S. 116(1)(a)
amended by
Nos 10191
s. 269(11),
50/1994 s. 121.

- (a) he has examined the accounting records kept by the insurer in relation to the collection from holders of policies of accident insurance or indemnity of contributions under this Part and the payment of those contributions to the Authority and the insurer's entitlement to recover from the fund; and

- (b) in his opinion—

S. 116(1)(b)(i)
amended by
Nos 10191
s. 269(11),
50/1994 s. 121.

- (i) the accounts accurately record the amounts actually collected by the insurer by way of contributions under this Part and actually paid to the Authority;

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- (ii) the insurer has performed his obligations under sections 106 and 107 in respect of the collection and payment of contributions;
 - (iii) the accounting records accurately represent any entitlement of the insurer to be recompensed from the fund; and
 - (iv) any claims made by the insurer to be recompensed from the Fund are based on the insurer's entitlement as shown in the accounting records.
- (2) A statement under subsection (1)—
- (a) shall be in writing;
 - (b) shall be in or to the effect of the prescribed form;
 - (c) shall be signed by the auditor; and
 - (d) shall relate to the period of 12 months ended on the preceding 30 June.

117 Inspection of insurer's records

**S. 117
inserted by
No. 9297
s. 10(1).**

- (1) An insurer shall when requested to do so by the Authority or a person authorized in writing in that behalf by the Authority, forthwith produce to that person such books and records as are kept by the insurer in relation to claims which arise under the Act, the collection of contributions under this Part and the payment of contributions to the Authority as are specified by the person requiring the production.

**S. 117(1)
amended by
Nos 9613
s. 20, 10089
s. 4(1), 10191
s. 269(11),
50/1994 s. 121.**

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- (2) A person to whom a document is produced under subsection (1) may examine the document in relation to any matter under this Part or under sections 2F or 2G and may take copies of or extracts from the document.
 - (3) An insurer who without reasonable excuse fails or refuses to produce a document in accordance with a requirement made under subsection (1) shall be guilty of an offence against this Act.
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Sch. 1

SCHEDULES

FIRST SCHEDULE

Section 2.

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
5601	Workers Compensation Act 1951	So much as is not already repealed
5676	Workers Compensation Act 1953	The whole
5715	Workers Compensation (Amendment) Act 1953	The whole
5950	Workers Compensation (Police) Act 1956	The whole
6017	Police Regulation (Reservists) Act 1956	Section 18
6031	Workers Compensation (Supplementary Board) Act 1956	The whole

Section 2(3).

SECOND SCHEDULE

*(Reproduced Provisions of Section 15 of the **Workers Compensation Act 1953** as re-enacted by Section 8 of the **Workers Compensation (Amendment) Act 1953**).*

In this Schedule references to "the principal Act" and "this Act" are references to the **Workers Compensation Act 1951** and the **Workers Compensation Act 1953** respectively.

15. Notwithstanding anything to the contrary in any rule of law or construction, the provisions of the principal Act as amended by the foregoing provisions of this Act, so far as they relate to rates or amounts of compensation, shall apply with respect to every payment of compensation after the commencement of this Act irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation and notwithstanding that an award for a lesser rate or amount may have been made by the Board before the commencement of this Act, and every policy of accident insurance or indemnity in force under the Workers Compensation Acts at the said commencement shall, notwithstanding anything to the contrary therein, be read and construed as fully insuring or indemnifying the employer against the increased liability accordingly.

THIRD SCHEDULE

Sch. 3
inserted by
No. 41/2006
s. 47.

LIST OF DISEASES PROCLAIMED

<i>Description of Disease</i>	<i>Description of Process or Occupation</i>
Anthrax	Wool combing, wool sorting, handling of or coming into contact with hides, skins, wool, hair, bristles or carcasses, work in connection with animals infected with anthrax, loading and unloading or transport of merchandise.
Arsenic poisoning or its sequelae	Any manufacturing or other process involving the use of or contact with arsenic or its preparations or compounds.
Asbestosis (with or without mesothelioma)	Any mining, manufacturing or other process which involves the use of or contact with asbestos.
Avascular Necrosis or its sequelae	Any occupation involving working underground or underwater where the worker is subjected to greater than normal atmospheric pressure and subsequent decompression.
Brucellosis (Undulant Fever)	Work in connection with animals or carcasses infected with the brucella organism.
Carbon bisulphide poisoning	Any manufacturing or other process involving working in contact with or the inhalation of carbon bisulphide gas.
Carbon monoxide poisoning	Any manufacturing or other process involving working in contact with or the inhalation of carbon monoxide gas.
Chrome ulceration or its sequelae	Any manufacturing or other process involving the use of or contact with chromic acid or bichromate of ammonium, potassium or sodium or their preparations.
Copper poisoning or its sequelae	Any manufacturing or other process involving the use of or contact with copper or its preparations or compounds.

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<i>Description of Disease</i>	<i>Description of Process or Occupation</i>
Dermatitis venenata	Any occupation, involving the use of or contact with vegetable or mineral matter.
Lead poisoning or its sequelae	Any manufacturing or other process involving the use of or contact with lead or its preparations or compounds.
Leptospirosis, as caused by any of the serotypes of the micro-organism <i>Leptospira</i> , in any of its clinical manifestations.	Any work done at abattoirs, slaughterhouses and knackeries involving contact directly or indirectly with animals or tissues of animals.
Mercury poisoning or its sequelae	Any manufacturing or other process involving the use of or contact with mercury or its preparations or compounds.
Pathological manifestations due to radium and other radioactive substances or X-rays	Any process involving exposure to the action of radium, radioactive substances or X-rays.
Phosphorus poisoning or its sequelae	Any manufacturing or other process involving the use of or contact with phosphorus or its preparations or compounds.
Poisoning by benzol, its homologues or its nitro and amido derivatives and the sequelae of these poisonings	Any process or occupation involving the production, liberation of or exposure to benzol, its homologues or its nitro and amido derivatives.
Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series	Any process or occupation involving the production, liberation or utilization of halogen derivatives of hydrocarbons of the aliphatic series.
Primary epitheliomatous cancer of the skin	Any process or occupation involving handling of or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.
Q fever as caused by the micro-organism <i>Coxiella burnetii</i> (also known as <i>Rickettsia burnetii</i>), in any of its clinical manifestations	Any work done at abattoirs, slaughterhouses and knackeries involving contact directly or indirectly with animals or tissues of animals.

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Sch. 3

<i>Description of Disease</i>	<i>Description of Process or Occupation</i>
Septic poisoning or its sequelae	Any work involving the handling of meat or the manufacture of meat products or animal by-products in connexion with the trade of a butcher or slaughterman.
Silicosis with or without pulmonary tuberculosis	Any manufacturing or other process involving exposure to the inhalation of silica dust.
Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow)	Mining.
Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee)	Mining.
Tenosynovitis (inflammation of the tendon sheaths of the hand, wrist, forearm or elbow)	Any process or occupation connected with the preparation, preserving, canning or bottling of jams, sauces, fruits, pickles or other similar foods for human consumption.
Zinc poisoning or its sequelae	Any manufacturing or other process involving the use of or contact with zinc or its preparations or compounds.

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ENDNOTES

1. General Information

The **Workers Compensation Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 893.

2. Table of Amendments

This Version incorporates amendments made to the **Workers Compensation Act 1958** by Acts and subordinate instruments.

Companies Act 1958, No. 6455/1958 (as amended by No. 6505)

Assent Date: 2.12.58
Commencement Date: 1.4.59: Government Gazette 4.3.59 p. 496
Current State: All of Act in operation

State Accident Insurance Office Act 1961, No. 6803/1961

Assent Date: 5.12.61
Commencement Date: 5.12.61
Current State: All of Act in operation

Companies Act 1961, No. 6839/1961

Assent Date: 19.12.61
Commencement Date: 1.7.62: Government Gazette 21.2.62 p. 392
Current State: All of Act in operation

Subordinate Legislation Act 1962, No. 6886/1962

Assent Date: 8.5.62
Commencement Date: 1.8.62: Government Gazette 4.7.62 p. 2314
Current State: All of Act in operation

Insurance Commissioner (Costs and Expenses) Act 1963, No. 6986/1963

Assent Date: 7.5.63
Commencement Date: 7.5.63
Current State: All of Act in operation

State Insurance Funds Act 1963, No. 7063/1963

Assent Date: 3.12.63
Commencement Date: 22.4.64: Government Gazette 22.4.64 p. 1305
Current State: All of Act in operation

State Insurance Funds Act 1964, No. 7152/1964

Assent Date: 29.9.64
Commencement Date: 1.7.64: s. 1
Current State: All of Act in operation

Public Lands and Works Act 1964, No. 7228/1964

Assent Date: 15.12.64
Commencement Date: 15.3.65: Government Gazette 11.3.65 p. 557
Current State: All of Act in operation

Workers Compensation (Amendment) Act 1965, No. 7292/1965

Assent Date: 9.6.65
Commencement Date: 1.7.65: Government Gazette 23.6.65 p. 1962
Current State: All of Act in operation

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Statute Law Revision Act 1965, No. 7332/1965

Assent Date: 14.12.65
Commencement Date: 14.12.65: subject to s. 3
Current State: All of Act in operation

Hospitals and Charities (Liability of Patients) Act 1966, No. 7455/1966

Assent Date: 15.11.66
Commencement Date: 21.12.66: Government Gazette 21.12.66 p. 4257
Current State: All of Act in operation

Justices (Amendment) Act 1969, No. 7876/1969

Assent Date: 25.11.69
Commencement Date: All of Act (*except* ss 3, 5, 6, 7(k)(m)–(o)) on 1.4.70;
ss 3, 5, 6, 7(k)(m)–(o) on 1.7.70: Government Gazette
25.2.70 p. 463
Current State: All of Act in operation

Workers Compensation Act 1970, No. 8084/1970

Assent Date: 22.12.70
Commencement Date: 22.12.70
Current State: All of Act in operation

Statutory Salaries Act 1971, No. 8165/1971

Assent Date: 3.11.71
Commencement Date: 3.11.71
Current State: All of Act in operation

Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71: subject to s. 2(2)
Current State: All of Act in operation

Workers Compensation Act 1972, No. 8271/1972

Assent Date: 9.5.72
Commencement Date: 9.5.72
Current State: All of Act in operation

Railways (Amendment) Act 1972, No. 8353/1972

Assent Date: 13.12.72
Commencement Date: 8.5.73: Government Gazette 2.5.73 p. 946
Current State: All of Act in operation

Workers Compensation Act 1973, No. 8417/1973

Assent Date: 17.4.73
Commencement Date: 17.4.73
Current State: All of Act in operation

State Insurance Office Act 1975, No. 8727/1975

Assent Date: 16.5.75
Commencement Date: 1.7.75: Government Gazette 25.6.75 p. 2180
Current State: All of Act in operation

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Workers Compensation (Amendment) Act 1975, No. 8733/1975

Assent Date: 16.5.75
Commencement Date: Ss 12, 21, 24 on 28.5.75: Government Gazette 28.5.75 p. 1857; rest of Act on 1.7.75: Government Gazette 25.6.75 p. 2179
Current State: All of Act in operation

Workers Compensation (Surcharge Payments) Act 1975, No. 8804/1975

Assent Date: 2.12.75
Commencement Date: 2.12.75
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Workers Compensation (Special Provisions) Act 1978, No. 9134/1978

Assent Date: 23.5.78
Commencement Date: 23.5.78
Current State: All of Act in operation

Workers Compensation (Amendment) Act 1978, No. 9136/1978 (as amended by No. 9215)

Assent Date: 23.5.78
Commencement Date: S. 3(2)(4) on 2.8.78: Government Gazette 2.8.78 p. 2505; s. 2 on 1.1.79: Government Gazette 29.11.78 p. 3676; s. 3(1) repealed by No. 9215; ss 4, 5 on 14.5.79: Government Gazette 9.5.79 p. 1351; s. 3(3) repealed by No. 9613
Current State: All of Act in operation

Workers Compensation (Share Farmers) Act 1978, No. 9215/1978

Assent Date: 19.12.78
Commencement Date: 1.3.79: Government Gazette 24.1.79 p. 201
Current State: All of Act in operation

Workers Compensation (Miscellaneous Provisions) Act 1979, No. 9297/1979

Assent Date: 27.11.79
Commencement Date: 1.12.79: Government Gazette 30.11.79 p. 2995
Current State: All of Act in operation

Workers Compensation (General Amendment) Act 1980, No. 9372/1980

Assent Date: 30.4.80
Commencement Date: Ss 2, 3 on 1.12.79: s. 1(3); s. 4 on 30.4.80: s. 1(4)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: subject to s. 2(2)
Current State: All of Act in operation

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**Workers Compensation (Insurers Guarantee and Compensation
Supplementation Fund) Act 1981, No. 9610/1981**

Assent Date: 1.12.81
Commencement Date: 1.12.81
Current State: All of Act in operation

Workers Compensation (Amendment) Act 1981, No. 9613/1981

Assent Date: 1.12.81
Commencement Date: Ss 1, 2 (*except* insofar as it inserts s. 25G(2) into the **Workers Compensation Act 1958**), 3–9, 11–20, 22 on 9.12.81; ss 2 (insofar as it inserts s. 25G(2) into the **Workers Compensation Act 1958**), 10, 21 on 19.1.82: Government Gazette 9.12.81 p. 4073
Current State: All of Act in operation

Workers Compensation (Actions) Act 1981, No. 9683/1981

Assent Date: 5.1.82
Commencement Date: 5.1.82
Current State: All of Act in operation

Companies (Consequential Amendment) Act 1981, No. 9699/1981

Assent Date: 5.1.82
Commencement Date: Ss 9, 14, 18 on 1.7.81: s. 2(2); s. 19 on 1.10.81: s. 2(3); s. 22 on 5.1.82: s. 2(4); rest of Act on 1.7.82: s. 2(1)
Current State: All of Act in operation

Workers Compensation (Benefit Rates) Act 1982, No. 9747/1982

Assent Date: 6.7.82
Commencement Date: 30.6.82: s. 1(3)
Current State: All of Act in operation

Workers Compensation (Amendment) Act 1982, No. 9840/1982 (as amended by No. 10100)

Assent Date: 21.12.82
Commencement Date: All of Act (*except* s. 4) on 21.12.82: s. 1(3); s. 4 on 14.1.83: Government Gazette 12.1.83 p. 80
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: subject to s. 2(2)
Current State: All of Act in operation

Transport Act 1983, No. 9921/1983

Assent Date: 23.6.83
Commencement Date: S. 255 on 1.7.83: s. 1(2)(c)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Education (Amendment) Act 1983, No. 9993/1983

Assent Date: 13.12.83
Commencement Date: S. 19(2) on 8.2.84: Government Gazette 8.2.84 p. 402
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

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Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

State Insurance Office Act 1984, No. 10089/1984

Assent Date: 22.5.84
Commencement Date: 18.9.84: Government Gazette 18.9.84 p. 3219
Current State: All of Act in operation

Workers Compensation (Amendment) Act 1984, No. 10100/1984

Assent Date: 11.9.84
Commencement Date: S. 16 on 21.12.82: s. 2(2); ss 1–3, 9, 11, 14 on 11.9.84:
s. 2(1); ss 4, 6–8, 10, 12, 13, 15, 17 on 11.10.84:
Government Gazette 11.10.84 p. 3705; s. 5 on 1.1.85:
Government Gazette 19.12.84 p. 4483
Current State: All of Act in operation

Post-Secondary Education (Practical Placements) Act 1984, No. 10156/1984

Assent Date: 20.11.84
Commencement Date: 18.12.84: s. 2
Current State: All of Act in operation

Accident Compensation Act 1985, No. 10191/1985

Assent Date: 30.7.85
Commencement Date: S. 264(4) on 30.6.85: s. 2(4); ss 256–264(1)(2)(3)(5),
265–270 on 31.8.85 (at 4. p.m.): Government Gazette
30.8.85 p. 3401
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

Accident Compensation (Amendment) Act 1986, No. 48/1986

Assent Date: 27.5.86
Commencement Date: Ss 35, 37 immediately after the appointed day within
the meaning of the **Accident Compensation Act 1985**
i.e. 4 p.m. on 31.8.85: s. 2(1); ss 33, 34, 36 on 27.5.86:
s. 2(3)
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

Transport Accident Act 1986, No. 111/1986

Assent Date: 16.12.86
Commencement Date: S. 180(3)(Sch. 2 item 9) on 1.1.87: Government
Gazette 23.12.86 p. 4777
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

Accident Compensation (Amendment) Act 1987, No. 83/1987

Assent Date: 1.12.87
Commencement Date: S. 6(2) on 30.7.85: s. 2(2); s. 45(1) on 1.1.88: s. 2(3);
rest of Act on 1.12.87: s. 2(1)
Current State: All of Act in operation

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Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Accident Compensation (Further Amendment) Act 1992, No. 37/1992

Assent Date: 16.6.92
Commencement Date: 16.6.92
Current State: All of Act in operation

Accident Compensation (WorkCover) Act 1992, No. 67/1992 (as amended by No. 50/1993)

Assent Date: 19.11.92
Commencement Date: S. 64(11) on 1.12.92: s. 2(1)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Accident Compensation (WorkCover Insurance) Act 1993, No. 50/1993

Assent Date: 1.6.93
Commencement Date: Ss 111(2), 112(1) on 19.11.92: s. 2(2)(a); ss 84(1), 92, 94(2), 95, 100, 110(2) on 1.12.92: s. 2(2)(b); s. 93 on 1.4.93: s. 2(2)(c); ss 87, 88 on 29.4.93: s. 2(2)(d); Pt 1 (ss 1–6), 19, 94(1), 102, 110(1), 111(1) on 1.6.93: s. 2(1); Pt 3 (ss 27–42), ss 7–11, 15–17, 72, 78(1)(b), 79, 80(1)(a)(e), 85, 86, 89, 90, 98, 103–108, 109(1)(2), 112(2), 113 on 16.6.93; ss 12–14, 18, 20–26, 55, 57–71, 73, 75, 78(1)(c)–(h)(2), 83, 101 on 30.6.93; Pt 4 (ss 43–54), ss 56, 74, 76, 78(1)(a), 80(1)(b)–(d)(2), 81, 84(2), 91, 99, 109(3) on 1.7.93; ss 96, 97 on 1.8.93: Special Gazette (No. 39) 16.6.93 p. 1; ss 77, 82 never proclaimed, repealed by No. 50/1994 s. 104
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 67) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

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Accident Compensation (Amendment) Act 1994, No. 50/1994

Assent Date: 15.6.94
Commencement Date: Ss 109–113, 114(2), 115–117, 119–123 on 24.6.94: Special Gazette (No. 37) 24.6.94 p. 2—see **Interpretation of Legislation Act 1984**; ss 114(1), 118 on 1.7.94: Special Gazette (No. 37) 24.6.94 p. 2
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Chiropractors Registration Act 1996, No. 63/1996

Assent Date: 17.12.96
Commencement Date: S. 98(Sch. item 5) on 1.7.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Podiatrists Registration Act 1997, No. 78/1997

Assent Date: 25.11.97
Commencement Date: S. 97(Sch. item 4) on 1.12.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Accident Compensation (Miscellaneous Amendment) Act 1997, No. 107/1997

Assent Date: 23.12.97
Commencement Date: S. 76 on 23.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998
(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 129) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Accident Compensation Legislation (Amendment) Act 2004, No. 102/2004

Assent Date: 21.12.04
Commencement Date: S. 46 on 21.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 54) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Workers Compensation Act 1958**

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Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 39) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

**Accident Compensation and Other Legislation (Amendment) Act 2006,
No. 41/2006**

Assent Date: 25.7.06
Commencement Date: Ss 31–47 on 5.8.06: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54 (Sch. Pt 1 item 67) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010,
No. 13/2010**

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 60) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Workers Compensation Act 1958**

3. Explanatory Details

¹ S. 4: As to compensation of casual firefighters see **Country Fire Authority Act 1958**, No. 6228 Part 5.

² S. 6(2)–6(5):

S. 6(2) amended by Nos 8084 s. 4(1)(b), 8733 s. 3(2)(a), repealed by No. 9683 s. 3(b).

S. 6(3) amended by No. 8733 s. 3(2)(b), repealed by No. 9683 s. 3(b).

S. 6(4) amended by No. 8733 s. 3(2)(c)(i)(ii), repealed by No. 9683 s. 3(b).

S. 6(5) amended by No. 8733 s. 3(2)(d), repealed by No. 9683 s. 3(b).

³ S. 9(3): Government Gazette 24 June 2010 page 1303 reads as follows:

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NOTICE OF NEW BENEFIT RATES PAYABLE IN ACCORDANCE WITH SECTION 9 AND SECTION 11

- (a) Section 9(3) of the **Workers Compensation Act 1958** provides for rates of compensation to be adjusted on 1 July in any year in line with movements in the Australian male average weekly earnings between the December quarter of the two preceeding years as published by the Australian Statistician at 15 June in each respective year.

The Australian male average weekly earnings for the December quarter of 2008 and 2009 were \$1100.60 and \$1162.70 respectively, an increase of 5.64%.

On 11 November 2008 the Australian Bureau of Statistics (ABS) announced a change to the method of calculating average weekly earnings to exclude all amounts that were salary sacrificed. This change has meant a small adjustment by the ABS to the average weekly earnings for the December 2007 quarter.

However section 100 of the **Accident Compensation Act 1958** requires use of the average weekly earnings as published by the ABS in the December quarter of the relevant financial year. Accordingly WorkSafe has utilised this figure.

Notice is hereby given that calculations in accordance with the said section produce the following rates of compensation which are payable, on and from 1 July 2005 instead of the amounts specified in section 9 of the said Act, in the clauses under the heading 'The Clauses Referred To'.

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The amount specified in "The Clauses Referred To" (wherever occurring)		Rates before 1 July 10	Rates from 1 July 10
COMPENSATION FOR THE DEATH OF A WORKER	Amount as per the 1958 Act		
1(a)(i)	\$33,160	\$170,773	\$180,409
	\$8,088	\$41,660	\$44,011
	\$7,566	\$38,961	\$41,159
	\$7,044	\$36,274	\$38,321
	\$6,523	\$33,593	\$35,488
	\$6,001	\$30,902	\$32,646
	\$5,479	\$28,214	\$29,806
	\$4,957	\$25,526	\$26,966
	\$4,435	\$22,839	\$24,128
	\$3,914	\$20,157	\$21,294
	\$3,392	\$17,463	\$18,448
	\$2,870	\$14,778	\$15,612
	\$2,348	\$12,088	\$12,770
	\$1,826	\$9,402	\$9,932
	\$1,826	\$9,402	\$9,932
1(a)(ii)	\$33,160	170,773	180,409
WEEKLY PAYMENTS			
1(b)(i)	\$105	\$544	\$575
	\$30	\$152	\$161
	\$10	\$51	\$54
	\$155	\$800	\$845
	\$78	\$399	\$422
	\$135	\$692	\$731
TOTAL LIABILITY FOR WEEKLY PAYMENTS			
1(b)(iii)	\$36,960	\$190,345	\$201,085
(b) Section 11(1) of the Workers Compensation Act 1958 provides for rates of compensation for certain specified injuries to be set percentages of the maximum payable, at the time of the injury, under Clause 1(a)(ii).			

⁴ S. 27(4): Refer to section 5 of the **Decimal Currency Act 1965**, No. 7315/1965.

⁵ S. 30(1): See Commonwealth Bankruptcy Act 1966–1973.

⁶ Pt 1 Div. 8: Section 118(2)—(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

118 Administration

- (2) The Principal Act as amended by subsection (1) applies in respect of payments of compensation to which section 34 of the Principal Act applies which are paid after the commencement of subsection (1).
- (3) Subject to subsection (4), payments of compensation to which section 34 of the Principal Act applies which have been paid to the Authority in accordance with the Principal Act as in force before the commencement of subsection (1) are to continue to be administered by the Authority in accordance with the Principal Act as in force before that commencement.
- (4) On the appointed day—
 - (a) the administration of payments of compensation to which subsection (3) applies is transferred to the State Trust Corporation of Victoria; and
 - (b) the Authority must transfer to the State Trust Corporation of Victoria such assets (including any money) as the Authority determines to be equivalent in value to the value of payments of compensation administered by the Authority.

⁷ Pt 2 Divs 2–5:

Pt 2 Div. 2 (Heading) repealed by No. 10191 s. 263.

Pt 2 Div. 2 (ss 46–49) amended by Nos 8181 s. 2(1)(Sch. item 195), 8733 s. 15(a)(b), 9297 s. 11(a)–(d)(i)–(iii), 10100 s. 10, repealed by No. 10191 s. 263.

Pt 2 Div. 3 (Heading) repealed by No. 10191 s. 263.

Pt 2 Div. 3 (ss 50–52) amended by No. 9297 s. 8, repealed by No. 10191 s. 263.

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Pt 2 Div. 4 (Heading) repealed by No. 10191 s. 263.

Pt 2 Div. 4 (ss 53–57) amended by Nos 7876 s. 2(3), 8733 ss 16, 17, 18(a)–(c), 9549 s. 2(1)(Sch. item 257), repealed by No. 10191 s. 263.

Pt 2 Div. 5 (Heading) repealed by No. 10191 s. 263.

Pt 2 Div. 5 (s. 58) amended by No. 8733 s. 19, repealed by No. 10191 s. 263.

⁸ S. 61: See note 5.

⁹ S. 67: Section 120(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

120 Amendment of section 67

(2) Section 67 of the Principal Act as amended by subsection (1) applies in respect of payments of compensation paid or payable after the commencement of this section.

¹⁰ Pt 3 Div. 5:

Pt 3 Div. 5 (Heading) repealed by No. 9683 s. 5.

Pt 3 Div. 5 (s. 63) repealed by No. 9683 s. 5.

¹¹ S. 73(1)(a)–(da):

S. 73(1)(a)–(c) repealed by No. 8727 s. 3(1).

S. 73(1)(d) repealed by No. 10191 s. 265(2)(a).

S. 73(1)(da) inserted by No. 9297 s. 4(3), repealed by No. 10191 s. 265(2)(a).

¹² Pt 3 Divs 11, 12:

Pt 3 Div. 11 (Heading and s. 78) amended by Nos 7292 s. 12(3)(b), 10191 s. 270(13)(a)(b), repealed by No. 50/1994 s. 115.

Pt 3 Div. 12 (Heading and s. 79) amended by Nos 7292 s. 11(a)–(d), 8084 s. 4(1)(d)(2)(b), 8733 s. 3(6)(a)(b), 9136 s. 5(b)(i)(ii), 9297 s. 9(1)–(3), 9549 s. 2(1)(Sch. item 259), repealed by No. 9683 s. 7.