

Queensland



# **WORKERS' COMPENSATION ACT 1990**

**Reprinted as in force on 20 December 1996  
(includes amendments up to Act No. 61 of 1996)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 4A**

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This Act is reprinted as at 20 December 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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# **WORKERS' COMPENSATION ACT 1990**

[as amended by all amendments that commenced on or before 20 December 1996]

## **An Act to provide for compensation and rehabilitation of injured workers and for related purposes**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Workers' Compensation Act 1990*.

#### **Objects of Act**

3. The objects of this Act are—
  - (a) to provide for the maintenance of a system of accident insurance providing adequate and suitable cover for workers who suffer injury and for dependants of workers whose deaths result from injury; and
  - (b) to meet the needs of workers and dependants mentioned in paragraph (a), including the need for adequate income and appropriate medical treatment; and
  - (c) to seek the participation of injured workers in suitable rehabilitation programs with a view to their early return to productive work; and
  - (d) to encourage safety in industry; and
  - (e) to protect the interests of employers in relation to claims for damages because of injury to a worker; and
  - (f) to provide for the efficient and economic administration of the system of accident insurance referred to in paragraph (a).

**Application of Act to workers**

4. This Act applies so as to confer an entitlement in respect of injury suffered by a worker—

- (a) on the worker; or
- (b) if the injury is, or results in, the worker's death—on the worker's dependants;

if—

- (c) the worker is in Queensland at the time the injury is suffered; or
- (d) the worker is not in Queensland at the time the injury is suffered, if—
  - (i) the worker entered into the contract of service or apprenticeship (in respect of the employment out of, or in the course of, which the injury arose) in Queensland with an employer who, at the time the contract was entered into, had a place of employment, or was present, in Queensland; and
  - (ii) the worker commenced employment under the contract in Queensland; and
  - (iii) employment under the contract is, or was, with the knowledge and consent of the employer, carried out partly in Queensland and partly outside Queensland;

unless, in the board's opinion, the worker has been continuously employed outside Queensland for longer than 2 years;

and in no other case.

## **PART 2—PROVISIONS FOR INTERPRETATION OF ACT**

### **Interpretation**

5.(1) In this Act—

“**accident insurance**” means insurance by which an employer is

indemnified against all sums for which the employer may become legally liable, in respect of injury to a worker employed by the employer, in respect of—

- (a) compensation under this Act; and
- (b) damages arising under circumstances creating also, independently of this Act, a legal liability in the employer to pay such damages, other than a liability against which the employer is required to provide under some other Act of Queensland or a law of another State or a Territory, or of the Commonwealth or of another country.

**“approved form”** see section 206A.<sup>1</sup>

**“authorised person”** means a person who is appointed as an authorised person.<sup>2</sup>

**“average weekly earnings”** means the average weekly earnings of an injured worker from employment (continuous or intermittent) had by the worker—

- (a) in the period of 12 months; or
- (b) if the worker has not had such employment over so long a period—in the period in which the worker has had such employment;

immediately preceding the day on which the worker suffered the injury.

**“award”** means an award within the meaning of—

- (a) the *Industrial Relations Act 1990*; or
- (b) the *Industrial Relations Act 1988* (Cwlth).

**“AWE”** means average weekly earnings.

**“board”** means the Workers' Compensation Board of Queensland preserved, continued in existence and constituted under this Act.

**“certificate injury”** see section 6A.

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<sup>1</sup> Section 206A (Approval of forms)

<sup>2</sup> Authorised persons are appointed under section 67.

**“coaster”** means a ship, wherever registered, that for the time being voyages only between 2 or more ports in the State.

**“Crown ship”** means a ship that is owned by, or is in the possession (under charter) of, the Crown in right of the State, on which are employed mariners in employment by a department of government or by or under the Crown in right of the State.

**“department of government”** includes Queensland Rail.

**“dependants”** means such members of the family of a worker as—

- (a) in the case of a deceased worker—were wholly or partially dependent on the earnings of the worker at the time of the worker’s death, or, but for the worker’s incapacity due to injury, would have been so dependent;
- (b) in the case of an injured worker—were wholly or partially dependent on the earnings of the worker at the time the worker suffered the injury.

**“director”**, in relation to a corporation, includes—

- (a) a person holding or acting in the position of a director of the corporation, by whatever name called, whether or not the person was validly appointed to hold, or is duly authorised to act in, the position; and
- (b) a person in accordance with whose directions or instructions the corporation is ordinarily controlled.

**“employer”** means an entity that employs a worker, and includes—

- (a) a government entity; and
- (b) the legal personal representative of a deceased employer; and
- (c) a person who is an employer, or a person by whom a worker is employed, because of any of the following provisions—
  - section 8 (Persons declared to be employers or workers)
  - section 47 (Extent of indemnity for principals and contractors)
  - section 183(3) (Reduction of damages recoverable at law).

**“fund”** means the Workers’ Compensation Fund kept at the Treasury

because of this Act.

**“general manager”** means the general manager of the board.

**“government entity”** means the State, a State agency or instrumentality or a GOC.

**“government worker”** means a worker employed by a government entity.

**“hospitalisation”** means medical treatment provided to a person as an in-patient at a hospital.

**“household worker”** means a person employed solely in and about, or in connection with, a private dwelling house or the grounds of the dwelling house.

**“impairment”**, from injury for a worker, means a loss of, or loss of efficient use of, any part of the worker’s body.

**“industrial agreement”** means an industrial agreement, certified agreement or enterprise flexibility agreement under the *Industrial Relations Act 1990*.

**“injury”** see section 6.

**“jockey”** means a person who is licensed as a jockey under the *Racing and Betting Act 1980* by the Queensland Principal Club or the Queensland Harness Racing Board.

**“mariner”** means a worker employed on a ship by the owner or charterer of the ship—

- (a) as a master or an officer; or
- (b) as crew or an apprentice; or
- (c) in any other capacity.

**“medical treatment”** includes—

- (a) treatment by—
  - (i) a registered medical practitioner; or
  - (ii) a registered dentist; or
  - (iii) a registered physiotherapist; or
  - (iv) a registered occupational therapist; or

- (v) a registered psychologist; or
- (vi) a registered chiropractor and osteopath; or
- (vii) a registered podiatrist; or
- (viii) a registered speech pathologist; and
- (b) provision of diagnostic procedures or skiagrams; and
- (c) provision of nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other devices of assistance.

**“member of the family”** means—

- (a) a spouse; or
- (b) a parent, grandparent and step-parent; or
- (c) a child, grandchild and stepchild; or
- (d) a brother, sister, half-brother and half-sister;

and includes a person who stands in loco parentis to another person and that other person.

**“non-policy compensation arrangement”**<sup>3</sup> means an arrangement (other than a policy for a contract of accident insurance) between the board and a government entity for compensation in relation to an injury sustained by a worker or another individual.

**“permanent impairment”**, from injury, means a permanent impairment from an injury that is stable and stationary and not likely to improve with further medical or surgical treatment.

**“place of employment”** means the premises, works, plant, or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed, and in, on, at, or in connection with which the worker was working at the time the worker suffered injury.

**“policy”**<sup>3</sup> means a policy for a contract of accident insurance, and includes—

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<sup>3</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

- (a) existing policies of accident or other insurance declared to be policies to which this Act applies;<sup>4</sup> and
- (b) a non-policy compensation arrangement.

**“port”** includes any harbour.

**“prescribed disfigurement”** means severe facial disfigurement or severe bodily scarring.

**“private hospital”** means a hospital other than a public hospital.

**“public hospital”** means a public sector hospital within the meaning of the *Health Services Act 1991*.

**“QUOTE”** see section 6B.

**“Queensland ship”** means a ship—

- (a) that is a Crown ship; or
- (b) that is a coaster; or
- (c) whose first port of clearance and whose destination are in the State; or
- (d) that, being engaged in fishing operations, discharges its catch at a port in the State, or to a mother ship that discharges its cargo at a port in the State, and does not engage in those operations within the territorial waters of a country other than Australia.

**“record”** means any collection of data, in whatever form it is held, whether in books, documents, papers, or visual representation, or on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable of reproduction from it, with or without the aid of another process or instrument.

**“registered”**, in relation to a person who is held out as providing, or qualified to provide, medical treatment, means registered under the law of the place where the medical treatment is provided as a person lawfully entitled to provide that medical treatment in that place.

**“registered person”** means a registered person of a description referred to in the definition “medical treatment”.

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<sup>4</sup> See section 209 (Application of Act to existing policies).

**“serious injury”**, for sections 182A and 182C, see section 182A(2).

**“ship”** means a ship, boat, or vessel of any kind designed for use in or on water.

**“spouse”** see section 7.

**“State”** includes Territory.

**“statutory maximum compensation”**, means an amount equal to the maximum amount of compensation payable under section 154(1)(c).

**“student”**, for part 9, division 3,<sup>5</sup> means a person under 21 years who is receiving full-time education at a school, college, university or similar institution.

**“table of injuries”** means the table of injuries prescribed under regulation.

**“uninsured worker”**<sup>6</sup> means a worker in respect of whom a policy is not maintained.

**“worker”** means a person who works under a contract of service or apprenticeship or otherwise with an employer in work of any description, whether the contract is oral or written, express or implied, and includes—

- (a) a person declared by section 8, or otherwise prescribed, to be a worker for the purposes of this Act;
- (b) a person to whom, or on whose account, compensation under this Act is payable in respect of an injury suffered by the person as a worker;

but does not include a person declared by section 9 not to be a worker for the purposes of this Act.

(2) A reference in this Act to a worker who has suffered injury includes, if the worker is deceased, reference to—

- (a) a legal personal representative of the worker; and

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<sup>5</sup> Part 9 (Quantum of compensation), division 3 (Compensation upon death of worker)

<sup>6</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

- (b) dependants of the worker; and
- (c) any other person to whom or for whose benefit compensation is payable under this Act because of the injury.

(3) A reference in this Act to compensation under this Act includes—

- (a) expenses paid or payable under this Act to or on account of a worker in respect of an injury; and
- (b) expenditure by the board in securing—
  - (i) medical treatment or assessment of a worker; or
  - (ii) any other treatment of or benefit for a worker; or
  - (iii) rehabilitation of a worker; and
- (c) amounts paid by the board by way of deductions for taxation or other obligations of a worker.

(4) In the application of a provision of this Act in relation to oral injury, or in respect of a worker who has suffered such injury, a reference in that provision to a registered medical practitioner includes reference to a registered dentist, who in respect of such injury may lawfully issue a prescribed certificate of medical practitioner.

(5) For the purposes of this Act, damage to or destruction of—

- (a) a prosthesis actually fitted to a person; or
- (b) a device of assistance being—
  - (i) crutches; or
  - (ii) spectacles; or
  - (iii) medical aids;

while in actual use by a person for a purpose for which the device is intended;

is taken to be personal injury to that person.

### **Meaning of “injury”**

6.(1) In this Act—

“injury” means personal injury arising out of, or in the course of,

employment if the employment was a significant contributing factor to the injury.

**(2) “Injury”** includes—

- (a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment was a significant contributing factor to the contracting of the disease; and
- (b) an aggravation or acceleration of a disease if the employment was a significant contributing factor to the aggravation or acceleration; and
- (c) loss of hearing resulting in the condition known as industrial deafness if the employment was a significant contributing factor to the loss of hearing; and
- (d) death from personal injury arising out of, or in the course of, employment if the employment was a significant contributing factor to the personal injury; and
- (e) death from a disease mentioned in paragraph (a), or an aggravation or acceleration of a disease mentioned in paragraph (b), if the employment was a significant contributing factor to the disease, aggravation or acceleration.

**(3) “Injury”** does not include a personal injury, disease, or aggravation or acceleration of a disease, suffered by a worker because of—

- (a) reasonable disciplinary action taken in a reasonable way against the worker in connection with the worker’s employment; or
- (b) reasonable action taken in a reasonable way to transfer or redeploy the worker in connection with the worker’s employment; or
- (c) failure by the worker to obtain a promotion, transfer or benefit in connection with the worker’s employment.

**Meaning of “certificate injury”**

**6A.(1)** A “**certificate injury**” for a worker means—

- (a) a psychiatric or psychological injury entitling the worker, in the board’s opinion, to lump sum compensation of at least 20% of statutory maximum compensation; or

- (b) another injury entitling the worker, in the board's opinion, to lump sum compensation of at least 20% of statutory maximum compensation.

(2) A “**certificate injury**” does not include an injury entitling the worker, in the board's opinion, to lump sum compensation of at least 20% of statutory maximum compensation if the entitlement arises only by combining the worker's entitlement to lump sum compensation for both—

- (a) a psychiatric or psychological injury; and
- (b) another injury.

### **Meaning of “QOTE”**

**6B.** “**QOTE**”, for a financial year, is the amount of Queensland full time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician's report about average weekly earnings published immediately before the start of the financial year.<sup>7</sup>

### **Meaning of “spouse”**

**7.(1)** For an injured worker, “**spouse**” includes a person who, although not legally married to the injured worker, lived with the worker as the worker's husband or wife—

- (a) for a continuous period of at least 1 year immediately before the injury happened and who continues to live with the worker after the injury; or
- (b) if the worker has a dependant who is a child of the relationship—immediately before the injury happened and who continues to live with the worker after the injury.

(2) For a deceased worker, “**spouse**” includes a person who, although not legally married to the deceased worker, lived with the worker as the worker's husband or wife—

- (a) for a continuous period of at least 1 year immediately before the

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<sup>7</sup> The publication is currently entitled ‘Average Weekly Earnings States and Australia’.

death; or

- (b) if the worker left a dependant who is a child of the relationship—immediately before the death.

(3) For this section—

**“child of the relationship”** means a child of the worker and the other person, and, for a deceased worker, includes a child born after the death.

**“dependant”** includes—

- (a) for an injured worker—a child born after the injury happens who is wholly or partially dependent on the worker’s earnings after the child’s birth; and
- (b) for a deceased worker—a child born after the death happens who would have been wholly or partially dependant on the worker’s earnings after the child’s birth if the worker had not died.

### **Persons declared to be employers or workers**

**8.(1)** For the purposes of this Act, a person declared by a provision of this section to be an employer or a worker is an employer or, as the case may be, a worker in the circumstances prescribed by the provision.

(2) Where a holding company lets on hire the services of a waterside worker or a supervisor stevedore—

- (a) the holding company is the employer of the waterside worker or supervisor stevedore before the worker or stevedore commences work for the person to whom the services are let on hire, and after the termination of the hire; and
- (b) the person to whom the services are let on hire is the employer of the waterside worker or the supervisor stevedore upon the worker or stevedore commencing work for that person under the hire, until the termination of the hire.

(3) Except as prescribed by subsection (2), a person who lends or lets on hire the services of a worker who is party to a contract of service with that person continues to be the employer of the worker while the worker’s services are so lent or let on hire.

(4) A labour hire agency that arranges, for reward, for a worker who is party to a contract of service with the agency to do work for someone else continues to be the worker's employer while the worker does the work for the other person under an arrangement made between the agency and the other person.

(5) A person who works under a contract, or at piecework rates, for labour only or substantially for labour only, including one who supplies tools of trade designed for use by hand, is a worker for the purposes of this Act, employed by the person for whom the labour is provided.

(6) A tributer working in a mine within the meaning of the *Mines Regulation Act 1964*, and any wages-worker employed by the tributer in the mine, is a worker employed by the person with whom the tributer has made the tribute agreement.

(7) A jockey riding or driving a horse on a racecourse, or doing on the racecourse anything incident to riding or driving a horse on the racecourse, is a worker employed by the club or association for the time being in occupation of the racecourse.

(8) A person who works a farm as a sharefarmer, and any wages-worker employed by that person, is a worker employed by the owner of the farm except where—

- (a) the sharefarmer provides and uses in the sharefarming operations farm machinery driven or drawn by mechanical power; and
- (b) the sharefarmer is entitled to not less than two-thirds of the proceeds of the sharefarming operations under the sharefarming agreement;

in which excepted case the sharefarmer is not a worker and the owner of the farm is not the employer of any such wages-worker.

(9) A salesperson, canvasser, collector, or other person paid wholly or partly by commission is a worker employed by the person by whom the commission is payable, except where the commission is received for or in connection with work incident to a trade or business regularly carried on by the salesperson, canvasser, collector, or other person, individually or by means of a partnership.

(10) If a contract is made with a contractor (other than a person declared by section 9 not to be a worker) for the performance of work that is not

incident to a trade or business regularly carried on by the contractor, individually or by means of a partnership, and the contractor—

- (a) neither sublets the contract nor employs a wages-worker; or
- (b) although employing a wages-worker, performs part of the work personally;

the contractor, and any wages-worker employed by the contractor in performance of the work, is a worker employed by the person who makes the contract with the contractor.

**(11)** In this section—

**“arrangement”** includes agreement, promise, scheme, transaction, understanding and undertaking (whether express or implied).

**“holding company”** means—

- (a) for a waterside worker—Stevedoring Employers of Australia Limited or its successor; or
- (b) for a supervisor stevedore—the Association of Employers of Waterside Labour or its successor.

**“labour hire agency”** means an entity, other than a holding company, that conducts a business that includes the supply of services of workers to others on a temporary basis.

### **Persons declared not to be workers**

**9.** For the purposes of this Act, a person of a description specified in a provision of this section is not a worker in the capacity described except in circumstances prescribed by the provision—

- (a) a person, other than a person mentioned in section 8(7),<sup>8</sup> who, as a professional sportsperson—
  - (i) participates in a sporting or athletic activity as a contestant; or
  - (ii) is training or preparing for participating in a sporting or athletic activity as a contestant; or
  - (iii) performs promotional activities offered to the person

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<sup>8</sup> Section 8(7) refers to jockeys.

- because of the person's standing as a sportsperson; or
- (iv) engages on any daily or other periodic journey in connection with the participation, training or performance; or
- (b) a member of the crew of a fishing vessel, if the member's entitlement to remuneration is contingent upon the working of the vessel producing gross earnings or profits and the remuneration is wholly or mainly a share of the gross earnings or profits; or
- (c) a person who supplies any material used in performance of a contract or in provision of the person's labour at piecework rates, being material incorporated in the product of the work performed; or
- (d) a person who works under a contract, other than a contract of service or apprenticeship in a calling governed by any award or industrial agreement, and who supplies and uses in performance of the contract—
- (i) equipment, plant, machinery (other than tools designed for use by hand), or a motor vehicle (being a commercial motor vehicle fitted with a commercial type body) used for carrying goods (other than tools designed for use by hand) or animals; or
- (ii) a motor vehicle of any kind used for driving tuition; or
- (e) a member of a partnership as defined in the *Partnership Act 1891*, section 5 and as determined in accordance with rules specified in section 6 of that Act; or
- (f) a director of a corporation, unless, where the director works for the corporation under a contract of service or apprenticeship, the director is specially insured under or is specially covered by a policy under the director's election to be so insured or covered; or
- (g) a trustee, unless the trustee is specially insured under or is specially covered by a policy under the trustee's election to be so insured or covered.

**Presumption as to work incident to trade or business<sup>9</sup>****10.** If under a contract—

- (a) work is performed by a contractor who regularly carries on a trade or business such that work of the kind performed under the contract is ordinarily performed in or in connection with that trade or business; and
- (b) in the performance of the contract the contractor supplies materials or uses equipment, plant, machinery (other than tools designed for use by hand) or a motor vehicle (being a commercial motor vehicle fitted with a commercial type body) used for carrying goods (other than tools designed for use by hand) or animals;

it is to be conclusively presumed that the work performed under the contract is work incident to the trade or business regularly carried on by the contractor.

**Computation of average weekly earnings**

**11.** For the purposes of this Act, the computation of average weekly earnings of a worker for work performed is to be made in accordance with the following provisions—

- (a) in such computation—
  - (i) sums paid by way of overtime may be taken into account; and
  - (ii) sums paid to the worker for special expenses entailed on the worker by the nature of the employment are not to be taken into account;
- (b) if, because of—
  - (i) the period of time for which a worker has been employed; or
  - (ii) the terms of a worker's employment;

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<sup>9</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see s 1997 SL No. 17 s 45).

it is impracticable, at the date of injury to the worker to compute the rate of the worker's remuneration—regard is to be had to the average weekly earnings during the period of 12 months immediately before such date of a person in the same grade, employed in the same work, by the same employer, as that of the worker, or, if there be no such person, of a person in the same grade, employed in the same class of employment, and in the same district as that of the worker;

- (c) if a worker has worked under concurrent contracts of service with 2 or more employers, under which the worker has worked at one time for 1 and at another time for another of the employers—the worker's average weekly earnings are to be computed as if earnings under all such contracts were earnings in the employment of the employer for whom the worker was working when the injury was suffered;
- (d) if computation as prescribed of average weekly earnings would, in the general manager's opinion, be unfair to a worker concerned—the average weekly earnings may be computed in a manner considered by the general manager to be fair to the worker, and, as so computed, are to be taken as the average weekly earnings of the worker.

## **PART 3—WORKERS' COMPENSATION BOARD**

### *Division 1—Constitution of board*

#### **Continuance of board**

**12.(1)** The body corporate constituted immediately before the commencement of this Act under the name and style 'Workers' Compensation Board of Queensland' is preserved and continued in existence under this Act and is to be constituted from time to time as prescribed.

**(2)** The board has perpetual succession and a common seal and, subject

to this Act, is capable in law of suing and being sued, of compounding or proving in a court of competent jurisdiction all debts and sums due to it, of acquiring, holding, demising, letting, and alienating property, real and personal, and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(3) The board has the functions and duties and may exercise the powers and authorities conferred on it by this Act.

(4) The board represents the Crown in right of the State and, except as prescribed, is entitled to the rights, privileges and immunities of the Crown.

### **Composition of board**

13. The board consists of 7 members appointed by the Governor in Council by industrial gazette notice, as follows—

- (a) 1 person to be both a member and chairperson;
- (b) 1 person, representing the Government of the State, who is deputy chairperson;
- (c) a medical practitioner who is an officer of the department that deals with matters under the *Health Act 1937*;
- (d) 2 persons representing employers, each being a person whose name—
  - (i) is submitted under section 14 to the Minister, for the purpose of such nomination, by an industrial organisation, or other association, of employers; or
  - (ii) is to be taken under section 14(4) to have been so submitted;
- (e) 2 persons representing workers, each being a person whose name—
  - (i) is submitted under section 14 to the Minister, for the purpose of such nomination, by an industrial organisation of employees, or an association of such organisations; or
  - (ii) is to be taken under section 14(4) to have been so submitted.

**Selection of employers' and workers' representatives on board**

**14.(1)** At least 6 weeks before the Minister proposes to nominate for appointment to the board a person representing the class referred to in section 13(d) or (e) the Minister is to require—

- (a) industrial organisations or other associations of employers; and
- (b) industrial organisations of employees, or associations of such organisations;

to submit to the Minister, within a time specified in the requisition, the name of a person, or names of persons, suitable for nomination for appointment as a member of the board under section 13(d) or (e), as the case may be.

**(2)** Notice of a requisition under subsection (1) may be given—

- (a) in writing, by such means as the Minister considers appropriate; and
- (b) to such bodies of persons as the Minister considers appropriate.

**(3)** If upon expiry of the time limited in a requisition under subsection (1) for submission of names to the Minister there has not been received by the Minister—

- (a) the names of at least 3 persons submitted for nomination for appointment under section 13(d); or
- (b) the names of at least 3 persons submitted for nomination for appointment under section 13(e);

the Minister may proceed to nominate for appointment under section 13(d) or (e) such person as the Minister considers suitable, whether or not the nominated person's name has been duly submitted in response to the requisition under subsection (1), without further reference to the organisations, or associations, that have failed to ensure the submission of the names of at least 3 persons in response to the requisition.

**(4)** If under subsection (3), the Minister nominates for appointment to the board a person whose name was not submitted by an organisation or association required under subsection (1) so to do, it is to be taken that such person's name was duly submitted to the Minister, for such nomination, by the organisations, or associations, that have failed to ensure the submission of the names of at least 3 persons in response to the requisition.

**Deputies of members**

**15.(1)** The Governor in Council may at any time appoint a person who is not a member of the board to be a deputy of a member of the board.

**(2)** A person appointed as a deputy of a member of the board is entitled to act as a member of the board in the member's absence.

**(3)** Appointment of a deputy of a member of the board must, as far as practicable, satisfy the requirements of this Act applicable to the nomination of the member whose deputy is to be appointed, except that it is not mandatory to carry out the procedure prescribed by section 14(1).

**Disqualifications from board membership**

**16.** A person who—

- (a) is a patient within the meaning of the *Mental Health Act 1974*; or
- (b) is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy; or
- (c) has been convicted in the State of an indictable offence or elsewhere than in the State in respect of an action or omission such that had it occurred in the State it would have constituted an indictable offence, except where the Minister certifies in writing that in the Minister's opinion the circumstances of the offence, action or omission do not warrant disqualification from membership of the board;

is disqualified from being, or continuing as, a member of the board.

**Term of office**

**17.(1)** A member of the board holds office for a term of 5 years, but if by the expiry of that term a successor has not been duly appointed, the member, subject to this Act, continues to hold office until a successor is duly appointed.

**(2)** The Governor in Council may, at any time, remove from office a member of the board by industrial gazette notice.

**(3)** A member of the board as constituted immediately before the

commencement of this Act continues to hold office as such member subject to the provisions of this Act.

### **Vacating office**

**18.(1)** The office of a board member becomes vacant if the member—

- (a) dies; or
- (b) resigns from office by signed notice of resignation given to the Minister; or
- (c) is absent from 3 consecutive meetings of the board without the board's leave and without reasonable excuse; or
- (d) becomes disqualified in a way prescribed by regulation; or
- (e) is removed from office by the Governor in Council.

**(2)** A member of the board is taken not to have been absent from a meeting of the board because of a failure to attend at the time and place notified to the member for the meeting unless a meeting of the board is actually held at that time and place, or at a later hour on the same day and the member has been given due notice of the later hour.

### **Casual vacancy**

**19.(1)** When a vacancy occurs in the office of a member of the board before the expiry of the term of appointment, the Governor in Council may appoint as prescribed another person to the office for the balance of the term of appointment.

**(2)** If the member in whose office a vacancy has occurred was also chairperson of the board, the successor appointed under subsection (1) is also chairperson.

## ***Division 2—Conduct of board's affairs***

### **Board meetings**

**20.(1)** The board is to meet as often as is necessary for the discharge of its functions and the exercise of its powers under this Act.

(2) The chairperson may convene a meeting of the board at any time.

(3) Notice of a meeting, or an adjourned meeting, must be in writing given by the chairperson to each member of the board at least 7 days before the day appointed for the meeting, except where, in the case of an adjourned meeting, the adjournment is to a later hour on the same day as that appointed for the meeting, in which event oral or written notice must be given by the chairperson to each member at least 1 hour before the hour to which the meeting is adjourned.

### **Adjournment of meetings**

**21.(1)** The members present at a meeting may adjourn the meeting at any time.

(2) If a quorum is not present at a meeting within 15 minutes after the time appointed for commencement of the meeting, the member or members present, or the majority of them if there be more than 2 present, or the secretary to the board if no member is present or the members present are equally divided on the question, may adjourn the meeting—

- (a) to a time and day not later than 14 days after the date of the adjournment; or
- (b) to a later hour on the date of the adjournment.

### **Procedure at meetings**

**22.(1)** The chairperson of the board is to preside at all meetings at which that person is present and, in that person's absence, the deputy chairperson of the board is to preside.

(2) When the deputy chairperson presides at a meeting, that person has all the functions and powers of the chairperson conferred by this Act.

(3) A quorum of the board consists of 4 members, including the chairperson or deputy chairperson, and business is not to be conducted at a meeting of the board unless a quorum is present.

(4) Business at a meeting is to be decided by majority vote of the members present and voting on the business in question.

(5) Business of the board decided by reference in writing to the members

of the board is to be decided by majority vote of the members voting on the business in question in response to the reference.

(6) A member who refrains from voting is to be taken to have cast a vote in the negative except if the member refrains because of a conflict of interest declared by the member.

(7) The person who presides at a meeting, or, where business of the board is decided by a reference in writing, the chairperson has a deliberative vote and also, in the event of an equality of votes, a casting vote.

(8) Subject to this Act, the board may conduct its business generally, and proceedings at its meetings, in such manner as it determines from time to time.

### **Minutes**

**23.(1)** The chairperson of the board is to cause a record of every decision of the board, whether made at a meeting or by reference in writing to the members, to be kept.

(2) The record of each decision of the board must be presented to the meeting of the board next following the taking of the decision for confirmation by the board and, if it is so confirmed, must be signed by the person presiding at that meeting and forms part of the minutes of that meeting.

### **Custody and affixing of seal**

**24.(1)** The common seal of the board is in the custody of the secretary to the board or, where there is a temporary vacancy in that position, of the chairperson of the board.

(2) The common seal can be lawfully affixed to a document only in pursuance of a resolution of the board by the person having custody of the seal in accordance with this section.

(3) Where that person is the secretary to the board, the common seal is to be affixed in the presence of the chairperson or, in the absence of the chairperson, of the deputy chairperson.

(4) Judicial notice is to be taken of the common seal of the board affixed

to any document or other writing and, until the contrary is proved, it is to be presumed that the seal has been duly affixed to it.

### **Execution of contracts, agreements**

**25.** Contracts or agreements may be made, varied or discharged on behalf of the board in the following manner—

- (a) a contract or agreement that, if made between private persons, would be required by law to be in writing under seal may be made, varied or discharged in the name and on behalf of the board, in writing under the common seal of the board;
- (b) a contract or agreement that, if made between private persons, would be required by law to be in writing signed by the parties to be charged with it and not required to be under seal may be made, varied or discharged in the name and on behalf of the board, in writing signed by any person acting under the express or implied authority of the board;
- (c) a contract or agreement that, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made, varied or discharged by parol in the name and on behalf of the board, by any person acting under the express or implied authority of the board.

### **Authentication of documents**

**26.** Except as is otherwise prescribed, a document made or issued by the board for the purposes of this Act is sufficiently authenticated if it is made or, as the case may be, signed by the chairperson, or in the absence of the chairperson, by the deputy chairperson.

### **Remuneration of members**

**27.(1)** A member of the board is to be paid such fees, remuneration and allowances in respect of the discharge of duties as a member as are approved by the Governor in Council.

**(2)** A payment with respect to a member, as a member or in any other capacity, may differ according to class of payment or rate or both class and

rate from a payment with respect to any other member.

(3) A provision in any Act requiring the holder of an office specified in the provision to devote the whole of the holder's time to the duties of office or prohibiting engagement in employment outside the duties of office does not operate to disqualify the holder from holding that office and also the office of a member of the board or from accepting and retaining any fees, remuneration or allowances payable under this section.

(4) A fee, remuneration or an allowance is not to be paid to a member of the board who is an officer of the public service for attendance at a meeting of the board held during the ordinary office working hours of that officer.

### ***Division 3—Administration of Act by board***

#### **Administration subject to Minister**

28. The board, subject to the Minister, is to administer this Act and to that end, with the approval of the Minister first obtained—

- (a) may establish and maintain district offices and agencies of the board in any part of the State;
- (b) may close any district office or agency so established;
- (c) may reopen any district office or agency so closed.

#### **General manager and officers employed under Public Service Act**

29. A general manager and officers of the board are to be employed under the *Public Service Act 1996*.

#### **Functions of general manager**

30.(1) Except so far as is otherwise prescribed and subject to the board's directions, the general manager—

- (a) is to conduct the business of the board; and
- (b) has the powers and functions given to the board by this Act.

(2) If under this Act the board is required or authorised—

- (a) to do any act or thing; or
- (b) to be of a prescribed state of mind in relation to any matter;

it is sufficient compliance with this Act, subject to any direction of the board to the contrary, if the general manager does the act or thing or is of the prescribed state of mind, on the board's behalf.

### **General manager's power of delegation**

**31.** The general manager may delegate the general manager's powers under this Act to an officer of the board.

### **Judicial notice of signatures**

**32.** Judicial notice is to be taken of the signature of the general manager or of a delegate of the general manager affixed to any document or other writing, and until the contrary is proved it is to be presumed that the signature has been duly affixed.

### **Use of services of Crown employees**

**33.(1)** With the approval of the Minister, and of the Minister responsible for the department of government concerned, the board may utilise the services of any officer or employee in any department of government on such terms as are arranged.

**(2)** The amount of salaries, wages or allowances paid from the consolidated fund to an officer or employee in a department of government who is engaged in the business of the board must be recouped to the consolidated fund from the fund to the extent that reflects the proportion of the working time of the officer or employee spent in the business of the board.

### **Engagement of consultants**

**34.** The board may engage the services of such consultants of relevant competence as it considers necessary to aid it in the conduct of the business of the board and in the proper administration of this Act.

**Annual report and financial statement**

**35.(1)** As soon as practicable after 30 June in each year the board is to furnish to the Minister a report of its administration of this Act and its operations under this Act during the period of 12 months last preceding that date.

**(2)** The board is to prepare and furnish with the report—

- (a) a statement of accounts for the relevant period of 12 months and a balance sheet, each in such form and containing such particulars as the Minister requires; and
- (b) a certificate of the auditor-general stating whether—
  - (i) all information and explanations sought by or on behalf of that officer were duly furnished; and
  - (ii) the statement and balance sheet are, in that officer's opinion, in agreement with the accounts and have been properly drawn up so as to present a true and fair view of the transactions for the relevant period of 12 months and the financial position of the board at the end of that period.

**(3)** The Minister is to lay the report, statement of accounts, and balance sheet before the Legislative Assembly within 14 sitting days following their receipt by the Minister.

**PART 4—ACCIDENT INSURANCE***Division 1—Involvement of the State***The fund**

**36.(1)** The fund called the 'Workers' Compensation Fund' kept at the Treasury as a fund of the trust and special funds immediately before the commencement of this Act is to be continued in existence and kept at the Treasury as a fund of the trust and special funds.

**(2)** Subject to this or any other Act or law, the Treasurer is to administer

and manage the fund.

(3) All premiums and other moneys received by the board under this Act are to be paid into the fund.

(4) Amounts standing to the credit of the fund are to be applied in making—

- (a) payments in relation to policies, whether of accident insurance or other insurance business under this Act; and
- (b) payments in relation to the administration of accident insurance business or other insurance business undertaken by or on behalf of the board; and
- (c) payments for purposes that the board considers will assist in—
  - (i) the treatment or alleviation of injury suffered by workers; or
  - (ii) the recognition or prevention of injury to workers; and
- (d) payments required under this Act to be made from the fund.

(5) A payment of the kind mentioned in subsection (4)(c) may be made only with the Minister's approval.

(6) Despite subsection (4), the board may—

- (a) transfer premiums for policies for contracts of accident insurance or other insurance business paid for government workers into an account (other than the fund) kept at the Treasury; and
- (b) use amounts held in the account for purposes mentioned in subsection (4) in relation to the government workers.

### **Policies guaranteed by State**

**37.(1)** Every policy is guaranteed by the Government of the State.

(2) Such sums as the Treasurer certifies to be required to secure payment of moneys legally payable by the board under policies or other insurance contracts, so far as such sums cannot be paid out of the fund, are to be paid from the consolidated fund, which to that extent is appropriated accordingly.

(3) Any sum paid from the consolidated fund under subsection (2) is an advance to the fund and a charge on it, and is to be recouped to the consolidated fund from the fund when money is available in the fund.

**Stamp duty etc. payable**

**38.(1)** The board is required to comply with the provisions of the *Stamp Act 1894* that require the making of returns of premiums charged and the provisions of that Act apply in respect of such returns made by the board and in respect of other insurance business undertaken by the board under this Act.

**(2)** An Act that imposes taxation in relation to the business of accident insurance or other insurance applies to such business undertaken by the board under this Act.

**Board's recommendations to Minister**

**39.** The board is, from time to time, to make recommendations to the Minister—

- (a) as to the bases on which—
  - (i) rates of premium to be charged in connection with policies and other insurance contracts under this Act; and
  - (ii) benefits to be paid to injured workers and their dependants under this Act; and
  - (iii) merit or other bonus payments under this Act; and
  - (iv) demerit charges under this Act;may be fixed; and
- (b) as to the circumstances in which employers are entitled to merit or other bonus payments or liable to pay demerit charges under this Act; and
- (c) on matters of policy in relation to the administration of this Act; and
- (d) as to services that the board might provide to promote improved safety performance by employers.

**Surplus or deficit of board**

**40.(1)** As soon as practicable after 30 June in each year, the board is to forward to the Minister a report stating the amount that, in the board's

opinion, is the net surplus or deficit of the board for the period of 12 months last preceding that date, and making recommendations as to any amount available for distribution under this section.

(2) The board may establish and maintain such reserves as it considers appropriate in the conduct of its business and the amount of a surplus or deficit to be stated in such a report is to be computed after such sums as the board considers proper are appropriated to the reserves maintained by the board.

(3) The Minister may obtain the opinion of any actuary or other competent person as to any recommendation made in a report furnished under subsection (1).

(4) The Governor in Council may approve a scheme for the distribution of an amount available for distribution under subsection (1).

(5) If a scheme is approved by the Governor in Council, the amount available for distribution is to be distributed in accordance with the scheme among holders of policies in force at any time during the year to which the report furnished under subsection (1) relates.

### ***Division 2—Policies with board***

#### **Board's powers to undertake insurance**

**41.** The board is authorised—

- (a) to undertake the business of accident insurance; and
- (b) to undertake such business of insurance of persons, whether or not employers, in respect of injury suffered by them and of liability incurred by them in respect of injury suffered by other persons as is provided for by this Act; and
- (c) to do all such acts and things as are necessary and incidental to the exercise of the authority conferred by paragraph (a) or (b).

#### **Board as provider of accident insurance**

**42.(1)** Accident insurance is to be undertaken only by the board.

(2) Policies are to be issued by or on behalf of the board and no other person or association or group of persons.

(3) A policy issued in breach of this section is unenforceable at law.

### **Board's powers to reinsure**

**43.(1)** The board may, on such terms and conditions as it considers equitable, reinsure the whole or part of any risk accepted by it under this Act.

(2) Moneys payable in respect of reinsurance are to be paid from the fund.

### **Employer's legal liability and obligation to insure**

**44.(1)** An employer is legally liable to pay the compensation prescribed to be payable from the fund in respect of injury suffered by a worker employed by the employer.

(2) Subject to subsection (3), every employer is to insure and remain insured with the board under a policy in respect of—

- (a) the employer's legal liability to pay compensation under this Act; and
- (b) the employer's legal liability existing independently of this Act to pay damages in respect of injury to a worker employed by the employer, being a liability within the cover of accident insurance as defined in section 5.

(3) An employer is not required by subsection (2) to insure against legal liability in respect of injury to a mariner employed by the employer, unless the mariner is employed on a Queensland ship.

**Policy cover on directors and trustees<sup>10</sup>**

**45.** Cover under a policy does not extend to a director of a corporation, or a trustee, who is to be specially insured under, or specially covered by, the policy under the director's, or trustee's, election until a date stipulated by the board and notified in writing by the board to the director or trustee.

**Policy cover on worker on loan<sup>10</sup>**

**46.(1)** If an employer uses the labour of a worker whose services are lent or hired to the employer by another, cover under a policy maintained by the employer extends to indemnify the employer against legal liability existing independently of this Act to pay damages in respect of injury to the worker arising out of or in the course of work for which the worker's labour is being so used.

**(2)** If a person who is not an employer uses the labour of a worker whose services are lent or hired to the person by another, cover under a policy maintained by the worker's employer extends to indemnify the person against legal liability existing independently of this Act to pay damages in respect of injury to the worker arising out of or in the course of work for which the worker's labour is being so used.

**Extent of indemnity for principals and contractors<sup>10</sup>**

**47.(1)** In this section—

**“contractor”** means a person who by a contract undertakes to carry out, or to secure the carrying out of, work for another.

**“principal”** means a person for whom work is to be carried out by another under a contract to which the person is a contracting party.

**(2)** A contractor under a contract for performance of work can also be a principal under any other contract for performance of the same work or any part of that work.

**(3)** When a contract is made between a principal and a contractor for

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<sup>10</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

work to be carried out and workers are used in carrying out the work, or any part of it—

- (a) the principal is declared to be an employer of every such worker used in carrying out work in performance of the contract, or in performance of any other contract made with a view to carrying out the work for which the first contract is made, or any part of that work; and
- (b) the cover of a policy maintained by the principal with the board extends to indemnify the principal against the principal's legal liability existing independently of this Act to pay damages in respect of injury to any such worker while used in carrying out work for which the contract is entered into, or any part of that work.

(4) The declaration of a principal to be an employer of a worker by subsection (3)(a) does not affect the relationship of employer and employee existing between the worker and the actual employer of the worker.

(5) If in the case of a contract such as is referred to in subsection (3) the principal is not indemnified against the legal liability referred to in subsection (3)(b), under—

- (a) a policy maintained by the principal with the board; or
- (b) a contract of insurance made independently of this Act;

the cover of a policy maintained with the board by the contractor extends to indemnify the principal against the principal's legal liability referred to in subsection (3)(b).

### **Obligation to establish existence of policy<sup>11</sup>**

**48.(1)** In this section—

**“contractor”** has the meaning given by section 47(1).

**“principal”** has the meaning given by section 47(1).

(2) If a principal contracts with a contractor for the carrying out of work,

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<sup>11</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continued in force until 30 June 1997 (see 1997 SL No. 17 s 45).

and the contractor employs, or proposes to employ, any workers in carrying out the work, the contractor, if requested to do so by the principal, is to produce to the principal for inspection the policy, or policy renewal certificate, issued by the board, for the period then current covering the contractor's workers.

(3) If the contractor fails to comply with the principal's request, as prescribed by subsection (2), it is to be presumed that the contractor does not have a policy covering the contractor's workers for the relevant period.

(4) If the contractor does not have a policy, or it is to be presumed that the contractor does not have a policy, covering the contractor's workers for the relevant period, the board is entitled to recover from the principal the premium payable under this Act, appropriate to the work to be carried out under the relevant contract, unless, in the case of the contractor's failure to comply with the principal's request as prescribed by subsection (2), the principal has, within 14 days following commencement of work under the relevant contract, given notice in writing to the board of such failure, stating in the notice the name and business address of the contractor as known to the principal.

(5) If the principal gives notice to the board within the time specified in subsection (4), the board is not entitled to recover from the principal any premium, penalty or other moneys in respect of the contractor's workers.<sup>12</sup>

### **Employer's failure to fulfil obligation to insure**

**49.(1)** An employer fails to comply with section 44(2)—

- (a) if, before or immediately after the employer commences to employ any worker or workers, the employer does not make application in the approved form to the board for a policy in accordance with this Act; or
- (b) if, having taken out a policy in accordance with this Act, the employer does not maintain it in force at all times whilst being an employer by—

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<sup>12</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

- (i) making at the time and in the manner prescribed every prescribed annual or other periodic return in respect of workers employed by the employer; and
- (ii) paying at the time and in the manner prescribed every premium prescribed as payable in respect of the policy or of the renewal thereof for any year.

(2) An employer who fails to comply with section 44(2) commits an offence against this Act and is liable to a maximum penalty of 100 penalty units.

(3) If, after being convicted of such offence, the employer continues the failure to comply, the employer commits a continuing offence against this Act for which the employer may be prosecuted from time to time, and is liable to a maximum penalty of 20 penalty units for every week during which the failure to comply continues.

### **Recovery of claims costs and unpaid premium**

**50.(1)** This section applies if—

- (a) an employer contravenes section 44(2);<sup>13</sup> or
- (b) the board makes a payment for a worker who was injured when the worker's employer was in contravention of section 44(2).

(2) The board may recover from the employer—

- (a) the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium; and
- (b) if the board has made a payment for the injured worker—the amount of the payment made together with a penalty equal to 50% of the payment.

(3) An employer may apply to the general manager to waive or reduce the penalty because of extenuating circumstances.

(4) The general manager must consider the application and may—

- (a) waive or reduce the penalty; or

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<sup>13</sup> Section 44 deals with an employer's legal liability and obligation to insure.

(b) refuse to waive or reduce the penalty.

(5) An employer who is dissatisfied with the general manager's decision may object to the decision in the same way an objection to a default assessment may be made.

(6) Sections 53 to 58 apply to the objection with all necessary changes and any change prescribed under the regulations.

(7) This section does not limit section 49.

### **Audit of wages and contracts**

**51.** The board may engage the services of a person who in the board's opinion has relevant competence to carry out an audit of—

- (a) wages paid by or on behalf of an employer to or on account of workers employed by the employer; and
- (b) contracts let by or on behalf of an employer for performance of work.

### **Premium variation**

**51A.(1)** The premium payable for a policy for a period of insurance is to be assessed at the rate fixed under a regulation or, if no rate is fixed under a regulation, the rate decided by the board.

(2) It is declared that, if the rate is varied during a period of insurance, the board may reassess the premium for the policy according to the rate as varied from the day of variation or a later day prescribed under a regulation.

(3) An assessment or reassessment under this section must be made on the following bases—

- (a) wages paid or estimated to be paid during the period of insurance—
  - (i) are taken to have been paid in equal weekly instalments during the period; or
  - (ii) if the employer establishes to the board's satisfaction the wages were paid by the employer in another way, are paid in the other way during the period;

- (b) the premium for the period of insurance is payable at the rates in force from time to time during the period.

(4) An employer to whom a reassessed premium notice is given must pay the premium as reassessed.

### **Discounting of premiums<sup>14</sup>**

**52.(1)** It is competent to the board, with the Minister's approval first obtained, to issue in relation to a policy a premium notice that requires the employer to pay a renewal premium discounted by a merit bonus applicable to the policy—

- (a) before the surplus arising from the board's operations, from which such bonus is payable, has been confirmed by the auditor-general; and
- (b) before a scheme for distribution of such surplus or part of such surplus has been approved by the Governor in Council.

(2) The board may allow a discount at a rate for the time being prescribed to an employer who pays the full amount of premium assessed in relation to a policy (other than a premium on a default assessment under section 53) within such time following the date of the assessment as is prescribed.

### **Default assessment**

**53.(1)** If it comes to the knowledge of the board, or the board suspects on reasonable grounds, that an employer has failed to comply with section 44(2), the board may cause to be made a default assessment of premium based on such sums as the board considers to be adequate cover, having regard to—

- (a) the probable salaries, wages, and other earnings paid or to be paid by the employer (in money or in money's worth) during the period in respect of which the default assessment is made; and
- (b) the nature of the employer's business.

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<sup>14</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

(2) The amount of the premium to be paid by the employer under the default assessment is to be calculated in accordance with the rates of premium prescribed by regulation.

(3) As soon as practicable after a default assessment is made, the board is to cause written notice of the assessment and of the amount of premium to be given to the employer.

(4) The employer to whom the notice is given is liable to pay to the board the amount of premium so notified, unless the employer establishes, on objection or appeal under this part, that the default assessment is excessive.

(5) If the employer does not serve on the board a notice of objection to the default assessment within the time prescribed, the amount of premium assessed and notified to the employer, becomes due and payable immediately upon expiry of that time.

(6) Payment by an employer of the amount of a default assessment, or that amount as varied as prescribed on objection or appeal by the employer, does not debar the board from recovering moneys paid from the fund in respect of injury to any of the employer's workers, by action authorised by section 50.

### **Objection to default assessment**

**54.(1)** An employer who is dissatisfied with a default assessment by the board may, within 21 days after notice of assessment is given to the employer, give to the board a written objection that states fully and in detail the facts and grounds on which the employer relies.

(2) The board—

- (a) is to consider every objection duly made under subsection (1) and may confirm, reduce, increase, vary or cancel the relevant default assessment; and
- (b) is to cause written notice of its decision to be given to the employer concerned.

(3) Except where the board, on objection by the employer, confirms or cancels a default assessment, the amount of premium as notified to the employer in the notice of the board's decision, is taken to be the amount of

the default assessment, instead of that notified to the employer under section 53(3).

### **Appeal to industrial magistrate from decision on default assessment<sup>15</sup>**

**55.(1)** An employer who is dissatisfied with the board's decision on the employer's objection to a default assessment may appeal to an industrial magistrate in accordance with this section.

**(2)** An employer who wishes to appeal must, within 30 days after notice of the board's decision on the objection is given to the employer—

- (a) pay to the board the amount of premium specified in the notice of the board's decision; and
- (b) give to the board written notice of intention to appeal against the board's decision, which notice sets out fully and in detail the grounds of appeal; and
- (c) give a written statement, which sets out fully and in detail the grounds of appeal, to the industrial magistrate in whichever of the following Magistrates Courts districts is nearest to the employer's ordinary place of residence or of business, that is, the Magistrates Courts districts of Ayr, Bundaberg, Cairns, Central Division of Brisbane, Dalby, Gladstone, Gympie, Ipswich, Kingaroy, Mackay, Maryborough, Mount Isa, Rockhampton, Roma, Southport, Toowoomba, Townsville, Warwick.

**(3)** If an employer does not appeal as prescribed within the time prescribed, the amount of premium assessed by the board on objection and notified to the employer becomes due and payable immediately upon expiry of that time.

**(4)** An employer who does appeal as prescribed within the time prescribed is limited to the grounds of appeal set out in the statement given to the industrial magistrate under subsection (2)(c), and bears the onus of proving all or any of those grounds.

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<sup>15</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provisions continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

**Appeal to Industrial Court from decision of industrial magistrate<sup>16</sup>**

**56.(1)** If aggrieved by the decision of an industrial magistrate on an appeal under section 55, the board, or an employer, may appeal to the Industrial Court in accordance with the rules of court governing the practice of that court.

**(2)** Unless the Industrial Court orders that additional evidence be heard, the appeal is by way of rehearing on the evidence and proceedings before the industrial magistrate.

**(3)** The decision of the Industrial Court is final.

**Powers of appellate courts<sup>16</sup>**

**57.(1)** On an appeal with respect to a default assessment an industrial magistrate or the Industrial Court—

- (a) may confirm the decision appealed from; or
- (b) may reduce or increase the amount of the assessment.

**(2)** If an amount of an assessment is reduced or increased on appeal, the amount of premium assessed by the industrial magistrate or, as the case may be, Industrial Court is the amount of premium payable by the employer on the default assessment instead of that previously notified to the employer.

**Refund of overpaid premiums<sup>16</sup>**

**58.** If the amount of premium paid by an employer under section 55(2) as a condition of an appeal to an industrial magistrate exceeds the amount of premium assessed by the industrial magistrate or, on appeal to the Industrial Court, by the court, the board is to cause the amount of the excess to be refunded to the employer.

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<sup>16</sup> Despite the repeal of this Act by *WorkCover Queensland Act 1996* No. 75 s 534 (commenced 1 February 1997 (see 1996 SL No. 442)), this provision continues in force until 30 June 1997 (see 1997 SL No. 17 s 45).

**Employer's separate liabilities for 1 period of default**

**59.** An employer is liable—

- (a) to prosecution proceedings for an offence of failing to comply with section 44(2) in respect of any period; and
- (b) in addition, to proceedings by way of default assessment to recover an amount of premium, with or without a charge imposed by the board, in respect of the same period or part of the same period, or a period that includes the same period or part of the same period.

**Additional premium payable upon nonpayment of premium**

**60.(1)** If an employer to whom is given—

- (a) a notice of acceptance under this Act; or
- (b) a notice of adjustment of premium; or
- (c) a notice of default assessment; or
- (d) a notice of the board's decision on objection;

does not pay to the board the amount specified in the notice upon or before its becoming due and payable as specified in the notice (in the case of a notice of acceptance or adjustment), or as prescribed by this Act (in the case of a notice of default assessment or the board's decision), the employer is to pay to the board an additional premium calculated as prescribed by regulation.

**(2)** The board may recover the amount of premium and additional premium payable to it by an employer as prescribed by subsection (1).

**(3)** Until an employer has paid to the board the full amount of premium specified in the notice given (being a notice referred to in subsection (1)) and any additional premium payable, the employer is not covered by a policy.

**Additional premium payable upon nonpayment of excess amount due by employer**

**61.(1)** Where an employer's liability in respect of a default assessment has been finally determined by decision of an industrial magistrate or the

Industrial Court, and the employer fails to pay to the board the amount by which the final assessment exceeds the amount of premium paid under section 55(2) as a condition of the appeal to an industrial magistrate, within 21 days following the day on which the decision is pronounced, the employer is to pay to the board an additional premium calculated as prescribed by regulation.

(2) The board may recover the amount of such excess assessment and additional premium payable to it by an employer as prescribed by subsection (1).

(3) Until an employer has paid to the board the full amount of such excess assessment and any additional premium payable, the employer is not covered by a policy.

### **Additional premiums for out-of-State workers**

62. The board may, from time to time, charge an additional premium on a policy issued to an employer of a worker whose employment is not wholly performed in the State in such amount as the board finds necessary towards providing compensation payable under this Act in respect of injury to that worker and covering the cost of administration of this Act in relation to that worker.

## **PART 5—INVESTIGATION AND ENFORCEMENT**

### *Division 1—General*

#### **Functions of authorised persons**

63. Authorised persons have the following functions—

- (a) to conduct investigations and carry out inspections under this Act;
- (b) to monitor compliance with this Act.

**Authorised persons subject to directions from general manager**

**64.** An authorised person is subject to the general manager's directions in exercising powers of an authorised person.

**Powers of authorised persons**

**65.** An authorised person has the powers given under this Act.

**Limitation on powers of authorised person**

**66.** The powers of an authorised person may be limited—

- (a) under the regulations; or
- (b) under a condition of appointment; or
- (c) by written notice given by the general manager to the authorised person.

***Division 2—Appointment of authorised persons and other matters*****Appointment of authorised persons**

**67.(1)** The general manager may appoint an officer of the board as an authorised person.

**(2)** The general manager may appoint an officer to be an authorised person only if—

- (a) the general manager considers the officer has the necessary expertise or experience to be an authorised person; or
- (b) the officer has satisfactorily finished training approved by the general manager.

**Authorised person's appointment conditions**

**68.(1)** An authorised person holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice given to the general manager; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

### **Authorised person’s identity card**

**69.(1)** The general manager must give an identity card to each authorised person.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for the board; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised person for the board must return the person’s identity card to the general manager within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **Display of authorised person’s identity card**

**70.(1)** An authorised person may exercise a power in relation to someone else only if the authorised person—

- (a) first produces his or her identity card for the person’s inspection;  
or
- (b) has the identity card displayed so it is clearly visible to the person.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

### **Protection from liability**

**71.(1)** An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an authorised person, the liability attaches instead to the board.

### ***Division 3—Powers of authorised persons***

#### **Definition**

**72.** In this division—

“**contractor**” means a person who has contracted with someone else for performance of work.

#### **Entry to workplaces**

**73.** An authorised person may, at any reasonable time, enter a workplace (within the meaning of the *Workplace Health and Safety Act 1995*) to inspect—

- (a) the workplace; and
- (b) documents required to be kept under this Act.

#### **Power to require information from certain persons**

**74.(1)** This section applies if an authorised person believes, on reasonable grounds, that a person has information relevant to making a decision about whether the person or someone else is, or at any time was, an employer or contractor for this Act.

(2) The authorised person may require the person to give the authorised person the stated information relevant to making the decision.

(3) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.

(6) The person does not commit an offence against this section if the information sought by the authorised person is not in fact relevant to the decision.

### **Keeping, and inspection, of documents**

**75.(1)** An employer or contractor must keep the documents about workers, and contracts for the performance of work, prescribed under the regulations.

Maximum penalty—20 penalty units.

(2) A regulation may prescribe the particulars the documents must contain.

(3) The employer or contractor must—

- (a) keep each document for at least 3 financial years after the last entry is made in it; and
- (b) make available for inspection by an authorised person, or produce to the authorised person for inspection, the documents at a reasonable time and place nominated by an authorised person; and
- (c) permit the authorised person to make a copy of a document.

Maximum penalty—50 penalty units.

(4) The authorised person may keep the document to make a copy of it.

(5) The authorised person must return the document to the person as soon as practicable after making the copy.

**Warrants for entry**

**76.(1)** An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours when entry may be made; and
- (d) the day, within 14 days after the warrant’s issue, the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

**Warrants—applications made other than in person**

**77.(1)** An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

(a) the magistrate must—

(i) record on the warrant the reasons for issuing the warrant; and

(ii) tell the authorised person the date and time the warrant was signed; and

(iii) tell the authorised person the warrant's terms; and

(b) the authorised person must write on a form of warrant (the **“warrant form”**)—

(i) the magistrate's name; and

(ii) the date and time the magistrate signed the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if a warrant form was required to be completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

### **Power to seize evidence**

**78.(1)** An authorised officer who enters a place under this part with a warrant may seize the evidence for which the warrant was issued.

**(2)** An authorised officer may also seize another thing if the authorised officer believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being concealed, lost or destroyed.

### **Receipt for seized things**

**79.(1)** As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.

**(2)** However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

### **Access to seized things**

**80.** Until a seized thing is returned or otherwise finally dealt with, an authorised person must allow its owner—

- (a) to inspect it; or
- (b) if it is a document—to make copies of it.

### **Return of seized things**

**81.(1)** The authorised person must return a seized thing to its owner at the end of—

- (a) 6 months; or

(b) if a prosecution for an offence involving it is started within 6 months—the prosecution and any appeal from the prosecution.

(2) Despite subsection (1), the authorised person must return the seized thing to its owner immediately the authorised person stops being satisfied its retention as evidence is necessary.

#### ***Division 4—Other enforcement matters***

##### **Authorised person to give notice of damage**

**82.(1)** This section applies if an authorised person damages anything in the exercise of a power under this part.

(2) The authorised person must promptly give written notice of the particulars of the damage.

(3) The notice must be given to the person who appears to the authorised person to be the thing's owner.

(4) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the officer's control, the officer may state this in the notice.

(5) If, for any reason, it is not practicable to comply with subsection (3), the authorised person must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secured way in a conspicuous position.

(6) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

##### **Compensation**

**83.(1)** A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person under this part.

(2) The compensation may be claimed from the board.

(3) Payment of compensation may be claimed and ordered—

- (a) in a proceeding brought in a court with jurisdiction for the recovery of compensation; or
- (b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.

(4) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### *Division 5—Offences*

#### **Obstruction of authorised persons**

**84.(1)** A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) In this section—

“**obstruct**” includes hinder, resist or attempt to obstruct.

#### **Impersonation of authorised persons**

**85.** A person must not pretend to be an authorised person.

Maximum penalty—20 penalty units.

#### **False or misleading information**

**86.(1)** A person must not—

- (a) state anything to the general manager or an authorised person the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the general manager or an

authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—50 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state the statement made was false or misleading to the person's knowledge.

### **False, misleading or incomplete documents**

**87.(1)** A person must not give the general manager or an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the general manager or authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the general manager or authorised person if the person has, or can reasonably obtain, the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document was false, misleading or incomplete to the person's knowledge.

## **PART 6—ENTITLEMENT TO COMPENSATION**

### **Compensation to injured worker**

**88.** A worker who suffers an injury arising out of or in the course of the worker's employment is entitled (and, in the case of the worker's death being or resulting from the injury, the worker's dependants are entitled), subject to this Act, to be paid from the fund, compensation in accordance with this Act.

**Effect on entitlement of exercising rights under other laws**

**89.(1)** If in respect of an injury payment (by whatever name called) that corresponds to compensation under this Act is made to or on account of a person under an entitlement had under a law of the Commonwealth or of a place other than Queensland, an entitlement of that person to compensation under this Act in respect of the injury ceases.

**(2)** If in respect of an injury payment of compensation under this Act is made to or on account of a person and subsequently payment (by whatever name called) that corresponds to compensation under this Act is made to or on account of that person under an entitlement had under a law of the Commonwealth or of a place other than Queensland in respect of the injury, the board may recover the amount paid as compensation under this Act from the person to whom or on whose account it was paid.

**(3)** If in respect of an injury a person is entitled to—

- (a) payment of compensation under this Act; and
- (b) payment that corresponds to compensation under this Act under an entitlement had under a law of the Commonwealth or of a place other than Queensland;

an application by or on behalf of the person for compensation under this Act is not duly made, and is not to be acted on, unless the person—

- (c) furnishes to the board a statement by the person, in writing under oath or affirmation or by way of statutory declaration, that a claim for such payment in respect of the injury under entitlement under such a law has not been made; and
- (d) covenants with the board that a claim referred to in paragraph (c) will not be made.

**Where right to damages exists**

**90.(1)** If in respect of an injury suffered by a worker there is—

- (a) an entitlement to compensation under this Act; and
- (b) a right of action against the worker's employer, or other person, to recover damages independently of this Act;

a claim for compensation under this Act may be made and proceedings to

recover such damages may be taken but an entitlement to such compensation does not exist at any time, or in respect of any period, after judgment for damages is given, or settlement is agreed, in such proceedings.

(2) Subsection (1) does not limit sections 182B and 182D.<sup>17</sup>

### **Injuries that arise out of or in the course of employment**

**91.(1)** This section does not operate so as to limit the circumstances in which an injury to a worker arises out of or in the course of the worker's employment.

(2) An injury to a worker is taken to arise out of or in the course of the worker's employment if it occurs—

- (a) on a day on which the worker has attended at the place of employment as required under the terms of the worker's employment or apprenticeship—
  - (i) while the worker is at that place and is engaged in an activity for the purposes of or in connection with the employer's trade or business; or
  - (ii) while the worker is temporarily absent from that place during an ordinary recess if the injury is not due to the worker voluntarily being subjected to an abnormal risk of injury during the recess; or
  - (iii) while the worker is away from that place in the course of the worker's employment or apprenticeship or under the instructions of the worker's employer or other person having, for the time being, control of the worker's service;
- (b) while the worker—
  - (i) is travelling between the worker's place of abode and place of employment; or
  - (ii) is travelling between the worker's place of abode or place of

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<sup>17</sup> Section 182B (Worker must make choice about damages at law in certain cases)  
Section 182D (Access to common law damages if no offer of lump sum compensation made)

employment and any trade, technical or other training school that the worker is required by the terms of employment or as an apprentice to attend, or that the employer expects the worker to attend; or

- (iii) is in attendance at a school such as is referred to in subparagraph (ii); or
- (iv) is travelling between the worker's place of abode or place of employment and any other place for the purpose of the worker's—
  - (A) rehabilitation; or
  - (B) obtaining a medical certificate, or medical or hospital advice, attention or treatment; or
  - (C) submitting to examination by a registered person under a provision of this Act or to a requirement under this Act; or
  - (D) receiving payment of compensation; in respect of an injury for which the worker is entitled to compensation under this Act; or
- (v) is in attendance at a place for a purpose referred to in subparagraph (iv); or
- (vi) is travelling between the worker's place of abode and place of employment for the purpose of receiving payment of wages or other moneys due to the worker under the terms of employment that, under those terms, or any agreement or arrangement between the worker and the employer, are available, or the worker reasonably expects to be available, for collection at the place of employment; or
- (vii) is travelling between the worker's place of employment with one employer and the worker's place of employment with another employer.

(3) For subsection (2) (other than subsection (2)(a)(i) and (iii) and (b)(iii)), employment need not be a significant contributing factor to the injury.

(4) A person who, for the purposes of being selected for employment,

attends at any place that, in respect of the person and the person's attendance at that place, is a place of pick-up is, for the purposes of this Act, taken to be working under a contract of service with an employer while the person—

- (a) is travelling between the person's place of abode and the place of pick-up; or
- (b) is in attendance at the place of pick-up before being selected for employment; or
- (c) is travelling between the place of pick-up and the person's place of abode, if the person is not selected for employment, or the engagement for employment for which the person is selected is to commence on a later day.

(5) In this section—

**“place of abode”** includes the place where the worker in question has spent the night immediately preceding the worker's travelling referred to in this section and from which the worker is so travelling, and the place to which the worker is travelling as referred to in this section with the intention of spending the night there following such travelling.

**“place of pick-up”** means—

- (a) in respect of a person ordinarily engaged in employment in connection with which persons customarily attend prearranged places at which employers select and engage persons for employment—any such prearranged place; or
- (b) in respect of a person who, in answer to a notification or advertisement stating that at a specific time and place persons will be selected and engaged for employment, attends at that time and place for the purpose of being so selected and engaged—that specified place; or
- (c) in respect of a person who attends at a place and at a time or during a period arranged or appointed under an award or industrial agreement, for the purpose of being selected and engaged for employment governed by the award or industrial agreement, where the award or industrial agreement provides that persons available for employment thereunder are to be selected and engaged by employers for that employment at certain

prearranged or appointed places—that place so arranged or appointed.

### **Compensation not payable in certain cases**

**92.(1)** Compensation under this Act is not payable in relation to an injury to a worker—

- (a) that is intentionally self-inflicted; or
- (b) if not intentionally self-inflicted—that is caused by the serious and wilful misconduct of the worker, unless the injury results in death or serious permanent impairment.

**(2)** Compensation under this Act is not payable in respect of an injury—

- (a) suffered by a worker, or person to whom section 91(4) applies—
  - (i) if there has been substantial delay before commencement of the travelling referred to in section 91 to a place of abode; or
  - (ii) if the injury has occurred during or after a substantial interruption of or substantial deviation from (but before completion of) any travelling referred to in section 91;

unless, in the case referred to in subparagraph (ii), the interruption or deviation has arisen from circumstances beyond the control of the worker or person who has suffered the injury in question; or

- (b) suffered by a person to whom section 91(4) applies, if the injury occurs while the person is out of the State.

**(3)** Compensation under this Act is not payable in respect of injury suffered by a jockey if the injury relates to a horse race or trotting race conducted at a place at which the jockey is not authorised under the *Racing and Betting Act 1980* to ride or drive.

**(4)** In this section—

**“serious and wilful misconduct”** of a worker does not include conduct engaged in at the express or implied direction of the worker’s employer.

**Compensation entitlements of mariners**

**93.(1)** A provision of this Act that confers an entitlement to compensation on a worker, or a worker's dependants, is subject to this section if the worker is, or was, a mariner.

**(2)** Subject to subsection (1), section 91(1) and (2) applies in respect of injury suffered by a mariner.

**(3)** Compensation under this Act is payable in respect of injury suffered by a mariner only if—

- (a) at the time the injury is suffered, the mariner is employed on a Queensland ship; and
- (b) at the time the injury is suffered, the ship—
  - (i) is in a Queensland port; or
  - (ii) being other than a Crown ship, is not on a voyage interstate or to or from a country other than Australia and is not within territorial waters of a country other than Australia for any reason other than mishap, stress of weather or offering assistance to a ship in distress.

**Compensation entitlements of miners**

**94.(1)** A provision of this Act that confers an entitlement to compensation in respect of injury suffered by a worker is subject to this section if the injury is a disease referred to in subsection (2).

**(2)** If the injury suffered by a worker is the disease, silicosis or anthraco-silicosis, caused by employment in mining, quarrying, stone crushing, or stone cutting, compensation under this Act is not payable in respect of the injury unless—

- (a) the worker has been continuously resident in the State during the 5 years immediately preceding—
    - (i) the onset of incapacity due to the disease; or
    - (ii) death due to the disease, if it occurs without the onset of such incapacity;
- and has been employed in such employment in the State for 300 days at least; or

- (b) the worker has been resident in the State for periods aggregating 5 years at least during the 7 years immediately preceding—
  - (i) the onset of incapacity due to the disease; or
  - (ii) death due to the disease, if it occurs without the onset of such incapacity;
 and has been employed in such employment in the State for 500 days at least.

### **Special provision concerning compensation for loss of hearing**

**95.(1)** Subsections (4) to (9) do not apply to an entitlement to compensation had in respect of the injury referred to in subsection (4) by a worker who makes a claim for compensation in respect of the injury before 1 March 1991.

**(2)** Such claim is to be determined and such entitlement is to be paid in accordance with the *Workers' Compensation Act 1916*.

**(3)** However, the worker is to be given the benefit of every increase in the amount of compensation prescribed by this Act in relation to such injury before such entitlement terminates.

**(4)** If the injury suffered by a worker is loss of hearing (other than total loss of hearing in either ear) caused by excessive noise resulting in the condition known as industrial deafness—

- (a) the worker's entitlement to compensation in respect of the injury is subject to this section; and
- (b) for the purpose of the proper application of section 212 and of determining the worker's entitlement to payment of compensation under section 130<sup>18</sup> the injury is taken to have occurred at the time the worker makes a claim for compensation in respect thereof.

**(5)** A worker is not entitled to compensation under this Act in respect of the injury referred to in subsection (4) unless—

- (a) during the period of 7 years immediately preceding the making of the claim for compensation, the worker has been employed in the

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<sup>18</sup> Section 130 (Compensation for injury resulting in permanent impairment)

State at a location, or at locations, where the noise level caused, or contributed to, the condition for which compensation is claimed—

- (i) for a period of, or for periods aggregating, 3 years at least, in the case of employment in a seasonal industry; or
  - (ii) for a period of, or for periods aggregating, 5 years at least, in the case of employment in any other industry; and
- (b) the claim for compensation is made—
- (i) at a time when the claimant is a worker; or
  - (ii) at a time when the claimant, being other than one who has formally retired from employment, is temporarily unemployed, if the claimant would ordinarily be a worker; or
  - (iii) at a time within 12 months following the claimant's formal retirement from employment.

(6) The board, in its discretion, may allow a claim for compensation under this Act in respect of industrial deafness made by a worker who does not satisfy the requirements of subsection (5)(a) if the board is satisfied that at some time the claimant has worked—

- (a) for 3 years at least in a seasonal industry; or
- (b) for 5 years at least in any other industry;

in the State and at a location, or at locations, specified in that subsection, and, if the board allows the claim, the claimant is entitled to payment of compensation under this Act in respect of the industrial deafness.

(7) A worker who suffers the injury referred to in subsection (4) is not entitled to compensation under this Act in respect of the first 1% of the worker's diminution of hearing.

(8) A worker who suffers the injury referred to in subsection (4) is in no case entitled to a weekly payment of compensation under this Act.

(9) The percentage of the diminution of hearing to be determined for the purposes of a claim for compensation in respect of the injury referred to in subsection (4) is to be assessed by reference to the hearing loss tables recommended and published for the time being by the National Acoustic Laboratories of the Commonwealth.

**Time from which compensation payable**

**96.(1)** Subject to subsections (2) and (3), entitlement of a worker to compensation under this Act in respect of an injury arises on the day next following the day on which the worker suffers the injury.

**(2)** If the injury suffered by the worker results in total or partial incapacity for work at a time later than the day on which the injury is suffered, the incapacity is an injury in respect of which compensation under this Act is payable, which injury—

- (a) in the case of an incapacity that causes the worker to cease work—is taken to have been suffered on the day on which the worker last worked; or
- (b) in the case of an incapacity that does not cause the worker to cease work—is taken to have been suffered on the day on which the worker last worked before seeking assessment by a registered medical practitioner in relation to the incapacity.

**(3)** Despite subsections (1) and (2), entitlement of a worker to compensation under this Act in respect of an injury suffered does not arise until the day on which the worker is assessed by a registered medical practitioner as incapacitated for work because of the injury.

**Right to claim compensation cannot be relinquished**

**97.** Any contractual provision under which a person purports to relinquish a right to claim, as a worker, compensation under this Act in respect of injury that would entitle the person to such compensation is of no force or effect.

**Appeals concerning claims and entitlements**

**98.(1)** In this section—

**“decision”** does not include—

- (a) a decision made in exercise of a power expressed by this Act, otherwise than by the use of the word ‘may’ alone, to be in the discretion of the board or general manager; or
- (b) a decision made in respect of which a right of appeal is conferred

by another provision of this Act.

(2) A claimant for entitlement to compensation may appeal to an industrial magistrate against a decision of the board or general manager.

(3) An appeal under this section is to be made by written notice given to the board or general manager within 60 days of receipt by the claimant of written notice of the decision.

(4) On receipt of the notice, the board must immediately refer the matter to an industrial magistrate.

(5) After hearing the matter, the magistrate must set aside, affirm or vary the decision.

## **PART 7—CLAIMS FOR COMPENSATION**

### **Making of claim**

**99.(1)** A claim for compensation under this Act is made by application completed in accordance with the regulations by the person claiming entitlement to compensation and lodged in the State at—

- (a) the office of the board at Brisbane; or
- (b) a district office of the board; or
- (c) the office of the clerk of the Magistrates Court, if there be no convenient district office of the board;

together with a certificate of a registered medical practitioner who attended the injured worker, and such other proofs and particulars as are prescribed.

(2) The clerk of the Magistrates Court in whose office an application is lodged is immediately to submit the application and all documents received in connection with it to the board at Brisbane, or to a district office of the board.

(3) If the physical or mental condition of a person seeking compensation under this Act is such that the person is unable to complete an application for compensation, the application may be completed by another on that person's behalf.

**Limitation of time for applying**

**100.(1)** An application for compensation is not valid and the claim under it is unenforceable unless the application is lodged as prescribed within 6 months following the day on which the injury occurs or the entitlement to compensation arises.

**(2)** The extent of the board's liability to pay compensation is, in any case other than where death is, or results from, the injury, limited to a period commencing no earlier than 4 weeks before the day on which a valid application for compensation is lodged.

**(3)** In relation to a particular application, the board may—

- (a) waive subsection (1), if the board is satisfied that failure to lodge the application in the prescribed period was due to—
  - (i) mistake; or
  - (ii) absence from the State of the applicant; or
  - (iii) a reasonable cause; and
- (b) waive subsection (2) for any cause that the board considers to be reasonable.

**Public trustee may act for claimant**

**101.** Upon request made of it by a person who wishes to claim compensation under this Act, the public trustee may make and prosecute an application for compensation under this Act, and act on behalf of that person for any of the purposes of this Act.

**Duty to report injury**

**102.(1)** The employer of a worker who suffers an injury in respect of which compensation under this Act is payable is to report in the approved form—

- (a) to the board at Brisbane; or
- (b) to a district office of the board;

in respect of the occurrence of the injury, immediately and in any case within 10 days following the occurrence.

(2) An employer who fails to comply with subsection (1) within the period of 10 days following the occurrence of an injury to the employer's worker commits an offence against this Act and is liable to a maximum penalty of 20 penalty units, unless the employer has a reasonable excuse for the failure.

### **Medical examinations**

**103.(1)** The board may require a worker who has applied for, or is in receipt of, compensation under this Act to submit to a personal examination by a registered person at any time, or from time to time, at a place reasonably convenient for the worker.

(2) If the matter of an application for compensation under this Act is to be heard and determined by an industrial magistrate, the magistrate may, at any time before or after commencement of the hearing, order the injured worker concerned to submit to a personal examination, on behalf of the board, by 1 or more registered persons specified in the order, and further order in relation to—

- (a) the manner, time and place of such examination; and
- (b) costs of the application for such an order and of such examination or examinations;

as the magistrate thinks fit.

(3) The opinions formed upon any examination or examinations conducted under this section are to be furnished to the board, and if the opinion relates to an examination ordered by an industrial magistrate, the board is to make the opinion available to the worker or the worker's representative or agent.

(4) If a worker required under this section to submit to a personal examination—

- (a) refuses or fails to submit to the examination; or
- (b) obstructs the conduct of the examination;

the worker's entitlement (if any) to compensation under this Act is suspended until the examination is conducted.

**Determination of claims**

**104.(1)** Except where the procedure prescribed by subsection (2) is followed, an application for compensation under this Act is to be allowed or rejected in the first instance by the board.

**(2)** An application for compensation under this Act is to be heard and determined by an industrial magistrate in accordance with this Act if—

- (a) the board requires that the application be heard and determined by an industrial magistrate; or
- (b) within 60 days following receipt by the claimant of notice in writing of the board's decision on the application under subsection (1), by which decision the claimant is aggrieved, the claimant requires that the application be heard and determined by an industrial magistrate; or
- (c) at any time after the expiry of 6 months following the making of the application, where the board—
  - (i) has not notified the claimant of its decision on the application under subsection (1); and
  - (ii) has not required that the application be heard and determined by an industrial magistrate;

the claimant requires that the application be heard and determined by an industrial magistrate.

**(3)** A requirement referred to in subsection (2) is to be made by notice in writing given—

- (a) by the board to the claimant for compensation; or
- (b) by the claimant to the board;

as the case may be.

**(4)** The hearing and determination by an industrial magistrate of the matter of an application for compensation is to be initiated and conducted in accordance with the regulations and, subject to the regulations, the industrial magistrate may make such order as to costs as the magistrate thinks fit.

**Appeal from industrial magistrate to Industrial Court**

**105.(1)** If aggrieved by a decision of an industrial magistrate in the matter of an application for compensation under this Act, the board, or the claimant for the compensation, may appeal to the Industrial Court in accordance with the rules of court governing the practice of that court.

(2) Unless the Industrial Court orders that additional evidence be heard, the appeal is to be by way of rehearing on the evidence and proceedings before the industrial magistrate.

(3) Subject to the regulations, costs of appeal are in the discretion of the Industrial Court.

(4) The decision of the Industrial Court is final.

**PART 8—PAYMENT OF COMPENSATION****Advances on account**

**106.(1)** If the board is satisfied that an application for compensation under this Act is well founded, it may from time to time advance to the worker such sum or sums on account of compensation as it thinks proper in the circumstances.

(2) The board may exercise the power conferred by subsection (1) at any time before the amount of compensation is ascertained, or pending the outcome of an appeal as to the amount.

**Regard to other benefits for workers**

**107.** In assessing the amount of weekly payment of compensation under this Act, the board—

- (a) may have regard to the amount of any entitlement had by the worker independently of this Act by way of—
  - (i) payment or other benefit that is being, has been, or will be received by the worker; and
  - (ii) payment that is being, has been, or will be made on account

of the worker; and

- (b) may reduce the weekly payment of compensation under this Act by an amount no greater than the amount that bears to the whole of the worker's entitlement referred to in paragraph (a) the proportion that 1 week bears to the period for which the entitlement is had by the worker.

### **Entitlement of State employees to compensation**

**108.(1)** A worker who suffers injury arising out of or in the course of employment in a department of government or by the Crown in right of the State is not entitled to compensation under this Act in respect of any period during which the worker is entitled to receive, and receives, full salary or wages by way of sick pay.

(2) If a worker employed in a department of government or by the Crown in right of the State receives part of salary or wages in respect of any period and is entitled to compensation under this Act for the same period in respect of an injury suffered, the amount of compensation payable together with the amount of that part of salary or wages received by the worker must not exceed the amount that would have been received by the worker in respect of that period as full salary or wages at the rate payable to the worker at the time the injury occurred.

(3) No deduction is to be made from compensation under this Act to which a worker employed in a department of government or by the Crown in right of the State is entitled on account of any payment received by the worker under the *Public Service Superannuation Act 1958*, the *State Service Superannuation Act 1972* or the *Superannuation (State Public Sector) Act 1990*.

(4) Payment of salary or wages, or other payment referred to in this section, is taken to be received by a worker if the payment is not made to the worker but is made on the worker's account.

### **Reviews of weekly payments**

**109.(1)** The board may, from time to time, review any entitlement to weekly payment of compensation under this Act, and upon such review may terminate, decrease, or, subject to complying with any prescribed

maximum for a payment, increase such payment.

(2) If a worker in respect of whose injury compensation under this Act is payable was under the age of 18 years at the time the injury occurred and a review under subsection (1) takes place at a time more than 12 months after the injury occurred, the amount of future weekly payment may be increased to an amount not exceeding whichever of the following amounts is less—

- (a) 80% of the weekly sum that the worker would probably have been earning in the relevant employment at the date of the review had the worker not been injured;
- (b) the worker's AWE.

### **Misconduct of worker**

**110.** If it appears to the board that, because of indulgence in alcohol or other drug, neglect of spouse or children who is or are dependent on the earnings of the worker, or other sufficient misconduct on the part of a worker to whom a sum is payable as compensation under this Act—

- (a) the worker ought to be deprived of the whole or part of the sum;  
or
- (b) the manner in which the sum is payable to the worker ought to be varied;

the board may cease, or refuse, payment of the sum to the worker to such extent as the board determines, and, if in its opinion the circumstances warrant, may pay the amount of which the worker has been deprived to or for the benefit of the spouse or children who is or are so dependent, as the board considers just.

### **Remarriage or misconduct of surviving spouse**

**111.** If a sum is payable to or on account of a surviving spouse as compensation under this Act in respect of the death of a worker and because of—

- (a) the surviving spouse's remarriage, or living in a connubial relationship with another person; or
- (b) the surviving spouse's indulgence in alcohol or other drug,

neglect of children who were dependent on the earnings of the deceased worker, or other sufficient misconduct;

it appears to the board that—

- (c) the surviving spouse ought to be deprived of the whole or part of the sum; or
- (d) the terms on which or the manner in which the sum is payable to the surviving spouse ought to be varied;

the board may cease, or refuse, payment of the sum to the surviving spouse to such extent as the board determines, and, if in its opinion the circumstances warrant, may pay the amount of which the surviving spouse has been deprived to or for the benefit of any children who were dependent on the earnings of the deceased worker, as the board considers just.

### **Payment of lump sum**

**112.(1)** The board's liability to make weekly payments of compensation under this Act or under a corresponding previous enactment may, at any time, be discharged by payment of lump sum compensation in an amount agreed between the board and the worker or other person entitled to the compensation or, in default of agreement, ordered by an industrial magistrate upon the request of either of them.

**(2)** Any such lump sum compensation may, at the request of the board or the worker, be reviewed by an industrial magistrate within 12 months after it has been so agreed or ordered.

**(3)** Upon a review under subsection (2) of lump sum compensation, the industrial magistrate may decrease or, subject to complying with any prescribed maximum for lump sum compensation, increase such sum.

**(4)** If lump sum compensation payable under this section, or under any other provision of this Act, is not to be paid directly to the person entitled to it, it may be invested or otherwise applied for the benefit of that person as agreed between that person and the board or, in default of agreement, as ordered by an industrial magistrate upon a reference by the board.

**(5)** A person to whom or on whose account payment is made of lump sum compensation—

- (a) agreed or ordered under this section; or

(b) payable under any other provision of this Act;

in respect of an injury is not entitled to payment of compensation under this Act or expenses of whatever description in respect of the injury for any period after lump sum compensation is agreed, ordered or, as the case may be, paid.

### **Lump sum upon worker moving abroad**

**113.(1)** A worker in receipt of weekly payments of compensation under this Act who ceases to ordinarily reside in Australia or New Zealand, ceases to be entitled to such weekly payments.

(2) However, if the worker satisfies the board that the worker's incapacity resulting from the injury for which the compensation is payable is permanent, the worker is entitled to lump sum compensation of not more than—

#### **(156 x Q) – TWP**

(3) In subsection (2)—

“Q” is 60% of QOTE.

“TWP” means the total weekly payments already paid to the worker.

(4) Any question arising under this section is, in default of agreement, to be determined by an industrial magistrate at the request of either the board or the worker.

(5) A worker in relation to whom lump sum compensation is paid under an agreement or determination under this section or another provision of this Act in relation to an injury is not entitled to payment, under this Act, of compensation, or expenses of any description, in relation to the injury for any period after lump sum compensation is agreed or determined.

### **To whom payments made in case of death**

**114.** Compensation under this Act payable in respect of the death of a worker is payable—

(a) to the worker's legal personal representative, who is to pay or apply the same to or for the benefit of the worker's dependants or other persons entitled to compensation under this Act; or

- (b) if there be no legal personal representative—
  - (i) so far as the payment is to recoup expenses to which a person is entitled under this Act—to the person who has incurred those expenses; or
  - (ii) so far as the payment is by way of compensation to dependants of the worker—to the dependants entitled to compensation.

### **Total and partial dependants**

**115.** If compensation under this Act is payable in respect of the death of a worker who is survived by persons totally dependent on the worker and persons partially dependent on the worker, the compensation may be allotted partly to the total dependants and partly to the partial dependants.

### **Investment of compensation**

**116.** A sum allotted as compensation payable to a dependant may be invested or applied by the board for the benefit of the person entitled to compensation as agreed between the board and the person, or, in default of agreement, as ordered by an industrial magistrate at the request of the board.

### **Payment to minors**

**117.(1)** If a person entitled to payment of moneys under this Act is under the age of 18 years, then, despite the person's minority—

- (a) the person is capable in law of agreeing with the board about the amount of such moneys payable; and
- (b) the person is capable in law of giving a good and valid discharge for such moneys paid.

**(2)** The board may pay to the public trustee moneys due under this Act to a person under the age of 18 years, other than compensation payable during and in respect of any period of total or partial incapacity resulting from the injury in question to that person, and the provisions of the *Public Trustee Act 1978* relating to property held by the public trustee upon trust for infants apply in relation to the moneys so paid.

**Suspension of entitlement**

**118.** If under this Act an entitlement to compensation is suspended, no compensation is payable in respect of the period of suspension.

**Appeals against decisions under this part**

**119.(1)** A worker or surviving spouse who is dissatisfied with a decision made by the board under section 107, 109(1), 110 or 111 may appeal to an industrial magistrate.

**(2)** An appeal under this section is to be made by written notice given to the board within 60 days of receipt by the worker or surviving spouse of written notice of the decision.

**(3)** On receipt of the notice, the board must immediately refer the matter to an industrial magistrate.

**(4)** After hearing the matter, the magistrate must set aside, affirm or vary the decision.

**Special provision concerning payment on account of mariners**

**120.(1)** No compensation is payable under this Act in respect of the death of a mariner who leaves no dependants, if the owner or charterer of the ship on which the mariner was employed at the time the relevant injury was suffered is, under any Act, or law in force in the State, liable to pay the expenses of the mariner's funeral.

**(2)** No weekly payment of compensation is payable under this Act in respect of injury suffered by a mariner for any period during which the owner or charterer of the ship on which the mariner was employed at the time the injury was suffered is, under any Act, or law in force in the State, liable to defray the expenses, maintenance or wages of the mariner.

**(3)** Subject to section 89, compensation under this Act payable in respect of injury suffered by a mariner is to be paid in full, despite any limitation of liability prescribed by any other law.

**Worker must notify board of return to work**

**121.(1)** A worker receiving compensation under this Act for an injury must give the board written notice of the worker's return to work.

(2) The notice may be a medical certificate stating the worker's fitness for work.

(3) The notice must be given within 14 days of the worker's return to work.

**Recovery of compensation overpaid**

**122.(1)** If, in respect of a claim for compensation under this Act, a payment has been made to or on account of a person of an amount in excess of the amount to which the person is entitled under this Act, the board—

- (a) may recover the amount of the difference between such payment and such entitlement from that person; or
- (b) may from time to time deduct from moneys that become payable to or on account of that person, whether in respect of that claim or a subsequent claim for compensation, the difference between such payment and such entitlement, or any part of that difference.

(2) If the payment of an excess amount has resulted from the provision of false information by the employer of a worker, the board may recover such excess amount from that employer.

**Compensation entitlement not assignable or subject to execution**

**123.(1)** Subject to section 122 and subsection (2), moneys payable as compensation under this Act are not capable of being assigned, charged, taken in execution, or attached, and the entitlement to them of a person cannot pass to any other person by operation of law or otherwise, and no claim can be set off against such moneys.

(2) If, on or after 1 July 1991, an employer pays to or on account of a worker who has suffered an injury in respect of which compensation under this Act is payable—

- (a) moneys to which the worker is entitled from the fund in respect of that injury, or any part of those moneys; or

- (b) wages of the worker, or any part of those wages;

the board may recoup the employer for them to the extent of the worker's entitlement under this Act in respect of the injury instead of payment to or on account of the worker.

### **Employer excess**

**123A.(1)** The employer of an injured worker must pay to the worker the worker's entitlement to weekly payment of compensation under this Act for the prescribed period.<sup>19</sup>

(2) If the worker is employed under concurrent contracts of service in 2 or more callings at the time of the injury, the amount the employer must pay under subsection (1) is the part of the worker's entitlement that relates to the amount payable to the worker under the contract of service with that employer.

(3) If the employer fails to pay to the worker the amount payable to the worker under subsection (1) within 14 days after receiving notice from the board that the worker's claim has been allowed, the board must make the payment to the worker on behalf of the employer.

(4) A payment made by the board under subsection (3) together with a penalty equal to 50% of the payment may be recovered from the employer by the board—

- (a) as a debt; or
- (b) as an addition to a premium payable by the employer under this Act.

(5) An employer may apply to the general manager to waive or reduce the penalty because of extenuating circumstances.

(6) The general manager must consider the application and may—

- (a) waive or reduce the penalty; or
- (b) refuse to waive or reduce the penalty.

(7) An employer who is dissatisfied with the general manager's decision

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<sup>19</sup> The time from which compensation is payable is dealt with under section 96 (Time from which compensation payable).

may object to the decision in the same way an objection to a default assessment may be made.

(8) Sections 54 to 58 apply to the objection with all necessary changes and any change prescribed under a regulation.

(9) This section does not limit section 49.<sup>20</sup>

(10) In this section—

“**employer**” means the employer in whose employ the worker was injured, but does not include the employer of a household worker.

“**injured worker**” means a worker who suffers an injury entitling the worker to compensation under this Act.

“**prescribed period**”, for an injured worker, means a period up to 4 of the worker’s ordinary working days during which the worker’s entitlement to weekly payment of compensation continues as a result of the work related injury.

## **PART 9—QUANTUM OF COMPENSATION**

### *Division 1—Compensation (weekly payments) for total and partial incapacity*

#### **Application of division**

**124.** This division applies if a worker is incapacitated because of injury in relation to which compensation under this Act is payable.

#### **Amounts payable under awards, industrial agreements and contracts**

**124A.** In this division, an amount payable under an award, industrial agreement or contract in relation to a worker is the weekly rate of salary or

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<sup>20</sup> Section 49 (Employer's failure to fulfil obligation to insure)

wages to which the worker is entitled for the time being under the award, industrial agreement or contract.

**Total incapacity—worker whose employment is governed by award or industrial agreement**

**124B.(1)** Compensation payable to a totally incapacitated worker whose employment is governed by an award or industrial agreement is a weekly payment under this section.

**(2)** The payment is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's AWE;

(ii) the amount payable under the worker's award or industrial agreement; and

(b) afterwards, the greater of the following—

(i) 65% of the worker's AWE;

(ii) 60% of QOTE.

**(3)** However, the payment under subsection (2)(b) must not be more than the payment to which the worker would be entitled under subsection (2)(a) if that paragraph applied to the worker at the time of the payment under subsection (2)(b).

**Total incapacity—worker whose employment is not governed by award or industrial agreement**

**124C.(1)** Compensation payable to a totally incapacitated worker whose employment is not governed by an award or industrial agreement is a weekly payment under this section.

**(2)** The payment is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's AWE;

- (ii) 70% of QOTE; and
- (b) afterwards, the greater of the following—
  - (i) 65% of the worker's AWE;
  - (ii) 60% of QOTE.

(3) However, the payment under subsection (2) must not be more than the worker's AWE.

### **Total incapacity—certain contract workers**

**124D.(1)** Compensation payable to a totally incapacitated contract worker is a weekly payment under this section.

- (2) The payment is, for each week—
  - (a) for the first 26 weeks of the incapacity, the greater of the following—
    - (i) 85% of the worker's AWE;
    - (ii) the amount payable under the worker's contract of service; and
  - (b) afterwards, the greater of the following—
    - (i) 65% of the worker's AWE;
    - (ii) 60% of QOTE.

(3) However, the payment under subsection (2)(b) must not be more than the payment to which the worker would be entitled under subsection (2)(a) if that paragraph applied to the worker at the time of the payment under subsection (2)(b).

- (4) In this section—

**“contract worker”** means a worker employed under a contract of service—

- (a) as an officer of the public service; or
- (b) by a university; or
- (c) as a salaried employee in the electricity industry; or

- (d) as a contracted health service employee under the *Health Services Act 1991*.

**Total incapacity—certain waterside workers**

**124E.(1)** Compensation payable to a totally incapacitated waterside worker is a weekly payment under this section.

(2) The payment is, for each week—

- (a) for the first 26 weeks of the incapacity, the greater of the following—

(i) the worker's guaranteed weekly wage under the relevant award or industrial agreement;

(ii) the lesser of the following—

(A) 60% of QOTE;

(B) the worker's AWE; and

- (b) afterwards, the greater of the following—

(i) 65% of the worker's AWE;

(ii) 60% of QOTE.

(3) However, the payment under subsection (2)(b) must not be more than the payment to which the worker would be entitled under subsection (2)(a) if that paragraph applied to the worker at the time of the payment under subsection (2)(b).

(4) In this section—

“**waterside worker**” means a waterside worker employed at 1 of the following ports—

- Bowen
- Bundaberg
- Cairns
- Gladstone
- Mackay

- Townsville
- Urangan.

**Total incapacity—casual or part-time workers**

**124F.(1)** Compensation payable to a totally incapacitated worker engaged in casual or part-time employment is a weekly payment under section 124B, 124C, 124D, 124E or 125.

(2) However, the payment under subsection (1) must not be more than the worker's AWE.

**Total incapacity—worker receiving certain benefits under Commonwealth law**

**124G.** Compensation payable to a totally incapacitated worker who, at the time the worker was injured, was receiving an age, disability support or class B widow pension under a Commonwealth law is the lesser of the following—

- (a) the amount the worker was earning at the time of the injury;
- (b) the amount the worker is entitled to earn before the maximum pension payable to the worker is reduced.

**Total incapacity—worker with more than 1 employer**

**124H.(1)** If, at the time injury is suffered—

- (a) a totally incapacitated worker is employed under concurrent contracts of service in 2 or more callings; and
- (b) the worker's employment under 1 of the contracts of service is other than as a casual employee;

the board may decide that the worker's entitlement to compensation is to be worked out under an award or industrial agreement for the calling that increases the worker's entitlement to compensation.

(2) If the board makes a decision under subsection (1), the entitlement to compensation is worked out under the award or industrial agreement decided by the board.

**Total incapacity—prescribed volunteers**

**125.(1)** In this section—

**“prescribed volunteer”** means a person—

- (a) who is a member of a local emergency service or a body that acts under the authority of the state counter-disaster organisation or the state emergency service and is taken to be a worker under the *State Counter-Disaster Organisation Act 1975*, section 36; or
- (b) who is not a worker but a member of a rural fire brigade under the *Fire Service Act 1990* who is discharging duties or participating in training as a member of the rural fire brigade.

**(2)** Compensation payable to a totally incapacitated prescribed volunteer is a weekly payment under this section.

**(3)** The payment for a prescribed volunteer who is not in employment or self-employed is an amount not more than 60% of QOTE.

**(4)** The payment for a prescribed volunteer who is employed, but not self-employed, is the payment under section 124B, 124C, 124D, 124E, 124F, 124G or 124H.

**(5)** The payment for a prescribed volunteer who is self-employed is, for each week—

- (a) for the first 26 weeks of the incapacity—
  - (i) if subparagraph (ii) does not apply—70% of QOTE; or
  - (ii) if the volunteer replaces the volunteer’s labour—the payment under subsection (6); and
- (b) afterwards, the lesser of the following—
  - (i) 60% of QOTE;
  - (ii) the reasonable cost of labour paid to replace the volunteer.

**(6)** For subsection (5)(a)(ii), the amount is—

- (a) if paragraph (b) does not apply—85% of the reasonable cost of labour paid to replace the prescribed volunteer; or
- (b) if the reasonable cost of labour paid to replace the volunteer is less than 70% of QOTE—the reasonable cost of labour paid to replace the volunteer.

**When compensation under ss 124B–125 stops**

**126.(1)** The entitlement of a worker, or a prescribed volunteer who is not a worker, to weekly payments under section 124B, 124C, 124D, 124E, 124F, 124G, 124H or 125 stops when the first of the following events happens—

- (a) the incapacity as a result of the work related injury stops;
- (b) compensation payable under this division reaches the maximum amount prescribed under section 154(1)(a).

**(2)** This section does not limit another provision of this Act that stops weekly payments.

**Compensation for partial incapacity**

**128.(1)** If partial incapacity of a worker results from an injury suffered, the compensation under this Act payable in respect of the injury is a weekly payment calculated—

- (a) in a case where the calling in which the worker is engaged at the time the injury occurred is at that time governed by any award or industrial agreement—in accordance with the formula—

$$PC = MC \times \frac{LE}{WR}$$

- (b) in any other case—in accordance with the formula—

$$PC = MC \times \frac{LE}{AE}$$

where—

“**PC**” means the compensation under this Act, expressed as a weekly rate, payable in respect of the injury on account of the partial incapacity.

“**MC**” means the maximum compensation under this Act, expressed as a weekly rate, that would have been payable under this division had total incapacity of the worker resulted from the injury.

“**LE**” means the worker’s loss of earnings, expressed as a weekly rate, as a result of the injury.

“**WR**” means the weekly rate of salary or wages provided for the time

being by such award or industrial agreement as payable to an employee of the worker's description.

**"AE"** means the worker's average weekly earnings in such calling at the time the injury occurred.

(2) In subsection (1)—

**"loss of earnings"** means the difference between—

- (a) the amount of the worker's average weekly earnings at the time of injury; and
- (b) the amount—
  - (i) of the worker's average weekly earnings from employment during the period of partial incapacity; or
  - (ii) if the worker is not in employment during that period—that could be reasonably expected to be derived by the worker during that period having regard to the worker's incapacity and the availability of employment.

(3) The board may from time to time require a worker referred to in subsection (1) to furnish to it within a time specified in the requisition information as to, and particulars of, the worker's employment and earnings during a period specified in the requisition.

(4) If a worker fails to comply with a requisition directed to the worker, the board may suspend the worker's entitlement to weekly payments of compensation until full compliance with the requisition.

(5) A worker suffering partial incapacity is not entitled, under this section, to compensation in an amount that is more than the component "MC" mentioned in subsection (1).

### *Division 2—Compensation (lump sum) for injury resulting in permanent impairment*

#### **Application of division**

**129.** This division applies if a worker sustains permanent impairment because of injury in relation to which compensation under this Act is payable.

**Compensation for injury resulting in permanent impairment**

**130.(1)** A worker who sustains permanent impairment because of injury is entitled to lump sum compensation under this section for the injury.

(2) The amount of lump sum compensation is the amount worked out having regard to the worker's degree of permanent impairment, the degree of permanent impairment attributable to the injury and the table of injuries.

(3) Without limiting subsection (2), lump sum compensation for injury must not include an amount for a degree of permanent impairment that is attributable to—

- (a) a condition existing before the injury; or
- (b) another injury the worker may have suffered before the injury.<sup>21</sup>

**Assessment of degree of permanent impairment**

**130A.(1)** The board or a worker may ask that the degree of permanent impairment resulting from the worker's injury be assessed—

- (a) for hearing loss—under section 95(9);<sup>22</sup> or
- (b) for a psychiatric or psychological injury—by a medical assessment tribunal; or
- (c) for another injury—by a registered medical practitioner.

(2) The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be provided to the board stating—

- (a) the matters taken into account, and the weight given to those matters, in deciding the degree of impairment; and
- (b) any other information prescribed under a regulation.

(3) For an injury, other than a psychiatric or psychological injury, the board or worker may accept or reject the assessment of the degree of

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<sup>21</sup> For the maximum amount of lump sum compensation payable under section 130, see section 154(1)(b).

<sup>22</sup> Section 95 (Special provision concerning compensation for loss of hearing). See also section 131(4).

permanent impairment.

(4) If the board and worker cannot agree about the degree of permanent impairment—

- (a) the degree of impairment may be decided only by a medical assessment tribunal; and
- (b) the board must refer the question of degree of impairment to a tribunal for decision.

### **Additional compensation for certain injuries**

**130B.(1)** This section applies if a worker suffers spinal cord injury or chronic organic brain syndrome resulting in the worker sustaining permanent impairment that, in the board's opinion, entitles the worker to lump sum compensation of at least 50% of statutory maximum compensation.

(2) The worker is entitled to additional lump sum compensation for the injury, up to \$100 000, payable according to a graduated scale prescribed under a regulation.

### **Application of s 130 in particular cases**

**131.(1)** Section 130 does not apply in relation to an injury until the expiry of the period of total incapacity resulting from the injury in respect of which period compensation is paid otherwise than in accordance with that section, except where the worker concerned accepts payment of compensation in accordance with that section in respect of the injury.

(2) Except as otherwise prescribed by this section, an amount of compensation under this Act paid other than in accordance with section 130 in respect of an injury to which that section applies (by weekly payments, lump sum compensation or otherwise) is not to be deducted from compensation payable in respect of the injury in accordance with that section, but the total amount of compensation payable to a worker in respect of the injury must not exceed the amount prescribed by section 154(1)(c).

(3) If—

- (a) a worker has previously received lump sum compensation for injury (other than hearing loss) to a part of the worker's body; and

- (b) the worker sustains a further injury to that part (the **“later injury”**);

lump sum compensation under section 130 for the later injury must be reduced by the amount of lump sum compensation previously paid under this Act or the repealed Act.

*Example—*

A worker loses the distal joint of the right forefinger in a work related incident and receives lump sum compensation for the impairment. The worker loses the entire right forefinger in a subsequent work related incident. The lump sum compensation payable for the second impairment must be reduced by the lump sum compensation paid for the first impairment.

(4) If section 130 applies in relation to an injury consisting in loss of hearing due to the condition known as industrial deafness or other loss of hearing, suffered by a worker who has previously suffered a like injury in respect of which compensation was paid under this Act or the repealed Act, the compensation payable in accordance with section 130 in respect of the injury is reduced by the percentage loss of hearing for which the worker was previously so compensated.

(5) In this section—

**“repealed Act”** means the *Workers' Compensation Act 1916*.

### **Offer and payment of compensation after assessment**

**132.** The board may make an offer of lump sum compensation to or on account of a worker who has suffered an injury prescribed under the table of injuries that has resulted in the worker sustaining a permanent impairment.

(2) An offer may be made only if—

- (a) the board and the worker both accept the worker's degree of permanent impairment is the degree assessed by a registered medical practitioner or under section 95(9);<sup>23</sup> or
- (b) a medical assessment tribunal has decided on a reference under part 10 that the worker has sustained a degree of permanent impairment.

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<sup>23</sup> Section 95 (Special provision concerning compensation for loss of hearing)

(3) The following information must be stated on the offer—

- (a) the degree of the worker's permanent impairment;
- (b) the degree of the worker's impairment attributable to the injury;
- (c) the percentage of statutory maximum compensation the worker is entitled to for the injury;
- (d) the amount of lump sum compensation payable under section 130<sup>24</sup> the worker is entitled to for the injury.

(4) If the worker is entitled to lump sum compensation under section 130 for an injury, other than a certificate injury, the board must—

- (a) advise the worker about the choice the worker must make under section 182B;<sup>25</sup> and
- (b) give the worker a copy of sections 182A, 182B and 182C.<sup>26</sup>

(5) An offer may be accepted or rejected, or a decision about the offer may be deferred, within 28 days after a written offer is made by the board (the “**decision period**”).

(6) If, within the decision period, the worker does not advise the board that the offer is accepted or rejected or that the worker wishes to defer the decision, the worker is taken to have deferred the decision.

(7) If the offer is accepted, the board must pay the lump sum compensation entitlement to or on account of the worker.

### **Maximum compensation for multiple s 130 injuries**

**134.** If in 1 incident a worker suffers injuries consisting of more than 1 injury prescribed under the table of injuries, the worker is not entitled to compensation under this Act in an amount greater than the maximum amount prescribed by section 154(1)(b).

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<sup>24</sup> Section 130 (Compensation for injury resulting in permanent impairment)

<sup>25</sup> Section 182B (Worker must make choice about damages at law in certain cases)

<sup>26</sup> Sections 182A (Application of ss 182B–182E), 182B (Worker must make choice about damages at law in certain cases) and 182C (Consequences of choosing to seek damages at law)

**No further compensation after offer**

**135.(1)** This section applies if an offer of lump sum compensation under section 132 is made.

**(2)** A worker to or for whom an offer of lump sum compensation is made is not entitled, after the acceptance, rejection or deferral of the offer—

- (a) to further compensation in relation to the injury; or
- (b) to payment of expenses of any description in relation to the injury.

**(3)** This section does not limit the worker's entitlement to payment of the lump sum compensation offered after acceptance of the offer.

*Division 3—Compensation upon death of worker***Benefits for total or partial dependants**

**136.(1)** If the death of a worker is, or has resulted from, an injury in respect of which compensation under this Act is payable, the compensation payable in each case specified in column 1 of the following table is that specified in column 2 opposite the specification of that case—

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Circumstances and description of persons</b>	<b>Compensation</b>
(a) where the worker has left any dependants who at the time of the worker's death were totally dependent on the worker's earnings.	the sum of \$160 000, which is subject to reductions as prescribed by section 137.

*Workers' Compensation Act 1990*

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- (b) where the worker has left—
- (i) a child or stepchild of the worker; or
  - (ii) a child of the worker's spouse within the extended meaning of that term in this Act; or
  - (iii) a brother or sister of the worker;
- who, at the time of the worker's death was totally or mainly dependent on the worker's earnings and is under the age of 16 years or a student.
- (c) where the worker has left a surviving spouse who, at the time of the worker's death, was totally dependent on the worker's earnings, and a child, stepchild, brother or sister, such as is referred to in paragraph (b) of this column.
- (d) where the worker has left any dependants who, at the time of the worker's death, were partially dependent on the worker's earnings but has left no dependants who at that time were totally dependent on the worker's earnings.
- a weekly payment of 7% of QOTE for each child, stepchild, brother or sister starting at the time of the worker's death and ending when the child, stepchild, brother or sister turns 16 or stops being a student.
- the amount of \$6 000 for each child, stepchild, brother or sister who is under 16, or a student, left by the worker.
- a sum that in the board's opinion is reasonable and proportionate to the monetary value of the loss of dependence by such partial dependants, being a sum—
- (a) not exceeding the sum specified in this column opposite paragraph (a) in column 1 or that sum reduced as prescribed by section 137; and

*Workers' Compensation Act 1990*

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- (b) not less than 15% of the sum specified in this column opposite paragraph (a) in column 1.
- (e) where the worker has left dependants consisting of or including a child, stepchild, brother or sister, such as referred to in paragraph (b) of this column, except that he or she, at the time of the worker's death, was only partially dependent on the worker's earnings but has left no dependants who at that time were totally or mainly dependent on the worker's earnings. a weekly payment of 7% of QOTE for each child, stepchild, brother or sister starting at the time of the worker's death and ending when the child, stepchild, brother or sister turns 16 or stops being a student.
- (f) where the worker had not attained the age of 21 years, and has left any parent or parents ordinarily resident in the State but no dependants. the sum of \$11 050.
- (g) whether the worker has left dependants or no dependants. the reasonable expenses of—
- (i) the medical treatment of, or attendance on, the worker; and
  - (ii) the funeral of the worker.
- (2) Compensation specified in the table in subsection (1) opposite paragraph (b) or (c) in column 1 is payable in addition to the compensation specified in the table opposite paragraph (a) in column 1.
- (3) Compensation specified in the table in subsection (1) opposite paragraph (e) in column 1 is payable in addition to the compensation specified in the table opposite paragraph (d) in column 1.

**Reduction of sum payable upon death**

**137.** If, in respect of an injury suffered by a worker, there has been made—

- (a) weekly payments of compensation under this Act; or
- (b) payment of lump sum compensation in discharge of the liability to make weekly payments of compensation under this Act; or
- (c) another payment of lump sum compensation under this Act;

there is to be deducted from the sum specified in the table in section 136(1) opposite paragraph (a) in column 1 as payable in the event of the worker's death from that injury the amount of all such payments referred to in paragraph (a), (b) or (c), but so that the sum as so reduced must not be less than 50% of the sum specified opposite paragraph (a) in column 1 of the table in section 136(1).

**Reduced benefit to dependant who dies before payment of compensation**

**138.(1)** If a dependant of a worker whose death is, or has resulted from, an injury in respect of which compensation under this Act is payable dies after the worker's death and before payment of the dependant's benefit of compensation that, but for this section, would be payable under this division for the benefit of the dependant (either alone or with another or others), the dependant is, for the purposes of this Act, taken to have predeceased the worker but nevertheless there is payable to the legal personal representative of the dependant, for the benefit of the dependant's estate, an amount of compensation based on the prescribed payments for the period commencing on the date of the worker's death and terminating on the date of the dependant's death.

**(2)** For the purposes of subsection (1) the prescribed payments are, in respect of a person of a description specified in column 1 of the following table, those specified in column 2 opposite that description of person—

**Table**

<b>Column 1</b> <b>Description of person</b>	<b>Column 2</b> <b>Prescribed payments</b>
(a) a surviving spouse of the worker who at the time of the worker's death was totally or mainly dependent on the worker's earnings.	a weekly payment of 14% of QOTE.
(b) where the worker has left no surviving spouse, a person who at the time of the worker's death, was totally or mainly dependent on the worker's earnings and who—	a weekly payment of 14% of QOTE.
(i) is caring for the worker's child or stepchild who is under the age of 16 years or a student; or	
(ii) is a member of the family of the worker who is 16 or over and not a student and is caring for persons who at the time of the worker's death were totally or mainly dependent on the worker's earnings.	
(c) each—	a weekly payment of 7% of QOTE.
(i) child or stepchild of the worker; and	
(ii) child of the worker's spouse within the	

extended meaning of  
that term in this Act;  
and

(iii) brother or sister of the  
worker;

who, at the time of the  
worker's death, was totally  
or mainly dependent on the  
worker's earnings and is  
under the age of 16 years or  
a student.

#### *Division 4—Compensation for prescribed disfigurement*

##### **Application of division**

**139.** The provisions of this division apply in respect of all prescribed disfigurement resulting from an injury in respect of which compensation under this Act is payable, other than prescribed disfigurement incident to an injury in respect of which compensation under this Act is payable under section 130.

##### **Entitlement to additional compensation**

**140.(1)** A worker who suffers injury resulting in prescribed disfigurement is entitled to compensation under this division in addition to compensation to which the worker is entitled under any other provision of this Act.

**(2)** In no case is weekly payment of compensation to be made in respect of prescribed disfigurement.

**(3)** Compensation under this Act for prescribed disfigurement is payable as lump sum compensation in an amount worked out having regard to the severity of the worker's prescribed disfigurement and the table of injuries.

**Assessment of additional compensation**

**141.(1)** The general manager may refer to a prescribed disfigurement assessment tribunal constituted under part 10, division 3 an application for compensation under this Act to the extent that the application relates to disfigurement.

**(2)** The tribunal is to assess, by personal examination of the claimant worker—

- (a) whether the disfigurement in question is sufficiently severe to be prescribed disfigurement; and
- (b) if it assesses the disfigurement to be prescribed disfigurement—the severity of the disfigurement expressed as a percentage.

**(3)** The tribunal must assess the severity of prescribed disfigurement in the way prescribed under a regulation.

**(4)** The tribunal is to issue a written determination of its assessment on each reference to it.

**Suspension of entitlement to compensation under division**

**142.** If a worker whose claim for compensation in respect of disfigurement is referred to the tribunal under section 141—

- (a) fails to attend at a sitting of the tribunal of which the worker has been given at least 7 days prior notice in writing on behalf of the tribunal; or
- (b) having attended at such sitting, refuses to be examined by the tribunal or any member of the tribunal; or
- (c) obstructs, or attempts to obstruct, examination of the worker by the tribunal or any member of the tribunal;

the worker's entitlement (if any) to compensation under this division is suspended until the worker undergoes examination required by the tribunal.

***Division 5—Board's liability for expenses*****Board's liability for treatment**

**143.** If hospitalisation or medical treatment of a worker is necessary for an injury in respect of which compensation under this Act is payable, the board is to pay, in addition to compensation otherwise payable under this Act, the cost of such hospitalisation or treatment as is reasonable in the general manager's opinion, having regard to the injury in question, in accordance with the provisions of this division.

**Extent of liability for medical treatment**

**144.(1)** The fees and costs that the board is liable to pay under this division in respect of medical treatment for an injury suffered by a worker, whether the treatment is provided at 1 time or at different times, are—

- (a) for medical treatment by a registered person—the cost of medical treatment accepted by the general manager to be reasonable having regard to the relevant table of costs for the time being notified by the board as acceptable for the purposes of this Act; and
- (b) for treatment at a public hospital—the fees lawfully charged for medical treatment by the hospital; and
- (c) for nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other devices of assistance provided to the worker otherwise than as an in-patient at a hospital—the cost accepted by the general manager to be reasonable.

**(2)** The board's liability for the cost of treatment by a registered chiropractor and osteopath extends only to the cost of treatment involving the manipulation, mobilisation and management of the neuromusculoskeletal system of the human body.

**(3)** The board's liability for the cost of attendance following a surgical operation extends only to the cost of such attendance for a period not exceeding 3 months.

**Board's liability for prosthetic expenses**

**145.(1)** If a worker—

- (a) is fitted with a prosthesis; or
- (b) is dependent on support of a medical aid, or crutches or other device of assistance;

because of a condition resulting from an injury in respect of which compensation under this Act is payable, the board is liable to pay reasonable expenses necessarily incurred by the worker on account of—

- (c) reasonable wear and tear of the prosthesis, medical aid or device; or
- (d) replacement of the prosthesis, medical aid or device due to reasonable wear and tear.

**(2)** Compensation under this Act payable in respect of injury consisting in damage to or destruction of a prosthesis or device of assistance consists in payment of expenses necessarily incurred by the worker on account of the injury in an amount accepted by the general manager as reasonable.

**Accounts for medical treatment, medical certificate**

**146.(1)** Accounts for medical treatment, for the cost of which the board is liable, are to be rendered to the board promptly and within 2 months following completion of the treatment, and must specify—

- (a) the item number (if any) relevant to the treatment in the relevant table of costs for the time being notified by the board as acceptable for the purposes of this Act; and
- (b) the date of each attendance; and
- (c) detailed particulars of treatment; and
- (d) the name and place of residence of the injured worker; and
- (e) the name and place of business of the injured worker's employer.

**(2)** An injured worker who receives medical treatment is to be furnished with the prescribed medical certificate free of charge.

**Review of fees or costs payable**

**147.(1)** A person who provides medical treatment and who considers that the fee or cost accepted by the general manager as reasonable, in a particular case, is inadequate because of special circumstances may apply to the general manager for an increase in such fee or cost.

(2) Every such application must specify the special circumstances relied on in support of the application and the reasons the fee or cost should be increased in the particular case.

(3) If upon consideration of an application the general manager accepts that an increase is justified, the general manager may approve the increase.

**Extent of board's liability for hospital treatment**

**148.(1)** The board's liability for the cost of hospitalisation of an injured worker extends only to the cost of treatment provided to the worker—

- (a) as an in-patient in a public ward of a public hospital; or
- (b) as an in-patient at a private hospital—
  - (i) for non-elective hospitalisation—for not more than 4 days; or
  - (ii) for non-elective hospitalisation for more than 4 days—to the extent agreed to by the board under earlier arrangements entered into between the board and the worker or someone for the worker; or
  - (iii) for elective hospitalisation—to the extent agreed to by the board under earlier arrangements entered into between the board and the worker or someone for the worker.

(2) Before agreeing to arrangements under subsection (1)(b)(ii) or (iii), the board must be satisfied that—

- (a) a public hospital is not reasonably available to the injured worker or a public hospital that is reasonably available cannot admit the injured worker as an in-patient to a public ward within a reasonable time; or
- (b) admission of the injured worker to a private hospital—
  - (i) would relieve prolonged pain and suffering to the worker; or

(ii) would result in material saving of costs to the fund.

(3) The cost for which the board is liable for hospitalisation of an injured worker as an in-patient is the cost to the hospital of the treatment calculated at the weekly rate of hospital charges current at the material time.

(4) However—

- (a) if the Crown in right of the State or of the Commonwealth makes a payment in respect of hospitalisation of an injured worker as an in-patient at a private hospital or in a ward or room of a public hospital that is not a public ward—the amount of such payment (expressed as a weekly rate) is to be deducted from the cost for which the board would be liable under this subsection for hospitalisation of the injured worker as an in-patient at a private hospital or in a ward or room of a public hospital that is not a public ward; and
- (b) if a fee or charge is not payable to a public hospital for hospitalisation of any person in a public ward of that hospital—the cost to that hospital of hospitalisation of an injured worker as an in-patient in a public ward of that hospital is taken to be nil.

(5) A person authorised in writing by the governing body of any hospital to collect moneys on behalf of the hospital may recover from the board any sum for which the board becomes liable to the hospital under this division in respect of hospitalisation of an injured worker, or in respect of any prosthesis supplied by the hospital to an injured worker, by action in a court of competent jurisdiction as a debt due and payable by the board to the governing body and unpaid.

(6) In this section—

**“elective”** hospitalisation means hospitalisation involving a treatment or procedure decided on by a worker or the worker’s medical practitioner that is of advantage to the worker, but is not fundamental in the therapy of the worker’s case.

**“private hospital”** includes a ward or room of a public hospital that is not a public ward.

**Maximum liability for hospitalisation**

**149.** The maximum sum that the board is liable to pay for hospitalisation of an injured worker in respect of injury suffered in any 1 incident, whether the hospitalisation occurs at 1 time or at different times, is \$5 000.

**Extent of board's liability for travelling expenses**

**150.(1)** Subject to this section, the board is liable to pay travelling expenses necessarily and reasonably incurred by a worker for obtaining medical treatment for an injury in respect of which compensation under this Act is payable.

**(2)** The board is liable to pay the cost of transportation by ambulance vehicle of a worker who has suffered such an injury, irrespective of distance if—

- (a) the worker is not entitled to ambulance transportation under a subscription to the Queensland Ambulance Service; and
- (b) the transportation—
  - (i) being that first provided immediately following occurrence of the injury—is from the place where the injury occurred to a place where appropriate medical treatment is available, for the purpose of seeking such treatment; or
  - (ii) being that subsequently provided—is certified in writing by a registered medical practitioner as necessary because of the worker's physical condition resulting from the injury;

or if the board approves in writing of such transportation because of other circumstances that in the board's opinion renders such transportation necessary.

**(3)** Except as prescribed by subsection (2), the board is not liable for travelling expenses incurred by an injured worker—

- (a) in travelling a distance less than 20 km to or from a place where the worker is to obtain or has obtained medical treatment for the injury; or
- (b) in any case where medical or hospital treatment for the injury was reasonably available to the worker nearer than the place to which

the worker has travelled to seek such treatment.

(4) If—

- (a) a worker is not entitled under subsection (3)(a) to be recouped by the board for travelling expenses; and
- (b) in a period of 7 consecutive days, the worker incurs travelling expenses in reasonably travelling at least 150 km to and from a place for the purpose of seeking medical or hospital treatment for an injury suffered by the worker;

the board is liable to recoup the worker for the expenses.

### ***Division 6—Board's liability for rehabilitation***

#### **Responsibility of board**

**151.(1)** It is the responsibility of the board to take such steps as appear to it to be practicable to secure—

- (a) rehabilitation; and
- (b) early return to productive work;

of workers who have suffered injury in respect of which compensation under this Act is payable, and to that end the board—

- (c) may establish and maintain, or participate in and support, programs for rehabilitation, or retraining, of injured workers; and
- (d) is to provide artificial aids or appliances to injured workers who in the board's opinion, need them, and maintain such aids or appliances as are provided.

(2) In discharge of the responsibility imposed by subsection (1), the board may require a worker to undertake such programs of rehabilitation as are specified in the requisition.

(3) If a worker required as prescribed by subsection (2) fails to undertake a specified program to the satisfaction of the general manager, the worker's entitlement to compensation under this Act may be suspended by the general manager until the worker satisfactorily complies with the requisition.

(4) Within 60 days after receiving written notice of the suspension of the entitlement to compensation, the worker may, by written notice given to the board, require the general manager to refer the suspension to an industrial magistrate.

(5) If the board receives a notice under subsection (4), the general manager must immediately refer the suspension to an industrial magistrate.

(6) The industrial magistrate is to review the suspension and may confirm or revoke the general manager's decision.

### **Board's liability for cost**

**152.** If a rehabilitation program is accepted by the general manager as necessary for a worker in respect of whose injury the board has accepted a liability under this Act, the board is to pay such cost of the program as the general manager accepts to be reasonable, having regard to the injury, in addition to compensation under this Act otherwise payable.

### **Board's liability for caring allowance**

**153.** If the general manager is satisfied that a worker entitled to compensation under this Act in respect of an injury is so severely incapacitated by the injury that the worker's survival depends on constant day to day care for the worker, which care is to be provided at home on a voluntary basis by another person in relation to whom compensation under this Act is not payable, the board may accept liability to pay to or on account of that other person an allowance, called a caring allowance, in an amount considered by the general manager to be appropriate in the circumstances.

## ***Division 7—Maximum entitlement for 1 incident***

### **Maximum entitlement for 1 incident**

**154.(1)** The maximum amount of compensation under this Act payable in respect of all injuries suffered by a worker in any 1 incident is—

- (a) in respect of compensation payable as weekly payments or as lump sum compensation in settlement of an entitlement to weekly

payments—\$100 000;

- (b) in respect of compensation payable under section 130<sup>27</sup>—\$100 000;
- (c) in respect of total compensation, being that referred to in paragraph (a) together with that referred to in paragraph (b)—\$100 000.

(2) A worker in relation to whom the maximum amount of compensation is paid under subsection (1) is not entitled to further compensation for the incident under another provision of this part for any period after the payment is made.

(3) However, subsections (1) and (2) do not limit the power to make additional payment of compensation under section 130B.<sup>28</sup>

### *Division 8—Variation of compensation payable*

#### **Variation of payments for mining diseases**

**155.** A regulation may vary a payment or amount to which a person is entitled under the *Workers' Compensation Act 1916* in relation to the disease silicosis or anthraco-silicosis if—

- (a) QOTE is varied; or
- (b) the amount of age, disability support or class B widow pension payable under the *Social Security Act 1991* (Cwlth) is varied.

#### **Variation of payments for other injuries**

**156.(1)** If QOTE varies, each payment or amount under division 1, 2, 3, 4 or 7 that is not expressed as a percentage of QOTE, is to be varied proportionately.

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<sup>27</sup> Section 130 (Compensation for injury resulting in permanent impairment)

<sup>28</sup> Section 130B (Additional compensation for certain injuries) provides for additional lump sum compensation in certain cases involving serious spinal cord injury or chronic organic brain syndrome.

(2) A weekly payment or another amount varied under subsection (1) is to be rounded up—

- (a) for a weekly payment—to the nearest 5¢; and
- (b) for another amount—to the nearest \$5.

(3) Notification of every variation under this section is to be published in the industrial gazette.

### **Construing entitlements in light of variation**

**157.** Upon variation of any payment or sum as permitted by section 155 or required by section 156—

- (a) an entitlement to the payment or sum referred to in section 155; or
- (b) a reference in division 1, 2, 3, 4 or 7 to the payment or sum;

is to be construed as an entitlement, or, as the case may be a reference, to that payment or sum as varied for the time being under section 155 or, as the case may be, section 156.

### **Application of division to existing benefits**

**159.** This division applies in relation to benefits being paid, and entitlements accrued under, the *Workers' Compensation Act 1916*, as if they were benefits paid or entitlements accrued under this Act, and to that end the reference in section 157(b) to division 1, 2, 3, 4 or 7 is to be construed as a reference to the corresponding provisions of that Act under which the benefit is paid or the entitlement arose or the limitation is prescribed.

## **PART 10—MEDICAL ASSESSMENT TRIBUNALS**

### *Division 1—Composition and proceedings of tribunals*

#### **Assessment tribunals to be maintained**

**160.(1)** There are to be maintained for the purposes of, and in accordance with, this Act a General Medical Assessment Tribunal and the following specialty medical assessment tribunals—

- (a) Cardiac Assessment Tribunal;
- (b) Orthopaedic Assessment Tribunal;
- (c) Dermatology Assessment Tribunal;
- (d) Ear, Nose and Throat Assessment Tribunal;
- (e) Neurology/Neurosurgical Assessment Tribunal;
- (f) Ophthalmology Assessment Tribunal.

**(2)** Each of the tribunals referred to in subsection (1) is a continuance in existence of the corresponding medical board established and maintained for the purposes of the *Workers' Compensation Act 1916*.

#### **General Medical Assessment Tribunal**

**161.(1)** The General Medical Assessment Tribunal consists of a chairperson and 2 other members appointed as prescribed.

**(2)** The Governor in Council, by gazette notice, is to appoint, for a specified period of not more than 3 years, a panel of 16 medical practitioners as members of the General Medical Assessment Tribunal.

**(3)** Every such appointee must be a medical practitioner who is registered under the *Medical Act 1939* as a specialist in the speciality in relation to which the appointment is made.

**(4)** The panel must comprise—

- (a) 5 physicians; and
- (b) 1 vascular surgeon; and

- (c) 3 general surgeons; and
- (d) 1 urologist; and
- (e) 3 psychiatrists; and
- (f) 1 gynaecologist; and
- (g) 1 thoracic physician; and
- (h) 1 rheumatologist.

(5) The Governor in Council, by gazette notice, may appoint an alternate panel of members for a specified period of not more than 3 years.

(6) The alternate panel must comprise the number of specialists of the descriptions prescribed by subsection (4) and every appointee must be a medical practitioner who is registered under the *Medical Act 1939* as a specialist in the speciality in relation to which the appointment is made.

### **Conditions of appointment to panels**

**162.(1)** An appointee to the panel or alternate panel holds the appointment for the term specified in the gazette notice by which the appointment is made unless the appointee sooner—

- (a) dies; or
- (b) resigns by writing signed by the appointee and given to the Minister; or
- (c) becomes incapable of discharging the duties of a member of the General Medical Assessment Tribunal.

(2) As often as a vacancy occurs in the membership of the panel or alternate panel, the Governor in Council, by gazette notice, may appoint a medical practitioner to that vacancy for the remainder of the term of appointment of the predecessor.

(3) Every such medical practitioner appointed must be qualified as prescribed by section 161.

**Chairperson and deputy chairperson of General Medical Assessment Tribunal**

**163.(1)** The Governor in Council, by the gazette notice, is to appoint 1 physician appointed to the panel to be chairperson, and another 2 physicians appointed to the panel to be deputy chairpersons, of the General Medical Assessment Tribunal.

(2) If the chairperson is not available to attend to the business of the General Medical Assessment Tribunal, a deputy chairperson is to act as chairperson of the tribunal.

(3) Until the contrary is proved, it is to be presumed that a deputy chairperson has acted with due authority on each occasion of the deputy chairperson's acting as chairperson of the tribunal.

(4) Except when acting under the authority of subsection (2), a person who is deputy chairperson is not to act as a member of the General Medical Assessment Tribunal unless the chairperson has designated that person for that purpose.

**Constitution of General Medical Assessment Tribunal for purpose of reference**

**164.(1)** For the purpose of determining a matter referred to it, the General Medical Assessment Tribunal is constituted by the chairperson and 2 members of the panel designated by the chairperson.

(2) In so designating, the chairperson is to have regard to the branch of medicine that is a speciality, within the meaning of the *Medical Act 1939*, and is relevant to the matters referred to the medical board for determination.

(3) Whenever it is impracticable to supply from appointees to the panel 2 appropriate persons to constitute, with the chairperson the General Medical Assessment Tribunal for the determination of a particular matter, the chairperson may designate an appointee or, as the case requires, appointees on the alternate panel to be a member or, as the case may be, 2 members of the tribunal for the determination of that matter.

(4) Until the contrary is proved, it is to be presumed—

(a) that an appointee on the alternate panel who acts as a member of

the tribunal has been duly designated to do so; and

- (b) that the tribunal whose members include any such appointee or appointees, and the chairperson, is duly constituted.

(5) The chairperson is to preside over meetings of the General Medical Assessment Tribunal.

### **Specialty medical assessment tribunal**

**165.(1)** Every specialty medical assessment tribunal consists of 3 members, each of whom must be a medical practitioner who is registered under the *Medical Act 1939* as a specialist in the speciality with which the tribunal is concerned.

(2) The general manager may nominate a medical practitioner, who is qualified to be a member, for appointment as a member of a specialty medical assessment tribunal, and may so nominate in respect of each such tribunal.

(3) The general manager is not to nominate a medical practitioner who is an employee of the board.

(4) Each member of a specialty medical assessment tribunal is to be appointed by the Governor in Council by gazette notice.

(5) The Governor in Council may appoint alternate members of a specialty medical assessment tribunal.

(6) A member or alternate member is to be appointed for a term of not more than 3 years specified in the gazette notice making the appointment.

(7) Each alternate member so appointed must be a medical practitioner who is registered under the *Medical Act 1939* as a specialist in the speciality with which the tribunal, for which the appointee is an alternate member, is concerned.

(8) Alternate members for different tribunals may be appointed at different times and for different terms of appointment.

### **Vacation of office as member or alternate member of specialty medical assessment tribunal**

**166.** A person is taken to have vacated the office of member or alternate

member of a specialty medical assessment tribunal if the person—

- (a) dies; or
- (b) resigns that office by signed notice given to the Minister; or
- (c) becomes incapable of discharging the duties of the office; or
- (d) if the general manager nominated the person under section 165(2)—becomes an employee of the board.

### **Constitution of specialty medical assessment tribunal in absence of members**

**167.** If—

- (a) a member of a specialty medical assessment tribunal is unavailable to attend to the business of the tribunal; or
- (b) there is a vacancy in the membership of a specialty medical assessment tribunal;

an alternate member for the tribunal designated by the general manager is to act as a member of the tribunal.

### **Chairperson of specialty medical assessment tribunals**

**168.(1)** The persons who are to constitute a specialty medical assessment tribunal are to appoint from their number a chairperson of that tribunal.

**(2)** The chairperson is to preside over the meeting of that tribunal.

### **Proceedings of medical assessment tribunals**

**169.(1)** This section applies to the General Medical Assessment Tribunal and each specialty medical assessment tribunal.

**(2)** In respect of each tribunal to which this subsection applies—

- (a) the general manager may appoint a secretary; and
- (b) meetings are to be held at such places and times as the tribunal resolves, or, in the absence of the tribunal's resolution, as the general manager directs; and

- (c) in the event of disagreement among the persons constituting the tribunal, a determination of the tribunal is that of the majority of those persons.

### *Division 2—Jurisdiction of tribunals*

#### **Meaning of term**

**170.** In this division—

“**tribunal**” means the General Medical Assessment Tribunal and each of the specialty medical assessment tribunals referred to in section 160.

#### **Reference to tribunals**

**171.(1)** The general manager may refer to the appropriate tribunal—

- (a) any claim for compensation under this Act made in respect of an alleged injury; and
- (b) the matter of the fitness for work of a worker whose claim for compensation under this Act has been allowed.

**(2)** A reference under subsection (1)(b) may be made at any time and from time to time.

**(3)** On a reference to it under subsection (1)(a)—

- (a) if the general manager has not admitted that an injury has been suffered by a worker to whom the claim relates, and the nature of the injury—the tribunal is to determine—
  - (i) whether the matters alleged in the claim constitute an injury to the worker to whom the claim relates and, if so, the nature thereof; and
  - (ii) whether any incapacity for work resulting from the injury—
    - (A) is total or partial; and
    - (B) is permanent or temporary; and
  - (iii) if the tribunal determines that the worker has suffered an injury under the table of injuries resulting in permanent

impairment and the general manager asks—the nature and extent of the impairment; and

- (b) in any other case—the tribunal is to determine—
  - (i) whether any incapacity for work resulting from the injury—
    - (A) is total or partial; and
    - (B) is permanent or temporary; and
  - (ii) if the worker has suffered an injury under the table of injuries resulting in permanent impairment—the nature and extent of the impairment.

(4) On a reference to it under subsection (1)(b), the tribunal is to determine—

- (a) whether, at the time it makes its determination, there exists in the worker to whom the claim relates an incapacity for work, resulting from the injury in respect of which the claim was made; and
- (b) whether any such incapacity is total or partial; and
- (c) if the worker has suffered an injury under the table of injuries resulting in permanent impairment—the nature and extent of the impairment.

(5) A tribunal must assess the nature and extent of permanent impairment in the way prescribed under a regulation.

(6) A tribunal may, from time to time, defer its determination on a reference to it but a deferral must not be for longer than 3 months at any one time.

### **Limitation of tribunals' jurisdiction**

**172.(1)** A tribunal has no jurisdiction to determine whether a person to whom a claim for compensation under this Act relates is or is not, or was or was not, a worker at any time material to the claim.

(2) A determination of a tribunal is not admissible in evidence as proof, or as tending to prove, that a person to whom a claim for compensation under this Act relates, or who has suffered an injury, is or is not, or was or was not, a worker at any time material to the claim.

**Powers of tribunal to examine worker etc.**

**173.(1)** On a reference to it in respect of a nonfatal injury, a tribunal or any persons then and there constituting the tribunal, may make, at any time and from time to time, a personal examination of the worker who claims compensation under this Act, or who is in receipt of compensation under this Act, or the tribunal may arrange for such an examination to be made by a medical practitioner nominated by it.

**(2)** If a worker of whom an examination may be made under subsection (1)—

- (a) fails to attend on the date and at the time and place of which the worker has been given at least 7 days prior notice in writing by the secretary to the tribunal or by the general manager; or
- (b) having so attended, refuses to be examined as prescribed by subsection (1) by the tribunal, a member of the tribunal, or a medical practitioner nominated by the tribunal; or
- (c) obstructs, or attempts to obstruct, an examination such as is referred to in subsection (1);

the claim for compensation under this Act is to be deferred or, as the case may be, the worker's entitlement to compensation under this Act is suspended until the worker undergoes the examination or the tribunal, with the general manager's concurrence, exempts the worker from the examination.

***Division 3—Prescribed Disfigurement Assessment Tribunal*****Tribunal to be constituted**

**174.(1)** In addition to the tribunals prescribed by section 160, there is to be constituted as occasion requires, a tribunal called the Prescribed Disfigurement Assessment Tribunal.

**(2)** For the purpose of determining any matter referred to it, a prescribed disfigurement assessment tribunal is constituted by—

- (a) a medical practitioner, who is registered under the *Medical Act 1939* as a specialist in the speciality of plastic surgery, nominated by the chief health officer within the meaning of the *Health Act*

1937; and

- (b) a medical practitioner nominated by the general manager; and
- (c) a medical practitioner nominated by the claimant for compensation concerned in the reference to the tribunal.

(3) The medical practitioner nominated under subsection (2)(a) is the chairperson of the tribunal.

### **Proceedings of tribunal**

**175.(1)** The general manager may appoint a secretary to a prescribed disfigurement assessment tribunal.

(2) A prescribed disfigurement assessment tribunal is to meet at such places and times as it resolves or, in the absence of its resolution, as the general manager directs.

(3) The chairperson of a prescribed disfigurement assessment tribunal is to preside over all meetings of the tribunal.

(4) In the event of disagreement among members of a prescribed disfigurement assessment tribunal, a determination of the tribunal is that of the majority of its members or, if no 2 members are of the same opinion, of the chairperson of the tribunal.

### **Jurisdiction of tribunal**

**176.** The jurisdiction of a prescribed disfigurement assessment tribunal is that prescribed by part 9, division 4.

### ***Division 4—Proceedings for exercise of tribunals' jurisdiction***

#### **Meaning of term**

**177.** In this division—

“**tribunal**” means—

- (a) the General Medical Assessment Tribunal referred to in section 160; and

- (b) each of the specialty medical assessment tribunals referred to in section 160; and
- (c) each prescribed disfigurement assessment tribunal referred to in section 174.

### **Determinations in writing with reasons**

**178.** A tribunal—

- (a) is to furnish to the board the determination, in writing, of the tribunal in relation to a matter referred to it under this Act; and
- (b) is to include in such determination the reasons for the determination.

### **Further reference on fresh evidence**

**179.(1)** If a claimant for compensation under this Act whose claim, or any matter in respect of whose claim, has been determined by a tribunal produces to the board, within 12 months of the making of such determination, medical evidence that is adjudged as prescribed by subsection (2)—

- (a) to be relevant to the claim or matter so determined; and
- (b) to be factual medical data not known in relation to the claimant at the time of such determination;

the general manager is to again refer the claim or, as the case may be, matter to the appropriate tribunal for further determination.

**(2)** To warrant action required by subsection (1), the adjudgment of medical evidence referred to in the subsection must be agreed by 2 persons, namely, the chairperson or a deputy chairperson of the General Medical Assessment Tribunal and 1 of the following, whichever is appropriate—

- (a) the chairperson of the specialty medical assessment tribunal that determined the claim or matter in question (the “**original tribunal**”) or, if the chairperson is unavailable, a member of the original tribunal;
- (b) the chairperson of the prescribed disfigurement assessment tribunal that determined the claim or matter in question (the

**“original tribunal”**) or, if the chairperson is unavailable, a member of the original tribunal;

- (c) the deputy chairperson of the General Medical Assessment Tribunal that determined the claim or matter in question (the **“original tribunal”**) or, if the deputy chairperson is unavailable, a member of the original tribunal.

**(3)** An adjudgment made in accordance with subsection (2) is final and cannot be questioned in any proceedings whatever, before a tribunal or a court.

**(4)** Wherever practicable, a claim or matter referred under subsection (1) is to be further determined by a tribunal constituted by the same persons as constituted the tribunal that previously determined the claim or, as the case may be, matter.

### **Finality of tribunal’s determination**

**180.** A determination of a tribunal in relation to a matter that the tribunal is required by this Act to determine in respect of a claim for compensation under this Act is final and cannot be questioned in any proceedings whatever, before a tribunal or a court, except under section 179(1).

### **Right to be heard before tribunals**

**181.** On a reference under this part to a tribunal, the claimant for compensation is entitled to be heard before the tribunal in person, or by counsel, solicitor or agent.

### **Determinations notified to claimant**

**182.** The board is to notify—

- (a) a claimant for compensation under this Act to whom a tribunal’s determination relates; or
- (b) such claimant’s representative or agent;

of the tribunal’s determination (and the reasons for the determination), as soon as practicable after the board has received the determination.

## **PART 11—ENTITLEMENT TO DAMAGES INDEPENDENTLY OF ACT**

### **Application of ss 182B–182E**

**182A.(1)** Sections 182B to 182E apply to a worker who suffers an injury, other than a serious injury, in circumstances creating, independently of this Act, a legal liability in the worker's employer in relation to which the worker's employer is—

- (a) indemnified by the board under a policy in relation to the injury; or
- (b) required by this Act to be so indemnified.

**(2)** In subsection (1)—

**“injury”** does not include an injury in relation to which the employer is required to provide against the employer's legal liability by—

- (a) another Act; or
- (b) a law of another State, the Commonwealth or another country.

**“serious injury”** of a worker means a certificate injury or an injury resulting in the worker's death.

### **Worker must make a choice about damages at law in certain cases**

**182B.(1)** A worker to whom lump sum compensation is payable under part 9, division 2<sup>29</sup> for an injury is not entitled to both—

- (a) lump sum compensation for the injury; and
- (b) damages at law for the injury.

**(2)** The worker must choose between accepting lump sum compensation offered under this Act and seeking damages at law.

**(3)** The worker must give the board notice of the worker's choice in the approved form.

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<sup>29</sup> Part 9 (Quantum of compensation), division 2 (Compensation (lump sum) for injury resulting in permanent impairment)

(4) If the worker fails to give the board notice of the worker's choice before the worker seeks damages at law, the worker is taken to have made a choice to reject lump sum compensation for the injury.

(5) The worker cannot change the worker's choice after—

- (a) notice of it is given to the board; or
- (b) it is taken to have been made under subsection (4).

(6) The worker is taken to seek damages at law for the injury when the worker—

- (a) seeks to negotiate a damages settlement with the board; or
- (b) starts proceedings at law for damages.

### **Consequences of choosing to seek damages at law**

**182C.(1)** This section applies if the worker is not entitled to, or rejects, lump sum compensation under this Act for an injury and seeks damages at law for the injury.

(2) The worker's entitlement to compensation under this Act stops and the following rules in relation to costs in the worker's proceeding for damages apply.

(3) No order as to costs, other than an order allowed under this section, is to be made by the court in the proceeding, unless the board certifies that the worker's injury is a serious injury.

(4) If a party to the proceeding makes an offer of settlement that is refused and the court later awards damages to the worker, the court must, in the following circumstances, make the order about costs provided for—

- (a) if the amount of damages awarded is equal to or more than the worker's final offer—an order that the defendant pay the worker's party and party costs from the day of the final offer;
- (b) if the amount of damages awarded is equal to or less than the defendant's final offer—an order that the worker pay the defendant's party and party costs from the day of the final offer.

(5) If the award of damages is less than the worker's final offer but above the defendant's final offer, subsection (3) applies.

(6) An order as to costs for an interlocutory application may be made only if the court is satisfied that the application has been brought because of unreasonable delay on the part of 1 of the parties.

(7) If an entity other than the worker's employer or the board is joined as a defendant in the proceeding, the court may make an order as to costs in favour of, or against, the entity according to the proportion of liability of the defendants and the justice of the case.

(8) The court may make an order for costs against the worker's employer or the board under subsection (7) only if—

- (a) the order is in favour of the entity; and
- (b) the worker's employer or the board joined the entity as a defendant.

### **Access to common law damages if no previous offer of lump sum compensation made**

**182D.(1)** A worker who has not received an offer of lump sum compensation under section 132<sup>30</sup> may seek damages at law for an injury suffered after the commencement only if the board gives to the worker a certificate under this section.

(2) The worker must apply in the approved form to the board for a certificate.

(3) The board may only, and must, give the certificate if—

- (a) the board decides the injury is an injury within the meaning of this Act and was suffered after the commencement; and
- (b) the degree of the worker's permanent impairment resulting from the injury has been assessed in the way mentioned for the injury under section 130A(1).<sup>31</sup>

(4) However, the board may issue the worker with a conditional certificate if—

- (a) the degree of the worker's permanent impairment is not agreed or

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<sup>30</sup> Section 132 (Offer and payment of compensation after assessment)

<sup>31</sup> Section 130A(1) (Assessment of degree of permanent impairment)

has not been decided by a tribunal; or

(b) there is an urgent need to bring proceedings for damages.

(5) If a conditional certificate is given, the worker may start proceedings at law for damages for the injury, but the proceedings are stayed until the board makes the certificate unconditional.

(6) The board must make the certificate unconditional when it is satisfied about the matters mentioned in subsection (3).

(7) If the board is unable to make a decision about a matter mentioned in subsection (3)(a) or (b), the board must—

(a) refer the matter to a medical assessment tribunal for decision; and

(b) in an appropriate case, ask the tribunal to assess the worker's degree of permanent impairment resulting from the injury.

(8) If the board makes a decision under subsection (3)(a), a worker aggrieved by the decision may appeal the decision in the way, and within the time, prescribed under the regulations.

(9) A decision of a medical assessment tribunal on a reference under this section is final and cannot be questioned in any proceedings whatever before a tribunal or a court.

### **Decision not to seek damages at law reviewable in certain circumstances**

**182E.(1)** A worker who chooses, under section 182B,<sup>32</sup> to accept lump sum compensation may ask the board to consider fresh medical evidence about the worker's injury.

(2) The board may consider the medical evidence only if the worker satisfies the board that—

(a) at the time the worker made the choice, there was no reason to believe that further material deterioration in relation to the worker's injury would happen; and

(b) the medical evidence—

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<sup>32</sup> Section 182B (Worker must make choice about damages at law in certain cases)

- (i) was not available at the time the worker made the choice; and
- (ii) establishes there has been a further material deterioration in relation to the worker's injury; and
- (iii) tends to establish that the degree of permanent impairment sustained by the worker from the injury has reached the prescribed level.

(3) The board must consider the additional medical evidence produced by the worker and may accept or reject the evidence.

(4) If the board rejects the evidence, the worker may require the board to refer the evidence to a review panel for review.

(5) The review panel must consider the additional medical evidence produced by the worker and may accept or reject the evidence.

(6) A decision of the review panel is final and may not be appealed against.

(7) If the board accepts, or the review panel decides, that the medical evidence tends to establish that the degree of permanent impairment sustained by the worker has reached the prescribed level—

- (a) the board and worker may agree about the degree of the worker's permanent impairment; or
- (b) if the board and worker cannot agree, the board must refer the question of degree of permanent impairment to an appropriate medical assessment tribunal for decision.

(8) For this section, a worker reaches the “**prescribed level**” if, for a certificate injury, the degree of permanent impairment sustained by the worker—

- (a) provides the worker with a further lump sum compensation entitlement of at least 10% of statutory maximum compensation; and
- (b) brings the worker's entitlement to lump sum compensation for the injury to at least 20% of statutory maximum compensation.

(9) In this section—

“**review panel**” means a panel consisting of the chairperson or deputy

chairperson of the general medical assessment tribunal and another member of an appropriate medical assessment tribunal.

### **Reduction of damages recoverable at law**

**183.(1)** If an injury in respect of which compensation under this Act is payable is suffered by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer who is—

- (a) indemnified by the board under a policy in respect of the injury; or
- (b) required by this Act to be so indemnified;

to pay damages in respect of the injury, then—

- (c) the amount of such damages that the employer is legally liable to pay is reduced by the total amount paid or payable from the fund, by way of compensation under this Act in respect of the injury; and
- (d) subject to this part, the worker is, or the worker's dependants are, to receive from the fund such reduced amount.

**(2)** In subsection (1)—

**“injury”** does not include an injury in respect of which the employer is required by—

- (a) some other Act of Queensland; or
- (b) a law enacted by any other State or a Territory, or by the Commonwealth or any other country;

to provide against the employer's legal liability in respect of the injury.

**(3)** If the injury arises out of or in the course of work for which the worker's labour is being used by a person to whom the worker's services are lent or hired by another, the provisions of this section apply as if the person were the worker's employer, and in this part **“employer”** includes such a person as if the person were the employer of the worker in question.

**Assessment by court of total liability of fund****184.** If—

- (a) damages are awarded in an action in respect of an injury to which section 183(1) applies; or
- (b) damages are to be paid in settlement of a claim in an action in respect of an injury to which section 183(1) applies;

the court in which is the action, on application of the plaintiff, the defendant, or the board, is to determine the total amount prescribed to be paid from the fund, by way of compensation under this Act in respect of the injury, and its determination is binding on the board and all persons entitled to payment by the board in respect of the injury.

**Notice to board of claims for damages**

**185.(1)** When in court proceedings relating to an injury in respect of which compensation under this Act is payable a claim for damages in respect of the injury is made against an employer who—

- (a) is indemnified by the board; or
- (b) is required by this Act to be indemnified by the board;

under a policy against liability for such damages, the claimant—

- (c) must serve on the board a copy of the writ or other process by which the claim is made; and
- (d) before any further step is taken by the claimant in the proceedings, must file in the court in the proceedings an affidavit of such service.

**(2)** Service on the board under subsection (1) must be effected no later than 28 days following service of the writ or other process by which the claim is made on the other party or parties to the proceedings.

**(3)** The board may, at any time during the proceedings in which a claim referred to in subsection (1) is made, elect to be joined with the employer against whom the claim is made, as a party to the proceedings, by filing in the court a notice to that effect.

- (4)** This section does not apply—

- (a) where the proceedings in question are taken outside Queensland; or
- (b) to an application for leave of a court to issue any process of which a copy is required by this section to be served on the board.

### **Recovery of damages from board if employer not available**

**186.(1)** If a worker suffers injury in respect of which compensation under this Act is payable in circumstances conferring a right of action for damages in respect of the injury against the worker's employer who—

- (a) has died; or
- (b) being a corporation, has ceased to exist; or
- (c) cannot be served with process;

a person who might have obtained judgment for damages against the employer in respect of the injury may recover by action against the board, as if the board were the employer, the sum that would have been payable by way of damages to that person by the board under section 183(1) had judgment been given against the employer.

**(2)** The entitlement conferred by subsection (1) cannot be exercised by court proceedings unless the person seeking the damages proves that notice of the person's claim for damages and a short statement of the grounds thereof were given to the board—

- (a) as soon as practicable after the person became aware of the fact giving rise to the entitlement; or
- (b) at such time afterwards that the board would not be prejudiced by want of such notice and statement.

**(3)** Subsection (1) does not confer on a person any right or advantage that the person would not have had if action had been brought or pursued against the employer of the worker who has suffered injury.

### **Board's carriage of proceedings in which it is joined**

**187.(1)** If the board elects under section 185 to be joined as a party to proceedings—

- (a) it is entitled to conduct, on behalf of the employer with whom it is joined, all proceedings taken to enforce the claim in question or to settle any matter in respect thereof, unless it permits, by writing, the employer to conduct the proceedings;
- (b) the employer, immediately upon being required by the board so to do, is to execute all such documents as the board considers necessary to allow the proceedings to be conducted by the board.

(2) If an employer with whom the board is joined in proceedings—

- (a) is absent from Queensland or, after reasonable inquiry, cannot be found by the board; or
- (b) refuses, fails, or is unable to execute documents referred to in subsection (1);

the board is authorised to execute on behalf of the employer all such documents as it requires the employer to execute for the purposes of subsection (1).

### **Court procedures on claims affected by s 185 or 186**

**188.(1)** A claim to which section 185 or 186 applies that is made in proceedings in the Supreme Court, or in a District Court, is to be heard and determined by a judge without a jury.

(2) If a claim to which section 185 or 186 applies is made by a worker who has suffered the injury to which the claim relates, the court may, on application by any party to the proceedings in which the claim is made and on such terms as the court considers just, order the worker to submit to a personal examination by a registered person named in the order.

(3) The court may at any time discharge or vary an order made under subsection (2).

(4) If, in the opinion of the court that has made an order under subsection (2), the worker required by the order to submit to a personal examination has wilfully failed to comply with the order, without reasonable excuse, the court may enter judgment against the claimant on such terms as it considers just.

**Status of worker or employer extends to claims for damages**

**189.(1)** A person declared by this Act to be, for the purposes of this Act, a worker is a worker for the purposes of an action to recover damages in respect of an injury to which section 183(1) applies.

**(2)** A person or body declared by this Act to be, for the purposes of this Act—

- (a) an employer; or
- (b) a person or body by which a worker is employed;

is an employer for the purposes of an action to recover damages in respect of an injury to which section 183(1) applies.

**Board's charge on damages for compensation paid**

**190.(1)** This section applies to an injury suffered by a worker in circumstances creating—

- (a) an entitlement to compensation under this Act; and
- (b) a legal liability in the worker's employer, or other person, to pay damages in respect of the injury, independently of this Act.

**(2)** An amount paid as compensation under this Act to or on account of a person in respect of an injury to which this section applies, at a time or in respect of a period before the person becomes entitled to payment of damages by—

- (a) the worker's employer who is not indemnified by the board against liability for the injury; or
- (b) any person other than the worker's employer;

constitutes a first charge on those damages.

**(3)** Such an employer, or other person, from whom such damages are recoverable is to pay to the board the amount of such first charge or, if such damages do not exceed the amount of such first charge, the whole of such damages.

**(4)** Payment to the board under subsection (3), to the extent of the payment, satisfies the liability of such employer or other person for payment of such damages.

(5) If a person to whom or on whose account compensation under this Act is paid in respect of an injury to which this section applies has not recovered, or taken proceedings to recover, damages in respect of the injury from a person other than the worker's employer, the board is entitled to be indemnified for the amount of such compensation by the last person to the extent of such person's liability for such damages, so far as the amount of damages payable in respect of the injury by such person extends and, to that end, the board is subrogated to the rights of the first person in respect of the injury.

(6) Payment made as indemnity under subsection (5), to the extent of the payment, satisfies the liability of the other person upon any judgment for damages in respect of the injury in question obtained against the person.

(7) It is not competent for a person to settle, for a sum less than the amount that is a first charge on damages under subsection (2), a claim for damages had by the person independently of this Act in respect of an injury to which this section applies without the board's consent in writing first obtained.

(8) If, without the board's consent, such a settlement is made, then to the extent that the damages recovered are insufficient to meet all payments due to the board under this section, the board is entitled to be indemnified by the employer or other person who is required by the settlement to pay the damages and, to that end, the board is subrogated to the rights of the person who has sought the damages, as if the settlement had not been made.

(9) In addition to all rights of action had by the board to give effect to its right to indemnity prescribed by this section, all questions as to that right and the amount of such indemnity may, in default of agreement, be determined by an industrial magistrate if the persons concerned in the indemnity consent.

### **Requirements of part to prevail**

**191.** A provision of any other Act or rule of law that is inconsistent with a requirement of any provision of this part applies subject to this part.

**Meaning of “this Act”**

**192.** In this part—

“**this Act**” includes the *Workers' Compensation Act 1916*.

**PART 12—MISCELLANEOUS PROVISIONS****Offence to charge worker for compensation for injury**

**193.(1)** A person is not, directly or indirectly, to take or receive from a worker, whether by way of deduction from wages or otherwise, money in respect of—

- (a) a liability or possibility of liability arising under this Act; or
- (b) a liability or possibility of liability to pay damages independently of this Act.

**(2)** Money taken or received from a worker in contravention of subsection (1), with or without the consent of the worker, may be recovered by the worker by action in a court of competent jurisdiction as a debt due and owing to the worker, and unpaid, from—

- (a) the person who so took or received the money; and
- (b) where that person was acting on behalf of the employer of the worker in taking or receiving the money—the employer of the worker.

**(3)** A worker is not entitled to recover such money more than once.

**(4)** Subsection (1) does not apply to money taken from a sharefarmer by or on behalf of an employer of the sharefarmer in respect of the premium payable for any period of insurance for the full amount of the employer's liability to pay compensation under this Act to the sharefarmer and to all workers employed by the sharefarmer if—

- (a) the money is taken by way of deduction from moneys payable to the sharefarmer under the sharefarming agreement; and
- (b) the amount taken in respect of the premium for a particular period

does not exceed the part of the premium that is proportionate to the share received by the sharefarmer.

### **Offences involving fraud**

**194.(1)** A person who—

- (a) with intent to defraud, makes an application for compensation under this Act in respect of an injury for which compensation under this Act is not payable; or
- (b) obtains, or attempts to obtain, compensation, or a benefit, under this Act by means of a statement or representation that the person does not believe to be true; or
- (c) obtains, or attempts to obtain, compensation, or a benefit, under this Act by misrepresenting the person's capacity for work; or
- (d) in any manner, defrauds or attempts to defraud the board;

commits an offence against this Act.

Maximum penalty—200 penalty units or 1 year's imprisonment.

**(2)** A person to whom or on whose account compensation under this Act is being paid on account of total incapacity for work who, without reasonable excuse, engages in any calling without informing the board of the person's return to work, or intention of returning to work, is to be taken to have defrauded the board of all payments made by the board to or on account of such person after commencement of such engagement in the calling and before the board is so informed.

**(3)** A person who, without reasonable excuse, makes an application for compensation under this Act because of total incapacity for work and, after making the application, engages in any calling without first informing the board of the person's intention to return to work, is taken to have attempted to defraud the board.

**(4)** If on a complaint of an offence defined in subsection (1) it is proved that the defendant obtained payment by the board, by conduct constituting the offence, then, whether or not a conviction is recorded or a penalty is imposed, the court may order the defendant to repay to the board the amount of such payment and the board may then recover such amount from the defendant as prescribed.

(5) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of such conduct would constitute a separate offence, 2 or more instances of such conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to such conduct, and may be charged and be dealt with on 1 complaint.

### **Board's liability confined to compensation**

**195.** The board is not to be taken to be—

- (a) an employer of a worker; or
- (b) liable to pay moneys on account of a worker as an employer, or other person in a contractual relationship with the worker;

because the board has paid, is paying, or is liable to pay compensation under this Act to or on account of the worker.

### **Proceedings for offence**

**196.(1)** A person who contravenes a provision of this Act commits an offence against this Act (whether or not a right to recover moneys also exists in respect of the contravention) and, if a penalty is not expressly prescribed for the contravention, is liable to a penalty of 20 penalty units.

(2) Proceedings in respect of an offence against this Act are to be taken in a summary way before an industrial magistrate on the complaint of—

- (a) the general manager; or
- (b) a delegate of the general manager; or
- (c) a person authorised for the purpose by the general manager, generally or in a particular case.

(3) A person described in a complaint as authorised to lay the complaint is to be taken as so authorised in the absence of evidence to the contrary.

(4) Proceedings in respect of an offence against this Act may be commenced within 1 year following the commission of the offence, or within 6 months after the commission of the offence comes to the knowledge of the general manager, whichever period is the longer.

(5) All penalties recovered under this Act are to be paid into the fund.

(6) The provisions of subsection (1) and of any other section of this Act that prescribe a penalty for an offence are to be construed, in relation to an offence alleged to have been committed before 1 July 1991, as if the penalty prescribed for the offence by those provisions were the penalty prescribed for the corresponding offence under the *Workers' Compensation Act 1916* instead of the penalty actually prescribed by those provisions.

### **Recovery of debts under this Act**

**197.(1)** The board may engage the services of debt collecting agencies for the purpose of recovering debts due and payable to the board.

(2) Every sum—

- (a) prescribed to be payable to the board as a premium, additional premium or charge; or
- (b) prescribed to be recoverable by the board on any account whatever;

constitutes a debt due and payable to the board by each person liable to pay such premium or charge, or from whom the sum is recoverable, under this Act.

(3) A debt due and payable to the board may be recovered—

- (a) on the complaint of the general manager, or a delegate of the general manager, before an industrial magistrate; or
- (b) by action for debt, at the suit of the general manager, or a delegate of the general manager, in a court of competent jurisdiction.

(4) Proceedings for recovery of a debt due and payable to the board may be taken in accordance with both paragraphs (a) and (b) of subsection (3).

(5) However, the amount of such debt may be recovered only once.

(6) If in respect of any contravention or failure to comply with a provision of this Act there exists—

- (a) a right to recover moneys as a debt; and
- (b) a right to proceed for a penalty as for an offence;

the right to recover moneys may be pursued and enforced even though the

right to proceed for a penalty has not been pursued.

(7) Payment of a penalty under this Act does not relieve a person from liability to be assessed and to pay any premium, or from liability to pay any other moneys, for which the person is liable under this Act.

### **Recovery of amounts from State**

**198.(1)** This section applies if—

- (a) the board pays compensation under this Act in relation to an injury sustained by a government worker; and
- (b) a non-policy compensation arrangement exists between the board and a government entity for the worker.

(2) The government entity must pay the board the total of—

- (a) the amount paid; and
- (b) the reasonable amount the board fixes as its charge for administering the claim for compensation.

### **Powers of industrial magistrate**

**199.** For the purposes of this Act, an industrial magistrate has all the powers conferred on an industrial magistrate by the *Industrial Relations Act 1990* or by the rules of court or the regulations made for the purposes of that Act, so far as those powers are appropriate in respect of matters arising under this Act.

### **Evidentiary value of certificates**

**200.(1)** In proceedings relating to a matter arising under this Act a certificate purporting to be signed by the general manager, or a delegate of the general manager, or a person authorised for the purpose by the general manager, generally or in a particular case, is admissible in evidence in accordance with subsections (2) to (4).

(2) A certificate—

- (a) that notice of acceptance of a risk, or of adjustment of a premium, was duly sent on a date specified in the certificate to a person

specified in the certificate and as to the amount of premium demanded by such notice; or

- (b) that a default assessment, or a decision on an objection made to a default assessment, was duly made, and that notice of the assessment or decision was duly sent on a date specified in the certificate to a person specified in the certificate at an address that is the person's place of business or place of residence last known to the board, and as to the amount of premium demanded by such notice of default assessment, or of decision on objection; or
- (c) that commission of an offence against this Act came to the knowledge of the general manager on a date specified in the certificate; or
- (d) that an address to which any notice or other document was sent by post to any person is that person's place of business or place of residence last known to the board; or
- (e) that a worker has a degree of permanent impairment entitling the worker to a stated percentage of statutory maximum compensation;

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate.

**(3)** A certificate—

- (a) that no objection has been received from a person specified in the certificate against a default assessment within 21 days after notice of the assessment was given to the person; or
- (b) that an amount specified in the certificate is due and payable to the board and unpaid by a person specified in the certificate in respect of premium or a charge; or
- (c) that an amount specified in the certificate is due and payable to the board and unpaid by a person specified in the certificate in respect of an overpayment of compensation under this Act or under any previous enactment corresponding to this Act; or
- (d) that a person specified in the certificate and stated in the certificate to be an employer has failed to comply with section 44, and as to the manner in which the person has so failed to comply;

is prima facie evidence of the matters contained in the certificate.

(4) A certificate that an amount specified in the certificate is due and payable to the board and unpaid by a person specified in the certificate and stated in the certificate to be an employer who has failed to comply with section 44 in respect of any worker employed by the person, and that the amount is due and payable on account of moneys paid to or on account of such uninsured worker from the fund, is prima facie evidence of the matters contained in the certificate.

### **Entitlements to compensation independently of Act prohibited and void**

**201.(1)** It is not competent to the Industrial Relations Commission to include in an award made by it, or to approve in relation to an industrial agreement submitted to it, a provision for accident pay, or other payment, on account of a worker's suffering an injury.

(2) The Registrar of the Industrial Relations Commission is not to register an industrial agreement or any other agreement submitted to the registrar that provides for payment of accident pay, or other payment, on account of a worker's suffering an injury.

(3) A provision of—

- (a) an award or industrial agreement made or approved under the *Industrial Relations Act 1990*; or
- (b) an award or agreement continued in force by the *Industrial Relations Act 1990*;

being, in the case referred to in paragraph (b), a provision inserted in the award or agreement after the passing of the *Workers' Compensation Act Amendment Act 1982*, is of no force or effect to the extent that it provides for payment by, or on behalf of an employer, of accident pay, or other payment, on account of a worker's suffering an injury.

### **Disclosure of information**

**202.(1)** Despite the provisions of any other Act a person who is—

- (a) the commissioner of pay-roll tax appointed for the purpose of the *Pay-roll Tax Act 1971*; or

- (b) the director, an inspector or another officer concerned in the administration of the *Workplace Health and Safety Act 1995*;

may disclose to the board any information in the person's possession, or facts of which the person has knowledge, relating to any matter under this Act or touching the administration of this Act.

(2) Despite any provision of this Act or any other Act, the board—

- (a) may disclose to the commissioner of pay-roll tax, any information in its possession or facts of which it has knowledge, relating to any matter under the *Pay-roll Tax Act 1971* or touching the administration of that Act; and
- (b) may disclose to such officers of the department of government within which this Act is administered as are designated for the time being in that behalf by the board, statistical or other information of assistance to that department in the discharge of its administrative functions.

(3) A member of the board or a member of the staff of the board is not to disclose information that comes to the member's knowledge because of holding an appointment on or with the board except—

- (a) where the disclosure is for the purposes of the board or of this Act; or
- (b) where the disclosure is authorised by subsection (2); or
- (c) where the disclosure is required or authorised by any other Act to be made; or
- (d) where the disclosure is authorised by the general manager, generally or in a particular case.

### **Board's information not actionable**

**203.(1)** Action for damages or proceedings for other redress cannot be brought by any person claiming to be aggrieved on account of material being an opinion, comment or information concerning—

- (a) the physical or mental condition; or
- (b) the capacity or incapacity for work; or
- (c) the credence to be given to statements or behaviour;

of a person for whom compensation under this Act is sought, or is being paid, which material is in the possession of the board and the disclosure of which can be traced to that possession.

(2) A court in which any action or proceedings of a description referred to in subsection (1) is or are brought, contrary to that subsection, is to order the action or proceedings to be struck out.

### **General manager may waive or reduce prescribed addition to premium**

**204.** If, under this Act, an employer is liable to pay the board an additional premium, the general manager is authorised—

- (a) to waive the payment of such part of the premium as is additional; or
- (b) to reduce the amount of the additional premium to such amount as the general manager considers appropriate;

if, in either case, the general manager considers such waiver or reduction is justified, having regard to all the circumstances of the case.

### **Service of documents**

**205.** A notice or other document to be given by the board to any person for the purposes of this Act may be given—

- (a) by service personally on the person to whom it is to be given, or on the person's agent; or
- (b) by post addressed to the person to whom it is to be given, at the person's place of business or place of residence last known to the board.

### **References to Workers' Compensation Act 1916**

**206.** In an Act or document, a reference to the *Workers' Compensation Act 1916* is taken to be a reference to this Act.

**Approval of forms**

**206A.** The board may approve forms for use under this Act.

**PART 13—REGULATIONS****Regulations**

**207.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may make provision about the following—

(a) fixing and varying—

(i) premiums and rates of premium; and

(ii) surcharges; and

(iii) demerit charges;

to be paid or made in relation to policies, including providing for an increase in such a rate or charge in any case where, because of want of care on the part of the insured or for other reason appearing to the board to be sufficient, the risk carried by the board is greater than that usually carried in cases of accident insurance of a similar description; or

(b) providing for payment of additional premiums in relation to policies, and fixing the rates of additional premiums, in cases where employers fail to furnish to the board the prescribed annual returns within the time determined and notified by the board; or

(c) extension of cover under policies to self-employed persons, the conditions or provisions to be contained or implied in policies, and the nature and extent of risk covered by policies; or

(d) acceptance by the board of risk under insurance contracts other than policies, the conditions or provisions to be contained or implied in such contracts, the nature and extent of risk covered by such contracts; or

(e) the basis for fixing, as may be practicable, amounts of

- compensation payable under this Act, having regard to age, debility, infirmity or other factor appearing to the board to be relevant; or
- (f) amounts that may, or may not, be taken into account when deciding the weekly rate of salary or wages; or
  - (g) the proper conduct generally, by or on behalf of the board of the business of accident insurance; or
  - (h) the duties of and fees payable to registered persons under this Act; or
  - (i) the proceedings of medical assessment tribunals constituted for the purposes of this Act, including—
    - (i) securing attendance before such tribunals of persons whose attendance is required by—
      - (A) the general manager or a delegate of the general manager; or
      - (B) a claimant for compensation under this Act; and
    - (ii) taking of evidence before such tribunals on oath or affirmation, or by way of statutory declaration, and administration of an oath or affirmation for the purpose; and
    - (iii) remuneration of members of such tribunals; and
    - (iv) the effectual operation of such tribunals for the purposes for which they are constituted; or
  - (j) empowering the board—
    - (i) to review and, if the board considers it just, to reduce charges made by registered persons for medical treatment of injured workers; or
    - (ii) to enter into agreements or arrangements with registered persons, or the management bodies of hospitals or other institutions for provision of medical treatment, other treatment, or rehabilitation of, or aid to, injured workers; or
  - (k) recovery of costs of proceedings under this Act and limitation of costs recoverable in proceedings conducted for the purposes of this Act; or

- (l) returns to be furnished to the board, including—
  - (i) the persons by whom they are to be furnished (whether employers or other persons); and
  - (iii) the time and manner in which they are to be furnished; or
- (m) empowering the board to assess premiums to be paid, as the board directs, by—
  - (i) employers; or
  - (ii) other persons with whom the board has made contracts of insurance; or
  - (iii) persons required to furnish returns; or
  - (iv) persons whom the board believes to be employers;and to increase, reduce and enforce payment of such assessments; or
- (n) the hearing and determination of objections to any assessment of the board and of appeals in relation to such determinations and the payment of costs in respect of appeals; or
- (o) the time in which and place where any assessment of the board is to be paid; or
- (p) the payment to, and acceptance by, the board of assessments by instalments and the conditions of such assessments, including—
  - (i) payment of interest; and
  - (ii) the rate and calculation of interest; and
  - (iii) security to the board for payment of instalments and interest;and the consequences of and remedies upon a failure to make payment due or to honour obligations under any security given to the board for payment of such assessments; or
- (q) investment of moneys payable under this Act by way of compensation to, or on account of, minors or other persons under any disability; or
- (r) providing for extension of time limited by this Act for requiring any matter to be referred to an industrial magistrate for hearing and determination; or

- (s) empowering the general manager, a delegate of the general manager or an officer authorised by the general manager for the purpose to summon and examine any person in relation to any matter arising under this Act, the administration of an oath or taking of an affirmation or statutory declaration for the purpose of taking evidence on such an examination, and procedures for enforcement of such a summons in the event of a person's failure to obey the summons; or
- (t) the mode of service of process in legal proceedings, or of any notice or document, for the purposes of this Act, which is not provided for in part 12; or
- (u) the evidentiary value and, where necessary, the admissibility into evidence, in proceedings before any court, tribunal or person for the purposes of this Act of any certificate, or copy of or extract from any record kept under this Act in respect of any matter under this Act, which is not provided for by part 12; or
- (v) contraventions of a regulation and fixing a penalty for a contravention of a fine of not more than 4 penalty units.

### **Board's power to fix premiums and charges when regulations silent**

**208.(1)** If in respect of a policy the regulations are silent as to the rate of premium to be charged or demerit charge to be made, or as to an increase in such rate or charge on account of relevant factors, it is to be taken that the board is authorised to fix the amount of such premium, demerit charge, or increase in such premium or charge for the policy.

**(2)** To remove any doubt, it is declared that subsection (1) applies, and is always taken to have applied, whether or not a regulation provides, or ever provided, for any of the things mentioned in subsection (1).

## **PART 14—TRANSITIONAL AND SAVING PROVISIONS**

### **Application of Act to existing policies**

**209.** This Act applies in relation to every policy of accident insurance or of other insurance subsisting immediately before the commencement of this Act, being—

- (a) a policy issued by the board under the *Workers' Compensation Act 1916*; or
- (b) a policy issued by the insurance commissioner or the State Government Insurance Office (Queensland), which, under the *Workers' Compensation Act Amendment Act 1978*, is to be deemed to be a policy issued by the board.

### **References in other Acts etc.**

**210.(1)** A reference in any Act or in any proclamation, order in council, regulation, rule, by-law or ordinance made under any Act, or in any document, to the insurance commissioner or the State Government Insurance Office (Queensland), so far as it relates to the carrying on of the business of accident insurance or other insurance under the *Workers' Compensation Act 1916*, is to be read as a reference to the board.

**(2)** In an Act or document, a reference to the State Accident Insurance Fund may, if the context permits, be taken to be a reference to the Workers' Compensation Fund.

### **Continuance of existing offices**

**211.** A person who, immediately before the commencement of this Act, holds an office for the purposes of the *Workers' Compensation Act 1916* continues to hold the office for the purposes of this Act until the person ceases to hold the office in accordance with law.

**Claims relating to injury predating Act**

**212.(1)** An application for compensation, which—

- (a) having been made under the *Workers' Compensation Act 1916*, has not been determined at the commencement of this Act; or
- (b) being made after the commencement of this Act, relates to a death that occurred before the commencement of this Act, or to an incapacity, disability or loss resulting from injury suffered before the commencement of this Act;

is to be determined, and benefits (if any) are to be paid in respect of it, in accordance with the *Workers' Compensation Act 1916* as amended and in force at the time the injury to which the application relates was suffered, subject to subsection (2).

**(2)** A person who has an entitlement to weekly payments of compensation under the *Workers' Compensation Act 1916* which entitlement has not terminated at the commencement of this Act, continues to have that entitlement, but in respect of such weekly payments, or other payments, made to or on account of that person after the commencement of this Act—

- (a) that person is to be given the benefit of every increase in the amount of compensation, or other payments, prescribed by this Act in relation to an entitlement of a like description, before that entitlement terminates; and
- (b) if that entitlement is to weekly payments for a period of 26 weeks and has not terminated before 1 March 1991—that person is to be given the benefit of the increase to 39 weeks for which weekly payments of compensation under this Act are payable; and
- (c) if that entitlement is to weekly payments for a period of 26 weeks and terminates before 1 March 1991—the period for which such weekly payments are payable to that person is limited to 26 weeks, in accordance with the *Workers' Compensation Act 1916*.

**(3)** Subsection (2) does not apply to an entitlement to weekly payments of compensation in respect of the injury silicosis or anthraco-silicosis.

**(4)** If a person who, at the commencement of this Act, is in receipt of compensation under the *Workers' Compensation Act 1916* dies leaving a

surviving spouse or dependant who would, under that Act, have an entitlement to further benefits, that entitlement continues, and an application in respect of the entitlement is to be determined under that Act.

(5) However, the applicant is to be given the benefit of every increase in the amount of compensation—

- (a) prescribed by this Act in relation to that entitlement before the entitlement terminates, in the case of an entitlement to periodic payments; and
- (b) prescribed by this Act in relation to that entitlement at the time the entitlement arises, in the case of an entitlement to payment of lump sum compensation.

### **Claims relating to injury**

**213.(1)** If a worker suffers injury before the commencement, an application for compensation under this Act in relation to the injury, whether made before or after the commencement, must be decided under the Act as in force at the time the injury was suffered.

(2) An entitlement to compensation under this Act is to be decided, and paid, in accordance with the Act as in force at the time the injury was suffered.

(2A) However, if the injury was one suffered after the commencement of this Act and before the commencement of this section, a person entitled to lump sum compensation, weekly payments or dependant allowances under this Act is entitled to the benefit of every increase in the prescribed base rate.

(3) Despite subsection (1), if the application is for compensation for the cost of hospitalisation under section 148, the application is to be decided, and compensation paid, under the Act as in force on 1 January 1995 or from time to time after that day.

(4) In this section—

**“commencement”** means—

- (a) for an injury in relation to which compensation is sought under section 5.2A—the day the section comes into force; or
- (b) for another injury—1 January 1996.

**“prescribed base rate”** means a weekly rate of compensation under this Act that is 65% of the weekly minimum rate of wages for the time being provided by the Engineering Award—State, made by the Industrial Relations Commission, in relation to employees of the class ‘Wage Group C10’ in the southern division.

### **Application of amendments made by Common Law Practice and Workers' Compensation Amendment Act 1994**

**214.(1)** To remove any doubt, the amendments of this Act made by the *Common Law Practice and Workers' Compensation Amendment Act 1994* apply only to an injury or death that happens on or after 17 October 1994.

**(2)** Subsection (1) is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

**(3)** This section expires 3 years after it commences.

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 20 December 1996. Future amendments of the Workers' Compensation Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 97 of 1991	1 March 1993
2	to Act No. 48 of 1993	28 January 1994
3	to Act No. 13 of 1995	28 April 1995
4	to Act No. 56 of 1995	1 January 1996

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	4
Changed names and titles	4
Corrected minor errors	2
Obsolete and redundant provisions	3, 4
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## 6 List of legislation

### **Workers' Compensation Act 1990 No. 110**

date of assent 18 December 1990

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1991 (see s 2(2))

as amended by—

### **Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 1**

date of assent 17 December 1991

amendment 3 commenced 1 January 1992 (1991 SL No. 200)

amendments 14 and 15 commenced 1 January 1991 (see s 3 sch 1)

remaining provisions commenced on date of assent

### **Workers' Compensation Amendment Act 1993 No. 48 (as amd 1994 No. 15 s 3 sch 2 (as from 30 September 1993))**

date of assent 30 September 1993

s 4(2) commenced 1 January 1991

remaining provisions commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 2**

date of assent 10 May 1994

commenced on date of assent

### **Anti-Discrimination Amendment Act 1994 No. 29 ss 1–3 sch**

date of assent 28 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (see s 2)

### **Workers' Compensation Amendment Act 1994 No. 66**

date of assent 1 December 1994

ss 5(3), 21 commenced 1 January 1995 (see s 2(1), (4), 1994 SL No. 467)

s 9 commenced 1 July 1995 (see s 2(2))

s 17 commenced 9 June 1995 (1995 SL No. 170)

ss 4 and 12 not yet proclaimed into force

remaining provisions commenced on date of assent

**Common Law Practice and Workers' Compensation Amendment Act 1994  
No. 85 pts 1, 3**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 17 October 1994 (see s 2)

**Workers' Compensation Amendment Act 1995 No. 13**

date of assent 11 April 1995

commenced on date of assent

**Workers' Compensation Amendment Act (No. 2) 1995 No. 56**

date of assent 28 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1996 (see s 2)

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch**

date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

## **7 List of annotations**

**Commencement**s 2           amd 1993 No. 48 s 3 sch  
              om R4 (see RA s 37)**Repeals**s 1.3        amd 1991 No. 97 s 3 sch 1  
              om R1 (see RA s 40)**Application of Act to workers**s 4           amd 1994 No. 66 s 4; 1995 No. 13 s 3**Application of Act to existing policies**

s 1.6        renum as s 209 1994 No. 66 s 31

**References in other Acts etc.**

s 1.7        renum as s 210 1994 No. 66 s 31

**Continuance of existing offices**

s 1.8        renum as s 211 1994 No. 66 s 31

**Claims relating to injury predating Act**

s 1.9        renum as s 212 1994 No. 66 s 31

**Interpretation**s 5           amd 1993 No. 48 s 3 sch; 1994 No. 66 s 5(4)  
              def “**accident pay**” amd 1994 No. 66 s 3 sch

- om 1995 No. 56 s 4(1)
- def **“approved form”** ins 1995 No. 56 s 4(2)
- def **“authorised person”** ins 1994 No. 66 s 5(2)
- def **“award”** ins 1994 No. 66 s 5(2)
- def **“AWE”** ins 1995 No. 56 s 4(2)
- def **“certificate injury”** ins 1995 No. 56 s 4(2)
- def **“commencement of this Act”** ins 1993 No. 48 s 3 sch  
om 1994 No. 66 s 5(1)
- def **“department of government”** sub 1994 No. 66 s 5(3)
- def **“employer”** sub 1995 No. 13 s 4
- def **“government entity”** ins 1995 No. 13 s 4
- def **“government worker”** ins 1995 No. 13 s 4
- def **“household worker”** ins 1995 No. 56 s 4(2)
- def **“impairment”** ins 1995 No. 56 s 4(2)
- def **“industrial agreement”** ins 1994 No. 66 s 5(2)
- def **“Industrial Magistrate”** om 1991 No. 97 s 3 sch 1
- def **“Industrial Relations Commission”** om 1991 No. 97 s 3 sch 1
- def **“injury”** sub 1994 No. 66 s 5(1)–(2)
- def **“jockey”** sub 1993 No. 48 s 3 sch
- def **“medical treatment”** amd 1993 No. 48 s 3 sch  
sub 1994 No. 66 s 5(1)–(2)
- def **“Minister”** om 1991 No. 97 s 3 sch 1
- def **“non-policy compensation arrangement”** ins 1995 No. 13 s 4
- def **“permanent impairment”** ins 1995 No. 56 s 4(2)
- def **“policy”** amd 1994 No. 66 s 3 sch  
sub 1995 No. 13 s 4
- def **“prescribed base rate”** om 1995 No. 56 s 4(1)
- def **“public hospital”** sub 1993 No. 48 s 3 sch; 1996 No. 61 s 15 sch
- def **“QOTE”** ins 1995 No. 56 s 4(2)
- def **“relict”** om 1993 No. 48 s 3 sch
- def **“serious injury”** ins 1995 No. 56 s 4(2)
- def **“spouse”** sub 1994 No. 85 s 9
- def **“State”** ins 1994 No. 66 s 5(2)
- def **“statutory maximum compensation”** ins 1995 No. 56 s 4(2)
- def **“student”** ins 1995 No. 56 s 4(2)
- def **“table of injuries”** ins 1995 No. 56 s 4(2)

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**General manager's power of delegation**

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## **9 Provisions that have not commenced and are not incorporated into reprint**

**Workers' Compensation Amendment Act 1994 No. 66 ss 4 and 12 read as follows—**

### **Amendment of s 1.5 (Application of Act to workers)**

#### **4. Section 1.5(1)—**

*omit, insert—*

**'1.5(1)** This Act confers an entitlement in relation to an injury suffered by a worker on the worker or, if the injury is, or results in, the worker's death, on the worker's dependants only if—

- (a) the worker is in Queensland when the injury is suffered; or

(b) the worker is entitled to compensation under section 5.2A(1).<sup>33</sup>

‘(1A) However, subsection (1)(a) does not apply if the worker is not entitled to receive compensation because section 5.2A(2) applies.’.

### **Insertion of new s 5.2A**

**12.** After section 5.2—

*insert—*

### **Interstate and overseas arrangements**

**‘5.2A(1) If—**

- (a) an injury is suffered by a worker in another State or country in circumstances that, had the injury happened in Queensland, would have entitled the worker, or the worker’s dependants, to compensation under this Act; and
- (b) at the time of the injury, the worker’s principal place of employment was in Queensland;

compensation under this Act is payable in relation to the worker as if the injury happened in Queensland.

**‘(2) If—**

- (a) an injury is suffered by a worker in Queensland; and
- (b) at the time of the injury, the worker’s principal place of employment was in another State or country;

compensation under this Act is not payable in relation to the worker for the injury.

**‘(3) For this section, a worker’s principal place of employment is in a State or country if—**

- (a) the worker usually carries out his or her work in that State or country; or
- (b) for a worker who usually carries out his or her work in more than 1 State or country—the employer’s principal place of business is

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<sup>33</sup> Section 5.2A (Interstate and overseas arrangements)

in that State or country.

‘(4) In deciding whether a worker usually carries out his or her work in a State or country, regard must be had to the worker’s work history with the employer and the intention of the worker and employer.

‘(5) However, regard must not be had to any temporary arrangement under which the worker works in a State or country for a continuous period of not longer than 6 months.’