



Australian Capital Territory

Workers' Compensation Act 1951

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About this republication

The republished law

This is a republication of the *Workers' Compensation Act 1951* effective from 20 December 1995 to 30 April 1996.

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This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Updated as at 20 December 1995

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Australian Capital Territory

WORKERS' COMPENSATION ACT 1951

An Act relating to Compensation to Workers for Injuries arising out of or in the course of their Employment, and for other purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Workers' Compensation Act 1951*.¹

Repeal and saving

2. (1) The *Workmen's Compensation Ordinance 1946* and the *Workmen's Compensation Ordinance 1948* are repealed.

- (2) All rules and regulations made under the Ordinances repealed by the last preceding subsection and in force immediately prior to the commencement of this Act shall, except in so far as they are inconsistent with this Act, continue in force as if they had been made under this Act and as if every reference in those rules or regulations to a provision repealed by this Act were a reference to the corresponding provision of this Act.

- (3) The rules or regulations continued in force by this section may be repealed or amended by rules or regulations, as the case may be, made under this Act.

Interpretation

6. (1) In this Act, unless the contrary intention appears—
“approved form” means a form approved in writing by the Minister;

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“approved insurer” means an insurer approved by the Minister under section 17;

“base figure” means an amount specified in subsection 10 (1), 12 (1) or Schedule 1 in respect of an employer’s liability under this Act;

“chiropractor” means a person entitled to practise as a chiropractor under the *Chiropractors Registration Act 1983* or a corresponding law of a State or another Territory;

“compensation” means an amount payable under this Act in respect of an injury to, or the death of, a person;

“Court” means the Magistrates Court;

“defined offence” means an offence against this Act or the regulations, or referred to in Part VIII of the Crimes Act, 1900 of the State of New South Wales in its application in the Territory in relation to an offence against this Act or the regulations;

“dental prosthetist” means a person entitled to practise as a dental prosthetist under the *Dental Technicians and Dental Prosthetists Registration Act 1988* or a corresponding law of a State or another Territory;

“dentist” means a person entitled to practise as a dentist under the *Dentists Registration Act 1931* or a corresponding law of a State or another Territory;

“dependant”, in relation to a deceased worker, means—

- (a) a member of the family of the worker;
- (b) a person to whom the worker stood *in loco parentis* or who stood *in loco parentis* to the worker;
- (c) any ex-nuptial child or grand-child of the worker; and
- (d) if the worker was an ex-nuptial child, any parent or grand-parent of the worker,

who was wholly or in part dependent upon the worker’s earnings at the date of the worker’s death or who would, but for the worker’s incapacity due to the injury, have been so dependent;

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- “determined categories of workers” means the categories determined by the Minister under section 6B;
- “determined fee” means the fee determined under section 27C for the purposes of the provision in which the expression occurs;
- “disease” includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development, and also includes the aggravation, acceleration or recurrence of a pre-existing disease;
- “employer” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker while the worker is working for that other person;
- “employer’s insurer”, in relation to an employer, means the insurer with whom the employer has entered into a prescribed insurance policy;
- “exempt employer” means an employer exempt under subsection 17C (1) from compliance with subsections 17B (1) and (2);
- “Index number” means the Consumer Price Index (All Groups) for Canberra published from time to time by the Commonwealth Statistician;
- “injury” means any physical or mental injury and includes aggravation, acceleration or recurrence or a pre-existing injury;
- “inspector” means an inspector under section 23D;
- “medical practitioner” means a person entitled to practise as a medical practitioner under the *Medical Practitioners Registration Act 1930* or a corresponding law of a State or another Territory;
- “medical treatment” means—
- (a) an examination, test or analysis, conducted by or under the direction, or at the request, of a medical practitioner for the purpose of diagnosing an injury;
 - (b) medical or surgical treatment by a medical practitioner;

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- (c) dental treatment by a dentist or a dental prosthetist;
- (d) chiropractic treatment by a chiropractor;
- (e) treatment by a psychologist;
- (f) therapeutic treatment by a masseur, osteopath, physiotherapist, remedial medical gymnast or speech therapist;
- (g) therapeutic treatment (including treatment by a psychologist) given on referral by a medical practitioner or dentist;
- (h) the provision of skiagrams;
- (i) the provision, repair or replacement of contact lenses, crutches, prostheses, spectacles or other artificial aids;
- (j) any consultation, examination, therapeutic treatment or other service reasonably rendered in connection with any treatment referred to in paragraph (c), (d), (f), (g), (h) or (i);
- (k) treatment and maintenance as a patient at a hospital; or
- (l) the provision of nursing attendance, medicines, medical and surgical supplies and curative apparatus in a hospital or otherwise;

“member of the family”, in relation to a worker or an employer, means the grandchild, child, step-child, adopted child, sister, brother, half-sister, half-brother, spouse, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer;

“nominal insurer” means the nominal insurer appointed under subsection 18B (1);

“osteopath” means a person entitled to practise osteopathy under the *Chiropractors Registration Act 1983* or a corresponding law of a State or another Territory;

“outworker” means a person to whom articles or material are given out to be treated or manufactured in the person’s own home or on other premises not under the control or management of the person who gave out the articles or materials;

“overtime” includes—

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- (a) any duty on shifts or on Saturdays, Sundays or other holidays;
and
- (b) excess travelling time;

“physiotherapist” means a person entitled to practise as a physiotherapist under the *Physiotherapists Registration Act 1977* or a corresponding law of a State or another Territory;

“prescribed insurance policy” means a policy referred to in subsection 16 (1);

“professional sporting activity” means—

- (a) participation for fee or reward as a contestant in a sporting or athletic activity;
- (b) training or preparation for such participation; or
- (c) travelling to or from a place for the purpose of such participation, training or preparation;

but does not include an activity referred to in subsection (4B), (4C) or (4D);

“registered auditor” means an auditor, registered under Division 2 of Part 9.2 of the Corporations Law;

“speech therapist” means—

- (a) a person entitled to practise as a speech therapist under a law of the Territory, a State or another Territory; or
- (b) a person who is a member of the Australian Association for Speech and Hearing;

“spouse”, in relation to an injured or deceased worker, includes a person of the opposite sex to the worker who lives, or, in relation to a deceased worker, lived immediately before the worker’s death, with the worker as the worker’s spouse on a *bona fide* domestic basis although not legally married to the worker;

“therapeutic treatment” includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury;

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“worker” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether the contract is express or implied, oral or in writing, but does not include—

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the employer’s trade or business;
- (b) a public servant; or
- (c) an employee within the meaning of the *Commonwealth Employees Rehabilitation and Compensation Act 1988* of the Commonwealth.

(2) A member of the family of the employer dwelling in the home of the employer shall not, for the purposes of this Act, be deemed to be a worker unless the employer discloses to the insurer of the employer’s liability under this Act, at the time when the employment is commenced and, thereafter, whenever the insurance is renewed, the name, nature of employment and estimated wages of the member of the family.

(3) Where a contract to perform any work exceeding \$10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor’s own name), or to perform any work as an outworker, is made with the contractor, who neither sublets the contract, nor employs workers, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the person who made such contract with the contractor.

(3A) Where—

- (a) a person (in this subsection referred to as “the principal”) in the course of or for the purpose of the principal’s trade or business enters into a contract with any other person or persons (in this subsection referred to as “the contractor”) under which the contractor agrees—
 - (i) to fell trees or cut firewood and deliver the felled trees or firewood to the principal;
 - (ii) to fell trees or cut scrub on land in the occupation of the principal;
 - (iii) to clear stumps or logs from land in the occupation of the principal; or

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(iv) to carry out for the principal one or more of the services of logging (including felling, crosscutting, snigging, loading, carting, bundling and de-barking), clearing of timber, preparing land for planting trees, planting trees, pruning trees, or coppice cleaning; and

(b) the contractor does not either sublet the contract or employ workers, or although employing workers, actually performs any part of the work himself or herself,

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

(3B) Subsection (3A) does not apply in a case where, in relation to the relevant contract, being a contract referred to in that subsection, the Territory would be the principal within the meaning of that subsection.

(3C) A person whose employment is of a casual nature and who is employed otherwise than for the purposes of his or her employer's trade or business shall, where the employment was found for him or her by a person who carries on the business of an employment agent, be deemed for the purposes of this Act to be a worker employed by that employment agent.

(4) A salesperson, canvasser, collector or person paid wholly or partly by commission shall, for the purposes of this Act, be deemed to be a worker in the employment of the person by whom the commission is payable, unless the commission is received by the salesperson, canvasser, collector or person for, or in connexion with, work incidental to a trade or business regularly carried on by him or her or by a firm of which he or she is a member.

(4AA) A person engaged for fee or reward to participate as a referee or umpire in a sporting contest shall, for the purposes of this Act, be deemed to be a worker employed by the person conducting the contest.

(4B) A person engaged for fee or reward to ride or drive in a horse or pony race conducted by a racing club or association shall, for the purposes of this Act, be deemed to be a worker employed by the club or association conducting the race.

(4C) A person engaged for fee or reward as a rider or driver for the purpose of preparing a horse or pony for racing in a horse or pony race to be conducted by a racing club or association shall, for the purposes of this Act, be deemed to be a worker employed by the trainer of the horse or pony.

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(4D) A person engaged for fee or reward to take part as a boxer or wrestler in a boxing or wrestling contest shall, for the purposes of this Act, be deemed to be a worker employed by the person conducting the contest.

(4E) For the purposes of subsections (4AA) and (4D), a person engaged to take part as a boxer, wrestler or referee in an amateur boxing or wrestling contest shall not, by reason only of the offering or awarding of a trophy or certificate as a prize in the contest, be taken to be engaged for fee or reward.

(7) Any reference in the provisions of this Act applicable to a worker after the date of the injury shall be read as including a reference to a former worker.

(8) Where an employer has a place of employment in the Territory, or is for the time being present in the Territory, and there employs a worker whose employment under a contract of service or apprenticeship with that employer is not wholly carried out in the Territory and is in part carried out in any State or in any other Territory, then, if the worker, while in that State or other Territory, sustains personal injury under circumstances which, had the injury been sustained in the Territory, would entitle the worker to compensation in accordance with this Act, the worker's employer shall, subject to this Act, be liable to pay compensation in accordance with this Act as if the personal injury had arisen out of or in the course of the worker's employment in the Territory.

(10) In this section—

“applicable amount”, in relation to a person who is engaged under a contract to participate as a contestant in sporting contests, means—

- (a) where the contract provides for the payment to the person of a fixed amount in respect of all or each of the contests in which the person participates—the amount, or the aggregate of the amounts, payable to the person under the contract in a year;
- (b) where the contract provides for the payment to the person of one of 2 or more different amounts in respect of each contest in which the person participates—the amount that is ascertained by multiplying the mean of the amounts specified in the contract in respect of those contests by the total number of those contests in which the person is so engaged to participate in a year; or
- (c) where the contract provides for the payment to the person of a fixed amount in respect of one or more of the contests in which the person participates and of one of 2 or more different

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amounts in respect of others of those contests—an amount equal to the aggregate of—

- (i) the fixed amount, or the aggregate of the fixed amounts, payable to the person under the contract in a year; and
- (ii) the amount that is ascertained by multiplying the mean of the amounts specified in the contract in respect of those other contests by the total number of those other contests in which the person is so engaged to participate in that year;

“contract” means a contract under which a person is engaged to participate as a contestant in sporting contests and is entitled to receive payment for each contest in which the person participates.

Religious workers

6A. (1) The Minister may, by notice published in the *Gazette*, in accordance with a request by—

- (a) a religious organisation; or
- (b) a person acting on behalf of a religious organisation;

declare that each person included in a specified class of persons is a worker whose employer is a specified person in that organisation, and whose employment is of a specified nature.

(2) Where the Minister makes a declaration under subsection (1), then, for the purposes of this Act—

- (a) a person included in a class of persons specified in the declaration is to be taken to be a worker;
- (b) the person specified in the declaration as the employer of persons in that class is to be taken to be their employer; and
- (c) employment of the nature specified in the declaration is to be taken to be employment undertaken by persons in that class.

Determined categories of workers

6B. The Minister may, by notice in the *Gazette*, determine categories of workers for the purposes of subparagraphs 18 (1) (b) (i) and 23F (1) (b) (i) and Schedule 3.

PART II—ENTITLEMENT TO COMPENSATION

Compensation for personal injury

7. (1) Where a worker suffers personal injury arising out of or in the course of the worker's employment, the employer is liable to pay compensation in accordance with Schedule 1.

(2) Where a worker is required by the terms of his or her employment, or is expected by his or her employer, to attend a trade, technical or other training school, that employment is, for the purposes of this Act, to be taken to include that attendance.

(3) If it is proved that the injury to a worker is attributable to the worker's serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(4) Compensation shall not be payable where the injury to, or death of, a worker is caused by an intentionally self-inflicted injury.

(5) An amount of compensation payable under a provision of this Act in respect of an injury is, unless the contrary intention appears, in addition to any amounts of compensation paid or payable under any other provision of this Act in respect of that injury.

Injury while travelling to or from employment etc.

8. (1) Where personal injury is caused to a worker while travelling to or from—

- (a) the worker's employment; or
- (b) any place which it is necessary for the worker to attend to obtain a medical certificate, or to receive medical treatment or compensation, in relation to a previous injury in respect of which compensation is payable;

the worker's employer is liable to pay compensation as if the first-mentioned injury were an injury arising out of or in the course of that employment.

(2) In this section, "travelling" means travelling, whether within or outside the Territory, by the shortest convenient route for the journey but does not include travelling during or after any substantial interruption of the journey or any substantial deviation from the route made for a reason unconnected with the worker's employment or obtaining the certificate, treatment or

compensation, as the case may be, unless, in the circumstances of any particular case, the nature, extent, degree and content of the risk of injury was not materially changed or increased by reason only of any such interruption or deviation.

Compensation for death or incapacity through disease

9. (1) Where—

- (a) a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease; and
- (b) any employment of the worker by his or her employer was a contributing factor to the contraction of the disease or the aggravation, acceleration or recurrence, as the case may be, whether or not the disease was contracted or the aggravation, acceleration or recurrence was suffered in the course of that employment,

the succeeding provisions of this section have effect.

(2) If—

- (a) the death of the worker; or
- (b) the total or partial incapacity for work of the worker,

results from the disease, or the worker obtained medical treatment in relation to the disease, then, for the purposes of this Act, unless the contrary intention appears—

- (c) the contraction of the disease, or the aggravation, acceleration or recurrence, as the case may be, shall be deemed to be a personal injury to the worker arising out of the employment of the worker by his or her employer; and
- (d) the date of the death, the date of the commencement of the incapacity or the date on which the medical treatment was first obtained, whichever is the earlier, shall be deemed to be the date of the injury.

(3) Where a liability of an employer in respect of a disease of a worker arises by virtue of this section, any other employer who, prior to that liability so arising, employed the worker in any employment that caused or contributed to the disease shall, subject to subsection (4), be liable to pay to the employer from whom compensation is recoverable such contribution as is, in default of agreement, settled by arbitration.

(4) An employer shall not be liable under subsection (2) or (3) in respect of a disease if the worker, at the time of entering the employment of that employer, made a wilful and false representation that the worker did not suffer, or had not previously suffered, from that disease.

(5) A claimant for compensation under this section in respect of a worker's disease shall, if so required, furnish the employer who is liable to pay compensation to the claimant with such information as to the names and addresses of the worker's other employers as the claimant possesses.

Hearing loss—application of section 9

9AA. Section 9 applies in relation to a loss, or a further loss, of hearing as if—

- (a) without limiting the generality of the definition of “disease” in subsection 6 (1), a loss, or a further loss, of hearing were a disease for the purposes of that section;
- (b) paragraph 9 (2) (c) were amended by inserting “who last employed the worker in employment of the kind referred to in paragraph 9 (1) (b)” after “employer”;
- (c) subsection 9 (3) were amended by omitting “prior to that liability so arising,” and substituting “during the relevant period,”; and
- (d) the following subsection were added at the end:

“(6) In subsection (3), ‘the relevant period’, in relation to the contraction of a disease, or the aggravation, acceleration or recurrence, as the case may be, that is deemed to be a personal injury under paragraph 9 (2) (c) (in this subsection called ‘the relevant injury’), means—

- (a) where, at the date of the relevant injury, the worker was employed by the employer referred to in paragraph 9 (2) (c)—
 - (i) if the worker had not recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the date of the relevant injury—that period; or
 - (ii) if the worker had recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the date of the relevant injury—the period commencing on the day after

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the date on which the employer from whom that compensation was recovered or last recovered became liable to pay that compensation and ending on the date of the relevant injury; or

- (b) where, at the date of the relevant injury, the worker was not employed by the employer referred to in paragraph 9 (2) (c) (in this paragraph called 'the recent employer')—
 - (i) if the worker had not recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the last day on which the worker was employed by the recent employer—that period; or
 - (ii) if the worker had recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the last day on which the worker was employed by the recent employer—the period commencing on the day after the date on which the employer from whom that compensation was recovered or last recovered became liable to pay that compensation and ending on the last day on which the worker was employed by the recent employer.

Employment-related diseases

9A. Without limiting by implication the operation of section 9 where—

- (a) a worker has suffered, or is suffering from a disease, or the death of a worker results from a disease;
- (b) the disease is a disease of a kind specified in the regulations as a disease that is related to employment of a kind so specified; and
- (c) the worker was, at any time before symptoms of the disease first became apparent, engaged in employment of that kind,

then, for the purposes of this Act, unless the contrary is established, the employment in which the worker was so engaged shall be deemed to have been a contributing factor to the disease.

Compensation for disease

9B. (1) Any employment in which a worker who has contracted a disease was engaged at any time before symptoms of the disease first became apparent

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shall, unless the contrary is established, be taken for the purposes of this Act to have been a contributing factor to the worker's contracting the disease if the incidence of the disease among persons who have engaged in that kind of employment is significantly greater than the incidence of the disease among persons who have engaged in employment generally in the place where the worker was ordinarily employed.

(2) Any employment in which a worker who has suffered an aggravation, acceleration or recurrence of a disease was engaged at any time before symptoms of the aggravation, acceleration or recurrence first became apparent shall, unless the contrary is established be taken for the purposes of this Act to have been a contributing factor to the aggravation, acceleration or recurrence if the incidence of the aggravation, acceleration or recurrence of the disease among persons suffering from the disease who have engaged in that kind of employment is significantly greater than the incidence of the aggravation, acceleration or recurrence of the disease among persons suffering from the disease who have engaged in employment generally in the place where the worker was ordinarily employed.

(3) The death of a worker shall be taken for the purposes of this Act, to have been contributed to by a disease if, but for that disease, the death of the worker would have occurred at a significantly later time.

(4) An incapacity for work or facial disfigurement of a worker shall be taken for the purposes of this Act to have been contributed to by a disease if, but for the disease—

- (a) the incapacity or disfigurement would not have occurred;
- (b) the incapacity would have commenced, or the disfigurement would have occurred, at a significantly later time; or
- (c) the extent of the incapacity or disfigurement would have been significantly less.

(5) This section shall not be construed as limiting the operation of section 9.

Compensation for loss of body parts, hearing and sight

10. (1) Subject to this Act, where an injury in Part I of Schedule 2, being an injury arising out of or in the course of a worker's employment by his or her employer, is caused to a worker, the compensation payable shall, where the

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injury results in an incapacity other than total and permanent incapacity for work, be \$20,000.

(1A) Subject to this Act, where an injury specified in the first column of Part II of Schedule 2, being an injury arising out of or in the course of a worker's employment by his or her employer, is caused to the worker, the compensation payable shall, where the injury results in incapacity other than total or permanent incapacity for work, be the amount equal to such percentage of the amount specified in subsection (1) as is specified in the second column of that Part opposite the specification of the injury in the first column.

(3) Where a worker habitually uses the left hand and arm to perform work usually performed by a worker with the right hand and arm, the compensation payable to the first-mentioned worker under this section shall be—

- (a) for the loss of the left arm or any part thereof—the amount which would have been payable to a worker for a similar loss in respect of the right arm or the corresponding part thereof; and
- (b) for the loss of the right arm or any part thereof—the amount which would have been payable to a worker for a similar loss in respect of the left arm or the corresponding part thereof.

(4) Where a worker sustains an injury which causes the loss of the sight of both eyes or of an only useful eye, any compensation previously paid under this section or under any corresponding provision of any other law in respect of loss of sight shall be deducted from the compensation payable under this section.

(5) Where a worker sustains an injury which causes partial and permanent loss of the sight of one eye, there shall be payable an amount of compensation equivalent to such percentage of the amount of compensation payable under this section in respect of the loss of the sight of one eye as is equal to the percentage loss of sight from that eye.

(6) Where a worker sustains an injury which causes partial and permanent loss of the efficient use of a part of the body specified in Schedule 2, there shall be payable an amount of compensation equivalent to such percentage of the amount of compensation payable under this section in respect of the loss of that part as is equal to the percentage loss of the efficient use of that part.

(7) For the purposes of subsection (5) or (6), the relevant loss is to be calculated when—

- (a) the worker's employer became liable to pay compensation; or

- (b) it is unlikely that there will be any improvement or further improvement in the sight from the relevant eye or the efficient use of the relevant part of the body;

whichever occurs last.

(8) Where a payment referred to in subsection (5) or (6) has been made in relation to an injury, nothing in the relevant subsection prevents a further such payment being made in relation to the same injury where there is an increase—

- (a) in the loss of sight from the relevant eye; or
- (b) in the loss of the efficient use of the relevant part of the body.

(9) For the purposes of this section and Schedule 2, the loss of a specified part of the body includes the permanent loss of the use of that part.

Compensation for facial disfigurement

10A. (1) Where a worker sustains an injury—

- (a) that is not, or is not wholly, an injury specified in Schedule 2; and
- (b) that results in severe and permanent facial disfigurement,

the worker is entitled to receive from his or her employer by way of compensation for that injury, such amount, not exceeding 50% of the amount payable under subsection 10 (1), as may be agreed upon or, in default of agreement, as may be settled by arbitration in accordance with Schedule 4 as being appropriate compensation having regard to the severity of the disfigurement.

(7) For the purposes of this section—

- (a) facial disfigurement shall not be taken to be severe where, if the worker underwent suitable medical treatment, the disfigurement would not be severe; and
- (b) facial disfigurement shall not be taken to be permanent where, if the worker underwent suitable medical treatment, the disfigurement would be removed.

Compensation for loss of sense of smell or sense of taste

10B. (1) Where a worker sustains an injury that results in total or partial loss of the sense of smell or of the sense of taste, the worker is entitled to receive from his or her employer, by way of compensation for that injury, such

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amount not exceeding 10% of the amount payable under subsection 10 (1) as may be agreed upon or, in default of agreement, as may be settled by arbitration in accordance with Schedule 4 as being appropriate compensation, having regard to the degree of loss of the sense.

(7) In this section—

“loss” means a permanent loss.

Compensation for injuries relating to sexual organs and breasts

10C. (1) Subject to section 10E, where a worker sustains an injury that results in—

(a) the total or partial loss of genitals; or

(b) in the case of a woman—the total or partial loss of one or both breasts,

the worker is entitled to receive from his or her employer, by way of compensation for that injury, such amount not exceeding 50% of the amount payable under subsection 10 (1) as may be agreed upon or, in default of agreement, as may be settled by arbitration in accordance with Schedule 4 as being appropriate compensation having regard to the severity of the injury and the degree of the loss.

Compensation for loss of capacity to engage in sexual intercourse

10D. Subject to section 10E, where a worker sustains an injury that results in the permanent and total loss of his or her capacity to engage in sexual intercourse the worker shall be entitled to receive from his or her employer, by way of compensation for that injury, 50% of the amount payable under subsection 10 (1).

Persons not entitled to compensation under section 10C and section 10D

10E. A person is not entitled to receive compensation under section 10C and section 10D in respect of the same injury.

Limitations on entitlement

10F. (1) The provisions of sections 10A, 10B, 10C and 10D do not apply in relation to an injury where that injury, or another injury sustained at the same time, results in the death of the worker within 3 months after the date of that injury or those injuries.

Compensation for sporting injuries

10G. A person is not entitled to receive compensation for an injury sustained as a result of his or her engagement in professional sporting activity.

Compensation for medical treatment

11. (1) Where—

- (a) compensation in respect of an injury is payable by an employer to, or in respect of, a worker; or
- (b) but for the fact that a worker is not incapacitated for work, or but for the operation of subparagraph 2 (b) (ii) of Schedule 1, compensation would be so payable;

the following provisions have effect.

(2) The employer is liable to pay—

- (a) in respect of the cost of medical treatment reasonably obtained in relation to the injury—compensation of such amount as is appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment in the place where that treatment is obtained; and
- (b) in respect of any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of such an amount as is reasonable for the repair or replacement of the damaged or lost clothing.

(3) The aggregate of any amounts payable under subsection (2)—

- (a) for medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid; or
- (b) for damage to or loss of a worker's clothing;

shall not exceed—

- (c) \$300 or such greater amount as is prescribed; or
- (d) if an amount in respect of such treatment, damage or loss is settled by arbitration in accordance with Schedule 4—that amount.

(3A) For the purposes of this section, the cost of medical treatment shall be taken to include—

- (a) the amount of wages lost by the worker by reason of the worker's attendance at any place for the purpose of undergoing such treatment;

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- (b) the reasonable cost of conveyance of the worker (whether by himself or herself or by another person) to and from such a place; and
- (c) the reasonable cost of any accommodation required by the worker by reason of the worker's attendance at such a place.

(4) Subject to subsection (5), a worker shall not institute proceedings for the recovery of compensation for the cost of medical treatment or in respect of damage to or loss of the worker's clothing unless the worker has given the employer notice in writing specifying—

- (a) the amount of compensation sought; and
- (b) reasonable particulars of the expenses for which compensation is sought.

(5) The want of notice or any defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings if it is found in the proceedings that the employer's defence is not, or would not be, if a notice or an amended notice were then given and the hearing postponed, prejudiced by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(6) Where a worker receives medical treatment the cost of which the worker claims from an employer under this section, the employer may, in consultation with the medical practitioner or other person providing the treatment, before making a payment under this section, require the worker to be examined by a medical practitioner, or other person, selected by the employer.

(7) Where an employer is liable under this section to pay any sum of money in respect of medical treatment received by a worker from a hospital, the employer shall pay the amount of that sum less any amount previously so paid by the worker in respect of that treatment on demand—

- (a) in the case of a private hospital—to the proprietor of that hospital; and
- (b) in the case of any other hospital—to the person authorized in writing by the governing body or person in charge of the hospital to receive payments of money due to the hospital.

Maximum compensation

12. (1) Notwithstanding anything contained in this Act, the amount of compensation payable in respect of—

- (a) an injury or injuries sustained on one occasion; or
- (b) a disease,

shall not, except as provided by this section, exceed \$20,000.

(2) Where an injury results in the death or the total and permanent incapacity of the worker for work, subsection (1) of this section shall not apply to limit the total amount of compensation payable under this Act.

(3) In the application of subsection (1) in relation to the total amount of compensation payable to a worker under section 10, 10A, 10B, 10C or 10D the total amount of any compensation paid to the worker in accordance with Schedule 1 before the payment to the worker of the amount payable in accordance with whichever of those sections is applicable to the injury shall be disregarded.

(4) In the application of subsection (1), any amount paid to, or in respect of, the worker in accordance with section 11 shall be disregarded.

Variation of amounts of compensation

12A. (1) Where there is a variation in the Index number, an amount of compensation payable under subsection 10 (1), 12 (1) or Schedule 1 shall be varied in accordance with this section.

(2) An amount referred to in subsection (1) shall be varied in accordance with the formula $\frac{L \times N}{51.6}$, where—

L is the base figure; and

N is the most recently issued Index number.

Application of variation

12B. (1) A variation in an amount of compensation made in accordance with section 12A applies to a lump sum payable in respect of an injury disease, loss or death occurring in the period of 3 months immediately succeeding the period to which the Index number used in calculating the variation refers.

(2) A variation referred to in subsection (1) applies to a weekly payment which a worker is entitled to receive during the period of 3 months immediately succeeding the period to which the Index number used in calculating the variation refers.

Contracting out

13.

(2) A provision in an agreement or other document whereby—

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- (a) a right conferred on a worker by this Act is excluded or limited in any way; or
- (b) the liability imposed on an employer by this Act is excluded or limited in any way,

is void.

Sub-contracting

14. (1) Where any person (in this section referred to as “the principal”), in the course of or for the purpose of the principal’s trade or business, contracts with any other person (in this section referred to as “the contractor”) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation which the principal would have been liable to pay if that worker had been immediately employed by the principal.

(2) Where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Act, references to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he or she is immediately employed.

(3) Where the principal is liable to pay compensation under this section, the principal shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section.

(4) Nothing in this section shall be construed as preventing a worker recovering compensation from the contractor instead of the principal.

Medical referees

15. (1) The Minister may appoint any medical practitioners to be medical referees for the purpose of this Act.

(2) Where the services of a medical referee have been used as a medical practitioner in connexion with any case by or on behalf of an employer or worker or by any insurer interested, he or she shall not act as medical referee in that case.

(3) A person appointed to be a medical referee shall be paid such fees in respect of the performance of his or her functions as a medical referee as the Minister determines.

PART IIA—OCCUPATIONAL REHABILITATION

Interpretation

15A. In this Part—

“occupational rehabilitation”, in relation to an injured worker, means—

- (a) the assessment of the needs of the worker for the purposes of paragraph (b); and
- (b) the provision of appropriate, adequate and timely services for the worker aimed at maintaining the worker in suitable employment or returning him or her to suitable employment;

“protocol” means a protocol approved under section 15F.

Appropriate, adequate and timely

15B. For the purposes of paragraph (b) of the definition of “occupational rehabilitation” in section 15A, services shall be taken to be appropriate, adequate and timely if they are in accordance with any relevant protocol.

Occupational rehabilitation

15C. (1) Where a worker claims compensation for an injury, the employer shall provide the worker with occupational rehabilitation at the employer’s expense unless the employer is of the opinion, based on reasonable grounds, that the worker is not entitled to compensation.

Penalty: \$5,000.

(2) The provision of occupational rehabilitation to a worker shall not be taken to be an admission of liability in relation to the worker’s claim for compensation.

Occupational rehabilitation policy

15D. (1) An employer shall, in accordance with subsection (4) and any relevant protocol—

- (a) develop an occupational rehabilitation policy for his or her employees; and
- (b) from time to time, review that policy.

(2) An employer shall comply with paragraph (1) (a) as soon as practicable and, in any event, within 3 months after the commencement of this section.

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Penalty: \$1,000.

(3) As soon as practicable after developing or reviewing an occupational rehabilitation policy an employer shall display a copy of the policy in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

Penalty: \$500.

(4) For the purpose of developing or reviewing an occupational rehabilitation policy under subsection (1), the employer shall consult—

- (a) any health and safety committee established in respect of the employer's employees; or
- (b) if no such committee exists in respect of the employer's employees—those employees or any relevant union.

(5) In subsection (4)—

“health and safety committee” means a health and safety committee established under regulations under the *Occupational Health and Safety Act 1989*;

“relevant union”, in relation to an employee of an employer, means a registered union of which the employee is a member, being an employee who is qualified to be such a member by virtue of the work that the employee performs as an employee of the employer.

Rehabilitation coordinator

15E. (1) An employer shall—

- (a) appoint a person to be a rehabilitation coordinator for his or her employees; and
- (b) ensure, as far as practicable, that there is always an appointed rehabilitation coordinator for his or her employees.

(2) An employer shall display a notice containing the name of any person appointed as rehabilitation coordinator and stating that he or she is the rehabilitation coordinator in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

Penalty for contravention of subsection (2): \$500.

Approval of protocol

15F. (1) The Minister may, after consultation with representatives of employers, unions and insurers, by instrument, approve a protocol or an amendment of a protocol relating to occupational rehabilitation.

(2) A protocol may make provision in respect of the following matters:

- (a) the requirements for an occupational rehabilitation policy;
- (b) when occupational rehabilitation is appropriate, adequate and timely;
- (c) the settlement of disputes;
- (d) the fulfilment of parties' responsibilities under this Part;
- (e) any other matter that is necessary or convenient to be so dealt with for the carrying out of or giving effect to this Part.

Disallowance

15G. An instrument under section 15F is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Publication

15H. (1) The Minister shall cause to be published in a newspaper published and circulating in the Territory, as soon as practicable after making an instrument under section 15F, notice of that approval—

- (a) specifying a place or places at which copies of the protocol to which the approval relates may be purchased; and
- (b) specifying a place or places at which a copy of the protocol may, at any reasonable time, be inspected.

(2) The Minister shall ensure that—

- (a) copies of the protocol to which an approval under section 15F relates are made available for purchase at each place specified for that purpose in the relevant notice under subsection (1); and
- (b) a copy of that protocol is, at any reasonable time, available for inspection at each place specified for that purpose in the relevant notice under subsection (1).

PART III—INSURANCE

Prescribed insurance policies

16. (1) For the purposes of this Part, a prescribed insurance policy is an insurance policy in the form—

- (a) set out in Schedule 3; or
- (b) approved by the Minister under subsection (2);

for an unlimited amount in respect of any liability of an employer arising under this Act, or independently of this Act, in respect of any injury to, or the death of, each worker employed by the employer.

(2) The Minister may approve a form of insurance policy for the purposes of paragraph (1) (b)—

- (a) in relation to a worker required to travel in the course of employment;
- (b) in relation to a worker engaged in domestic duties; or
- (c) in relation to any other worker of a type determined in writing by the Minister.

(3) A prescribed insurance policy may include a provision relating to a liability of the employer other than a liability referred to in subsection (1).

Approved insurers

17. (1) On application by an insurer, accompanied by the determined fee, the Minister shall, by notice in writing to the insurer—

- (a) approve the insurer for the purposes of this Act; or
- (b) refuse to do so.

(2) The Minister may, by notice in writing to an approved insurer, revoke the approval from a specified date at least 28 days after the date of the notice.

Effect of revocation of approval

17A. (1) Where the approval of an insurer under subsection 17 (1) is revoked, subsections 17B (1) and (2) apply in relation to an insurance policy issued by that insurer at a time when the insurer was so approved as if the insurer was still so approved.

(2) The revocation of an approval of an insurer under section 17 does not—

- (a) annul a policy issued by the insurer before that revocation;
- (b) affect the liability of the insurer under such a policy; or

- (c) affect the liability of the insurer under section 18H.

Compulsory insurance—employers

17B. (1) An employer shall at all times maintain a prescribed insurance policy in force with an approved insurer.

Penalty: \$5,000.

(2) Where—

- (a) an employer complies with subsection (1); and
- (b) while the relevant policy is in force, a Court order is made for the winding up of the insurer under a law of the Territory, a State or another Territory;

the employer shall—

- (c) within 30 days after the date of the order, obtain a prescribed insurance policy from another approved insurer; and
- (d) maintain that policy in force.

Penalty: \$5,000.

(3) Where 2 or more employers could become liable to pay compensation in respect of the same worker, any of those employers may comply with subsection (1) or (2) in relation to that worker by means of a joint insurance policy in respect of their joint liability.

(4) In the prosecution of an employer for the contravention of subsection (1) or (2), an averment in the information that there was not in force, on a specified date, a prescribed insurance policy issued by an approved insurer in favour of that employer is evidence of the matter averred.

(5) Where an employer contravenes subsection (1) or paragraph (2) (c) or (d), the nominal insurer may recover as a debt from the employer the amount of the premiums which would have been payable to an approved insurer if the employer had complied with the relevant provision.

(6) Where—

- (a) an employer contravenes subsection (1) or paragraph (2) (c) or (d); and
- (b) the employer maintains an insurance policy in respect of any liability arising under this Act;

that contravention does not—

- (c) annul that policy;
 - (d) affect the liability of the insurer under such a policy; or
 - (e) affect the liability of the insurer under section 18H.
- (7) This section does not apply in relation to an exempt employer.

Exempt employers

17C. (1) On application in writing by an employer, accompanied by the determined fee, the Minister shall, by notice in writing to the employer—

- (a) exempt the employer from compliance with subsections 17B (1) and (2) for a specified period; or
- (b) refuse to do so.

(2) The Minister shall grant an exemption under subsection (1) to an employer if he or she is satisfied, on reasonable grounds, that the employer is able to meet, from the employer's own resources, any liability under this Act.

(3) The Minister may, by notice in writing to an employer who has been granted an exemption under subsection (1), require the employer, within 28 days after the date of the notice, to show cause why the exemption should not be—

- (a) suspended for a period specified in the notice; or
- (b) revoked.

(4) After the expiration of 28 days after the date of a notice under subsection (3), in consideration of any representation made by the relevant employer, the Minister shall, by notice in writing to the employer—

- (a) suspend the relevant exemption for the period specified in the notice; or
- (b) revoke the exemption;

(as the case requires) from the date specified in the notice, if the Minister is satisfied, on reasonable grounds, that subsection (2) no longer applies in relation to the employer.

(5) The date of effect of the suspension or revocation of an exemption specified in a notice under subsection (4) is to be at least 14 days after the date of the notice.

Compulsory insurance—insurers

17D. (1) An approved insurer shall not refuse to issue a prescribed insurance policy required by an employer for the purposes of subsection 17B (1) or (2) unless the Minister consents in writing.

Penalty: \$10,000.

(2) An approved insurer shall not issue an insurance policy required by an employer for the purposes of subsection 17B (1) or (2) which is not a prescribed insurance policy.

Penalty: \$10,000.

Provision of information to insurers

18. (1) An employer applying to an insurer for the renewal of a prescribed insurance policy shall give the insurer, in relation to the period relevant to the determination of the premium payable for the renewal of the policy—

- (a) a certificate from a registered auditor stating the total amount of wages paid to the employer's employees; and
- (b) a statutory declaration setting out—
 - (i) the determined categories of workers employed by the employer; and
 - (ii) the total amount of wages paid in respect of each of those categories.

Penalty: \$5,000.

(2) Where an employer is a party to an insurance policy in the form set out in Schedule 3, the employer shall give the insurer—

- (a) a certificate from a registered auditor; and
- (b) a statutory declaration;

of the type, and in the circumstances, provided for under the term of the policy corresponding to paragraph 11 or 13, as the case requires, of the conditions in that form.

Penalty: \$5,000.

(3) A registered auditor who knowingly supplies false, misleading or incomplete information in a certificate provided for the purposes of subsection

(1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 6 months.

Provision of information to the Minister

18A. (1) The Minister may, by notice in writing, require—

- (a) an approved insurer;
- (b) an exempt employer; or
- (c) where an approved insurer or employer is a body corporate—a specified officer of the body corporate, on behalf of that body;

to furnish to the Minister, within such time as is specified in the notice—

- (d) particulars of the number of injuries in respect of which compensation has been paid during a period specified in the notice and the total amount of compensation paid during that period; and
- (e) such other particulars relating to the operation of this Act as are specified in the notice.

(1A) A notice under subsection (1) shall set out the requirements of subsection (2) in relation to the notice, and the penalty for contravention of subsection (2).

(1B) A person is not excused from furnishing particulars in accordance with a requirement under subsection (1) on the ground that furnishing those particulars would incriminate, or would tend to incriminate, the person or the person's spouse or would tend to expose that person to proceedings for an offence against a law in force in Australia or elsewhere.

(1C) Where a person is required to furnish particulars under subsection (1), the particulars furnished, or any information, document or thing obtained as a direct or indirect consequence of furnishing those particulars, shall not be admissible in evidence against the person in any civil or criminal proceedings in any court other than proceedings for perjury or for an offence against subsection (2).

(2) An approved insurer or an employer shall not—

- (a) refuse or fail to comply with a notice under subsection (1); or
- (b) furnish any particulars under subsection (1) which are false or misleading.

Penalty for contravention of subsection (2): \$5,000.

Nominal insurer

18B. (1) The Minister may appoint a person to be the nominal insurer for the purposes of this Act.

(2) The appointment shall be made on the nomination of the approved insurers or a majority of them or, in default of such a nomination, directly by the Minister.

(3) Notice of an appointment under this section shall be published in the *Gazette*.

Claims for payment by nominal insurer

18C. (1) Where—

- (a) a claim has been made against an employer that the employer is liable to pay compensation in respect of an injury caused to, or sustained by, a worker, being an injury arising out of or in the course of the worker's employment by the employer or for which the employer is liable as if the injury arose out of or in the course of the worker's employment;
- (b) in relation to the claim, the employer has agreed to pay any compensation or the liability of the employer to pay any compensation has been established;
- (c) the liability of the employer to pay the compensation is not covered in full by a policy or policies of insurance obtained in accordance with this Act; and
- (d) the employer defaults in payment of any amount of the compensation for a period exceeding one month,

the person entitled to the compensation may make a claim against the nominal insurer for payment of the amounts of compensation payable and to become payable.

(2) Where—

- (a) a final judgment has been obtained against an employer in respect of the employer's liability independently of this Act for an injury to, or the death of, a worker employed by the employer, being an injury or death that occurred on or after 1 September 1969;
- (b) execution of the judgment is not stayed;

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- (c) the liability of the employer under the judgment is not covered, or is not covered in full, by a policy or policies of insurance obtained in accordance with this Act; and
- (d) the judgment has, for a period of not less than one month, remained unsatisfied in whole or in part,

the person in whose favour the judgment was given may make a claim against the nominal insurer for payment of the amount by which the judgment remains unsatisfied.

(3) Where—

- (a) an employer has entered into an agreement to pay a sum of money in discharge of the employer's liability independently of this Act in respect of an injury to, or the death of, a worker employed by the employer, being an injury or death that occurred on or after 1 September 1969;
- (b) the liability of the employer is not covered, or is not covered in full, by a policy or policies of insurance obtained in accordance with this Act; and
- (c) the employer has, for a period of not less than one month, failed to pay the whole or a part of the sum of money payable by the employer under the agreement,

the person to whom that sum of money is payable under the agreement may make a claim against the nominal insurer for payment of the amount that the employer has failed to pay.

(4) A claim under this section shall be made within a period of one month after the right to make the claim arose or within such further time as the Minister, on an application made before or after the expiration of that period of one month, allows.

(5) For the purpose of subsection (1), “compensation” includes—

- (a) an amount in settlement of a claim for compensation; and
- (c) costs payable to a worker by an employer in relation to a claim for compensation.

Payments by nominal insurer

18D. (1) Subject to this Act, where a person makes a claim against the nominal insurer in accordance with section 18C, the nominal insurer shall pay to that person—

- (a) where the claim is made under subsection 18C (1)—the compensation payable at the date of the claim or becoming payable thereafter;
- (b) where the claim is made under subsection 18C (2)—the amount payable for damages and costs under the judgment to which the claim relates; or
- (c) where the claim is made under subsection 18C (3)—the amount payable by the employer under the agreement.

Re-opening of agreements and awards

18E. (1) Where a claim is made against the nominal insurer under subsection 18C (1), the nominal insurer may apply to the Court for an order directing that the agreement or award under which the compensation is payable be re-opened on the ground that there is reason to believe that, in relation to the agreement, the appointment of a committee or the arbitration, the employer has not in good faith endeavoured to protect the employer's own interests and taken all reasonable steps to that end, and the Court may, if it thinks fit, make an order accordingly.

(2) Where the Court makes an order under subsection (1), it shall determine or re-determine the claim for compensation by arbitration in accordance with Schedule 4 (so far as applicable), and the nominal insurer shall be a party to the arbitration.

(3) In an award made by the Court in pursuance of this section, the Court may set aside any previous agreement or award.

(4) Where an award of compensation is made against the employer by the Court, the nominal insurer shall pay to the person entitled the amounts payable from time to time under the award.

(5) Any agreement by a person to accept, in settlement of a claim against the nominal insurer, an amount less than the amount payable according to the relevant agreement or award has no force or effect unless approved by the Court.

Power of Supreme Court to set aside certain agreements

18EA. (1) Where a claim is made against the nominal insurer under subsection 18C (3), the nominal insurer may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.

(2) Where, on an application under subsection (1), the Supreme Court is satisfied there are reasonable grounds for believing that, in relation to the agreement the subject of the application, the employer has not in good faith endeavoured to protect the employer's own interests and taken all reasonable steps to that end, the Supreme Court may, by order, set aside the agreement.

(3) Where an agreement is set aside under this section—

- (a)** the agreement shall, for the purposes of any proceedings in a court, be deemed never to have had effect; and
- (b)** evidence of a statement or communication, or a part of a statement or communication tending to establish the existence of the agreement shall not, unless the court directs otherwise, be admissible in such proceedings.

(4) A court shall not give a direction for the purpose of paragraph (3) (b) unless it is satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceedings.

(5) Where the Supreme Court sets an agreement aside under subsection (2), the costs of the respondent of, and incidental to, the application shall, unless the Supreme Court directs that this subsection shall not apply in relation to the application, be paid by the nominal insurer.

(6) The Supreme Court shall not give a direction under subsection (5) in relation to an application under this section unless it is satisfied that, having regard to the special circumstances surrounding the making of the agreement to which the application relates, it is desirable that a direction under that subsection be given.

(7) Where—

- (a)** an agreement is set aside under subsection (2); and
- (b)** but for this subsection, an action by a party to the agreement to recover damages in respect of a liability to which the agreement related would, at the time at which the agreement is set aside, be barred or would, within three months after the agreement is set aside, become barred, by a law (other than an Act) in force in the Territory

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relating to the limitation of the time within which proceedings in a court may be commenced,

such an action may, notwithstanding any such law, be commenced at any time within three months after the date on which the agreement was set aside.

(8) Where—

- (a) an agreement is set aside under subsection (2); and
- (b) an action by a party to the agreement to recover damages in respect of a liability to which the agreement related is commenced in a court of the Territory,

the plaintiff in the action shall, within seven days after the date on which the action was commenced, give to the nominal insurer notice in writing of the commencement of the action.

Penalty: \$200.

(9) Where notice is given to the nominal insurer under subsection (8), the nominal insurer—

- (a) may, on behalf of the employer sued in the action, conduct the defence of the action in the name of the employer and in such manner as the nominal insurer thinks fit; and
- (b) shall indemnify the employer against all costs and expenses of and incidental to the action.

(10) Nothing in this Act authorizes the nominal insurer—

- (a) to consent to the entry of judgment in an action against a defendant in the action; or
- (b) to compromise the action,

except with the consent of that defendant.

Intervention by nominal insurer

18F. (1) This section applies to an employer—

- (a) against whom a claim for compensation has been made;
- (b) who is not an exempt employer; and
- (c) who is not a party to a prescribed insurance policy which applies to that claim.

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(1A) An employer to whom this section applies shall, not later than 14 days after the claim is made, give the nominal insurer full written particulars of the claim.

Penalty: \$200.

(1B) An employer to whom this section applies shall not make any agreement or admission in relation to the claim, or in relation to arbitration in respect of the claim, except with the consent of the nominal insurer.

Penalty: \$2,000.

(2) In relation to a claim referred to in subsection (1)—

- (a) the nominal insurer is entitled to intervene in any arbitration proceedings as a party; and
- (b) the nominal insurer has the same right of objection to arbitration by a committee as has the employer under Schedule 4.

Effects of payment by nominal insurer

18G. Where the nominal insurer pays an amount under this Act in respect of a liability of an employer—

- (a) the payment operates, to the extent of the payment, to discharge the liability of the employer;
- (b) the amount of the payment is a debt payable by the employer to the nominal insurer, and may be sued for and recovered in a court of competent jurisdiction; and
- (c) the nominal insurer has the right of subrogation in respect of all rights that the employer may have against any person in relation to the occurrence that gave rise to the liability of the employer.

Funds for payments by nominal insurer

18H. (1) An amount payable to a person by the nominal insurer may be sued for and recovered by that person by action in a court of competent jurisdiction, but the nominal insurer is not liable to satisfy a judgment in such an action except out of moneys referred to in subsection (2).

(2) The nominal insurer shall pay amounts payable under this Act (including the amount of any costs or expenses incurred) out of moneys provided in accordance with this section by approved insurers and exempt employers and any other moneys received under this Act.

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(3) Liability to provide an amount referred to in subsection (2) shall be apportioned by the nominal insurer amongst those who were approved insurers or exempt employers at the time of the occurrence that gave rise to the right to compensation in respect of which the amount is payable.

(4) In making an apportionment under subsection (3), the nominal insurer shall have regard so far as practicable to—

- (a) the premium incomes received by each approved insurer in respect of prescribed insurance policies in the financial year last preceding the occurrence; and
- (b) the premium that would have been payable by each exempt employer if the employer had obtained, in respect of that year (or the part of that year during which the employer was an exempt employer), a prescribed insurance policy.

(5) When the nominal insurer makes an apportionment under this section, the nominal insurer shall notify, in writing, each approved insurer and exempt employer concerned of particulars of the apportionment and require the insurer or employer to pay to the nominal insurer the apportioned amount, within such time as is specified in the notice.

(6) An amount specified in a notice to a person under subsection (5) and unpaid at the expiration of the time specified in the notice is a debt due and owing to the nominal insurer by the approved insurer or exempt employer and may be sued for and recovered by the nominal insurer in a court of competent jurisdiction.

(7) Where an amount has been provided by approved insurers and exempt employers under this section in relation to a payment by the nominal insurer, the nominal insurer shall apply any amounts received in relation to the payment from the defaulting employer in reimbursing proportionately the approved insurers and exempt employers.

Information and assistance by employer to nominal insurer

18J. (1) For the purpose of the exercise of his or her powers and functions under this Act, the nominal insurer may, by notice in writing, require an employer—

- (a) to give such information and assistance as the nominal insurer considers necessary;

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- (b) to furnish such documents in the employer's possession as the nominal insurer considers necessary;
- (c) to execute such documents as it is necessary for the employer to execute to enable the nominal insurer to exercise those powers and functions; and
- (d) to allow the nominal insurer at all reasonable times to inspect the plant, works, machinery and appliances used in the employer's business.

(2) An employer shall comply with a requirement of the nominal insurer under subsection (1).

Penalty for contravention of subsection (2): \$2,000 or imprisonment for 12 months, or both.

Proceedings to be in the name of "The Nominal Insurer"

18K. For the purposes of this Act—

- (a) any proceedings by or against the nominal insurer may be taken in the name of "The Nominal Insurer"; and
- (b) the death or resignation of, or the revocation of the appointment of, the person holding office as the nominal insurer at the time any proceedings were commenced and the appointment of another person in his or her place does not abate the proceedings and the proceedings may be continued and concluded as if the person had not died or resigned or as if the appointment had not been revoked, as the case may be.

Premiums—maximum rates

20. An insurer shall not charge or accept in respect of a prescribed insurance policy a premium greater than that calculated in accordance with the prescribed maximum rate of premium.

Penalty: \$5,000.

Premiums—remuneration for professional sporting activity

20AA. An employer is not liable to pay any portion of a premium for a prescribed insurance policy calculated by reference to the remuneration payable to an employee for engaging in professional sporting activity.

Variation of insurance policies

20A. (1) A prescribed insurance policy that is in force immediately before the date of a variation under section 12A has effect in the period during which the policy remains in force after the variation as if it applied to that liability as so varied.

(2) Where, by virtue of subsection (1)—

- (a) a variation under section 12A increases the potential liability of an authorised insurer under a prescribed insurance policy; and
- (b) the policy has effect in a period after the variation;

the employer who is a party to the policy shall pay the insurer an additional premium of the amount calculated in accordance with the formula—

$$P_1 - P_2$$

where:

P_1 is the amount of the premium for the period after the variation at the rate that would have been payable if the policy had been issued after the date of the variation;

P_2 is the amount of the premium for the period after the variation at the rate payable under the policy.

(3) Where, by virtue of subsection (1)—

- (a) a variation under section 12A reduces the potential liability of an authorised insurer under a prescribed insurance policy; and
- (b) the policy has effect in a period after the variation;

the insurer shall pay the employer who is a party to the policy a refund of the amount calculated in accordance with the formula—

$$P_2 - P_1$$

where P_1 and P_2 have the values assigned to those terms in subsection (2).

Workers' rights to information

21. (1) An employer shall, on request by a person who is or has been employed by the employer, in relation to a date specified by that person—

- (a) inform that person of the name and address of the insurer, or of each insurer, who issued to the employer an insurance policy for the purposes of this Act which was current on that date; or
- (b) if, on that date, the employer was exempt from the requirement to obtain insurance under this Act—inform that person of that fact.

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Penalty: \$2,000.

(2) An employer shall keep displayed, in accordance with subsection (3), a notice containing a summary of the requirements of this Act for making compensation claims, in the form determined by the Minister under subsection (4), and stating—

- (a) that claim forms for compensation are available from the employer on request and free of charge;
- (b) if the employer is a party to a prescribed insurance policy—the name and address of the insurer; and
- (c) if the employer is an exempt employer—that the employer is exempt from the requirement to obtain insurance under this Act.

Penalty: \$1,000.

(3) An employer shall display the notice in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

(4) The Minister shall, by notice published in the *Gazette*, determine the form of the summary referred to in subsection (2).

(5) An employer shall ensure that claim forms in accordance with Forms 1 and 2 in Schedule 1 to the regulations are available during business hours to each worker who is or has been employed by the employer upon request and free of charge.

Penalty for contravention of subsection (5): \$1,000.

PART IV—COMPENSATION AND COMMON LAW REMEDIES

Interpretation

21A. (1) In this Part—

“compensation” includes a payment under section 11;

“damages” includes an amount paid under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not, but does not include an amount paid for costs incurred in connection with proceedings in a court;

“injury”, in relation to a worker, includes damage to the worker’s contact lenses, crutches, prosthesis, spectacles or other artificial aid.

(2) Where damages are recovered by a person on another person's behalf, a reference in this Part to a person who recovers damages shall be read as a reference to the person on whose behalf damages are recovered.

(3) Where compensation is paid or payable to a person for the benefit of another person, a reference in this Part to a person to whom compensation is paid or payable, as the case may be, shall be read as a reference to the person for whose benefit the compensation is paid or payable.

Payments by nominal insurer

21B. (1) Where the nominal insurer pays compensation in respect of an injury to a worker, this Part applies as if a reference to the worker's employer were a reference to the nominal insurer.

(2) Where the nominal insurer and an employer both pay compensation in respect of an injury suffered by a worker, the rights of the nominal insurer under this Part in relation to that payment have priority over the rights of the employer.

Remedies both against the employer and a stranger

22. (1) If an injury in respect of which compensation is payable under this Act is caused under circumstances which appear to create a legal liability in some person other than the employer to pay damages in respect of the injury—

- (a) the worker may take proceedings against that person to recover damages and may also make a claim against the employer under this Act;
- (b) where the worker receives both amounts under this Act and damages from that other person, he or she shall repay to the employer so much of those amounts as does not exceed the amount of the damages received from that person;
- (c) upon notice to that person, the employer shall have a first charge upon moneys payable by that person to the worker to the extent of any amounts which the employer has paid to the worker under this Act;
- (d) where the worker has received amounts under this Act, but no damages or less than the full amount of the damages to which he or she is entitled, the person liable to pay the damages shall indemnify the employer against so much of the amounts paid to the worker as does not exceed the damages for which that person is liable; and

- (e) payment of money by that person to the employer under either of the last two preceding paragraphs shall, to the extent of the amount paid, be a satisfaction of the liability of that person to the worker.

Liability of the employer independently of this Act

23. (1) Except as provided by this section, a worker shall not be entitled, in respect of personal injury arising out of or in the course of his or her employment, to receive compensation or any payment by way of compensation from his or her employer both independently of and also under this Act.

(3) Where a worker is awarded damages against his or her employer in respect of an injury independently of this Act—

- (a) amounts received by him or her under this Act in respect of that injury shall, to the extent that they do not exceed the damages, be deemed to have been paid by the employer in or towards satisfaction of the damages; and
- (b) he or she shall be entitled to recover under this Act so much (if any) of the amount which, but for this section, would be payable under this Act as does not exceed any unsatisfied balance of the damages.

Dependants recovering damages and not claiming compensation

23A. (1) This section applies where—

- (a) an employer pays compensation to a dependant of a deceased worker in respect of an injury that resulted in the death of a worker;
- (b) damages in respect of the injury have been recovered from the employer or any other person by another dependant of the deceased worker (in this section called a “non-claiming dependant”); and
- (c) no claim for compensation in respect of the injury has been made by or on behalf of the non-claiming dependant.

(2) Where there is only 1 non-claiming dependant, he or she is liable to pay to the employer—

- (a) if the amount of the damages recovered by the non-claiming dependant is less than the total amount of compensation paid to the dependants of the worker in respect of the worker’s injury—the amount of the damages; or
- (b) in any other case—the amount of the compensation.

(3) Where there is more than 1 non-claiming dependant, each such dependant is liable to pay to the employer—

(a) an amount calculated in accordance with the formula—

$$C \times \frac{D}{TD}$$

where—

C is the total amount of the compensation paid in respect of the worker's injury to dependants of the worker;

D is the amount of damages recovered by the non-claiming dependant in respect of the injury to the worker; and

TD is the total of the amounts of damages recovered by all the non-claiming dependants; or

(b) if the amount of the damages recovered by the non-claiming dependant is less than the amount calculated in accordance with the formula in paragraph (a)—the amount of the damages.

(4) For the purposes of subsections (2) and (3), the amount of the compensation paid by the employer in respect of the worker's injury does not include—

(a) any amount paid to a dependant of the worker who is not entitled to recover damages in respect of the worker's injury; or

(b) any amount paid for the benefit of a dependent child of the worker under subparagraph 1 (a) (i) of Schedule 1.

Discharge of liability out of payments into Court

23B. (1) Where a worker or a dependant of a deceased worker is liable under section 22 or 23A to pay an amount to the worker's employer and the Court or any person appointed by the Court for the purpose holds on behalf of the worker or the dependant—

(a) an amount of money, being compensation payable for the benefit of, or damages awarded to, the worker or the dependant; or

(b) investments acquired out of such an amount;

the Court or that person shall—

(c) deduct from that amount; or

- (d) realise any or all of the investments and deduct from the proceeds of the realisation;

an amount not exceeding the amount that the worker or dependant is so liable to pay the employer, and shall pay the amount deducted to the employer.

(2) The payment of an amount to an employer under subsection (1) shall be a discharge of the liability—

- (a) of the worker or dependant to the employer; and
- (b) of the Court or other person to the worker or dependant;

to the extent of the amount paid.

PART V—INSPECTION

Interpretation

23C. (1) In this Part—

“premises” includes—

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

(2) For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or it is intended to be used, for the purpose of committing the offence.

(3) A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or will be, committed.

(4) Where an inspector is authorised under this Part to enter premises, and enters those premises, a reference to the occupier of the premises shall include a reference to a person believed by the inspector on reasonable grounds to be the occupier, or to be in charge, of those premises.

Inspectors

23D. (1) There may be 1 or more inspectors for the purposes of this Act.

(2) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an inspector.

(3) An inspector shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

Identity cards

23E. (1) The Chief Executive shall issue to an inspector an identity card that specifies the inspector's name and office, and on which appears a recent photograph of the inspector.

(2) Upon ceasing to occupy, or to act in, an office of inspector, a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: \$100.

Provision of information to inspectors

23F. (1) An inspector may, by notice in writing given to an employer, require the employer to provide to the inspector, within 28 days after the notice is given—

- (a) a certificate from a registered auditor stating the total amount of wages paid during the period specified in the notice to workers employed by the employer; and
- (b) a statutory declaration setting out—
 - (i) the determined categories of workers employed by the employer; and
 - (ii) the total amount of wages paid in respect of each of those categories of workers;

during the period specified in the notice.

(2) An inspector may, by notice in writing given to an employer, require the employer—

- (a) to produce for inspection any prescribed insurance policy to which the employer is a party; and

- (b) to furnish such related information as the inspector specifies in the notice;

within the time and in the manner stated in the notice.

(3) A registered auditor shall not knowingly supply false, misleading or incomplete information in a certificate provided for the purposes of subsection (1).

Penalty: \$5,000 or imprisonment for 6 months.

(4) An employer shall not, without reasonable excuse, fail to comply with a notice served on the employer in accordance with subsection (1) or (2).

Penalty for contravention of subsection (4): \$5,000 or imprisonment for 6 months.

Entry and inspection of premises

23G. (1) If an inspector believes on reasonable grounds that commercial premises are used by an employer in connection with the employment of a worker by the employer, the inspector may, while the premises are being so used, enter those premises for the purpose of ensuring that this Act is complied with.

(2) An inspector may enter any premises, and may exercise the powers of an inspector under subsection (3), if the entry is made, and the powers are exercised—

- (a) pursuant to a warrant issued under section 23I;
- (b) with the consent of the occupier of the land or premises; or
- (c) pursuant to an order of a court.

(3) An inspector who enters premises in accordance with this section may—

- (a) require any person on the premises to produce for inspection any documents or things relating to the employment of workers by the employer using the premises;
- (b) make copies of, or take extracts from, any such documents; and
- (c) require any person on the premises to produce information relating to such documents or things, or information relating generally to the employment of workers by the employer using the premises.

(4) An inspector who enters premises in accordance with this section is not authorised to remain on the premises if, at the request of the occupier of the premises, the inspector does not show the occupier the identity card issued to the inspector under section 23E.

(5) A person shall not, without reasonable excuse, contravene a requirement made of him or her under this section.

Penalty: \$5,000 or imprisonment for 6 months.

(6) In this section—

“commercial premises” means premises in which a business, trade, profession or calling is carried on, excluding any part of the premises that is used for residential purposes.

Consent to entry and inspection

23H. (1) Before seeking the consent of the occupier of premises or a place for the purposes of paragraph 23G (2) (b), an inspector shall inform the occupier that he or she may refuse to give that consent.

(2) If an inspector obtains the occupier's consent for the purposes of paragraph 23G (2) (b), he or she shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has given the inspector consent, for those purposes, to enter the occupier's premises and to exercise the powers of an inspector under subsection 23G (3);
- (b) that the occupier has been informed that he or she may refuse to give that consent; and
- (c) of the day on which, and the time at which, that consent was given.

(3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of paragraph 23G (2) (b), and an acknowledgment in accordance with subsection (2) signed by the occupier is not produced in evidence, it is to be presumed that the occupier did not consent unless the contrary is established.

Search warrants

23I. (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, in or on any premises any thing of a particular kind connected with a particular defined

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offence, and the information sets out those grounds, the magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises;
- (b) to search the premises for things of that kind; and
- (c) to exercise the powers of an inspector under subsection 23G (3) in relation to the premises or place.

(2) A magistrate shall not issue a warrant unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence, if any, in relation to which the entry and search are authorised;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under subsection 23G (3) may be exercised; and
- (e) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

PART VI—PROCEDURE FOR PAYMENT OF COMPENSATION

Arbitration

24. All matters and questions (other than prosecutions for offences) arising under this Act shall, where no other provision is made in this Act, in the absence of agreement, be settled by arbitration in accordance with Schedule 4.

Time for taking proceedings

25. (1) Proceedings for the recovery of compensation for an injury shall not be maintainable unless notice of the injury has been given as soon as practicable after it has happened, and before the worker has voluntarily left the employment in which he or she was injured and unless the claim for compensation has been made—

- (a) within six months after the occurrence of the injury; or
- (b) in case of death—within six months after advice of the death has been received by the claimant.

(2) The want of notice or any defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings if it is found in the proceedings for the settling of the claim that the employer's defence is not, or would not be, if a notice or an amended notice were then given and the hearing postponed, prejudiced by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(3) The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.

(4) Notice in respect of any injury to which this Act applies shall contain the name and address of the person injured, and a statement in ordinary language of the cause of the injury, and the date on which the injury happened, and shall be served on the employer, or, if there is more than one employer, upon one of the employers.

(5) The notice may be served by delivering it at, or sending it by post in a registered letter properly address to, the residence or place of business of the person on whom it is to be served.

(6) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it to, or by sending it by post in a registered letter addressed to the employer at, the office, or if there be more than one office, any of the offices of the body.

Admissibility of statements by injured workers

25A. (1) A written statement in relation to a worker's injury which is given by the worker to his or her employer or to the employer's insurer is not to be admitted in evidence on behalf of such an employer or insurer in any proceedings under this Act unless the employer or insurer, as the case may be,

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has, not later than 14 days before the proceedings are heard, given to the worker, or his or her solicitor or agent, a copy of the statement.

(2) In this section—

“insurer” means—

- (a) an approved insurer; or
- (b) the nominal insurer.

Appeals

26. (1) Where a committee or the Court gives a decision or makes an order or award with respect to any matter which may be or is required to be settled by arbitration under this Act, any party to the arbitration may appeal from the decision, order or award to the Supreme Court.

(2) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to an appeal under subsection (1)—

- (a) as if it were an appeal from a judgment or order of a kind specified in subsection 282C (2) of that Act; and
- (b) in the case of an appeal from a decision, order or award by a Committee—as if the decision, order or award was a decision, order or award of the Court.

PART VIA—WEEKLY COMPENSATION PAYMENTS

Notice to employer's insurer

26A. Where a worker makes a claim for weekly compensation payments, the employer (not being an exempt employer) shall, within 7 days after the day on which the worker lodges the claim with the employer, lodge the claim with the employer's insurer.

Penalty: \$1,000.

Commencement

26B. (1) Where a worker makes a claim for weekly compensation payments the employer shall, within the prescribed period, in accordance with the direction of the employer's insurer (if any)—

- (a) commence making weekly compensation payments in accordance with Schedule 1; or

- (b) reject the claim by written notice to the worker.

Penalty: \$5,000.

- (2) In subsection (1)—

“prescribed period” means—

- (a) in relation to a claim lodged by a worker with an exempt employer—the period ending at the expiration of 28 days after the day on which the worker lodges the claim with the employer; or
- (b) in relation to a claim lodged with any other employer—the period ending 21 days after the day on which the employer lodges the claim with the employer’s insurer.

Termination

26C. (1) An employer may, within 12 months after the day on which a worker lodges a claim for weekly compensation payments with the employer, terminate those payments by notice to the worker in accordance with subsection (2) if, in the opinion of the employer’s insurer or, in the case of an exempt employer, the employer, based on reasonable grounds, the worker is no longer entitled to receive the payments.

- (2) A notice under subsection (1) shall—

- (a) be in writing in the approved form; and
- (b) specify the following:
 - (i) the day on which the termination is to take effect, being a day not less than 8 weeks after the day on which the notice is given to the worker;
 - (ii) the grounds for the insurer’s or employer’s opinion that the worker is not entitled to continue receiving the weekly payments;
 - (iii) the options available to the worker to have the decision to terminate payments reviewed.

Review of termination

26D. (1) Where an employer gives notice of termination of weekly compensation payments under section 26C, the worker to whom the notice is

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given may apply to the Court to have the weekly payments continue or recommence.

(2) On receipt of an application from a worker under subsection (1), if the Court is satisfied that the worker is entitled to receive the payments that are the subject of the application, the Court shall order that the payments continue or recommence.

(3) Where the Court orders that weekly compensation payments recommence, it may order that the employer make an additional payment to the worker of such amount as the Court considers appropriate, being an amount not exceeding the amount that the worker could have received by way of weekly compensation for the period during which those payments were not made.

(4) On application by any party, or of its own motion, the Court may make such interim orders in relation to an application under subsection (1) as it considers appropriate pending its final decision.

Court-approved termination

26E. (1) An employer may apply to the Court for authority to terminate weekly compensation payments paid to a worker under this Act.

(2) An employer shall give the affected worker notice in the approved form of the employer's intention to apply to the Court for authority to terminate weekly compensation payments to the worker.

(3) Where the Court is satisfied that the affected worker is not entitled to receive weekly compensation payments, it shall make an order authorising the employer to terminate the payments to the worker after a specified day.

(4) The day specified under subsection (3) shall be after the expiration of 8 weeks from the day on which the employer gave the worker notice under subsection (2).

Notice to nominal insurer

26F. An employer who gives notice of the termination of weekly compensation payments to a worker under section 26C or subsection 26E (2) shall, as soon as is practicable, give a copy of the notice to the nominal insurer.

Penalty: \$500.

PART VII—MISCELLANEOUS

Conduct of directors, servants and agents

27. (1) Where, for the purposes of a prosecution for a defined offence, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person is to be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for a defined offence, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of a defined offence; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

Corporations—penalties

27A. Where a body corporate is convicted of a defined offence, the penalty that the Court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.

Administrative review

27B. (1) Application may be made to the Administrative Appeals Tribunal for the review of the decision of the Minister—

- (a) under paragraph 17 (1) (b) to refuse to approve an insurer;
- (b) under subsection 17 (2) to revoke the approval of an insurer;
- (c) under paragraph 17C (1) (b) to refuse to exempt an employer;
- (d) under paragraph 17C (4) (a) to suspend the exemption of an employer;
or
- (e) under paragraph 17C (4) (b) to revoke the exemption of an employer.

(2) A notice under a provision referred to in subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*

Power of Minister to determine fees

27C. The Minister may, by notice published in the *Gazette*, determine fees for the purposes of this Act.

Regulations

28. The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act and in particular for prescribing matters providing for and in relation to—

- (a) the procedure in regard to the medical examination of injured workers;
- (b) the duties of medical referees appointed under this Act;
- (c) fees and expenses to be paid for medical examinations or medical treatment;
- (ca) the form of medical certificates required for the purposes of this Act, the regulations or the Rules;
- (d) the procedure in regard to compulsory insurance and approval of insurance companies; and

Workers' Compensation Act 1951

- (e) penalties for offences against the regulations not exceeding—
 - (i) if the offender is a natural person—\$1,000; or
 - (ii) if the offender is a body corporate—\$5,000.
-

SCHEDULE 1

Section 7

1AA. In this Schedule—

“child”, in relation to a worker, means an unmarried child of the worker who is—

- (a) under the age of 16 years; or
- (b) a full-time student;

“full-time student” means a person who—

- (a) has attained the age of 16 years but not the age of 25 years; and
- (b) is receiving full-time education at a secondary or tertiary educational institution;

“prescribed person”, in relation to a worker, means a person who has attained the age of 16 years and is—

- (a) a member of the worker’s family; or
- (b) caring for a child of the worker, being a child who is wholly or mainly dependent on the worker’s earnings.

1. The amount of compensation shall be—

- (a) where the death of the worker results from the injury—
 - (i) if the worker leaves any dependants wholly dependent on his or her earnings—\$20,000 and, in respect of each dependent child of the worker, payment at the rate of \$7 per week from the date of death until the person ceases to be a child;
 - (ii) if the worker does not leave any dependants wholly dependent upon his or her earnings, but leaves dependants in part dependent upon his or her earnings—such sum, not exceeding in any case the amount payable under subparagraph (i) as is reasonable and proportionate to the loss to the dependants resulting from the cessation of the earnings of the worker; and
 - (iii) such sum, not exceeding \$450, on account of the expenses of the worker’s funeral as is reasonable;
- (b) where the worker is totally incapacitated for work by the injury, in respect of the period of the worker’s incapacity—
 - (i) \$57 for each week, and a proportionate amount for each additional day;
 - (ii) if the worker had a spouse at the date of the injury—\$15 for each week, and a proportionate amount for each additional day, during which the spouse is wholly or mainly dependent on the worker’s earnings;
 - (iii) if the worker has no spouse, and there is a prescribed person in relation to the worker—\$15 for each week, and a proportionate amount for each additional day, during which the prescribed person is wholly or mainly dependent on the worker’s earnings, in respect of one prescribed person only;
 - (iv) if the worker has a child, whether born before or after the date of the injury, but not including a child of a marriage or ex-nuptial relationship formed after that date—\$7 for each week, and a proportionate amount for each additional day, during which the child is wholly or mainly dependent on the worker’s earnings; and
 - (v) if the prescribed amount applicable to a worker in respect of a week, being one of the first 26 weeks of the incapacity, exceeds an amount calculated by adding to \$57 the amount or amounts (if any) payable to the worker under subparagraphs (ii), (iii)

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SCHEDULE 1—continued

and (iv)—the amount of the excess for each week, and a proportionate amount for each day; and

- (c) where the worker is partially incapacitated for work by the injury—a weekly payment during his or her incapacity—
 - (i) of the amount (if any) by which the weekly amount that he or she is earning, or is able to earn in some suitable employment or business, after the injury is less than his or her weekly pay at the date of the injury, or of the amount of \$57, whichever is the less; or
 - (ii) of the amount (if any) by which the weekly amount that he or she is earning, or is able to earn in some suitable employment or business, after the injury is less than the weekly amount that would have been payable to him or her under paragraph (b), if he or she had been totally incapacitated,

whichever is the greater.

1A. For the purposes of paragraph 1 (b), the prescribed amount applicable to a worker in respect of a week is—

- (a) in the case of a worker who is, during that week, employed under conditions of employment providing for sick leave payments—an amount equal to the sick leave payment that the worker would receive in respect of that week if, during that week, he or she were entitled to, and were granted, sick leave on full pay by reason of an illness that is not attributable to an injury in relation to which this Act applies; or
- (b) in any other case—an amount equal to the amount of the earnings that would, but for the injury, be payable to the worker in respect of that week.

1B. For the purposes of clause 1A—

- (a) a worker who would be, or would have been, employed but for his or her incapacity shall be taken to be employed or to have been employed, as the case may be;
- (b) a reference to a sick leave payment is a reference to a payment by way of salary, wages or pay in respect of a period during which the worker concerned is absent from employment by reason of illness; and
- (c) a reference to earnings, in relation to a worker—
 - (i) includes a reference to the earnings that would be, or would have been, payable to the worker but for his or her incapacity; and
 - (ii) does not include a reference to a payment in respect of overtime or a reference to an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the worker in respect of his or her employment.

2. Notwithstanding anything contained in clause 1—

- (a) where death results from the injury—
 - (i) any amount paid or payable before the death of the worker by way of weekly payments in respect of his or her total or partial incapacity for work shall not be deducted from the sum payable under subparagraph 1 (a) (i), or shall be disregarded in determining the sum payable under subparagraph 1 (a) (ii), as the case may be; but
 - (ii) the amount by which any lump sum, paid to a worker in pursuance of clause 13 of this Schedule or section 10 of this Act before the death of the worker, exceeds the total of all weekly payments which would have been payable under paragraph 1 (b)

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SCHEDULE 1—continued

or (c), if they had continued until the date of the worker's death, shall be deducted from the sum payable under subparagraph 1 (a) (i), or shall be taken into account in determining the sum payable under subparagraph 1 (a) (ii), as the case may be, provided that the sum so payable is not reduced to less than \$2,000;

- (b) where the worker is totally or partially incapacitated for work by the injury—
 - (i) no payment shall be made under paragraph 1 (b) or (c) which is in excess of the amount of the weekly pay of the worker at the date of the injury;
 - (ii) subject to clause 2A regard shall be had to any payment, allowance or benefit which the worker receives from his or her employer during the period of the worker's incapacity and the amount of the weekly payment otherwise payable under paragraph 1 (b) or (c) shall be reduced to such amount (if any) as is just and proper; and
 - (iii) if the worker is a minor who is not entitled under the terms of any award order or determination of an industrial authority, any industrial agreement or any law to receive the same rate of pay as an adult, "\$42.75" shall be deemed to be substituted for "\$57.00" in the application of the provisions of paragraph 1 (b) or (c) in relation to the worker while he or she remains such a minor; and
- (c) where the worker is totally incapacitated for work by the injury, eligibility for weekly payment under paragraph 1 (b) in respect of a child born after the date of the injury shall not accrue until the date of birth of the child.

2A. For the purposes of subparagraph 2 (b) (ii), no regard shall be had to any payment, allowance or benefit that is payable to the worker by his or her employer under the terms of an award, order or determination of an industrial authority, under the terms of an industrial agreement or under the terms of the contract of service or apprenticeship between the worker and his or her employer whereby provision is made, in the event of the worker being totally or partially incapacitated for work in circumstances to which this Act applies, for the payment by the employer to the worker of a weekly amount equal to the amount by which the weekly amount payable as compensation is less than a weekly amount ascertained or calculated in accordance with those terms.

3. The amount of family allowance paid under Part X of the *Social Security Act 1947* of the Commonwealth in respect of a child shall be disregarded in ascertaining, for the purposes of this Schedule, whether or not that child is or was dependent upon the earnings of the worker.

4. For the purposes of this Schedule—

- (a) "pay" means the salary or wages of the worker, and includes—
 - (i) where at the date of the injury the worker was engaged in part-time work—his or her earnings from any other employment; and
 - (ii) unless otherwise prescribed—any allowance payable to the worker in respect of his or her employment,

but subject to the regulations, does not include any allowance which is intermittent or which is payable in respect of special expenses incurred or likely to be incurred by the worker in respect of his or her employment; and

- (b) any reference to the weekly pay of the worker at the date of the injury means, if the rate of pay of workers of the same class is subsequently varied by competent authority or following upon a variation in the cost of living, the rate of pay as so varied.

5. Where a worker has given notice of an injury, or has made a claim for compensation for an injury, the worker shall, if so required by the employer, submit himself or herself for examination by a medical practitioner provided and paid by the employer, and, if the worker refuses to submit himself or

SCHEDULE 1—continued

herself to the examination, or in any way obstructs the examination, the worker's right to compensation, and to take or prosecute any proceedings under this Act in relation to compensation, shall be suspended until the examination has taken place.

6. A payment in the case of death (including a payment under clause 9A) shall, unless otherwise ordered in pursuance of the provisions of this Schedule, be paid into the Court and any sum so paid into Court shall, subject to Rules of Court, and the provisions of this Schedule, be invested, applied or otherwise dealt with by the Court in such manner as the Court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, or (except in the case of a payment under clause 9A) dealt with in accordance with section 25 of the *Public Trustee Act 1985* and the receipt of the Registrar of the Court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the worker leaves no dependants, be made to his or her legal personal representative, or if the worker has no such representative, to the person to whom the expenses of medical treatment and the funeral are due.

6A. The Court may, in the case of weekly payments referred to in subparagraph 1 (a) (i) payable in respect of a particular child, order that, instead of those payments being paid into Court, those payments be made, until the Court otherwise orders, to such person as the Court specifies in the order to be applied for the benefit of the child.

7. (1) Where weekly payments (other than payments referred to in subparagraph 1 (a) (i)) are payable to a person under a legal disability, the Court may order that, until it otherwise orders—

- (a) the payments be paid into Court; or
- (b) the payments be made to such person as the Court specifies in the order to be applied for the benefit of the person under legal disability.

(2) Where a lump sum payment (other than a payment under clause 9A) is payable to a person under a legal disability, the payment shall, unless the Court otherwise orders, be paid into Court.

(3) Where under this clause the payment of a weekly payment or a lump sum payment is to be paid into Court, the provisions of clause 6 with respect to payments into Court in pursuance of that clause and, in the case of a lump sum payment, section 25 of the *Public Trustee Act 1985* shall apply to sums paid into Court under this clause.

7A. An application for an order under clause 6A or 7 may be made on the application of the person liable to make the weekly payments or by or on behalf of the person to whom or in respect of whom payments are payable.

8. Where there are both total and partial dependants and an application is made to the Court in accordance with the Rules of Court, the Court may allot the compensation partly to the total and partly to the partial dependants.

9. Where, on application being made in accordance with Rules of Court, it appears to the Court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the Court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with ought to be varied, the Court may make such order for the variation of the former order or the award, as in the circumstances of the case, the Court may think just.

9A. Where—

- (a) a weekly payment under subparagraph 1 (a) (i) in respect of a child of a worker ceases to be payable; and
- (b) the aggregate amount of such weekly payments is less than \$700;

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SCHEDULE 1—continued

there is payable an additional amount of compensation equal to the difference between the aggregate amount and \$700.

10. Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner provided and paid by the employer and if the worker refuses to submit himself or herself to the examination or in any way obstructs the examination, the worker's right to such weekly payments shall be suspended until the examination has taken place.

11. (1) A worker shall not be required to submit himself or herself for examination by a medical practitioner under clause 5 or 10 otherwise than in accordance with the regulations.

(2) Where a worker has so submitted himself or herself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself or herself, and the employer or the worker, as the case may be, has within 6 days after such examination furnished the other with a copy of the report of that practitioner as to the worker's condition, then, in the absence of agreement between the employer and the worker as to the worker's condition or fitness for employment, the Registrar of the Court may, on an application being made by either of the parties with the consent of the other and on payment of such fee not exceeding \$2.00, as may be prescribed, refer the matter to a medical referee.

(3) The medical referee to whom the matter is so referred shall, in accordance with the regulations, give a certificate as to the condition of the worker and his or her fitness for employment, specifying, where necessary, the kind of employment for which the worker is fit and that certificate shall be conclusive evidence as to the matters so certified.

(4) Where no agreement can be come to between the employer and the worker as to whether or to what extent the incapacity of the worker is due to the injury, this paragraph shall, subject to the regulations, apply as if the question were a question as to the condition of the worker.

(5) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical referee to whom the matter has been so referred, or in any way obstructs the medical referee, his or her right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a worker in receipt of a weekly payment, his or her right to that weekly payment shall be suspended until the examination has taken place.

(6) Rules of Court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this clause, the forms to be used for these purposes and the fees to be paid under this clause.

12. A weekly payment (other than a weekly payment referred to in subparagraph (1) (a) (i)) payable under this Act may be varied or ended by agreement or by arbitration under this Act or ended in accordance with section 26C or 26E of this Act.

13. Where, in any case other than one of total and permanent incapacity, any weekly payment (other than a weekly payment referred to in subparagraph (1) (a) (i)) has been continued for not less than 6 months, the liability therefor may be redeemed by the payment of a lump sum of such amount as may be settled by agreement (subject to clause 10 of Schedule 4) or, upon application by or on behalf of the employer with the consent of the worker, by arbitration under this Act, and the lump sum may be ordered by the Court to be invested or otherwise applied for the benefit of the person entitled thereto.

14. If a worker receiving a weekly payment ceases to reside in Australia, the worker shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature or that the worker's absence from Australia is desirable for recuperative purposes. If a medical referee so certifies the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as the worker proves in such a manner and at such intervals as may be prescribed, his or her identity and the continuance of the incapacity in respect of which the weekly payment is payable.

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SCHEDULE 1—continued

15. A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the amount of the payment or sum.

16. Where under this Schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

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SCHEDULE 2

Section 10

Loss of both eyes
 Loss of an only useful eye, the other being blind or absent
 Loss of both hands
 Loss of hand and foot
 Loss of both feet

First Column Nature of Injury	Second Column Percentage
Loss of one eye, with serious diminution of the sight of the other	75
Loss of one eye	40
Loss of hearing	70
Complete deafness of one ear	20
Loss of right arm or greater part of right arm	80
Loss of left arm or greater part of left arm	72
Loss of lower part of right arm, right hand or five fingers of right hand	70
Loss of lower part of left arm, left hand or five fingers of left hand	63
Loss of right thumb	30
Loss of left thumb	27
Loss of right forefinger	20
Loss of left forefinger	18
Loss of right middle finger	16
Loss of left middle finger	15
Loss of right ring finger	14
Loss of left ring finger	13
Loss of right little finger	13
Loss of left little finger	12
Loss of total movement of joint of right thumb	14
Loss of total movement of joint of left thumb	13
Loss of distal phalanx or joint of right thumb	16
Loss of distal phalanx or joint of left thumb	15
Loss of portion of terminal segment of right thumb involving one-third of its flexor surface without loss of distal phalanx or joint	14
Loss of portion of terminal segment of left thumb involving one-third of its flexor surface without loss of distal phalanx or joint	13
Loss of two phalanges or joints of right forefinger	12
Loss of two phalanges or joints of left forefinger	11
Loss of two phalanges or joints of right middle or ring finger	11
Loss of two phalanges or joints of left middle or ring finger	10
Loss of two phalanges or joints of right little finger	10
Loss of two phalanges or joints of left little finger	9
Loss of distal phalanx or joint of right forefinger	10
Loss of distal phalanx or joint of left forefinger	9
Loss of distal phalanx or joint of other finger of right hand	8
Loss of distal phalanx or joint of other finger of left hand	7
Loss of leg above knee	75
Loss of leg below knee	65
Loss of foot	60
Loss of great toe	20

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Loss of any other toe.....	8
Loss of two phalanges or joints of any other toe	7
Loss of phalanx or joint of great toe	10
Loss of phalanx or joint of any other toe	6

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SCHEDULE 3

Paragraph 16 (1) (a)

Estimated Earnings, \$

Premium, \$

(Subject to adjustment as provided below.)

Whereas by virtue of the *Workers' Compensation Act 1951* of the Australian Capital Territory (hereinafter called the Act) it is provided that every Employer shall obtain from an Insurer approved under the Act, a policy of insurance for an unlimited amount in respect of any liability of the employer that may arise—

(a) under the Act; and

(b) independently of the Act;

in respect of any injury to, or death of, any of the employer's employees, and shall maintain such Policy in force and whereas

of

(hereinafter called the Employer) is carrying on the business of
and no other for the purpose of this Policy at
in the Australian Capital Territory, and has made to
an Insurer approved under the Act (hereinafter called the Insurer) a written Proposal and Declaration, dated the day of , 19 , containing certain particulars and statements which it is hereby agreed shall be the basis of this contract and be considered as incorporated herein.

Now this policy witnesseth that in consideration of the payment by the Employer to the Insurer of the abovementioned Premium (which Premium is subject to adjustment as hereinafter provided) if, between the

day of , 19 , and Four O'clock in the afternoon of the
day of , 19 , and thereafter to Four O'clock in the afternoon of the last day of any
subsequent period in respect of which the Premium shall have been paid to and accepted by the Insurer, the Employer shall be liable to pay compensation under the Act to or in respect of any person who is or is deemed by the Act to be a worker of such Employer or to pay any other amount in respect of the Employer's liability independently of the Act for any injury to any such person, then and in every such case, the Insurer will indemnify the Employer against all such sums for which the Employer shall be so liable; the Insurer will also pay all costs and expenses incurred with the written consent of the Insurer in connexion with the defence of any legal proceedings in which such liability is alleged. Provided that this Policy shall not extend to any business or occupation other than that described herein, unless and until particulars thereof shall have been supplied to and accepted by the Insurer and the acceptance of such extension endorsed hereon by the Insurer. And it is hereby further agreed that the above indemnity is made subject to the due and proper observance and fulfilment by the Employer of the conditions hereunder. And the Insurer shall be (a) directly liable to any worker, and in the event of the worker's death to his or her dependants, to pay the compensation for which the Employer is liable and in respect of which the Employer is indemnified under this Policy, and (b) bound by and subject to any order, decision or award made against the Employer of any such worker under the provisions of the Act or in respect of the Employer's liability independently of the Act and in respect of which the Employer is indemnified under this policy. Provided lastly that this Policy shall be subject to the Act and the Rules and Regulations made thereunder, as in force from time to time, all of which shall be deemed to be incorporated in and form part of this Policy.

1. Every notice or communication to be given or made under this Policy shall be delivered in writing at the Office of the Insurer from which the Policy has been issued.

2. The Employer shall give notice to the Insurer of any personal injury as soon as practicable after information as to the happening of the injury, or of any incapacity arising therefrom, comes to the knowledge of the Employer or of the Employer's representative for the time being, and shall forward to

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the Insurer forthwith after receipt thereof every written notice of claim or proceedings, and all information as to any verbal notice of claim or proceedings.

3. The Employer shall not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement, or admission of liability in respect of any injury to or claim made by any worker.

4. The Insurer shall in respect of anything indemnified under this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer, be entitled to use the name of the Employer. The Employer shall give all necessary information and assistance, and forward all documents to enable the Insurer to settle or resist any claim as the Insurer may think fit.

5. The Insurer shall be entitled to use the name of the employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise, and shall have the right of subrogation, in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by this Policy, and the Employer shall as and when required execute any necessary documents for the purpose of vesting such rights in the Insurer.

6. The Employer shall take all reasonable precautions to prevent injuries.

7. So far as reasonably practicable, no alteration or repair shall, without the consent of the Insurer, be made in any ways, works, machinery, or plant after any injury to a worker shall have occurred in connexion therewith until the Insurer shall have had an opportunity of examining the same.

8. The Insurer shall have the right and opportunity at all reasonable times to inspect the plant, works, machinery and appliances used in the Employer's business.

9. The first and every subsequent premium that may be accepted shall be regulated by the amount of all wages, salaries and other forms of remuneration paid or allowed to workers during each period of indemnity.

10. The name and earnings of every worker employed by the Employer shall be entered regularly in a proper Wages Book, so that a record may exist of such workers as are entitled to call upon the Employer for compensation.

11. The Employer shall at all times allow any officer duly authorized by the Insurer to inspect the Wages Book, and shall supply the insurer with:

- (a) a certificate from a registered auditor stating the total amount of wages paid to workers employed by the employer; and
- (b) a statutory declaration setting out:
 - (i) the determined categories of workers employed by the employer; and
 - (ii) the total amount of wages paid in respect of each of those categories of workers;

during any period of indemnity within one month from the expiry of such period of indemnity, and if the total amount shall differ from the amount on which premium has been paid, the difference in premium shall be met by a further proportionate payment to the Insurer, or by a refund by the Insurer, as the case may be, subject always to the retention by the Insurer of the Minimum Premium stated in the Proposal.

12. No assignment of interest under this Policy shall bind the Insurer unless the written consent of the Insurer is endorsed hereon.

13. The Insurer may at any time, by giving written notice to the Employer, cancel this Policy. The notice of cancellation shall be posted to the Employer at the withinmentioned address, and the cancellation of the Policy shall be effected on the expiration of seven clear days from the date of posting

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the said notice. Notwithstanding the cancellation of the Policy as aforesaid, the employer shall supply the insurer with:

- (a) a certificate from a registered auditor stating the total amount of wages paid to workers employed by the employer; and
- (b) a statutory declaration setting out:
 - (i) the determined categories of workers employed by the employer; and
 - (ii) the total amount of wages paid in respect of each of those categories of workers;

during the period of indemnity prior to the time of the cancellation, and the premium for the period of insurance prior to cancellation shall be adjusted on a *pro rata* basis in the manner provided by Condition 11 of this Policy. Provided that the Policy may not be cancelled without the consent of the (*here insert official description of appropriate Minister*) first had and obtained.

14. No condition or provision of this Policy shall be waived or altered unless the consent of the Insurer be previously obtained and signified by endorsement hereon, nor shall notice to any agent, nor shall knowledge possessed by any agent, or by any person, be held to effect a waiver or alteration in this contract or any part of it.

SCHEDULE 4

Section 24

1. For the purpose of settling any matter which, under this Act, is to be settled by arbitration, if any committee, representative of an employer and the employer's workers, exists with power to settle matters under this Act in the case of the employer and workers, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meets to consider the matter, be settled by the arbitration of the committee, or be referred by it, in its discretion, to arbitration as provided in this Schedule.

2. If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within one month from the date of the claim, the matter shall be settled by the Court by arbitration.

3. The *Commercial Arbitration Act 1986* does not apply to an arbitration under this Act, but a committee may, if it thinks fit, submit a question of law for the decision of the Court.

4. The Court shall, for the purposes of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the Court.

5. The Court may, if it thinks fit, summon a medical referee to sit with it as an assessor.

6. Rules of Court may make provision for the appearance, in any arbitration under this Act, of any party by some other person.

6A. Subject to this Act, the Regulations and the Rules of Court, in an arbitration under this Act—

- (a) the procedure of the Court is within the discretion of the Court;
- (b) the Court or the committee is not bound to act in a formal manner and is not bound by rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
- (c) the Court or committee shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

7. (1) A committee or the Court shall not award the costs of, or incidental to, an arbitration or any connected proceedings against a person claiming compensation in good faith in that arbitration or those proceedings.

(2) The costs of, and incidental to, an arbitration or any connected proceedings—

- (a) shall not exceed the limit prescribed by Rules of Court; and
- (b) shall be taxed in the manner prescribed by those Rules.

(3) The Court may review the taxation referred to in paragraph (2) (b).

9. Where an agreement has been made before ascertainment of compensation between a worker and his or her employer for payment of a lump sum by way of compromise and satisfaction of all claims, or the amount of compensation has been ascertained, or any weekly payment varied or terminated, or any other matter decided, under this Act, either by a committee or by agreement, a memorandum thereof may be sent, in the manner (if any) prescribed by Rules of Court, by the committee, or by any party interested, to the Registrar of the Court, who shall, subject to those Rules, on being satisfied as to its genuineness, record the memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the Court:

Provided that—

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- (a) no such memorandum shall be recorded before 7 days after the despatch by the Registrar of notice to the parties interested;
- (b) where a worker seeks to record a memorandum of agreement made with his or her employer for the payment of compensation, and the employer, in accordance with Rules of Court, proves that the worker has in fact returned to work and is earning the same wages as he or she did before the injury, and objects to the recording of the memorandum, the memorandum shall only be recorded, if at all, on such terms as the Court, under the circumstances, thinks just;
- (c) the Court may at any time rectify its register;
- (d) where it appears to the Registrar of the Court, on any information which the Clerk considers sufficient, that an agreement made before ascertainment of compensation between a worker and the worker's employer for payment of a lump sum by way of compromise in satisfaction of all claims or an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, the Clerk may refuse to record the memorandum of the agreement sent to him or her for registration, and refer the matter to the Court, which shall, in accordance with Rules of Court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just; and
- (e) the Court may, within six months after a memorandum of an agreement as to compromise of claims or the redemption of a weekly payment by a lump sum or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to its satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just.

10. An agreement as to the redemption of a weekly payment by a lump sum, if not registered in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, the person proves that the failure to register was not due to any neglect or default on the person's part.

11. The duty of the Court under this Act shall, subject to Rules of Court, be part of the duties of the Court, and the officers of the Court shall act accordingly.

12. No court fee, except such as may be prescribed under clause 11 of Schedule 1, shall be payable by any party in respect of any proceedings by or against a worker under this Act in the Court prior to the award.

13. Any sum awarded as compensation shall, unless paid into Court, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from the person any costs in respect of any proceedings in an arbitration under this Act or to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee or the Court, on an application made either by the person claiming compensation, or by the person's solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by Rules of Court.

Workers' Compensation Act 1951

14. A committee or the Court may, subject to regulations made under this Act, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

15. The Minister may, by order, either unconditionally or subject to such conditions or modifications as he or she thinks fit, confer on any committee representative of an employer and the employer's workers, in respect of any matter in which the committee acts as an arbitrator, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on the Court, and may by the order provide how and to whom compensation money is to be paid in cases where, but for the order, the money would require to be paid into Court, and the order may exclude from the operation of paragraphs 9 (d) and (e) agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as appear to the Minister to be necessary or proper for the purposes of the order.

Workers' Compensation Act 1951

NOTE

1. The *Workers' Compensation Act 1951* as shown in this reprint comprises Act No. 2, 1951 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

The *Workers' Compensation Act 1951* was formerly the *Workmen's Compensation Act 1951*. It was renamed by the *Worker's Compensation (Amendment) Act 1991* s 5.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Workmen's Compensation Ordinance 1951</i>	2, 1951	21 Mar 1951	21 Mar 1951	
<i>Workmen's Compensation Ordinance 1952</i>	4, 1952	1 May 1952	1 May 1952 (see <i>Gazette</i> 1952, p. 2417)	Ss. 3 and 4
<i>Workmen's Compensation Ordinance 1954</i>	12, 1954	3 June 1954	3 June 1954	Ss. 7 and 8
<i>Workmen's Compensation Ordinance 1956</i>	1, 1956	1 Mar 1956	1 Mar 1956	—
<i>Workmen's Compensation Ordinance 1959</i>	12, 1959	17 Sept 1959	17 Sept 1959	—
<i>Workmen's Compensation Ordinance (No. 2) 1959</i>	20, 1959	23 Dec 1959	23 Dec 1959	Ss. 6 and 7
<i>Ordinances Revision Ordinance 1959</i>	21, 1959	23 Dec 1959	31 Dec 1959	—
<i>Workmen's Compensation Ordinance 1961</i>	8, 1961	1 June 1961	1 June 1961	Ss. 6 and 7
<i>Workmen's Compensation Ordinance 1962</i>	10, 1962	6 Sept 1962	6 Sept 1962	S. 3 (2)
<i>Workmen's Compensation Ordinance 1965</i>	6, 1965	13 May 1965	10 June 1965	Ss. 8 and 9
<i>Workmen's Compensation Ordinance 1967</i>	44, 1967	14 Dec 1967	14 Dec 1967	—
<i>Workmen's Compensation Ordinance 1968</i>	19, 1968	3 Oct 1968	3 Oct 1968	Ss. 8 and 9
<i>Workmen's Compensation Ordinance 1969</i>	7, 1969	29 May 1969	29 May 1969	Ss. 3 and 4
<i>Workmen's Compensation Ordinance (No. 2) 1969</i>	13, 1969	24 July 1969	24 July 1969	—
<i>Workmen's Compensation Ordinance (No. 3) 1969</i>	18, 1969	28 Aug 1969	1 Sept 1969	—
<i>Workmen's Compensation Ordinance 1970</i>	26, 1970	9 July 1970	20 July 1970 (see <i>Gazette</i> 1970, p. 4716)	Ss. 4 and 5
<i>Workmen's Compensation Ordinance 1971</i>	15, 1971	1 July 1971	1 July 1971	Ss. 5 and 6
<i>Workmen's Compensation Ordinance 1972</i>	35, 1972	2 Nov 1972	2 Nov 1972	S. 3

Workers' Compensation Act 1951

NOTE—continued

Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Workmen's Compensation Ordinance (No. 2) 1972</i>	38, 1972	23 Nov 1972	23 Nov 1972	Ss. 4 and 5
<i>Workmen's Compensation Ordinance 1973</i>	11, 1973	5 Apr 1973	5 Apr 1973	Ss. 5 and 6
<i>Workmen's Compensation Ordinance 1974</i>	34, 1974	25 Sept 1974	25 Sept 1974	Ss. 3 and 4
<i>Workmen's Compensation Ordinance 1975</i>	11, 1975	1 May 1975	1 May 1975	Ss. 5 and 6
<i>Workmen's Compensation (Amendment) Ordinance 1978</i>	15, 1978	8 June 1978	8 June 1978	S. 4 (rep. by 47, 1978, s. 4) S. 5
	as amended by			
	47, 1978	28 Dec 1978	28 Dec 1978	—
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Workmen's Compensation (Amendment) Ordinance (No. 2) 1978</i>	47, 1978	28 Dec 1978	28 Dec 1978	S. 5 (rep. by 15, 1979, s. 4)
	as amended by			
	15, 1979	29 June 1979	29 June 1979	S. 5
<i>Workmen's Compensation (Amendment) Ordinance 1979</i>	15, 1979	29 June 1979	29 June 1979	S. 5
<i>Workmen's Compensation (Amendment) Ordinance 1980</i>	29, 1980	11 Sept 1980	11 Sept 1980	—
<i>Workmen's Compensation (Amendment) Ordinance 1981</i>	4, 1981	4 Mar 1981	4 Mar 1981	S. 4
<i>Workmen's Compensation (Amendment) Ordinance 1982</i>	103, 1982	31 Dec 1982	1 July 1982	—
<i>Workmen's Compensation (Amendment) Ordinance (No. 2) 1982</i>	104, 1982	31 Dec 1982	1 Jan 1983	—
<i>Workmen's Compensation (Amendment) Ordinance 1983</i>	69, 1983	30 Dec 1983	30 Dec 1983 (see <i>Gazette</i> 1983, No. S349, p. 2)	Ss. 9 (2) and 10 (2) (ad. by 5, 1984, ss. 4 and 5) S. 19
	as amended by			
	5, 1984	29 Feb 1984	30 Dec 1983	—
<i>Court of Petty Sessions (Civil Jurisdiction) Ordinance 1984</i>	76, 1984	19 Dec 1984	19 Dec 1984	S. 12

Workers' Compensation Act 1951

NOTE—continued

Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Trustee (Miscellaneous Amendments) Ordinance 1985</i>	9, 1985	8 Mar 1985	28 Oct 1985 (see <i>Gazette</i> 1985, No. G42, p. 3902)	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Commercial Arbitration Ordinance 1986</i>	84, 1986	22 Dec 1986	2 Mar 1987 (see <i>Gazette</i> 1987, No. G6, p. 509)	—
<i>Workmen's Compensation (Amendment) Ordinance 1987</i>	10, 1987	2 Apr 1987	2 Apr 1987	—
<i>Workmen's Compensation (Amendment) Ordinance (No. 2) 1987</i>	24, 1987	15 June 1987	15 June 1987	S. 7
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

Self-Government day 11 May 1989

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Magistrates and Coroner's Courts (Registrar) Act 1991</i>	44, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 2)	—
<i>Workers' Compensation (Amendment) Act 1991</i>	105, 1991	15 Jan 1992	Ss. 1-3: 15 Jan 1992 Remainder: 22 Jan 1992 (see <i>Gazette</i> 1992, No. S9)	Ss. 25-29
<i>Workers' Compensation (Amendment) Act 1993</i>	19, 1993	9 Mar 1993	9 Mar 1993	S. 5 (2)

Workmen's Compensation Act 1951

NOTE—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—
<i>Workers' Compensation (Amendment) Act 1994</i>	68, 1994	1 Nov 1994	Ss. 1 and 2: 1 Nov 1994 S. 5 (in part): 25 Nov 1994 (see <i>Gazette</i> 1994, No. S286) Remainder (ss. 3, 4, 5 (in part) and 6-9): 1 Jan 1995 (see <i>Gazette</i> 1995, No. S286)	S. 9
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
<i>Statute Law Revision Act 1995</i>	46, 1995	18 Dec 1995	18 Dec 1995	—
<i>Workers' Compensation (Amendment) Act 1995</i>	52, 1995	20 Dec 1995	20 Dec 1995	S. 4

NOTE—continued**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision	How affected
Title	am. No. 69, 1983; Act No. 105, 1991
Heading to Part I	ad. Act No. 105, 1991
S. 1	rs. Act No. 105, 1991
S. 3	rep. No. 46, 1978
Ss. 4, 5	rep. No. 21, 1959
S. 6	am. No. 4, 1952; No. 12, 1954; No. 1, 1956; Nos. 12 and 21, 1959; No. 10, 1962; No. 6, 1965; No. 44, 1967; No. 18, 1969; No. 11, 1973; No. 11, 1975; Nos. 15 and 47, 1978; No. 15, 1979; No. 4, 1981; No. 104, 1982; No. 69, 1983; No. 67, 1985; No. 24, 1987; No. 38, 1989; Act No. 105, 1991; Nos. 60, 68 and 97, 1994; Nos. 46 and 52, 1995
Ss. 6A, 6B	ad. Act No. 105, 1991
Heading to Part II	ad. Act No. 105, 1991
S. 7	am. No. 69, 1983 (as am. by No. 5, 1984); Act No. 105, 1991
S. 8	am. No. 4, 1952; No. 16, 1968; No. 69, 1983; Act No. 105, 1991
S. 9	rs. No. 69, 1983 am. Act No. 105, 1991
S. 9AA	ad. Act No. 19, 1993
Ss. 9A, 9B	ad. No. 69, 1983 am. Act No. 105, 1991
S. 10	am. No. 19, 1968; No. 26, 1970; No. 15, 1971; No. 38, 1972; No. 11, 1975; No. 69, 1983; Act No. 105, 1991
Ss. 10A-10C	ad. No. 69, 1983 am. No. 10, 1987; Act No. 105, 1991
S. 10D	ad. No. 69, 1983 am. Act No. 105, 1991
S. 10E	ad. No. 69, 1983
S. 10F	ad. No. 69, 1983 am. Act No. 105, 1991
S. 10G	ad. Act No. 52, 1995
S. 11	am. No. 4, 1952; No. 12, 1954; No. 20, 1959; No. 6, 1965; No. 44, 1967; No. 15, 1971; Act No. 105, 1991
S. 12	am. No. 4, 1952; No. 12, 1954; No. 20, 1959; No. 6, 1965; No. 44, 1967; No. 19, 1968; No. 26, 1970; No. 15, 1971; No. 38, 1972; No. 11, 1975; No. 69, 1983; Act No. 105, 1991
S. 12A	ad. No. 11, 1975 am. No. 103, 1982; Act No. 105, 1991
S. 12B	ad. No. 11, 1975
S. 12C	ad. No. 11, 1975 rep. Act No. 105, 1991
S. 13	am. No. 19, 1968; Act No. 105, 1991
S. 14	am. No. 44, 1967; Act No. 105, 1991
S. 15	am. No. 13, 1969; Act No. 105, 1991
Part IIA (ss. 15A-15H)	ad. Act No. 68, 1994
Ss. 15A-15H	ad. Act No. 68, 1994
Heading to Part III	ad. Act No. 105, 1991

Workers' Compensation Act 1951

NOTE—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 16	am. No. 44, 1967; No. 24, 1987 rs. Act No. 105, 1991
S. 17	rep. No. 12, 1959 ad. Act No. 105, 1991
Ss. 17A-17D	ad. Act No. 105, 1991
S. 18	am. No. 12, 1959; No. 44, 1967; No. 18, 1969; No. 29, 1980; No. 69, 1983; No. 24, 1987 rs. Act No. 105, 1991
S. 18A	ad. No. 12, 1959 am. No. 44, 1967; Act No. 105, 1991
S. 18B	ad. No. 12, 1959
S. 18C	ad. No. 12, 1959 am. No. 18, 1969; No. 69, 1983; Act No. 105, 1991
S. 18D	ad. No. 12, 1959 rs. No. 18, 1969 am. No. 69, 1983; Act No. 105, 1991
S. 18E	ad. No. 12, 1959 am. No. 8, 1961; No. 18, 1969; Act No. 105, 1991
S. 18EA	ad. No. 18, 1969 am. Act No. 105, 1991
S. 18F	ad. No. 12, 1959 am. No. 44, 1967; Act No. 105, 1991
S. 18G	ad. No. 12, 1959 am. No. 18, 1969
S. 18H	ad. No. 12, 1959 am. Act No. 105, 1991
S. 18J	ad. No. 12, 1959 am. No. 44, 1967; Act No. 105, 1991
S. 18K	ad. No. 12, 1959 am. Act No. 105, 1991
S. 19	am. No. 44, 1967; No. 18, 1969 rep. Act No. 105, 1991
S. 20	am. No. 44, 1967 rs. Act No. 105, 1991
S. 20AA	ad. Act No. 52, 1995
S. 20A	ad. Act No. 105, 1991
S. 21	am. No. 44, 1967; No. 18, 1969 rs. Act No. 105, 1991
Heading to Part IV	ad. Act No. 105, 1991
Ss. 21A, 21B	ad. Act No. 105, 1991
S. 22	am. No. 4, 1952; No. 12, 1959; Act No. 105, 1991
S. 23	am. No. 10, 1962; No. 69, 1983; Act No. 105, 1991
Ss. 23A, 23B	ad. Act No. 105, 1991

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NOTE—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Part V (ss. 23C-23I).....	ad. Act No. 105, 1991
S. 23C.....	ad. Act No. 105, 1991
Ss. 23D, 23E.....	ad. Act No. 105, 1991 rs. No 97, 1994
Ss. 23F-23I.....	ad. Act No. 105, 1991
Heading to Part VI.....	ad. Act No. 105, 1991
S. 24.....	am. Act No. 105, 1991
S. 25.....	am. No. 69, 1983; Act No. 105, 1991
S. 25A.....	ad. Act No. 105, 1991
S. 26.....	am. No. 12, 1959; No. 8, 1961; No. 11, 1973; No. 76, 1984; No. 67, 1985
Part VIA (ss. 26A-26F).....	ad. Act No. 68, 1994
Ss. 26A-26F.....	ad. Act No. 68, 1994
S. 27.....	rep. No. 38, 1989 ad. Act No. 105, 1991
S. 27A.....	ad. Act No. 105, 1991
S. 27B.....	ad. Act No. 105, 1991 am. No. 60, 1994; No. 46, 1995
S. 27C.....	ad. Act No. 105, 1991
S. 28.....	am. No. 4, 1952; No. 44, 1967; No. 13, 1969; No. 38, 1989; Act No. 105, 1991; No. 68, 1994
Heading to First Schedule	rep. Act No. 105, 1991
Heading to Schedule 1.....	ad. Act No. 105, 1991
First Schedule.....	am. No. 4, 1952; No. 12, 1954; Nos. 12 and 20, 1959; No. 8, 1961; No. 6, 1965; No. 44, 1967; No. 19, 1968; No. 7, 1969; No. 26, 1970; No. 15, 1971; Nos. 35 and 38, 1972; No. 11, 1973; No. 34, 1974; No. 11, 1975; No. 69, 1983; No. 9, 1985; No. 10, 1987; Acts Nos. 44 and 105, 1991
Schedule 1.....	am. No. 19, 1993; No. 68, 1994
Heading to Second Schedule	rep. Act No. 105, 1991
Heading to Schedule 2.....	ad. Act No. 105, 1991
Second Schedule.....	rs. No. 4, 1952; No. 12, 1954; No. 20, 1959; No. 6, 1965; No. 44, 1967; No. 19, 1968
Heading to Third Schedule	rep. Act No. 105, 1991
Heading to Schedule 3.....	ad. Act No. 105, 1991
Third Schedule.....	am. No. 4, 1952; No. 44, 1967; No. 18, 1969; No. 24, 1987; No. 38, 1989; Act No. 105, 1991
Heading to Fourth Schedule	rep. Act No. 105, 1991
Heading to Schedule 4.....	ad. Act No. 105, 1991
Fourth Schedule.....	am. No. 8, 1961; No. 69, 1983; No. 84, 1986; Acts Nos. 44 and 105, 1991

NOTES—continued

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