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K Woodward
Chief Parliamentary Counsel
Dated 4 December 2023



TASMANIA

WORKERS REHABILITATION AND COMPENSATION ACT 1988

No. 4 of 1988

CONTENTS

PART I – PRELIMINARY

1. Short title
2. Commencement
- 2A. Objects of Act
3. Interpretation
4. Application of Act
- 4A. Services of workers lent or on hire
- 4B. Contractors
- 4C. Salespersons
- 4D. Participants in training programs
- 4DA. Luxury hire car drivers
- 4DB. Taxi drivers

- 4DC. Jockeys
- 4E. Prescribed relationship
- 5. Persons engaged in fire-fighting operations and fire prevention operations
- 6. Persons engaged in providing ambulance services
- 6A. Police volunteers
- 6B. Prescribed classes of volunteers
- 7. Exclusion of certain persons who are contestants in sporting activities
- 7A. Part V to apply to all claims for compensation, &c., referred to Tribunal

PART II – ADMINISTRATION

Division 1 – WorkCover Tasmania Board

- 8. WorkCover Tasmania Board
- 9. Membership of Board
- 10. Functions of Board
- 11. Powers of Board
- 11A. Minister may give directions
- 12. Disclosure of interest
- 13. Delegation by Board
- 14. Secretary to Board
- 15. Annual report

Division 2 – Provisions relating to Tribunal

- [16 - 19. *Repealed*]
- 20. Functions of Tribunal
- [21. *Repealed*]
- 22. Record of Tribunal
- 23. Jurisdiction of Tribunal

[23A - 24. *Repealed*]

[Division 3 – Repealed

- 24. *Repealed*]

PART III – ENTITLEMENT TO COMPENSATION

Division 1 – Entitlement to compensation

- 25. Liability of employers to compensate workers for injuries
- 25A. Claims for certain diseases arising from mining operations
- 26. Presumption as to cause of disease
- 27. Presumption as to cause of certain diseases in relation to fire-fighters
- 28. Review of operation of section 27
- 28A. Presumption as to cause of post-traumatic stress disorder
- 29. Liability of principal in case of workers employed by contractors
- 30. Liabilities of employer transferred to licensed insurer
- 31. Liability of employer not affected by agreement

Division 2 – Employment connection with State

- 31A. Employment connection test
- 31B. Determination of State of connection in workers compensation proceedings
- 31C. Determination of State of connection by Tribunal
- 31D. Recognition of previous determinations of State of connection
- 31E. Person not to be compensated twice

PART IV – CLAIMS FOR COMPENSATION

- 32. Notice of injury and claim for compensation
- 33. Form of notice of injury
- 33A. Employer given notice of injury must inform worker of right to claim
- 34. Form of claim for compensation
- 35. Service of claim
- 36. Employer to forward accident report and claim
- 37. Effect of failure to give notice of injury, &c.
- 38. Effect of failure to make claim
- 39. Employer to give claimant notice of status of claim within 28 days
- [40. *Repealed*]

PART V – DISPUTE RESOLUTION

Division 1 – Reference of claims to Tribunal

[41. *Repealed*]

42. Reference of claims for compensation to Tribunal

Division 2 – Conciliation process

42A. Interpretation of Division

42B. Parties to undertake conciliation process

42C. Conciliation process

42D. Preliminary stage

42E. Conciliation conference may be required

42F. Purpose of conciliation conference

42G. Evidence during conciliation process

42H. Representation during conciliation process

42I. Powers of conciliator

42J. Payment not admission of liability

42K. Claim unresolved after conciliation

42L. Conciliator may discontinue process

42M. Resolution of claim in conciliation process

42N. Liability of conciliator

Division 3 – Arbitration

[43 - 43A. *Repealed*]

44. Amendment of applications, &c.

45. Persons to be notified

[46. *Repealed*]

47. Presentation of cases

48. Proceedings to be in private except in certain cases

49. Procedure of Tribunal

Division 4 – Medical panels

50. Medical panels

51. Determination by medical panel

52. Tribunal to be informed of findings

- 53. Representation before medical panel
- 54. Power of medical panel to examine worker
- 55. Failure to attend before medical panel
- 55A. Liability of members of medical panel
- 55B. Medical panel not bound by rules of evidence
- 55C. Remuneration of members of panel

Division 5 – Miscellaneous

- 56. Provisions relating to evidence and production of documents
- 57. Tribunal to act on evidence available
- 58. Right of Tribunal to state case
- 59. Costs
- [60. *Repealed*]
- 60A. Power of Tribunal to make interim determinations, &c.
- 61. Orders of Tribunal
- 61A. Power of Tribunal to publish and distribute copies of determinations
- 62. Orders of Tribunal final
- [63. *Repealed*]
- 64. Regulations for purposes of Part V

PART VI – AMOUNT OF COMPENSATION

Division 1 – Basic compensation payable

- 65. Interpretation of Division 1 of Part VI
- 66. Declaration of basic salary
- 67. Amount of compensation in case of death
- 67A. Weekly payments in case of death
- 67B. Commencement of weekly payments to dependants
- 67C. Timing of weekly payments
- 67D. Payments in respect of dependent child
- 67E. Payment not admission of liability in respect of death of worker
- 67F. Dispute of liability in respect of death of worker
- 67G. Failure to dispute liability in respect of death of worker

- 68. Dependency questions and apportionment
- [68A. *Repealed*]
- 69. Amount of compensation in case of incapacity
- 69A. Operation of section 69
- 69B. Period for which benefits are payable
- 70. Computation of normal weekly earnings
- 71. Compensation for permanent impairment
- 71A. Assessment guidelines
- 72. Assessment of degree of impairment
- 72A. Industrial deafness
- 73. Computation of industrial deafness
- 73A. Date of industrial deafness
- 73B. Determination for payment of compensation

Division 2 – Medical and Other Services

- 74. Interpretation of Division 2 of Part VI
- 75. Additional compensation for medical and other services
- 76. Additional compensation for travelling expenses
- 76A. Account to be forwarded to employers and insurers
- 77. Certain questions to be determined by Tribunal
- 77AA. Employer to pay claim or refer it to Tribunal
- 77AB. Employer's liability for expenses less than \$5 000 if liability not accepted or determined
- 77AC. Proceedings before Tribunal under section 77AB

Division 2A – Accreditation

- 77A. Provision of certain services
- 77B. Application for accreditation
- 77C. Grant, &c., of accreditation
- 77D. Duration of accreditation
- 77E. Notice of refusal
- 77F. Revocation or suspension of accreditations
- 77FA. Revocation of accreditation on ceasing to be registered

- 77G. Appeals
- 77H. Publication of grant of accreditation

Division 3 – Special provisions relating to the payment of compensation in respect of injuries contracted by gradual process

- 78. Injuries contracted by gradual process
- 79. Information to be supplied
- 80. Employer to whom notice to be given

PART VII – PAYMENT OF COMPENSATION AND RELATED MATTERS

Division 1 – Provisions relating to weekly payments and other benefits

- 80A. Claim for compensation
- 81. Commencement of weekly payments
- 81AA. Payments not admission of liability
- 81A. Disputes of liability for weekly payments and other benefits
- 81AB. Failure to dispute liability
- 81AC. Tribunal may order compensation to be paid if employer taken to have accepted liability
- 81B. Payment of weekly payments
- 82. Prisoners not entitled to weekly payment
- 83. Right of worker to receive weekly payments if worker ceases to reside in this State
- 84. Paid holidays during incapacity
- 84A. Re-crediting of sick leave during incapacity
- 84B. Re-crediting of annual recreation leave and long service leave
- [85. *Repealed*]
- 86. Cases in which employer may terminate or reduce payments
- 87. Cessation on account of age of entitlement to weekly payments
- 88. Review of weekly payments
- [89. *Repealed*]
- 90. Weekly payments not assignable

Division 1A – Medical examinations and independent medical reviews

- 90A. Workers may be required to submit to independent medical reviews
- 90B. Reports in relation to reviews
- 90C. Disagreements, &c., about reviews
- 90D. Reliance on medical reports

Division 2 – Payment of compensation money to persons entitled and to the Public Trustee

- 91. Payment of compensation money to person entitled and to Public Trustee
- 92. Interest payable where delay in paying over certain compensation money

Division 3 – Power of Tribunal to vary certain determinations relating to payment of compensation

- 93. Power to vary certain determinations

[PART VIII – Repealed

- 94 - 96. *Repealed*]

PART IX – INSURANCE PROVISIONS

Division 1 – Compulsory insurance by employers

- 96A. Interpretation of Division 1
- 97. Obligation of employers to insure
- 97AA. Insurer to give notification of expiry of policy
- 97A. Disputes between insurers, &c.
- 97B. Worker entitled during dispute between employers

Division 2 – Licensed insurers and self-insurers

- 98. Prohibition on providing certain insurance unless licensed
- 99. Authority of licences
- 100. Applications for licences
- 101. Granting, &c., of licences
- 102. Conditions of licences
- [102A. *Repealed*]
- 102B. Board to make available suggested premium rates

- 103. Licensed insurers not to refuse insurance
- 104. Applications for permits
- 105. Granting, &c., of permits
- 105A. Wholly-owned subsidiary
- 106. Authority of permits
- 107. Conditions of permits
- 108. Duration of licences and permits
- 109. Additional information to be supplied
- 110. Notice of refusal
- 111. Revocation or suspension of licences and permits
- 112. Appeals
- 113. Publication of grant of, or revocation or suspension of, licences and permits

Division 3 – Returns by licensed insurers and self-insurers

- 114. Returns by licensed insurers and self-insurers

[Division 4 – Repealed

- 115 - 120. *Repealed*]

Division 5 – Nominal Insurer

- 121. Establishment of Nominal Insurer
- 122. Composition of Nominal Insurer
- 123. Powers and functions of Nominal Insurer
- 124. Disclosure of interest
- 125. Delegation by Nominal Insurer
- 125A. Nominal Insurer may assign liabilities
- 126. When proceedings may be taken against the Nominal Insurer
- 126A. Claims against Nominal Insurer for increase in payments
- 127. Order or judgment against Nominal Insurer
- 127A. Nominal Insurer Fund
- 127B. Nominal Insurer Special Account
- 127C. Minister may give directions in relation to Nominal Insurer Fund and Special Account

- 128. Payments to Nominal Insurer
- 128A. Special contributions
- 129. Right of Nominal Insurer to recover reinsurance money
- 129A. Power of Nominal Insurer to borrow money
- 130. Recovery by Nominal Insurer from employer, &c.
- 131. Employer to give information and assistance to Nominal Insurer
- 131AAA. Financial statements
- 131AA. Annual report

Division 6 – Acts of terrorism

- 131A. Interpretation of Division
- 131B. Orders in respect of acts of terrorism
- 131C. Claim for compensation in respect of act of terrorism
- 131D. Nominal Insurer may be funded by contributions

PART X – CONCURRENT RIGHTS TO COMPENSATION AND DAMAGES

Division 1 – Rights to compensation and damages

- 132. Interpretation of Part X
- 132A. Settlement by agreement
- 133. Effect of compensation on worker’s right to damages
- 134. Right of employer to contribution or indemnity from third parties
- [135. *Repealed*]
- 136. Application to bring action on
- 137. Weekly payments to be continued during proceedings for damages
- 138. Proceedings by dependants to be taken jointly

Division 2 – Restrictions on awards of damages

- 138AA. Application of Division
- 138AB. Claims for damages
- [138ABA - 138AC. *Repealed*]
- 138AD. No damages if claim settled by agreement

Division 3 – Choice of law

- 138AE. Applicable substantive law for work injury claims
- 138AF. Claim to which Division applies
- 138AG. What constitutes injury and employment and who is employer
- 138AH. Claim in respect of death included
- 138AI. Meaning of substantive law
- 138AJ. Availability of action in another State not relevant

PART XI – INJURY MANAGEMENT

Division 1 – Application, purpose and interpretation

[138A - 138B. *Repealed*]

- 139. Purpose and principles of Part
- 140. Application of Part
- 141. Interpretation

Division 2 – Injury management programs

- 142. Injury management programs to be complied with
- 143. Approval of injury management programs

Division 3 – Injury management and return-to-work co-ordinators and plans

- 143A. Employer to notify insurer of workplace injury
- 143B. Injury management co-ordinator to be appointed
- 143C. Responsibilities of injury management co-ordinators
- 143D. Return-to-work co-ordinator may be required to be appointed
- 143E. Return-to-work and injury management plans
- 143F. Work capacity of injured workers to be regularly reviewed

Division 4 – Medical treatment

- 143G. Primary treating medical practitioners
- 143H. Issue of certificates
- 143I. Employer to be notified of certified incapacity and given medical certificate
- 143J. Worker's obligation of full disclosure to medical practitioners chosen by worker
- 143K. Medical advisory and mentoring service

Division 5 – Obligations relating to return to work of injured worker

- 143L. Injured worker's position to be held open for worker
- 143M. Employer to provide suitable duties after injury
- 143N. Workers to participate in return-to-work process
- 143O. Workplace rehabilitation providers

Division 6 – Miscellaneous

- 143P. Disputes about injury management
- 143Q. Powers of Tribunal in respect of matters under this Part

PART XII – WORKERS REHABILITATION AND COMPENSATION FUND

- 144. Interpretation of Part XII
- 145. Establishment of Workers Rehabilitation and Compensation Fund
- 146. Assessment by Board of amount to be contributed to Fund
- 147. Contributions to Fund by licensed insurers and self-insurers
- 148. Temporary advances to Fund

PART 12A – INFRINGEMENT NOTICES

- [148AA. *Repealed*]
- 148A. Infringement notices
- [148B - 148E. *Repealed*]
- 148F. Payments to Board
- [148G - 148I. *Repealed*]

PART XIII – MISCELLANEOUS

- 149. Recovery of compensation over-paid
- [150. *Repealed*]
- 150A. Authorized officers
- 151. Powers of authorized officers
- 151A. Protection from liability for authorized officers
- [152. *Repealed*]
- 152A. Obtaining of information by Board

- 153. False or misleading statements
- 153A. Employer to keep records
- 154. Worker's right to information
- [155. *Repealed*]
- 156. Enactments relating to limitations of actions inapplicable to proceedings under this Act, &c.
- 157. Receipts by minors valid discharge
- 158. Maintenance of secrecy
- 158A. Common seal of Board
- 158B. Judicial notice of certain signatures
- 159. Service of documents
- 160. Offences by bodies corporate
- 161. Fines to be paid to Board
- 161A. Time for instituting proceedings for offences
- 161B. Codes of practice
- 162. Regulations
- [162A. *Repealed*]
- 163. Repeal
- 164. Savings, transitional and other provisions
- 164A. *Application of Workers Rehabilitation and Compensation Amendment Act 2009*
- 164BAA. *Transitional provisions consequent on enactment of Workers Rehabilitation Amendment Act 2017*
- 164BA. *Application of Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*
- 164BB. *Application of Workers Rehabilitation and Compensation Amendment Act 2019*
- 164B. Review of operation of certain provisions
- 164C. Validation of certain guidelines, &c.
- 164D. Review of restructured Board
- 164E. Validation
- 165 - 166.

SCHEDULE 1 – PROVISIONS WITH RESPECT TO MEMBERSHIP OF BOARD

SCHEDULE 2 – PROVISIONS WITH RESPECT TO MEETINGS OF BOARD

[**SCHEDULE 3 – *Repealed***]

[**SCHEDULE 4 – *Repealed***]

SCHEDULE 5 – DISEASES, OF FIRE-FIGHTERS, IN RESPECT OF WHICH THERE IS PRESUMPTION OF CAUSE

SCHEDULE 6 – PROVISIONS WITH RESPECT TO MEMBERSHIP AND MEETINGS OF NOMINAL INSURER

SCHEDULE 7 – ACTS REPEALED

SCHEDULE 8 – SAVINGS AND TRANSITIONAL PROVISIONS

SCHEDULE 9 – SAVINGS AND TRANSITIONAL PROVISIONS IN RELATION TO THE *WORKERS REHABILITATION AND COMPENSATION REFORM ACT 1995*

SCHEDULE 10 – SAVINGS AND TRANSITIONAL PROVISIONS IN RELATION TO *WORKERS REHABILITATION AND COMPENSATION AMENDMENT ACT 2000*

SCHEDULE 11 – ADJACENT AREAS



WORKERS REHABILITATION AND COMPENSATION ACT 1988

No. 4 of 1988

An Act to provide for the rehabilitation and compensation of workers in respect of occupational injuries suffered by workers, to promote the prevention of injuries in the workplace, to repeal the *Workers' Compensation Act 1927*, and for other purposes and to amend the *Evidence Act 1910* and the *Magistrates Act 1987*

[Royal Assent 26 May 1988]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I – PRELIMINARY

1. Short title

This Act may be cited as the *Workers Rehabilitation and Compensation Act 1988*.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 2

Part I – Preliminary

2. Commencement

- (1) This section and section 1 shall commence on the day on which this Act receives the Royal Assent.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

2A. Objects of Act

The objects of this Act are to establish a rehabilitation and compensation scheme for workplace injuries that –

- (a) provides for the prompt and effective management of workplace injuries in a manner that promotes and assists the return to work of injured workers as soon as possible; and
- (b) provides fair and appropriate compensation to workers and their dependants for workplace injuries; and
- (c) assists in securing the health, safety and welfare of workers and in reducing the incidence of workplace injuries; and
- (d) provides an effective and economical mechanism for resolving disputes relating to the treatment and management of, and compensation in relation to, workplace injuries; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

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- (e) is efficiently and effectively administered; and
 - (f) is fair, affordable, efficient and effective.

3. Interpretation

- (1) In this Act, unless the contrary intention appears

—
accredited medical practitioner means a medical practitioner accredited under section 77C to assess the degree of a worker's permanent impairment;

accredited person means a person accredited under section 77C;

AMA Guides means –

- (a) the American Medical Association Guides to the Evaluation of Permanent Impairment, fourth edition, as modified by this Act; or
- (b) such later edition of those Guides as may be prescribed, as modified by this Act;

applicant means a person who has referred a claim for compensation to the Tribunal under this Act or an agent of that person;

application means an application referred to in section 42(2);

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

arbitrated hearing means a hearing under Division 3 of Part V;

authorized officer means a person appointed as, or authorized to perform the functions and exercise the powers of, an authorized officer under section 150A;

basic salary means –

- (a) during the year beginning 1 January 1991, \$311·30; and
- (b) during any subsequent year beginning 1 January, the basic salary for the previous year as varied by the relevant percentage;

Board means the WorkCover Tasmania Board established under section 8;

caring partner, in relation to a person, means –

- (a) the person who is in a caring relationship with that person which is the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*; or
- (b) the person who was, at the time of the death of the first-mentioned person, in a caring relationship with that person which was the subject of a deed of relationship registered under

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

Part 2 of the *Relationships Act 2003*;

claim for compensation means a claim for compensation under this Act and includes any matter or question arising in connection with or incidental to such a claim;

dependants means such members of the family of the worker in relation to whom the term is used as –

- (a) were dependent, wholly or in part, upon the earnings of that worker at the time of his death; or
- (b) would have been so dependent but for the incapacity due to the injury;

disease means any ailment, disorder, defect, or morbid condition, whether of sudden or gradual development;

employer means the person with whom a worker has entered into a contract of service or training contract and may include –

- (a) the Crown; and
- (b) the employer of any person or class of persons taken to be a worker for the purposes of this Act; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

- (c) the legal personal representative of a deceased employer;

financial year means the period of 12 months ending on the last day of June;

Fund means the Workers Rehabilitation and Compensation Fund established under section 145;

Health Practitioner Regulation National Law means –

- (a) the Health Practitioner Regulation National Law –
- (i) as in force from time to time, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland; and
 - (ii) as it applies as a law of Tasmania or another State or a Territory; and
- (b) the law of another State or a Territory that substantially corresponds to the law referred to in paragraph (a);

industrial deafness means permanent loss of hearing caused by exposure to industrial noise in a worker's employment;

injury includes –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

- (a) a disease; and
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration –

but does not, except for the purposes of section 97(1)(b) and (c), include an asbestos-related disease within the meaning of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*;

injury management means the management of an injured worker intended to provide the worker with a timely, safe and durable return to work following an injury;

insurer means a body corporate authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business and includes a person who, at the time a relevant policy of insurance or indemnity was taken out, was so authorized;

licence means a licence issued and in force under Division 2 of Part IX;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

licensed insurer means an insurer who is the holder of a licence and includes a specialized insurer;

medical panel means a medical panel formed under section 50;

medical practitioner means –

- (a) a person registered under the Health Practitioner Regulation National Law in the medical profession; and
- (b) a person who is authorised under a law of another country to carry out all of the functions in respect of which the person would, if they were carried out in Australia, be required to be registered under the Health Practitioner Regulation National Law in the medical profession;

medical question means a question relating to –

- (a) the existence, nature or extent of an injury; or
- (b) whether an injury is, or is likely to be, permanent or temporary; or
- (c) a worker's capacity for work or specific work duties; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

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- (d) the loss, or the degree of loss, of any of the parts or faculties of the body; or
 - (e) the permanent loss of the effective use of a part of the body; or
 - (f) the assessment of the degree of permanent impairment, including whether the impairment is permanent;
 - (g) a medical service provided or to be provided to a worker for an injury, including the adequacy, appropriateness or frequency of that service;

member of the family, in relation to a worker, means –

- (a) the spouse, caring partner, father, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, grand-daughter, step-son, step-daughter, brother, sister, half-brother, and half-sister of that worker; or
- (b) a person to whom the worker stood *in loco parentis*;

mining employee means a worker who is engaged in mining operations under a contract of service or apprenticeship with

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

an employer, whether the contract is
express or implied or is oral or in writing;

mining operations means –

- (a) the disturbing, removing, carting, carrying, sifting, smelting, refining, crushing or otherwise dealing with or treating any rock, stone, quartz, clay, sand, soil, ore or mineral by any method for the purpose of obtaining metals or minerals or for prospecting for metals or minerals; and
- (b) any process in connection with the dealing with, treating or handling of, any rock, stone, quartz, clay, sand, soil, ore or mineral for that purpose; and
- (c) the dealing with, treating or handling, in connection with a process mentioned in paragraph (a) or (b), of any by-products or residues produced by, or arising from, that process; and
- (d) the cutting, dressing, shaping or working on any stone, granite, marble or other similar substance; and
- (e) the quarrying of blue metal or freestone; and
- (f) the driving of a tunnel –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

but does not include sluicing, dredging or any similar operations or mining for coal or shale, or the quarrying or crushing of any materials required for the construction or maintenance of roads;

motor vehicle has the same meaning as it has in the *Motor Accidents (Liabilities and Compensation) Act 1973*;

Nominal Insurer means the body established as the Nominal Insurer under section 121;

notified dispute means a claim for liability disputed under section 77AA;

outworker means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale, in premises not under the management or control of the person giving them out;

permit means a permit issued and in force under Division 2 of Part IX;

place of residence includes the curtilage, messuages, and appurtenances of the place of residence;

police officer includes a junior constable and a trainee as defined in the *Police Service Act 2003*;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

policy of insurance means a policy of insurance that an employer is required to maintain under section 97(1);

President has the same meaning as in the *Tasmanian Civil and Administrative Tribunal Act 2020*;

primary treating medical practitioner, in relation to a worker, means the medical practitioner referred to in a notice given by the worker in accordance with section 143G(1);

psychiatric impairment means an illness of the mind or a disorder of the mind;

Registrar has the same meaning as in the *Tasmanian Civil and Administrative Tribunal Act 2020*;

the regulations means the regulations made and in force under this Act;

repealed Act means the *Workers' Compensation Act 1927*;

second injury scheme means a scheme established by the Board to encourage the employment of injured workers by providing financial incentives to employers in relation to insurance liabilities arising from further injuries to the injured workers;

Secretary means the Secretary of the Department;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

self-insurer means an employer who is the holder of a permit;

specialized insurer means an insurer or proposed insurer whose business is, or is intended to be, specialized insurance for employers of a particular class or particular classes;

spouse includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act 2003*;

State includes a Territory;

State of connection means the State with which the employment of a worker is connected as determined under Division 2 of Part III;

training contract has the same meaning as in the *Training and Workforce Development Act 2013*;

Tribunal means the Tasmanian Civil and Administrative Tribunal;

weekly payment means a weekly payment determined in accordance with section 69;

worker means –

- (a) any person who has entered into, or works under, a contract of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

service or training contract with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing; and

- (b) any person or class of persons taken to be a worker for the purposes of this Act –

and when used in relation to a person who has been injured and is dead, includes the legal personal representatives or dependants of that person or other person to whom or for whose benefit compensation is payable;

workers' compensation insurance business means the business of insuring employers against the employers' liability to their workers under this Act;

working day, in relation to a worker's place of employment, means any day on which work is normally carried on at that place;

workplace injury, in relation to a worker, means an injury for which the worker's employer is or may be liable to pay compensation under this Act;

workplace rehabilitation provider means a person who is accredited under section 77C to provide workplace rehabilitation services;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 3

workplace rehabilitation services means –

- (a) initial workplace rehabilitation assessment; or
 - (b) assessment of the functional capacity of a worker; or
 - (c) workplace assessment; or
 - (d) job analysis; or
 - (e) advice concerning job modification; or
 - (f) rehabilitation counselling; or
 - (g) vocational assessment; or
 - (h - i)
 - (j) any other service that is prescribed by the regulations.
- (2) For the purposes of this Act, a person who is engaged in plying for hire with a vehicle or vessel, the use of which is obtained from the owner of the vehicle or vessel under a contract of bailment (other than a hire-purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings of the vehicle or vessel, shall be deemed to be a worker employed by that owner.
- (2A) For the purposes of this Act, employment contributed to a disease to a substantial degree only if it is the major or most significant factor.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 3

Part I – Preliminary

- (3) For the purposes of this Act, the exercise and performance of the powers and duties of a local or other public authority shall be deemed to be the carrying on by such authority of a trade or business.
- (4) At the request of the governing body of a church, the Minister –
- (a) may, by notice published in the *Gazette*, declare that clergymen, as defined in the notice, of that church shall be deemed to be workers for the purposes of this Act and, where he makes such a declaration, the Minister shall also declare, in the same notice, by whom such clergymen are, for those purposes, deemed to be employed; and
 - (b) may at any time, by subsequent notice so published, revoke or amend the first-mentioned notice –
- and the notice so published has effect according to its terms as if they were provided in this Act.
- (5) For the purposes of this Act, where a worker suffers an injury that is a disease, that injury shall be deemed to have occurred –
- (a) on the day on which the worker became totally or partially incapacitated by reason of that injury; or
 - (b) if a day cannot be ascertained under paragraph (a), on the day on which a medical practitioner has certified that the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 4

worker was first incapacitated by reason of that injury.

- (5A) Nothing in subsection (5) precludes a worker who suffers from industrial deafness from maintaining a claim for compensation under the relevant provisions of this Act notwithstanding that the deafness did not cause incapacity.
- (6) Where a medical practitioner is unable to certify as to the day on which a worker was first incapacitated by reason of an injury referred to in subsection (5) or where there is a dispute as to the day on which such an injury occurred, the matter may be referred by the worker or his employer, to the Tribunal for determination as to the day on which the injury occurred and the day so determined by the Tribunal shall be deemed to be the day on which that injury occurred.

4. Application of Act

- (1) This Act binds the Crown, not only in right of Tasmania but also, so far as the legislative power of Parliament permits, in all its other capacities and, accordingly, applies in respect of a worker employed by or on behalf of the Crown.
- (2) For the purposes of this Act, a police officer shall be deemed to be in the service of the Crown.
- (3) This Act does not apply in respect of an injury which occurred before the day fixed under section 2(2).

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 4

Part I – Preliminary

- (4) In relation to an injury to which this Act does not apply by virtue of subsection (3), the repealed Act continues to apply as if this Act had not been enacted and any claim, application, matter, or proceeding in relation to such an injury shall be heard and determined as if this Act had not been enacted.
- (5) This Act shall not apply to any person –
- (a) whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; or
 - (b) who is an outworker; or
 - (c) who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury; or
 - (d) who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat; or
 - (da) who is employed by or on behalf of the Crown in right of the Commonwealth or by a person, or body, that is licensed, or taken to be licensed, under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth; or
 - (e) notwithstanding section 4D, who is participating in an approved program of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 4A

work for unemployment payment under the *Social Security Act 1991* of the Commonwealth –

and no such person shall be deemed to be a worker within the meaning of this Act.

4A. Services of workers lent or on hire

If an employer lends or hires the services of a worker to another person, the employer continues to be the employer, for the purposes of this Act, of the worker while the worker is working for that other person.

4B. Contractors

- (1) Subject to subsection (2), where a person makes a contract with a contractor to perform work exceeding \$100 in value that is not work incidental to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name, and the contractor does not sublet the contract or employ any worker, the contractor is taken to be a worker employed by the person making the contract.
- (2) If a contractor to whom subsection (1) applies takes out his or her own personal accident insurance, the contractor is taken not to be a worker for the period during which that insurance remains valid.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 4C

Part I – Preliminary

- (3) If a contractor takes out his or her own personal accident insurance, the contractor is to provide the person with whom the contract is made with evidence of the contractor's insurance.
- (4) If a contractor does not take out his or her own personal accident insurance, he or she is to advise the person with whom the contract is made that the contractor has not taken out such insurance.

4C. Salespersons

- (1) A salesperson, canvasser, collector or other person paid wholly or partly by commission is, for the purposes of this Act, taken to be a worker in the employment of the person by whom the commission is payable, unless the commission is received for or in connection with work incidental to a trade or business regularly carried on by the salesperson, canvasser, collector or other person or by a firm of which he or she is a member.
- (2) If more than one employer is employing a salesperson, canvasser, collector or other person at the time of an injury to that person, all the employers are liable to contribute to any compensation payable under this Act in respect of the injury in such proportion as, in default of agreement, the Tribunal determines.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 4D

4D. Participants in training programs

- (1) A training program that includes the provision of workplace-based training and involves the provision of funding by the Commonwealth may be prescribed as a training program for the purposes of this section.
- (2) A class of payments may be prescribed as payments that are taken to be wages in respect of a participant in a prescribed training program.
- (3) A participant in a prescribed training program is taken to be a worker employed by the person providing the workplace-based training.
- (4) A payment prescribed under subsection (2) as wages in respect of a participant in a prescribed training program is, for the purposes of this Act, taken to be the participant's wages in the employment by the person providing the workplace-based training.
- (5) This section does not apply in respect of the participation of a person, or an injury received by a person, in a training program before the program was prescribed as a training program.

4DA. Luxury hire car drivers

- (1) A person who operates a vehicle as a luxury hire car with the consent or authority of the licensee is, while driving the vehicle or performing any associated activity, taken to be a worker employed by the licensee.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 4DB

Part I – Preliminary

(2) Subsection (1) does not apply if the driver of the luxury hire car is also the licensee.

(3) In this section –

licensee means the holder of a luxury hire car licence under the *Taxi and Hire Vehicle Industries Act 2008*;

luxury hire car means a vehicle in respect of which a luxury hire car licence is in force under the *Taxi and Hire Vehicle Industries Act 2008*.

4DB. Taxi drivers

(1) A person who operates a vehicle as a taxi with the consent or authority of the responsible operator of a taxi service provided under the authority of a taxi licence is, while driving the taxi or performing any associated activity, taken to be a worker employed by the responsible operator.

(2) Subsection (1) does not apply if the driver of the taxi is also the responsible operator.

(3) In this section –

responsible operator means –

(a) in respect of a perpetual taxi licence within the meaning of the *Taxi and Hire Vehicle Industries Act 2008* –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 4DC

- (i) if an assignment or leasing arrangement is in force under section 11 of that Act, the person who, by virtue of that section, is the responsible operator; or
 - (ii) if no such assignment or leasing arrangement is in force, the owner of the perpetual taxi licence; or
- (b) in respect of an owner-operator taxi licence, wheelchair-accessible taxi licence or temporary taxi licence within the meaning of the *Taxi and Hire Vehicle Industries Act 2008*, the holder of that licence;

taxi has the same meaning as in the *Taxi and Hire Vehicle Industries Act 2008*;

taxi licence means a licence in force under Part 3 of the *Taxi and Hire Vehicle Industries Act 2008*.

4DC. Jockeys

- (1) Notwithstanding section 7, a jockey or apprentice who holds a licence or permit to ride in accordance with the Rules of Racing and who –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 4DC

Part I – Preliminary

- (a) is engaged to ride a horse for fee or reward at a race meeting or official trial held in Tasmania under the Rules of Racing; or
- (b) is engaged to ride a thoroughbred horse in a training session in Tasmania conducted by a licensed trainer or his or her delegate –

is to be taken for the purposes of this Act, while performing such riding work, to be a worker employed by Tasracing.

- (2) For the purposes of determining any compensation payable to or in respect of a person to whom subsection (1) applies –
 - (a) he or she is taken to have been continuously employed by Tasracing for the period during which he or she has continuously held a permit or licence under the Rules of Racing; and
 - (b) any earnings from riding engagements in another State during the 12 months immediately before the period of incapacity, or during the period for which he or she held a licence to ride, are to be taken to be earnings received in the employment of Tasracing.
- (3) Notwithstanding section 69, the normal weekly earnings of a person to whom subsection (1) applies are not to exceed 2 times the basic salary.
- (4) In this section –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 4E

Director means the Director of Racing appointed under the *Racing Regulation Act 2004*;

licensed means licensed by the the Director;

Rules of Racing means the Rules of Racing for thoroughbred racing made and in force under the *Racing Regulation Act 2004*;

Tasracing means Tasracing Pty Ltd formed under the *Racing (Tasracing Pty Ltd) Act 2009*.

4E. Prescribed relationship

A relationship between a certain person, or class of persons, and an organisation or class of organisations may, for the purposes of this Act, be prescribed as a relationship between a worker and an employer.

5. Persons engaged in fire-fighting operations and fire prevention operations

- (1) A person who, otherwise than under a contract for services, a contract of service, or training contract with the Secretary of the responsible Department in relation to the *Fire Service Act 1979*, the State Fire Commission or any brigade within the meaning of the *Fire Service Act 1979*, engages in fire-fighting operations or fire prevention operations with the consent of or under the authority of or in co-operation with the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 5

Part I – Preliminary

Secretary of that responsible Department, the State Fire Commission or any brigade within the meaning of the *Fire Service Act 1979* shall, while so engaged, be deemed to be a worker employed by the Crown.

(2) For the purposes of assessing the compensation payable to or in respect of a person to whom subsection (1) applies, his normal weekly earnings shall –

- (a) if he was working under a contract of service with any person immediately before engaging in the operations referred to in that subsection, be computed according to his earnings under that contract; and
- (b) if he was not working under a contract of service immediately before engaging in those operations, be the basic salary.

(3) In this section –

fire-fighting operations includes –

- (a) any act that is necessary or expedient for or directed towards –
 - (i) extinguishing a fire;
 - (ii) preventing the spread of a fire;
 - (iii) saving life or preventing injury to persons by a fire;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 6

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- (iv) preventing property from being destroyed or damaged by fire;
 - (v) providing sustenance for persons performing any act referred to in subparagraphs (i), (ii), (iii), and (iv); or
 - (vi) taking action to prevent the outbreak of fire; and

- (b) the undergoing of training in relation to all or any acts specified in subparagraphs (i), (ii), (iii), (iv), or (vi);

fire prevention operations means any operations carried on, or any work or other acts done, for the purpose of preventing the outbreak of fire or abating the danger of fire, and includes the undergoing of training in relation to any of those operations or acts or that work.

- (4) For the purposes of this section any meeting, competition, or demonstration related to the prevention, control, or extinguishment of fires shall be deemed to be training.

6. Persons engaged in providing ambulance services

- (1) A person who, otherwise than under a contract for services, a contract of service, or training contract with the Secretary of the responsible

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 6

Part I – Preliminary

Department in relation to the *Ambulance Service Act 1982* or the Commissioner for Ambulance Services, engages in ambulance services with the consent of or under the authority of or in co-operation with the Secretary of that responsible Department, the Commissioner for Ambulance Services or any officer of the Ambulance Service (or in pursuance of an arrangement made with him by the Commissioner for Ambulance Services in the exercise of the performance of his functions under the *Ambulance Service Act 1982*) shall, while so engaged, be deemed to be a worker employed by the Crown.

- (1A) For the avoidance of doubt, subsection (1) does not apply to –
- (a) a person providing ambulance services for, or on behalf of, a commercial business or commercial organisation; or
 - (b) a person providing ambulance services in this State in accordance with an interstate arrangement within the meaning of section 38A of the *Ambulance Service Act 1982*.
- (2) For the purpose of assessing the compensation payable to or in respect of a person to whom subsection (1) applies, his normal weekly earnings shall –
- (a) if he was working under a contract of service with any person immediately before engaging in ambulance services pursuant to that subsection, be computed

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 6A

according to his earnings under that contract; and

- (b) if he was not working under a contract of service immediately before engaging in ambulance services pursuant to that subsection, be the basic salary.
- (3) References in this section to engaging in ambulance services shall be construed as including references to the undergoing of training or instruction in those services.
- (4) For the purposes of this section, *ambulance services*, *Commissioner*, and *officer of the Ambulance Service* have the meaning assigned to those expressions by section 3 of the *Ambulance Service Act 1982*.

6A. Police volunteers

- (1) A person who, otherwise than under a contract for services, contract of service or training contract with the Secretary of the responsible Department in relation to the *Police Service Act 2003*, performs police operations with the consent of, under the authority of, or in co-operation with, the Secretary of that responsible Department is, while so engaged, taken to be a worker employed by the Crown.
- (2) For the purpose of assessing the compensation payable to or in respect of a person to whom subsection (1) applies, the normal weekly earnings of that person are –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 6A

Part I – Preliminary

- (a) if the person was working under a contract of service with any person immediately before assisting the police officer, to be computed according to the person's earnings under that contract; and
 - (b) if the person was not working under a contract of service immediately before assisting the police officer, to be the basic salary.
- (3) For the purposes of subsection (1), ***police operations*** means –
- (a) marine search and rescue operations within the meaning of the *Marine Search and Rescue Act 1971*; and
 - (b) operations required for the purpose of searching for or bringing to safety –
 - (i) persons in danger in the State; or
 - (ii) persons in need of assistance as a result of a casualty occurring in the State; or
 - (iii) persons suffering from illness or injury in the State who require assistance that is not immediately available to them; and
 - (c) operations required for the purpose of protecting property in the State.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part I – Preliminary

s. 6B

6B. Prescribed classes of volunteers

- (1) Persons of a prescribed class who voluntarily perform work of a prescribed class which is of benefit to the State are taken to be workers employed by the Crown.
- (2) For the purpose of assessing the compensation payable to or in respect of a person to whom subsection (1) applies, the normal weekly earnings of that person are –
 - (a) if the person was working under a contract of service with any person immediately before voluntarily performing work of the prescribed class, to be computed according to the person's earnings under that contract; and
 - (b) if the person was not working under a contract of service immediately before voluntarily performing work of the prescribed class, to be the basic salary.

7. Exclusion of certain persons who are contestants in sporting activities

A person is deemed not to be a worker within the meaning of this Act while he is, pursuant to a contract –

- (a) participating as a contestant in any sporting or athletic activity;
- (b) engaged in training or preparing himself with a view to his so participating; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 7A

Part I – Preliminary

(c) travelling in connection with his so participating or being so engaged –

if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.

7A. Part V to apply to all claims for compensation, &c., referred to Tribunal

Where in this Act it is provided that any claim for compensation or any dispute relating to a claim for compensation may or must be referred to the Tribunal by any person, a person who refers a claim for compensation or a dispute relating to such a claim to the Tribunal in pursuance of such a provision must do so in accordance with section 42 and the provisions of Part V apply to the determination, resolution or review of the claim for compensation or dispute.

PART II – ADMINISTRATION

Division 1 – WorkCover Tasmania Board

8. WorkCover Tasmania Board

- (1) The Workplace Safety Board of Tasmania is abolished and the WorkCover Tasmania Board is established.
- (2) The corporate name of the Board is “WorkCover Tasmania”.
- (3) The Board –
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name.
- (4) Schedule 10 has effect.

9. Membership of Board

- (1) The Board consists of –
 - (a) the Secretary of the Department, or a person nominated by the Secretary, who is to be the chairperson; and
 - (b) subject to subsection (5), 5 persons nominated by the Minister –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 9

Part II – Administration

- (i) one of whom is to be a medical practitioner, or a registered nurse, with expertise in evidence-based management of work-related injuries; and
- (ii) one of whom is to be an Australian lawyer with experience in workers rehabilitation and compensation matters; and
- (iii) one of whom is to be a person with extensive experience in the workers compensation insurance industry; and
- (iv) one of whom is to be a person with expertise in the evidence base related to management of work-related injuries and who advocates for, or has experience in respect of, the interests of injured workers; and
- (v) one of whom is to be a person with expertise in the evidence base related to management of work-related injuries and who advocates for, or has experience in respect of, the interests of employers.

(c - f)

(2 - 3)

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part II – Administration

s. 10

- (4) The members of the Board referred to in subsection (1)(b) are to be appointed by the Governor.
- (5) In nominating a person for appointment as a member of the Board, the Minister or the Secretary, as the case may be, is to take into account—
 - (a) the functions of the Board; and
 - (b) the skills required of a member to enable the Board to carry out its functions effectively.

(6 - 10)

- (11) Schedule 1 has effect with respect to membership of a Board.
- (12) Schedule 2 has effect with respect to meetings of a Board.

10. Functions of Board

In addition to the functions conferred or imposed on it by any other provision of this Act or any other Act, the Board has the following functions:

- (a) to make recommendations to the Minister on –
 - (i) the policy and objectives of legislation relating to workers rehabilitation and compensation in this State; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 10

Part II – Administration

- (ii) the amendment or replacement of that legislation;
- (b) to monitor and report to the Minister on the operation and effectiveness of that legislation and on the performance of the systems to which the legislation relates;
- (c)
- (d) to control and administer the Fund;
- (e)
- (f) to promote and support the purpose and principles of injury management and to encourage and support the return to work of injured workers as soon as possible;
- (g) to review and monitor the performance of licensed insurers and self-insurers and the operation of the Nominal Insurer;
- (h)
- (i) to collect and publish statistics on any matter the Board considers necessary or relevant to the performance of its functions under, or the administration of, this Act;
- (j) to promote understanding of this Act through education and any other appropriate means;
- (k) to advise the Minister on any matter relating to this Act that the Minister refers to the Board;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part II – Administration

s. 11

(l)

(m) such other functions as may be prescribed.

11. Powers of Board

- (1) The Board may do all things necessary and convenient to be done for or in connection with, or incidental to, the performance of its functions under this Act or any other Act.
- (2) The generality of subsection (1) shall not be taken to be limited by any other provision of this Act conferring a power on the Board.
- (3) The Board may establish committees to advise the Board on any aspect of its functions.
- (4) The Board may establish and administer a second injury scheme.

11A. Minister may give directions

- (1) The Minister may give a direction in writing to the Board with respect to the performance of its functions and the exercise of its powers under this or any other Act.
- (2) If the Board has been given a written direction under subsection (1), the Board is to publish that direction in its next annual report under section 15.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 12

Part II – Administration

- (3) Within 21 days after receiving a direction under subsection (1), the Board may object to the direction on any ground.
- (4) An objection is to –
 - (a) be in writing; and
 - (b) specify the grounds for the objection; and
 - (c) be provided to the Minister.
- (5) If, after receiving an objection, the Minister determines that a direction is not to be withdrawn or amended, the Minister must cause a copy of the direction and the objection to be laid before each House of Parliament within 10 sitting days of receiving the objection.
- (6) The Board must perform its functions and exercise its powers in a manner that is consistent with a direction if –
 - (a) the Board has not objected to the direction within the period specified in subsection (3); or
 - (b) the Board has objected to the direction and the direction has been tabled in both Houses of Parliament; or
 - (c) the Board has withdrawn its objection.

12. Disclosure of interest

- (1) A member of the Board who has a direct or indirect interest (whether pecuniary or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part II – Administration

s. 13

otherwise) in a matter being considered or about to be considered by the Board (otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he is not a director) shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not be present during, or take part in, any deliberation or decision of the Board in relation to that matter.

13. Delegation by Board

- (1) The Board may, by instrument in writing under its common seal, delegate to a person specified in the instrument the performance or exercise of such of its functions and powers under this Act or any other Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in writing under its common seal, revoke wholly or in part any such delegation.
- (2) A function or power the performance or exercise of which has been delegated under this section may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 14

Part II – Administration

performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.

- (4) Notwithstanding any delegation under this section, the Board may continue to perform or exercise all or any of the functions or powers delegated.
- (5) Any act or thing done by, or to, a delegate of the Board while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by, or to, the Board and shall be deemed to have been done by, or to, the Board.
- (6) An instrument purporting to be signed by a delegate of the Board in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Board under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Board under this section.
- (7) Where the exercise of a power by the Board is dependent on the opinion or belief of the Board, a delegate of the Board under this section may, in exercising that power, act on his own opinion or belief.

14. Secretary to Board

- (1) The Board may, with the approval of the Head of a State Service Agency, appoint a State Service officer or State Service employee employed in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part II – Administration

s. 15

that Agency to be secretary to the Board and that officer or employee may hold that office in conjunction with State Service employment.

- (2) The Board may make arrangements with the Head of a State Service Agency for such State Service officers and State Service employees employed in that Agency as may be necessary to be made available to the Board to enable it to perform its functions under this Act, and such officers and employees may, in conjunction with State Service employment, serve the Board in any capacity.

15. Annual report

- (1) The Board shall, not later than 31 October after the end of each financial year, submit to the Minister, in relation to that financial year, a report of its operations.

(1A)

- (2) The Minister shall cause a copy of the report referred to in subsection (1) to be laid on the table of each House of Parliament within the first 15 sitting days of the House after the report is received by him.

Division 2 – Provisions relating to Tribunal

16 - 19.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 20

Part II – Administration

20. Functions of Tribunal

The functions of the Tribunal under this Act are as follows:

- (a) to determine all claims for compensation referred to it under this Act;
- (b) to determine such other matters as are referred to it under this Act;
- (c) to exercise the powers conferred, and the duties imposed, on it elsewhere in this Act;
- (d) to hear and determine any appeal referred to the Tribunal under the *Workers' (Occupational Diseases) Relief Fund Act 1954*.

21.

22. Record of Tribunal

- (1) The record of the Tribunal in respect of a proceeding to which this Act relates consists of—
 - (a) the application lodged with the Registrar that relates to that proceeding;
 - (b) a summary of the facts of the matter to be resolved in the relevant claim for compensation as determined and recorded by the Tribunal during the hearing of that claim;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part II – Administration

s. 23

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- (c) any written medical advice or medical opinion provided to the Tribunal pursuant to section 54 by a medical panel to which, or a medical practitioner to whom, a medical question has been referred pursuant to section 49(3);
 - (d) the recording made pursuant to section 56(2);
 - (e) any notes of the proceeding made by the Tribunal; and
 - (f) any order made by the Tribunal in relation to that proceeding.
- (2) The record of the Tribunal in respect of a proceeding to which this Act relates–
- (a) shall be open for inspection free of charge by a party to the proceeding and a person acting with the authority of a party to the proceeding; and
 - (b) shall be available for production before a court or a judge for the purposes of any proceedings before the court or judge.

23. Jurisdiction of Tribunal

- (1) The Tribunal has jurisdiction to perform the functions imposed, and exercise the powers conferred, on it under this Act.
- (2) Proceedings in respect of compensation under this Act may not be brought before any person, court or tribunal other than the Tribunal.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part II – Administration

- (3) Subsection (2) does not apply to appeals to the Supreme Court in respect of any proceedings before the Tribunal.

23A - 24.

Division 3 –

24.

PART III – ENTITLEMENT TO COMPENSATION

Division 1 – Entitlement to compensation

25. Liability of employers to compensate workers for injuries

(1) If in any employment –

(a) a worker suffers an injury, not being a disease, arising out of or in the course of his employment; or

(b) a worker suffers an injury, which is a disease and to which his employment contributed to a substantial degree, within the meaning of section 3(2A)–

his employer is, except as is otherwise provided by this Act, liable to pay compensation in accordance with this Act –

(c) to the worker; or

(d) if the injury results in the death of the worker, to the persons who are the worker's dependants at the date of his death or who would, but for any incapacity due to the injury, have been his dependants.

(1A) Compensation is not payable under this Act in respect of a disease which is an illness of the mind or a disorder of the mind and which arises substantially from–

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 25

Part III – Entitlement to compensation

- (a) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment; or
 - (b) a decision of an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment; or
 - (c) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment; or
 - (d) the failure of an employer to take action of a type referred to in paragraph (a), (b) or (c) in relation to a worker in connection with the worker's employment if there are reasonable grounds for not taking that action; or
 - (e) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker.
- (2) Compensation is not payable under this Act in respect of –
- (a) any injury which is –
 - (i) attributable to the serious and wilful misconduct of the worker, unless the injury results in the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 25

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- death or serious and permanent incapacity of the worker; or
- (ii) an intentional self-inflicted injury;
- (b) the disease known as undulant fever or brucellosis, unless a medical practitioner has certified in writing that he is satisfied as to the result of the pathological examination of the blood of the worker that the worker is suffering from that disease; or
- (ba) coronary heart disease, a diseased heart valve, an aortic aneurism or a cerebral aneurism or any prescribed injury, unless the employment contributed to the disease or injury to a substantial degree; or
- (c) any disease, including the disease mentioned in paragraph (b), in any case where the worker, at the time of entering his employment, wilfully and falsely represented himself in writing as not having previously suffered from that disease.
- (3) For the purposes of this Act, an employer is liable, subject to subsection (1), to pay compensation pursuant to that subsection in respect of an injury suffered by a worker notwithstanding that the worker was, at the time when the injury was suffered, acting in contravention of any statutory or other regulation

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 25

Part III – Entitlement to compensation

applicable to his employment, or that he was acting without instructions from his employer, if the act was done by the worker for the purposes of, or in connection with, his employer's trade or business.

- (4) Where a person ordinarily engages in work in relation to the port or harbour operations at a port or harbour and in connection with that work persons customarily attend at pre-arranged places for the purpose of being selected and engaged for employment in that work, then, in relation to any contract of service by which that person is engaged in that work—
- (a) any such place shall be deemed to be a place of employment; and
 - (b) attendance at any such place for the purpose of being so engaged or otherwise in connection with the employment, shall be deemed to be attendance at a place of employment in pursuance of that contract—

and, in the application of this Act to the person's attendance at such a place, a contract of service by which, on any occasion, he is engaged for employment at such a place shall be deemed to continue until the next occasion on which he is so engaged.

- (5)
- (6) For the purposes of this section, an injury does not arise from a worker's employment if it occurs —

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 25

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- (a) while the worker is travelling in either direction between the worker's place of residence and the worker's place of employment, except where that journey occurred –
- (i) at the request or direction of the employer; or
 - (ii) if the journey is work related, with the authority (expressed or implied) of the employer; or
- (b) while the worker is travelling between places where the worker is employed by different employers; or
- (c) while the worker, on a working day, is temporarily absent from the worker's place of employment, except where that absence occurs at the request or direction, or, if it is work related, with the authority (expressed or implied), of the employer; or
- (d) during a social or sporting activity which takes place away from the worker's place of employment, except where the worker's involvement in that activity forms part of the worker's employment or is undertaken at the request or direction, or with the authority (expressed or implied), of the employer.
- (7) For the purposes of subsection (6)(a)(ii), a journey is not work related by reason only of the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 25A

Part III – Entitlement to compensation

fact that it is for the purpose of enabling a worker to travel –

- (a) to his or her place of employment from his or her place of residence; or
 - (b) to his or her place of residence from his or her place of employment.
- (8) No compensation is payable to a worker under this Part in respect of any disease for which he or she is entitled to compensation as an employee under the *Workers' (Occupational Diseases) Relief Fund Act 1954*.

25A. Claims for certain diseases arising from mining operations

- (1) Subject to section 25(2), where–
 - (a) a mining employee is suffering from silicosis, carbon-monoxide poisoning, pneumoconiosis, cadmium poisoning, fibrosis of the lungs, ankylostomiasis, lead poisoning and its results, nystagmus, arsenic poisoning or contact dermatitis caused by work; and
 - (b) he or she has been engaged continuously in mining operations in Tasmania for a period of 2 years immediately before ceasing to be employed as a mining employee and is incapacitated from continuing to work as such–

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 26

his or her employment is, in the absence of evidence to the contrary, taken to have contributed to a substantial degree to that disease.

- (2) For the purposes of subsection (1), a mining employee is taken to have been engaged continuously in mining operations in this State for the period mentioned in that subsection, notwithstanding that he or she may, at any time after that period commenced, have been absent from his or her employment for any periods not exceeding 3 months in the aggregate.

26. Presumption as to cause of disease

- (1) The Board, by notice, may specify an occupation, or an exposure, to be an occupation or exposure that is to be presumed to contribute to a substantial degree to a disease specified in the notice.
- (2) A notice under subsection (1) may specify an occupation, or an exposure, by adopting, with the modifications, omissions, or additions, if any, specified in the notice, an instrument that –
 - (a) is made by Safe Work Australia or another person or body that is prescribed; and
 - (b) specifies an occupation, or an exposure, to be an occupation or exposure that is to be presumed to contribute to a substantial degree to a disease specified in the instrument.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 27

Part III – Entitlement to compensation

- (3) Subject to section 25(2), if a worker –
- (a) suffers a disease that is specified in a notice under subsection (1); and
 - (b) has been employed in an occupation, or has been subject to an exposure at the person's workplace, that is specified in the notice to be presumed to contribute to a substantial degree to the disease –

it is to be presumed, in the absence of evidence to the contrary, that the worker's employment contributed to a substantial degree to that disease.

- (4) In this section –

Safe Work Australia means Safe Work Australia established by section 5 of the *Safe Work Australia Act 2008* of the Commonwealth.

27. Presumption as to cause of certain diseases in relation to fire-fighters

- (1) Subject to section 25(2), where –
- (a) a worker suffers an injury –
 - (i) that is a disease referred to in column 1 of Schedule 5; and
 - (ii) that occurs on or after the day on which this section commences; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 27

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- (b) the injury occurs during a period in which the worker is employed as a fire-fighter or within the 10-year period after the worker ceases to be employed as a fire-fighter; and
 - (c) before the date on which the injury that is a disease referred to in column 1 of Schedule 5 occurred, the worker is employed as a fire-fighter for at least the period specified in column 2 of Schedule 5 opposite the disease –
 - (d)

the worker's employment as a fire-fighter is, in the absence of evidence to the contrary, taken to have contributed to a substantial degree to that injury.

- (2) For the purposes of this section –
 - (a) a person is employed as a fire-fighter if the person is employed as a career fire-fighter or an occupational fire-fighter or is engaged as a volunteer fire-fighter; and
 - (b) a reference to employment as a fire-fighter includes a reference to engagement as a volunteer fire-fighter; and
 - (c) a reference to a period of employment of a worker as a fire-fighter includes a reference to a period –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 27

Part III – Entitlement to compensation

- (i) beginning on the first day on which the worker is a volunteer fire-fighter; and
 - (ii) ending on the last day, before the worker suffers an injury to which this section relates, on which the worker is a volunteer fire-fighter.
- (3) For the purposes of determining a period under subsection (1)(c), all periods of employment of a worker as a fire-fighter are to be combined.
- (4)
- (5) Despite section 3(5), where a worker suffers an injury that is a disease, the injury is, for the purposes of this section, to be taken to have occurred on the day on which the worker –
 - (a) is first diagnosed as suffering from the disease; or
 - (b) becomes partially or totally incapacitated by reason of the disease; or
 - (c) dies by reason of the disease –whichever occurs first.
- (6) Despite the amendments to this section made by the *Workers Rehabilitation and Compensation Amendment (Presumption of Cause of Disease) Act 2017*, this section, as in force immediately before that Act commences, applies to an injury if the injury is to be taken to have occurred, in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 27

accordance with subsection (5), before 31 October 2017.

- (6A) This section, as amended by the *Workers Rehabilitation and Compensation Amendment (Presumption of Cause of Disease) Act 2017*, applies to an injury if the injury is to be taken to have occurred, in accordance with subsection (5), on or after 31 October 2017.
- (6B) This section, as amended by the *Workers Rehabilitation and Compensation Amendment Act 2022*, applies to an injury if the injury is to be taken to have occurred, in accordance with subsection (5), on or after the day on which that Act commences.
- (7) The regulations may amend Schedule 5 by –
- (a) varying or rescinding any matter set out in the Schedule; or
 - (b) adding a disease and a period to the Schedule.
- (7A) For the avoidance of doubt, the amendment of Schedule 5 by a provision of an Act does not prevent the further amendment of that Schedule by regulations that are made in accordance with subsection (7).
- (8) In this section –
- career fire-fighter* means a worker who –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 27

Part III – Entitlement to compensation

- (a) is appointed or employed in accordance with section 24 of the *Fire Service Act 1979*; and
- (b) who occupies, or has occupied, during such an appointment or employment (whether or not for the whole period of such appointment or employment), a position classified as a “fire-fighter”, “station officer”, “senior station officer” or “district officer” under the industrial award that relates from time to time to persons carrying out fire-fighting operations;

Chief Officer has the same meaning as it has in the *Fire Service Act 1979*;

fire-fighter means –

- (a) a career fire-fighter; and
- (b) a volunteer fire-fighter; and
- (c) an occupational fire-fighter;

fire-fighting operations –

- (a) in relation to a volunteer fire-fighter or an occupational fire-fighter, has the same meaning as it has in section 5(3) and as if a reference in section 5(3) to training included any meeting, competition, or demonstration,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 27

related to the prevention, control or extinguishment of fires; or

- (b) in relation to a career fire-fighter, has the same meaning as it has in the *Fire Service Act 1979*;

fire prevention operations has the same meaning as it has in section 5(3) and as if a reference in section 5(3) to training included any meeting, competition, or demonstration, related to the prevention, control or extinguishment of fires;

occupational fire-fighter means –

- (a) a person who is –
- (i) a State Service employee, or State Service officer, employed in an Agency, within the meaning of the *State Service Act 2000*, a significant function of which is to manage forests or parks; or
 - (ii) an employee of a Government Business Enterprise, within the meaning of the *Government Business Enterprises Act 1995*, a significant function of which is to manage forests or parks –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 27

Part III – Entitlement to compensation

and who is employed, in whole or in part, in the Agency or Government Business Enterprise, to perform fire-fighting operations or fire prevention operations, or who engages, during his or her employment in the Agency or Government Business Enterprise, in fire-fighting operations or in fire prevention operations, that are related to forests or parks; or

- (b) a State Service employee or State Service officer, other than a career fire-fighter, who –
 - (i) is appointed or employed in accordance with section 24 of the *Fire Service Act 1979*; and
 - (ii) in the course of such an appointment or employment, engages in fire-fighting operations or fire prevention operations in relation to bushfires;

volunteer fire-fighter means a person who, otherwise than under a contract for services, a contract of service, or a training agreement, with –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 28

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- (a) the Secretary of the responsible Department in relation to the *Fire Service Act 1979*; or
 - (b) the State Fire Commission; or
 - (c) any brigade within the meaning of the *Fire Service Act 1979* –

engages in fire-fighting operations, or fire prevention operations, with the consent of, under the authority of, or in co-operation with, a person or body referred to in paragraph (a), (b) or (c).

28. Review of operation of section 27

- (1) The Minister must cause a review of the operation of section 27 to be undertaken and completed as soon as practicable after the end of –
 - (a) the 12-month period from the commencement of this section; and
 - (b) each 3-year period after the completion of each previous review of the operation of section 27.
- (2) The person who undertakes the review must provide a written report of the review to the Minister as soon as practicable after the review is completed.
- (3) The Minister must cause the written report of the review to be laid before each House of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 28A

Part III – Entitlement to compensation

Parliament within 10 sitting-days after the report
is provided to the Minister.

28A. Presumption as to cause of post-traumatic stress disorder

(1) In this section –

relevant worker means –

- (a) a worker who is employed by the Crown or appointed under an Act of the State; and
 - (b) a worker who is employed by a Government Business Enterprise, within the meaning of the *Government Business Enterprises Act 1995*; and
 - (c) a worker who is employed by a State-owned company, within the meaning of the *Government Business Enterprises Act 1995*.
- (2) Subject to section 25(1A) and (2), where a relevant worker suffers an injury that consists of post-traumatic stress disorder, the worker's employment is, in the absence of evidence to the contrary, taken to have contributed to a substantial degree to that injury.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 29

29. Liability of principal in case of workers employed by contractors

- (1) Where a person (in this section referred to as “the principal”) 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, the principal is liable to pay to a worker employed in the execution of the work any compensation under this Act that he would have been liable to pay if that worker had been immediately employed by him.
- (2) Where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Act, a reference to the principal shall be substituted for a reference to the employer, and the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.
- (3) In the construction of the provisions of this section, the expression *the principal* includes a contractor who enters into a sub-contract with any other person for the whole or any part of the work undertaken by him, and the expression *the contractor* includes a person who takes such a sub-contract.
- (4) Where the principal is liable to pay compensation under this section, he is entitled to be indemnified by any person, other than the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 30

Part III – Entitlement to compensation

Nominal Insurer, who would have been liable to pay compensation to the worker independently of this section, and the right to that indemnity is available against every contractor standing between the principal and the worker.

- (5) Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal.
- (6) This section does not apply in any case where the injury occurs elsewhere than on, in, or about the place on which the principal has undertaken to execute the work or that is otherwise under his control or management.

30. Liabilities of employer transferred to licensed insurer

- (1) Where an employer has entered into a contract with a licensed insurer in respect of a liability to a worker in respect of which he is required under section 97(1) to maintain a policy of insurance, then—
 - (a) if the employer has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or
 - (b) if, where the employer is a body corporate—

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 30

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- (i) the body corporate has commenced to be wound up;
 - (ii) a receiver or manager of the body corporate's business or undertaking has been duly appointed; or
 - (iii) possession has been taken by or on behalf of any secured creditors of the body corporate of any property comprised in or subject to their security–

the liabilities of the employer to the worker are transferred to and imposed upon the licensed insurer, notwithstanding any law relating to bankruptcy or the winding-up of bodies corporate.

- (2) On the transfer of an employer's liabilities to the licensed insurer under subsection (1), the licensed insurer –
 - (a) retains the same rights, remedies and defences as it would otherwise have had against the employer; and
 - (b) has the same rights and remedies against the worker as if it were the employer; and
 - (c) is subject to the same liabilities to the worker as if it were the employer.
- (3) Where under this section the liability of a licensed insurer to a worker is less than the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 30

Part III – Entitlement to compensation

liability of the employer to the worker, the worker –

- (a) may prove for the balance in the bankruptcy or liquidation; or
- (b) may recover the balance from the receiver or manager in the bankruptcy or liquidation –

but the priority conferred by subsection (4) does not apply to that balance.

- (4) The amount due in respect of any compensation or liability for compensation accrued before the date of–
 - (a) the bankruptcy;
 - (b) the commencement of a winding-up; or
 - (c) the appointment of a receiver or manager or the taking of possession as provided in subsection (1)(b)(iii)–

as the case may be, shall be included among the debts that, under section 433 or section 556 of the Corporations Act, as the case may be, are to be paid in priority to other debts, and that amount is subject to the provisions of such of those sections as are applicable to the particular case.

- (5) If any compensation to which the provisions of subsection (4) apply is payable by weekly payments, the amount of compensation for the purposes of that subsection shall be deemed to

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 31

be the amount of the lump sum for which the payment, if redeemable, could be redeemed if the employer concerned made application for that purpose under this Act.

- (6) This section does not apply where a body corporate is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another body corporate.
- (7) Nothing in the foregoing provisions of this section shall be construed as –
 - (a) requiring a worker to pay to a licensed insurer any sum that was or becomes due and owing to the licensed insurer by the employer in respect of any premium payable by the employer in relation to a policy of insurance obtained by him from the licensed insurer; or
 - (b) entitling a licensed insurer to retain from, or to set off against, any payments due to the worker under this Act any sum so due and owing.

31. Liability of employer not affected by agreement

Except as provided in this Act, no contract or agreement made between an employer and a worker has the effect of relieving the employer from liability to pay compensation under this Act.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 31A

Part III – Entitlement to compensation

Division 2 – Employment connection with State

31A. Employment connection test

- (1) Compensation under this Act is payable only if this State is the State of connection.
- (2) The fact that a worker is outside this State when injured does not prevent compensation being payable under this Act.
- (3) A worker's employment is connected with –
 - (a) the State where the worker usually works in the employment; or
 - (b) if no State, or no single State, is identified by paragraph (a), the State where the worker is usually based for the purposes of the employment; or
 - (c) if no State, or no single State, is identified by paragraph (a) or (b), the State where the employer's principal place of business in Australia is located.
- (4) For a worker working on a ship, if no State, or no single State, is identified by subsection (3), the worker's employment is, while working on the ship, connected with –
 - (a) the State where the ship is registered; or
 - (b) if the ship is registered in more than one State, the State where the ship most recently became registered.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 31A

- (5) If no State is identified for a worker by subsection (3) or (4), the worker's employment is connected with this State if –
- (a) the worker is in this State when injured; and
 - (b) the worker is not entitled to compensation in relation to the injury under the workers compensation law of an external Territory, or a place outside Australia.
- (6) In deciding whether a worker usually works in a State –
- (a) regard must be had to the following:
 - (i) the worker's work history with the employer over the preceding 12 months;
 - (ii) the worker's proposed future working arrangements;
 - (iii) the intentions of the worker and employer;
 - (iv) any period during which the worker worked in a State or was in a State for the purposes of employment, whether or not the worker is regarded as working or employed in that State under its workers compensation law; but

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 31A

Part III – Entitlement to compensation

- (b) regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.
- (7) Compensation under this Act is not payable in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies to the worker's employment.
- (8) The application of this Act in respect of a seaman is subject to the following modifications:
 - (a) the notice of injury and the claim for compensation may, except where the seaman injured is the master, be served on the master of a ship as if he or she were the employer;
 - (b) in the case of the death of the seaman, the claim for compensation for the purposes of section 32(1)(b) is to be made within 6 months after news of his or her death has been received by the claimant;
 - (c) in the case of a ship lost with all hands, the claim for compensation for the purposes of section 32(1)(b) is to be made within 18 months after the date on which the ship is deemed to have been lost with all hands.
- (9) In this section –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 31B

seaman means a worker who is employed in any capacity on board a ship by the owner or charterer of the ship;

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes all of the following if used wholly or primarily in navigation by water:

- (a) a barge, lighter or other floating vessel;
- (b) an air-cushioned vehicle, or other similar craft;

State, in a geographical sense, includes a State's relevant adjacent area as described in Schedule 11.

31B. Determination of State of connection in workers compensation proceedings

- (1) If the question of whether this State is the State of connection arises in a proceeding before the Tribunal in relation to a claim for compensation under this Act, the Tribunal must determine the State of connection in accordance with section 31A.
- (2) Subsection (1) does not apply if there is a determination of the State of connection that is to be recognised under section 31D.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 31C

Part III – Entitlement to compensation

31C. Determination of State of connection by Tribunal

- (1) If a claim for compensation under this Act has been made, a party to the claim may apply to the Tribunal for a determination of the question of which State is the State of connection.
- (2) On receiving an application, the Tribunal must determine the State of connection in accordance with section 31A.
- (3) An application may not be made or heard if there is a determination of the State of connection that is to be recognised under section 31D.

31D. Recognition of previous determinations of State of connection

- (1) This section applies if a determination of the State of connection has been made by any of the following courts or tribunals:
 - (a) the Tribunal under section 31B or 31C;
 - (b) a court or tribunal of a State under a provision of a law of the State corresponding to section 31B or 31C;
 - (c) a court of this State or another State in the course of proceedings on a claim for damages.
- (2) The State determined as mentioned in subsection (1) is to be recognised for this Act as the State of connection.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part III – Entitlement to compensation

s. 31E

- (3) This section does not prevent any appeal relating to a determination of a court or tribunal under subsection (1).
- (4) If a determination is changed on appeal to a court, the changed determination is to be recognised under this section.

31E. Person not to be compensated twice

- (1) Compensation under this Act is not payable in respect of anything to the extent that –
 - (a) compensation has been received under the laws of a place other than this State; or
 - (b) judgment has been obtained against the employer independently of this Act.
- (2) If a person receives compensation under this Act and, for the same matter, subsequently –
 - (a) receives compensation under the laws of a place other than this State; or
 - (b) obtains judgment against the employer independently of this Act –

the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).

- (3) The amount that is recoverable under subsection (2) is the lesser of the following:

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 31E

Part III – Entitlement to compensation

- (a) the amount of compensation paid under this Act;
- (b) the amount of compensation received under the laws of a place other than this State or for which judgment was obtained independently of this Act.

PART IV – CLAIMS FOR COMPENSATION

32. Notice of injury and claim for compensation

- (1) Subject to this Act, a person shall not be entitled to compensation under this Act for an injury to a worker unless –
 - (a) notice of the injury has, as soon as practicable after the occurrence of the injury and before the worker has voluntarily left the employment in which he suffered the injury, been given to the employer of the worker or a person referred to in section 33(1)(b); and
 - (b) a claim for compensation with respect to the injury has been made within 6 months after the date of the occurrence of the injury, or where the injury results in the death of the worker, within 6 months after the date of the death.
- (2) Subsection (1) does not apply to industrial deafness, but proceedings for the recovery under this Act of compensation in respect of industrial deafness are not maintainable unless the claim for compensation is made while the worker is still in the employment of the employer or within 6 months after the termination of that employment.
- (2A) For the purposes of this Part, where a mining employee –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 32

Part IV – Claims for compensation

- (a) suffers from silicosis, pneumoconiosis or fibrosis of the lungs within 12 months after ceasing to be a mining employee; or
- (b) suffers from silicosis within 5 years after ceasing to be a mining employee, and since ceasing to be engaged in mining operations he or she has not engaged in any occupation in which he or she would be exposed to contamination by industrial dust; or
- (c) suffers from lead poisoning or cadmium poisoning within 3 months after ceasing to be a mining employee; or
- (d) suffers from lead poisoning within 6 months after ceasing to be a mining employee, and since ceasing to be engaged in mining operations he or she has not exposed himself or herself to contamination by lead in any form; or
- (e) suffers from dermatitis caused by work within 2 months after ceasing to be a mining employee –

a claim for compensation is to be made no later than 6 months after the relevant period specified in this subsection or, where the disease results in the death of the mining employee, within 6 months after the date of the death.

- (3) An employer who receives a claim for compensation shall be deemed to have been given notice of the injury to which it relates.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IV – Claims for compensation

s. 33

33. Form of notice of injury

- (1) Notice of an injury –
 - (a) may be given orally or in writing;
 - (b) shall be given to –
 - (i) the employer of the worker or, if there is more than one employer, to one of the employers of the worker; or
 - (ii) a person under whose supervision the worker is employed; or
 - (iii) a person designated for the purpose by the employer; or
 - (iv) a person having authority or apparently having authority to receive such a notice on behalf of the employer;
 - (c) shall include the name and address of the person injured; and
 - (d) shall include the nature of the injury, the date on which the injury occurred, and the cause of the injury.
- (2) Where an employer has received notice of an injury, he shall record that fact in records kept by him for that purpose.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 33A

Part IV – Claims for compensation

33A. Employer given notice of injury must inform worker of right to claim

- (1) An employer who is informed by a worker of an injury to the worker must, within 14 days, inform the worker, in the prescribed form, that the worker may have a right to make a claim for compensation in relation to the injury.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply in relation to an injury if the employer is informed of the injury by the service on the employer of a claim for compensation.

34. Form of claim for compensation

- (1) Subject to subsection (2A), a claim for compensation is to—
- (a) be in a form approved by the Board;
 - (b) be accompanied by a certificate in a form approved by the Board signed by a medical practitioner or an accredited person; and
 - (c) be given to—
 - (i) the employer of the worker or, if there is more than one employer, to one of the employers of the worker; or
 - (ii) a person designated for the purpose by the employer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IV – Claims for compensation

s. 35

(2) If a claim for compensation and a medical certificate under subsection (1)(b) or subsection (2A)(b) are not given at the same time, the claim for compensation shall be deemed not to have been made until the day on which the remaining document is given to the employer.

(2A) A claim for compensation by a dependant under section 67 or 67A is to be –

(a) in a form approved by the Board; and

(b)

(3) A defect, omission, or irregularity in a claim for compensation or a medical certificate under subsection (1)(b) shall not affect the validity of the claim and the claim shall be dealt with in accordance with this Part unless the defect, omission, or irregularity relates to information which is not within the knowledge of, or reasonably ascertainable by, the employer or his licensed insurer.

35. Service of claim

(1) A claim for compensation may be given –

(a) to the employer of a worker or, if there is more than one employer, to one of the employers of a worker by –

(i) delivering it personally to the employer or one of the employers; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 36

Part IV – Claims for compensation

- (ii) by placing it in a properly addressed envelope and sending it by post to the employer, or one of the employers, at the employer's usual or last-known place of business or residence; and
- (b) to the person designated for the purpose by the employer, by delivering it personally to that person.

36. Employer to forward accident report and claim

(1AA) An employer must, within 3 working days of receiving a claim for compensation under section 35, notify the employer's insurer of the claim.

(1) An employer must –

- (a) immediately on receiving a claim for compensation, complete the employer's report section of the form referred to in section 34(1)(a); and
 - (b) within 5 working days after receiving the claim, forward the completed claim and a copy of the claim to his or her licensed insurer, if any; and
 - (c) retain a copy of the claim for the employer's own records.
- (2) A licensed insurer who receives a claim for compensation forwarded under subsection (1)

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IV – Claims for compensation

s. 36

must, within 5 working days after receiving it, forward a copy to the Board.

- (3) An employer who –
- (a) refuses to receive a claim for compensation; or
 - (ab) hinders or prevents, or attempts to hinder or prevent, a worker from obtaining a claim form or making or pursuing a claim for compensation under this Act; or
 - (b) dismisses a worker from employment for the reason only that the worker has given or attempted to give to the employer a claim for compensation –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

- (4) If an employer does not comply with subsection (1AA) in relation to a worker then, despite any contract of insurance with the employer in accordance with section 97(1), the employer's insurer is not liable to indemnify the employer for the relevant amount that the employer is liable to pay, or has paid, to the worker by way of weekly payments for the relevant period.
- (5) In this section –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 37

Part IV – Claims for compensation

- (a) the relevant amount is the weekly payment payable to the worker within the relevant period; and
- (b) the relevant period means the period that –
 - (i) begins on the day, after the 3 working days referred to in subsection (1AA); and
 - (ii) ends on, and includes, all of the day on which the employer notifies the insurer of the claim.

37. Effect of failure to give notice of injury, &c.

- (1) The failure to give notice of injury in accordance with section 32(1)(a) or any defect or inaccuracy in such a notice does not affect the worker's right to claim compensation under this Act if –
 - (a) the failure or defect or inaccuracy was occasioned by mistake, absence from the State of the worker or other reasonable cause; and
 - (b) it is found in proceedings relating to the worker's right to claim compensation under this Act that the employer's defence is not prejudiced by reason of the failure.
- (2) Without limiting the generality of the expression *reasonable cause* in subsection (1), that expression includes –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IV – Claims for compensation

s. 38

- (a) the making of a payment to a worker that the worker believes to be a payment of compensation under this Act; and
 - (b) any representation that is made to a worker that the worker believes is made by or on behalf of the worker's employer to the effect that compensation under this Act will or will not be payable.
- (3) Any dispute relating to the failure of the worker to give notice of injury in accordance with section 32(1)(a) may be referred, by either party to the dispute, to the Tribunal for determination.

38. Effect of failure to make claim

- (1) The failure to make a claim for compensation within the period prescribed by section 32(1)(b), section 32(2) or section 32(2A) does not affect the validity of the claim if the failure was occasioned by mistake, absence from the State of the worker, or other reasonable cause.
- (2) Without limiting the generality of the expression *reasonable cause* in subsection (1), that expression includes –
 - (a) the making of a payment to a worker that he believes to be a payment of compensation under this Act; and
 - (aa) a failure by the worker's employer to comply with section 33A in relation to the injury to which the worker's claim for compensation relates; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 39

Part IV – Claims for compensation

- (b) any representation that is made to a worker that he believes is made by or on behalf of his employer to the effect that compensation under this Act will or will not be payable.
- (3) Any dispute relating to the failure of the worker to make a claim for compensation within the period prescribed by section 32(1)(b), section 32(2) or section 32(2A) may be referred by either party to the dispute to the Tribunal for determination.

39. Employer to give claimant notice of status of claim within 28 days

- (1) If an employer receives a claim for compensation from a worker under section 35, the employer or the employer's insurer, within 28 days –
 - (a) must notify the worker in writing as to whether a decision has been made to accept, or not to accept, liability for the injury to which the claim relates; and
 - (b) if no decision has been made to accept, or not to accept, liability for the injury, must specify in the notice –
 - (i) the reasons why the decision has not been made; and
 - (ii) the steps the employer, or the employer's insurer, intends to take before making the decision.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IV – Claims for compensation

s. 40

Penalty: Fine not exceeding 10 penalty units.

- (2) A person referred to in subsection (1) is not required to comply with that subsection if another person referred to in that subsection complies with the subsection.

40.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 41

Part V – Dispute Resolution

PART V – DISPUTE RESOLUTION

Division 1 – Reference of claims to Tribunal

41.

42. Reference of claims for compensation to Tribunal

- (1) A claim for compensation may be referred to the Tribunal by –
 - (a) an injured worker or a dependant of an injured worker; or
 - (b) the employer of an injured worker; or
 - (c) the licensed insurer of an employer.
 - (d)
- (2) A claim for compensation is to be referred to the Tribunal by application, in a form approved by the President, filed with the Registrar.
- (3) Where an application is filed with the Registrar, the Registrar shall, as soon as practicable, forward the application to the Tribunal.
- (4) On receipt of an application from the Registrar, the Tribunal shall determine the persons who appear to it from the application to have an interest in the settlement of the claim for compensation to which the application relates and shall advise the Registrar of the names of those persons.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 42A

- (5) The Registrar shall, as soon as practicable after being advised of the names of the persons who appear to the Tribunal to have an interest in the settlement of the claim for compensation to which the application relates, serve those persons with a notice containing particulars of the claim.

Division 2 – Conciliation process

42A. Interpretation of Division

In this Division,

party means a person determined under section 42(4) to have an interest in a claim for compensation.

42B. Parties to undertake conciliation process

- (1) If a claim for compensation, other than a claim referred to the Tribunal in accordance with section 81A, is referred to the Tribunal, the parties must undertake a conciliation process for the purpose of attempting to resolve the claim by agreement.
- (2) The conciliator may be a legally qualified member, within the meaning of the *Tasmanian Civil and Administrative Tribunal Act 2020*, the Registrar, a Deputy Registrar, within the meaning of that Act, or a person nominated by the President.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 42C

Part V – Dispute Resolution

- (3) A notice under subsection (2) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (4) The Tribunal is to serve each party with notice –
 - (a) that he or she is required to undertake a conciliation process; and
 - (b) of the identity and contact details of the conciliator; and
 - (c) of a brief outline of how the process is to be conducted.
- (5) The notice is to be served within 14 days of the claim being referred to the Tribunal.

42C. Conciliation process

- (1) Subject to subsection (2), the conciliation process is to be conducted in any manner the conciliator determines, taking into account the issues and circumstances of the relevant claim.
- (2) The conciliation process may consist of the following:
 - (a) a preliminary stage;
 - (b) a conciliation conference.

42D. Preliminary stage

- (1) The purpose of the preliminary stage is as follows:

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 42D

- (a) to identify the issues in dispute;
 - (b) to ensure that any necessary investigations or medical examinations are arranged;
 - (c) to determine the necessary steps for each party to take in order to resolve the claim;
 - (d) to discuss the claim generally and to obtain concessions from the parties as to fact, law or procedure where possible;
 - (e) where a settlement of the claim is not possible, to discuss the claim in preparation for a conciliation conference;
 - (f) to discuss any other matter that may be relevant to achieving a speedy resolution of the claim.
- (2) Contact between the conciliator and the parties during the preliminary stage may be –
- (a) by telephone, writing or in any manner the conciliator determines; and
 - (b) made with the parties jointly or separately; and
 - (c) by an officer of the Tribunal on behalf of the conciliator.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 42E

Part V – Dispute Resolution

42E. Conciliation conference may be required

- (1) If a claim cannot be resolved in the preliminary stage, the conciliator is to schedule the claim for a conciliation conference.
- (2) If a conciliation conference is required, the conciliator is to serve the parties with notice of the date, time and place at which the conciliation conference is to be held.
- (3) Notice under subsection (2) is to be served not less than 7 days before the date on which the conciliation conference is to be held.
- (4) A party served with a notice under subsection (2) must not, without reasonable excuse, fail or refuse to attend the conciliation conference.

Penalty: Fine not exceeding 20 penalty units.

- (5) The conciliator may require the parties to attend more than one conciliation conference.

42F. Purpose of conciliation conference

The purpose of the conciliation conference is to provide an opportunity for open and “without prejudice” discussion based on all the available information to facilitate a resolution of the claim.

42G. Evidence during conciliation process

- (1) During a conciliation process, a party to the process must provide the other parties to the process with any report or proof of evidence

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 42G

from a medical practitioner or other expert witness on whom the party intends to rely should the claim proceed to an arbitrated hearing before the Tribunal.

- (2) If a party fails to provide the report or proof of evidence referred to in subsection (1) during the conciliation process, the party may not adduce evidence from the medical practitioner or other expert witness at an arbitrated hearing before the Tribunal, unless the Tribunal otherwise allows.
- (3) Subject to subsection (4), all discussions held with a conciliator during the conciliation process are confidential and without prejudice and any notes or other documents forming part of the conciliator's record are not to be disclosed to the Tribunal, except in relation to –
 - (a) the provision of reasons to the Tribunal in support of a recommendation made by the conciliator; and
 - (b) the determination of costs as provided by section 59.
- (4) At the conclusion of the conciliation process, the conciliator is to give the Tribunal notice in the approved form of the outcome of that process.
- (5) Notice under subsection (4) is to –
 - (a) identify and give the date of any expert report or proof of evidence given during the conciliation process; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 42H

Part V – Dispute Resolution

- (b) identify the issues in dispute between the parties; and
- (c) identify any agreed facts or concessions made by the parties during that process; and
- (d) if the claim has been resolved, include details of the resolution.

42H. Representation during conciliation process

- (1) Subject to subsections (3) and (4), a worker may be represented during the conciliation process.
- (2) Subject to subsection (3), a party, other than a worker, may be represented during the conciliation process by –
 - (a) in the case of a body corporate, an officer of the body corporate; and
 - (b) in any other case, an officer of an association to which that party belongs.
- (3) A person representing a worker, or an officer referred to in subsection (2), must have the authority to settle or otherwise determine the claim on behalf of the worker or party represented at a conciliation conference.
- (4) A party may not be represented at a conciliation conference by an Australian legal practitioner unless the conciliator determines that –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 42I

- (a) the party's interests would be materially disadvantaged by not being so represented; or
 - (b) the conference would be materially assisted in resolving the claim for compensation by the presence of that practitioner.
- (5) A party who is aggrieved by the determination of a conciliator in relation to representation at a conciliation conference may refer the matter to the Tribunal for determination.
- (6) The determination of the Tribunal is final and not subject to appeal.

42I. Powers of conciliator

- (1) A conciliator may direct a party to –
- (a) attend at a meeting with the conciliator; and
 - (b) provide, within a specified period, the conciliator or another party with any documents or information the conciliator considers may help resolve the claim; and
 - (c) attend at a conciliation conference at which the conciliator and any other party is present.
- (2) The conciliator may do any one or more of the following things in connection with a claim:

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 42J

Part V – Dispute Resolution

- (a) make any recommendations to the parties as the conciliator considers appropriate;
 - (b) recommend to the Tribunal that it make an interim order in respect of any issue raised in the claim;
 - (c) vary or revoke a direction or recommendation made by the conciliator;
 - (d) decline to make any direction or recommendation;
 - (e) recommend that the Tribunal refer a medical question to a medical panel.
- (3) The Tribunal must make, or decline to make, an order within 5 days after receiving a recommendation under subsection (2)(b).
- (4) A party or his or her representative must not fail to comply with a direction of the conciliator given to the party or representative, respectively, under this section.

Penalty: Fine not exceeding 10 penalty units.

42J. Payment not admission of liability

The fact that a person pays or continues to pay compensation in accordance with an interim order or recommendation under this Division is not an admission of liability in respect of that claim by the person.

42K. Claim unresolved after conciliation

- (1) If a claim is unresolved at the conclusion of the conciliation process, the conciliator is to certify that the claim proceed to an arbitrated hearing.
- (2) If the conciliator is of the opinion that any of the parties has not made a reasonable attempt to resolve the claim throughout the conciliation process, the conciliator is to give the Tribunal written notice of that fact.

42L. Conciliator may discontinue process

At any stage in the conciliation process, the conciliator, if of the opinion that the claim is for any reason unsuitable for conciliation, may discontinue the process and require the claim to proceed to an arbitrated hearing.

42M. Resolution of claim in conciliation process

If a claim is resolved at any stage of the conciliation process, the conciliator is to refer the claim to the Tribunal for the making of an order giving effect to the resolution.

42N. Liability of conciliator

No liability attaches to a conciliator for an act or omission by the conciliator in good faith and in the exercise or purported exercise of a power or in the performance or discharge, or purported performance or discharge, of a function or duty, of the conciliator.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

Division 3 – Arbitration

43 - 43A.

44. Amendment of applications, &c.

The Tribunal may amend any application, referral, claim for compensation or appeal at the request of the person who lodged the application, referral, claim for compensation or appeal.

45. Persons to be notified

- (1) The Registrar is to arrange a time and a place for the hearing and determination of a claim for compensation by the Tribunal and is to serve a notice of that time and place on every person who is served with a notice under section 42(5).
- (2) A person who is served with a notice under subsection (1) shall be regarded as a party to the proceeding relating to the claim for compensation to which the notice relates.
- (3) The Tribunal may, in its discretion, join a person as a party to the proceeding if the Tribunal is satisfied that that person has a sufficient interest in the settlement of the matter to which the claim for compensation relates.

46.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 47

47. Presentation of cases

- (1) A party to a proceeding, to which this Act relates, that is before the Tribunal may, with the approval of the Tribunal, be represented by a person of that party's choice.
- (2) Where it appears to the Tribunal that it should allow a person to present to it the case of a party to a proceeding to which this Act relates, the Tribunal shall, where that person is proposed for its approval, satisfy itself that the proposed person has sufficient personal knowledge of the matter to be resolved in the proceeding and is vested with sufficient authority to bind the party.
- (3) Section 98 of the *Tasmanian Civil and Administrative Tribunal Act 2020* does not apply to a proceeding to which this Act relates.

48. Proceedings to be in private except in certain cases

- (1) Subject to subsection (2), a proceeding, to which this Act relates, that is before the Tribunal shall be heard in private.
- (2) A proceeding, to which this Act relates, that is before the Tribunal may be open to the public if all the parties to the proceeding so agree.
- (3) This section applies despite section 81 of the *Tasmanian Civil and Administrative Tribunal Act 2020*.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 49

Part V – Dispute Resolution

49. Procedure of Tribunal

(1)

(1A) A party may not adduce expert evidence at a hearing to which this Act relates, other than a hearing under section 81A, unless –

(a) the evidence has been disclosed to the other parties to the hearing during the conciliation process in accordance with section 42G; or

(b) the Tribunal otherwise allows.

(2) In proceedings, to which this Act relates, that are before the Tribunal–

(a) the onus of proving an initial entitlement to a payment of compensation to a worker or the dependants of a worker lies on the worker or those dependants; and

(b) the onus of proving that a worker is no longer entitled to the payment of compensation lies on the employer.

(3) Where a medical question arises in any proceedings, to which this Act relates, that are before the Tribunal, the Tribunal may –

(a) determine the medical question on any medical evidence presented to the Tribunal; or

(b) refer the medical question, subject to subsection (3A), to a medical panel formed under section 50.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 50

- (3A) The Tribunal may only refer a medical question under subsection (3)(b) if –
- (a) there is a conflict of medical opinion presented to the Tribunal on the question between –
 - (i) a medical practitioner engaged by the worker; and
 - (ii) any medical practitioner provided and paid by the employer or insurer; and
 - (b) one or more of the parties wishes the proceedings to continue.
- (3B) If the parties to the proceeding cannot agree on the medical practitioner nominated by the Tribunal, the Tribunal must choose another medical practitioner who the Tribunal considers is appropriately qualified to provide the medical advice or opinion.
- (4) The Tribunal is bound by the determination of a medical panel given in response to a medical question referred to it under subsection (3)(b).

Division 4 – Medical panels

50. Medical panels

- (1) The Tribunal is to keep and maintain a register of suitably qualified medical practitioners who are willing to be selected on a medical panel.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 50

Part V – Dispute Resolution

- (2) On the referral of a medical question to a medical panel, the Tribunal is to select 2 or 3 practitioners, at least one of whom is to be a general practitioner, from the register to form the medical panel.
- (3) At least one of the medical practitioners is to have particular expertise in the medical field to which the question relates.
- (4) The Tribunal must appoint one of the medical practitioners to be chairperson of the panel.
- (5) The Tribunal must not nominate a medical practitioner to be a member of a medical panel for the purpose of obtaining a determination in response to a medical question in respect of a worker if the medical practitioner –
 - (a) has, in any capacity other than as a member of a medical panel, been involved in the examination or treatment of, or has provided medical services (including an assessment of impairment) to, the worker in relation to the injury in respect of which the medical advice or opinion is sought by the Tribunal; or
 - (b) informs the Tribunal that, for any reason, the medical practitioner's appointment to the medical panel could give rise to a conflict of interest.
- (6) The Tribunal is to ensure that the medical panel is provided with any information in its possession likely to assist in determining the medical question.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 51

51. Determination by medical panel

- (1) If 2 or more members of a medical panel are in agreement as to the determination of a medical question, the determination of those members is taken to be the determination of the panel.
- (2) A medical panel is to make its determination as soon as practicable and, in any event, within 28 days after the medical question has been referred to it.
- (3) If the members of a medical panel do not agree as to the determination of a medical question, the question is to be returned to the Tribunal for its determination.

52. Tribunal to be informed of findings

- (1) Within 7 days after determining a medical question, a medical panel is to provide the Tribunal with –
 - (a) its written determination in response to that medical question; and
 - (b) the reasoning, in writing, used in determining that question.
- (2) Within 3 days after receiving the medical panel's determination of a medical question, the Tribunal is to provide a copy of the determination to the worker to whom the medical question relates and to any other interested party.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 53

Part V – Dispute Resolution

53. Representation before medical panel

- (1) A worker in respect of whom a claim for compensation relates is not entitled to be represented by any person at any attendance before a medical panel unless it appears to the medical panel that the worker should be allowed to be so represented.
- (2) A worker is entitled to be accompanied by a person of his or her choice at any attendance before a medical panel.

54. Power of medical panel to examine worker

- (1) A medical panel or member of a medical panel may conduct such medical examination of a worker to whom a claim for compensation relates as the medical panel or member considers necessary to determine a medical question referred to the panel under section 49(3)(b).
- (2) In conducting a medical examination, a medical panel or member of a medical panel may require the worker to answer questions, produce relevant documents or consent to the production of relevant documents by another person.
- (3) If a worker unreasonably refuses or neglects to answer questions, produce relevant documents or consent to the production of relevant documents, the Tribunal may suspend the worker's right to compensation under this Act until he or she answers the questions, produces the documents or consents to the production of the documents.

55. Failure to attend before medical panel

If a worker in respect of whom a claim for compensation has been made –

- (a) fails, without reasonable cause, to attend before a medical panel at the time and place of which the worker has received not less than 7 days' prior notice in writing from the Tribunal; or
- (b) appears before a medical panel but refuses to be medically examined by the medical panel or a member of the medical panel or in any way obstructs such an examination –

the Tribunal may suspend the worker's right to compensation under this Act until he or she appears before the medical panel or undergoes that examination.

55A. Liability of members of medical panel

No liability attaches to a member of a medical panel for an act or omission by the member or the medical panel in good faith and in the exercise or purported exercise of a power or in the performance or discharge, or purported performance or discharge, of a function or duty of the member or medical panel.

55B. Medical panel not bound by rules of evidence

A medical panel is not bound by the rules of evidence but may inform itself on any matter

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 55C

Part V – Dispute Resolution

relating to the medical question in any manner it thinks fit.

55C. Remuneration of members of panel

- (1) A member of a medical panel is entitled to such remuneration as the Minister determines.
- (2) Any remuneration payable under subsection (1) is to be paid out of the Fund.

Division 5 – Miscellaneous

56. Provisions relating to evidence and production of documents

- (1)
- (2) The Tribunal must cause to be made a recording, by mechanical or electronic or other means, of a proceeding, to which this Act relates, that is before the Tribunal.
- (3) On the completion of a proceeding, to which this Act relates, that is before the Tribunal, the Tribunal must cause the recording of the proceeding and any notes of the proceeding made by the Tribunal to be filed in the office of the Registrar in Hobart.
- (4) Any recording and notes of a proceeding filed in accordance with subsection (3) are to be kept for a period of 12 months from the completion of the proceeding or a longer period determined by the Tribunal.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 57

57. Tribunal to act on evidence available

(1) Subject to this section, the matter to be resolved in a proceeding before the Tribunal to which this Act relates shall be resolved by the Tribunal on such evidence as is placed before it after all parties have been given a reasonable opportunity to be heard, and an order made by the Tribunal in relation to the proceeding is lawful and effectual whether or not all parties to the proceeding have presented their cases.

(2) Where –

(a) the matter to be resolved has been determined in the absence of a party to the relevant proceeding; and

(b) that party has, within 7 days after he receives notice of the order made by the Tribunal, applied for a rehearing to the Tribunal –

the Tribunal may order that the claim for compensation be reheard if it appears to it that it is just and reasonable to do so.

(3) An order under subsection (2) shall –

(a) be subject to such terms and conditions as may be specified by the Tribunal, including terms and conditions as to the payment of costs; or

(b) be unconditional if the Tribunal is satisfied that no substantial injustice will

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 58

Part V – Dispute Resolution

be caused to a party to the relevant proceeding.

- (4) On an order being made under subsection (2) for the rehearing of a claim for compensation –
 - (a) the Registrar shall give notice to all parties to the relevant proceeding of the making of the order and of the time and place appointed for the rehearing; and
 - (b) the order of the Tribunal made on the first hearing ceases to have effect unless it is restored pursuant to subsection (5).
- (5) If the party on whose application the rehearing of a claim for compensation is ordered does not appear at the time and place appointed for the rehearing or any adjournment of the relevant proceeding, the Tribunal, if it thinks fit and without rehearing or further rehearing the claim, may direct that the order made on the first hearing of the claim be restored, and that order shall be restored to full force and effect and shall be deemed to have been of effect at all times since the time of its making.

58. Right of Tribunal to state case

- (1) Where, in the opinion of the Tribunal, a matter in a proceeding before it involves a question of law of such public and general importance as to make it desirable in the public interest that it should be determined by the Supreme Court, the Tribunal, instead of determining the matter, may state a case for the opinion of the Supreme

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 58

Court, and may adjourn the hearing of the matter pending the receipt of the opinion of the Supreme Court on it.

- (2) In a case referred to in subsection (1), the Tribunal shall –
 - (a) immediately prepare and state a case setting forth the material facts as found by it, and stating the question of law on which it desires the opinion of the Supreme Court; and
 - (b) transmit the case without delay to the Registrar of the Supreme Court.
- (3) On receipt of a case stated under this section, the Registrar of the Supreme Court shall set it down for hearing and give the parties at least 7 days' notice of the hearing.
- (4) On the hearing of a case stated, the Supreme Court –
 - (a) shall be constituted by a single judge;
 - (b) may remit the case to the Tribunal for amendment if, in its opinion, the case is defective;
 - (c) may reserve the case or any point arising on the case for the Full Court; and
 - (d) shall cause the case to be remitted to the Tribunal with the opinion of the Court on the question submitted in that case.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 59

Part V – Dispute Resolution

- (5) The Full Court has power to hear and determine a case or point that is reserved for the Full Court pursuant to subsection (4)(c).

59. Costs

- (1) Except as provided in subsection (2), the Tribunal may make such order as to costs as it considers appropriate in any proceedings, in relation to this Act, that are before it.
- (2) The Tribunal may not order costs in respect of the conciliation process set out in Division 2 except if it appears to the Tribunal that a party –
 - (a) has unreasonably obstructed or prolonged that process; or
 - (b) has not made a reasonable attempt to resolve the claim throughout the conciliation process.
- (3) If a party to proceedings withdraws proceedings, other than proceedings in relation to a referral under section 81A, costs are payable by the party.
- (4) Division 10 of Part 8 of the *Tasmanian Civil and Administrative Tribunal Act 2020* does not apply in relation to proceedings in relation to this Act.

60.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 60A

60A. Power of Tribunal to make interim determinations, &c.

- (1) The Tribunal may make an interim determination, ruling or direction in respect of a claim for compensation referred to it, whether or not liability for the claim has been accepted or disputed.
- (1A) The Tribunal may make an interim determination, ruling or direction in the following circumstances:
- (a) where a delay by one side of the proceedings substantially prejudices the other side;
 - (b) where a party fails to comply with a direction of the Tribunal or a conciliator;
 - (c) where the Tribunal is otherwise satisfied that the interests of justice require it.
- (2) Where the Tribunal makes an interim determination, ruling or direction it must make an order which gives effect to that interim determination, ruling or direction.
- (2A) The Tribunal is not to make an order under subsection (2) in respect of the provision of a medical service under Part VI unless it is satisfied that –
- (a) the service is reasonably necessary –
 - (i) to prevent a deterioration in the worker’s medical condition; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 61

Part V – Dispute Resolution

- (ii) to promote an early return to work; or
 - (iii) to relieve significant pain or discomfort; and
- (b) the total cost of the service will not exceed \$5 000.
- (2B) It is not a requirement for the making of an interim order that the applicant might otherwise suffer serious or irreparable harm.
- (2C) In determining a rate of weekly payments for the purposes of an order under this section, the Tribunal may have regard to the basic salary if a rate cannot be reasonably determined by reference to section 69.
- (3) An order made under subsection (2) is to specify the period for which the interim determination, ruling or direction applies.

61. Orders of Tribunal

- (1) Where the Tribunal makes a determination in respect of a claim for compensation referred to it, the Tribunal shall make an order that gives effect to that determination.
- (2) The Tribunal may –
 - (a) on the written application of all the parties to a proceeding before it; and
 - (b) after considering the matters to be resolved in the proceeding and being

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 61

satisfied that the parties properly understand those matters –

make a consent order with respect to that proceeding.

- (3) If the Tribunal makes an order in respect of a claim for compensation referred to it, other than a consent order under subsection (2) or an order under section 81A(2C), (3)(c) or (3)(d), it is to provide a statement in writing of its reasons for making the determination to which the order relates.
- (4) An order made under subsection (1) shall direct that what is required to be done by the order shall be done within the time specified in the order.
- (5) Where an order is made under section 60A or this section, the Registrar must, as soon as practicable after the order is made, arrange for a copy of the order together with, where applicable, a copy of any statement provided by the Tribunal under subsection (3) to be served on all parties to the proceeding to which the order relates.
- (6) Where an order is made under section 60A or this section in relation to the payment of a sum of money, the order is –
 - (a) deemed to be a judgment of the Magistrates Court (Civil Division); and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 61A

Part V – Dispute Resolution

- (b) enforceable in that court as provided by the *Magistrates Court (Civil Division) Act 1992*.

61A. Power of Tribunal to publish and distribute copies of determinations

Where the Tribunal makes a determination in respect of a claim for compensation, the Tribunal may publish copies of the determination in such form as the Tribunal thinks fit with the name of the worker who is a party to the determination omitted and may distribute the copies to any person.

62. Orders of Tribunal final

- (1) Subject to section 136(1) of the *Tasmanian Civil and Administrative Tribunal Act 2020*, an order made by the Tribunal in relation to proceedings to which this Act relates is final and binding on all parties to the proceeding to which the order relates.
- (2) Subject to subsection (3), nothing in subsection (1) prevents the Tribunal from reconsidering any claim for compensation that has been determined by it, or from varying or revoking an order previously made by it.
- (3) The Tribunal shall not vary or revoke an order previously made by it if that variation or revocation will affect any amount paid, or any action taken, in accordance with that order.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part V – Dispute Resolution

s. 63

- (4) Subject to section 137(1) of the *Tasmanian Civil and Administrative Tribunal Act 2020*, no order, or proceeding of the Tribunal with respect to an order, that is made for the purposes of this Act –
 - (a) is vitiated by reason of any informality or want of form; or
 - (b) is liable to be challenged, appealed against, reviewed, quashed, or called into question by any court.

63.

64. Regulations for purposes of Part V

- (1) The Governor may make regulations for the purposes of this Part.
- (2) Without limiting subsection (1), regulations may be made for or with respect to –
 - (a) the practices and procedures to be adopted by the Tribunal and conciliators referred to in this Part; and
 - (b) the powers that may be exercised, and the functions that are required to be performed, by the Registrar under this Part.

(2A)

- (3) Regulations under this section may be made subject to such conditions, or be made so as to

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 64

Part V – Dispute Resolution

apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

- (4) Regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

PART VI – AMOUNT OF COMPENSATION

Division 1 – Basic compensation payable

65. Interpretation of Division 1 of Part VI

In this Division –

child means a person who –

- (a) is under the age of 16 years; or
- (b) is 16 years or more, but less than 21 years and is a full-time student;

dependent caring partner means a caring partner who is a dependant;

dependent child means a child who is a dependant;

dependent spouse means a spouse who is a dependant;

relevant percentage, in respect of any year beginning 1 January, means the percentage difference in the average weekly ordinary full-time earnings of adults in Tasmania between the May immediately preceding the start of that year and the immediately preceding May, as evidenced by statistics published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 66

Part VI – Amount of compensation

unit means the amount represented by the basic salary.

66. Declaration of basic salary

- (1) Before the start of each year beginning 1 January the Minister shall publish in the *Gazette* a notice stating the basic salary for that year.
- (2) A failure by the Minister to publish a notice under subsection (1) before the start of a year beginning 1 January does not affect the basic salary for that year.

67. Amount of compensation in case of death

- (1) Where a worker dies as a result of an injury suffered by him or her and in respect of which his or her employer is liable to pay compensation under this Act, the compensation payable under this Act is a lump sum not exceeding 415 units, together with any weekly payment payable under section 67A.
- (2) Where a deceased worker leaves –
 - (a) a wholly dependent spouse or wholly dependent caring partner and paragraph (ab) does not apply, the lump sum referred to in subsection (1) is to be 415 units to be paid to the spouse or partner; or
 - (ab) a wholly dependent spouse (or wholly dependent caring partner) and one or more children, who are not children of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 67

the spouse or partner and each of whom is wholly or partially dependent, the lump sum is to be an amount calculated in accordance with subsection (3) to be paid to each such spouse, caring partner or child according to the level of his or her dependency; or

- (b) a partially dependent spouse or partially dependent caring partner and no dependent children, the lump sum is to be an amount calculated in accordance with subsection (3) to be paid to the spouse or partner; or
- (ba) a partially dependent spouse (or partially dependent caring partner) and one or more children, each of whom is wholly or partially dependent, the lump sum is to be an amount calculated in accordance with subsection (3) to be paid to each such spouse, caring partner or child according to the level of his or her dependency; or
- (c) no dependent spouse or dependent caring partner and a wholly dependent child or wholly dependent children, the lump sum referred to in subsection (1) is to be 415 units to be paid to the child or divided equally between the children; or
- (d) no dependent spouse or dependent caring partner and a partially dependent child or children, the lump sum is to be an amount calculated in accordance with

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 67A

Part VI – Amount of compensation

subsection (3) to be paid to each such child according to the level of his or her dependency.

- (3) A lump sum calculated in accordance with this subsection is to be such amount, not exceeding 415 units, as is reasonable and proportionate to the degree of dependency of the dependant.
- (4) Where a deceased worker leaves no dependants, but was, immediately before that date, contributing towards the maintenance of the home of the members of his or her family, those members are taken to be dependants of the worker in part dependent upon the worker, and the provisions of subsection (3) apply to, and in respect of, those members accordingly.
- (5) An amount paid or payable before the death of a worker as weekly payments in respect of his or her total or partial incapacity for work resulting from the injury suffered by him or her is not to be taken into consideration in calculating the amount of compensation payable under this section upon the worker's death.
- (6) A claim for a lump sum under this section is to be made in accordance with section 34.

67A. Weekly payments in case of death

- (1) In addition to any lump sum payable under section 67 –
 - (a) a spouse or caring partner of a deceased worker who is wholly or partially

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 67A

- dependent on that worker, is entitled to weekly payments from the date of the worker's death, calculated at the same rate as the deceased worker would have been entitled to had he or she become totally incapacitated; and
- (b) a dependent child of the deceased worker is entitled to weekly payments of 15% of the basic salary, commencing on the expiration of 13 weeks after the date of death.
- (2) The amount payable under subsection (1)(a) is to be paid as follows:
- (a) 100% of the weekly payment for the first 26 weeks following the date of death;
 - (b) 90% of the weekly payment for the period exceeding 26 weeks but not exceeding 78 weeks from the date of death;
 - (c) 80% of the weekly payment for the period exceeding 78 weeks but not exceeding 2 years from the date of death.
- (3) If a worker dies, as a result of injuries in respect of which he or she is receiving compensation under this Act, more than 78 weeks after receiving those injuries, his or her dependent spouse or dependent caring partner is entitled to 80% of the weekly payment.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 67B

Part VI – Amount of compensation

- (4) A spouse or caring partner ceases to be entitled to weekly payments under subsection (3) on the expiration of 2 years after the date of death.
- (5) A claim for weekly payments under this section is to be made in accordance with section 34.

67B. Commencement of weekly payments to dependants

- (1) Where an employer receives a claim for weekly payments under section 67A(1)(a) and the deceased worker's first pay day after receipt of that claim –
 - (a) would have been not later than 14 days after receipt of that claim, the employer must –
 - (i) if it is reasonably practicable to do so, commence making weekly payments to the worker's dependants on the first pay day; or
 - (ii) in any other case, commence making weekly payments to the worker's dependants not later than 14 days after receipt of that claim; or
 - (b) is later than 14 days after the receipt of that claim, the employer must commence making weekly payments of compensation to the worker's dependants on that pay day.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 67C

-
- (2) An employer who fails to comply with subsection (1) is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (3) Weekly payments payable under section 67A(1)(a) are payable –

- (a) from the date of death of the worker; or
- (b) 28 days prior to the date on which the claim was given to the employer –

whichever is the later.

- (4) Where an employer receives more than one claim for weekly payments under section 67A(1)(a), the amount of the weekly payment is to be divided equally among those claims unless the Tribunal determines otherwise.
- (5) In this section –

pay day means the day on which the deceased worker would have normally received salary or wages from his or her employer.

67C. Timing of weekly payments

- (1) Weekly payments payable to a dependent spouse or dependent caring partner of a deceased worker under this Act are payable on the days on which, and at the intervals at which, the worker

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 67D

Part VI – Amount of compensation

would normally have been paid salary or wages if the worker had continued in his or her employment.

- (2) Weekly payments payable to a dependent child under this Act are payable fortnightly, monthly or quarterly as may be agreed between the employer, the employer's insurer and the person to whom the payment is to be made.
- (3) An employer required to make weekly payments must do so in accordance with subsections (1) and (2).

Penalty: Fine not exceeding 10 penalty units.

67D. Payments in respect of dependent child

Where a child under the age of 18 is entitled to a weekly payment under section 67A(1)(b), that payment is payable to –

- (a) the parent of the child who has custody of him or her; or
- (b) if there is no such parent, the child's guardian; or
- (c) if there is no such parent or guardian, the person who has day-to-day care and control of the child and with whom the child is ordinarily resident.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 67E

67E. Payment not admission of liability in respect of death of worker

- (1) Where an employer who has received a claim for compensation (whether the employer has accepted liability or not) makes weekly payments under section 67B, those payments –
 - (a) are not, in any subsequent proceedings under this Act, to be construed as an admission of liability; and
 - (b) are to be taken to be in reduction of the amount of any liability of the employer in respect of the death of the worker; and
 - (c) subject to subsection (2), are not recoverable from a dependant of the worker by the employer; and
 - (d) are recoverable from the employer's insurer including any amount payable by the employer under section 97(1A) or (1B).
- (2) The Tribunal may order that an employer be entitled to recover from a dependant any weekly payments made by the employer to him or her if the Tribunal is satisfied that the dependant's claim for compensation was fraudulent.

67F. Dispute of liability in respect of death of worker

- (1) If an employer or its licensed insurer disputes liability to pay compensation by way of weekly payments under section 67A, the employer or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 67F

Part VI – Amount of compensation

licensed insurer must, within 28 days of receiving the claim for compensation in respect of the death of the worker –

- (a) serve the dependant or dependants of the deceased worker with written notice that the employer disputes liability to pay weekly payments under section 67A; and
 - (b) inform the dependants of the matters related to the claim that are disputed and the reasons for disputing liability; and
 - (c) refer the matter to the Tribunal.
- (2) Where a claim for compensation is referred to the Tribunal under subsection (1), the Tribunal is to determine whether a reasonably arguable case exists concerning the liability of the employer to pay weekly payments under section 67A.
- (3) In determining whether there is a reasonably arguable case concerning a claim for compensation under this Division, the Tribunal is to identify each of the matters relating to that claim that are in dispute, and in relation to each of those matters determine whether a reasonably arguable case exists.
- (4) Subject to subsection (7), in any proceedings in the Tribunal, the employer or the employer's insurer is prohibited from raising any issue that it did not raise in a dispute under this section.
- (5) The Tribunal must –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 67G

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- (a) if the Tribunal considers that weekly payments should be made, order the employer to make weekly payments from such date as the Tribunal determines; or
 - (b) if the Tribunal considers that a reasonably arguable case exists concerning the liability of the employer to pay compensation by way of weekly payments to a dependant of the deceased worker, determine that compensation is not to be paid by the employer to that dependant.
- (6) The fact that the Tribunal has determined under subsection (5) that weekly payments should be made is not to be taken into account by the Tribunal in any other proceedings under this Act.
- (7) Notwithstanding that liability has not been disputed under subsection (1), an employer who wishes to dispute liability to continue to pay compensation by way of weekly payments under section 67A may, at any time after the period referred to in subsection (1), refer the matter to the Tribunal.

67G. Failure to dispute liability in respect of death of worker

Where an employer has received a claim for compensation in relation to the death of a worker employed by the employer and the employer does not, in accordance with section 67F(1), dispute liability to pay compensation to a dependant of the deceased worker, the employer

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 68

Part VI – Amount of compensation

is taken to have accepted liability in respect of that claim including –

- (a) entitlement to compensation under section 25; and
- (b) dependency or a degree of dependency; and
- (c) entitlement to weekly payments of compensation or lump sum compensation.

68. Dependency questions and apportionment

- (1) In default of agreement as to who are the dependants of a deceased worker or the amount to be paid to each dependant –
 - (a) a dependant, or a person on behalf of a dependant, or a person claiming to be a dependant, of the deceased worker;
 - (b) the employer of the deceased worker; or
 - (c) the licensed insurer of the employer –

may refer the matter to the Tribunal for determination as to who are the dependants of the deceased worker or the amount to be paid to each dependant.

- (2) Where, upon hearing the matter referred to it under subsection (1), the Tribunal is satisfied that a deceased worker has left either total or partial dependants or both total and partial dependants, the Tribunal may determine that the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 68A

compensation payable under this Act in respect of the deceased worker shall be apportioned, in accordance with the provisions of the determination –

- (a) partly between the total dependants;
- (b) partly between the partial dependants; or
- (c) partly between both the total and partial dependants.

68A.

69. Amount of compensation in case of incapacity

(1) Subject to this section, where total or partial incapacity for work results from an injury suffered by a worker and where the existence of such total or partial incapacity is supported by a certificate in a form approved by the Board signed by a medical practitioner or accredited person, the compensation payable to him under this Act is–

- (a) in the case of the total incapacity of the worker for work, weekly payments equal to–
 - (i) the normal weekly earnings of the worker; or
 - (ii) the ordinary time rate of pay of the worker for the work in which, and for the hours during which,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 69

Part VI – Amount of compensation

the worker was engaged
immediately before the period of
incapacity–

whichever is the greater; or

- (b) in the case of the partial incapacity of the worker for work, weekly payments for the period of that incapacity equal to the difference between the worker's weekly payment calculated in accordance with paragraph (a) and the amount that the worker is earning or would be able to earn in suitable employment or business during that period of incapacity.
- (2) For the purposes of this section, if the period of employment is 14 days or less, the normal weekly earnings of the worker before the commencement of the period of incapacity are to be taken to be –
- (a) equivalent to the normal weekly earnings of another worker who is employed by the same employer and performing comparable work; or
 - (b) if there is no such other worker, the worker's expected weekly salary calculated on the hourly rate of pay for the work that he or she agreed, or was rostered, to perform in the pay period in which the incapacity occurred.
- (2A) For the purposes of subsection (2)(b), the hourly rate of pay of a worker is –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 69

- (a) the rate to which the worker is entitled under the worker's contract of employment or industrial instrument, for each of his or her hours of work, excluding overtime and shift or other allowances; or
 - (b) if a rate cannot be determined under the worker's contract of employment or industrial instrument, the rate for each of those hours as previously agreed between the worker and the employer.
- (3) If, during the period of incapacity of a worker, the ordinary hourly rate of pay for the work in which, and for the hours during which, the worker was engaged immediately before the commencement of that period increases or decreases in accordance with the worker's entitlement under the worker's contract of employment or industrial instrument, the weekly payment to which the worker is entitled is to be increased or decreased by the like amount.
- (4) The foregoing provisions of this section have effect subject to the following provisions of this subsection:
- (a) in fixing the amount of the weekly payment to a worker under this section, regard shall be had to any payment, allowance, or benefit that the worker may receive in respect of his or her employment during the period of his or her incapacity, not being a payment, allowance, or benefit paid in respect of a

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 69

Part VI – Amount of compensation

period of long service leave or of any entitlement to long service leave or in lieu of the taking of a period of long service leave;

- (b) when the question of the amount that a worker is earning or would be able to earn arises, if it appears to the Tribunal that, because of the injury that the worker has suffered (including the physical disfigurement of the worker) he is, or will be, unable to obtain employment or to remain in reasonably regular employment, the Tribunal may decide that the worker is incapacitated by the injury, either totally or partially and either permanently or temporarily, as the circumstances of the case require, and, on the Tribunal so deciding, compensation is payable to the worker in accordance with this Division;
- (c) where a worker –
 - (i) has so far recovered from an injury suffered by him as to be fit for employment (but only for employment of a more limited kind than the employment in which he was engaged before the date when he suffered the injury); and
 - (ii) satisfies the Tribunal that he has taken all reasonable steps to obtain, and has failed to obtain,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 69

employment of a kind referred to in subparagraph (i), and that his failure to obtain that employment is a consequence wholly or mainly of the injury (including the physical disfigurement) of the worker –

the Tribunal may, notwithstanding any other provision of this Act or any earlier determination of the Tribunal under this Act, or any order, award, determination, or decision made by a judge under the repealed Act, in respect of that worker, determine that his incapacity shall continue to be treated as total incapacity for such period and subject to such conditions as the Tribunal thinks fit and, on the making of the determination, compensation is payable to the worker in accordance with this Division.

(d)

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

(6 - 7)

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 69

Part VI – Amount of compensation

- (8) If of the opinion that an amount of weekly payments calculated in accordance with this section is insufficient or excessive, a worker, an employer or a licensed insurer of the employer may refer the matter to the Tribunal.
- (9) The Tribunal, in relation to a matter referred to it under subsection (8), is to determine the amount of weekly payments which appears to it to be reasonable and appropriate in the circumstances, having regard to –
- (a) the current weekly earnings of another worker of the same grade or classification as the worker and employed by the same employer in similar work to the worker; and
 - (b) the earnings that the worker might reasonably have earned during the period of incapacity; and
 - (c) any other relevant matter.
- (10) In determining the amount of weekly payments under subsection (9), the Tribunal shall have regard to the principle that a worker should not receive, during a period of incapacity, weekly payments greater than the payments the worker would have received if he had worked in his usual employment during that period.
- (11) The amount of weekly payments determined by the Tribunal under subsection (9) shall be the amount of weekly payments payable to the worker notwithstanding that it may be a greater

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 69

or lesser amount than the compensation otherwise payable under this section.

- (12) Where the weekly payments determined by the Tribunal under subsection (9) involve a reduction in the amount of weekly payments being made to a worker, the Tribunal shall determine the date from which that reduction is to take effect, being a date that is not earlier than the date of the determination of the Tribunal.
- (13) If the period specified in a medical certificate provided by a worker under this section expires and the worker provides a further certificate more than 14 days after the expiration of that specified period, the employer, on receipt of the subsequent certificate, may treat that certificate as a claim for compensation to which section 81A applies.
- (14) In this section –
- normal weekly earnings*, in relation to a worker who is incapacitated for work, means the average weekly earnings of the worker during the relevant period;
- relevant period* means –
- (a) if the worker has been continuously employed by the same employer for 12 months or more, the 12 months immediately before the commencement of the period of incapacity; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 69A

Part VI – Amount of compensation

- (b) if the worker has been continuously employed by the same employer for less than 12 months, the period for which he or she was employed before the commencement of the period of incapacity.

69A. Operation of section 69

Section 69(1)(a)(ii) (as amended by the *Workers Rehabilitation and Compensation Reform Act 1995*) is to be taken to have applied in respect of injuries suffered by a worker before or after the commencement of that Act.

69B. Period for which benefits are payable

- (1) The weekly payment determined under section 69 is to be payable as follows:
 - (a) 100% of the weekly payment for the first 26 weeks of the period of incapacity following the date of the initial incapacity;
 - (b) 90% (or, if subsection (2) applies to the worker, 95%) of the weekly payment for the period of incapacity exceeding 26 weeks but not exceeding 78 weeks from the date of the initial incapacity;
 - (c) 80% (or, if subsection (2) applies to the worker, 85%) of the weekly payment for

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 69B

the period of incapacity exceeding 78 weeks but not exceeding –

- (i) 9 years from the date of the initial incapacity, if the worker's permanent impairment (if any), at a percentage of the whole person, is less than 15% or is not assessed; or
 - (ii) 12 years from the date of the initial incapacity, if the worker's permanent impairment, assessed at a percentage of the whole person, is 15% or more but less than 20%; or
 - (iii) 20 years from the date of the initial incapacity, if the worker's permanent impairment, assessed at a percentage of the whole person, is 20% or more but less than 30%; or
 - (iv) the period extending from the date of the initial incapacity to the day on which the entitlement of the worker ceases in accordance with section 87, if the worker's permanent impairment, assessed at a percentage of the whole person, is 30% or more.
- (2) For the purposes of paragraphs (b) and (c) of subsection (1), this subsection applies to a worker in respect of each week or part of a

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 69B

Part VI – Amount of compensation

week, within the period referred to in those paragraphs, in respect of which –

- (a) there is medical evidence that the worker is unable to perform the worker's usual duties with the employer; and
 - (b) there is medical evidence that the worker is able to return to perform suitable alternative duties with the employer; and
 - (c) the employer does not enable the worker to undertake suitable alternative duties as part of the worker's employment by the employer.
- (2A) Despite subsection (1), a weekly payment is not reduced by a percentage specified in subsection (1)(b) or (c) in respect of any week in which the worker engages in work, for 50% or more of the worker's normal weekly hours, under the worker's approved return-to-work plan, or approved injury management plan, within the meaning of Part XI.
- (2B) For the purposes of subsection (2A), if the worker was employed by the employer for more than 14 days before the date of the worker's initial incapacity, the worker's normal weekly hours are the average number of hours per week for which the worker was employed by the employer.
- (2C) For the purposes of subsection (2A), if the worker was employed by the employer for 14 days or less before the date of the initial

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 69B

incapacity, the normal weekly hours of the worker are taken to be the hours per week –

- (a) for which the worker agreed to work in the pay period in which the worker's incapacity arose; or
- (b) for which the worker was rostered to perform work in the pay period in which the worker's incapacity arose –

whichever is the higher.

(2D) In computing the normal weekly hours of the worker for the purposes of subsections (2B) and (2C), any overtime or excess hours are to be disregarded unless –

- (a) the overtime or excess hours were a requirement of the worker's contract of employment; and
- (b) the worker worked overtime or excess hours in accordance with a regular and established pattern and in accordance with a roster; and
- (c) the pattern was substantially uniform as to the number of overtime or excess hours worked; and
- (d) the worker would have continued to work overtime or excess hours in accordance with the established pattern if the worker had not been incapacitated.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 69B

Part VI – Amount of compensation

- (2DA) Despite subsection (1), a weekly payment in respect of a worker who is a police officer is not reduced by a percentage specified in subsection (1)(b) or (c) if, had the person not been a police officer, it is unlikely that the person would have been in the circumstances as a result of which the injury was suffered.
- (2E) Subject to section 87, a worker –
- (a) to whom subsection (1)(c)(i) applies ceases to be entitled to weekly payments under section 69 on the expiration of 9 years after the date of the initial incapacity; and
 - (b) to whom subsection (1)(c)(ii) applies ceases to be entitled to weekly payments under section 69 on the expiration of 12 years after the date of the initial incapacity; and
 - (c) to whom subsection (1)(c)(iii) applies ceases to be entitled to weekly payments under section 69 on the expiration of 20 years after the date of the initial incapacity; and
 - (d) to whom subsection (1)(c)(iv) applies ceases to be entitled to weekly payments under section 69 on the expiration of the day on which the entitlement of the worker ceases in accordance with section 87.
- (3) An amount payable under subsection (1)(b) or (c), when taken together with a worker's

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 69B

earnings, is not to be less than 70% of the basic salary or the weekly payment determined under section 69, whichever is the lesser.

- (4) For the purposes of subsection (3), the entitlement of a worker who, at the time of injury was working on a part-time or casual basis, is to be calculated as if the basic salary were an amount which bears the same proportion to the actual basic salary as the number of hours during which the worker was engaged immediately before the period of incapacity bore to full-time employment.
- (5) The amendments to subsections (1) and (2) effected by the *Workers Rehabilitation and Compensation Amendment Act 2004* apply to all claims for compensation relating to periods of incapacity after the commencement of that Act with respect to injuries occurring on or after 1 July 2001.
- (6) In this section –

period of incapacity means –

- (a) a period of incapacity for work, whether partial incapacity, total incapacity or a combination of partial incapacity and total incapacity, starting on the date of the initial incapacity; and
- (b) in the case of separate periods of incapacity for work resulting from the same injury, the aggregate of those periods.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 70

Part VI – Amount of compensation

70. Computation of normal weekly earnings

- (1) For the purposes of section 69, a reference to the normal weekly earnings of a worker shall be construed as a reference to the normal weekly earnings of the worker as determined by subsection (2).
- (2) The normal weekly earnings of a worker shall be determined in accordance with the following provisions:
 - (a) in computing normal weekly earnings, regard is to be had to the principle that, subject to this Act, a worker should receive no more than the worker would have received if the worker had continued in the worker's usual employment;
 - (ab) in computing normal weekly earnings, any component of the worker's earnings attributed to overtime or excess hours is to be disregarded unless –
 - (i) the overtime or excess hours was or were a requirement of the worker's contract of employment; and
 - (ii) the worker worked overtime or excess hours in accordance with a regular and established pattern and in accordance with a roster; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 70

- (iii) the pattern was substantially uniform as to the number of overtime or excess hours worked; and
 - (iv) the worker would have continued to work overtime or excess hours in accordance with the established pattern if the worker had not been incapacitated;
- (ac) in computing normal weekly earnings, any amounts paid to the worker at the discretion of the worker's employer by way of bonus, gratuity or other similar payment is to be excluded;
- (b) where, at the commencement of the period of incapacity, the worker has contracts of service with 2 or more employers, his or her normal weekly earnings are to be computed as the sum of the average weekly earnings in each employment as if his or her earnings under both or all of those contracts were earnings in the employment of the employer for whom he or she was working at the commencement of the period of incapacity;
- (c)
- (d) where one of the contracts referred to in paragraph (b) is a full-time contract of service, the normal weekly earnings of the worker shall be computed by

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 70

Part VI – Amount of compensation

reference only to the full-time contract of service;

(e)

(f) where the employer has been accustomed to pay to the worker a 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;

(fa) where the worker has been entitled to receive payment or allowances to cover the cost of expenses incurred in relation to travel, meals and accommodation during the worker's employment, such payment or allowances are not to be included as part of the earnings;

(g) 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, that statement is evidence that that amount was the earnings of the worker during that period.

(3) For the purposes of this section, *excess hours* means hours worked in addition to the minimum guaranteed contracted hours prescribed in an award, industrial agreement or enterprise agreement which applies to the worker or the worker's contract of employment.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 71

71. Compensation for permanent impairment

(1) In addition to any other compensation payable under this Act, the amount of compensation payable under this section to a worker who suffers permanent impairment resulting from an injury which entitles the worker to compensation under this Act is to be calculated as at the date of the injury as follows:

(a) subject to paragraph (d), a worker who suffers permanent impairment assessed at a percentage of the whole person of less than 5% is not entitled to compensation under this section;

(b) a worker who suffers permanent impairment assessed at a percentage of the whole person of between 5% and 70%, inclusive, is entitled to compensation calculated in accordance with the following formula:

$$\{18 + [6.1 \times (WPI - 5)]\} \times BS$$

where –

WPI is the percentage of whole person impairment;

BS is the basic salary;

(c) a worker who suffers permanent impairment assessed at a percentage of the whole person equal to more than 70% is entitled to compensation of 415 units;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 71

Part VI – Amount of compensation

- (d) a worker who suffers permanent impairment in the form of the loss of part, or all, of a finger or toe and that impairment is assessed at a percentage of the whole person of less than 5%, the worker is entitled to compensation calculated in accordance with the following formula:

$$3.2 \times BS \times WPI$$

where –

WPI is the percentage of whole person impairment;

BS is the basic salary.

- (2) The amount of compensation payable under this section to a worker who suffers permanent psychiatric impairment which entitles the worker to compensation under this Act is to be calculated as at the date of the injury as follows:
- (a) a worker who suffers permanent psychiatric impairment assessed at a percentage of the whole person of less than 10% is not entitled to compensation under this section;
- (b) a worker who suffers permanent psychiatric impairment assessed at a percentage of the whole person of between 10% and 70%, inclusive, is entitled to compensation calculated in accordance with the following formula:

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 71A

$$\{18 + [6.1 \times (WPI - 5)]\} \times BS$$

where –

WPI is the percentage of whole person impairment;

BS is the basic salary;

- (c) a worker who suffers permanent psychiatric impairment assessed at a percentage of the whole person equal to more than 70% is entitled to compensation of 415 units.
- (3) For the purposes of this section and section 138AB(4), a worker who suffers an injury resulting in, or consisting in whole or in part of, the loss of a foetus that the worker has carried for at least 16 weeks since conception is to be taken to have suffered a permanent impairment, in relation to that loss, that has been assessed at a percentage of the whole person equal to 20%.
- (4) The degree of impairment of a person for the purposes of subsection (3) and section 138AB(4) in respect of a workplace injury is in addition to any other degree of impairment that the person may be assessed to have suffered as a result of the injury.

71A. Assessment guidelines

- (1) The Board may issue guidelines in relation to the assessment of the degree of impairment.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 71A

Part VI – Amount of compensation

- (2) The Board must give notice in the *Gazette* of –
 - (a) the issuing of guidelines under subsection (1); and
 - (b) the place, which may be an internet address, where copies of the guidelines may be viewed or purchased.
- (3) Guidelines issued by the Board under subsection (1) come into effect on and from –
 - (a) the day on which notice of the issuing of the guidelines is published in the *Gazette* under subsection (2); or
 - (b) a later day specified in the notice.
- (4) Subject to subsection (6), on and from the day on which guidelines issued by the Board under subsection (1) come into effect, until such guidelines are revoked, the guidelines have effect for the purposes of determining how an assessment of the degree of impairment of an injury is to be made, whether the injury occurs before or after the guidelines come into effect.
- (5) The Board may amend or revoke guidelines issued by the Board under subsection (1).
- (6) On and from the day on which an amendment under subsection (5) to guidelines issued by the Board under subsection (1) comes into effect, until such guidelines are revoked or further amended under this section, the guidelines, as so amended, have effect for the purposes of determining how an assessment of the degree of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 72

impairment of an injury is to be made, whether the injury occurs before or after the guidelines come into effect or are so amended.

- (7) The Board must give notice in the *Gazette* of the amendment or revocation under subsection (5) of guidelines under subsection (1).
- (8) A notice under subsection (7) of the amendment of guidelines must specify a place, which may be an internet address, where copies of the guidelines, as amended by the amendment, may be viewed or purchased.
- (9) A notice under subsection (2) or (7) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (10) The Board must ensure that copies of guidelines that are issued under subsection (1), as those guidelines are amended if at all under subsection (5), are, while they are in effect, available for purchasing or viewing at a place, which may be an internet address, of which notice has been given in the *Gazette*.
- (11) Guidelines to which section 164C applies are to be taken to be guidelines issued under this section until they are revoked, if at all, under subsection (5).

72. Assessment of degree of impairment

- (1) An assessment of a degree of impairment is to be undertaken by an accredited medical practitioner in accordance with –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 72

Part VI – Amount of compensation

- (a) any relevant guidelines, issued under section 71A, as in effect on the date on which the assessment is made; or
 - (b) if there are no such guidelines, the AMA Guides as in effect on the date on which the assessment is made; or
 - (c) if there are no such guidelines and the AMA Guides are not applicable or are unsuitable, any method as may be prescribed.
- (2) In assessing a degree of impairment of an injury –
- (a) regard is not to be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, the physical injury; and
 - (b) the degree may comprise a combination of impairments arising out of the same incident or occurring on the same date assessed together using the combination tables in the AMA Guides; and
 - (c) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed separately; and
 - (d) an impairment arising otherwise than from the injury is not to be taken into account in assessing the degree of the impairment resulting from the injury.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 72A

- (3) If an assessment of a degree of impairment of a person is, at any time, validly made under this section in accordance with guidelines or a method prescribed for the purposes of subsection (1), as the case may be –
- (a) the assessment is not to be taken to be invalid by reason only that the guidelines, or the prescribed method, have or has ceased to be in effect or have or has subsequently been amended; but
 - (b) the assessment ceases to apply in relation to the person on and from the day on which a subsequent assessment of the person is made under this section in accordance with guidelines, or a method prescribed for the purposes of subsection (1), as amended if at all, that is or are in force on the day on which the subsequent assessment is made.

72A. Industrial deafness

- (1) A worker who has industrial deafness is a person who has suffered an injury within the meaning of this Act, notwithstanding that the worker has not become totally or partially incapacitated.
- (2) A worker is entitled to compensation under this Act in respect of industrial deafness which occurred after the commencement of the *Workers Rehabilitation and Compensation Reform Act 1995*.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 73

Part VI – Amount of compensation

- (3) A worker is entitled to compensation for permanent impairment under this Act in respect of industrial deafness which exceeds 5% binaural hearing impairment.
- (4) For the purposes of subsection (3) –
 - (a) the binaural hearing impairment is to be calculated by reference to the worker's hearing ability at the commencement of the *Workers Rehabilitation and Compensation Reform Act 1995*; and
 - (b) a worker's hearing loss is taken to have been sustained at a constant rate over the course of the worker's exposure to workplace noise in employment of a nature likely to have caused industrial deafness unless a hearing test that has been conducted since 16 August 1995, in accordance with the regulations, establishes otherwise.
- (5) The amount of compensation payable under this Part to a worker who suffers permanent impairment in respect of industrial deafness is to be calculated in accordance with section 71(1).

73. Computation of industrial deafness

- (1) The degree of a worker's industrial deafness is to be measured according to the worker's binaural hearing impairment.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 73

- (2) The degree of a worker's industrial deafness is not to include the percentage of deafness as is shown –
 - (a) to have arisen otherwise than from industrial deafness; or
 - (b) subject to section 27, to have been contracted outside this State; or
 - (c) to be a condition in respect of which compensation has been awarded or paid under this Act or under a law of another State or of the Commonwealth or a Territory of the Commonwealth.
- (3) A worker's binaural hearing impairment is to be determined by the prescribed class of persons in accordance with the Improved Procedure for Determining Percentage Loss of Hearing, NAL Report No. 118 Commonwealth of Australia, 1988 (NAL Tables), as amended, or any similar report or other document as may be prescribed.
- (4) The percentage of binaural hearing impairment is to be converted to a percentage of whole person impairment using the prescribed table.
- (5) The regulations may prescribe the manner in which any determination or assessment under this section is required to be made and the persons or class of persons able to make such a determination or assessment.
- (6 - 9)

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 73A

Part VI – Amount of compensation

73A. Date of industrial deafness

Notwithstanding section 3(5), in respect of a claim for compensation for industrial deafness the date of injury is –

- (a) the last day of the worker's employment out of which, or in the course of which, the deafness arose; or
- (b) if the worker is still in that employment, the date the claim is made.

73B. Determination for payment of compensation

- (1) A determination for the payment of compensation for a claim for permanent impairment or industrial deafness is to include a statement of the percentage of the whole person impairment of the worker at the date of the determination.
- (2) A person who makes a payment of compensation for a claim for permanent impairment or industrial deafness is to advise the Board of –
 - (a) the date of the determination; and
 - (b) in the case of a payment for industrial deafness, the degree of industrial deafness of the worker in respect of whom the payment is made; and
 - (c) the percentage of the whole person impairment of the worker at the date of the determination.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 74

- (3) The Board is to keep a register of all determinations for the payment of compensation for permanent impairment or industrial deafness.

Division 2 – Medical and Other Services

74. Interpretation of Division 2 of Part VI

In this Division, unless the contrary intention appears –

ambulance services means the conveyance of a worker by any practicable means to the nearest suitable hospital or rehabilitation centre or other place for the purpose of his receiving medical, hospital, or rehabilitation services, or to his place of residence after receiving or seeking any of those services;

chiropractor means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the chiropractic profession;

constant attendance services means the services of a person, other than a member of the family of the worker, where the injury suffered by a worker is of such a nature that he must have the regular or constant personal attendance of another person but does not include hospital services or nursing services;

dentist means a person registered under the Health Practitioner Regulation National

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 74

Part VI – Amount of compensation

Law (Tasmania) in the dental profession
as a dentist;

hospital services means –

- (a) maintenance, attendance, and treatment at a public or private hospital; or
- (b) the provision or supply by such a hospital of –
 - (i) medical attendance or medical treatment;
 - (ii) nursing attendance;
 - (iii) medicines, medical or surgical supplies, or other curative supplies or apparatus; or
 - (iv) other usual or necessary hospital services;

household services means a service provided to a worker, other than by a member of the family of the worker, that is a service –

- (a) of a domestic nature, including, but not limited to, cooking, cleaning, and laundry or gardening services; and
- (b) required for the proper running and maintenance of the worker's residential premises;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 74

medical services means –

- (a) attendance, examination, or treatment of any kind by, or under the supervision of, a medical practitioner, chiropractor, dentist, optometrist, osteopath, physiotherapist, podiatrist or psychologist;
- (b) the provision, maintenance, repair, adjustment, or replacement of artificial limbs, eyes or teeth, crutches, splints, spectacles, and other medical and surgical aids and curative appliances or apparatus;
- (c) the repair or replacement of artificial limbs, eyes or teeth, crutches, splints, spectacles or other medical or surgical aids or curative appliances or apparatus destroyed or damaged at the time of an injury;
- (d) the provision by a pharmacist of medicines or materials; or
- (e) any examination, test, or analysis carried out on, or in relation to, a worker at the request or direction of a medical practitioner, chiropractor, dentist, optometrist, osteopath, physiotherapist, or podiatrist and the provision of a

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 74

Part VI – Amount of compensation

report or certificate in respect of
such an examination, test, or
analysis;

nurse means a registered nurse or an enrolled nurse;

nursing services means nursing services rendered by a nurse otherwise than at a hospital or as a member of the nursing staff of a hospital;

optometrist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the optometry profession;

osteopath means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the osteopathy profession;

physiotherapist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the physiotherapy profession;

podiatrist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the podiatry profession;

psychologist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the psychology profession;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 75

rehabilitation services means –

- (a) treatment, training, or other assistance provided to facilitate or assist a worker’s rehabilitation;
- (b) the supply of material or equipment in respect of any occupational therapy projects undertaken by a worker; or
- (ba) advice in relation to job-seeking or advice or assistance in arranging vocational re-education or vocational training; or
- (c) any necessary and reasonable modifications required to be made to a worker’s workplace, place of residence, or motor vehicle –

and includes workplace rehabilitation services;

road accident rescue services means services provided for the purpose of extricating a worker from a vehicle in which the worker has been injured.

75. Additional compensation for medical and other services

- (1AA) Subsection (1) applies to an employer of a worker if –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 75

Part VI – Amount of compensation

- (a) the employer has accepted, or is to be taken under section 81AB to have accepted, liability to pay compensation in accordance with this Act for an injury to the worker; or
 - (b) the employer has been determined by the Tribunal or a court to be liable to pay compensation in accordance with this Act for an injury to the worker; or
 - (c) section 77AB applies to the worker.
- (1) If this subsection applies to an employer of a worker, the employer is, subject to this section, liable to pay as compensation to the worker or his dependants–
- (a) the reasonable expenses necessarily incurred by the worker as a result of his injury for medical services, hospital services, nursing services, constant attendance services, rehabilitation services, household services, road accident rescue services and ambulance services; and
 - (b) if the worker dies as a result of the worker's injury –
 - (i) the reasonable expenses, not being more than the amount prescribed by regulations, of the worker's burial or cremation; and
 - (ii) the reasonable costs of counselling services provided to

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 75

members of the family by counselling professionals, up to a total amount of all such costs that is not more than the amount prescribed by regulations.

- (2) If a worker was entitled to weekly payments in respect of an injury, the worker's entitlement to compensation under subsection (1)(a) for a service in relation to the injury ceases 52 weeks after the lawful termination of the weekly payments, unless the Tribunal makes a determination in relation to the service under subsection (2AB).
- (2AA) If a worker is not entitled to weekly payments in respect of an injury in relation to which a claim for compensation has been made, the worker's entitlement to compensation under subsection (1)(a) for a service in relation to the injury ceases 52 weeks after the date the claim is made, unless the Tribunal makes a determination in relation to the service under subsection (2AB).
- (2AB) If a worker's entitlement to compensation for an expense, referred to in subsection (1)(a), for a service provided to the worker has ceased in accordance with subsection (2) or (2AA), the Tribunal may order that, despite those subsections, the worker is entitled to compensation for –
- (a) the expense; or
 - (b) expenses for services, specified in the determination, that are services referred

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 75

Part VI – Amount of compensation

to in subsection (1)(a) that have been or may be provided to a worker.

(2AC) The Tribunal may only make a determination under subsection (2AB) in relation to a service provided, or to be provided, to a worker, if –

- (a) the worker has returned to work and the worker requires surgery or cannot reasonably be expected to remain at work unless the service is provided; or
- (b) the service consists of, or relates to, a modification, replacement or maintenance of a prosthesis of the worker; or
- (c) the service is essential to ensure that the worker's health, or ability to undertake the necessary activities of daily life, does not significantly deteriorate.

(2A) A person who provides any services in respect of a claim for compensation under this Act must not charge a fee that is in excess of –

- (a) the prescribed fee; or
- (b) if no fee is prescribed, the fee that the person would normally charge (taking into account any discount that would normally be applicable) for that service if that service were provided for a matter not connected with a claim for compensation.

Penalty: Fine not exceeding 100 penalty units.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 75

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- (3) Where as a result of an injury suffered by a worker the question arises as to whether or not any constant attendance services or household services are required by the worker, the matter may be referred to the Tribunal by the worker, the employer of the worker, or the licensed insurer of the employer for determination as to—
- (a) the necessity for such services;
 - (b) the period for which such services are to be provided; and
 - (c) the level of payments which it considers to be reasonable and appropriate for such services.
- (4) An employer who is required by subsection (1) to pay expenses for a service referred to in paragraph (a) of that subsection or for the burial or cremation of a worker shall, to the extent provided in this section, pay those expenses to the person or body of persons who performed the service or carried out the burial or cremation.
- (5) Notwithstanding subsection (4), where an employer's liability to a person or body of persons under that subsection has already been discharged in whole or in part by a payment by the worker concerned or any other person, whether he is legally liable to make that payment or not, the employer shall, to the extent provided by this section, pay the amount by which the liability has been so discharged to the worker or, in the case of the worker's death, to his legal personal representatives or dependants, or to the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 75

Part VI – Amount of compensation

other person by whom the liability was so discharged, as the case requires.

- (6) Where a worker or his legal personal representatives 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 referred to in subsection (1)(a) or to the worker's burial or cremation free of charge or at a reduced rate of charge, the payment by the employer in respect of the expenses of that service, 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 who provided the service or performed the burial or cremation, the balance of the expenses shall, to the extent provided by this section, be paid to the worker or, as the case requires, to his legal personal representatives or dependants.
- (7) The compensation payable under this section is in addition to all other compensation payable under this Act to a worker or his dependants, and the fact that a worker is, or his dependants are, entitled to compensation under this section does not restrict the compensation payable to him or them under any other provision of this Act.
- (8) The payment of the reasonable expenses of any service, repair or replacement, or burial or cremation expenses pursuant to this section, whether by agreement or upon the determination of the Tribunal, discharges the worker, his legal personal representatives, his dependants, and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 75

every other person from liability in respect of the expenses of that service, repair or replacement, or burial or cremation.

(9) No action, claim, or demand shall be brought or allowed by or in favour of any person against a worker, or the legal personal representatives or dependants of a worker, for the payment or recovery of –

(a) any expenses that his employer is liable to pay pursuant to subsection (1); or

(b) the difference between the amount charged by a medical practitioner, in relation to medical treatment provided to or carried out on a worker for any injury in respect of which an employer is liable to pay compensation in accordance with this Act, and the amount of the fee mentioned in subsection (2) in respect of that treatment.

(10) In this section –

counselling professionals means –

(a) medical practitioners, registered psychologists or social workers;
or

(b) counsellors who are members of, or who have qualifications recognised by, the Australian Counselling Association;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 76

Part VI – Amount of compensation

counselling services means services provided to a person to assist the person to cope with the psychological impact of the death of a worker;

medical treatment, in relation to a worker, includes any attendance, examination, treatment, test or analysis provided to or carried out on the worker.

76. Additional compensation for travelling expenses

- (1) Where an employer of a worker is, under section 25, liable to pay compensation in accordance with this Act, the employer is liable to pay to the worker or his or her dependants the lesser of –
 - (a) the reasonable expenses necessarily incurred by the worker for travelling and maintenance in connection with all or any of the following purposes:
 - (i) to undergo any medical examination required under section 90A(2);
 - (ii) to obtain the medical services, hospital services or rehabilitation services in respect of which he or she is entitled to compensation under this Division; or
 - (b) such amount as may be prescribed.
- (2) In addition to paying the reasonable expenses incurred by a worker under subsection (1), his

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 76A

employer is liable to pay the reasonable expenses necessarily incurred by a person who attends the worker while he is travelling in connection with a purpose to which that subsection applies, but only if a medical practitioner certifies, in writing, that it is necessary in the circumstances that the worker be accompanied by some other person while he is travelling for that purpose.

- (3) If the reasonable expenses necessarily incurred—
- (a) by a worker for travelling and maintenance in connection with all or any of the purposes specified in subsection (1); or
 - (b) by a person who attends the worker while that person is travelling in connection with a purpose to which subsection (1) applies—

involves the use of a private motor vehicle, the amount payable for the use of that motor vehicle is to be calculated at the rate payable to an occasional user of a private motor vehicle under the Tasmanian State Service Award or any industrial award, agreement or determination that replaces that award.

76A. Account to be forwarded to employers and insurers

- (1) A worker who receives an account for payment of an expense under this Division for which the worker's employer is or may be liable to pay is to take reasonable steps to ensure that the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77

Part VI – Amount of compensation

account is forwarded to the employer within 7 days.

- (2) An employer who receives an account for payment of an expense under this Division for which the employer is or may be liable to pay is to take reasonable steps to ensure that within 7 days the account is forwarded to the employer's insurer.

77. Certain questions to be determined by Tribunal

Any question whether any claim under this Division is a proper claim, or as to the reasonableness of the amount of such a claim or the necessity for the medical services or rehabilitation services which are, or may become, the subject of the claim, may be referred by the worker, the employer of the worker, or the licensed insurer of the employer to the Tribunal for determination.

77AA. Employer to pay claim or refer it to Tribunal

- (1AA) Subsection (1) applies to an employer of a worker if –
- (a) the employer has accepted, or is to be taken under section 81AB to have accepted, liability to pay compensation in accordance with this Act for an injury to the worker; or
 - (b) the employer has been determined by the Tribunal or a court to be liable to pay

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77AA

compensation in accordance with this Act for an injury to the worker.

- (1) Within 28 days after receiving a claim for payment of an expense under this Division, an employer to whom this section applies –
 - (a) must pay the expense; or
 - (b) must –
 - (i) serve the worker with notice in writing disputing the claim; and
 - (ii) notify in writing the service provider who rendered the account that liability for the expense is disputed and outline the reasons why the employer disputes liability to pay the expense.

Penalty: Fine not exceeding 20 penalty units.

- (2) A notice disputing a claim is to –
 - (a) state that the employer disputes liability to pay the expense; and
 - (b) give the reasons why the employer disputes liability to pay the expense; and
 - (c) attach or identify with particularity such medical or other evidence as the employer relies on for disputing liability to pay the expense; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77AA

Part VI – Amount of compensation

- (d) inform the worker of his right, within 60 days from the date of service of the notice, to refer the matter to the Tribunal; and
 - (e) state whether the employer disputes –
 - (i) only the expense to which the claim relates; or
 - (ii) all expenses of a specified kind or incurred with an identified provider of medical, hospital, nursing, constant attendance, rehabilitation or ambulance services, or travelling and maintenance expenses related to the provision of such services; or
 - (iii) liability to pay expenses of any kind whatsoever claimed by the worker under Division 2 of Part VI.
- (3) Where an employer gives notice disputing expenses of a kind referred to in subsection (2)(e)(ii), the employer need not comply with this section in respect of any claim subsequently received from the worker for payment of an expense of the same kind, or incurred with the same provider, as identified in the notice, until the Tribunal has determined a matter referred to it by the worker in respect of the notified dispute.
- (4) Where an employer gives notice disputing expenses of a kind referred to in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77AB

subsection (2)(e)(iii), the employer need not comply with this section in respect of any claim subsequently received from the worker for payment of any expense under this Division until the Tribunal has determined a matter referred to it by the worker in respect of the notified dispute.

- (5) A worker who is served with notice of dispute may, within 60 days after the date of service, refer the matter to the Tribunal.
- (6) An employer who fails to give notice disputing a claim as required by this section is deemed to have accepted liability to pay the expense claimed by the worker.
- (7) In proceedings before the Tribunal, the onus of proving that the worker is not entitled to the payment of the disputed expense lies on the employer.

77AB. Employer's liability for expenses less than \$5 000 if liability not accepted or determined

- (1) This section applies to an employer of a worker who has made a claim for compensation if –
 - (a) either –
 - (i) the employer has not accepted, or is not to be taken under section 81AB to have accepted, liability to pay compensation for an injury to the worker; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77AB

Part VI – Amount of compensation

- (ii) the employer has not been determined by the Tribunal or a court to be liable to pay compensation for an injury to the worker; and
 - (b) the Tribunal has not made orders under either section 81A(3)(c) or (d) in relation to the injury to the worker; and
 - (c) the employer receives from an injured worker a claim for payment of an expense under this Division; and
 - (d) the amount of the expense, when combined with amounts for expenses under this Division that the employer has already paid in relation to the worker's injury, is not more than \$5 000.
- (2) If this section applies to an employer, the employer, within 28 days of receiving a claim for payment of an expense referred to in subsection (1)(c) –
- (a) must pay the expense; or
 - (b) if the employer is of the opinion that the expense is unreasonable or unnecessary, must –
 - (i) serve the worker with a notice specifying why the expense is unreasonable or unnecessary; and
 - (ii) notify in writing the service provider who rendered the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77AB

account that liability for the expense is disputed because the expense is unreasonable or unnecessary and give the reasons why the expense is unreasonable or unnecessary; and

(iii) refer the dispute to the Tribunal under this section.

- (3) If an employer pays an expense in accordance with subsection (2), the payment is not, in any subsequent proceedings under this Act, to be construed as an admission of liability.
- (4) If an employer who receives from a worker a claim for payment of an expense under this Division pays the expense under this section –
- (a) the payment is not recoverable from the worker by the employer, unless an order is made in relation to the amount under section 77AC(5); and
 - (b) the payment, except for the amount payable by the employer under section 97(1A) and (1B) and any amount that the employer is entitled to recover from the worker by virtue of an order under section 77AC(5), is recoverable by the employer from the employer's insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77AC

Part VI – Amount of compensation

77AC. Proceedings before Tribunal under section 77AB

- (1) The referral of a dispute to the Tribunal under section 77AB is to be accompanied by –
 - (a) the prescribed fee; and
 - (b) all evidentiary material on which the employer intends to rely at the hearing of the matter.
- (2) An employer who fails to lodge evidentiary material under subsection (1)(b) may not rely on that material unless the Tribunal otherwise allows.
- (3) The Tribunal must –
 - (a) if the Tribunal is not satisfied that it is reasonably arguable that an expense is unreasonable or unnecessary, order the employer to pay the expense; or
 - (b) if the Tribunal is satisfied that it is reasonably arguable that an expense, type of expense or any treatment is unreasonable or unnecessary, order that the employer is not liable to pay the expense, such expenses or such treatment.
- (4) If a dispute is referred to the Tribunal under section 77AB, the onus of proving that the expense is unreasonable or unnecessary lies on the employer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77A

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- (5) The Tribunal may order that an employer is entitled to recover from a worker a payment for an expense that the employer has paid as required by section 77AB, if the Tribunal is satisfied that the worker’s claim for payment of the expense was fraudulent.

Division 2A – Accreditation

77A. Provision of certain services

- (1) A medical practitioner must not, for the purposes of this Act, assess the degree of a person’s permanent impairment, unless the medical practitioner has been accredited by the Board to assess the degree of a worker’s permanent impairment.
- (2)
- (3) A person is not to provide a prescribed service in respect of an injury for which compensation is or may be payable under this Act unless the person belongs to a class of persons prescribed in relation to the prescribed service and that person has been accredited by the Board.
- (4) A person (in this section referred to as a “provider”) is not to provide workplace rehabilitation services to another person for the purposes of this Act (including by reason only of supplying to the other person the services of a person employed or engaged by the provider) unless the provider has been accredited by the Board as a workplace rehabilitation provider.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77B

Part VI – Amount of compensation

- (5) Subsection (4) does not apply to a person, employed or engaged by the provider, who provides services to another person on behalf of the provider, if the provider is accredited by the Board.

77B. Application for accreditation

- (1) A medical practitioner who wishes to be accredited to assess the degree of a worker's permanent impairment may apply to the Board for accreditation.
- (2) A person who wishes to provide a service referred to in section 77A(3) or (4) may apply to the Board for accreditation.
- (3) An application for accreditation is to be –
- (a) in a form approved by the Board; and
 - (b) accompanied by the prescribed fee (if any).

77C. Grant, &c., of accreditation

- (1) Subject to subsection (2), the Board may, by notice in writing served on –
- (a) a medical practitioner, grant, or refuse to grant, to the medical practitioner accreditation to assess the degree of a worker's permanent impairment; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77C

- (b) a person, grant, or refuse to grant, to the person accreditation as a workplace rehabilitation provider.
- (1A) The Board may grant accreditation to a person, whether the person is a natural person or a body corporate.
- (1B) The Board must determine, by instrument in writing, the Board's requirements for accreditation.
- (1C) The Board may, by instrument in writing, amend or revoke a determination under subsection (1B) of the Board's requirements for accreditation.
- (1D) The Board must give notice in the *Gazette* of –
 - (a) a determination under subsection (1B) or an amendment or revocation under subsection (1C); and
 - (b) the place, which may be an internet address, at which copies of the determination, amendment or revocation may be viewed, downloaded or purchased.
- (1E) A determination under subsection (1B) or an amendment or revocation under subsection (1C) comes into effect on and from –
 - (a) the day on which notice of the issuing of the determination, amendment or revocation is published in the *Gazette* under subsection (1D); or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77D

Part VI – Amount of compensation

- (b) a later day specified in the notice.
- (1F) The Board must ensure that copies of a determination under subsection (1B) or an amendment or revocation under subsection (1C) are, while the determination is in effect, available for purchasing or viewing at a place, which may be an internet address, of which notice has been given in the *Gazette*.
- (1G) A notice under subsection (1D) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (2) The Board is not to grant accreditation to a medical practitioner or person unless it is satisfied that the medical practitioner or person –
 - (a) has satisfied the Board’s requirements under subsection (1B); and
 - (ab)
 - (b) has agreed to comply with the relevant requirements of this Act and any relevant regulations, guidelines and rules of practice and procedure issued under this Act.
- (3) The Board may grant accreditation subject to the conditions or restrictions it thinks fit.

77D. Duration of accreditation

- (1) An accreditation comes into force on the day on which it is granted and remains in force until it is revoked or surrendered under this Act but is not

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77E

to be taken to be in force during any period in respect of which the accreditation is suspended.

- (2) A person who holds an accreditation may, by notice to the Board, surrender the accreditation.

77E. Notice of refusal

Where the Board refuses to grant accreditation it is to give to the medical practitioner or person, in writing, its reasons for so refusing.

77F. Revocation or suspension of accreditations

- (1) Subject to subsection (2), the Board may, by notice in writing served on an accredited medical practitioner or accredited person, revoke or suspend the accreditation of that medical practitioner or person if it is satisfied –
- (a) that the accredited medical practitioner or accredited person has failed to comply with any provision of this Act or of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* or of any regulations, guidelines or rules of practice and procedure made under this Act or that Act and the failure constitutes a substantial breach of the requirements of this Act, the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* or those regulations, guidelines or rules; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77F

Part VI – Amount of compensation

- (b) that the accredited medical practitioner or accredited person has been convicted of an offence against this Act or the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; or
 - (ba) that the accredited medical practitioner or accredited person has failed to comply with the principles set out in section 139(2); or
 - (c) that the accreditation should be revoked or suspended in the public interest.
- (2) Before the Board revokes or suspends the accreditation of a medical practitioner or person, it is to consult with such bodies as it considers represents the interests of that medical practitioner or person.
 - (3) A notice under subsection (1) is to be accompanied by a statement of the Board's reasons for revoking or suspending the accreditation.
 - (4) The revocation or suspension of an accreditation, subject to section 77G(3), takes effect on such date as the Board specifies in the notice, being a date not earlier than 14 days after the service of the notice on the accredited medical practitioner or accredited person.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77FA

77FA. Revocation of accreditation on ceasing to be registered

- (1) If an accredited medical practitioner ceases on a particular day to be entitled to practise as a medical practitioner in this State, his or her accreditation is revoked with effect from that day.
- (2) A person whose accreditation is revoked under subsection (1) may apply for accreditation if he or she subsequently becomes entitled to practise as a medical practitioner in this State.

77G. Appeals

- (1) A medical practitioner or person may appeal to the Tribunal if the medical practitioner or person is aggrieved by –
 - (a) the refusal of the Board to grant that medical practitioner or person accreditation; or
 - (b)
 - (c) the revocation or suspension by the Board of the accreditation held by that medical practitioner or person.
- (2) An appeal under this section is to be instituted within a period of 14 days from –
 - (a) in the case of an appeal against the refusal of the Board to grant accreditation, the service of a notice under section 77C(1); and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 77G

Part VI – Amount of compensation

- (b)
 - (c) in the case of an appeal against the revocation or suspension of an accreditation, the service of a notice under section 77F(1).
- (3) Where an appeal is brought under this section in respect of the revocation or suspension of an accreditation, the revocation or suspension does not have effect until the determination or abandonment of the appeal or until such later date as the Tribunal determines.
 - (4) On an appeal under this section, the Tribunal (unless it dismisses the appeal) may, by order, quash the decision of the Board and direct the Board to take such action as the Tribunal considers necessary in the matter to which the appeal relates.
 - (5) The Board is to comply with any order of the Tribunal under subsection (4).
 - (6) Subject to this section, an appeal under this section is to be instituted, heard and determined as prescribed.
 - (7) The decision of the Tribunal on the hearing of an appeal under this section is final, and, subject to section 136(1) of the *Tasmanian Civil and Administrative Tribunal Act 2020*, is not subject to appeal.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 77H

77H. Publication of grant of accreditation

Where an accreditation is granted or an accreditation is revoked or suspended the Board is to cause to be published in the *Gazette* notice of that fact.

Division 3 – Special provisions relating to the payment of compensation in respect of injuries contracted by gradual process

78. Injuries contracted by gradual process

- (1) Where an injury suffered by a worker is of such a nature as to be contracted by a gradual process, compensation is payable by –
 - (a) the employer in whose employment the worker was when the injury occurred, if the injury was due to the nature of his employment with that employer; or
 - (b) the employer who last employed the worker if the nature of the employment was likely to have given rise to that injury, in any other case.
- (2) Subject to subsection (2A), an employer who, at any time during the period of 3 years immediately preceding the day on which an injury referred to in subsection (1) occurred to a worker, employed the worker in any employment to the nature of which the injury was due is liable to pay compensation and must make to the relevant employer referred to in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 79

Part VI – Amount of compensation

subsection (1) such contribution as is agreed between the employers.

- (2A) Where a worker suffers industrial deafness, an employer who, at any time during the period of 10 years preceding the date of injury, employed the worker in any employment to the nature of which the injury was due is liable to pay compensation and must make to the relevant employer referred to in subsection (1) such contribution in respect of compensation for industrial deafness as is agreed between the employers.
- (3) Where the employers referred to in subsection (2) or subsection (2A) cannot agree as to the amount of contribution, any of the employers may refer the matter to the Tribunal for a determination as to the amount of contribution.

79. Information to be supplied

- (1) A worker referred to in subsection (1) of section 78 shall, on demand by an employer referred to in that subsection, furnish that employer with such information as is within his knowledge as to the name and address of any employer who may be liable, pursuant to subsection (2) or (2A) of that section, to make a contribution.
- (2) A worker to whom subsection (1) applies who fails to comply with that subsection is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VI – Amount of compensation

s. 80

80. Employer to whom notice to be given

The employer to whom notice of death of, or notice of injury to, a worker referred to in section 78(1) is to be given is the employer who last employed the worker in the employment to the nature of which the relevant disease was due, and the notice may be given notwithstanding that the worker has voluntarily left his employment.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 80A

Part VII – Payment of compensation and related matters

**PART VII – PAYMENT OF COMPENSATION AND
RELATED MATTERS**

*Division 1 – Provisions relating to weekly payments and
other benefits*

80A. Claim for compensation

For the purposes of this Division, a claim for compensation is a claim for compensation by a worker against an employer in respect of an injury for which the worker has not previously made a claim for compensation against that or any other employer.

81. Commencement of weekly payments

- (1) Where an employer has received a claim for compensation in relation to an injury to a worker employed by the employer and the worker's first pay day after receipt of that claim –
 - (a) is not later than 14 days after the receipt of that claim, the employer must –
 - (i) if it is reasonably practicable to do so, commence making weekly payments to the worker on the first pay day; or
 - (ii) in any other case, commence making weekly payments to the worker not later than 14 days after receipt by the employer of the worker's claim for compensation; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 81AA

- (b) is later than 14 days after the receipt of that claim, the employer must commence making weekly payments of compensation on that pay day.
- (2) An employer who fails to comply with subsection (1) is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.
- (3) Weekly payments payable under this section are payable from –
 - (a) the date of the incapacity; or
 - (b) 14 days before the date on which the claim for compensation was given to the employer under section 34 –whichever is the later.
- (4) In this section, *pay day* means the day on which the worker would normally receive salary or wages from the worker's employer.

81AA. Payments not admission of liability

- (1) Where an employer who has received a claim for compensation (whether the employer has accepted liability or not) makes weekly payments under section 81(1), those payments –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 81AA

Part VII – Payment of compensation and related matters

- (a) are not, in any subsequent proceedings under this Act, to be construed as an admission of liability; and
 - (b) are to be taken in reduction of the amount of any liability of the employer in respect of the injury; and
 - (c) subject to subsections (2) and (3), are not recoverable from the worker by the employer; and
 - (d) are recoverable from the employer's insurer except for the amount payable by the employer under section 97(1A) and (1B) or an amount referred to in section 36(4).
- (2) The Tribunal may order that an employer be entitled to recover from a worker any weekly payments made by the employer to the worker as required by section 81(1) if the Tribunal is satisfied that –
- (a) the worker's claim for compensation was fraudulent; or
 - (b) the worker obstructed or otherwise delayed the determination of the claim by the employer or the employer's insurer and the employer's liability to make the payments is subsequently determined not to exist; or
 - (c) the claim was in respect of an injury to which section 25(2) applies.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 81A

(3) If –

- (a) pursuant to section 81, an employer pays compensation to a worker by way of weekly payments; and
- (b) a determination is made under section 81A(3)(c); and
- (c) the employer’s liability under section 25 is subsequently determined not to exist –

the employer may deduct from the worker’s sick leave entitlements existing at the time of the determination referred to in paragraph (c) an amount up to the amount of those weekly payments.

(4) This section does not apply to a claim in respect of which section 69(13) applies.

81A. Disputes of liability for weekly payments and other benefits

- (1) An employer who disputes liability to pay compensation by way of weekly payments for an injury referred to in section 81(1) or benefits under Division 2 of Part VI must, within 84 days of receiving the claim for compensation in respect of the injury to the worker –
 - (a) serve the worker with written notice that the employer disputes liability –
 - (i) to pay compensation by way of weekly payments; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 81A

Part VII – Payment of compensation and related matters

- (ii) to pay any benefits payable under Division 2 of Part VI in respect of the injury; and
 - (b) inform the worker of the reasons for disputing liability; and
 - (c) refer the matter to the Tribunal.
- (2) The referral of a matter to the Tribunal is to be accompanied by –
 - (a) the prescribed fee; and
 - (b) all evidentiary material on which the employer intends to rely at the hearing of the matter.
- (2AA) If an employer fails to lodge evidentiary material under subsection (2)(b), the employer may not rely on that material unless the Tribunal otherwise allows.
- (2A) Where a matter is referred to the Tribunal under subsection (1), the Tribunal may authorise the Registrar to determine whether a reasonably arguable case exists concerning the liability of the employer to pay–
 - (a) compensation by way of weekly payments; or
 - (b) the cost of any benefits payable under Division 2 of Part VI in respect of the injury to the worker.
- (2B) The Registrar is to advise the Tribunal of the Registrar’s determination.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 81A

- (2C) The Tribunal may make an order giving effect to the Registrar's determination.
- (3) The Tribunal must –
- (a) if the Tribunal considers that weekly payments should be made, order the employer to make weekly payments from such date as the Tribunal determines; or
 - (b) if the Tribunal considers that the cost of any benefits payable under Division 2 of Part VI in respect of the injury to the worker should be paid, order the employer to pay the cost of the benefits from such date as the Tribunal determines; or
 - (c) if the Tribunal considers that a reasonably arguable case exists concerning the liability of the employer to pay compensation by way of weekly payments, determine that compensation is not to be paid by the employer; or
 - (d) if the Tribunal considers that a reasonably arguable case exists concerning the liability of the employer to pay the cost of any benefits payable under Division 2 of Part VI in respect of the injury to the worker, determine that the cost of the benefits is not to be paid by the employer.
- (4) The fact that the Tribunal has determined under subsection (3) that weekly payments should be made, or that the cost of any benefits payable

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 81AB

Part VII – Payment of compensation and related matters

under Division 2 of Part VI in respect of the injury to the worker should be paid, is not to be taken into account by the Tribunal in any other proceedings under this Act.

- (5) Notwithstanding that liability has not been disputed in accordance with subsection (1), an employer who wishes to dispute liability to continue to pay compensation by way of weekly payments for an injury referred to in section 81(1) or to pay the cost of any benefits payable under Division 2 of Part VI in respect of the injury may, at any time after the expiration of the period referred to in subsection (1), refer the matter to the Tribunal.
- (6) For the purposes of this section, the Tribunal or the Registrar may conduct any hearing the Tribunal or the Registrar considers necessary by any appropriate means including, but not limited to, a telephone conference.

81AB. Failure to dispute liability

Where an employer has received a claim for compensation in relation to an injury to a worker employed by the employer and the employer does not, in accordance with section 81A, dispute liability to pay compensation, the employer is taken to have accepted liability in respect of that claim.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 81AC

81AC. Tribunal may order compensation to be paid if employer taken to have accepted liability

If, under section 81AB, an employer is taken to have accepted liability in respect of a claim for compensation in relation to an injury to a worker, the Tribunal may make one or more of the following orders in relation to the employer:

- (a) order the employer to make weekly payments in respect of the worker from the date determined by the Tribunal;
- (b) order the employer to pay the costs of an expense payable under Division 2 of Part VI in respect of the injury.

81B. Payment of weekly payments

- (1) Unless a worker and an employer agree otherwise in writing, weekly payments payable to the worker under this Act are payable on the days on which, and at the intervals and in the manner, the worker is normally paid salary or wages by the worker's employer or, if the worker is no longer employed by that employer, on the days on which, and at the intervals and in the manner, the worker would normally have been paid salary or wages by the employer if the worker had continued in that employment.
- (2) An employer required to make weekly payments must do so in accordance with subsection (1).

Penalty: Fine not exceeding 10 penalty units.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 82

Part VII – Payment of compensation and related matters

82. Prisoners not entitled to weekly payment

A person serving a term of imprisonment is not entitled to weekly payments during that term of imprisonment.

83. Right of worker to receive weekly payments if worker ceases to reside in this State

If a worker who is in receipt of a weekly payment ceases to reside in this State, the worker is not entitled to continue to receive the weekly payment unless the worker proves, in such manner and at such intervals as may be prescribed –

- (a) the worker's address and identity; and
- (b) the continuance of the incapacity due to the injury in respect of which the payment is payable.

84. Paid holidays during incapacity

- (1) If during a period for which compensation would otherwise be payable to a worker under this Act there occurs any period during which the worker would be entitled, under the contract of service in force when the right to compensation occurred, to be absent from his or her employment on annual recreational leave on full pay or on long service leave on full or part pay–

- (a) the worker must be given by his or her employer a similar period of leave on full pay in lieu of that annual recreational

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 84A

leave or a similar period of leave on full or part pay in lieu of that long service leave at some time within 3 months from the date of his or her return to work, or at the termination of his or her right to compensation under this Act if he or she does not then return to work; or

- (b) if the worker so desires, the worker may, by arrangement with his or her employer, take annual recreational leave or a period of long service leave during the period of incapacity for which compensation is payable.
- (2) If a worker takes annual recreational leave or a period of long service leave during a period of incapacity in accordance with subsection (1)(b), the worker is not entitled to receive weekly payments for compensation during that annual recreational leave or long service leave.
 - (3) An employer must not attempt to cause or require a worker to take annual recreational leave or long service leave during a period of incapacity for which compensation is payable.

Penalty: Fine not exceeding 100 penalty units.

84A. Re-crediting of sick leave during incapacity

Notwithstanding section 69(4)(a), if a worker takes sick leave for a period and his or her employer is subsequently found to be liable to pay weekly payments for that period –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 84B

Part VII – Payment of compensation and related matters

- (a) the period is taken to be a period during which the worker was receiving weekly payments; and
- (b) the worker's accrued entitlement to sick leave is to be amended to take that period into account.

84B. Re-crediting of annual recreation leave and long service leave

Notwithstanding section 84, where a worker takes annual recreation leave or a period of long service leave during any period in which his or her entitlement to weekly payments is pending, including where liability is in dispute, and his or her employer is subsequently found to be liable to pay weekly payments for that period –

- (a) the period is taken to be a period during which the worker was receiving weekly payments; and
- (b) the worker's accrued entitlement to annual recreation leave or long service leave, as the case may be, is to be amended to take that period into account.

85.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

86. Cases in which employer may terminate or reduce payments

- (1) Except in pursuance of a determination made by the Tribunal under section 88(2), an employer may, subject to this section, terminate or reduce a weekly payment made to a worker only where –
- (a) the payment is in respect of total incapacity and the worker has returned to work;
 - (b) the worker is in receipt of the weekly payment in respect of partial incapacity and is receiving weekly earnings in excess of the amount upon which the amount of such weekly payment was determined;
 - (c) a medical practitioner who has examined the worker has certified that, in his opinion, the worker has wholly recovered or substantially recovered, from the effects of the injury in respect of which the payment is being made or that the worker's incapacity is no longer due, wholly or substantially, to that injury; or
 - (d)
 - (e) a worker's entitlement to weekly payments has expired as provided by section 69B(2E).

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 86

Part VII – Payment of compensation and related matters

- (2) A certificate referred to in subsection (1)(c) shall specify the grounds upon which the opinion expressed in it is given.
- (3) An employer who, for the reasons specified in subsection (1)(c), (d) or (e), intends to terminate or reduce a weekly payment made to a worker shall cause to be served on the worker –
 - (a) a notice of his intention to terminate the weekly payment being made to the worker, or to reduce that payment by the amount specified in the notice at the expiration of a period of 10 days from the day on which the notice was served on the worker; and
 - (b) where the employer's intention to terminate or reduce is based on a certificate referred to in subsection (1)(c), a copy of that certificate.
- (3A) A notice referred to in subsection (3)(a) is to contain a statement informing the worker of the worker's right to refer the termination or reduction of the weekly payments to the Tribunal for determination.
- (4) A worker who has been served with a notice under subsection (3)(a) and who wishes to dispute the termination or reduction of the weekly payments being made to him may within a period of 60 days from the date on which the weekly payments were terminated or reduced, refer the matter to the Tribunal for determination.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 87

- (5) An employer who terminates or reduces a weekly payment otherwise than in accordance with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

87. Cessation on account of age of entitlement to weekly payments

(1AA) In this section –

cessation date means the date applicable by virtue of subsection (1);

pension age, in relation to a worker, means the pension age, within the meaning of the *Social Security Act 1991* of the Commonwealth, in relation to the worker.

- (1) Subject to subsection (2), an entitlement of a worker to weekly payments of compensation under section 69 in relation to an injury in respect of which an employer is liable to pay compensation under this Act ceases –
- (a) if the injury occurs 2 years or more before the date on which the worker attains the pension age – on the date on which the worker attains the pension age; or
 - (b) if the injury occurs less than 2 years before the date on which the worker attains the pension age – on the date 2 years after the injury occurs.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 87

Part VII – Payment of compensation and related matters

- (2) Where the terms and conditions of a worker's employment are such as to permit him or her to continue in that employment beyond the cessation date, the worker may refer to the Tribunal for determination the question as to whether or not the provisions of subsection (1) should apply to him or her.
- (3) In any case referred to it pursuant to subsection (2), if the Tribunal is satisfied—
 - (a) that the terms of the worker's employment would have entitled him or her to continue in that employment beyond the cessation date and the worker, but for the injury referred to in subsection (1), intended to continue in that employment beyond that date; and
 - (b) that the incapacity of the worker resulting from that injury will continue beyond the cessation date—

the Tribunal may determine that weekly payments of compensation may be continued beyond the cessation date and shall determine the period for which such payments are to be continued.

- (4) Where an injury occurs –
 - (a) before the commencement of the *Workers Rehabilitation and Compensation Amendment Act 2022*, this section, as in force immediately before the commencement of that Act, and section 164BAA, apply in relation to that

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

injury and any claim arising from that injury; or

- (b) on or after the commencement of that Act, this section, as amended by that Act, applies in relation to that injury and any claim arising from that injury.

88. Review of weekly payments

- (1) A worker, an employer of a worker, or the licensed insurer of the employer may refer to the Tribunal for review a weekly payment being made to the worker.
- (2) The Tribunal may, upon hearing an application to review a weekly payment, make a determination –
 - (a) terminating or reducing the payment; or
 - (b) increasing the payment, subject to the limitations prescribed by section 69.
- (3) A determination terminating or reducing a weekly payment may be ordered to take effect from the date of the application or any other date the Tribunal determines.

89.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 90

Part VII – Payment of compensation and related matters

90. Weekly payments not assignable

- (1) A weekly payment is not capable of being assigned, charged, or taken in execution, and is not capable of passing to any other person by operation of law.
- (2) No claim shall be set off against a weekly payment.

*Division 1A – Medical examinations and independent
medical reviews*

90A. Workers may be required to submit to independent medical reviews

- (1) For the purposes of this Act, an independent medical review of a worker is a review, conducted by a single medical practitioner (other than a medical practitioner chosen by the worker) who has expertise in a field, or a part of a field, relevant to the worker's injury, and may include –
 - (a) one or more examinations of the worker; and
 - (b) a review of any diagnostic test results, or other medical records, in respect of the worker.
- (2) If a worker claims compensation or is receiving weekly payments, the worker's employer, or the employer's insurer, may require the worker to submit to an independent medical review of the worker by a medical practitioner.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 90A

- (3) A worker may only be required under subsection (2) to submit to an independent medical review if the employer or the employer's insurer –
- (a) has discussed with the worker's primary treating medical practitioner the reasons why it is intended to have the review conducted; and
 - (b) has informed the worker, in writing, of the reasons why it is intended to have the review conducted.
- (4) A worker who is required under subsection (2) to submit to an independent medical review by a medical practitioner –
- (a) is to –
 - (i) submit, at a reasonable time, and at a reasonable place, of which the worker has been given reasonable notice in writing, to the review, including any examination conducted by the medical practitioner as part of the review; and
 - (ii) be taken to have given consent to the provision, to a medical practitioner nominated by the worker's employer, of any medical reports or records that relate to the injury to which the worker's claim for compensation relates; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 90A

Part VII – Payment of compensation and related matters

- (b) is to, within 30 days, refer the matter under section 90C(2) to the Tribunal.
- (5) Subject to subsection (6), a worker is not required to submit to more than one independent medical review in any 3-month period.
- (6) Despite subsection (5), a worker is required to submit to an independent medical review if –
 - (a) the worker has suffered multiple injuries or the worker’s injury requires the consideration of medical practitioners who are specialists in different fields or aspects of the injury; and
 - (b) the review is conducted by a medical practitioner specialising in a different injury, or a different field or different aspect of the injury, to the previous practitioner who conducted a review in the 3-month period.
- (7) If a medical practitioner conducting an independent medical review reports that any medical or surgical treatment specified by the practitioner will terminate or shorten the period of incapacity of the worker to whom the report relates, the following provisions apply:
 - (a) subject to paragraph (b), the worker must submit to that treatment;
 - (b) if the worker notifies the employer, not later than 14 days after the date on which a copy of the practitioner’s report has been provided to the worker in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 90B

accordance with section 90B(4), that the worker, after consulting with the worker's primary treating medical practitioner, is not satisfied with the report, the worker must submit to an examination by another medical practitioner selected by the worker who may be, but is not required to be, the worker's primary treating medical practitioner;

- (c) the employer or the employer's insurer is to pay for the examination referred to in paragraph (b);
- (d) if the report, provided in accordance with section 90B(2), of the medical practitioner who makes an examination in accordance with paragraph (b) is in agreement with the report provided under section 90B(1) by the medical practitioner conducting the independent medical review, the worker must as soon as practicable submit to the treatment specified in the last-mentioned report.

90B. Reports in relation to reviews

- (1) After an independent medical review of a worker is conducted under section 90A by a medical practitioner, the medical practitioner –
 - (a) must prepare a report in respect of the review; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 90B

Part VII – Payment of compensation and related matters

- (b) must provide the report to the person who required the worker to submit to the review; and
 - (c) must not provide the report to the worker.
- (2) After an examination is conducted under section 90A(7)(b) by a medical practitioner, the medical practitioner –
 - (a) must prepare a report in respect of the examination; and
 - (b) must provide the report to the person who required the worker to submit to the review as a result of which the examination was conducted; and
 - (c) must not provide the report to the worker, unless the medical practitioner is the worker's primary treating medical practitioner.
- (3) A person to whom a report of a review or examination is provided under subsection (1) or (2) must, within 7 days, serve a copy of the report on –
 - (a) the worker's primary treating medical practitioner, unless the person conducting the examination was the primary treating medical practitioner; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 90C

- (b) the injury management co-ordinator to whom the worker has been assigned under section 143B.

Penalty: Fine not exceeding 10 penalty units.

- (4) If a report is served on a primary treating medical practitioner under this section or relates to an examination conducted by that practitioner under section 90A(7)(b) or otherwise, the primary treating medical practitioner must provide the report to the worker.

90C. Disagreements, &c., about reviews

- (1) Subsections (2) and (3) apply in relation to a worker if the worker –
 - (a) refuses without reasonable excuse to submit to an independent medical review or examination when required under section 90A to do so; or
 - (b) in any way obstructs such a review or examination; or
 - (c) refuses to submit to, or undertake, any treatment required in accordance with section 90A(7).
- (2) If this subsection applies to a worker, the worker, the worker's employer or the employer's insurer may refer the matter of the worker's refusal or obstruction to the Tribunal.
- (3) If this subsection applies to a worker, the worker's right to compensation and to take any

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 90C

Part VII – Payment of compensation and related matters

proceedings under this Act in relation to compensation is, except if the treatment to which the worker has refused to submit is surgical treatment, suspended until the matter has been determined by the Tribunal.

(4) If –

(a) a copy of a report is served under this Division on a worker's primary treating medical practitioner, the worker's employer, or the employer's insurer; and

(b) the worker, employer or employer's insurer are unable to agree as to –

(i) whether, or to what extent, the worker's incapacity is due to the injury in respect of which the worker is claiming or receiving compensation; or

(ii) the worker's condition or fitness for employment –

the worker, the employer or the employer's insurer may refer the matter to the Tribunal.

(5) In determining whether an independent medical review, or an examination of a worker, ought to be conducted, the Tribunal must have regard to the following matters:

(a) whether the reviewer has the appropriate expertise to properly assess the worker's injury;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VII – Payment of compensation and related matters

s. 90D

- (b) whether, in the circumstances, an excessive number of reviews or examinations have been conducted in respect of the worker;
 - (c) whether the worker has previously made a complaint, on reasonable grounds, to the worker's employer or the employer's insurer about the conduct of the medical practitioner who it is proposed will conduct the review;
 - (d) the location and timing of the review –
and may have regard to any other matter that the Tribunal thinks fit.
- (6) In determining any matter referred to it under subsection (2), the Tribunal may, if the payment of compensation has been suspended under subsection (3), specify –
- (a) whether compensation may be paid to the worker in respect of that period of suspension; and
 - (b) the period of that suspension in respect of which the worker is entitled to be paid compensation.

90D. Reliance on medical reports

- (1) If a worker has submitted to an independent medical review under section 90A by a medical practitioner, a report in relation to the review, and any evidence of the medical practitioner,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 91

Part VII – Payment of compensation and related matters

cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker.

- (2) If a worker has been examined under section 90A(7)(b) by a medical practitioner chosen by the worker, a report in relation to the examination, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker's employer.
- (3) If a worker has been examined, otherwise than under section 90A(7)(b), by a medical practitioner chosen by the worker, a report in relation to the examination, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker's employer.

Division 2 – Payment of compensation money to persons entitled and to the Public Trustee

91. Payment of compensation money to person entitled and to Public Trustee

- (1) Except as provided in this section and in section 67D, all money payable by way of compensation under this Act in respect of death or in a lump sum as provided by section 71 or 72 shall be paid to the person entitled to that money.
- (1A) Where a person to whom money is payable under subsection (1) is under a legal disability,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

the Tribunal is to determine to whom the money payable to that person is to be paid.

- (2) If the Tribunal has reasonable doubts about the nature of the dependency between the person under a legal disability and the legal guardian of that person, the Tribunal may determine that the money payable to the person under a legal disability is to be paid to the Public Trustee.
- (3) The Public Trustee –
 - (a) shall invest, apply, or otherwise deal with the money paid to him under subsection (2) for the benefit of the person entitled to the money, in such manner and subject to such conditions as may be prescribed in the regulations; and
 - (b) shall cause the income from any money so invested to be paid to, or for the benefit of, that person.
- (4) Where a worker does not leave any dependants, the payment of compensation under this Act in respect of his death may be paid to his legal personal representative, or, if there is no such representative, to the person to whom the expenses of medical attendance and his funeral are due.
- (5) An employer who pays to the person entitled or, where the person entitled is under a disability, to the Public Trustee compensation in respect of a worker's death is exonerated, to the extent of the compensation paid by him, from all liability

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 92

Part VII – Payment of compensation and related matters

under this Act in respect of the same subject matter.

92. Interest payable where delay in paying over certain compensation money

- (1) Where a person to whom money is payable under section 91(1) or the Public Trustee considers that there has been unnecessary delay on the part of an employer in paying to that person or the Public Trustee, as required by section 91(1) or (2), any compensation referred to in that section, the person entitled or the Public Trustee may refer the matter to the Tribunal.
- (2) Where, after hearing the matter referred to it under subsection (1), the Tribunal is satisfied that there has been unreasonable or unnecessary delay on the part of an employer to whom the matter relates in paying to the person entitled or the Public Trustee any compensation referred to in section 91 and that neither the person entitled nor the Public Trustee has contributed to that delay, the Tribunal shall determine that the employer shall pay interest on the amount of the compensation –
 - (a) for such period as the Tribunal is satisfied is the period of unreasonable or unnecessary delay in making the payment; and
 - (b) at a rate equal to the Commonwealth long term bond rate plus 50% of that rate.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

- (3)
- (4) Where an employer is required by a determination under subsection (2) to pay interest on the amount of any compensation, that interest shall be deemed to be compensation payable pursuant to the determination.
- (5) For the purposes of subsection (2)(b), *Commonwealth long term bond rate* means the estimated closing yield at the end of the month, immediately preceding the date on which the Tribunal's determination under subsection (2) was made, for the 10 year bond rate as published by the Reserve Bank of Australia.

Division 3 – Power of Tribunal to vary certain determinations relating to payment of compensation

93. Power to vary certain determinations

- (1) Where a dependant of a deceased worker is of the opinion that –
 - (a) on account of variation of the circumstances of the various dependants of the deceased worker; or
 - (b) for any other sufficient cause –

a determination made by the Tribunal under section 68 as to the apportionment among the several dependants of the deceased worker of any compensation should be varied, that party may refer the matter to the Tribunal.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 93

Part VII – Payment of compensation and related matters

- (2) Where a matter is referred to the Tribunal under subsection (1), the Tribunal may, where no sum has been paid to any of the dependants of the deceased worker in accordance with a determination made by it under section 68, vary the determination formerly made by it in such manner as it considers just and reasonable in the circumstances.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part VIII –

s. 94

PART VIII –

94 - 96.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 96A

Part IX – Insurance provisions

PART IX – INSURANCE PROVISIONS

Division 1 – Compulsory insurance by employers

96A. Interpretation of Division 1

In this Division,

wages includes the monetary value of all payments made to a worker, whether in cash or in kind, in return for the worker's labour and includes the following:

- (a) any amount paid or payable by way of remuneration to a person holding office under, or in the service of, the Crown;
- (b) any amount paid or payable to a person or class of persons taken to be a worker under this Act to the extent to which that payment is attributable to labour;
- (c) any amount paid or payable by a company by way of remuneration to a director or member of the governing body of that company;
- (d) the value of provision by the employer of meals or sustenance or of the use of premises or quarters as consideration or part consideration for the worker's services;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 97

- (e) the value of fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;
- (ea) a distribution to a worker as a beneficiary of a trust to the extent that the distribution is in lieu of wages for work done for the trust by the worker;
- (f) all superannuation contributions, forming part of the worker's salary package, made by the employer in respect of the worker –

but does not include –

- (g) any allowance for travelling or accommodation; or
- (h) any workers' compensation payment; or
- (i) any redundancy, severance or termination payment.

97. Obligation of employers to insure

- (1) An employer who is not a self-insurer shall maintain in force with a licensed insurer a policy of insurance –
 - (a) that indemnifies him in respect of the full amount of his liabilities to pay compensation under this Act;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 97

Part IX – Insurance provisions

- (b) that indemnifies the employer in respect of any liability arising independently of this Act in respect of an injury suffered by a worker arising out of or in the course of the employment of that worker by the employer; and
- (c) that indemnifies each person employed by him in respect of the liabilities incurred by that person in respect of any such injury as is referred to in paragraph (b).

(1A - 1C)

- (2) Notwithstanding anything in any law or rule of law to the contrary, where a policy of insurance entered into by any person purports to indemnify as mentioned in subsection (1)(c) any person employed by him, the insurer under that policy is liable to indemnify that person so employed in respect of any liability that the policy purports to cover.
- (3) A policy of insurance which is required pursuant to subsection (1) to be maintained by an employer shall not be required to indemnify him or any person employed by him against any liability in respect of an injury suffered by a worker in an accident involving the use of a motor vehicle which occurs while the worker is travelling in either direction between his place of residence and his place of employment.
- (4) An employer who fails to comply with subsection (1) is guilty of an offence and is

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 97

liable in a court of summary jurisdiction to a fine not exceeding 500 penalty units.

- (5) It is a defence to a prosecution for an offence under subsection (4) to show that at the time of the alleged offence the employer believed on reasonable grounds that the employer did not have a liability under this Act in respect of the worker because the worker's employment was connected with another State.
- (6) An employer who applies to a licensed insurer to issue or renew a policy of insurance must, within 60 days after applying, provide the licensed insurer with –
- (a) an estimate, made to the best of that employer's knowledge and belief, of the aggregate amount of wages to be paid to workers in the employer's employment during the period relevant to the determination of the premium payable by the employer for the policy of insurance; and
 - (b) a statement showing the trade, occupation and calling of such workers; and
 - (c) such other information as may be prescribed in the regulations.
- (6A) If an employer of more than 50 persons at a workplace accepts or renews an insurance policy referred to in this Act, the employer, within 60 days, must identify, and provide to the insurer, a list of duties, if any, at the workplace that may

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 97

Part IX – Insurance provisions

be suitable for the purposes of section 143M in relation to a worker to whom that section may apply.

Penalty: Fine not exceeding 5 penalty units.

- (7) Within 60 days after the termination or expiration of a policy of insurance, an employer must provide the licensed insurer with –
- (a) a full and correct statement of the aggregate amount of wages paid to workers in the employer's employment during the period relevant to the determination of the premium paid by the employer for the policy of insurance; and
 - (b) a statement showing the trade, occupation and calling of such workers; and
 - (c) such other information as may be prescribed in the regulations.
- (8) An employer who fails to comply with subsection (6) or subsection (7) is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.
- (9) This section does not oblige –
- (a) the Crown (whether in relation to this State or otherwise); or
 - (b) any Agency, within the meaning of the *State Service Act 2000*, or any public statutory body constituted under any law

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 97AA

of the Commonwealth or of any Territory
of the Commonwealth or of any State
other than this State–

to obtain such a policy of insurance as is
mentioned in subsection (1).

- (10) A court that convicts an employer of an offence under subsection (1), (6) or (7) is to, in addition to any other penalty imposed in respect of the offence, order the employer to pay to the Board an amount equal to the total of any insurance premiums which the court is satisfied the employer has, at any time during the period of 7 years before the conviction, avoided by failing to maintain insurance as required by subsection (1), failing to provide an estimate or statement as required by subsection (6) or (7) or giving any false information or particular in any such estimate or statement.
- (11) In determining the amount under subsection (10), a court is to take into account any amount payable by the employer to the Nominal Insurer under section 130(3).

97AA. Insurer to give notification of expiry of policy

- (1) A licensed insurer must give an employer covered by a policy of insurance written notice of the impending expiry of that policy not less than 28 days before the expiry.
- (2) A policy of insurance is taken not to have expired until 28 days after notice in relation to it

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 97A

Part IX – Insurance provisions

has been given in accordance with subsection (1).

97A. Disputes between insurers, &c.

- (1) If a dispute arises as to which of 2 or more insurers is liable to indemnify an employer in respect of a claim for compensation, any one of the insurers, the worker or the employer may refer the dispute to the Tribunal.
- (2) Where a worker is entitled to compensation for an injury from an employer but there is a dispute between insurers as to liability to indemnify that employer, the insurer of the employer of the worker at the time of the latest injury is liable to indemnify the employer until the Tribunal has otherwise determined.
- (3) The Tribunal is to determine which insurer is liable to indemnify the employer or how liability is to be apportioned and may make such order as it thinks proper for the reimbursement of one insurer by another and for the indemnity of the employer in respect of the employer's liability under this Act.
- (4) An employer or insurer may refer a dispute between insurers for conciliation under Division 2 of Part V, notwithstanding any term or condition of any policy of insurance providing for some other means of settling disputes.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 97B

97B. Worker entitled during dispute between employers

- (1) Where there is a dispute between employers as to liability but no dispute that a worker is entitled to compensation from some employer for an injury, the employer of the worker at the time of the latest injury is liable to pay compensation under this Act until the question of which employer is liable or how liability is to be apportioned between employers has been resolved.
- (2) The worker or his or her dependants, if so required by the employer first liable to pay compensation, is to furnish to the employer the name and address of any employer in whose employment the worker was when any similar injury previously occurred.
- (3) If the worker has filed an application for compensation, the respondent employer is to join as a party any other employer who the respondent employer alleges is wholly or partially liable to pay the compensation.
- (4) If the worker has not filed an application for compensation, the employer first liable to pay compensation may refer for conciliation under Division 2 of Part V the question of whether some other employer is wholly or partially liable to pay compensation.
- (5) If the Tribunal finds that the liability to pay compensation arose as a result of one or more injuries, it may order another employer to pay to the employer first liable to pay compensation the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 98

Part IX – Insurance provisions

whole or a part of the amount of compensation paid to the worker and to pay any further compensation to which the worker is entitled.

Division 2 – Licensed insurers and self-insurers

98. Prohibition on providing certain insurance unless licensed

- (1) An insurer shall not carry on in this State the business of insuring employers against the employers' liability to their workers under this Act unless that insurer is the holder of a licence.
- (2) An insurer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 500 penalty units.

99. Authority of licences

A licence while it is in force authorizes the insurer who holds the licence to carry on in this State the business of insuring employers against the employers' liability to their workers under this Act subject to and in accordance with the conditions (if any) to which the licence is subject.

100. Applications for licences

- (1) An insurer who wishes to carry on in this State the business of insuring employers against the employers' liability to their workers under this Act may apply to the Board for a licence.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 101

- (2) An application for a licence shall be –
- (a) in a form approved by the Board; and
 - (b) accompanied by the prescribed fee (if any).

101. Granting, &c., of licences

- (1) The Board may, subject to subsection (2), by notice in writing served on the insurer, grant or refuse to grant the licence.
- (2) The Board is not to grant a licence to an insurer unless it is satisfied that –
- (a) the insurer will provide the necessary insurance service, including the ability to meet time limits imposed by this Act; and
 - (b) the insurer will set premiums which reflect –
 - (i) the claims experience of an employer; and
 - (ii) an employer's commitment to workplace health and safety; and
 - (iii) an employer's agreement to provide suitable alternative duties to injured workers; and
 - (c) the insurer is financially viable; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 102

Part IX – Insurance provisions

- (d) the insurer will commit an appropriate level of resources to manage claims for compensation under this Act in a manner which furthers the objective of rehabilitating injured workers; and
- (e) the insurer will involve an employer in the management of claims for compensation under this Act; and
- (f) the insurer will provide the statistical and other information required or likely to be required under this Act; and
- (fa) the insurer is capable of complying with Part XI and any regulations or guidelines for the purposes of that Part; and
- (g) the insurer will meet such other criteria as may be prescribed.

102. Conditions of licences

- (1) A licence is subject to such conditions as may be imposed by the Board –
 - (a) on the granting of the licence; or
 - (b) at any time during the currency of the licence.
- (2) Without limiting the generality of subsection (1), a licence granted to a specialized insurer shall be subject to the condition that the specialized insurer shall insure only such classes of employers as are specified in the licence against

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 102A

the employers' liability to their workers under this Act.

- (3) The Board may, by notice served on a licensed insurer, impose conditions (or further conditions) to which the licence is to be subject or vary any conditions imposed on the licence by the Board and such conditions or variation shall, subject to section 112(3), take effect on such date as the Board specifies in the notice, being a date not less than 14 days after the service of the notice on the licensed insurer.
- (4) A condition to which a licence is subject has effect whether or not the condition is endorsed on the licence.
- (5) A licensed insurer who fails to comply with, or contravenes, any condition to which the licence is subject is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

102A.

102B. Board to make available suggested premium rates

The Board is to publish and make available to employers and licensed insurers –

- (a) suggested premium rates for various businesses or groups of businesses; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 103

Part IX – Insurance provisions

- (b) as soon as practicable after receiving a request to do so, a report containing details of –
 - (i) the actuarial basis on which the suggested premium rates were calculated; and
 - (ii) the claims experience of the various businesses or groups of businesses to which the rates relate so far as that experience is known to the Board.

103. Licensed insurers not to refuse insurance

- (1) A licensed insurer shall not, except with the consent of the Board, refuse to issue a policy of insurance to an employer or to renew a policy of insurance issued to an employer.
- (2) Without affecting the generality of subsection (1), the Board may consent to any refusal referred to in that subsection in order that the licensed insurer does not contravene any condition of his licence.
- (3) This section does not apply –
 - (a) to a specialized insurer; or
 - (b) in any case where the employer has not complied with any conditions prescribed by this Act or the regulations in respect of the issue or renewal of a policy of insurance.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 104

- (4) A licensed insurer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 200 penalty units.

104. Applications for permits

- (1) An employer who wishes to self-insure against the liabilities referred to in section 97 may apply to the Board for a permit.
- (2) An application for a permit shall be –
- (a) in a form approved by the Board; and
 - (b) accompanied by the prescribed fee (if any).

105. Granting, &c., of permits

- (1) The Board may, in its absolute discretion, by notice in writing served on the employer grant or refuse to grant a permit to that employer.
- (2) Without limiting its discretion under subsection (1), the Board shall, before granting or refusing to grant the permit, take into consideration –
- (a) the employer's financial history; and
 - (b) the employer's ability to provide the statistical and other information required or likely to be required under this Act; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 105A

Part IX – Insurance provisions

- (ba) the employer’s ability to satisfy such prudential standards as the Board determines; and
- (bb) the employer’s capacity to comply with Part XI and any regulations or guidelines for the purposes of that Part; and
- (bc) the employer’s commitment to occupational health and safety; and
- (c) such other matters as may be prescribed.

105A. Wholly-owned subsidiary

- (1) The Board may endorse on a permit the name of one or more wholly-owned subsidiaries of the permit holder.
- (2) While the name of a subsidiary is endorsed on a permit, the subsidiary is taken to be covered by the permit.
- (3) The Board may at any time amend an endorsement on a permit by adding, altering or deleting the name of a subsidiary.
- (4) An amendment to a permit –
 - (a) is made by the Board giving notice of it to the permit holder; and
 - (b) takes effect on the day the notice is given or on a later day specified in the notice.
- (5) A company which holds a permit and any subsidiary covered by the permit are jointly and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 106

severally liable for any contribution required to be made to any fund by the subsidiary under this Act.

(6) A permit –

- (a) may be subject to conditions under this Act relating to the obligations of a subsidiary covered by the permit; and
- (b) may be cancelled or suspended under this Act because of the acts or omissions of the subsidiary.

(7) In this section,

wholly-owned subsidiary has the same meaning as in the *Corporations Law*.

106. Authority of permits

A permit while it is in force authorizes the employer who holds the permit to self-insure against the liabilities referred to in section 97 subject to and in accordance with the conditions to which the permit is subject.

107. Conditions of permits

- (1) A permit is subject to such conditions as may be imposed by the Board –
 - (a) on the granting of the permit; or
 - (b) at any time during the currency of the permit.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 108

Part IX – Insurance provisions

- (2) The Board may, by notice served on a self-insurer, impose conditions (or further conditions) to which the permit is to be subject or vary any conditions imposed on the permit by the Board and any such conditions or variation shall, subject to section 112(3), take effect on such date as the Board specifies in the notice, being a date not less than 14 days after the service of the notice on the self-insurer.
- (3) A condition to which a permit is subject has effect whether or not the condition is endorsed on the permit.
- (4) A self-insurer who fails to comply with, or contravenes, any condition to which the permit is subject is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

108. Duration of licences and permits

- (1) A licence or permit comes into force on the day on which it is granted and remains in force until it is revoked or surrendered under this Act.
- (2) The holder of a licence or permit may, by notice to the Board, surrender the licence or permit.

109. Additional information to be supplied

- (1) The Board may direct an insurer or employer who has made an application under section 100 or 104, or a licensed insurer or self-insurer, to provide it with such information, and at such

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 110

times, as it thinks fit relating to the matters referred to in section 101(2) or 105(2).

- (2) A licensed insurer or self-insurer referred to in subsection (1) who refuses or fails to comply with a direction under that subsection is guilty of an offence and is liable on summary conviction to a fine not exceeding 150 penalty units.

110. Notice of refusal

Where the Board refuses under –

- (a) section 101 to grant a licence to an insurer;
- (b) section 105 to grant a permit to an employer –
- (c)

it shall give to the insurer, employer, licensed insurer, or self-insurer, in writing, its reasons for so refusing.

111. Revocation or suspension of licences and permits

- (1) The Board may at any time, in its absolute discretion, by notice in writing served on a licensed insurer or self-insurer, revoke or suspend a licence or permit if it is satisfied –
- (a) that the grant of the licence or permit was obtained improperly;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 111

Part IX – Insurance provisions

- (b) that the licensed insurer or self-insurer has failed to comply with any provision of this Act and the failure constitutes a substantial breach of the requirements of this Act;
- (c) that the licensed insurer or self-insurer has been convicted of an offence against this Act;
- (d) in the case of a licensed insurer, that the licensed insurer has unreasonably failed, or unreasonably refused, to satisfy or comply with a determination made by the Tribunal in respect of an employer insured or indemnified by the licensed insurer against the liability of the employer under the determination;
- (e) in the case of a self-insurer, that the self-insurer has unreasonably failed, or unreasonably refused, to satisfy or comply with a determination made by the Tribunal;
- (f) that the conduct of the licensed insurer or self-insurer, his or its employees or officers, or the arrangement of his or its affairs has been such that, in the opinion of the Board, the Board should exercise its power under this subsection in relation to the licence or permit; or
- (g) that the licence or permit should be revoked or suspended in the public interest.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 112

- (2) Without limiting the generality of subsection (1), the powers conferred on the Board by that subsection may be exercised by it on the application of a licensed insurer or self-insurer.
- (3) A notice under subsection (1) shall be accompanied by a statement of the Board's reasons for revoking or suspending the licence or permit.
- (4) The revocation or suspension under this section of a licence or permit shall not –
 - (a) annul a policy of insurance issued before the revocation; or
 - (b) diminish or otherwise affect the liability of the insurer under a policy referred to in paragraph (a) or of an employer in relation to his status as a self-insurer before the revocation.
- (5) The revocation or suspension of a licence or permit shall, subject to section 112(3), take effect on such date as the Board specifies in the notice, being a date not earlier than 14 days after the service of the notice on the licensed insurer or self-insurer.

112. Appeals

- (1) A person who is aggrieved by–
 - (a) the refusal of the Board to grant him or it a licence or permit;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 112

Part IX – Insurance provisions

- (b) the conditions to which a licence or permit initially granted to him or it is subject;
- (c) any conditions that the Board imposes on his or its licence or permit during the currency of the licence or permit;
- (d) the variation by the Board of any conditions to which his or its licence or permit is subject;
- (e)
- (f) the revocation or suspension by the Board of a licence or permit held by him or it–

may appeal to the Supreme Court.

- (2) An appeal under this section shall be instituted within a period of 14 days from –
 - (a) in the case of an appeal against the refusal of the Board to grant a licence or permit, the service of a notice under section 101(1) or 105(1), as the case may require;
 - (b) in the case of an appeal against the conditions to which a licence or permit initially granted to a person is subject, the receipt of the licence or permit by that person;
 - (c) in the case of an appeal against any conditions imposed on a licence or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

permit during the currency of the licence or permit or the variation of any conditions of the licence or permit, the receipt of a notice under section 102 or 107; and

(d)

(e) in the case of an appeal against the revocation or suspension of a licence or permit, the service of a notice under section 111(1).

(3) Where an appeal is brought under this section in respect of–

(a)

(b) the conditions imposed on a licence or permit during the currency of the licence or permit or the variation of any conditions of a licence or permit; or

(c) the revocation or suspension of a licence or permit–

the imposition of conditions, variation, revocation, or suspension shall not have effect until the determination or abandonment of the appeal or until such later date as the Supreme Court may determine.

(4) On an appeal under this section, the Supreme Court (unless it dismisses the appeal) may, by order, quash the decision of the Board and direct the Board to take such action as it considers

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 113

Part IX – Insurance provisions

necessary in the matter to which the appeal relates.

- (5) The Board shall comply with any order of the Supreme Court under subsection (4).
- (6) Subject to this section, an appeal under this section shall be instituted, heard, and determined as prescribed in the regulations.
- (7)

113. Publication of grant of, or revocation or suspension of, licences and permits

Where –

- (a) a licence or permit is granted; or
- (b)
- (c) a licence or permit is revoked or suspended –

the Board shall, as soon as practicable cause to be published in the *Gazette* and in a newspaper circulating throughout the State notice of that fact.

Division 3 – Returns by licensed insurers and self-insurers

114. Returns by licensed insurers and self-insurers

- (1) Every licensed insurer and self-insurer is to provide the Board with such returns, at such times and in such manner, as the Board determines.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

- (2) A licensed insurer or self-insurer –
 - (a) who fails to furnish a return that the licensed insurer or self-insurer is required to furnish under this section;
 - (b) who fails to furnish such a return within such time and in such manner as the Board determines; or
 - (c) who, in such a return, makes a statement that is false or misleading in a material particular –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

- (3) Every licensed insurer and self-insurer shall keep such records as may be prescribed in the regulations.
- (4) A licensed insurer or self-insurer who fails to comply with subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.
- (5) For the purposes of this Division, the Crown in right of this State, is taken to be a self-insurer.

Division 4 –

115 - 120.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 121

Part IX – Insurance provisions

Division 5 – Nominal Insurer

121. Establishment of Nominal Insurer

- (1) There is established by this Act a body to be known as the Nominal Insurer.
- (2) The Nominal Insurer –
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal;
 - (c) may take proceedings, and be proceeded against, in its corporate name; and
 - (d) may do and be subject to all other things that corporations may by law do and be subject to and that are necessary for, or incidental to, the purpose for which it was constituted.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Nominal Insurer affixed to a document and shall presume that it was duly affixed.

122. Composition of Nominal Insurer

- (1) The Nominal Insurer consists of –
 - (a) 4 members appointed by the Minister after consultation with licensed insurers and self-insurers; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 123

- (b) one member nominated by the Treasurer and appointed by the Minister; and
 - (c) one member appointed by the Minister.
- (2) The Minister is to appoint one of the members referred to in subsection (1)(a) as the chairperson of the Nominal Insurer.
 - (3) Schedule 6 has effect with respect to the membership and meetings of the Nominal Insurer.

123. Powers and functions of Nominal Insurer

The Nominal Insurer shall perform such functions and may exercise such powers as are imposed or conferred on it by or under this Act.

124. Disclosure of interest

- (1) A member of the Nominal Insurer who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Nominal Insurer (otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he is not a director) shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Nominal Insurer.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Nominal Insurer and the member shall not be

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 125

Part IX – Insurance provisions

present during, or take part in, any deliberation or decision of the Nominal Insurer in relation to that matter.

125. Delegation by Nominal Insurer

- (1) The Nominal Insurer may, by instrument in writing under its common seal, delegate to a person specified in the instrument the performance or exercise of such of its functions and powers under this Act or any other Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in writing under its common seal, revoke wholly or in part any such delegation.
- (2) A function or power the performance or exercise of which has been delegated under this section may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.
- (4) Notwithstanding any delegation under this section, the Nominal Insurer may continue to perform or exercise all or any of the functions or powers delegated.
- (5) Any act or thing done by, or to, a delegate of the Nominal Insurer while acting in the exercise of a delegation under this section shall have the same

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 125A

force and effect as if the act or thing had been done by, or to, the Nominal Insurer and shall be deemed to have been done by, or to, the Nominal Insurer.

- (6) An instrument purporting to be signed by a delegate of the Nominal Insurer in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Nominal Insurer under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Nominal Insurer under this section.
- (7) Where the exercise of a power by the Nominal Insurer is dependent on the opinion or belief of the Nominal Insurer, a delegate of the Nominal Insurer under this section may, in exercising that power, act on his own opinion or belief.

125A. Nominal Insurer may assign liabilities

- (1) The Nominal Insurer may assign to a person approved by the Minister any of the Nominal Insurer's liabilities under this Act –
 - (a) absolutely; or
 - (b) on such terms and conditions as may be approved by the Minister.
- (2) If a liability is assigned absolutely, the Nominal Insurer's responsibility for the discharge of the liability ceases and that responsibility becomes

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 126

Part IX – Insurance provisions

the responsibility of the person to whom the liability is assigned.

126. When proceedings may be taken against the Nominal Insurer

(1) Where –

(a) an employer –

(i) has not obtained from a licensed insurer such a policy of insurance as is referred to in section 97(1) or has failed to maintain in force any such policy so obtained by him;

(ii) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or

(iii) has left the State and his whereabouts are unknown;

(b) an employer, or the licensed insurer from whom or from which an employer obtained such a policy, is a body corporate and –

(i) the winding-up of the body corporate has commenced; or

(ii) a receiver or manager of the property of the body corporate has been appointed, or the body

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 126

corporate has been placed under administration, under the provisions of the Corporations Act or any corresponding previous enactment; or

- (c) for any other reason there are reasonable grounds for believing that an employer or a licensed insurer from whom or from which he has obtained such a policy is, or is likely to be, unable to discharge in full any liability in respect of which such a policy is required under section 97(1) to be maintained by the employer –

the same claims, whether by way of legal proceedings or not, may be made against the Nominal Insurer in respect of any liability in respect of which such a policy is required under section 97(1) to be maintained by the employer, and the same judgment may be obtained against the Nominal Insurer, as could, apart from subsection (3), have been made or obtained against the person by whom the liability was incurred.

- (2) Where –

- (a) a self-insurer –

- (i) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 126

Part IX – Insurance provisions

- (ii) has left the State and his whereabouts are unknown;
- (b) a self-insurer is a body corporate and –
 - (i) the winding-up of the body corporate has commenced; or
 - (ii) a receiver or manager of the property of the body corporate has been appointed, or the body corporate has been placed under administration, under the provisions of the Corporations Act or any corresponding previous enactment; or
- (c) for any other reason there are reasonable grounds for believing that a self-insurer is, or is likely to be, unable to discharge in full any liability in respect of which, but for the fact that that person was a self-insurer, he would have been required under section 97(1) to maintain a policy of insurance referred to in that section –

the same claims, whether by way of legal proceedings or not, may be made against the Nominal Insurer in respect of any liability in respect of which he would have been required under section 97(1) to maintain a policy of insurance and the same judgment may be obtained against the Nominal Insurer, as could, apart from subsection (3), have been made or obtained against the person by whom the liability was incurred.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 126A

- (3) Where, in respect of such a liability as is referred to in section 97(1)(c), the same claims may be made under subsection (1) or (2) against the Nominal Insurer as could, but for this subsection, have been made against the person by whom the liability was incurred, those claims shall not be made against that person.

126A. Claims against Nominal Insurer for increase in payments

- (1) Where an employer becomes liable, as a result of the amendments to section 69B effected by the *Workers Rehabilitation and Compensation Amendment Act 2004*, for increased weekly payments in respect of claims for compensation relating to periods of incapacity after the commencement of that Act with respect to injuries occurring on or after 1 July 2001 and before the commencement of that Act, the employer's insurer or, if the employer is a self-insurer, the employer may make a claim against the Nominal Insurer for an amount equivalent to the increase in those weekly payments.
- (2) The Nominal Insurer is to pay to the employer's insurer or, if the employer is a self-insurer, the employer the amount equivalent to the increase in weekly payments referred to in subsection (1).
- (3) For the purposes of this section, the Crown in the right of this State is taken to be a self-insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 127

Part IX – Insurance provisions

127. Order or judgment against Nominal Insurer

(1) Where, in respect of a liability in respect of which an employer is required under section 97(1) to maintain a policy of insurance –

- (a) an order has been made by the Tribunal in respect of that liability; or
- (b) judgment is obtained in any court in respect of that liability –

and the order is not complied with or the judgment has not been satisfied within the period of 28 days after the making of the order or after the judgment is obtained –

- (c) the Tribunal may, on the application of the person in whose favour the order was made, order that the order be complied with by the Nominal Insurer; or
 - (d) the court in which the judgment was obtained may direct that that judgment be entered against the Nominal Insurer.
- (2) For the purposes of subsection (1), where an order is not enforced, or execution of a judgment is stayed, pending appeal, the time during which it is not so enforced or stayed shall be excluded in calculating the period referred to in that subsection.
- (3) Where a claim is made for the recovery of compensation or damages and the person against whom the claim is made knows or has reason to believe that such circumstances exist as would,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 127

under section 126, entitle a claim for that compensation or those damages to be made against the Nominal Insurer, that person –

- (a) shall, if no proceedings have been instituted in respect of the claim, notify the Nominal Insurer in writing within 48 hours after the receipt of the claim by the person and shall allow the Nominal Insurer to take over the conduct of all negotiations in respect of the claim and its defence in any subsequent proceedings; or
 - (b) shall, if proceedings have been instituted in respect of the claim, within 48 hours after –
 - (i) notice of the application to the Tribunal has been served on him by the applicant; or
 - (ii) filing a notice of defence, in any other case, serve a copy of that notice on the Nominal Insurer.
- (4) Where the Nominal Insurer is served with a copy of a notice pursuant to subsection (3) or has reasonable grounds for believing –
- (a) that the Tribunal may, in the proceedings to which the notice relates, make an order under subsection (1)(c); or
 - (b) that judgment in those proceedings may be entered against it under subsection (1)(d) –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 127

Part IX – Insurance provisions

the Nominal Insurer may apply to the Tribunal or court to be made a party to the proceedings and to act for the person against whom the claim for compensation has been made or take over the conduct of the defence, as the case may be.

- (5) On an application under subsection (4) to the Tribunal or a court, the Tribunal or court may order that the Nominal Insurer be made a party to the proceedings and that, to such extent and upon and subject to such conditions as the Tribunal or court may determine, the Nominal Insurer shall act for the person against whom the claim for compensation has been made or the conduct of the defence shall be taken over by the Nominal Insurer.
- (6) In any proceedings to which this section relates –
- (a) an order shall not be made by the Tribunal in the absence of the person against whom the claim for compensation has been made; or
 - (b) judgment by default shall not be entered for the plaintiff –

unless, within the prescribed time, a copy of the application or summons has been served, by or on behalf of the applicant or plaintiff, on the Nominal Insurer.

- (7) If in any proceedings to which this section relates –
- (a) the person against whom a claim for compensation has been made has not, in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 127

the case of proceedings before the Tribunal, indicated his intention to appear at those proceedings; or

- (b) the defendant has not, in any other case, filed a notice of defence to the summons

–

the Nominal Insurer may, on receiving a copy of the application or summons, apply to the Tribunal or court to be made a party to the proceedings and to act for the person against whom the claim for compensation has been made or, as the case may be, to take over the conduct of the defence, and the provisions of subsection (5) apply to and in relation to an application under this subsection as if it were an application under subsection (4).

- (8) The right conferred by subsection (1) on –

- (a) a person in whose favour an order is made by the Tribunal pursuant to subsection (1)(a); or
- (b) a judgment creditor to have judgment entered against the Nominal Insurer –

is not affected or prejudiced by any non-compliance with any of the provisions of subsections (3) to (6) by –

- (c) in the case of proceedings heard by the Tribunal, the person referred to in paragraph (a) or the other party to the proceedings; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 127A

Part IX – Insurance provisions

- (d) in the case of any other proceedings, the judgment creditor or judgment debtor or by the practitioner of either of them.

127A. Nominal Insurer Fund

- (1) There is established a fund to be known as the Nominal Insurer Fund.
- (2) There is to be paid into the Nominal Insurer Fund –
 - (a) money received by the Nominal Insurer under section 128 and section 128A and section 131D; and
 - (b) money borrowed by the Nominal Insurer under section 129A; and
 - (c) any other money received by the Nominal Insurer.
- (3) There is to be paid from the Nominal Insurer Fund –
 - (a) all amounts required to be paid by the Nominal Insurer under this Act in satisfaction of any claim or order made, or judgment obtained, against the Nominal Insurer pursuant to this Act or the amount of costs incurred by the Nominal Insurer in relation to any claim or order made, or the proceedings in which any judgment is obtained, against the Nominal Insurer pursuant to this Act; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 127B

- (b) all amounts required to meet the costs and expenses incurred by the Nominal Insurer in or in connection with the performance or exercise of the powers and functions imposed or conferred on the Nominal Insurer by or under this Act; and
- (c) all amounts required to be paid from the Nominal Insurer Fund in accordance with a direction under section 127C.

127B. Nominal Insurer Special Account

- (1) The Nominal Insurer is to establish a Special Account in the Nominal Insurer Fund into which money received by the Nominal Insurer by way of special contributions under section 128A(2) is to be paid.
- (2) The Nominal Insurer is to pay from the Special Account –
 - (aa) any amount payable under section 126A(2); and
 - (a) amounts of the type specified in section 127A(3) that are determined by the Nominal Insurer to be paid from the Special Account; and
 - (b) amounts required to be paid by the Nominal Insurer under section 128A(14) and (15); and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 127C

Part IX – Insurance provisions

- (c) the repayment of any money borrowed by the Nominal Insurer under section 129A together with any interest payable on the money borrowed or costs associated with any other arrangements entered into by the Nominal Insurer for the payment of amounts referred to in paragraph (a); and
- (d) all amounts required to be paid from the Special Account in accordance with a direction under section 127C.

127C. Minister may give directions in relation to Nominal Insurer Fund and Special Account

- (1) The Nominal Insurer may, in writing, request the Minister for directions in relation to an amount that –
 - (a) is in the Nominal Insurer Fund established under section 127A or the Special Account established under section 127B; and
 - (b) is, in the opinion of the Nominal Insurer, in excess of the amount required for the purposes for which the Nominal Insurer Fund, or the Special Account, as the case may be, is established.
- (2) The Minister may, in writing, after receiving under subsection (1) a request in relation to an amount, direct the Nominal Insurer as to how the Nominal Insurer is to deal with the amount.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 127C

- (3) A direction under subsection (2) in relation to an amount referred to in a request under subsection (1) may require the Nominal Insurer to –
- (a) retain in the Nominal Insurer Fund, or the Special Account, as the case may be, the amount or a part of the amount; or
 - (b) pay the amount, or part of the amount, for –
 - (i) a purpose related to the provision of rehabilitation or compensation for injured workers; or
 - (ii) the promotion of workplace safety; or
 - (iii) purposes that are, in the opinion of the Minister, related to the objects of this Act.
- (4) The Nominal Insurer is to publish in its next annual report under section 131AA a copy of a direction given to the Nominal Insurer under subsection (2).
- (5) The Minister must cause a copy of a direction given under subsection (2) to be laid before each House of Parliament within 10 sitting-days after making the direction.
- (6) The Nominal Insurer must comply with a direction given to it under subsection (2).

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 128

Part IX – Insurance provisions

128. Payments to Nominal Insurer

- (1)
- (2) In order to ensure that there is sufficient money in the Nominal Insurer Fund to enable payments to be made under section 127A(3)(a), licensed insurers and self-insurers must pay to the Nominal Insurer amounts of money in such proportion as the Nominal Insurer may from time to time determine having regard to, so far as is practicable –
 - (a) in the case of licensed insurers, the premium income in respect of policies of insurance under this Act received by each licensed insurer during the preceding financial year; and
 - (b) in the case of self-insurers, the premium that has been determined by the Board for the purposes of the definition of *notional premium payments* in section 144(1).
- (3) Licensed insurers and self-insurers must pay to the Nominal Insurer, in such proportion as the Nominal Insurer determines under subsection (2), such additional amounts as the Nominal Insurer may require from time to time to enable the Nominal Insurer to meet any costs and expenses incurred by the Nominal Insurer in or in connection with the performance or exercise of the powers and functions imposed or conferred on the Nominal Insurer by or under this Act.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 128

- (4) For the purpose of making a determination under subsection (2), the Nominal Insurer may rely upon information that is required under the regulations to be provided to the Nominal Insurer by licensed insurers and self-insurers for the purpose of enabling such a determination to be made.
- (5) When the Nominal Insurer makes a determination under subsection (2), it shall give notice to each licensed insurer and self-insurer of the sum it has determined as being payable by that licensed insurer or self-insurer and shall, in that notice, require the licensed insurer or self-insurer to pay that sum to the Nominal Insurer within such time as is specified in that behalf in the notice.
- (6) If a licensed insurer or self-insurer fails to pay to the Nominal Insurer the sum specified in a notice given to the licensed insurer or self-insurer pursuant to subsection (5) within the time specified in that behalf in the notice, the licensed insurer or self-insurer is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.
- (7) Where a licensed insurer or self-insurer is convicted of an offence against this section the court by whom the licensed insurer or self-insurer is convicted may, in addition to imposing a penalty for the offence, order the licensed insurer or self-insurer to pay to the Nominal Insurer the sum in respect of the non-payment of which the offence was committed, or such

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 128A

Part IX – Insurance provisions

portion of that sum as may remain unpaid at the date of the conviction.

- (8) An order under subsection (7) for the payment of a sum to the Nominal Insurer may be enforced in the same manner as a summary conviction or order under the *Justices Act 1959* for the payment of a sum of money, and the provisions of that Act, with the necessary adaptations, apply to such an order accordingly.

128A. Special contributions

- (1) In this section –

domestic workers compensation insurance policy means a policy of insurance that indemnifies the policyholder for liabilities under this Act or independently of this Act in respect of domestic workers;

policyholder means the holder of a policy of insurance required to be maintained under section 97(1) but does not include the holder of a domestic workers compensation insurance policy;

special contribution means the special contribution determined by the Minister under subsection (2).

- (2) If the Nominal Insurer is or will be liable to pay amounts of the type specified in section 127A(3) –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 128A

- (a) as a result of the insolvency of a licensed insurer or former licensed insurer; or
- (b) as a result of the operation of section 126A –

the Minister may require all policyholders and self-insurers to pay to the Nominal Insurer, in each year, a special contribution determined by the Minister.

- (3) For the purposes of subsection (2), each State Service Agency or other body to which the Tasmanian Risk Management Fund applies is taken to be a policyholder.
- (4) In making a determination under subsection (2), the Minister is to take into account –
 - (a) the expected level of payments that the Nominal Insurer will be required to make as a result of the insolvency of the licensed insurer; and
 - (b) the cost to the Nominal Insurer of borrowing money pursuant to section 129A or entering into other arrangements to make the payments referred to in paragraph (a); and
 - (c) any other money expected to be received by the Nominal Insurer in relation to the insolvency of the licensed insurer; and
 - (d) the period during which payment of the special contribution is likely to be required; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 128A

Part IX – Insurance provisions

- (da) the expected amounts that the Nominal Insurer will be required to pay under section 126A(2); and
 - (e) such other matters as may be prescribed.
- (5) The Minister is to cause to be published in the *Gazette*, by not later than 15 December in each year, a determination made under subsection (2) specifying the amount of special contribution that each policyholder and self-insurer is to pay to the Nominal Insurer expressed as the percentage determined by the Minister under subsection (8).
- (6) A determination made under subsection (2) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (7) A determination made under subsection (2) has effect for a period of one year commencing on 30 June in the year following the day on which it is published in the *Gazette*.
- (8) If the Minister makes a determination under subsection (2) –
 - (a) each policyholder is to pay to the licensed insurer with whom a policy of insurance is maintained an amount of special contribution that is equal to a percentage, determined by the Minister, of the premium payable by the policyholder in respect of a policy that commences on the day on which the determination made under subsection (2)

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 128A

- takes effect or during the period for which the determination has effect; and
- (b) each self-insurer is to pay to the Nominal Insurer during the period for which the determination made under subsection (2) has effect an amount of special contribution that is equal to a percentage, determined by the Minister, of the notional premium, within the meaning of section 144(1), applying –
- (i) in the case of a self-insurer referred to in subsection (11)(a), on the day on which the determination made under subsection (2) takes effect; or
 - (ii) in the case of a self-insurer referred to in subsection (11)(b), on the day on which the permit is granted.
- (9) A policyholder is to pay the special contribution to the licensed insurer with whom the policy of insurance is maintained not later than the day on which the premium in respect of the policy is required to be paid.
- Penalty: Fine not exceeding 20 penalty units.
- (10) A licensed insurer, within 30 days after the end of each month, is to –
- (a) pay to the Nominal Insurer all amounts received under subsection (9) during that month; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 128A

Part IX – Insurance provisions

- (b) forward to the Nominal Insurer a statement in writing –
 - (i) setting out the amounts of special contribution received in respect of policies of insurance during that month; and
 - (ii) setting out the amounts of special contribution due during that month but not paid; and
 - (iii) setting out such other particulars as may be required by the Nominal Insurer; and
 - (iv) verified by a statutory declaration made by an officer of the licensed insurer.

Penalty: Fine not exceeding 20 penalty units.

- (11) A self-insurer is to pay the special contribution to the Nominal Insurer –
 - (a) in the case of an employer who was granted a self-insurer permit before the day on which the determination under subsection (2) took effect, within 30 days of the day on which the determination takes effect; or
 - (b) in the case of an employer who is granted a self-insurer permit after the day on which the determination under subsection (2) took effect, within 30 days

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 128A

of the day on which the permit is granted.

Penalty: Fine not exceeding 20 penalty units.

- (12) If a policyholder is required to pay an additional premium as a result of an adjustment of the policy of insurance, the policyholder must pay to the licensed insurer with whom the policy is maintained the amount of special contribution payable in respect of that adjustment not later than the day on which the additional premium in respect of the policy is required to be paid.

Penalty: Fine not exceeding 20 penalty units.

- (13) If a policyholder is entitled to receive from a licensed insurer a refund of an amount paid by way of premium in respect of a policyholder's policy, the licensed insurer, in addition to any amount paid to the policyholder by way of refund of premium, is to pay to the policyholder, by way of refund of the special contribution paid by the policyholder under subsection (9), an amount that represents a proportionate part of that special contribution.
- (14) If a self-insurer would, if it had been a policyholder, have been entitled to a refund of an amount paid by way of premium in respect of a policy of insurance, the self-insurer is entitled to a refund of the amount that represents a proportionate part of the amount paid by it by way of special contribution and the Nominal Insurer is to pay that amount to the self-insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 129

Part IX – Insurance provisions

- (15) If a licensed insurer pays to a policyholder an amount by way of refund of special contribution, the Nominal Insurer, on application by the licensed insurer, is to pay to the licensed insurer an amount equal to the amount so paid by the licensed insurer.
- (16) If a policyholder, licensed insurer or self-insurer is convicted of an offence under this section, the court by whom the policyholder, licensed insurer or self-insurer is convicted, in addition to imposing a penalty for the offence, is to order the policyholder, licensed insurer or self-insurer to pay to the Nominal Insurer the sum in respect of the non-payment of which the offence was committed, or such portion of that sum as may remain unpaid at the date of the conviction.
- (17) An order under subsection (16) for the payment of a sum to the Nominal Insurer may be enforced in the same manner as a summary conviction or order under the *Justices Act 1959* for the payment of a sum of money, and the provisions of that Act, with the necessary adaptations, apply such an order accordingly.

129. Right of Nominal Insurer to recover reinsurance money

Where a licensed insurer is insured under a contract of reinsurance against liability in respect of a policy of insurance or indemnity issued by the insurer under section 97 and any such liability is incurred by the licensed insurer, then, if that insurer, being a company, is wound up –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 129A

- (a) the Nominal Insurer shall be entitled to the benefit of, and may exercise, the rights and powers of the licensed insurer under that contract of reinsurance so as to enable the Nominal Insurer to recover from the reinsurer and retain the amount due under that contract of reinsurance; and
- (b) to the extent that recovery is not made from a reinsurer pursuant to paragraph (a), the Nominal Insurer shall be a creditor of, and have the same rights against, the licensed insurer as the employer concerned would have had if the indemnity provided by the policy of insurance had not been met.

129A. Power of Nominal Insurer to borrow money

If at any time –

- (a) the amount in the Special Account established by the Nominal Insurer under section 127B in respect of an insolvent licensed insurer is insufficient to meet payments required by this Act to be paid from the Special Account; or
- (b) the amount in a separate account established by the Nominal Insurer under section 131D(8) in respect of an act of terrorism, specified in an order under section 131B(1)(b), is insufficient to meet payments required by this Act to be paid from that account –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 130

Part IX – Insurance provisions

the Nominal Insurer may –

- (c) borrow money, from sources and on terms and conditions approved by the Treasurer, to be paid into the Special Account or the separate account, as the case may require; and
- (d) enter into such other arrangements as may be approved by the Treasurer.

130. Recovery by Nominal Insurer from employer, &c.

- (1) An amount that is paid by the Nominal Insurer in satisfaction of a claim, or an order made or judgment obtained, against the Nominal Insurer under this Act, together with its costs, either as agreed or as taxed between party and party, may be recovered by the Nominal Insurer as a debt due to it by action in a court of competent jurisdiction against –
 - (a) the employer, at the date on which the injury was sustained, of the worker by or on behalf of whom, or by or on behalf of whose dependants, the claim or order was made or the proceedings were instituted, except where the employer had, at all relevant times, maintained with a licensed insurer a policy of insurance or indemnity under section 97; or
 - (b) the licensed insurer from which that employer obtained a policy of insurance that was in force on the date when the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 130

- injury, by reason of which the claim or order arose or in respect of which the judgment was obtained, was sustained; or
- (c) any person against whom that employer or licensed insurer has or had at any time a right of indemnity or contribution, whether under this Act or any other Act or at common law in respect of the relevant injury; or
 - (d) any person liable to pay compensation to the worker in respect of the relevant injury under section 29.
- (2) A person from whom a sum is recoverable by the Nominal Insurer under subsection (1) has the same rights of indemnity or contribution in respect of that sum as that person would have had if he or she had paid the amount referred to in that subsection.
- (3) Subject to subsection (4), where the Nominal Insurer pays an amount under this Act arising out of an employer's failure to comply with section 97(1), the employer is liable to pay to the Nominal Insurer, in addition to any other debts due under this Part, an amount equal to the total of any insurance premiums which the Nominal Insurer is satisfied the employer has, at any time during the period of 5 years before the payment was made, avoided by failing to comply with section 97(1).
- (4) Where an employer pays an amount to the Board under section 97(10) –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 131

Part IX – Insurance provisions

- (a) no further amount is recoverable from the employer by the Nominal Insurer under subsection (3); and
 - (b) if the Nominal Insurer has a right of recovery against the employer under subsection (1), the Board is to pay to the Nominal Insurer the amount paid by the employer.
- (5) An employer must pay an amount payable under subsection (3) within such period as the Nominal Insurer determines.

Penalty: Fine not exceeding 100 penalty units.

- (6) If an employer fails to pay the amount within the period determined, that amount together with interest calculated at the rate referred to in section 92(2)(b) may be recovered by the Nominal Insurer as a debt due to it in any court of competent jurisdiction.

131. Employer to give information and assistance to Nominal Insurer

- (1) For the purpose of the performance of its functions and the exercise of its powers under this Act, the Nominal Insurer may, by notice in writing served on an employer, require the employer to –
- (a) give it such information and assistance as the Nominal Insurer considers necessary;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 131AAA

- (b) furnish to it such documents in the employer's possession as the Nominal Insurer considers necessary; and
 - (c) execute such documents as it is necessary for the employer to execute to enable the Nominal Insurer to exercise those powers and perform those functions.
- (2) An employer who fails to comply with a requirement of the Nominal Insurer made under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

131AAA. Financial statements

- (1) The Nominal Insurer is to keep accounts and records of its financial affairs.
- (2) Within 45 days after the end of the financial year ended 30 June 2004 and each subsequent financial year, the Nominal Insurer is to –
 - (a) prepare the financial statements of the Nominal Insurer relating to that financial year; and
 - (b) provide the Auditor-General with the financial statements of the Nominal Insurer.
- (3) The financial statements of the Nominal Insurer are to comply with the Australian Accounting Standards.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 131AA

Part IX – Insurance provisions

131AA. Annual report

- (1) The Nominal Insurer is to prepare an annual report for the financial year ended 30 June 2004 and each subsequent financial year.
- (2) The annual report is to –
 - (a) be in a form approved by the Minister; and
 - (b) incorporate the financial statements prepared for the relevant financial year under section 131AAA.
- (3) The Minister is to lay a copy of the annual report of the Nominal Insurer before each House of Parliament within 4 months after the end of the financial year to which the report relates.
- (4) If the Minister is unable to lay a copy of the annual report before a House of Parliament within the period specified in subsection (3) because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –
 - (a) forward a copy of the annual report to the Clerk of that House of Parliament immediately after the expiration of that period or that day; and
 - (b) lay a copy of the annual report before that House within the next 7 sitting-days of that House.

Division 6 – Acts of terrorism

131A. Interpretation of Division

(1) In this Division –

act of terrorism means an act done or a threat made by a person –

- (a) for an ethnic, ideological, political, religious or similar purpose; and
- (b) with the intention to cause personal injury or damage to property; and
- (c) with the intention to influence a government or put the public, or a section of the public, in fear;

actuary means a person who is a Fellow of the Institute of Actuaries of Australia;

interested party means –

- (a) a representative of licensed insurers; and
- (b) a representative of self-insurers; and
- (c) a representative of employers; and
- (d) a representative of workers; and
- (e) the Nominal Insurer; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 131B

Part IX – Insurance provisions

- (f) any other person the Minister considers to be an interested party;

policyholder has the same meaning as in section 128A.

- (2) In deciding whether an act was done or a threat was made for a purpose or with an intention specified in the definition of *act of terrorism* in subsection (1) –
 - (a) regard may be had to the nature of the act or threat and the context in which the act was done or the threat was made; and
 - (b) it does not matter whether the person was acting alone or with others or in connection with an organisation or government.

131B. Orders in respect of acts of terrorism

- (1) The Minister may do either or both of the following:
 - (a) make an order declaring that a policy of insurance referred to in section 97(1) is not required to indemnify the employer or any person employed by the employer for any liability arising out of an act of terrorism;
 - (b) make an order declaring that a specified act of terrorism has occurred and the date

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 131C

on which that act is taken to have occurred.

- (2) An order under subsection (1) may have retrospective effect.
- (3) Before making an order under subsection (1)(b), the Minister is to consult with all interested parties.

131C. Claim for compensation in respect of act of terrorism

- (1) If an order is made under section 131B(1)(b) –
 - (a) an employer is not liable to pay compensation under this Act for an injury or disease arising out of the act of terrorism specified in the order; and
 - (b) the same claims that would, but for this section, be made against an employer may be made against the Nominal Insurer.
- (2) Any such claim against the Nominal Insurer must be made within 90 days after the day on which the order is made.
- (3) As soon as practicable after the period referred to in subsection (2) elapses, the Nominal Insurer, on the advice of an actuary, is to estimate –
 - (a) the total amount that would, if subsection (4) did not apply, be payable by the Nominal Insurer in respect of all workers on account of its liability for the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 131D

Part IX – Insurance provisions

act of terrorism specified in the order;
and

- (b) if that amount exceeds \$25 million, the reduction factor by which that amount would need to be multiplied to limit it to \$25 million.

- (4) If the Nominal Insurer determines a reduction factor, the amount that the Nominal Insurer would, but for this section, be required to pay on account of its liability for the act of terrorism specified in the order is reduced by multiplying it by the reduction factor.

131D. Nominal Insurer may be funded by contributions

- (1) The Minister, after consulting with such interested parties as the Minister considers necessary or expedient, may determine that any liability of the Nominal Insurer under this Division is to be funded by –
 - (a) contributions from licensed insurers and self-insurers in such proportions as may be determined by the Nominal Insurer in a financial year having regard to –
 - (i) in the case of licensed insurers, the premium income in respect of policies of insurance under this Act received by each licensed insurer in respect of that financial year; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 131D

- (ii) in the case of self-insurers, the notional premium within the meaning of section 144(1); or
 - (b) a special contribution determined by the Minister payable by all policyholders and self-insurers; or
 - (c) a combination of the methods referred to in paragraphs (a) and (b).
- (2) The Minister is to cause a notice of the making of a determination under subsection (1) to be published in the *Gazette* as soon as practicable after the determination is made.
- (3) If the Minister determines that the Nominal Insurer's liability is to be funded, or partly funded, by contributions from licensed insurers and self-insurers, the amount required to be paid in respect of any financial year is not to exceed, for all acts of terrorism specified in orders under section 131B(1)(b) –
 - (a) in the case of licensed insurers, 4% of the premium income in respect of policies of insurance under this Act received by each licensed insurer in respect of that financial year; and
 - (b) in the case of self-insurers, 4% of the notional premium within the meaning of section 144(1).
- (4) If the Minister determines that any of the Nominal Insurer's liability is to be funded by contributions from licensed insurers or self-

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 131D

Part IX – Insurance provisions

insurers, those contributions are not payable in respect of the financial year in which that determination is made.

- (5) The Nominal Insurer may require contributions payable under subsection (1)(a) to be paid at such times, including in advance, and in such instalments as the Nominal Insurer determines.
- (6) If contributions or a special contribution payable by a licensed insurer, self-insurer or policyholder under this section are not paid within the time specified by the Nominal Insurer or Minister, as the case may be –
 - (a) the licensed insurer, self-insurer or policyholder is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units; and
 - (b) the amount of those contributions or that special contribution together with interest calculated at the rate referred to in section 92(2)(b) may be recovered by the Nominal Insurer as a debt due to it in any court of competent jurisdiction.
- (7) For the purposes of this section –
 - (a) each State Service Agency is taken to be a policyholder; and
 - (b) the Tasmanian Risk Management Fund is taken to be a licensed insurer.
- (8) If the Nominal Insurer is, or is likely to be, liable to pay a claim under this Division in respect of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part IX – Insurance provisions

s. 131D

an act of terrorism specified in an order under section 131B(1)(b), the Nominal Insurer is to establish a separate account in the Nominal Insurer Fund into which money received by the Nominal Insurer by way of payments under this section, in respect of that act of terrorism, is to be paid.

- (9) The Nominal Insurer is to pay from that separate account –
- (a) any amount required to be paid for claims under section 131C; and
 - (b) any amount required to pay costs and expenses incurred by the Nominal Insurer in, or in connection with, the performance of its functions under this Division; and
 - (c) any amount required to repay money borrowed by the Nominal Insurer under section 129A, inclusive of any interest, or to pay costs associated with any other arrangements entered into by the Nominal Insurer for the payment of amounts referred to in paragraph (a).

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 132

Part X – Concurrent rights to compensation and damages

**PART X – CONCURRENT RIGHTS TO
COMPENSATION AND DAMAGES**

Division 1 – Rights to compensation and damages

132. Interpretation of Part X

In this Part, unless the contrary intention appears

—

compensation, used in relation to an injury, means any compensation or any such expenses as are referred to in section 75 payable in respect of that injury under this Act;

damages means damages recoverable (whether by virtue of an enactment or otherwise) in respect of any civil liability in the employer, however arising;

employer, used in relation to an injury suffered by a worker, includes any person who, in respect of that injury, is liable, under section 29, to pay compensation or to indemnify any other person for any compensation paid by that other person.

132A. Settlement by agreement

- (1) A worker's outstanding entitlements to compensation under this Act in respect of an injury may only be settled by an agreement to settle by which the worker agrees that all further claims to compensation are extinguished.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 132A

- (2) An agreement to settle that does not comply with this section is void.
- (3) A settlement by agreement of all a worker's outstanding entitlements to compensation may only be entered into, before the end of the period of 2 years beginning on the day on which a claim for compensation is first made in relation to the worker, if the agreement has been approved by the Tribunal under this section.
- (4) A worker, the employer or the employer's insurer may, in a form approved by the Tribunal, refer to the Tribunal for its approval a proposed agreement to settle, which may be in the form the parties think fit.
- (5) The Tribunal may approve, or refuse to approve, a proposed agreement to settle that is referred to it under subsection (4).
- (6) The Tribunal may only approve under subsection (5) a proposed agreement to settle –
 - (a) if the Tribunal is satisfied that –
 - (i) all reasonable steps have been taken to enable the worker to whom the proposed agreement relates to be rehabilitated or retrained or to return to work; or
 - (ii) the worker has returned to work; or
 - (b) where the Tribunal has, on a reference to the Tribunal under section 81A,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 132A

Part X – Concurrent rights to compensation and damages

determined that there is a reasonably arguable case for disputing liability to pay compensation under this Act, if the Tribunal is satisfied that the proposed agreement is in the best interests of the worker; or

(c) if the Tribunal is satisfied that –

(i) special circumstances in relation to the worker make the worker's rehabilitation, retraining or return to work impracticable; and

(ii) the proposed agreement is in the best interests of the worker.

(7) The Tribunal may only approve under subsection (5) a proposed agreement to settle if the Tribunal is satisfied that –

(a) the worker has received advice (which may be legal or financial advice or both) about the implications of settling the claim, which advice has been paid by the employer or the employer's insurer and is appropriate in the circumstances of the worker; and

(b) the entitlement, if any, of the worker under section 71 has been considered.

(8) If the Tribunal refuses to approve under subsection (5) a proposed agreement to settle –

(a) the Tribunal is not to make any order as to the amount of the settlement; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 132A

- (b) a party to the claim may refer to the Tribunal under subsection (4) another proposed agreement to settle.
- (9) If a worker's outstanding entitlements to compensation are settled by agreement between the parties after the end of the period of 2 years beginning on the day on which a claim for compensation is first made in relation to the worker, the worker, the employer or the employer's insurer may refer the agreement to settle to the Tribunal for review.
- (10) A referral under subsection (9) of an agreement to settle –
 - (a) must be made within 3 months of the date of the agreement; and
 - (b) is to be in a form approved by the Tribunal.
- (11) The Tribunal may set aside an agreement to settle referred to the Tribunal under subsection (9) if the Tribunal is of the opinion that –
 - (a) a party entered the agreement under duress; or
 - (b) the worker has not received advice (which may be legal or financial advice, or both) about the implications of settling the claim, which advice has been paid by the employer or the employer's insurer and is appropriate in the circumstances of the worker; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 132A

Part X – Concurrent rights to compensation and damages

- (c) a party was induced to enter the agreement by a misrepresentation, made by another party to, or the agent of a party to, the agreement, as to a fact material to the agreement, whether the misrepresentation was innocent, fraudulent or reckless.
- (12) If the Tribunal sets aside an agreement to settle under subsection (11) –
- (a) the Tribunal is not to make any order as to the amount of the settlement; and
 - (b) the Tribunal must make the order it considers appropriate in respect of the repayment of any money paid under the agreement or the application of the money towards any entitlements of the worker; and
 - (c) the parties may enter into another agreement to settle the claim.
- (13) The Tribunal is to order that the costs reasonably incurred by a worker of and incidental to a referral under this section to the Tribunal of an agreement to settle, or a proposed agreement to settle referred to in subsection (3), are to be paid by the worker's employer, unless –
- (a) the worker referred the agreement; and
 - (b) the Tribunal is satisfied the referral was frivolous or vexatious.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 133

133. Effect of compensation on worker's right to damages

- (1) Except as otherwise provided in this Part, the payment or an entitlement to the payment of compensation in respect of an injury does not affect the right to obtain damages in respect of that injury, but, where a liability has been incurred (whether by the employer or any other person) for the payment of damages to a worker in respect of an injury, the payment to or to the benefit of that worker of compensation in respect of that injury shall, so far as it extends, be regarded also as a payment in or towards the discharge of that liability, and the amount of the damages shall be reduced accordingly.
- (2) The subsistence of a right of a worker or a dependant of a deceased worker to damages in respect of an injury, or the taking of proceedings to establish any such right or for the recovery of any such damages, does not prejudice or affect his right to compensation in respect of that injury, but where a worker or a dependant of a deceased worker has obtained judgment (whether against his employer or any other person) for damages in respect of an injury or has accepted any money paid into court in satisfaction of a claim for damages, his right to any payments by way of compensation that have not been determined before the date of the judgment, or the date of his acceptance of money paid into court, is extinguished.
- (3) The settlement by a worker or a dependant of a deceased worker of a claim for damages in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 134

Part X – Concurrent rights to compensation and damages

respect of an injury, if by that settlement he agrees that all his further claims to compensation in respect of that injury are extinguished, has, for the purposes of subsection (2), the like effect as a judgment obtained by that worker or that dependant for those damages.

134. Right of employer to contribution or indemnity from third parties

- (1) Subject to this section, where an injury for which compensation is payable to a worker is caused under circumstances which, but for section 138AB, would create a liability in some person other than the employer to pay damages in respect of that injury to that worker, the employer may recover indemnity against that person in respect of the compensation paid by the employer to the worker in respect of that injury.
- (2) Subject to subsection (3), where the circumstances referred to in subsection (1) create the liability to pay damages both in the employer and some other person, whether arising as a result of a tort or otherwise, the employer has the like right of indemnity or contribution against that other person in respect of the compensation paid by the employer as if that compensation were part of those damages.
- (3) Where an injury to a worker arises partly by his or her own fault and partly by the fault of another person, the amount recoverable by the employer under this section by way of

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

contribution or indemnity is reduced to such extent as the Supreme Court thinks just and equitable having regard to the degree of the worker's responsibility for the injury.

135.

136. Application to bring action on

- (1) Where a worker has accepted the payment of compensation in respect of an injury, the employer may, not sooner than 12 months after the date on which the worker first received payment of compensation in respect of that injury, serve on the worker a notice in writing requiring the worker, not later than 42 days after service of the notice, to commence proceedings against the employer to recover damages in respect of that injury and, if the worker within that period does not commence those proceedings, the employer may apply to the Supreme Court or a judge in chambers for an order that the worker commence proceedings within whatever period that the Court or judge may direct.
- (2) Upon hearing an application under subsection (1), the Supreme Court or judge in chambers may make an order –
 - (a) fixing a time within which proceedings to recover damages shall be commenced by the worker; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 136

Part X – Concurrent rights to compensation and damages

(b) adjourning the application –

- (i) for a fixed period, or indefinitely (with liberty to the employer to apply); and
- (ii) on such terms and conditions as the Court or judge thinks fit –

and may make any other order and give other directions.

- (3) Where, before the end of the time fixed by the Supreme Court or a judge in chambers in accordance with subsection (2)(a), the worker files an application for an extension of that time, the Supreme Court or judge may order an extension.
- (4) Upon the hearing of an application adjourned pursuant to subsection (2)(b), the Supreme Court or a judge in chambers may make any order under subsection (2) in relation to that application.
- (5) Where a worker does not commence proceedings against an employer to recover damages in respect of an injury, within –
 - (a) a time fixed by the Supreme Court or a judge in chambers in accordance with subsection (2)(a); or
 - (b) any extension of that time granted under subsection (3) –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 137

any right of action of the worker to recover damages in respect of that injury is, without affecting his right to compensation under this Act, forever barred and extinguished.

137. Weekly payments to be continued during proceedings for damages

Subject to section 89, where a worker who is entitled under this Act to weekly payments during his incapacity takes proceedings independently of this Act for damages for the injury in respect of which he is entitled to receive those weekly payments, his employer shall, pending the determination of those proceedings, pay or, as the case requires, continue to pay to the worker all such weekly payments to which the worker is so entitled as if those proceedings had not been taken.

138. Proceedings by dependants to be taken jointly

Where the dependants of a worker are entitled to compensation in respect of an injury resulting in his death, proceedings in respect of that compensation or for the payment of damages in respect of that injury shall, except with the leave of the Tribunal, be brought jointly by all those dependants.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 138AA

Part X – Concurrent rights to compensation and damages

Division 2 – Restrictions on awards of damages

138AA. Application of Division

- (1) This Division applies to the awarding of damages against an employer independently of this Act in respect of an injury suffered by a worker if –
 - (a) the injury was caused by the negligence or other tort of, or a breach of contract or statutory duty by, an employer; and
 - (b) compensation has been paid or is payable in respect of the injury under this Act or would have been paid or be payable but for section 25(2).
- (2) This Division applies even if the damages resulting from the negligence or other tort of an employer are sought to be recovered in an action for breach of contract or statutory duty or other action.
- (3) A reference in this Division to an employer includes a reference to a person for whose acts an employer is vicariously liable.
- (4) This Division extends to an employer's liability for a breach of statutory duty by a worker where the employer would have been liable for damages if the employer had committed the breach.
- (5) This Division does not apply to an action by a worker for damages for trespass, or any other

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 138AB

cause of action for which the employer is not vicariously liable, committed against the worker by a person –

- (a) employed by the employer under a contract of service at the time the injury was suffered; or
- (b) otherwise deemed to be a worker employed by the employer at that time.

138AB. Claims for damages

- (1) A settlement by agreement of a claim for damages in respect of an injury to a worker for which compensation is payable under this Act is void unless the threshold requirement is met in relation to the injury.
- (2) A person may not commence proceedings for an award of damages in respect of an injury to a worker for which compensation is payable under this Act, unless the threshold requirement is met in relation to the injury.
- (3) The threshold requirement is met in relation to an injury if –
 - (a) there has been provided to the Tribunal a statement in writing, signed by a medical practitioner, certifying that, in the opinion of the practitioner, the degree of permanent impairment of the worker resulting from the injury is not less than 20% of the whole person; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 138AB

Part X – Concurrent rights to compensation and damages

- (b) the Tribunal has determined that the degree of permanent impairment of the worker resulting from the injury is not less than 20% of the whole person.
- (4) The threshold requirement is met in relation to an injury suffered by a worker if –
 - (a) the injury is an injury to which section 71(3) applies; and
 - (b) there has been provided to the Tribunal a statement in writing, signed by a medical practitioner, certifying that the injury is an injury to which section 71(3) applies.
- (5) An assessment of the degree of the worker's permanent impairment for the purposes of this section is to be carried out in accordance with section 72 or 73.
- (6) The Tribunal may refer the question of the degree of permanent impairment to a medical panel in accordance with Part V.
- (7) The Tribunal is to keep a record of –
 - (a) a statement provided to the Tribunal in accordance with subsection (3)(a); and
 - (b) a determination of the Tribunal of the kind referred to in subsection (3)(b); and
 - (c) a statement provided to the Tribunal in accordance with subsection (4)(b); and
 - (d) any other prescribed matter.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

138ABA - 138AC.

138AD. No damages if claim settled by agreement

A worker is not entitled to damages in respect of an injury if the worker has settled in accordance with section 132A the worker's outstanding entitlements to compensation.

Division 3 – Choice of law

138AE. Applicable substantive law for work injury claims

- (1) If there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid) the substantive law of that State is the substantive law that governs –
 - (a) whether or not a claim for damages in respect of the injury can be made; and
 - (b) if it can be made, the determination of the claim.
- (2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.
- (3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 138AF

Part X – Concurrent rights to compensation and damages

respect of an injury if compensation in respect of it –

- (a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or
 - (b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.
- (4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.

138AF. Claim to which Division applies

- (1) This Division applies only to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury that was caused by –
- (a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or
 - (b) a breach of contract by the worker's employer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 138AG

- (2) This Division also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if –
- (a) the worker's employment is connected with this State; and
 - (b) the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.
- (3) Subsections (1)(a) and (2) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.
- (4) A reference in this Division to a worker's employer includes a reference to –
- (a) a person who is vicariously liable for the acts of the employer; and
 - (b) a person for whose acts the employer is vicariously liable.

138AG. What constitutes injury and employment and who is employer

For the purposes of this Division –

- (a) “**injury**” and “**employer**” include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 138AH

Part X – Concurrent rights to compensation and damages

- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

138AH. Claim in respect of death included

For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

138AI. Meaning of substantive law

In this Division –

a State's legislation about damages for a work-related injury means –

- (a) for this State, this Part and any other provision of this Act providing for the interpretation of anything in this Part; and
- (b) for any other State, any provisions of a law of that State that is declared by the regulations to be the State's legislation about damages for a work-related injury;

substantive law includes –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part X – Concurrent rights to compensation and damages

s. 138AI

- (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action; and
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and
- (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and
- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and
- (g) a provision of a State's legislation about damages for a work-related injury, whether or not it would be

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 138AJ

Part X – Concurrent rights to compensation and damages

otherwise regarded as procedural
in nature –

but does not include a law prescribing
rules for choice of law.

138AJ. Availability of action in another State not relevant

(1) It makes no difference for the purpose of this Division that, under the substantive law of another State –

(a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or

(b) the circumstances on which the claim is based do not give rise to a cause of action.

(2) In this section –

another State means a State other than the State with which the worker's employment is connected.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

PART XI – INJURY MANAGEMENT

Division 1 – Application, purpose and interpretation

138A - 138B.

139. Purpose and principles of Part

- (1) The purpose of this Part is to establish a system that ensures that, as far as practicable, workers –
 - (a) recover as soon as possible from workplace injuries; and
 - (b) are able, as soon as practicable, to return to and remain in work that is safe for them to perform without aggravating the injury or impeding its healing.
- (2) This Part is based on the following principles:
 - (a) the primary aim of persons, including the injured worker, involved in injury management should be –
 - (i) the recovery of the worker from the injury; and
 - (ii) that the worker return to work –and, to this end, all such persons should co-operate, collaborate and consult together;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 139

Part XI – Injury Management

- (b) it is essential to ensure that injury management begins as soon as possible after a worker suffers a workplace injury;
- (c) wherever possible, injury management is to enable an injured worker to continue to be employed by the employer who was the worker's employer when the worker was injured;
- (d) injury management should be transparent, effective and cost-efficient;
- (e) all parties to injury management, in particular injured workers, their employers and their medical practitioners, should have access to information and assistance relating to their roles, rights and responsibilities;
- (f) injury management should be of a high standard so as to maintain the dignity and integrity of injured workers and should ensure that injured workers are active participants in the management of their injuries;
- (g) issues relating to injury management should be resolved as soon as practicable, and with such assistance as may be necessary, so as to ensure effective injury management;
- (h) all decisions relating to injury management should be made in the best interests of the worker.

140. Application of Part

- (1) This Part applies in relation to a worker who has made a claim for compensation, even if there is a dispute as to whether the employer is liable for the claim, but ceases to apply –
 - (a) after an agreement to settle the claim is made in accordance with section 132A; or
 - (b) after an agreement to settle a claim for damages is made in accordance with this Act; or
 - (c) if the Tribunal makes orders under either section 81A(3)(c) or (d); or
 - (d) if the Tribunal or a court determines that the employer is not liable for the claim.
- (2) Despite subsection (1), if –
 - (a) this Part ceases, in accordance with subsection (1)(a), to apply in relation to a worker because an agreement to settle is made in accordance with section 132A; and
 - (b) the agreement is set aside by the Tribunal under section 132A(11) –

this Part applies in relation to the worker, from the date on which the agreement is set aside, as if subsection (1)(a) did not apply, until a further agreement to settle, if any, is made in accordance with section 132A.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 141

Part XI – Injury Management

(3) Despite subsection (1), if –

- (a) this Part ceases, in accordance with subsection (1)(d), to apply in relation to a worker because the Tribunal or a court determines that the employer is not liable for the claim; and
- (b) the Tribunal or a court subsequently determines that the employer is so liable –

this Part applies in relation to the worker from the date of the determination, as if subsection (1)(d) did not apply.

141. Interpretation

(1) In this Part, unless the contrary intention appears –

Agency has the same meaning as in the *State Service Act 2000*;

approved injury management plan, in relation to a worker, means the injury management plan to which the worker and the worker's employer have consented under section 143E;

approved injury management program, in relation to a worker –

- (a) means the injury management program that is in force and that was approved under

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 141

section 143(7) in respect of the worker's employer; or

- (b) if the worker is employed for the purposes of an Agency and there is in force an injury management program that was approved under section 143(7) in respect of that Agency, means that program –

and includes any amendments to the program that are submitted to the Board under section 143(10) and are not disallowed under section 143(11);

approved return-to-work plan, in relation to a worker, means the return-to-work plan to which the worker and the worker's employer have consented under section 143E and that is in force;

employer's insurer, in relation to an employer, means a licensed insurer with whom the employer has entered into a contract pursuant to section 97(1);

Head of an Agency has the same meaning as in the *State Service Act 2000*;

injured worker means a worker suffering from a workplace injury;

injury management co-ordinator, in relation to a worker, means the injury management co-ordinator to whom the worker is assigned under section 143B;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 141

Part XI – Injury Management

injury management plan means a comprehensive plan for injury management in respect of an injured worker who is, or is likely to be, totally or partially incapacitated for work for an extended period;

injury management program means a program for injury management in respect of workers who may suffer workplace injuries;

return-to-work co-ordinator, in relation to a worker, means the return-to-work co-ordinator to whom the worker is assigned under section 143D;

return-to-work plan means a plan, which need not be comprehensive, for the return to work of an injured worker;

significant injury, in relation to a worker, means a workplace injury suffered by the worker that is likely to result in the worker being totally or partially incapacitated for more than 5 working days;

treating medical practitioner, in relation to a worker, means a medical practitioner treating the injured worker for the worker's workplace injury and includes the worker's primary treating medical practitioner.

- (2) In this Part, a reference to an employer in relation to a worker means the employer who is

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 141

or may be liable to pay compensation under this Act in respect of a workplace injury suffered by the worker.

(3) For the purposes of this Part, the injury management program in respect of an employer who is not a self-insurer, a Minister or the Crown –

(a) is, if there is in force an injury management program that was submitted by the employer to the employer's insurer under section 143(4), that program; or

(b) is, if –

(i) there is in force an injury management program that was submitted to the Board under section 143(1) by the employer's insurer; and

(ii) the employer's insurer has notified the employer under section 143(3) that the program applies to the employer; and

(iii) paragraph (a) does not apply –

that program –

and includes any amendments to the program that are submitted to the Board under section 143(10) and are not disallowed under section 143(11).

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 141

Part XI – Injury Management

(4) For the purposes of this Part, the injury management program in respect of an employer who is a self-insurer and who is not a Minister or the Crown is the injury management program that –

- (a) was submitted by the employer to the Board under section 143(5); and
- (b) is approved by the Board under section 143(7); and
- (c) is in force –

and includes any amendments to the program that are submitted to the Board under section 143(10) and are not disallowed under section 143(11).

(5) For the purposes of this Part, an injury management program is in force in relation to an Agency if the program –

- (a) was submitted by the Head of the Agency to the Board under section 143(6); and
- (b) is approved by the Board under section 143(7); and
- (c) is in force –

and a reference to such a program includes a reference to any amendments to the program that are submitted to the Board under section 143(10) and are not disallowed under section 143(11).

Division 2 – Injury management programs

142. Injury management programs to be complied with

- (1) The Board may, by notice, issue guidelines specifying –
 - (a) matters that must be included in an injury management program; and
 - (b) matters that the Board recommends be included, but that are not required to be included, in an injury management program.
- (2) An employer’s insurer must, as far as reasonably practicable –
 - (a) ensure that there is an injury management program in respect of each employer; and
 - (b) comply with each injury management program –
 - (i) that is submitted by the insurer to the Board and approved by the Board under section 143(7); or
 - (ii) that is submitted to the insurer under section 143(4) and approved by the insurer.

Penalty: Fine not exceeding 100 penalty units.

- (3) An employer who is not a Minister or the Crown must –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143

Part XI – Injury Management

- (a) ensure that there is an injury management program in respect of the employer; and
- (b) comply with each injury management program in respect of the employer.

Penalty: Fine not exceeding 100 penalty units.

(4) An employer who is a Minister or the Crown must –

- (a) ensure that there is an injury management program that is in force in relation to each Agency; and
- (b) comply with each such program.

(5 - 6)

(7) The Board may, by notice in writing to an employer, a Head of an Agency or an employer's insurer, require the employer, Head of an Agency or insurer to submit to the Board, within the period specified in the notice, a report in relation to the injury management program referred to in the notice.

143. Approval of injury management programs

(1) An employer's insurer may submit to the Board an injury management program in respect of an employer, or a group of employers, or all employers, in respect of whom the insurer is a licensed insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143

- (2) An injury management program that is submitted by an insurer to the Board and approved by the Board under subsection (7) may apply to one or more employers, if the insurer has notified the employers under subsection (3).
- (3) An employer's insurer may notify the employer in writing that an injury management program approved by the Board under subsection (7) applies to the employer.
- (4) An employer may submit to the employer's insurer –
 - (a) an injury management program; or
 - (b) an amendment to an injury management program submitted to the insurer under paragraph (a).
- (5) An employer who is a self-insurer may submit to the Board an injury management program.
- (6) If a worker is employed by a Minister or the Crown, the Head of an Agency may submit to the Board, on behalf of the employer of the worker, an injury management program that is to apply to the Agency.
- (7) The Board or an employer's insurer may approve, or refuse to approve, an injury management program, or an amendment to an injury management program, submitted to the Board or the insurer, respectively, under this section.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143

Part XI – Injury Management

- (8) The Board or an employer's insurer must not approve an injury management program unless it contains all matters that are specified in guidelines issued under section 142(1) to be matters that must be included in injury management programs.
- (9) An injury management program that has been approved under subsection (7) –
 - (a) comes in force on the date on which it is approved under that subsection or another date agreed to by the Board, or the insurer, to whom the plan is submitted; and
 - (b) remains in force for a period of 3 years, unless a longer or shorter period is specified in the approval; and
 - (c) may contain the amendments, submitted to the Board or an insurer under subsection (10), that have not been disallowed under subsection (11) by the Board or the employer's insurer, as the case may be.
- (10) A person who may under this section –
 - (a) submit an injury management program to the Board may submit to the Board an amendment to an injury management program approved by the Board; and
 - (b) submit an injury management program to an employer's insurer may submit to the insurer an amendment to an injury

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143A

management program approved by the insurer.

- (11) If an amendment to an injury management program is submitted to the Board or an insurer by a person under subsection (10), the Board or the insurer, as the case may be, may, within 60 days, disallow the amendment by notice in writing to the person.

Division 3 – Injury management and return-to-work coordinators and plans

143A. Employer to notify insurer of workplace injury

- (1) An employer must notify the employer's insurer, if any, within 3 working days of becoming aware that one of the employer's workers has suffered a workplace injury that –
- (a) results in, or is likely to result in, the worker being partially or totally incapacitated for work; or
 - (b) is required to be reported to the insurer under the employer's approved injury management program.

Penalty: Fine not exceeding 10 penalty units.

- (2) An employer is not to be taken to have given notice under subsection (1) in relation to a worker unless the notice is in accordance with the requirements of the worker's approved injury management program.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143B

Part XI – Injury Management

143B. Injury management co-ordinator to be appointed

- (1) The licensed insurer of an employer of a worker must appoint an injury management co-ordinator in respect of the employer.
- (2) The licensed insurer of an employer of a worker, as soon as practicable after becoming aware that the worker has suffered a significant injury, must assign the worker to the injury management co-ordinator in respect of the employer.
- (3) If a worker's approved injury management program was submitted by the worker's employer to the employer's insurer under section 143(4) –
 - (a) subsections (1) and (2) do not apply to the employer's insurer; and
 - (b) the employer must –
 - (i) appoint an injury management co-ordinator in respect of the employer; and
 - (ii) assign a worker to the injury management co-ordinator, as soon as practicable after becoming aware that the worker has suffered a significant injury.
- (4) If a worker's approved injury management program was submitted by the worker's employer to the Board under section 143(5) or (6), the employer must –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143C

- (a) appoint an injury management co-ordinator in respect of the employer; and
 - (b) assign a worker to the injury management co-ordinator, as soon as practicable after becoming aware that the worker has suffered a significant injury.
- (5) A person may only be appointed to be an injury management co-ordinator if, where the Board approves a course of training –
- (a) the person has successfully completed the course of training; or
 - (b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.
- (6) The employer or insurer who appointed a person to be an injury management co-ordinator may appoint another person to be the injury management co-ordinator in the place of the person first appointed.

143C. Responsibilities of injury management co-ordinators

- (1) An injury management co-ordinator is responsible for co-ordinating and overseeing the injury management in respect of the worker assigned to the co-ordinator under section 143B(2) or (3).

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143C

Part XI – Injury Management

- (2) An injury management co-ordinator, so far as is reasonably practicable, is to ensure that –
- (a) contact is made with the worker, the employer and the worker's primary treating medical practitioner, as soon as practicable after the worker is assigned to the co-ordinator under section 143B(2) or (3); and
 - (b) injury management plans and return-to-work plans in relation to the worker are developed, reviewed, modified, and implemented, as agreed with the worker or determined by the Tribunal; and
 - (c) the work capacity of the worker is regularly reviewed and options for the worker's retraining or redeployment are investigated and arranged; and
 - (d) arrangements are made for the rehabilitation of the worker so that the worker returns to work as soon as is possible and appropriate; and
 - (e) if required, workplace rehabilitation providers are appointed; and
 - (f) the following persons are involved in the management of the worker's injury and return to work:
 - (i) the worker, the worker's employer and the employer's insurer;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143C

- (ii) the primary treating medical practitioner and other treating medical practitioners; and
- (g) the following persons are, if necessary or desirable, involved in the injury management of the worker's injury:
 - (i) workplace rehabilitation providers;
 - (ii) the return-to-work co-ordinator;
 - (iii) supervisors and line managers;
 - (iv) allied health professionals; and
- (h) medical information is collated; and
- (i) relevant documentation is maintained; and
- (j) attempts are made to resolve disputes in relation to injury management in respect of the worker, including, if the co-ordinator thinks fit, by arranging or providing informal mediation; and
- (k) information on injury management is provided to the worker and the worker's employer; and
- (l) any other duties that are prescribed for the purposes of this paragraph are carried out.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143D

Part XI – Injury Management

143D. Return-to-work co-ordinator may be required to be appointed

- (1) An employer who employs more than 100 workers must appoint a return-to-work co-ordinator.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person may only be appointed under subsection (1) to be a return-to-work co-ordinator if, where the Board approves a course of training –

(a) the person has successfully completed the training; or

(b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.

- (3) A worker's employer who employs more than 50 workers, as soon as practicable after becoming aware that a worker has suffered a significant injury, must assign the worker to the return-to-work co-ordinator appointed under subsection (1) in respect of the employer.

Penalty: Fine not exceeding 50 penalty units.

- (4) A worker's employer may only assign a worker to a return-to-work co-ordinator if the co-ordinator is familiar with the workplace, and the management and staff of the workplace, in which the worker is employed.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143E

- (5) A return-to-work co-ordinator in respect of a worker is to –
- (a) assist with return-to-work planning and the implementation of the worker’s approved return-to-work plan or approved injury management plan; and
 - (b) monitor the worker’s progress towards returning to work; and
 - (c) assist the worker to perform the worker’s designated work duties in a safe and appropriate manner; and
 - (d) provide the worker with reassurance and encouragement in respect of the treatment of the worker’s injury and the worker’s return to work; and
 - (e) encourage and foster a good relationship, and effective communication, between the worker, the worker’s employer and the employer’s insurer.

143E. Return-to-work and injury management plans

- (1) If a worker suffers a significant injury, the employer must ensure that any return-to-work plan, or injury management plan, that is required under the employer’s approved injury management program to be prepared in relation to a worker who has suffered a significant injury, is prepared within the period specified in that program.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143E

Part XI – Injury Management

- (2) A worker's return-to-work plan or injury management plan, and any amendment to such a plan, is to be prepared, as far as is reasonably practicable, in consultation with –
 - (a) the worker; and
 - (b) the worker's employer; and
 - (c) the worker's primary treating medical practitioner; and
 - (d) the employer's insurer, if any; and
 - (e) the worker's workplace rehabilitation provider, if any; and
 - (f) the worker's injury management co-ordinator.
- (3) A worker's approved return-to-work plan or approved injury management plan, and any amendment to such a plan, takes effect from the day on which the worker and the worker's employer consent to the plan or amendment.
- (4) If either a worker or a worker's employer refuses to give consent to an injury management plan or a return-to-work plan, or an amendment to such a plan, the injury management co-ordinator may notify the Tribunal under section 143Q about the matter.
- (5 - 6)
- (7) If a worker or the worker's employer does not take all reasonable steps to comply with any requirements of the worker's approved return-to-

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143F

work plan or approved injury management plan, the worker or the worker's employer may notify the Tribunal under section 143Q about the matter.

(8) The –

- (a) preparation of or giving of consent to a return-to-work plan, or an injury management plan, in relation to an injured worker; or
- (b) implementation of an approved return-to-work plan or an approved injury management plan in relation to an injured worker –

is not an admission of liability in respect of any claim that may be made by the worker under this Act.

143F. Work capacity of injured workers to be regularly reviewed

- (1) If an injured worker is incapacitated for work for more than 6 months continuously, the injury management co-ordinator must, as soon as practicable after the end of that period and each successive 6-month period until the claim is finalised –
 - (a) co-ordinate the assessment of the worker's capacity to work; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143G

Part XI – Injury Management

- (b) consider whether the worker's approved injury management plan should be modified; and
 - (c) consider options for retraining or redeploying the worker.
- (2) If medical evidence in relation to an injured worker indicates that it is highly unlikely that the worker will be able to engage in the employment in which the worker was engaged before he or she was injured, the injury management co-ordinator must ensure that appropriate options for –
- (a) retraining the worker; and
 - (b) redeploying the worker, including to another workplace or employer –
- are reviewed, assessed, considered and implemented.

Division 4 – Medical treatment

143G. Primary treating medical practitioners

- (1) An injured worker must, as soon as practicable after suffering a workplace injury, notify the worker's employer of the name of the person that the worker has chosen to be the worker's primary treating medical practitioner.
- (2) An injured worker must not be required to choose a primary treating medical practitioner nominated by the employer or the insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143G

- (3) If an injured worker chooses a primary treating medical practitioner to replace another primary treating medical practitioner, the worker must –
- (a) notify the worker’s employer of the name of the new primary treating medical practitioner; and
 - (b) authorise the previous primary treating medical practitioner to release to the newly chosen medical practitioner records, in relation to the worker’s workplace injury, that are held by the previous practitioner.
- (4) A primary treating medical practitioner in relation to an injured worker has the following functions:
- (a) to provide certificates for the purposes of this Act;
 - (b) to diagnose the nature of the worker’s workplace injury;
 - (c) to provide primary medical care in relation to the worker’s workplace injury;
 - (d) to co-ordinate medical treatment in relation to the worker’s workplace injury, including by referring the worker to persons who may deliver specialist medical care and by co-ordinating the delivery of any specialist medical care;
 - (e) to monitor, review and advise on the worker’s condition and treatment;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143H

Part XI – Injury Management

- (f) to advise on the suitability of, and to specify restrictions on, the work that the worker may be expected to perform;
 - (g) to take part in the development of return-to-work plans and injury management plans.
- (5) If an injured worker fails to comply with subsection (1) or (3), the employer or insurer may notify the Tribunal about the matter.

143H. Issue of certificates

- (1) A medical practitioner may not issue a medical certificate under this Act certifying that a worker is totally incapacitated for work for a period of more than 28 days, unless the certificate specifies –
- (a) the medical practitioner’s reasons why the period is longer than 28 days; and
 - (b) a date on which the medical practitioner will review whether the worker remains totally incapacitated for work.
- (2) If a medical practitioner is of the opinion that a worker is unlikely, for a period (whether limited or indefinite), to be able to resume –
- (a) work for the number of hours in a week for which the worker was generally engaged by the employer before the worker suffered the workplace injury; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143I

- (b) some or all of the duties for which the worker was generally engaged by the employer before the worker suffered the workplace injury –

the medical practitioner must, in a medical certificate issued under this Act, specify the opinion, the reasons for it, and the period.

- (3) A failure to comply with subsection (1) or (2) in relation to a medical certificate does not affect the validity of a claim to which the certificate relates.

143I. Employer to be notified of certified incapacity and given medical certificate

If a medical certificate issued under this Act specifies that an injury has resulted in the worker being totally or partially incapacitated for work, the worker must, as soon as reasonably practicable –

- (a) notify the worker’s employer of the incapacity and the period for which the incapacity is likely to continue; and
- (b) provide a copy of the medical certificate to the employer.

143J. Worker’s obligation of full disclosure to medical practitioners chosen by worker

A worker must not wilfully fail to fully disclose to any treating medical practitioner any information that the worker knows, or ought

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143K

Part XI – Injury Management

reasonably be expected to know, is relevant to the diagnosis or treatment of the worker's workplace injury.

Penalty: Fine not exceeding 10 penalty units.

143K. Medical advisory and mentoring service

- (1) The Board may establish a medical advisory and mentoring service for the purposes of this Act.
- (2) The Board may nominate persons to comprise the medical advisory and mentoring service.
- (3) A medical practitioner nominated under subsection (2) is to receive the remuneration the Board thinks fit, which remuneration is to be paid out of the Fund.
- (4) The medical advisory and mentoring service is to provide to medical practitioners advice in respect of –
 - (a) applying evidence-based medical treatment guidelines; and
 - (b) identifying appropriate treatment options; and
 - (c) identifying the work capacity of an injured worker, including assessing whether the worker will be able to perform suitable alternative duties within the meaning of section 143M; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143L

- (d) issuing under this Act certificates and medical reports in relation to injured workers; and
- (e) obtaining second opinions on the diagnosis or treatment of injured workers; and
- (f) the compensation scheme established under this Act.

Division 5 – Obligations relating to return to work of injured worker

143L. Injured worker’s position to be held open for worker

- (1) An employer of a worker must, for a period of 12 months commencing on the day on which the worker becomes totally or partially incapacitated by a workplace injury, make available to the worker the employment in respect of which the worker was engaged immediately before becoming incapacitated.

Penalty: Fine not exceeding 100 penalty units.

- (2) Subsection (1) does not apply if –
 - (a) there is medical evidence indicating that it is highly improbable that the worker will be able to perform the employment in respect of which the worker was engaged immediately before becoming incapacitated; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143M

Part XI – Injury Management

- (b) the work for which the worker was employed is no longer required to be performed.
- (3) If subsection (2) applies in relation to a worker, the worker's employer, as soon as practicable, must notify the worker, and the employer's insurer, if any, of the reason for the application of the subsection in relation to the worker.

Penalty: Fine not exceeding 20 penalty units.

143M. Employer to provide suitable duties after injury

- (1) If a worker who suffers from a workplace injury is unable to perform duties for which the worker was engaged immediately before becoming totally or partially incapacitated by the injury, the worker's employer must ensure that the worker is given suitable alternative duties to perform.

Penalty: Fine not exceeding 100 penalty units.

- (2) When providing suitable alternative duties to a worker, the worker's employer must ensure that –
 - (a) the worker has been consulted for the purpose of identifying and choosing the duties; and
 - (b) the duties are suitable, having regard to the worker's incapacity and any restrictions imposed, or advice given, by

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143M

a medical practitioner, as to the type of work that the worker may perform; and

(c) the duties comply with the worker's approved injury management plan or approved return-to-work plan, if any.

(3) Subsection (1) does not apply if it is unreasonable or impracticable to give the worker suitable alternative duties to perform.

(4) An employer who is of the opinion that it is unreasonable or impracticable to give an injured worker suitable alternative duties to perform, must, as soon as practicable, provide the worker with reasons in writing for the employer's opinion.

Penalty: Fine not exceeding 20 penalty units.

(5) For the purposes of this Part, suitable alternative duties in relation to a worker are those duties for which the worker is suited, having regard to the following:

(a) the nature of the worker's incapacity and pre-injury employment;

(b) the worker's age, education, skills and work experience;

(c) the worker's place of residence;

(d) any suitable duties for which the worker has received rehabilitation training;

(e) any other relevant circumstances –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143N

Part XI – Injury Management

but do not include –

- (f) duties that are merely of a token nature or do not involve useful work, having regard to the employer’s trade or business; or
- (g) duties that are demeaning in nature, having regard to paragraphs (a) and (b) and to the worker’s other employment prospects.

143N. Workers to participate in return-to-work process

- (1) An injured worker is to perform any actions that the worker is required to perform under the worker’s approved injury management plan or approved return-to-work plan.
- (2) Subsection (1) does not apply in relation to an action that the worker is not able to perform because of the worker’s workplace injuries or for any other reasonable cause.
- (3) A worker who is unable to perform an action that the worker is required to perform under the worker’s approved injury management plan or approved return-to-work plan, is to, as soon as practicable –
 - (a) seek medical advice and, if appropriate, undergo treatment that may enable the worker to perform that action; and
 - (b) advise the employer and the worker’s injury management co-ordinator of the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143O

worker's inability and of any medical advice or treatment that has been sought or undergone.

- (4) A worker who is assigned reduced hours in accordance with the worker's approved injury management plan or approved return-to-work plan must take all reasonable steps to ensure that attending a medical practitioner does not interfere with the worker's employment during those hours.
- (5) If a worker fails to comply with a provision of this section, the worker's employer may notify the Tribunal about the matter.

143O. Workplace rehabilitation providers

- (1) The Board may issue guidelines relating to the referral of injured workers to workplace rehabilitation providers.
- (2) If there is a dispute between a worker and an injury management co-ordinator in relation to the referral of the worker to a workplace rehabilitation provider, any party to the dispute may notify the Tribunal about the matter.

Division 6 – Miscellaneous

143P. Disputes about injury management

- (1) An employer or insurer, as soon as practicable after making a significant decision in relation to the injury management in respect of a worker, is to notify the worker of –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143Q

Part XI – Injury Management

- (a) the decision; and
 - (b) the reasons why the decision was made.
- (2) A worker's employer is to inform the worker's injury management co-ordinator as soon as practicable after a dispute arises in relation to injury management in respect of the worker.
- (3) An injury management co-ordinator is to attempt to resolve any dispute of which the co-ordinator is informed under subsection (2) by, as soon as practicable –
- (a) informally mediating between the parties to the dispute; or
 - (b) discussing the matter individually with each party to the dispute.
- (4) A party to a dispute of which an injury management co-ordinator is informed under subsection (2) may notify the Tribunal about the dispute, if the dispute is not resolved to the party's satisfaction.

143Q. Powers of Tribunal in respect of matters under this Part

- (1) A worker, employer, insurer or injury management co-ordinator may notify the Tribunal about any matter to which this Part relates.
- (2) A notification under this Part is to be –
 - (a) in a form approved by the President; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143Q

- (b) filed with the Registrar.
- (3) If the Tribunal is notified under this Part about a matter, the President is to refer the matter to a State Service employee nominated by the President.
- (4) The person nominated under subsection (3) is to attempt to assist the parties, with as little formality as possible, to resolve the matter referred to the person.
- (5) All discussions held before a person nominated under subsection (3) are confidential and without prejudice and any notes or other documents forming part of the person's record of the matter are not to be disclosed to the Tribunal.
- (6) If a person nominated under subsection (3) notifies the Tribunal that the person is of the opinion that the matter referred to the person cannot be resolved between the parties, the matter is taken to have been referred to the Tribunal under section 42 on the day the notice is given.
- (7) If a matter is to be taken under subsection (6) to have been referred to the Tribunal under section 42, the Tribunal may resolve the matter by making any of the following orders:
 - (a) an order requiring the worker to attend work in accordance with the worker's approved return-to-work plan or approved injury management plan;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 143Q

Part XI – Injury Management

- (b) an order requiring an employer to make suitable alternative duties available to the worker;
- (c) an order suspending weekly payments for a period specified in the order;
- (d) an order increasing weekly payments for a period specified in the order;
- (e) an order requiring the worker to undergo the treatment specified in the order or, if the worker does not undergo the treatment, to forego part or all of weekly payments or amounts for services for which the worker would otherwise be able to claim under this Act;
- (f) an order requiring the worker to submit to an independent medical review or an examination specified in the order, or, if the worker does not submit to the review or examination, to forego part or all of weekly payments or amounts for services for which the worker would otherwise be able to claim under this Act;
- (g) an order requiring the worker to undertake certain retraining or rehabilitation specified in the order or, if the worker fails to do so, to forego part or all of weekly payments or amounts for services for which the worker would otherwise be able to claim under this Act;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XI – Injury Management

s. 143Q

- (h) an order that an approved return-to-work plan or approved injury management plan be varied as specified in the order;
- (i) any other order the Tribunal thinks fit.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 144

Part XII – Workers Rehabilitation and Compensation Fund

**PART XII – WORKERS REHABILITATION AND
COMPENSATION FUND**

144. Interpretation of Part XII

(1) In this Part –

notional premium, in relation to the contribution payable by a self-insurer under this Part for any period during a financial year, means a reasonable premium that the Board has determined would have been payable by the self-insurer, in respect of the preceding financial year or the part of that year during which he or she was a self-insurer, for a policy of insurance in accordance with section 97(1);

premium income, in relation to the contribution payable by a licensed insurer under this Part for a financial year, means the amount received by the licensed insurer as premiums in respect of policies of insurance issued or renewed by the licensed insurer during that financial year in accordance with section 97(1).

(2) For the purposes of this Part, the Crown in the right of this State, including an Agency, within the meaning of the *State Service Act 2000*, is deemed to be a self-insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

145. Establishment of Workers Rehabilitation and Compensation Fund

- (1) There shall be established by the Treasurer a fund to be known as the Workers Rehabilitation and Compensation Fund.
- (2) There shall be paid into the Fund –
 - (a) money paid by licensed insurers and self-insurers under this Part; and
 - (b) all other money received by the Board.
- (3) There is to be paid from the Fund –
 - (a) all money required for the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Board in the performance of its functions and the exercise of its powers specified under this Act or any other Act; and
 - (b) all money required for the administration of this Act; and
 - (c) payments required to be made by the Board to the Appeal Costs Fund under the *Appeal Costs Fund Act 1968* in respect of disputed claims for compensation referred to the Tribunal; and
 - (d) all money required in connection with the operation of the second injury scheme; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 146

Part XII – Workers Rehabilitation and Compensation Fund

- (e) all money required for other purposes that are determined by the Minister to be purposes associated with workers compensation, occupational health and safety or rehabilitation.

146. Assessment by Board of amount to be contributed to Fund

The Board shall, as soon as practicable in respect of each financial year –

- (a) make an estimate of the total of the amounts already applied, and the amounts to be applied, from the Fund during that financial year;
- (b) make an estimate of the amounts required to be applied to meet expenditure from the Fund in the following financial year, and specify the purposes for which such amounts are required;
- (c) make an estimate of the total amounts (including the amounts already received) to be received into the Fund during that financial year otherwise than by way of contributions in respect of that financial year from licensed insurers and self-insurers under this Part;
- (d) determine the total amount to be contributed to the Fund in respect of that financial year by licensed insurers and self-insurers under this Part.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

(e)

147. Contributions to Fund by licensed insurers and self-insurers

- (1) Each licensed insurer and self-insurer shall pay to the Board the contributions prescribed by this section for payment into the Fund.
- (2) The contribution to be paid by a licensed insurer in respect of each financial year is an amount equal to the greater of the following:
 - (a) the percentage, determined by the Minister on the recommendation of the Board, of the premium income of the licensed insurer in respect of that financial year;
 - (b) the prescribed amount.
- (3) The contribution to be paid by a self-insurer in respect of each financial year is an amount equal to the greater of the following:
 - (a) the percentage, determined by the Minister on the recommendation of the Board, of the notional premium of the self-insurer in respect of that financial year;
 - (b) the prescribed amount.
- (4) The percentage determined by the Minister pursuant to subsections (2) and (3) –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 147

Part XII – Workers Rehabilitation and Compensation Fund

- (a) shall be such as will be sufficient to yield the total amount to be contributed to the Fund by licensed insurers and self-insurers in respect of the relevant financial year as determined pursuant to section 146; and
 - (b) shall be the same percentage for all licensed insurers and for all self-insurers.
- (5) A contribution by a licensed insurer is payable at such times and in respect of premium income received during such periods as may be determined by the Board and notified to the licensed insurer.
- (6) A contribution by a self-insurer is payable in such instalments and at such times as may be determined by the Board and notified to the self-insurer.
- (7) If a contribution payable by a licensed insurer or a self-insurer has not been paid within the time prescribed by or under this section –
 - (a) the licensed insurer or self-insurer is guilty of an offence and liable on summary conviction to a fine not exceeding 100 penalty units; and
 - (b) the amount of that contribution together with interest calculated at the rate referred to in section 92(2)(b) may be recovered by the Board as a debt due to it in any court of competent jurisdiction.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

-
- (8) Subject to subsection (4), more than one percentage may be determined by the Minister for different portions of a financial year for the purposes of subsection (2) or (3).
 - (9) A certificate executed by the Board as to the amount of a contribution payable under this section by a licensed insurer or self-insurer specified in the certificate and the due date for payment is (without proof of its execution by the Board) admissible in proceedings under this section and is evidence of the matters specified in the certificate.
 - (10) The obligation of a person, being a self-insurer, to make a contribution under this section in respect of any period during which the person was a self-insurer does not cease merely because the person subsequently ceases to be a self-insurer.

148. Temporary advances to Fund

- (1) Where, at any time, the amount of the Fund is insufficient to meet a payment required under section 145(3) to be made from the Fund, the Treasurer may make temporary advances to the Fund from the Public Account.
- (2) The Public Account is appropriated to the extent necessary for the purpose of subsection (1).
- (3) Where a temporary advance is made under this section from the Public Account, the amount of the advance, together with interest at such rate as the Treasurer determines, shall be a first charge

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 148

Part XII – Workers Rehabilitation and Compensation Fund

on the Fund and shall be paid into the Public Account progressively as money is paid into the Fund.

- (4) The amount required to be contributed by licensed insurers and self-insurers pursuant to section 147 shall be sufficient to ensure that any temporary advance made to the Fund by the Treasurer is repaid to the Public Account within 5 years from the day on which the temporary advance is made.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part 12A – Infringement notices

s. 148AA

PART 12A – INFRINGEMENT NOTICES

148AA.

148A. Infringement notices

- (1) An authorized officer may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.
- (2) An infringement notice is not to relate to 4 or more offences.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

148B - 148E.

148F. Payments to Board

Any payment in respect of an infringement notice is to be made to the Board.

148G - 148I.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 149

Part XIII – Miscellaneous

PART XIII – MISCELLANEOUS

149. Recovery of compensation over-paid

Where in respect of any claim for compensation a person has received a payment by way of compensation in excess of the payment to which he was entitled under this Act, the licensed insurer, employer, or Nominal Insurer, as the case may be –

- (a) may recover from the first-mentioned person as a debt due and payable to him or it the difference between the payment received by that first-mentioned person and the payment to which he was entitled; or
- (b) may deduct from any money that may become payable to or in relation to that first-mentioned person in respect of that claim the difference between the payment received by him or in relation to him and the payment to which he or any person in relation to him was entitled.

150.

150A. Authorized officers

- (1) The Secretary may appoint as an authorized officer for the purposes of this Act–

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 151

- (a) a State Service officer or State Service employee employed in the Department;
or
 - (b) with the approval of another Head of a State Service Agency, a State Service officer or State Service employee employed in that Agency.
- (2) The Secretary is to issue an authorized officer appointed under subsection (1) with a certificate of appointment.
 - (3) The Secretary may authorize a person, other than a person referred to in subsection (1), to perform the functions and exercise the powers of an authorized officer under this Act.
 - (4) The Secretary is to issue a person authorized under subsection (3) with a certificate of authorization.

151. Powers of authorized officers

- (1) An authorized officer may, for the purposes of ascertaining whether the provisions of this Act are being complied with –
 - (a) require an employer, licensed insurer or other person, who has custody or control of any record, book or document, to produce that record, book or document;
and
 - (b) require the employer, licensed insurer or other person to furnish such particulars in

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 151

Part XIII – Miscellaneous

- relation to a record, book or document as the authorized officer may consider necessary; and
- (c) examine, copy and take extracts from a record, book or document or require the employer, licensed insurer or other person to provide a copy of, or extract from, the record, book or document; and
 - (d) take photographs, films or video or audio recordings; and
 - (e) question a person either alone or in the presence of any other person, as the authorized officer thinks fit, with respect to any claim for compensation, any alleged breach of this Act or any policy of insurance or record required to be maintained under this Act and require that person to answer the questions put by the authorized officer; and
 - (f) exercise such other powers as may be prescribed.
- (2) Without prejudice to the making of a requirement in any other manner, a requirement made of a person under subsection (1) may be made by notice in writing served on him.
- (3)
- (4) For the purpose of the exercise of his powers under this section, an authorized officer may enter and remain on any premises at which the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 151

employer, licensed insurer or other person conducts business.

- (5) An authorized officer who is exercising his powers under this section may take with him an interpreter and, when he does so –
- (a) any question put, or requirement made, by the interpreter on behalf of the authorized officer shall be deemed to have been put or made by the authorized officer; and
 - (b) a reply to a question or requirement made to the interpreter shall be deemed to have been made to the authorized officer.
- (6) An employer, licensed insurer or other person must, at all reasonable times, provide the means required by an authorized officer that are necessary for the exercise of his powers under this section.
- (7) A person who –
- (a) obstructs, hinders, wilfully delays, threatens, or assaults an authorized officer or interpreter in the exercise of his powers under this section;
 - (b) fails to comply with a request of an authorized officer, or to answer questions asked by an authorized officer, made under any such power when it is within his power to comply with the request;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 151A

Part XIII – Miscellaneous

- (c) gives an answer to such a question which, to his knowledge, is false or misleading in a material particular; or
- (d) intentionally conceals a person from an authorized officer or prevents a person from appearing before or being questioned by an authorized officer for the purposes of this Act or attempts so to conceal or prevent a person –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

- (8) The court by which a person is convicted of an offence against subsection (7) may order that person to forward to an authorized officer a true copy of the record, or, as the case may be, provide the information to the authorized officer, that the person failed to produce or provide in response to an authorized officer's request or question.

151A. Protection from liability for authorized officers

- (1) Any act or thing done, or omitted to be done, in good faith by an authorized officer in the exercise or purported exercise of the powers conferred on the officer by this Act shall not subject the officer personally to any action, liability, claim or demand.
- (2) Subsection (1) does not preclude the Crown from being subject to any action, liability, claim

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

or demand to which the Crown would, but for this subsection, have been subject.

152.

152A. Obtaining of information by Board

- (1) The Board may, by notice in writing served on a person, require that person, within such period as is specified in the notice, to furnish it with such information as it reasonably requires to enable it to carry out its functions.
- (2) A person who is required to furnish information and who without lawful excuse refuses or fails to furnish the information within the period specified in the notice is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units.

153. False or misleading statements

- (1) A medical practitioner or accredited person who provides a certificate that contains any information that to his knowledge is false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.
- (2) A person shall not, in making any application, furnishing any particulars or information, or keeping any record, pursuant to this Act, make, or cause to be made, a statement or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 153A

Part XIII – Miscellaneous

representation that to his knowledge is false or misleading in a material particular.

- (3) A person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

153A. Employer to keep records

- (1) An employer must make and maintain true records of the following matters:
- (a) the names of all workers employed by the employer;
 - (b) the wages paid to those workers;
 - (c) the trade or occupation of each of those workers;
 - (d) any notice of injury or claim for compensation received;
 - (e) such other matters as may be prescribed.

Penalty: Fine not exceeding 20 penalty units.

- (2) An employer must retain the records referred to in subsection (1) for –
- (a) in the case of records referred to in subsection (1)(a), (b) or (c), a period of 7 years from the date on which the worker ceases to be employed by the employer; and

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

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- (b) in the case of a notice of injury or claim for compensation, a period of 7 years from the date of receipt of the notice or claim; and
 - (c) in the case of a matter prescribed under subsection (1)(e), such period as may be prescribed.

Penalty: Fine not exceeding 20 penalty units.

154. Worker's right to information

- (1) A worker shall be entitled to inquire of his employer the name and address of the insurer from whom the employer has obtained a policy of insurance under this Act and, if the worker so requires, to examine the policy document or, if the employer is a self-insurer, to be so informed.
- (2) An employer or a person acting for an employer in the management of the business in which a worker is employed who refuses to supply to the worker particulars requested under subsection (1) or the policy document for examination or who, in reply to an inquiry under that subsection, gives information which to his knowledge is false or misleading, is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

155.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 156

Part XIII – Miscellaneous

156. Enactments relating to limitations of actions inapplicable to proceedings under this Act, &c.

No enactment relating to the limitation of actions applies, or shall be deemed to have applied, to any proceedings by a worker under this Act or under the repealed Act.

157. Receipts by minors valid discharge

The receipt of a person who is under the age of 18 years to whom any money is payable by way of compensation or otherwise under this Act is a good and valid discharge for the payment of that money notwithstanding that that person is a minor.

158. Maintenance of secrecy

- (1) A person must not disclose any information obtained by the person in the exercise of any powers conferred on the person by this Act, or by virtue of the person's office under this Act, unless the disclosure –
 - (a) is authorised by each person to whom the information relates; or
 - (b) occurs in the exercise or performance of the powers or functions of the person; or
 - (c) occurs in the exercise or performance of the powers or functions that have been delegated to the person, or which the person is authorised to perform, under this Act; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 158

- (d) is authorised under this Act; or
 - (e) is for the purposes of, or is authorised under, another Act or a law; or
 - (f) occurs in pursuance of a requirement imposed by or under another Act or a law.
- (1A) Without limiting the circumstances in which a disclosure is authorised under this Act, information may be disclosed by a person who is authorised by or under this Act to obtain the information, if the disclosure is to a person –
- (a) for the purpose of enabling the person to conduct study or research that is approved by the Board; or
 - (b) for the purpose of the collection and analysis of statistical information; or
 - (c) acting on behalf of a body performing functions similar in whole or in part to the functions of the Board, if the disclosure is authorised by the Board; or
 - (d) for law enforcement purposes.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 158A

Part XIII – Miscellaneous

158A. Common seal of Board

- (1) The common seal of the Board is to be kept and used as authorized by the Board.
- (2) All courts and persons acting judicially are to take judicial notice of the imprint of the common seal of the Board on a document and presume that it was duly sealed by the Board.

158B. Judicial notice of certain signatures

All courts and persons acting judicially are to take judicial notice of –

- (a) the official signature of a person who is or has been the chairperson or a member of the Board; and
- (b) the fact that the person holds or has held the office concerned.

159. Service of documents

- (1) Where under this Act a notice or other document, other than a notice of injury or claim for compensation referred to in Part IV, is required or authorized to be served on a person, the notice or document may be served –
 - (a) in the case of a person who is neither a body corporate nor a firm –
 - (i) by delivering it to him personally;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 159

- (ii) by leaving it at that person's place of residence last known to the person required or authorized to serve the notice or other document with someone who apparently resides there, or at that person's place of business or employment last known to the person required or authorized to serve the notice or other document with someone who is apparently employed there, being in either case a person who has or apparently has attained the age of 16 years; or
 - (iii) by sending it by post to that person's place of residence, business, or employment last known to the person required or authorized to serve the notice or other document;
- (b) in the case of a body corporate –
- (i) by delivering it to the secretary of the body corporate personally;
 - (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Tasmania with a person apparently employed there, being a person who has or apparently

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 159

Part XIII – Miscellaneous

- has attained the age of 16 years;
or
 - (iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate; or
- (c) in the case of a firm –
- (i) by delivering it to a member of the firm personally;
 - (ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person required or authorized to serve the notice or other document with a person apparently employed there, being a person who has or apparently has attained the age of 16 years;
or
 - (iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person required or authorized to serve the notice or other document.
- (2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Tasmania.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 160

- (3) The provisions of this section are in addition to the provisions of sections 109X and 601CX of the Corporations Act.

160. Offences by bodies corporate

Where a body corporate is convicted of an offence against this Act, each director or member of the governing authority of the body corporate and each officer concerned in the management of the body corporate is guilty of the like offence unless he proves that he used all due diligence to prevent the commission of the offence or that the offence was committed without his knowledge or consent or contrary to his orders or directions.

161. Fines to be paid to Board

All fines recovered under this Act shall be paid to the Board.

161A. Time for instituting proceedings for offences

- (1) Subject to subsection (2), notwithstanding anything in any other Act, proceedings for an offence against this Act may be instituted at any time within 12 months after the occurrence of the act or omission alleged to constitute the offence.
- (2) Proceedings for an offence against section 97(1) or (7) may be instituted at any time within 24 months after the failure to maintain insurance as required by subsection (1) of that section, the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 161B

Part XIII – Miscellaneous

failure to provide an estimate or statement as required by subsections (6) and (7) of that section or the giving of any false information or particular in any such estimate or statement.

161B. Codes of practice

- (1) For the purposes of providing practical guidance to any person or class of person providing a service under this Act, the Minister may approve a code of practice.
- (2) A code of practice may –
 - (a) consist of a code, service standard, rule or provision relating to services provided under this Act, prepared or adopted by the Board; and
 - (b) apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) The Minister may approve a revision of the whole or part of a code of practice or revoke a code of practice.
- (4) Before giving approval under subsection (3), the Minister must consult with any organisation the Minister considers appropriate having regard to the application of the code of practice.
- (5) The Minister must give notice in the *Gazette* of –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 161B

- (a) the approval of a code of practice; or
 - (b) the approval of the revision of the whole or part of a code of practice; or
 - (c) the revocation of a code of practice.
- (6) A notice under subsection (5) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.
- (7) The Minister must cause to be made available in the Department for inspection by members of the public without charge during normal office hours a copy of –
- (a) every approved code of practice; and
 - (b) if an approved code of practice has been revised and the revision has been approved, the approved code of practice as so revised; and
 - (c) if an approved code of practice applies, incorporates or refers to any other document, that other document.
- (8) An approved code of practice has effect on the day on which notice of the approval is published in the *Gazette*.
- (9) An approved code of practice ceases to have effect on the day on which notice of the revocation of the code is published in the *Gazette*.
- (10) A person is not liable to any civil or criminal proceedings merely because the person fails to

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 162

Part XIII – Miscellaneous

observe any provision of a code of practice approved under this section.

162. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) In addition to the regulations authorized to be made by any other provision of this Act and without affecting the generality of subsection (1), the regulations may make provision for or with respect to prescribing rules of practice and procedure, other than those already specified in this Act, in relation to all claims for compensation and any other matters arising under this Act.
- (3) The regulations may be made subject to such conditions, or be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.
- (4) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 162A

- (5) The regulations may provide for the charging of fees in respect of any thing done under or for the purposes of this Act.

162A.

163. Repeal

The Acts specified in Schedule 7 are repealed.

164. Savings, transitional and other provisions

- (1) Schedules 8 and 9 have effect.
- (2) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) A provision made under subsection (2) may take effect from and including the day fixed by proclamation under section 2(2) or from and including a later day.

164A. Application of *Workers Rehabilitation and Compensation Amendment Act 2009*

Except for –

- (a) this section; and
- (b) sections 143L and 143M –

as inserted in this Act by the *Workers Rehabilitation and Compensation Amendment*

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 164BAA

Part XIII – Miscellaneous

Act 2009, the amendments made to this Act by that Act do not apply in relation to a worker in respect of an injury suffered by the worker before the day on which this section comes into effect.

164BAA. Transitional provisions consequent on enactment of *Workers Rehabilitation Amendment Act 2017*

(1) In this section –

amending Act means the *Workers Rehabilitation and Compensation Amendment Act 2017*;

commencement day means the day on which section 9 of this Act is amended by the amending Act.

- (2) The appointment of a person who, immediately before the commencement day, is a member of the Board by virtue of being appointed under section 9(1)(b), (c), (d), (e) or (f), as in force before that day, is terminated on that day.
- (3) A person whose appointment as a member of the Board is terminated under subsection (2) is not entitled to any compensation or other payment in respect of that termination.
- (4) If, on the commencement day, all of the members referred to in section 9(1)(b) have not been appointed under that section as in force on and from that day –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 164BA

- (a) the Secretary is to be taken to be a member of the Board; and
- (b) the Board is, despite section 9, to be comprised by the Secretary alone –

until all members have been appointed under section 9(1)(b) as in force after that day.

- (5) A person who was, immediately before the commencement day, an accredited person under section 77C, is to be taken to have been accredited under that section as in force after the commencement day.
- (6) The amendments to section 87 made by the amending Act apply in relation to an injury of a worker and a claim in relation to such an injury whether the injury or claim occurred or was made before or after the day on which those amendments commence.
- (7) Section 108 applies in relation to a licence or permit that is in force immediately before the commencement day.

164BA. Application of *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*

- (1) In this section –

asbestos-related disease has the same meaning as it has in the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 164BB

Part XIII – Miscellaneous

- (2) If a claim for compensation in respect of an injury consisting of an asbestos-related disease was made by a person before the commencement of the *Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011*, the amendment effected by that Act to the definition of “injury” in section 3 does not apply in respect of that person in relation to that claim or any subsequent claim for compensation made in relation to that injury.

164BB. Application of *Workers Rehabilitation and Compensation Amendment Act 2019*

Section 69B(2DA), as inserted by the *Workers Rehabilitation and Compensation Amendment Act 2019*, does not apply in relation to an injury in respect of which a claim for compensation was made before that Act came into force.

164B. Review of operation of certain provisions

The Minister must –

- (a) cause a review of the operation of section 67 of this Act, during the period of 3 years beginning on the day on which that section is amended by the *Workers Rehabilitation and Compensation Amendment Act 2009*, to be carried out as soon as practicable after the end of that period; and
- (b) cause a review of the operation of section 69B of this Act, during the period

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 164C

of 3 years beginning on the day on which that section is amended by the *Workers Rehabilitation and Compensation Amendment Act 2009*, to be carried out as soon as practicable after the end of that period; and

- (c) cause a review of the operation of section 138AB of this Act, during the period of 3 years beginning on the day on which that section is inserted in this Act by the *Workers Rehabilitation and Compensation Amendment Act 2009*, to be carried out as soon as practicable after the end of that period; and
- (d) ensure that a copy of each such review is laid before each House of Parliament within the first 10 sitting-days of the House after the review is carried out.

164C. Validation of certain guidelines, &c.

- (1) In this section –

April 2011 guidelines means the document, relating to the assessment of permanent impairment under this Act, that was –

- (a) referred to, at a meeting of the Board on 10 August 2010, as “Guidelines for the Assessment of Permanent Impairment”; and
- (b) approved by the Board at that meeting as guidelines for the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 164C

Part XIII – Miscellaneous

assessment of permanent
impairment under this Act to take
effect following the completion
of certain training –

and includes any appendices attached to
the document when the Board approved
the guidelines;

October 2011 guidelines means the document,
relating to the assessment of permanent
impairment under this Act, that was –

- (a) referred to, at a meeting of the Board on 20 September 2011, as “Version 3 of the Tasmanian ‘Guidelines for the Assessment of Permanent Impairment’”; and
- (b) approved by the Board at that meeting as guidelines for the assessment of permanent impairment under this Act to take effect on 1 October 2011 –

and includes any appendices attached to
the document when the Board approved
the guidelines.

- (2) Any guidelines for the assessment of permanent impairment under this Act in force before 1 April 2011 are to be taken to have been revoked immediately before that day.
- (3) The April 2011 guidelines are to be taken –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 164C

- (a) to have been validly issued by the Board on 1 April 2011 and to have been in effect as guidelines for the assessment of permanent impairment under this Act on and from that date until immediately before 1 October 2011; and
 - (b) to have been revoked immediately before 1 October 2011.
- (4) The October 2011 guidelines are to be taken to have been validly issued by the Board on 20 September 2011 and to have taken effect as guidelines for the assessment of permanent impairment under this Act on and from 1 October 2011.
- (5) Nothing in this section is to be taken to prevent the Board revoking or amending the October 2011 guidelines.
- (6) An assessment of permanent impairment is not made, or to be taken to have been made, under this Act or the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* unless –
 - (a) if the assessment was undertaken on or after 1 April 2011 and before 1 October 2011, it was made in accordance with the April 2011 guidelines; or
 - (b) if the assessment was undertaken on or after 1 October 2011 and before the date on which this section commences, it was

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 164D

Part XIII – Miscellaneous

made in accordance with the October
2011 guidelines.

164D. Review of restructured Board

- (1) As soon as practicable after the end of the review period, the Minister is to cause to be carried out an independent review of the functionality of the Board, and the structure of the Board, during the review period.
- (2) The persons who carry out the review are to give to the Minister a written report on its outcome as soon as the review is completed.
- (3) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 5 sitting-days of that House after it is given to the Minister.
- (4) In this section –

amending Act means the *Workers Rehabilitation and Compensation Amendment Act 2017*;

Board reconstitution day means the day by which all members of the Board have been first appointed under section 9(1)(b), as amended by the amending Act;

independent review means a review carried out by persons who –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 164E

- (a) in the Minister's opinion, are appropriately qualified for that task; and
- (b) include one or more persons who are not employees of the State or of any agency of the State;

review period means the period beginning on the Board reconstitution day and ending on the day 3 years after that day.

164E. Validation

- (1) In this section –

Chief Commissioner has the same meaning as in this Act as in force immediately before the validation day;

Tribunal means the Tribunal established under section 16 of this Act as in force immediately before the validation day;

validation day means the day on which the *Validation Act 2021* commences.

- (2) If –

- (a) a person was appointed under section 18(1) to act in the office of the Chief Commissioner before the validation day; and
- (b) during all or part of the period –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

s. 164E

Part XIII – Miscellaneous

- (i) beginning on the day on which the appointment to act referred to in paragraph (a) expired; and
- (ii) ending immediately before the validation day –

the person purported to be authorised, under this Act or the *Acts Interpretation Act 1931*, to perform, or exercise, a function or power of the Chief Commissioner, that is a function or power that the Chief Commissioner may perform or exercise –

then, despite any provision of this Act or any other Act –

- (c) the person is to be taken to have been, and to always have been, validly appointed to act in the office of the Chief Commissioner during the period; and
- (d) that performance or exercise of that function or power by the person during the period is not to be taken to be, or to ever have been, invalid by reason only that the person was not, but for this section, validly appointed to act in the office of the Chief Commissioner during all or part of the period; and
- (e) the Tribunal is not to be taken to have been, or to ever have been, invalidly constituted by reason only that the person was not, but for this section, validly appointed to act in the office of the Chief

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

Part XIII – Miscellaneous

s. 165

Commissioner during all or part of the period.

165. *The amendments effected by this section have been incorporated into the authorised version of the Evidence Act 1910.*

166. *The amendments effected by this section have been incorporated into the authorised version of the Magistrates Court Act 1987.*

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 1

**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF BOARD**

Section 9

1. Terms of office

A member of the Board shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if he remains qualified for membership of the Board be eligible for re-appointment from time to time for a term, not exceeding 3 years, specified in the instrument of his re-appointment.

2. Provisions requiring devotion of whole of time to other duties

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office under that Act, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Board.

3. Remuneration

- (1) Subject to subclause (2), a member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine, and the payment of any such remuneration shall be made out of the Workers Rehabilitation and Compensation Fund.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 1

-
- (2) A member of the Board who is –
- (a) a State Service officer or State Service employee; or
 - (b) otherwise holding, or acting in, an office –
 - (i) under the *State Service Act 2000*; or
 - (ii) in an Agency within the meaning of that Act –

is not entitled to remuneration under subclause (1), except with the approval of the Minister administering that Act.

- (3)

4. *State Service Act 2000* not to apply

The *State Service Act 2000* does not apply to, or in respect of, the appointment of a member of the Board and a member of the Board shall not, in his capacity as such a member, be subject to that Act during his term of office.

5. Deputies of *ex officio* members and appointment of substitute to act in place of appointed members

- (1)
- (2) The Minister may appoint –
- (a) any person (including a member of the Board other than the chairperson) to act

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 1

in the office of chairperson of the Board;
or

- (b) any person to act in the office of a member of the Board referred to in section 9(1)(b) –

while the chairperson or that member, as the case may be, is absent from his office through illness or any other cause.

- (3) A member of the Board referred to in section 9(1)(b) shall, for the purposes of subclause (2), be deemed to be absent from his office if he is acting in the office of the chairperson of the Board pursuant to subclause (2).
- (4) A member of the Board shall, for the purposes of subclause (2), be deemed to be absent from his office if there is a vacancy in that office which has not been filled in accordance with clause 6.
- (5) A person shall not be concerned to inquire whether or not any occasion has arisen requiring or authorizing a person to act in the office of a member of the Board, and all things done or omitted to be done by that person while so acting shall be as valid, and shall have the same consequences, as if they had been done or omitted to be done by that member.

6. Filling of vacancies

On the occurrence of a vacancy in the office of a member of the Board, the Governor may appoint

a person to the vacant office for the residue of the member's term of office and the person is to be appointed in accordance with section 9.

7. Vacation of office

- (1) A member of the Board shall be deemed to have vacated his office –
- (a) when he dies;
 - (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
 - (c) if he is absent from 3 consecutive ordinary meetings of the Board of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless –
 - (i) on leave granted by the Minister; or
 - (ii) before the expiration of 21 days after the last of those meetings, he is excused by the Minister for his absence from those meetings;
 - (d) if he becomes unable to perform competently the duties of the office;
 - (e) if he is convicted in Tasmania of a crime or an offence which is punishable by

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 1

imprisonment for a period of not less than 12 months, or if he is convicted outside Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable;

- (f) if he is convicted of an offence against this Act;
 - (g) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or
 - (h) if he is removed from office by the Governor under subclause (2).
- (2) The Governor may remove from office a member of the Board if the Governor is satisfied that the member –
- (a) has failed to comply with section 12; or
 - (b) is unable to perform adequately or competently the duties of his office.
- (3) A member of the Board shall not be removed from office otherwise than in accordance with this clause.

8. Validity of proceedings, &c.

- (1) No act or proceeding of the Board or of any person acting pursuant to any direction of the Board is invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken, or commenced,

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 1

there was a vacancy in the membership of the Board.

- (2) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member of the Board or that any person was disqualified from acting as, or incapable of being, a member of the Board, as valid as if the member had been duly appointed and was qualified to act, or capable of being, a member, and as if the Board had been fully constituted.
- (3) Where a member of the Board, or any person acting pursuant to any direction of the Board, does or purports to do, or omits or purports to omit to do, any act or thing in good faith for the purpose of administering or executing this or any other Act, he shall not be personally subjected to any action, liability, claim, or demand in respect of that act or omission.

9. Presumptions

In any proceedings by or against the Board, unless evidence is given to the contrary, no proof shall be required of –

- (a) the constitution of the Board;
- (b) any resolution of the Board;
- (c) the appointment of any member of the Board; or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 1

- (d) the presence of a quorum at any meeting of the Board.

**SCHEDULE 2 – PROVISIONS WITH RESPECT TO
MEETINGS OF BOARD**

Section 9

1. Convening of meetings of the Board

Meetings of the Board may be convened by the chairperson of the Board or by any 3 members of the Board.

2. Procedure at meetings

(1) Four members of the Board form a quorum at any duly convened meeting of the Board.

(2) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(2A)

(3) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members of the Board present.

(4) In the event of an equality of votes, the person presiding at a meeting of the Board has a casting vote.

3. Chairing of meetings

The chairperson of the Board or, in the absence of the chairperson, the person acting in the office of chairperson shall preside at a meeting of the Board.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 2

4. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to any procedure that is specified in this Schedule, be as determined by the Board.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 3

SCHEDULE 3 –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 4

SCHEDULE 4 –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 5

**SCHEDULE 5 – DISEASES, OF FIRE-FIGHTERS, IN
RESPECT OF WHICH THERE IS PRESUMPTION OF
CAUSE**

Section 27

	Column 1	Column 2
	Description of Disease	Qualifying Period
1.	Primary site brain cancer	5 years
2.	Primary site bladder cancer	15 years
3.	Primary site kidney cancer	15 years
4.	Primary non-Hodgkins lymphoma	15 years
5.	Primary leukemia	5 years
6.	Primary site breast cancer	10 years
7.	Primary site testicular cancer	10 years
8.	Multiple myeloma	15 years
9.	Primary site prostate cancer	15 years
10.	Primary site ureter cancer	15 years
11.	Primary site colorectal cancer	15 years
12.	Primary site oesophageal cancer	25 years
13.	Primary site cervical cancer	10 years

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 5

	Column 1	Column 2
	Description of Disease	Qualifying Period
14.	Primary site ovarian cancer	10 years
15.	Primary site penile cancer	15 years
16.	Primary site thyroid cancer	10 years
17.	Primary site pancreatic cancer	10 years
18.	Primary site skin cancer	15 years
19.	Primary site lung cancer	15 years
20.	Primary site uterine cancer	10 years
21.	Malignant mesothelioma	15 years

**SCHEDULE 6 – PROVISIONS WITH RESPECT TO
MEMBERSHIP AND MEETINGS OF NOMINAL
INSURER**

Section 122

1. Term of office

A member of the Nominal Insurer referred to in section 122(1) shall be appointed for such period not exceeding 3 years, as is specified in the instrument of his appointment and shall be eligible for re-appointment from time to time for a term, not exceeding 3 years, specified in the instrument of his re-appointment.

2. Provisions requiring devotion of whole of time to other duties

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office under that Act, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Nominal Insurer.

3. Remuneration

A member of the Nominal Insurer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 6

4. *State Service Act 2000 not to apply*

The *State Service Act 2000* does not apply to, or in respect of, the appointment of a member of the Nominal Insurer and a member of the Nominal Insurer shall not, in his capacity as such a member, be subject to that Act during his term of office.

5. *Deputy chairperson and appointment of substitute to act in place of nominated members*

- (1) The Minister may appoint any person to act in the office of the chairperson of the Nominal Insurer while the chairperson is absent from his or her office through illness or any other cause.
- (2) The Minister may appoint any person to act in the office of a member of the Nominal Insurer, other than the chairperson, while that member is absent from his office through illness or any other cause.
- (3) A member of the Nominal Insurer shall, for the purposes of subclause (2), be deemed to be absent from his office if there is a vacancy in that office which has not been filled in accordance with clause 6.
- (4) A person shall not be concerned to inquire whether or not any occasion has arisen requiring or authorizing a person to act in the office of a member of the Nominal Insurer, and all things done or omitted to be done by that person while so acting shall be as valid, and shall have the

same consequences, as if they had been done or omitted to be done by that member.

6. Filling of vacancies

On the occurrence of a vacancy in the office of a member of the Nominal Insurer –

- (a) referred to in section 122(1)(a), the Minister may appoint a person to the vacant office for the residue of his or her predecessor's term of office and the person appointed is to be a person selected by the Minister after consultation with the licensed insurers and self-insurers; and
- (b) referred to in section 122(1)(b), the Minister, after consultation with the Treasurer, may appoint a person to the vacant office for the residue of his or her predecessor's term of office; and
- (c) referred to in section 122(1)(c), the Minister may appoint a person to the vacant office for the residue of his or her predecessor's term of office.

7. Vacation of office

- (1) A member of the Nominal Insurer shall be deemed to have vacated his office –
 - (a) when he dies;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 6

- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
- (c) if he is absent from 3 consecutive ordinary meetings of the Nominal Insurer of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless –
 - (i) on leave granted by the Minister;
or
 - (ii) before the expiration of 21 days after the last of those meetings, he is excused by the Minister for his absence from those meetings;
- (d) if he becomes unable to perform competently the duties of the office;
- (e) if he is convicted in Tasmania of a crime or an offence which is punishable by imprisonment for a period of not less than 12 months, or if he is convicted outside Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable;
- (f) if he is convicted of an offence against this Act;

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 6

- (g) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts the resignation; or
 - (h) if he is removed from office by the Minister under subclause (2).
- (2) The Minister may remove from office a member of the Nominal Insurer if the Minister is satisfied that the member –
 - (a) has failed to comply with section 124; or
 - (b) is unable to perform adequately the duties of his office.
- (3) A member of the Nominal Insurer shall not be removed from office otherwise than in accordance with this clause.

8. Validity of proceedings, &c.

- (1) No act or proceeding of the Nominal Insurer or of any person acting pursuant to any direction of the Nominal Insurer is invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken, or commenced, there was a vacancy in the membership of the Nominal Insurer.
- (2) All acts and proceedings of the Nominal Insurer or of any person acting pursuant to any direction of the Nominal Insurer are, notwithstanding the subsequent discovery of any defect in the appointment of any member of the Nominal Insurer or that any person was disqualified from

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 6

acting as, or incapable of being, a member of the Nominal Insurer, as valid as if the member had been duly appointed and was qualified to act, or capable of being, a member, and as if the Nominal Insurer had been fully constituted.

- (3) Where a member of the Nominal Insurer, or any person acting pursuant to any direction of the Nominal Insurer, does or purports to do, or omits or purports to omit to do, any act or thing in good faith for the purpose of administering or executing this Act, he shall not be personally subjected to any action, liability, claim, or demand in respect of that act or omission.

9. Presumptions

In any proceedings by or against the Nominal Insurer, unless evidence is given to the contrary, no proof shall be required of –

- (a) the constitution of the Nominal Insurer;
- (b) any resolution of the Nominal Insurer;
- (c) the appointment of any member of the Nominal Insurer; or
- (d) the presence of a quorum at any meeting of the Nominal Insurer.

10. Convening of meetings of the Nominal Insurer

Meetings of the Nominal Insurer may be convened by the chairperson of the Nominal

Insurer or by any 4 members of the Nominal Insurer.

11. Procedure at meetings

- (1) Four members of the Nominal Insurer shall form a quorum at any duly convened meeting of the Nominal Insurer.
- (2) Any duly convened meeting of the Nominal Insurer at which a quorum is present shall be competent to transact any business of the Nominal Insurer.
- (3) Questions arising at a meeting of the Nominal Insurer shall be determined by a majority of votes of the members of the Nominal Insurer present and voting.

12. Chairing of meetings

The chairperson of the Nominal Insurer or, in the absence of the chairperson, the person acting in the office of chairperson shall preside at a meeting of the Nominal Insurer and the chairperson or the person acting in the office of chairperson, as the case may be, has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

13. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Nominal Insurer shall, subject to any procedure that is

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 6

specified in this Schedule, be as determined by
the Nominal Insurer.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 7

SCHEDULE 7 – ACTS REPEALED

Section 163

Number and year of Act	Short title of Act
18 Geo. V No. 82	<i>Workers' Compensation Act 1927</i>
No. 79 of 1953	<i>Workers' Compensation Act 1953</i>
No. 63 of 1962	<i>Workers' Compensation Act 1962</i>
No. 58 of 1972	<i>Workers' Compensation Act 1972</i>
No. 93 of 1973	<i>Workers' Compensation (Alternative Remedies) Act 1973</i>
No. 72 of 1980	<i>Workers' Compensation Amendment Act 1980</i>
No. 59 of 1986	<i>Workers' Compensation Amendment Act 1986</i>

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 8

**SCHEDULE 8 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 164

1. Interpretation

In this Schedule –

approved insurer means an approved insurer
within the meaning of the repealed Act;

commencement day means the day fixed
under section 2(2).

**2. Proceedings commenced under repealed Act to be
continued under that Act**

Subject to section 69A, all proceedings that have
been commenced under the repealed Act and
that have not on the commencement day been
finally determined shall be continued and
determined under that Act.

**3. Provisions with respect to orders under section 3 (5)
of repealed Act**

An order under section 3 (5) of the repealed Act
that is in force immediately before the
commencement day continues in force after that
day as if it had been made under section 66.

4. Provisions with respect to employers maintaining policy of insurance complying with section 34 (1) of repealed Act

An employer who, immediately before the commencement day, maintains in force with an approved insurer a policy of insurance complying with section 34 (1) of the repealed Act shall, on that day, be deemed to be maintaining in force with a licensed insurer a policy of insurance that complies with section 97(1).

5. Certain insurers not guilty of offence under section 98

(1) An insurer –

- (a) who carried on, as an approved insurer, workers compensation insurance business in this State immediately before the commencement day; and
- (b) who has not been refused a licence under section 101 –

is not guilty of an offence under section 98 by reason only that, not being a licensed insurer, he carries on workers compensation insurance business in this State during the period of 3 months after the commencement day.

(2) An insurer who –

- (a) carried on, as an approved insurer, workers compensation insurance

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 8

business in this State immediately before the commencement day;

- (b) has, within 3 months after the commencement day applied under section 100 for a licence under this Act; and
- (c) has not withdrawn the application or been refused a licence under section 101

—
is not guilty of an offence under section 98 by reason only that, not being a licensed insurer, he carries on workers compensation insurance business in this State after the expiration of 3 months after the commencement day.

**SCHEDULE 9 – SAVINGS AND TRANSITIONAL
PROVISIONS IN RELATION TO THE WORKERS
REHABILITATION AND COMPENSATION REFORM
ACT 1995**

Section 164

1. Interpretation

In this Schedule –

commencement day means the day on which the *Workers Rehabilitation and Compensation Reform Act 1995* commences;

Workers Compensation Board means the Workers Compensation Board constituted under section 8, as in force immediately before the commencement day;

Workplace Safety Board means the Workplace Safety Board of Tasmania established under section 8.

2. Acts, &c., done by or to the Workers Compensation Board

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Workers Compensation Board before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 9

suffered in relation to, the Workplace Safety Board.

3. Property and rights, &c.

On the commencement day, the property and rights of the Workers Compensation Board vest in the Workplace Safety Board and the liabilities of the Workers Compensation Board become the liabilities of the Workplace Safety Board.

4. Money and claims

On the commencement day –

- (a) all money, debts and claims, liquidated or unliquidated, that, immediately before that day, was or were payable to, due to or recoverable by the Workers Compensation Board are taken to be money, debts or claims payable to, due to or recoverable by the Workplace Safety Board; and
- (b) all money, debts and claims, liquidated or unliquidated, that, immediately before that day, was or were payable by, due from, or recoverable against the Workers Compensation Board are taken to be money, debts or claims payable by, due from or recoverable against the Workplace Safety Board.

5. Legal proceedings by or against the Board

- (1) On and after the commencement day, any legal proceedings instituted by or against the Workers Compensation Board before, and pending immediately before, that day may be continued by or against the Workplace Safety Board.
- (2) On and after the commencement day, any legal or other proceedings which may, immediately before that day, have been instituted or continued by or against the Workers Compensation Board may be instituted or continued by or against the Workplace Safety Board.
- (3) On and after the commencement day, a judgment or order of a court obtained in legal proceedings by or against the Workers Compensation Board and not executed or satisfied before that day may be enforced by or against the Workplace Safety Board.

6. Contracts

All contracts, agreements, arrangements and undertakings which were entered into by the Workers Compensation Board before, but which were not performed or discharged by, the commencement day are, on and after that day, taken to have been entered into by the Workplace Safety Board.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 9

7. Documents

On and after the commencement day –

- (a) any document which was addressed to, and which was purported to have been served on or notified to, the Workers Compensation Board and which had not ceased to have effect before that day, is taken to have been served on or notified to the Workplace Safety Board; and
- (b) any document which was addressed to, and which was purported to have been served on or notified to, a person by or on behalf of the Workers Compensation Board and which had not ceased to have effect before that day, is taken to have been served on or notified to that person by the Workplace Safety Board.

8. References to Workers Compensation Board

On and after the commencement day, a reference to the Workers Compensation Board in any Act, law, instrument or document is taken to be a reference to the Workplace Safety Board.

9. Temporary performance of functions, &c., of Workplace Safety Board

Until all members of the Workplace Safety Board are appointed under section 9, or for a period of 2 months after the commencement day, whichever is the earlier, the Secretary is to

perform the functions and exercise the powers of that Board.

10. Person holding office as Workers Compensation Commissioner

On and after the commencement day, the person holding office as Workers Compensation Commissioner immediately before that day is taken to be appointed as Chief Workers Rehabilitation and Compensation Commissioner.

11. Acts, &c., done by or to the Workers Compensation Commissioner

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Workers Compensation Commissioner before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Tribunal.

12. Case stated for opinion of Supreme Court by Workers Compensation Commissioner

On and after the commencement day, a case stated for the opinion of the Supreme Court by the Workers Compensation Commissioner under section 58, the hearing of which is pending immediately before that day, is taken to be a case stated by the Tribunal.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 9

13. Appeals against determinations, &c., of Workers Compensation Commissioner

On and after the commencement day, an appeal to the Supreme Court in relation to any determination, order, ruling or direction of the Workers Compensation Commissioner and pending immediately before that day is taken to be an appeal in relation to a determination, order, ruling or direction of the Tribunal.

14. Legal proceedings by or against Workers Compensation Commissioner

- (1) On and after the commencement day, any legal proceedings instituted by or against the Workers Compensation Commissioner before, and pending immediately before, that day may be continued by or against the Tribunal.
- (2) On and after the commencement day, any legal or other proceedings which may, immediately before that day, have been instituted or continued by or against the Workers Compensation Commissioner may be instituted or continued by or against the Tribunal.
- (3) On and after the commencement day, a judgment or order of a court obtained in legal proceedings by or against the Workers Compensation Commissioner and not executed or satisfied before that day may be enforced by or against the Tribunal.

15. Acts, &c., done by or to a registrar

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, a registrar of the court of requests, or a person performing the functions of a registrar, under this Act before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Registrar.

16. References to Workers Compensation Commissioner

On and after the commencement day, a reference to the Workers Compensation Commissioner or a part-time Workers Compensation Commissioner in any Act, law, instrument or document is taken to be a reference to the Tribunal.

17. Documents

On and after the commencement day –

- (a) any document which was addressed to, and which was purported to have been served on, the Workers Compensation Commissioner and which had not ceased to have effect before that day, is taken to have been served on the Tribunal; and
- (b) any document which was addressed to, and which was purported to have been served on, a person by or on behalf of the

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 9

Workers Compensation Commissioner or a registrar of the court of requests, or a person performing the functions of a registrar, under this Act, and which had not ceased to have effect before that day, is taken to have been served on that person by the Tribunal; and

- (c) any document which was addressed to, and which was purported to have been served on, or lodged or filed with, a registrar of the court of requests, or a person performing the functions of a registrar, under this Act and which had not ceased to have effect before that day, is taken to have been served on, or lodged or filed with, the Registrar.

18. Continuation of certain weekly payments

A worker, who before 4 June 1995 received, or was in receipt of, a weekly payment in accordance with the decision of the High Court of Australia in *Scott v Sun Alliance Insurance Australia Limited & Anor.* (1993) 178 C.L.R. 1, is, on and after the commencement day, entitled to have received or to continue to receive that payment as if section 69A had not been enacted.

19. Claims for compensation

Except as provided in section 69A, all claims for compensation with respect to an injury which occurred before the commencement day and not finally determined before that day are, on and

after that day, to be continued and determined under this Act as in force immediately before that day.

20. Accredited medical practitioners

All medical practitioners are taken to be accredited medical practitioners for the period of 12 months from the commencement day or for such lesser period as may be prescribed.

21. Acts, &c., done by or to Premiums Monitoring Committee

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Premiums Monitoring Committee before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Workplace Safety Board.

22. Licences and permits

A licence or permit granted by the Workers Compensation Board and in force immediately before the commencement day is, on and after that day, taken to be a licence or permit granted by the Workplace Safety Board.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 9

23. Notional premium payments

A notional premium payment determined by the Workers Compensation Board before the commencement day is, on and after that day, taken to have been determined by the Workplace Safety Board.

24. References to *Workers Compensation Act 1988*

On and after the commencement day, a reference to the *Workers Compensation Act 1988* in any Act, law, instrument or document is taken to be a reference to the *Workers Rehabilitation and Compensation Act 1988*.

**SCHEDULE 10 – SAVINGS AND TRANSITIONAL
PROVISIONS IN RELATION TO WORKERS
REHABILITATION AND COMPENSATION
AMENDMENT ACT 2000**

Section 8(4)

1. Interpretation

In this Schedule –

commencement day means the day on which the *Workers Rehabilitation and Compensation Amendment Act 2000* commenced;

WorkCover Tasmania Board means the WorkCover Tasmania Board established under section 8;

Workplace Safety Board means the Workplace Safety Board of Tasmania established under section 8, as in force immediately before the commencement day.

2. Acts, &c., done by or to Workplace Safety Board

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Workplace Safety Board before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the WorkCover Tasmania Board.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 10

3. Property and rights, &c.

On the commencement day, the property and rights of the Workplace Safety Board vest in the WorkCover Tasmania Board and the liabilities of the Workplace Safety Board become the liabilities of the WorkCover Tasmania Board.

4. Money and claims

On the commencement day –

- (a) all money, debts and claims, liquidated or unliquidated, that, immediately before that day, was or were payable to, due to or recoverable by the Workplace Safety Board are taken to be money, debts or claims payable to, due to or recoverable by the WorkCover Tasmania Board; and
- (b) all money, debts and claims, liquidated or unliquidated, that, immediately before that day, was or were payable by, due from, or recoverable against the Workplace Safety Board are taken to be money, debts or claims payable by, due from or recoverable against the WorkCover Tasmania Board.

5. Legal proceedings by or against the Board

- (1) On and after the commencement day, any legal proceedings instituted by or against the Workplace Safety Board before, and pending

immediately before, that day may be continued by or against the WorkCover Tasmania Board.

- (2) On and after the commencement day, any legal or other proceedings which may, immediately before that day, have been instituted or continued by or against the Workplace Safety Board may be instituted or continued by or against the WorkCover Tasmania Board.
- (3) On and after the commencement day, a judgment or order of a court obtained in legal proceedings by or against the Workplace Safety Board and not executed or satisfied before that day may be enforced by or against the WorkCover Tasmania Board.

6. Contracts

All contracts, agreements, arrangements and undertakings which were entered into by the Workplace Safety Board before, but which were not performed or discharged by, the commencement day are, on and after that day, taken to have been entered into by the WorkCover Tasmania Board.

7. Documents

On and after the commencement day –

- (a) any document which was addressed to, and which was purported to have been served on or notified to, the Workplace Safety Board and which had not ceased

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 10

to have effect before that day, is taken to have been served on or notified to the WorkCover Tasmania Board; and

- (b) any document which was addressed to, and which was purported to have been served on or notified to, a person by or on behalf of the Workplace Safety Board and which had not ceased to have effect before that day, is taken to have been served on or notified to that person by the WorkCover Tasmania Board.

8. References to Workplace Safety Board

On and after the commencement day, a reference to the Workplace Safety Board in any Act, law, instrument or document is taken to be a reference to the WorkCover Tasmania Board.

9. Temporary performance of functions, &c., of WorkCover Tasmania Board

Until all members of the WorkCover Tasmania Board are appointed under section 9, or for a period of 2 months after the commencement day, whichever is the earlier, the Secretary is to perform the functions and exercise the powers of that Board.

10. Claims for compensation

- (1) Subject to subclause (3), all claims for compensation and claims for damages made against an employer independently of this Act in

respect of an injury which occurred before the commencement day and not finally determined before that day are, on and after that day, to be continued and determined in accordance with this Act as in force immediately before that day.

- (2) For the purposes of this clause, a claim for compensation includes any subsequent claim arising from the injury in respect of which the claim for compensation was made.
- (3) The amendments to this Act made by sections 35(b), 40, 41, 42, 49, 54, 55 and 57 of the *Workers Rehabilitation and Compensation Amendment Act 2000* apply to all claims for compensation not finally determined before the commencement day.

11. Licences and permits

A licence or permit granted by the Workplace Safety Board and in force immediately before the commencement day is, on and after that day, taken to be a licence or permit granted by the WorkCover Tasmania Board.

12. Notional premium payments

A notional premium payment determined by the Workplace Safety Board before the commencement day is, on and after that day, taken to have been determined by the WorkCover Tasmania Board.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

SCHEDULE 11 – ADJACENT AREAS

Section 31A(9)

1. Interpretation

In this Schedule –

continental shelf has the same meaning as in section 3(1) of the Seas and Submerged Lands Act;

Petroleum (Submerged Lands) Act means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

Seas and Submerged Lands Act means the *Seas and Submerged Lands Act 1973* of the Commonwealth;

territorial sea has the same meaning as in section 3(1) of the Seas and Submerged Lands Act.

2. Adjacent areas for States and the Northern Territory

- (1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is –
 - (a) the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for the relevant State that is within the outer limits of the continental shelf; and
 - (b) the space above and below that area.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

- (2) The adjacent area for Queensland is –
- (a) the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for Queensland that is within the outer limits of the continental shelf; and
 - (b) the Coral Sea area, within the meaning of section 5A(7) of the Petroleum (Submerged Lands) Act, other than the territorial area within the Coral Sea area; and
 - (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under section 7 of the Seas and Submerged Lands Act; and
 - (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The adjacent area for Western Australia is the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for Western Australia that –
- (a) is within the outer limits of the continental shelf, including the space above and below the area; and
 - (b) is not within Area A of the Zone of Cooperation.
- (4) The adjacent area for the Northern Territory is –

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

- (a) the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for the Northern Territory that –
 - (i) is within the outer limits of the continental shelf; and
 - (ii) is not within Area A of the Zone of Cooperation; and
 - (b) the adjacent area for the Territory of Ashmore and Cartier Islands, within the meaning of section 5A(3) of the Petroleum Submerged Lands Act, other than the territorial sea within that area; and
 - (c) the space above and below the areas described in paragraphs (a) and (b).
- (5) The adjacent area for a State or the Northern Territory does not include any area inside the limits of a State or Territory.

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

NOTES

The foregoing text of the *Workers Rehabilitation and Compensation Act 1988* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 27 November 2023 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Workers Compensation Act 1988</i>	No. 4 of 1988	15.11.1988
<i>Motor Accidents (Liabilities and Compensation) Amendment Act (No. 2) 1988</i>	No. 39 of 1988	15.11.1988
<i>Magistrates Amendment Act 1989</i>	No. 13 of 1989	1.9.1989
<i>Administrative Arrangements (Miscellaneous Amendments) Act 1990</i>	No. 5 of 1990	1.7.1990
<i>Statute Law Revision Act 1991</i>	No. 46 of 1991	1.7.1990 (Sched. 2)
<i>Workers Compensation Amendment Act 1991</i>	No. 26 of 1991	25.10.1991
<i>Workers Compensation Amendment Act 1992</i>	No. 50 of 1992	21.12.1992
<i>Workers Compensation Amendment Act 1993</i>	No. 43 of 1993	1.11.1993
<i>Workers Compensation Legislation Amendment Act 1993</i>	No. 44 of 1993	1.2.1994
<i>Tasmanian Government Insurance Office (Sale) Act 1993</i>	No. 27 of 1993	9.3.1994
<i>Workers Compensation Amendment (De Facto Spouses) Act 1994</i>	No. 49 of 1994	1.10.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Optometrists Registration Act 1994</i>	No. 87 of 1994	19.4.1995
<i>Workers Rehabilitation and Compensation Reform Act 1995</i>	No. 16 of 1995	16.8.1995 (all except s. 25)
<i>Nursing Act 1995</i>	No. 100 of 1995	1.7.1996
<i>Podiatrists Registration Act 1995</i>	No. 81 of 1995	1.7.1996
<i>Workers Rehabilitation and Compensation Amendment Act 1996</i>	No. 48 of 1996	17.12.1996
<i>Chiropractors and Osteopaths Registration Act 1997</i>	No. 48 of 1997	10.6.1998

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Act	Number and year	Date of commencement
<i>Mental Health (Consequential Amendments) Act 1996</i>	No. 32 of 1996	1.11.1999
<i>Physiotherapists Registration Act 1999</i>	No. 106 of 1999	1.3.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Workers Rehabilitation and Compensation Amendment Act 2000</i>	No. 99 of 2000	1.7.2001
<i>Workers Rehabilitation and Compensation Amendment Act 2007</i>	No. 42 of 2007	1.7.2001
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Workers Rehabilitation and Compensation Amendment Act 2001</i>	No. 48 of 2001	1.8.2001
<i>Dental Practitioners Registration Act 2001</i>	No. 20 of 2001	3.10.2001
<i>Workers Rehabilitation and Compensation Amendment Act 2002</i>	No. 11 of 2002	1.1.2002
<i>Pharmacists Registration Act 2001</i>	No. 90 of 2001	1.4.2002
<i>Financial Management and Audit Amendment Act 2003</i>	No. 42 of 2003	4.7.2003
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Workers Rehabilitation and Compensation Amendment Act 2004</i>	No. 16 of 2004	29.6.2004
<i>Workers Rehabilitation and Compensation Amendment (Miscellaneous) Act 2004</i>	No. 65 of 2004	17.12.2004
<i>Limitation Amendment Act 2004</i>	No. 66 of 2004	1.1.2005
<i>Statutory Officers (Age for Retirement) Act 2005</i>	No. 17 of 2005	10.6.2005
<i>Workers Rehabilitation and Compensation Amendment Act 2007</i>	No. 42 of 2007	31.10.2007
<i>Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007</i>	No. 72 of 2007	1.11.2007 28.4.2008
<i>Taxi and Luxury Hire Car Industries (Consequential Amendments) Act 2008</i>	No. 31 of 2008	24.9.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Racing Regulation Amendment</i>	No. 63 of 2008	1.1.2009

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Act	Number and year	Date of commencement
<i>(Governance Reform) (Transitional and Consequential Provisions) Act 2008</i>		
<i>Racing (Tasracing Pty Ltd) (Transitional and Consequential Provisions) Act 2009</i>	No. 26 of 2009	1.7.2009
<i>Workers Rehabilitation and Compensation Amendment Act 2009</i>	No. 85 of 2009	1.7.2010
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011</i>	No. 28 of 2011	31.10.2011
<i>Workers Rehabilitation and Compensation Amendment (Validation) Act 2012</i>	No. 27 of 2012	30.8.2012
<i>Work Health and Safety (Transitional and Consequential Provisions) Act 2012</i>	No. 2 of 2012	1.1.2013
<i>Training and Workforce Development (Repeals and Consequential Amendments) Act 2013</i>	No. 11 of 2013	1.7.2013
<i>Passenger Transport and Related Legislation (Consequential Amendments) Act 2011</i>	No. 60 of 2011	1.7.2013
<i>Workers Rehabilitation and Compensation Amendment (Fire-fighters) Act 2013</i>	No. 44 of 2013	21.10.2013
<i>Ambulance Service Amendment Act 2013</i>	No. 73 of 2013	1.7.2014
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Statutory Appointments (Miscellaneous Amendments) Act 2017</i>	No. 36 of 2017	19.9.2017
<i>Workers Rehabilitation and Compensation Amendment (Presumption of Cause of Disease) Act 2017</i>	No. 57 of 2017	20.12.2017
<i>Workers Rehabilitation and Compensation Amendment Act 2017</i>	No. 39 of 2017	1.1.2018
<i>Workers Rehabilitation and Compensation Amendment (Presumption as to Cause of</i>	No. 11 of 2019	4.6.2019

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Act	Number and year	Date of commencement
<i>Disease) Act 2019</i>		
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Workers Rehabilitation and Compensation Amendment Act 2019</i>	No. 23 of 2019	2.9.2019
<i>Validation Act 2021</i>	No. 19 of 2021	5.11.2021
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021
<i>Health Legislation (Miscellaneous Amendments) Act 2022</i>	No. 23 of 2022	24.10.2022
<i>Workers Rehabilitation and Compensation Amendment Act 2022</i>	No. 41 of 2022	1.3.2023
<i>Workers Rehabilitation and Compensation Amendment Act 2023</i>	No. 28 of 2023	7.11.2023
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2023</i>	No. 33 of 2023	27.11.2023

TABLE OF AMENDMENTS

Provision affected	How affected
The long title	Amended by No. 16 of 1995, s. 4 and No. 85 of 2009, s. 4
Section 1	Amended by No. 16 of 1995, s. 5
Section 2A	Inserted by No. 85 of 2009, s. 5
Section 3	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 50 of 1992, s. 10, No. 27 of 1993, s. 35 and Sched. 3, No. 43 of 1993, s. 4, No. 44 of 1993, s. 20, No. 49 of 1994, s. 4, No. 68 of 1994, s. 3 and Sched. 1, No. 16 of 1995, s. 6, No. 48 of 1996, s. 4, No. 86 of 2000, Sched. 1, No. 99 of 2000, s. 4, No. 45 of 2003, Sched. 1, No. 76 of 2003, Sched. 1, No. 65 of 2004, s. 4, No. 42 of 2007, s. 4, No. 66 of 2007, Sched. 1, No. 31 of 2008, Sched. 1, No. 85 of 2009, s. 6, No. 3 of 2010, Sched. 1, No. 28 of 2011, s. 50, No. 11 of 2013, Sched. 1, No. 36 of 2017, s. 24, No. 39 of 2017, s. 4 and No. 18 of 2021, s. 368
Section 4	Amended by No. 99 of 2000, s. 5 and No. 39 of 2017, s. 5
Section 4A	Inserted by No. 99 of 2000, s. 6
Section 4B	Inserted by No. 99 of 2000, s. 6
Section 4C	Inserted by No. 99 of 2000, s. 6
Section 4D	Inserted by No. 99 of 2000, s. 6
Section 4DA	Inserted by No. 42 of 2007, s. 5 Amended by No. 31 of 2008, Sched. 1 and No. 60 of 2011, Sched. 1

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 4DB	Inserted by No. 42 of 2007, s. 5 Amended by No. 31 of 2008, Sched. 1 and No. 60 of 2011, Sched. 1
Section 4DC	Inserted by No. 42 of 2007, s. 6 Amended by No. 63 of 2008, Sched. 1 and No. 26 of 2009, Sched. 1
Section 4E	Inserted by No. 65 of 2004, s. 5
Section 5	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 16 of 1995, s. 7, No. 48 of 1996, s. 5, No. 99 of 2000, s. 7 and No. 11 of 2013, Sched. 1
Section 6	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 16 of 1995, s. 8, No. 48 of 1996, s. 6, No. 99 of 2000, s. 8, No. 11 of 2013, Sched. 1 and No. 73 of 2013, Sched. 1
Section 6A	Inserted by No. 16 of 1995, s. 9 Amended by No. 48 of 1996, s. 7, No. 99 of 2000, s. 9, No. 76 of 2003, Sched. 1 and No. 11 of 2013, Sched. 1
Section 6B	Inserted by No. 16 of 1995, s. 9 Amended by No. 99 of 2000, s. 10
Section 7A	Inserted by No. 50 of 1992, s. 5 Amended by No. 16 of 1995, s. 91 and Sched. 1
Division 1 of Part II	Heading substituted by No. 16 of 1995, s. 10 Heading amended by No. 99 of 2000, s. 11
Section 8	Substituted by No. 16 of 1995, s. 11 and No. 99 of 2000, s. 12
Section 9	Substituted by No. 16 of 1995, s. 12 Amended by No. 48 of 1996, s. 8, No. 99 of 2000, s. 13, No. 42 of 2007, s. 7, No. 66 of 2007, Sched. 1 and No. 39 of 2017, s. 6
Section 10	Amended by No. 16 of 1995, s. 13 Substituted by No. 99 of 2000, s. 14 Amended by No. 85 of 2009, s. 7, No. 2 of 2012, s. 109 and No. 39 of 2017, s. 7
Section 11	Amended by No. 16 of 1995, s. 14
Section 11A	Inserted by No. 16 of 1995, s. 15
Section 12	Amended by No. 39 of 2017, s. 8
Section 14	Amended by No. 86 of 2000, Sched. 1
Section 15	Amended by No. 16 of 1995, s. 16, No. 99 of 2000, s. 15 and No. 42 of 2003, Sched. 1
Division 2 of Part II	Heading amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 18 of 2021, s. 369
Section 16	Substituted by No. 16 of 1995, s. 17 Repealed by No. 18 of 2021, s. 370
Section 17	Substituted by No. 16 of 1995, s. 17 Repealed by No. 18 of 2021, s. 370
Section 17A	Inserted by No. 16 of 1995, s. 17 Amended by No. 36 of 2017, s. 25 Repealed by No. 18 of 2021, s. 370
Section 17B	Inserted by No. 16 of 1995, s. 17

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
	Amended by No. 36 of 2017, s. 26 Repealed by No. 18 of 2021, s. 370
Section 18	Amended by No. 16 of 1995, s. 18, No. 86 of 2000, Sched. 1, No. 36 of 2017, s. 27 Repealed by No. 18 of 2021, s. 370
Section 19	Amended by No. 13 of 1989, s. 19, No. 16 of 1995, s. 19 Subsection (5) omitted by No. 16 of 1995, s. 19 Subsection (6) omitted by No. 16 of 1995, s. 19 Subsection (7) omitted by No. 16 of 1995, s. 19 Amended by No. 86 of 2000, Sched. 1, No. 36 of 2017, s. 28 Repealed by No. 18 of 2021, s. 370
Section 20	Amended by No. 44 of 1993, s. 21, No. 68 of 1994, s. 3 and Sched. 1, No. 16 of 1995, s. 91 and Sched. 1 and No. 18 of 2021, s. 371
Section 21	Substituted by No. 16 of 1995, s. 20 Repealed by No. 18 of 2021, s. 372
Section 22	Amended by No. 43 of 1993, s. 5, No. 16 of 1995, s. 21, No. 85 of 2009, s. 8 and No. 18 of 2021, s. 373
Section 23	Substituted by No. 16 of 1995, s. 22
Section 23A	Amended by No. 18 of 2021, s. 374 Inserted by No. 16 of 1995, s. 23 Amended by No. 86 of 2000, Sched. 1, No. 65 of 2004, s. 6
Section 24	Repealed by No. 18 of 2021, s. 375 Inserted by No. 16 of 1995, s. 23 Amended by No. 42 of 2003, Sched. 1 Repealed by No. 18 of 2021, s. 375
Part II, Div. 3	Repealed by No. 43 of 1993, s. 6
Section 24	Repealed by No. 43 of 1993, s. 6 and No. 18 of 2021, s. 375
Division 1 of Part III	Heading inserted by No. 65 of 2004, s. 7
Section 25	Amended by No. 44 of 1993, s. 22, No. 68 of 1994, s. 3 and Sched. 1, No. 16 of 1995, s. 24, No. 99 of 2000, s. 16, No. 42 of 2007, s. 8 and No. 39 of 2017, s. 9
Section 25A	Inserted by No. 44 of 1993, s. 23
Section 26	Amended by No. 42 of 2007, s. 9 Amended by No. 42 of 2007, s. 10 Substituted by No. 39 of 2017, s. 10
Section 27	Repealed by No. 65 of 2004, s. 8 Inserted by No. 44 of 2013, s. 4 Amended by No. 57 of 2017, s. 4, No. 41 of 2022, s. 4 and No. 28 of 2023, s. 4
Section 28	Repealed by No. 65 of 2004, s. 8 Inserted by No. 44 of 2013, s. 4 Amended by No. 39 of 2017, s. 11
Section 28A	Inserted by No. 11 of 2019, s. 4
Section 29	Amended by No. 99 of 2000, s. 17

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 30	Amended by No. 99 of 2000, s. 18 and No. 42 of 2001, Sched. 1
Section 31	Amended by No. 16 of 1995, s. 26
Section 31A of Part III	Inserted by No. 65 of 2004, s. 9
Section 31B of Part III	Inserted by No. 65 of 2004, s. 9
Section 31C of Part III	Inserted by No. 65 of 2004, s. 9
Section 31D of Part III	Inserted by No. 65 of 2004, s. 9
Section 31E of Part III	Inserted by No. 65 of 2004, s. 9
Section 32	Amended by No. 44 of 1993, s. 24
Section 33	Amended by No. 16 of 1995, s. 27
Section 33A	Inserted by No. 85 of 2009, s. 9 Substituted by No. 39 of 2017, s. 12
Section 34	Amended by No. 16 of 1995, s. 28, No. 65 of 2004, s. 10, No. 42 of 2007, s. 11 and No. 39 of 2017, s. 13
Section 36	Amended by No. 16 of 1995, s. 29, No. 99 of 2000, s. 19, No. 85 of 2009, s. 10 and No. 39 of 2017, s. 14
Section 37	Repealed by No. 16 of 1995, s. 30 Inserted by No. 48 of 1996, s. 9
Section 38	Amended by No. 50 of 1992, s. 10, No. 44 of 1993, s. 25, No. 16 of 1995, s. 91 and Sched. 1, No. 42 of 2007, s. 12 and No. 85 of 2009, s. 11
Section 39	Amended by No. 5 of 1990, s. 3 and sched. 1, No. 50 of 1992, s. 10 Substituted by No. 16 of 1995, s. 31, No. 99 of 2000, s. 20 and No. 85 of 2009, s. 12
Section 40	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 50 of 1992, s. 10, No. 16 of 1995, s. 32, No. 65 of 2004, s. 11 Repealed by No. 42 of 2007, s. 13
Part V	Heading amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 99 of 2000, s. 21
Division 1 of Part V	Heading inserted by No. 99 of 2000, s. 22
Section 41	Repealed by No. 50 of 1992, s. 6
Section 42	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 50 of 1992, s. 7, No. 16 of 1995, s. 33, No. 65 of 2004, s. 12, No. 42 of 2007, s. 14 and No. 18 of 2021, s. 376
Section 42A of Part V	Inserted by No. 99 of 2000, s. 23
Section 42B of Part V	Inserted by No. 99 of 2000, s. 23
Section 42B	Amended by No. 18 of 2021, s. 377
Section 42C of Part V	Inserted by No. 99 of 2000, s. 23

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 42D of Part V	Inserted by No. 99 of 2000, s. 23
Section 42E of Part V	Inserted by No. 99 of 2000, s. 23
Section 42F of Part V	Inserted by No. 99 of 2000, s. 23
Section 42G of Part V	Inserted by No. 99 of 2000, s. 23
Section 42H of Part V	Inserted by No. 99 of 2000, s. 23
Section 42H	Amended by No. 66 of 2007, Sched. 1 and No. 36 of 2017, s. 29
Section 42I of Part V	Inserted by No. 99 of 2000, s. 23
Section 42J of Part V	Inserted by No. 99 of 2000, s. 23
Section 42K of Part V	Inserted by No. 99 of 2000, s. 23
Section 42L of Part V	Inserted by No. 99 of 2000, s. 23
Section 42M of Part V	Inserted by No. 99 of 2000, s. 23
Section 42N of Part V	Inserted by No. 99 of 2000, s. 23
Division 3 of Part V	Heading inserted by No. 99 of 2000, s. 25
Section 43	Subsection (1) substituted by No. 16 of 1995, s. 34 Subsection (3) omitted by No. 16 of 1995, s. 34 Repealed by No. 99 of 2000, s. 24
Section 43A	Inserted by No. 16 of 1995, s. 35 Repealed by No. 99 of 2000, s. 24
Section 44	Substituted by No. 16 of 1995, s. 36
Section 45	Amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 48 of 1996, s. 10
Section 46	Amended by No. 16 of 1995, s. 91 and Sched. 1 Repealed by No. 18 of 2021, s. 378
Section 47	Amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 18 of 2021, s. 379
Section 48	Amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 18 of 2021, s. 380
Section 49	Amended by No. 43 of 1993, s. 7, No. 16 of 1995, s. 37, No. 99 of 2000, s. 26 and No. 18 of 2021, s. 381
Division 4 of Part V	Heading inserted by No. 99 of 2000, s. 27
Section 50	Substituted by No. 43 of 1993, s. 8 Amended by No. 16 of 1995, s. 91 and Sched. 1 Substituted by No. 99 of 2000, s. 28
Section 51	Amended by No. 43 of 1993, s. 9

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 52	Substituted by No. 99 of 2000, s. 28 Amended by No. 43 of 1993, s. 10, No. 16 of 1995, s. 91 and Sched. 1
Section 53	Substituted by No. 99 of 2000, s. 28 Amended by No. 43 of 1993, s. 10, No. 16 of 1995, s. 91 and Sched. 1
Section 54	Substituted by No. 99 of 2000, s. 28 Amended by No. 43 of 1993, s. 12, No. 16 of 1995, s. 91 and Sched. 1
Section 55	Substituted by No. 99 of 2000, s. 28 Amended by No. 43 of 1993, s. 13
Section 55A	Substituted by No. 99 of 2000, s. 28
Section 55B	Inserted by No. 99 of 2000, s. 28
Section 55C	Inserted by No. 99 of 2000, s. 28
Division 5 of Part V	Heading inserted by No. 99 of 2000, s. 29
Section 56	Amended by No. 43 of 1993, s. 14, No. 16 of 1995, s. 91 and Sched. 1, No. 85 of 2009, s. 13 and No. 18 of 2021, s. 382
Section 57	Amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 18 of 2021, s. 383
Section 58	Amended by No. 16 of 1995, s. 91 and Sched. 1
Section 59	Substituted by No. 16 of 1995, s. 38 Amended by No. 99 of 2000, s. 30 and No. 18 of 2021, s. 384
Section 60	Amended by No. 16 of 1995, s. 39 Subsection (2) omitted by No. 16 of 1995, s. 39 Subsection (3) omitted by No. 16 of 1995, s. 39 Subsection (4) omitted by No. 16 of 1995, s. 39 Amended by No. 16 of 1995, s. 39 Repealed by No. 18 of 2021, s. 385
Section 60A	Inserted by No. 16 of 1995, s. 40
Section 61	Amended by No. 65 of 2004, s. 13 Amended by No. 16 of 1995, s. 41 and No. 99 of 2000, s. 31
Section 61A	Inserted by No. 43 of 1993, s. 15 Amended by No. 16 of 1995, s. 91 and Sched. 1
Section 62	Amended by No. 16 of 1995, s. 91 and Sched. 1, No. 18 of 2021, s. 386 and No. 33 of 2023, s. 35
Section 63	Amended by No. 16 of 1995, s. 42 Repealed by No. 18 of 2021, s. 387
Section 64	Amended by No. 43 of 1993, s. 16, No. 16 of 1995, s. 43 and No. 99 of 2000, s. 32
Section 65	Substituted by No. 26 of 1991, s. 4 Amended by No. 99 of 2000, s. 33 and No. 45 of 2003, Sched. 1
Section 66	Substituted by No. 26 of 1991, s. 4

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 67	Subsection (6) omitted by No. 16 of 1995, s. 44 Substituted by No. 99 of 2000, s. 34 Amended by No. 45 of 2003, Sched. 1, No. 65 of 2004, s. 14, No. 85 of 2009, s. 14 and No. 39 of 2017, s. 15
Section 67A	Inserted by No. 99 of 2000, s. 34 Amended by No. 45 of 2003, Sched. 1, No. 65 of 2004, s. 15 and No. 85 of 2009, s. 15
Section 67B	Inserted by No. 65 of 2004, s. 16
Section 67C	Inserted by No. 65 of 2004, s. 16
Section 67D	Inserted by No. 65 of 2004, s. 16
Section 67E	Inserted by No. 65 of 2004, s. 16
Section 67F	Inserted by No. 65 of 2004, s. 16
Section 67G	Inserted by No. 65 of 2004, s. 16
Section 68	Amended by No. 50 of 1992, s. 10 and No. 16 of 1995, s. 91 and Sched. 1
Section 68A	Inserted by No. 49 of 1994, s. 5 Amended by No. 16 of 1995, s. 91 and Sched. 1 Repealed by No. 45 of 2003, Sched. 1
Section 69	Amended by No. 50 of 1992, s. 10, No. 43 of 1993, s. 17, No. 16 of 1995, s. 46, No. 48 of 1996, s. 11, No. 99 of 2000, s. 35, No. 65 of 2004, s. 17, No. 42 of 2007, s. 15 and No. 85 of 2009, s. 16
Section 69A	Inserted by No. 16 of 1995, s. 47
Section 69B	Inserted by No. 16 of 1995, s. 47 Substituted by No. 99 of 2000, s. 36 Amended by No. 16 of 2004, s. 4, No. 65 of 2004, s. 18, No. 42 of 2007, s. 16, No. 85 of 2009, s. 17 and No. 23 of 2019, s. 4
Section 70	Amended by No. 16 of 1995, s. 48, No. 42 of 2007, s. 17 and No. 85 of 2009, s. 18
Section 71	Amended by No. 50 of 1992, s. 10, No. 16 of 1995, s. 49 Subsection (6) omitted by No. 16 of 1995, s. 49 Subsection (7) omitted by No. 16 of 1995, s. 49 Subsection (8) omitted by No. 16 of 1995, s. 49 Amended by No. 16 of 1995, s. 49 Substituted by No. 99 of 2000, s. 37 Amended by No. 42 of 2007, s. 18 and No. 85 of 2009, s. 19
Section 71A	Inserted by No. 39 of 2017, s. 16
Section 72	Amended by No. 16 of 1995, s. 91 and Sched. 1 Substituted by No. 99 of 2000, s. 37 Amended by No. 65 of 2004, s. 19, No. 85 of 2009, s. 20 and No. 39 of 2017, s. 17
Section 72A	Inserted by No. 42 of 2007, s. 19
Section 73	Subsection (5) inserted by No. 16 of 1995, s. 50 Subsection (6) inserted by No. 16 of 1995, s. 50 Subsection (7) inserted by No. 16 of 1995, s. 50 Substituted by No. 99 of 2000, s. 37

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 73A	Amended by No. 42 of 2007, s. 20
Section 73B	Inserted by No. 99 of 2000, s. 37
Section 74	Amended by No. 42 of 2007, s. 21
Section 75	Amended by No. 43 of 1993, s. 18, No. 87 of 1994, s. 84 and Sched. 4, No. 81 of 1995, s. 80 and Sched. 4, No. 100 of 1995, s. 97 and Sched. 7, No. 48 of 1997, Sched. 4, No. 106 of 1999, Sched. 6, No. 20 of 2001, Sched. 6, No. 90 of 2001, Sched. 6, No. 85 of 2009, s. 21, No. 3 of 2010, Sched. 1, No. 39 of 2017, s. 18 and No. 23 of 2022, s. 92
Section 76	Amended by No. 50 of 1992, s. 10, No. 43 of 1993, s. 19, No. 16 of 1995, s. 51, No. 99 of 2000, s. 38 and No. 85 of 2009, s. 22
Section 76A	Amended by No. 16 of 1995, s. 52, No. 99 of 2000, s. 39, No. 85 of 2009, s. 23 and No. 39 of 2017, s. 19
Section 77	Inserted by No. 85 of 2009, s. 24
Section 77AA	Amended by No. 50 of 1992, s. 10, No. 16 of 1995, s. 91 and Sched. 1, No. 99 of 2000, s. 40 and No. 65 of 2004, s. 20
Section 77AB	Inserted by No. 99 of 2000, s. 41
Section 77AC	Substituted by No. 65 of 2004, s. 21
Part VI, Div. 2A	Amended by No. 42 of 2007, s. 22 and No. 85 of 2009, s. 25
Section 77A	Inserted by No. 85 of 2009, s. 26
Section 77B	Inserted by No. 85 of 2009, s. 26
Section 77C	Inserted by No. 16 of 1995, s. 53
Section 77D	Inserted by No. 16 of 1995, s. 53
Section 77E	Amended by No. 99 of 2000, s. 42, No. 85 of 2009, s. 27 and No. 39 of 2017, s. 20
Section 77F	Inserted by No. 16 of 1995, s. 53
Section 77FA	Amended by No. 16 of 1995, s. 53
Section 77G	Amended by No. 99 of 2000, s. 28 and No. 39 of 2017, s. 21
	Inserted by No. 16 of 1995, s. 53
	Amended by No. 99 of 2000, s. 45
	Inserted by No. 16 of 1995, s. 53
	Amended by No. 99 of 2000, s. 46, No. 85 of 2009, s. 31 and No. 28 of 2011, s. 51
	Inserted by No. 42 of 2007, s. 23
	Inserted by No. 16 of 1995, s. 53
	Amended by No. 99 of 2000, s. 47 and No. 33 of 2023, s. 36

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 77H	Inserted by No. 16 of 1995, s. 53 Amended by No. 99 of 2000, s. 48
Section 78	Amended by No. 50 of 1992, s. 10, No. 16 of 1995, s. 54 and No. 42 of 2007, s. 24
Section 79	Amended by No. 42 of 2007, s. 25
Part VII, Div. 1	Heading amended by No. 50 of 1992, s. 8
Section 80A	Inserted by No. 99 of 2000, s. 49
Section 81	Substituted by No. 50 of 1992, s. 9 Amended by No. 48 of 1996, s. 12, No. 99 of 2000, s. 50 and No. 65 of 2004, s. 22
Section 81AA	Inserted by No. 48 of 1996, s. 13 Substituted by No. 99 of 2000, s. 51 Amended by No. 65 of 2004, s. 23 and No. 85 of 2009, s. 32
Section 81A	Inserted by No. 50 of 1992, s. 9 Amended by No. 16 of 1995, s. 55, No. 48 of 1996, s. 14, No. 99 of 2000, s. 52 and No. 65 of 2004, s. 24
Section 81AB	Inserted by No. 48 of 1996, s. 15 Amended by No. 99 of 2000, s. 53
Section 81AC	Inserted by No. 85 of 2009, s. 33
Section 81B	Inserted by No. 50 of 1992, s. 9 Substituted by No. 99 of 2000, s. 54 Amended by No. 42 of 2007, s. 26
Section 82	Amended by No. 43 of 1993, s. 20 Repealed by No. 16 of 1995, s. 56 Inserted by No. 42 of 2007, s. 27
Section 83	Substituted by No. 16 of 1995, s. 57
Section 84	Substituted by No. 16 of 1995, s. 58 Amended by No. 42 of 2007, s. 28
Section 84A	Inserted by No. 65 of 2004, s. 25
Section 84B	Inserted by No. 65 of 2004, s. 25 Amended by No. 42 of 2007, s. 29
Section 85	Amended by No. 50 of 1992, s. 10 Subsection (3) substituted by No. 16 of 1995, s. 59 Subsection (3A) inserted by No. 16 of 1995, s. 59 Amended by No. 16 of 1995, s. 59 Subsection (3A) substituted by No. 99 of 2000, s. 55 Subsection (3AA) inserted by No. 99 of 2000, s. 55 Repealed by No. 85 of 2009, s. 34
Section 86	Amended by No. 50 of 1992, s. 10, No. 43 of 1993, s. 21, No. 16 of 1995, s. 60, No. 99 of 2000, s. 56, No. 85 of 2009, s. 35 and No. 39 of 2017, s. 24
Section 87	Amended by No. 50 of 1992, s. 10, No. 16 of 1995, s. 91 and Sched. 1, No. 39 of 2017, s. 25 and No. 41 of 2022, s. 5
Section 88	Amended by No. 50 of 1992, s. 10, No. 16 of 1995, s. 91 and Sched. 1 and No. 99 of 2000, s. 57
Section 89	Substituted by No. 16 of 1995, s. 61, No. 99 of 2000, s. 58

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
	Repealed by No. 85 of 2009, s. 36
Section 90	Amended by No. 16 of 1995, s. 62
Section 90A of Part VII	Inserted by No. 85 of 2009, s. 37
Section 90B of Part VII	Inserted by No. 85 of 2009, s. 37
Section 90C of Part VII	Inserted by No. 85 of 2009, s. 37
Section 90D of Part VII	Inserted by No. 85 of 2009, s. 37
Section 91	Amended by No. 16 of 1995, s. 63 and No. 65 of 2004, s. 26
Section 92	Amended by No. 50 of 1992, s. 10 and No. 16 of 1995, s. 64
Part VII, Div. 3	Amended by No. 16 of 1995, s. 91 and Sched. 1
Section 93	Amended by No. 16 of 1995, s. 91 and Sched. 1
Part VIII	Repealed by No. 65 of 2004, s. 27
Section 94	Repealed by No. 65 of 2004, s. 27
Section 95	Repealed by No. 65 of 2004, s. 27
Section 96	Repealed by No. 65 of 2004, s. 27
Section 96A	Inserted by No. 99 of 2000, s. 59
Section 97	Amended by No. 42 of 2007, s. 30 Amended by No. 39 of 1988, s. 5, No. 16 of 1995, s. 65, No. 86 of 2000, Sched. 1, No. 99 of 2000, s. 60, No. 65 of 2004, s. 28, No. 42 of 2007, s. 31, No. 85 of 2009, s. 38 and No. 39 of 2017, s. 26
Section 97AA	Inserted by No. 99 of 2000, s. 61
Section 97A	Inserted by No. 16 of 1995, s. 66 Amended by No. 42 of 2007, s. 32
Section 97B	Inserted by No. 42 of 2007, s. 33
Section 101	Substituted by No. 16 of 1995, s. 67 Amended by No. 85 of 2009, s. 39
Section 102A	Inserted by No. 99 of 2000, s. 62 Repealed by No. 39 of 2017, s. 27
Section 102B	Inserted by No. 99 of 2000, s. 62
Section 104	Amended by No. 48 of 1996, s. 16
Section 105	Amended by No. 99 of 2000, s. 63 and No. 85 of 2009, s. 40
Section 105A	Inserted by No. 99 of 2000, s. 64
Section 106	Amended by No. 48 of 1996, s. 17
Section 108	Amended by No. 16 of 1995, s. 68 Substituted by No. 39 of 2017, s. 28
Section 109	Amended by No. 39 of 2017, s. 29
Section 110	Amended by No. 39 of 2017, s. 30
Section 111	Amended by No. 16 of 1995, s. 91 and Sched. 1 and No. 39 of 2017, s. 31
Section 112	Amended by No. 16 of 1995, s. 91 and Sched. 1, No. 99 of 2000, s. 65 and No. 39 of 2017, s. 32

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 113	Amended by No. 39 of 2017, s. 33
Section 114	Amended by No. 99 of 2000, s. 66
Part IX, Div. 4	Repealed by No. 16 of 1995, s. 69
Section 115	Amended by No. 27 of 1993, sched. 3 Repealed by No. 16 of 1995, s. 69
Section 116	Repealed by No. 16 of 1995, s. 69
Section 117	Repealed by No. 16 of 1995, s. 69
Section 118	Repealed by No. 16 of 1995, s. 69
Section 119	Repealed by No. 16 of 1995, s. 69
Section 120	Repealed by No. 16 of 1995, s. 69
Section 122	Amended by No. 27 of 1993, s. 35 and Sched. 3 and No. 48 of 2001, s. 4
Section 125A	Inserted by No. 65 of 2004, s. 29
Section 126	Amended by No. 42 of 2001, Sched. 1
Section 126A	Inserted by No. 16 of 2004, s. 5
Section 127	Amended by No. 43 of 1993, s. 22, No. 16 of 1995, s. 91 and Sched. 1 and No. 66 of 2007, Sched. 1
Section 127A	Inserted by No. 43 of 1993, s. 23 Amended by No. 48 of 2001, s. 5, No. 11 of 2002, s. 4 and No. 85 of 2009, s. 41
Section 127B	Inserted by No. 48 of 2001, s. 6 Amended by No. 16 of 2004, s. 6 and No. 85 of 2009, s. 42
Section 127C	Inserted by No. 85 of 2009, s. 43
Section 128	Amended by No. 27 of 1993, s. 35 and Sched. 3 and No. 43 of 1993, s. 24
Section 128A	Inserted by No. 48 of 2001, s. 7 Amended by No. 16 of 2004, s. 7
Section 129A	Inserted by No. 48 of 2001, s. 8 Substituted by No. 11 of 2002, s. 5
Section 130	Amended by No. 43 of 1993, s. 25 Substituted by No. 99 of 2000, s. 67
Section 131AAA	Inserted by No. 42 of 2003, Sched. 1
Section 131AA	Inserted by No. 42 of 2003, Sched. 1
Section 131A of Part IX	Inserted by No. 11 of 2002, s. 6
Section 131B of Part IX	Inserted by No. 11 of 2002, s. 6
Section 131C of Part IX	Inserted by No. 11 of 2002, s. 6
Section 131D of Part IX	Inserted by No. 11 of 2002, s. 6
Division 1 of Part X	Heading inserted by No. 99 of 2000, s. 68
Section 132A	Inserted by No. 85 of 2009, s. 44
Section 134	Amended by No. 99 of 2000, s. 69 and No. 42 of 2007, s. 34
Section 135	Repealed by No. 66 of 2004, s. 9
Section 138	Amended by No. 16 of 1995, s. 91 and Sched. 1

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 138AA of Part X	Inserted by No. 99 of 2000, s. 70
Section 138AA	Amended by No. 65 of 2004, s. 30 and No. 42 of 2007, s. 35
Section 138AB of Part X	Inserted by No. 99 of 2000, s. 70
Section 138AB	Amended by No. 65 of 2004, s. 31, No. 42 of 2007, s. 36 Substituted by No. 85 of 2009, s. 45 Amended by No. 39 of 2017, s. 34
Section 138ABA	Inserted by No. 42 of 2007, s. 37 Repealed by No. 85 of 2009, s. 45
Section 138AC of Part X	Inserted by No. 99 of 2000, s. 70
Section 138AC	Repealed by No. 85 of 2009, s. 45
Section 138AD of Part X	Inserted by No. 99 of 2000, s. 70
Section 138AD	Amended by No. 85 of 2009, s. 46
Section 138AE of Part X	Inserted by No. 65 of 2004, s. 32
Section 138AF of Part X	Inserted by No. 65 of 2004, s. 32
Section 138AG of Part X	Inserted by No. 65 of 2004, s. 32
Section 138AH of Part X	Inserted by No. 65 of 2004, s. 32
Section 138AI of Part X	Inserted by No. 65 of 2004, s. 32
Section 138AJ of Part X	Inserted by No. 65 of 2004, s. 32
Part XI	Substituted by No. 85 of 2009, s. 47
Division 1 of Part XI	Inserted by No. 85 of 2009, s. 47
Section 138A	Inserted by No. 16 of 1995, s. 70 Repealed by No. 85 of 2009, s. 47
Section 138B	Inserted by No. 16 of 1995, s. 70 Repealed by No. 85 of 2009, s. 47
Section 139	Substituted by No. 16 of 1995, s. 71 and No. 85 of 2009, s. 47
Section 140	Substituted by No. 85 of 2009, s. 47
Section 141	Repealed by No. 16 of 1995, s. 72 Substituted by No. 85 of 2009, s. 47 Amended by No. 39 of 2017, s. 35
Division 2 of Part XI	Inserted by No. 85 of 2009, s. 47
Section 142	Amended by No. 16 of 1995, s. 73 Subsection (2) substituted by No. 16 of 1995, s. 73 Subsection (3) substituted by No. 16 of 1995, s. 73 Subsection (4) inserted by No. 16 of 1995, s. 73

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
	Subsection (5) inserted by No. 16 of 1995, s. 73
	Subsection (6) inserted by No. 16 of 1995, s. 73
	Substituted by No. 85 of 2009, s. 47
	Amended by No. 39 of 2017, s. 36
Section 143	Substituted by No. 16 of 1995, s. 74, No. 85 of 2009, s. 47
	Amended by No. 39 of 2017, s. 37
Division 3 of Part XI	Inserted by No. 85 of 2009, s. 47
Section 143A	Inserted by No. 99 of 2000, s. 71
	Substituted by No. 85 of 2009, s. 47
	Amended by No. 39 of 2017, s. 38
Section 143B	Inserted by No. 85 of 2009, s. 47
Section 143C	Inserted by No. 85 of 2009, s. 47
Section 143D	Inserted by No. 85 of 2009, s. 47
	Amended by No. 39 of 2017, s. 39
Section 143E	Inserted by No. 85 of 2009, s. 47
	Amended by No. 39 of 2017, s. 40
Section 143F	Inserted by No. 85 of 2009, s. 47
Division 4 of Part XI	Inserted by No. 85 of 2009, s. 47
Section 143G	Inserted by No. 85 of 2009, s. 47
Section 143H	Inserted by No. 85 of 2009, s. 47
	Amended by No. 39 of 2017, s. 41
Section 143I	Inserted by No. 85 of 2009, s. 47
Section 143J	Inserted by No. 85 of 2009, s. 47
Section 143K	Inserted by No. 85 of 2009, s. 47
Division 5 of Part XI	Inserted by No. 85 of 2009, s. 47
Section 143L	Inserted by No. 85 of 2009, s. 47
Section 143M	Inserted by No. 85 of 2009, s. 47
Section 143N	Inserted by No. 85 of 2009, s. 47
Section 143O	Inserted by No. 85 of 2009, s. 47
Division 6 of Part XI	Inserted by No. 85 of 2009, s. 47
Section 143P	Inserted by No. 85 of 2009, s. 47
Section 143Q	Inserted by No. 85 of 2009, s. 47
	Amended by No. 18 of 2021, s. 388
Section 144	Amended by No. 27 of 1993, s. 35 and Sched. 3, No. 16 of 1995, s. 75, No. 86 of 2000, Sched. 1 and No. 99 of 2000, s. 72
Section 145	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 16 of 1995, s. 76, No. 85 of 2009, s. 48 and No. 2 of 2012, s. 110
Section 146	Amended by No. 16 of 1995, s. 77
Section 147	Amended by No. 16 of 1995, s. 78 and No. 99 of 2000, s. 73
Section 148	Amended by No. 4 of 2017, Sched. 1
Section 148AA	Inserted by No. 65 of 2004, s. 33

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 148A	Repealed by No. 2 of 2012, s. 111 Inserted by No. 99 of 2000, s. 74
Section 148B	Amended by No. 72 of 2007, Sched. 1 Inserted by No. 99 of 2000, s. 74
Section 148C	Repealed by No. 72 of 2007, Sched. 1 Inserted by No. 99 of 2000, s. 74
Section 148D	Repealed by No. 72 of 2007, Sched. 1 Inserted by No. 99 of 2000, s. 74
Section 148E	Repealed by No. 72 of 2007, Sched. 1 Inserted by No. 99 of 2000, s. 74
Section 148F	Repealed by No. 72 of 2007, Sched. 1 Inserted by No. 99 of 2000, s. 74
Section 148G	Inserted by No. 99 of 2000, s. 74 Repealed by No. 72 of 2007, Sched. 1
Section 148H	Inserted by No. 99 of 2000, s. 74 Repealed by No. 72 of 2007, Sched. 1
Section 148I	Inserted by No. 99 of 2000, s. 74 Repealed by No. 72 of 2007, Sched. 1
Section 150	Amended by No. 16 of 1995, s. 79 Repealed by No. 18 of 2021, s. 389
Section 150A	Inserted by No. 16 of 1995, s. 80 Amended by No. 86 of 2000, Sched. 1 and No. 65 of 2004, s. 34
Section 151	Amended by No. 46 of 1991, s. 4 and Sched. 2, No. 16 of 1995, s. 81, No. 99 of 2000, s. 75 and No. 42 of 2007, s. 38
Section 151A	Inserted by No. 26 of 1991, s. 5
Section 152	Amended by No. 42 of 2007, s. 39 Repealed by No. 39 of 2017, s. 42
Section 152A	Inserted by No. 16 of 1995, s. 82
Section 153	Amended by No. 16 of 1995, s. 83 and No. 39 of 2017, s. 43
Section 153A	Inserted by No. 42 of 2007, s. 40
Section 155	Amended by No. 16 of 1995, s. 84 Repealed by No. 99 of 2000, s. 76
Section 158	Amended by No. 43 of 1993, s. 26 and No. 85 of 2009, s. 49
Section 158A	Inserted by No. 16 of 1995, s. 85
Section 158B	Inserted by No. 16 of 1995, s. 85
Section 159	Amended by No. 42 of 2001, Sched. 1
Section 161A	Inserted by No. 48 of 1996, s. 18 Substituted by No. 99 of 2000, s. 77
Section 161B	Inserted by No. 99 of 2000, s. 77
Section 162	Amended by No. 99 of 2000, s. 78
Section 162A	Inserted by No. 57 of 2017, s. 5 Repealed by No. 11 of 2019, s. 5
Section 164A	Inserted by No. 85 of 2009, s. 50
Section 164BAA	Inserted by No. 39 of 2017, s. 44

Workers Rehabilitation and Compensation Act 1988
Act No. 4 of 1988

sch. 11

Provision affected	How affected
Section 164BA	Inserted by No. 28 of 2011, s. 52
Section 164BB	Inserted by No. 23 of 2019, s. 5
Section 164B	Inserted by No. 85 of 2009, s. 50
Section 164C	Inserted by No. 27 of 2012, s. 4 Amended by No. 39 of 2017, s. 45
Section 164D	Inserted by No. 39 of 2017, s. 46
Section 164E	Inserted by No. 19 of 2021, s. 18
Schedule 1	Amended by No. 27 of 1993, s. 35 and Sched. 3, No. 16 of 1995, s. 86, No. 32 of 1996, Sched. 1, No. 48 of 1996, s. 19, No. 86 of 2000, Sched. 1, No. 99 of 2000, s. 79 and No. 39 of 2017, s. 47
Schedule 2	Amended by No. 16 of 1995, s. 87, No. 99 of 2000, s. 80, No. 65 of 2004, s. 35 and No. 39 of 2017, s. 48
Schedule 3	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 16 of 1995, s. 88, No. 32 of 1996, Sched. 1, No. 86 of 2000, Sched. 1, No. 17 of 2005, Sched. 1, No. 54 of 2016, s. 129
Schedule 4	Repealed by No. 18 of 2021, s. 390 Amended by No. 28 of 2011, s. 53 Repealed by No. 39 of 2017, s. 49
Schedule 5	Amended by No. 27 of 1993, sched. 3 Repealed by No. 16 of 1995, s. 89 Inserted by No. 44 of 2013, s. 5 Amended by No. 28 of 2023, s. 5
Schedule 6	Amended by No. 27 of 1993, s. 35 and Sched. 3, No. 32 of 1996, Sched. 1, No. 86 of 2000, Sched. 1 and No. 48 of 2001, s. 9
Schedule 8	Amended by No. 16 of 1995, s. 90
Schedule 9	Amended by No. 65 of 2004, s. 36
Schedule 10	Inserted by No. 99 of 2000, s. 81 Amended by No. 65 of 2004, s. 37
Schedule 11	Inserted by No. 65 of 2004, s. 38
